

**UPDATE ON OKLAHOMA REAL PROPERTY TITLE AUTHORITY:
STATUTES, CASES &
TITLE EXAMINATION STANDARDS
REVISIONS FOR 2020-2021**

(Covering July 1, 2020 to June 30, 2021)

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RESPECT FOR THE COURTS

“If respect for the courts and for their judicial process is gone or steadily weakened, no law can save us as a society. Lawyers, whatever their views on controversial decisions, must inspire respect for the judiciary.”

William T. Gossett, American lawyer; president, American Bar Association Speech, Canadian Bar Association, Ottawa, September 3, 1969

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- **2021 Report of the Title Examination Standards Committee of the OBA Real Property Law Section**
- **Latest TES Committee Agenda with Schedule of Meetings**

APPENDICES

A. LIST OF LATEST 10 ARTICLES (AVAILABLE ON-LINE), BY KRAETTLI Q. EPPERSON

**KRAETTLI Q. EPPERSON
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- **Oklahoma Bar - Admitted 1979**
- **Honors AV rated; 2022 The Best Lawyers in America (Oil and Gas; Real Estate Law); 2021 Oklahoma Super Lawyers;**
- **2021 405 Magazine Top Lawyers (Eminent Domain)**

EDUCATION:

- **University of Oklahoma [B.A. (PoliSci-Urban Admin.) 1971];**
- **State Univ. of N.Y. at Stony Brook [M.S. (Urban and Policy Sciences) 1974]; &**
- **Oklahoma City University [J.D. (Law) 1978].**

PRACTICE AREAS:

- **Mineral/Surface Title Matters: Curative, Litigation, Expert Consultant/Witness, and Opinions**
- **Mediations and Arbitrations**

SUCCESSFUL APPELLATE CASES AND SAMPLE ENGAGEMENTS:

- **Amicus Brief: Washout or ORRI (Arnold v. Cabot, 2021 OK 4)**
- **Appellant Counsel: Inadequate Legal Description (Riverbend Lands, LLC v. State of Oklahoma, ex rel, Oklahoma Turnpike Authority, 2019 OK CIV APP 31)**
- **Amicus Brief: Enforcement of Ancient Probate (Bebout v. Ewell, 2017 OK 22)**
- **Expert Opinion: Reformation of Deeds (Scott v. Peters, 2016 OK 16)**
- **Secured AG Opinion: Safe Distance Between Residences and Well Sites (2009 OK AG 5)**
- **Court-appointed Receiver for 5 Abstract Companies**

SPECIAL ACTIVITIES:

- **OBA Title Examination Standards Committee (Chairperson: 1988-2020)**
- **Oklahoma City University School of Law adjunct professor: “Oklahoma Land Titles” (1982-2018)**
- **Vernons 2d: Oklahoma Real Estate Forms and Practice, (2000 - Present) General Editor and Contributing Author**

SELECTED PUBLICATIONS:

- ***“Probate Venue (aka Jurisdiction) Is Important: Fulks Overrules Walker”, 92 OBJ 4 (April 2021)***
- ***“Seeking Default Judgment: After Schweigert”, 91 OBJ 54 (April 2020)***
- ***“Constructive Notice: Oklahoma’s Hybrid System Affecting Surface and Mineral Interests”, 80 OBJ 40 (January 2018)***

II. STATUTORY CHANGES **(see: www.lsb.state.ok.us)**

2021 Proposed Legislative Report Impacting Oklahoma Title and Real Property Attorneys October 7, 2021

[By: Tyler K. Larsen]

Bill No.: HB 1086

Brief Title: Guardian and ward, transfer or conveyance of property; notice; bonds; scope; purpose; homestead liens; effective date.

Sponsor: Boatman

Description: Procedural Bill relating to the method for conveyancing of property when a Ward is the owner of real or personal property that is or may be deemed an available resource by the United States Social Security Administration or by the Oklahoma Health Care Authority or other state agency.

Appears to be similar to HB3552 from last year.

Status: Approved by Governor 4/19/2021

Bill No.: SB 200

Brief Title: **Landlord Tenant**

Sponsor: Montgomery and Pae

Description: Allows victims of domestic violence to terminate lease without penalty by providing a copy of a protective order or police report. Also allows landlord to go after “perpetrator of such violence” to recover for early termination losses.

Status: Approved by Governor 5/4/21

Bill No.: SB 181

Brief Title: Ad Valorem Taxes, which relates to payment of taxes.

Sponsor: Taylor

Description: Amends 19 O.S. 2011, Section 2913. Modifies payment for mortgage services.

Taxpayers can pay more than half of tax bill before Dec 31st, remainder due by March 31st. Currently can only do equal payments.

Status: Approved by Governor 4/27/2021

Bill No.: SB 228

Brief Title: **Corporations - General Corporation Act**

Sponsor: Montgomery

Description: Appears to be amending the act for allowing electronic transmission of documents.

Status: **Approved by Governor 4/19/21**

Bill No.: SB 71

Brief Title: Local Development and Enterprise Zone Incentive Leverage Act; modifying reporting requirements for evaluation purposes.

Sponsor: Gergstrom

Description: Amends 62 O.S. 2011, Section 842 and 846, provides for data collection method for Tax Commission. (No new tax revenue, provides for rules for reporting.)

Status: Approved by Governor 4/21/21

Bill No.: SB 88

Brief Title: Public Trusts, modifying procedures for approval of waiver, termination and audit.

Sponsor: Howard

Description: Amends 60 O.S. 2011, Section 176. Provides for procedures for waiving bidding on bond issues, and audit requirements.

Status: Approved by Governor 4/21/21

Bill No.: HB 1148

Brief Title: Professions and occupations; Predatory Real Estate Wholesaler Prohibition Act; prohibiting certain contracts for sale of real property.

Sponsor: Osburn and Rosino

Description: Seeks to prohibit contracts for sale of an equitable interest in real estate unless the broker holds an active Oklahoma Real Estate License.

Status: Approved by Governor 5/3/21

Bill No.: HB 2326

Brief Title: **Title 1, Abstractors**

Sponsor: Frix

Description: Abstractors, amends 1O.S. 2011, Section 22,
Allows for reappointment and license qualifications.

Status: **Approved by Governor 5/10/21**

Bill No.: HB 2397

Brief Title: **Title 46 - Insurance**

Sponsor: Russ

Description: Mortgage Releases; Liens on real property; affidavit of release of mortgage or lien;

Removes requirement for written approval of title insurance company appear on mortgage release affidavit. Adds judgment lien and commercial agricultural land.

Status: **Approved by Governor 4/27/21**

As amended includes Judgment liens.

Bill No.: HB 2398

Brief Title: **Title 46 -- Mortgages**

Sponsor: Russ

Description: Title 46 – Mortgages: Mortgage or lien must be released within 30 days or pay 1% (\$100 per day) or mortgage, debtor, or Title Company may bring suit to recover penalty

Status: **Approved 4/27/2021.**

As amended substitutes Lien with the phrase Judgment Lien, and attorney is now Agent Attorney.

Bill No.: HB 2501

Brief Title: **Title 1 – Abstracting: Defines “authorized agent” and “representative” of current owner or insured**

Sponsor: Frix

Description: Allows for reappointment and license qualifications.

Status: **4/27/21 Approved by Governor.**
OLTA supported.

Bill No.: SB 300

Brief Title: Guardianship of vulnerable adult; requiring dismissal of temporary guardianship upon removal of emergency conditions.

Sponsor: Rosino and Kannady

Description: Procedural Bill relating to orders for involuntary protective services to state that when the conditions creating the emergency have been removed, then the court shall dismiss the temporary guardianship ordered.

Status: Approved by Governor 4/20/21

Bill No.: SB 1030

Brief Title: Insurance Department; Authorizing Department to conduct certain examinations in certain circumstances.

Sponsor: Quinn and Mize

Description: Allows Commissioner to impose a \$1000 civil fee on those who commit violations of the market conduct annual statements.

Status: Approved by Governor 4/22/21

Bill No.: HB 2678

Brief Title: Insurance; expanding actions that constitute unfair claims settlement practices.

Sponsor: Marti et al

Description: Amends 36 OS 2011, Section 1250.5

Expands the list of practices constituting an unfair claim settlement practice to include failing to include any amount paid by an enrollee or on behalf of an enrollee by another person when calculating the enrollee's total contribution to an out-of-pocket maximum, deductible, copayment, coinsurance or other cost-sharing requirement as it relates to a health insurer that provides pharmacy benefits manager that administers pharmacy benefits for a health plan.

Status: Approved 4/19/21

OKLAHOMA SUPREME COURT
CASES:
JULY 1, 2020 – JUNE 30, 2021

A. OKLAHOMA SUPREME COURT CASES
(JULY 1, 2020-JUNE 30, 2021)
LIST OF CASES

NO.	TOPIC		CASE	OLAHOMA CITATION	DECIDED
					MANDATE
	GENERAL	SPECIFIC			
A. <u>OKLAHOMA SUPREME COURT</u>					
1	Subcontractor’s Lien Statement	Filing Amended Lien Statement	Biantrav Contractor LLC v. Condren	2020 OK 73	9/21/2020
					N/A
2	Tourism Improvement District	Interpreting: “50 or More Rooms”	Toch, LLC v. City of Tulsa	2020 OK 81	9/30/2020
					11/5/2020
3	Due Process Notice	Constitutionality of Publication Notice When Addresses Known	Purcell v. Parker	2020 OK 83	10/6/2020
					11/19/2020
4	Surface Damages Act	Attorneys Fees to Jury-Demanding Party	Okla. ex rel. Commissioners of Land Office v. Stephens & Johnson Operating Co., Inc.	2020 OK 84	10/6/2020
					11/5/2020

A. OKLAHOMA SUPREME COURT CASES
(JULY 1, 2020-JUNE 30, 2021)
LIST OF CASES

NO.	TOPIC		CASE	OLAHOMA CITATION	DECIDED
	GENERAL	SPECIFIC			MANDATE
A. <u>OKLAHOMA SUPREME COURT</u>					
5	Probate Venue (Jurisdiction)	Proper Venue For In State Decedent’s Probate	In the Matter of the Estate of Fulks	2020 OK 94	11/24/2020
					1/7/2021
6	Sales Tax in Indian Country	Whether Sales Tax is Payable to Tribe and/or OTC	Warehouse Market v. State ex rel. Oklahoma Tax Comm.	2021 OK 6	2/2/2021
					3/3/2021

A. OKLAHOMA SUPREME COURT CASES
(JULY 1, 2020-JUNE 30, 2021)
LIST OF CASES

NO.	TOPIC		CASE	OLAHOMA CITATION	DECIDED
	GENERAL	SPECIFIC			MANDATE
A. <u>OKLAHOMA SUPREME COURT</u>					
7	Interest on Ad Valorem Tax Refund	General or Specific Interest Statute	In the Matter of the Assessments for the Tax Year 2012 of Certain Properties	2021 OK 7	2/9/2021
					3/17/2021
8	Pretermitted Heir	Omission of Child From Holographic Will	In the Matter of the Estate of Chester	2021 OK 12	3/23/2021
					5/26/2021
9	Foreclosure Sale During Bankruptcy	Bankruptcy Buyer Took Title Subject to Mortgage	Highpointe Energy v. Viersen	2021 OK 32	6/2/2021
					6/30/21

1. BIANTRAV CONTRACTOR LLC v. CONDREN (2020 OK 73)

- **GENERAL TOPIC: Subcontractor's Lien Statement**
- **SPECIFIC TOPIC: Filing Amended Lien Statement**

FACTS:

- Subcontractor filed an initial lien statement and then filed an amended lien statement (increasing the amount) within the statutory 90-day filing period following the last provision of material or equipment furnished or labor last performed.
- Subcontractor sued to enforce the lien, as amended.

HOLDINGS:

- Trial court held that such lien was ineffective apparently because the Appellant/Claimant filed an initial lien statement, and then, within the 90-day statutory period to file the initial lien statement, filed an amended lien statement (increasing the amount owed). (42 O.S. §143)
- Appellant/Claimant sought a Writ of Prohibition against any enforcement of such ruling. The Oklahoma Supreme Court assumed jurisdiction and granted the requested Writ of Prohibition, and held (¶7) *“The Court finds 42 O.S. §172 does not prohibit the filing of an amended lien statement, including an amendment as to the amount claimed, when the amended lien statement is filed within the 90-day time period prescribed by 42 O.S. Supp. 2013, §143. Section 172 is intended as a mechanism, once a civil action for enforcement is filed, to permit amendments to a lien statement to correct technical defects after the statutory period to file a lien has expired [without increasing the amount owed].”*

2. TOCH, LLC v. CITY OF TULSA (2020 OK 81)

- GENERAL TOPIC: Tourism Improvement District
- SPECIFIC TOPIC: Interpreting: “50 or More Rooms”

FACTS:

- Statute allowed creation of a Tourism Improvement District (TID) by cities for hotels with “50 or more” rooms.
- Tulsa passed an ordinance setting up a TID for hotels with “110 or more” rooms.
- The TOCH Company (owner of Aloft Hotel) protested at the city council meeting and then filed a lawsuit claiming the statute required the TID to always include hotels of “50 or more” rooms and not “110 or more” rooms.

HOLDINGS:

- Tulsa defended saying (1) Aloft filed the protest but TOCH (its owner) filed the lawsuit, and, therefore, only Aloft was the proper petitioner -- not TOCH, and (2) the Statute's use of "or" ("50 OR more") gave the city discretion so long as the TID did not include hotels below 50.
- TOCH'S filed a motion for summary judgment to find the "Tulsa Tourism Improvement District was improperly created." The trial court granted TOCH'S motion (§10). The trial court held (§8): *"The legislature did not grant to [City] the authority to legislate the number of rooms a hotel must have in order to be subject to the TID. The level set by legislature, '50 or more rooms' is 'perfectly clear' and unambiguous..... A number of questions raised by [Toch] are not reached in the determination of this matter because the enabling statute simply does not grant authority to [City] to set a threshold for creation of a TID. The threshold created by the legislature is 50 or more rooms."*

HOLDINGS (Cont'd):

➤ The Oklahoma Supreme Court assumed jurisdiction of the case on appeal and held:

(¶18) “Here, the petition stated that TOCH brought the action on behalf of the parties that objected to the creation of the TID and noted that TOCH owns and operates Aloft. TOCH did not appear and object at the hearing, but at least one party appeared at the hearing and filed a written objection on behalf of Aloft. Because Toch filed the petition in this matter as owner, operator, and on behalf of Aloft, we find Toch met the statutory prerequisite and properly brought this action.”

AND

(¶32) “Title 11, section 39-103. 1(A) provides municipalities the authority and discretion to create hotel advertising tourism improvement districts for any size hotel the municipality deems appropriate, so long as they have at least 50 rooms.

HOLDINGS (Cont'd):

City did not exceed the authority granted to it when it chose to limit the TID to hotels with 110 or more rooms. The district court erred in granting summary judgment to Toch. The district court's order is reversed and the cause is remanded for further proceedings."

➤ In the dissent (3 of 9 justices), it was explained (Dissent ¶¶7 & 8):

(¶7) "As written, the statute is permissive in character. However, similarly situated hotels and motels with less than 50 rooms within the improvement district will receive the benefits of the assessed class hotels or motels, yet pay no assessment.

(¶8) Accordingly, I respectfully dissent."

3. PURCELL v. PARKER **(2020 OK 83)**

- **GENERAL TOPIC: Due Process Notice**
- **SPECIFIC TOPIC: Constitutionality of Publication Notice When Addresses Known**

FACTS:

- Owner of a Lake sought a temporary and a permanent permit from the Oklahoma Water Resources Board to sell water to a third party for use in off-site fracking operations. Giving notice by publication to adjacent owners and downstream owners is directed in the notice statute.
- Notice was given by publication, and owners of the land containing the stream and of a farm adjacent to the Lake did not receive notice except by publication, which they did not see. They learned of the OWRB hearing belatedly and showed up and protested. After the permits were issued, they sued in District Court.

HOLDINGS:

➤ The adjacent land owners sued in the District Court claiming the use of publication notice was inadequate because their names and addresses were known or easily discoverable. The trial court dismissed the lawsuit.

➤ The Oklahoma Supreme Court concluded (§24):

“Pursuant to Cate, Dulaney, and Carlile, supra, if the affected landowners are known, or reasonably discoverable, notice provided by publication results in an unconstitutional exercise of jurisdiction and a denial of due process. There is no excuse for failing to give personal notice of something that directly affects landowners when such landowners are known or easily discoverable. Instead, 82 O.S. 2011 §105.11 ignores the precedents of this Court and the United States Supreme Court and clings to archaic procedures which have been invalidated for decades. Consequently, this cause is reversed and remanded for proceedings consistent herewith.”

HOLDINGS (Cont'd):

➤ In a dissent, Justices Kane and Winchester noted that it was premature for either the trial court or the Appellate Court to determine the adequacy of the use of notice by prohibition until the threshold question of whether the petitioner held a protected right was determined.

➤ The dissent held (Dissent, ¶1):

“While the judgment of the trial court is properly reversed in this action, the majority continues forward with the same error committed by the trial court -- prematurely resolving a due process dispute by presuming facts, rather than establishing facts from the record. This case stands to create broad, unintended consequences for countless other classes of litigation not before us today. While I share the majority’s sense of duty to protect the due process rights of our citizens, the record before us does not yet show that Petitioners’ due process rights have been abridged. Therefore, I concur in part and dissent in part.”

4. STATE OF OKLA, ex REL. COMMISSIONERS OF LAND OFFICE v. STEPHENS AND JOHNSON OPERATING CO., INC. **(2020 OK 84)**

- **GENERAL TOPIC:** Surface Damages Act
- **SPECIFIC TOPIC:** Attorney Fees to Jury - Demanding Party

FACTS:

- **The oil and gas operator (after drilling 4 wells) and the surface owner were unable to agree to surface damages under the Surface Damages Act (52 O.S. §318.2-318.9). Surface owner brought suit under the Act.**
- **Three appraisers were appointed pursuant to the Act, and a majority of 2 agreed to damages of \$450,000.00, and the third filed a minority report of \$120,510.00. Operator rejected the majority report and requested a jury trial.**

HOLDINGS:

- Jury awarded the surface owner \$206,192.97. This judgment was unappealed.
- Operator sought attorney fees and costs of \$359,458.71. Trial Court denied request altogether. COCA also denied attorney fees and costs.

(¶4) “COCA found that the Act provides for costs and attorney fees to be assessed only when the jury-demanding party fails to obtain a verdict more favorable than the appraisers’ assessment.”

- Certiorari to the Oklahoma Supreme Court was granted. Following the American Rule on the right to receive attorney fees, the Oklahoma Supreme Court withdrew the COCA Opinion and affirmed the trial court denial of attorney fees and costs.

- Specifically, the Oklahoma Supreme Court held:

(1) (¶7) “Here, the express requirements for Operator’s requested award of attorney fees and costs under §318.5(F) have not been satisfied.”

HOLDINGS (Cont'd):

Under the plain terms of the Act, only the non-jury demanding party may recover its fees and costs and only when the jury-demanding party failed to obtain a more favorable verdict than the appraiser's award. 52 O.S. 2011, §318.5(F). The terms of §318.5(F) are equally applicable in their treatment of the demanding party, regardless of whether a surface owner or an operator demands the jury trial. Tower Oil & Gas Co., Inc. v. Keeler, 1989 OK 104, ¶5, 776 P.2d 1277, 1278. This is not a prevailing party provision. Because Operator was the jury-demanding party and received a more favorable verdict, it is not entitled to fees herein under the plain terms of the SDA.”

AND

(2) (¶9) “Operator misconstrues the plain language of §55(D) which allows an award of fees, solely to the successful landowner.

HOLDINGS (Cont'd):

The Courts have specifically rejected an approach such as that advanced by Operator, holding that §55(D) does not authorize an award of attorney fees to a condemning party. See, e.g. Moore, 2009 OK CIV APP 63, ¶7, 217 P.3d 165, 167 (‘The language of §55 clearly subjects the condemning authority to the assessment of attorney, appraisal, engineering and expert witness fees. However, there is no corresponding provision subjecting the landowner to the assessment of such fees in the event the jury’s award is less than the commissioners’ award.’)”

AND

(3) (¶15) “Finally, Operator argues that equal protection principles demand that a successful defendant must be entitled to an award of attorney fees if a successful plaintiff is statutorily entitled to the fees.

HOLDINGS (Cont'd):

As mentioned previously, the attorney fees provided for by statute under the SDA and the railroad condemnation provisions are not typical 'prevailing party' awards. Further, the SDA subjects either party to payment of the other party's costs and attorney fees depending on the facts, which were not present herein."

5. IN THE MATTER OF THE ESTATE OF FULKS (2020 OK 94)

- GENERAL TOPIC: Probate Venue (Jurisdiction)
- SPECIFIC TOPIC: Proper Venue For an In State Decedent's Probate
- [SEE “*Probate Venue (Jurisdiction) is Important: Fulks Overrules Walker*”, 92 OBJ 28 (April 2021), by Kraettli Q. Epperson]

➤ FACTS:

- Decedent's wife filed the probate of his estate in Nowata County
- Decedent's daughter objected, claiming Osage County was the only proper venue (place of death, residence at death, and all property), seeking a transfer of the proceeding to Osage County due to the doctrine of intrastate *forum non conveniens*, relying on 58 O.S. Section 5.

HOLDINGS:

- Trial court denied the request for the proceeding to be transferred from Nowata County to Osage County
- The trial court relied upon its interpretation of 58 O.S. Section 5, and especially on the ruling in In re Estate of Walker, 2018 OK CIV APP 63 (as persuasive)
- In Walker a probate was completed in Osage County by the wife although the decedent's residence was in Mayes County
- In Walker, when a second probate was filed in the “correct” county (Mayes County), and the wife sought to dismiss the second probate, the trial court refused to dismiss the second probate
- The wife appealed in Walker

HOLDINGS (Cont'd):

- On appeal in Walker, the COCA reversed the trial court and directed the trial court to dismiss the second probate.
- In Walker, the COCA based its reversal on its (incorrect) assumption that the legislature (in 1941) changed the numbers of the subsections of 58 O.S. Section 5 from a written to a numerical designation (from First, Second, etc. to 1, 2, etc.)
- The COCA in Walker concluded the legislature thereby removed any priority on where to file, and instead found that the first court where the probate is filed always has proper venue.
- This conclusion in Walker was based on the last subsection (5) of 58 O.S. Section 5: *“Fifth, in all other cases, in the county where letters for administration is first made.”*
- In Fulks, the Oklahoma Supreme Court reversed the trial court and ordered the probate transferred to the correct county.

HOLDINGS (Cont'd):

- In addition, the Oklahoma Supreme Court also reversed Walker and held: *“Thus, Walker’s holding that a priority no longer exists in the statute because of a legislative amendment, and that a probate action may be filed in any of the applicable situations listed in Section 5, was based on an incorrect assumption. As a result, the rule suddenly became that probate venue was proper anywhere in the State of Oklahoma. To the extent that Walker is inconsistent with this opinion it is hereby overruled. Because we hold that Osage [the decedent’s residence] is the only proper county in which this probate may proceed, we need not address the intrastate forum non conveniens arguments made by the daughter.”* (emphasis added)

NOTE 1: ERROR REGARDING POSTURE OF WALKER:

- In Fulks the Ok Sup Ct misstated the posture of the Walker case by saying: “Like this cause, Walker, supra, also involved the request to transfer a probate case based upon a change of venue after administration of letters were first made.” Para. 23
- The Walker case did not involve a “request to transfer”; it related to a “motion to dismiss” the second probate (Para. 1), after the first probate had become “final” (Para. 3).
- This error in understanding the posture of the Walker case has potentially created a substantial negative unintended consequence.
- For instance, if the COCA in Walker, had done as suggested by Fulks and allowed the second probate to proceed, there would have been two parallel but potentially inconsistent Final Decrees distributing the same real property.

NOTE 2: PRESBURY SAYS “JURISDICTION”:

- The precedential case preceding Walker (being a COCA case) was Presbury, 1923 OK 127 (a precedential Oklahoma Supreme Court Case).
- Presbury stated (Presbury, ¶11):

“Where the decedent is a resident of the state, the court having jurisdiction to probate his will is specifically fixed by this statute [Section 6193, now 58 O.S. §5] in the county court of the county in which the decedent was a resident at the time of his death, and such jurisdiction cannot be shifted about to any other county, near or remote, merely by being diligent in making the first application for the probate of the will in some other county than that of the residence of the decedent. Only one county can have jurisdiction in such cases, and that is the county of which the decedent was a resident at the time of his death.”
- Therefore, under Presbury, 58 O.S. §5 is clearly a “jurisdictional” statute.

NOTE 3: VACATION OF IRREGULAR ORDER:

➤ Meyers, 1948 OK 246 stated (¶8):

“We have repeatedly held that the false allegation of the jurisdictional fact of residence in probate proceedings constitutes a fraud upon the court such as will justify the vacation of an order or judgment under Section 1031(4) above....The basis of jurisdiction in both probate and divorce cases is residence.”

➤ Meyers allows vacation in 2 years:

“Our statute fixes a limitation of two years to commence a proceeding to vacate a judgment because of fraud, 12 O.S. 1941 §1038.”

FULKS: UNANSWERED QUESTIONS -- PROBATE **VENUE AND/OR JURISDICTION***

(In the Matter of the Estate of Fulks, 2020 OK 94, 477 P.3d 1143

1. Based on the holdings in Fulks and Presbury, is the filing of an in-state decedent's probate in the county of the residence a matter of:

a. Jurisdiction 75%

b. Venue 25%

c. Not Know 0%

***Answers provided by 8 judges completing a survey for the 2021 Oklahoma Judicial Conference.**

FULKS: UNANSWERED QUESTIONS -- PROBATE VENUE AND/OR JURISDICTION

(In the Matter of the Estate of Fulks, 2020 OK 94 477 P.3d 1143)

2. Can such Jurisdiction be waived:

a. Yes 25%

b. No 75%

c. Not Know 0%

FULKS: UNANSWERED QUESTIONS -- PROBATE VENUE AND/OR JURISDICTION

(In the Matter of the Estate of Fulks, 2020 OK 94, 477 P.3d 1143)

3. Can such PROBATE venue be “waived”:

a. Yes 62.5%

b. No 37.5%

c. Not Know 0%

cont'd...FULKS: UNANSWERED QUESTIONS

4. Is the residence of an in-state decedent an essential jurisdictional fact that must be pled?

a. Yes 87.5%

b. No 0%

c. Not know 12.5%

cont'd...FULKS: UNANSWERED QUESTIONS

5. In the Walker fact scenario were the judgments, orders and decrees in the prior completed probate (in the wrong county):

a. Void 37.5%

b. Voidable 50%

c. Valid 0%

d. Not Know 12.5%

cont'd... FULKS: UNANSWERED QUESTIONS

6. Does the following language in Fulks (§3) mean that in the period between Walker and Fulks it was proper to file an in-state decedent's probate in some county other than in the county of the decedent's residence:

“As a result [of Walker], the rule suddenly became that probate venue was proper anywhere in the State of Oklahoma”:

- a. Yes 25%
- b. No 62.5%
- c. Not Know 12.5%

cont'd... FULKS: UNANSWERED QUESTIONS

7. Are probates completed in the wrong county before Walker void:

a. Yes 25%

b. No 50%

c. Not Know 25%

cont'd... FULKS: UNANSWERED QUESTIONS

8. Are probates completed in the wrong county between Walker and Fulks void:

- a. Yes 0%
- b. No 75%
- c. Not Know 25%

cont'd... FULKS: UNANSWERED QUESTIONS

9. If a completed probate is jurisdictionally void, is it necessary to file a petition or motion to vacate it:

a. Yes 62.5%

b. No 25%

c. Not Know 12.5%

cont'd... FULKS: UNANSWERED QUESTIONS

10. How long after a void judgment, order or decree is filed (and unappealed) can it be vacated:

1. Within 2 years (Fraud -- 12 O.S. Sections 1031(4) & 1038) -- 12.5%
2. Within 5 years (SOL -- 12 O.S. 93(1)) -- 25%
3. Within 10 years (SLTA -- 16 O.S. Section 62(c)(1)) -- 0%
4. Within 30 years (MRTA -- 16 O.S. Sections 71 et seq) -- 0%
5. Forever (Void Judgment -- 12 O.S. Section 1038) -- 50%
6. Not Know -- 12.5%

6. WAREHOUSE MARKET v. STATE EX REL.
OKLAHOMA TAX COMM.
(2021 OK 6)

➤ **GENERAL TOPIC:** Sales Tax in Indian Country

➤ **SPECIFIC TOPIC:** Whether Sales Tax is Payable to
Tribe and/or OTC

FACTS:

- **Two tribal members own a commercial building on tribal land. The owners entered into a long term lease (25 years) with a non-Indian management company which in turn subleased to a non-Indian retail company. The original lease required the tenant to pay the sales tax to the tribe. The sublessee collected and paid sales taxes only to the OTC.**
- **The tribe contacted the subtenant and advised it to pay the sales tax to only the tribe. The subtenant notified the OTC it would stop paying sales tax to the OTC.**
- **The subtenant filed an interpleader action paying \$600,000.00 into court and asking for a determination of who they owed the sales tax to. The tribe, OTC and the tenant were all joined.**

HOLDINGS:

➤ The trial court dismissed the tribe because the district court had no jurisdiction due to the tribe's sovereign immunity (§8). The trial court initially ordered that the taxes be paid to the OTC, and dismissed both the tenant and subtenant. (§9) Thereafter the trial court held that the OTC cannot collect such sales taxes (§11):

➤“The order states:

‘Plaintiff’s [Subtenant’s] Motion for Summary Judgment is GRANTED only to the extent Defendant Oklahoma Tax Commission is not currently entitled to retail tax proceeds at Plaintiff’s subject matter retail establishment unless and until the legitimate dispute between the Muskogee (Creek) Nation and the Oklahoma Tax Commission as to taxation authority is resolved in another forum or tribunal. To allow the Oklahoma Tax Commission to obtain funds or to have exclusive administrative authority over sales tax proceeds would result in catastrophic, permanent and irreparable harm to the innocent party Plaintiff who merely wants to pay its taxes.’”

HOLDINGS (Cont'd):

➤ OTC filed an appeal and the Oklahoma Supreme Court retained the case. The Oklahoma Supreme Court held once the trial court dismissed the Tribe, due to sovereign immunity, the matter was no longer an interpleader action between OTC and the Tribe, but solely a tax protest by the subtenant. Therefore, because the subtenant had failed to exhaust its administrative remedies to challenge the tax payment to the OTC, the trial court was without jurisdiction. Case was remanded to be dismissed, with funds to be paid to OTC. The concurring opinion agrees with the majority, but notes that the question remains open as to whether the subtenant also owes sales tax to the Tribe.

7. IN THE MATTER OF THE ASSESSMENTS FOR THE TAX YEAR 2012 OF CERTAIN PROPERTIES (2021 OK 7)

- **GENERAL TOPIC: Interest on Ad Valorem Tax Refund**
- **SPECIFIC TOPIC: General or Specific Interest Statute**

FACTS:

➤ Taxpayer paid ad valorem taxes under protest.

HOLDINGS:

- Taxpayer sued in District Court, successfully arguing that the taxes were not owed (nothing on one parcel and some lesser amount on a second parcel). Taxpayer sought pre-judgment and post-judgment interest.
- Trial court held the specific statute 68 §2884 was the proper pre-judgment and post-judgment (lower) interest rate, and was not the general post-judgment (higher) interest rate (12 O.S. §727.1).
- (para. 0) *“The Honorable Linda G. Morrissey, District Judge, granted the taxpayers' motion. Tulsa County Assessor appealed and Supreme Court retained the appeal sua sponte. We hold: the general post judgment statute, 12 O.S. § 727.1, does not apply to taxpayers' ad valorem tax protest appeal, and the procedure for interest on taxpayers' protested tax payments is provided by the ad valorem statute, 68 O.S. § 2884.”*

8. IN THE MATTER OF THE ESTATE OF CHESTER (2021 OK 12)

- **GENERAL TOPIC: Pretermitted Heir**
- **SPECIFIC TOPIC: Omission of Child From Holographic Will**

FACTS:

➤ **Father left a holographic will (handwritten -- printed and cursive -- and unwitnessed) leaving everything to his grandson, and not expressly mentioning his two living children (a son and a daughter).**

HOLDINGS:

- The daughter filed a probate in Grady County, Oklahoma and alleged there was no will, and she was appointed personal representative (Special Administrator).
- The grandson had earlier filed a separate probate in Oklahoma County, Oklahoma (the deceased's residence for 23 years) before the daughter filed her probate in Grady County.
- The grandson objected in Grady County and requested the proceeding be transferred to Oklahoma County asserting (1) that Grady County was the wrong county, (2) the daughter was unsuitable as the Special Administrator because she took bankruptcy several times and stole/damaged estate probate, and (3) the son was unsuitable since he shot the deceased causing life long injuries.

HOLDINGS (Cont'd):

- The son asserted he was a pretermitted heir, since (1) (without any explanation in the will) he (and his sister) were not mentioned in the holographic will, and (2) it was not all in “cursive” (being partially “printed” by hand).
- Trial Court (in Grady County) deemed “venue was proper” in Grady County, admitted the holographic will, appointed the daughter as the personal representative, and directed an inventory of all items.
- The son’s motion to have the trial court determine that he was a pretermitted heir was denied because (the trial court found) the holographic will “intentionally” omitted him (although it was really silent on that issue).

HOLDINGS (Cont'd):

- On the son's appeal the COCA affirmed the trial court.
- The Oklahoma Supreme Court granted Certiorari. The Oklahoma Supreme Court interpreted the pretermitted statute (84 O.S. §132). The holographic will (84 O.S. §54) expressly left the entire estate to his grandson. It was unambiguous (so no extrinsic evidence is allowed) and it failed to mention his son and daughter by name or class, and did not expressly leave them nothing or a nominal amount. The Oklahoma Supreme Court found the son (and daughter) were pretermitted heirs. The trial court was reversed and the COCA vacated, and it was remanded to the trial court.

[AUTHOR'S COMMENTS: The trial court denied the grandson's motion to transfer the proceeding from Grady County to Oklahoma County. This is worrisome because the Grady County was filed second and, according to the grandson, Oklahoma County -- not Grady County -- was the decedent's residence at the time of death, and had been the decedent's residence for the prior 23 years. Yet, without discussion, the trial court declares Grady County is the proper "venue" (58 O.S. Section 5, ¶5) and the Oklahoma Supreme Court fails to follow its own holding in Fulks (2020 OK 94): that the only court with probate jurisdiction/venue is the decedent's county of residence at death.]

9. HIGHPOINTE ENERGY v. VIERSEN **(2021 OK 32)**

- **GENERAL TOPIC: Foreclosure Sale During Bankruptcy**
- **SPECIFIC TOPIC: Bankruptcy Buyer Took Title Subject to Mortgage.**

FACTS:

- Mineral (royalty) owner gave mortgage on mineral interest and filed the mortgage of record in McClain County. The borrower took Bankruptcy (Federal Court, Eastern District of Oklahoma) and the Trustee sold such minerals to a third party. During the bankruptcy the mortgage went into default and a foreclosure lawsuit was filed, joining the debtor (bankrupt) and with notice served on the bankruptcy Trustee.
- Because the foreclosing lender gave the bankruptcy Trustee actual notice of the foreclosure proceeding, the lender knew of the pending bankruptcy. So while Federal Bankruptcy Law requires the Trustee to file notice of the bankruptcy in every county where the bankrupt owns real property (including minerals), and, therefore, in the absence of such filing, a purchase of such interest would be free from the bankruptcy proceedings, in this instance, the lender clearly had actual notice of the pending bankruptcy.

FACTS (Cont'd):

➤ **The Sheriff's sale resulted in a Sheriff's deed to a third party and the Trustee's sale resulted in a Trustee's deed to a different third party.**

HOLDINGS:

➤ The buyer at the Sheriff's sale filed a quiet title suit against the buyer at the Trustee's sale. The trial court held that both buyers had knowledge of the other's claim, but because the bankruptcy sale was not made free from liens, such sale was subject to any recorded liens, including the subject mortgage.

➤ The Oklahoma Supreme Court affirmed the trial court and held:

(¶26) *“The bankruptcy purchasers held no greater rights than the bankruptcy trustee held. The Trustee held Cal-Cul’s interest in the disputed property with a cloud on the title secured by the Missionary’s mortgage. The Trustee had notice of the foreclosure proceedings and neglected to take any action to clear the title and sell the disputed property interest free and clear of all liens. Consequently, pursuant to the rationale to Viersen v. Boettcher, 1963 OK 26, 387 P.2d 133, the purchasers under the Sheriff’s deed chain of title hold superior title.”*

[AUTHOR’S NOTE: While I agree with the holding in this case, there is a problem with the prior case which is relied on by this court. In Viersen v. Boettcher, 1963 OK 262, 387 P.2d 133, there was a quiet title suit between two claimants, one as a buyer under the same Cal-Cul Bankruptcy and the other as a buyer under a mortgage foreclosure sale. The trial court held that the buyer under the mortgage sale had the superior title over the buyer in the bankruptcy. On appeal the Oklahoma Supreme Court reversed and held the buyer under the bankruptcy sale held senior title because neither the buyer under the bankruptcy sale nor the Trustee were joined in the foreclosure or received actual notice of the foreclosure. However, the Oklahoma Supreme Court also held that:

(¶17) “Although the Court did not address whether the mortgage interest could still be foreclosed, it remanded the matter to the trial court with directions to enter quiet title to Viersen, subject to whatever right Boettcher might have under the mortgage.

AUTHOR'S NOTE (Cont'd):

The Court also discussed a 1938 revision to the Bankruptcy Act, after the sales at issue were completed, which might have resolved the notice issues. Under the revision [11 USCA §549], recording of the bankruptcy petition, decree of adjudication, or order approving the trustee's bond was required in every county where the bankrupt owned real property.”

This decision's message for future title examiners and courts appears to be that if a bankruptcy Trustee fails to file proper notice of the pending bankruptcy in each county where the bankrupt party holds title to real property (as required by 11 USCA §549) any direct sale or foreclosure sale will be free from any claim by the buyer in the bankruptcy proceeding (absent actual notice of the bankruptcy by the foreclosing lender and/or buyer at the foreclosure.)]

OKLAHOMA COURT OF CIVIL APPEALS: JULY 1, 2020 – JUNE 30, 2021

B. OKLAHOMA COURT OF CIVIL APPEALS CASES
(JULY 1, 2020 - JUNE 30, 2021)
LIST OF CASES

NO.	TOPIC		CASE	OKLAHOMA CITATION	DECIDED
					MANDATE
	GENERAL	SPECIFIC			
B. <u>OKLAHOMA COURT OF CIVIL APPEALS</u>					
10	Construction Contract Breach	Oklahoma Citizens Participation Act Application	Lewis v. Corrente	2020 OK CIV APP 45	5/18/2020
					8/26/2020
11	Transfer-on-Death Deed & Probate	Unaccepted TODD Is Not a Waiver	In the Matter of the Estate of Stites	2020 OK CIV APP 51	8/9/2019
					10/14/2020
12	Partition	Contribution Impact On Co-Tenancy	Shreck v. Reed	2020 OK CIV APP 54	4/9/2020
					11/5/2020
13	Tax Resale	Recovery of Mispaid Tax Sale Excess Proceeds	Grillo Ventures v. VU	2020 OK CIV APP 57	10/2/2020
					11/5/2020

B. OKLAHOMA COURT OF CIVIL APPEALS CASES
(JULY 1, 2020 - JUNE 30, 2021)
LIST OF CASES

NO.	TOPIC		CASE	OKLAHOMA CITATION	DECIDED
	GENERAL	SPECIFIC			MANDATE
B. <u>OKLAHOMA COURT OF CIVIL APPEALS</u>					
14	Residential Landlord & Tenant Act	Termination of Lease Before Occupancy	Ahlstrom v. Campbell Real Estate	2020 OK CIV APP 70	9/23/2020
					12/30/2020
15	Condemnation	Damages to Remainder Property Discernable at Trial	State ex rel. Dept. of Transportation v. Trade Winds Motor Hotel East	2021 OK CIV APP 6	7/3/2020
					3/17/2021

10. LEWIS v. CORRENTE **(2020 OK CIV APP 45)**

- **GENERAL TOPIC: Construction Contract Breach**
- **SPECIFIC TOPIC: Oklahoma Citizens Participation Act Application**

FACTS:

- **Homeowner contracted with a builder to remodel a residential kitchen and bathroom. Homeowner paid half up front with balance due on completion. Builder failed to get required permits and had completed less than half of the project, when homeowner contacted builder by phone (builder's number on her card was a cell number) about the status of the project.**
- **Homeowner was a US Air Marshal. Builder filed a complaint with the local police department complaining solely about the call being made “after normal business hours.” The builder then called the US Air Marshal Service to advise them she had filed a police report. The US Air Marshal Service then terminated the homeowner's contact as a US Air Marshal.**
- **The builder stopped work and homeowner had another remodeler complete the project. The initial builder demanded full payment and the homeowner refused. The builder filed a mechanics and materials MM Lien against the homeowner's house.**

HOLDINGS:

- The homeowner sued the builder for: (1) breach of construction contract, (2) cancellation of MM Lien, (3) slander of title (due to MM Lien), (4) civil conspiracy to slander, encumber and cloud title, and (5) intentional interference with the US Air Marshal Contract.
- The builder filed a motion to dismiss asserting that all of the claims (except breach of contract) were protected under the Oklahoma Citizens Participation Act.

(¶10) “The trial court ultimately denied Defendants’ motion on the basis that, among other things, ‘the facts and circumstances of this case are [not] what the statute [OCPA] is intended for,’ ‘the legal action was [not] brought to deter or prevent the moving party from exercising constitutional rights,’ and Mr. Lewis ‘established by clear and convincing evidence a prima facie case for each essential element of his claims.’”

HOLDINGS (Cont'd):

➤ The COCA explained that:

(¶15) *“Under the OCPA, the initial burden is on the Defendants to show that Mr. Lewis’s theories ‘relate to Defendants engaging in activity protected by the OCPA, i.e., the exercise of the right of free speech; the right to petition; or the right of association.’ Krimbill, 2018 OK CIV APP 37, ¶34. The Legislature has defined these protected activities in 12 O.S. Supp. 2014 §1431 as follows:*

2. ‘Exercise the right of association’ means communication between individuals who join together to collectively express, promote, pursue or defend common interests;

3. ‘Exercise the right of free speech’ means communication made in connection with a matter of public concern;

4. ‘Exercise of the right to petition’ means any of the following:...

HOLDINGS (Cont'd):

As noted by the Krimbill Court, ‘The definition of exercise the right to petition continues with numerous examples[.]’ 2018 OK CIV APP 37, ¶34 n.12.”

➤ The COCA affirmed the trial court’s denial of the builder’s motion to dismiss, holding:

(¶29) “With regard to the theories of cancellation of the mechanic’s and materialmen’s lien, slander of title, and civil conspiracy, we conclude Defendants have failed to meet the initial burden of showing these theories are based on, relate to or are in response to Defendants exercising a constitutional right to petition. With regard to the theory of interference with contract, we conclude material facts remain in dispute, thus rendering dismissal under the OCPA improper. Consequently, we affirm the trial court’s order denying Defendants’ OCPA motion.”

11. IN THE MATTER OF THE ESTATE OF STITES

(2020 OK CIV APP 51)

- GENERAL TOPIC: Transfer-on-Death Deed and Probate
- SPECIFIC TOPIC: Unaccepted TODD Is Not Waiver

FACTS:

- Deceased signed a TODD deed to one son on the same day he signed a will devising the same real property to the same son.
- Upon the decedent's death, the grantee on the TOD deed failed to timely (within 9 months) file the statutorily required affidavit accepting the property conveyed by the TOD deed.

HOLDINGS:

- A probate was filed, first by the grantee son, and then by a non-grantee son. The grantee son asked the court to make a partial distribution to him of the specific real property conveyed by both the TOD deed and the specific devise in the will.
- The non-grantee son objected claiming (1) the failure of the grantee son to timely file the required affidavit meant there was a “disclaimer”, so that the property would be devised under the residuary clause in the will (1/3 to each son) and (2) the will stated that the subject real property would go to the grantee son unless it was otherwise transferred by TOD deed.
- Trial court ordered the real property be conveyed to the grantee son. Non-grantee son appealed.

HOLDINGS (Cont'd):

- The COCA affirmed the trial court, and held (§15):

“We can see no basis for reversing the trial court’s determination of ownership interest.

- The COCA explained why it affirmed the trial court (§19):

“The trial court’s determination that the Decedent’s Will and TODD evinced an intent that Jef receive the entire Property in the event that the TODD was not accepted was not against the weight of the evidence. Further, the unaccepted transfer via TODD was not a lapsed gift or disclaimed interest. As such, we affirm the trial court’s order distributing the Property to Jef according to the Will’s specific devise. We also hold that the Discovery Code applies to probate proceedings and deny Ty’s motion to reverse or vacate the trial court’s May 19, 2019 order.”

12. SHRECK v. REED (2020 OK CIV APP 54)

➤ GENERAL TOPIC: Partition

➤ SPECIFIC TOPIC: Contribution Impact on Co-Tenancy

FACTS:

- **Two brothers owned land as co-tenants.**
- **Allegedly one brother paid 97% of the mortgage, maintenance and taxes.**
- **Non-paying brother deeded his share to his sister.**

HOLDINGS:

➤ Sister sued for partition. Commissioners were appointed and they concluded the land could NOT be distributed in kind, and, therefore, appraised it. Paying brother agreed that the deed made him and his sister co-tenants, but, due to his disproportionate share of the payments, his share in the property should be increased from 50% to 100%. The trial court held that the first step was to determine the respective ownership shares in the land. The paying brother appealed, and this matter was set on the accelerated docket.

➤ The COCA affirmed the trial court, and held (§15):

“We can see no basis for reversing the trial court’s determination of ownership interest. The law of tenancy in common dictates the result reached by the trial court, and no evidentiary support has been presented to lead to a different outcome, or even to present a disputed issue of fact on the question of ownership. Defendant’s unequal expenditure of funds in regard to the property does not change the undivided one-half interest each party has in the property as a tenant in common.”

HOLDINGS (Cont'd):

Despite this being an equitable proceeding, principles of equity do not dictate that an owner may recoup his disproportionate payment of related expenses by overriding the clear language of the deed of conveyance to the parties. If this were the law, much mischief could result, as Plaintiff points out. Recovery of these expenditures must be left for another day and another mechanism.”

13. GRILLO VENTURES v. VU (2020 OK CIV APP 57)

➤ GENERAL TOPIC: Tax Resale

➤ SPECIFIC TOPIC: Recovery of Mis-paid Tax Sale
Excess Proceeds

FACTS:

- **Owner of land (who bought the vacant lot at an earlier tax sale for \$388.00), thereafter failed to pay their county ad valorem taxes and consequently received notice of a tax sale of such property.**
- **After notice was received (April 2019), the owners sold the land to a third party (Ms. Vu) without Ms. Vu checking title and without the owner (Finleys) disclosing the pending tax sale and other outstanding liens.**
- **Finleys gave Ms. Vu a warranty deed and received \$38,000.00 in cash. Ms. Vu filed her deed but did not notify the county treasurer of her purchase, and she failed to pay the taxes or liens.**
- **The property was sold at the tax sale for \$83,000.00 (taxes due were \$986.00) and a tax deed was given to the third party buyer. At the request (probably fraudulent) of the Finleys, the treasurer gave the Finleys the excess proceeds of \$82,013.00. Before paying the Finleys, the county failed to check the land records to determine whether the Finleys were still the (former) owner.**

HOLDINGS:

- In August 2019, the third party buyer (Grillo Ventures, LLC) discovered Ms. Vu's deed and sued Ms. Vu in a quiet title action to extinguish her claim of interest. Grillo also joined the Finleys and the third party lien holders.
- Ms. Vu counter-sued the Finleys for fraud and breach of warranty, and the County Treasurer for either mandamus to pay Ms. Vu the excess proceeds or for a money judgment for the \$82,013.00. Ms. Vu agreed to an order quieting title in Grillo. Ms. Vu dismissed (without prejudice) her claims against the Finleys. The Treasurer filed a motion to dismiss. The trial court entered judgment denying her request for a writ of mandamus, and dismissed her tort claims (without prejudice) against the county. Ms. Vu appealed.

HOLDINGS (Cont'd):

- The COCA held that the “record owner” who should receive notice of the upcoming sale (68 O.S. §3127) was as shown in the assessor’s records (which showed the Finleys and not Ms. Vu), but that the requirement to pay the excess funds (68 O.S. §3131(C)) to “record owner” means as shown in the county clerk’s land records -- which was Ms. Vu.
- The county is required to check title again before paying out the excess funds. However, since the excess funds had already been paid out it was impossible to issue the requested writ of mandamus.
- COCA suggested that Ms. Vu seek a money judgment against the County, or against the Finleys for their “seemingly fraudulent conduct.”

14. AHLSTROM v. CAMPBELL REAL ESTATE **(2020 OK CIV APP 70)**

- **GENERAL TOPIC: Residential Landlord & Tenant Act**
- **SPECIFIC TOPIC: Termination of Lease Before Occupancy**

FACTS:

- **Tenant paid first month's rent, security deposit, and pet deposit. On the day they entered the home: there was no functioning air conditioner (summer/August), a strong odor, and carpet pulled up exposing metal tacking strips. They advised landlord of these problems and gave back the keys. Landlord said no other house was available. Landlord gave tenants another place to stay for the night (unfurnished home with air mattresses on the floor).**
- **Letter from tenants said if the house was not fixed and ready for occupancy the next day, they would consider the lease agreement "null and void." The house was not ready the next day, and the landlord said the ORLTA gave him 14 days to fix the problem.**
- **The tenants sent a second letter terminating the lease and demanding the return of their first month's rent and security deposit. Landlord sent the tenants a letter saying lease was in full force and effect, and refused to return any money.**

HOLDINGS:

- Tenant sued and trial judge held the landlord had 14 days to remedy the defects (42 O.S. §121). Tenant sought new trial and it was denied. Tenant appealed.
- COCA reversed and remanded to trial court directing trial court to enter judgment for tenant for return of first month's rent, deposit payments and attorney fees and costs. This was because the problems were discovered before occupancy began rather than during occupancy:

(¶29) *“Based on a plain reading of section 121 while giving full force and effect to section 120, we find section 121 concerns habitability issues occurring or discovered during occupancy; whereas, section 120 addresses the remedies available to a tenant when a landlord fails to deliver possession at the time of the commencement of the lease. See Vasquez v. Chi Properties, LLC, 925 N.W.2d 304, 315-16 (Neb. 2019) (similarly interpreting relevant provisions of Nebraska’s version of the Uniform Residential Landlord and Tenant Act (URLTA)).*

HOLDINGS (Cont'd):

Again, Landlord failed to deliver possession at the time of commencement within the meaning of section 117. Therefore, Tenants were entitled to the remedies available under section 120 [immediate termination], and section 121 [14 days to repair] was inapplicable.”

15. STATE EX REL. DEPT. OF
TRANSPORTATION v. TRADE WINDS MOTOR
HOTEL EAST
(2021 OK CIV APP 6)

➤ **GENERAL TOPIC: Condemnation**

➤ **SPECIFIC TOPIC: Damages to Remainder Property
Discernable at Trial**

FACTS:

- **ODOT condemned a 1/2 acre tract adjacent to a hotel.**
- **During construction massive water damage to the “remaining property” (the hotel) occurred which was allegedly caused by ODOT’s contractor.**

HOLDINGS:

- A condemnation proceeding was filed and was protracted, and by the time that it went to jury trial, the whole ODOT project had been completed. Based on an initial commissioner's report, ODOT paid \$847,000 into court, which was partially taken by condemnee (the hotel owner).
- There were several commissioner's reports. At the jury trial (demanded by both parties), in addition to ODOT and the condemnee (hotel owner), the ODOT's contractors (who caused the water damages) and the condemnee's insurance company were joined as parties.
- The trial court refused to allow evidence of the water damages to the remaining property to be presented to the jury. The condemnee made an offer of proof as to such water related damages, which was refused.
- The trial court held:

(¶18) *“The jury returned a verdict in favor of TWE for \$340,000.*

HOLDINGS (Cont'd):

The court entered judgment on the verdict for TWE for that amount in a journal entry which also characterized the amount as being ‘just compensation and damages...exclusive of any of Defendants’ claims of damages to said remaining lands and improvements by reason of water damages alleged to have resulted from the relocation of...water lines by [ODOT Contractors].’ In addition to judgment on the jury verdict, the court entered judgment in favor of ODOT on condemnation proceeds withdrawn by TWE and other Defendants in excess of the jury’s verdict -- \$420,000 -- and found ODOT was entitled to the return of \$87,000 remaining from the funds originally deposited with the district court clerk.”

➤ **The condemnee appealed. COCA vacated the trial court order and remanded the case.**

HOLDINGS (Cont'd):

➤ COCA held that:

(¶24) *“Pursuant to these provisions, the Supreme Court has recognized that ‘a landowner is entitled to full compensation for damages including those for a condemnor’s tortious conduct.’ (cites omitted) The Court in Curtis further indicated that, under the circumstances presented there, only such damage as is a ‘necessary incident’ to construction/operation of the public project should be considered in the condemnation proceeding itself. Curtis at ¶15. (cites omitted)”*

“As for injury that is ‘due to willful or negligent construction or operation,’ the Court said the remedy is ‘through a separate and distinct cause of action such as trespass.’ Curtis at ¶17.”

HOLDINGS (Cont'd):

- (§25) *“The Court has also held, however, that when a public project is completed prior to the trial in the condemnation case, ‘it is proper for the jury and court to consider the facts then existing’ to determine compensation for the landowner, including damages potentially caused by the condemnor or its contractor’s negligence or trespass. See, e.g., Cities Serv. Gas Co. v. Huebner, 1948 OK 77, ¶0, 1935 P.2d 985, where the Court distinguished its holding in Miller Bros. 101 Ranch (cited above) as involving a situation where the public work had not been completed at the time of the trial. In Huebner, the Court approved the trial court’s decision allowing the jury to consider damages resulting from a condemnor’s trespass or negligence in the condemnation case...”*

HOLDINGS (Cont'd):

- Therefore, because the project was completed by the time of trial, all damages -- both the value of the land taken and damages to the remaining property -- were determinable. Because all damages were determinable, and because, where possible there must just be one trial in a condemnation proceeding -- which is a special proceeding -- all damages must be included.
- The only way to exclude damages such as speculative damages that have not yet occurred -- because the project is incomplete at time of trial -- is to expressly reserve such damages. In this instance, the trial court held the condemnee had no remaining damages because he had received some payment from its insurer. The trial judge granted summary judgment to ODOT on the condemnee's counterclaims, and to the ODOT contractors on the condemnee's claims.
- COCA vacated the trial court judgment and remanded for a jury trial on all damages, including value of land taken and all damages to the remaining land. No negligence or trespass needs to be proven; just damages.

VI. TITLE EXAMINATION STANDARDS CHANGES

2021 REPORT OF THE TITLE EXAMINATION STANDARDS COMMITTEE OF THE REAL PROPERTY LAW SECTION

Proposed Amendments to Title Standards for 2022, to be presented for approval by the House of Delegates, Oklahoma Bar Association prior to or at the 2021 OBA Annual Meeting. Additions are underlined, deletions are indicated by ~~strikeout~~. Formatting requests that are not to be printed are contained within {curly brackets}.

The Title Examination Standards Sub-Committee of the Real Property Law Section proposes the following revisions and additions to the Title Standards for action by the Real Property Law Section prior to or at its annual meeting in 2021.

Proposals approved by the Section will be presented to the House of Delegates prior to or at the 2021 OBA Annual Meeting. Proposals adopted by the House of Delegates become effective immediately.

An explanatory note precedes each proposed Title Standard, indicating the nature and reason for the change proposed.

Proposal No. 1.

The committee recommends a new Standard 3.2.1 be included to assist title examiners with the application of an affidavit of heirship regarding severed mineral interests.

3.2.1 ACQUIRING SEVERED MINERAL INTERESTS FROM DECEDENT - ESTABLISHING MARKETABLE TITLE

In part, 16 O.S. §67 provides that a person who claims a severed mineral interest, through an affidavit of death and heirship recorded pursuant to 16 O.S. §§82 and 83, shall not acquire marketable title until ten (10) years after the recording of an affidavit that satisfies Part C of Section 67.

Authority: 16 O.S. §§53, 67, 82, and 83.

Comment 1: The term “severed mineral interest” is not defined in the Simplification of Land Titles Act although it is in the Marketable Record Title Act. Thus, while the statute explicitly states that it applies to a severed mineral interest, its application to leasehold interests (i.e., working interest, overriding royalty interests, etc.) has not been determined.

Comment 2: 16 O.S. §§ 82 and 83 provide that such an affidavit creates a rebuttable presumption that the facts stated in the recorded affidavit are true as they relate to the severed minerals.

Comment 3: Pursuant to 16 O.S. §§67, 83 and 83, the affidavit must contain sufficient factual information to make a proper determination of heirship. Such factual information typically includes the date of death of the decedent, a copy of the death certificate, marital history of the decedent, names and dates of death of all spouses, a listing of all children of the decedent including any adopted children,

identity of the other parent of all children of the decedent, the date of death of any deceased children and the identity of the deceased child's spouse and issue, if any. Pursuant to 16 O.S. §§84, the affidavit shall include the legal description of the land covered by the affidavit. If an affidavit fails to include factual information necessary to make a proper determination of heirship, the examiner should call for a new affidavit that contains the additional facts necessary for a proper determination of heirship. If a new or corrected affidavit is filed, the statutory 10-year period would run from the date of recordation of the new or corrected affidavit.

Comment 4: Title 16 O.S. §67 does not address the effect on title of an unprobated will attached to the affidavit. Oklahoma cases have held that until a will is admitted to probate, it is wholly ineffectual to pass title to real property, including any mineral or leasehold interest, and a devisee has no right to enforce any provisions of said will. Oklahoma cases have also held that there is no time limit within which a petition for probate of a will must or can be filed.

A will that has been probated in another jurisdiction but has not been probated in Oklahoma is ineffective to establish any interest or title in the persons claiming thereunder without proper Oklahoma proceedings. As a result, there is uncertainty regarding the legal effect of the attached will.

Proposal No. 2.

The committee recommends a new Standard 6.9 be included to assist title examiners with the application of new legislation regarding Remote Online Notaries.

6.9 REMOTE ONLINE NOTARIES AND RECORDING OF ELECTRONIC DOCUMENTS IN TANGIBLE FORM

A. Remote Online Notarization

Beginning January 1, 2020, Oklahoma law recognizes remote online notarizations performed by an Oklahoma Remote Online Notary. 49 O.S. §211 provides that a remote online notarization done pursuant to the requirements of the law of Oklahoma shall satisfy any requirement of law that requires principal appear before, appear personally before, or be in the physical presence of a notary public at the time of the performance of the notarial act.

Anytime a notarial acknowledgment is required under these Standards, an acknowledgment by an Oklahoma Remote Online Notary shall be deemed to satisfy the requirement if the Remote Online Notarization is completed in compliance with 49 O.S. §211.

Although the language of Oklahoma's statute purports that a Remote Online Notarization satisfies any requirement of law of this state that the principal appear before a notary public, the execution of wills and testamentary trusts and transactions under the Uniform Commercial Code are specifically excluded from the Uniform Electronic Transactions Act adopted by the state of Oklahoma.

Comment: The certificate of notarial act for a remote online notarization shall indicate that the notarial act was a remote online notarial act performed by means of communication technology. The Oklahoma Administrative Code provides the following example language for the acknowledgment of an individual by a remote online notary: “This record was acknowledged before me by means of communication technology on (date) by (name(s) of person(s)).”

Authority: 49 O.S. §§201-214; 12A O.S. §15-103; Okla. Admin. Code §655:25 Appendix A

B. Recording Electronic Documents in Tangible Form

Beginning January 1, 2020, Oklahoma law recognizes the recordation of electronic documents in tangible form. Pursuant to 16 O.S. §87, an electronic document is a document that is created, generated, sent, communicated, received, or stored by electronic means.

As used in these Standards, the word “document” should be interpreted to include electronic documents recorded in tangible form.

Pursuant to 16 O.S. §87 (B), an electronic document in paper form certified to by an Oklahoma notary public will satisfy any statutory recording requirement that the document:

1. be an original or be in writing;
2. be signed or contain an original signature if the document contains an electronic signature of the person required to sign the document; and
3. be notarized, acknowledged, verified, witnessed or made under oath, if the document contains an electronic signature of the person authorized to perform that act, and all other information required to be included.

Authority: 16 O.S. §87

Comment: No additional notarial certification is required under Oklahoma law to make the above describe certification of an electronic document in tangible form.

Caveat: This statute does not apply to a plat, plan, map, or survey of real property, or other instruments with format and medium restrictions.

Proposal No. 3.

The committee recommends for the following editorial changes to the Title Standards as they appear on OSCN to bring the printed handbook and OSCN into conformity.

13.1 CONVEYANCES TO AND BY PARTNERSHIPS

...

Authority: 54 O.S. § § 1-201 (for all general partnership conveyances after January 1, 2020) and §307 (for limited partnerships).

13.5 NO MARITAL RIGHTS IN PARTNERSHIP REAL PROPERTY

No homestead or other marital rights attach to the interest of married partner in specific partnership real property. If, by recitals in instruments in the chain of title or otherwise, it appears that partnership real property was conveyed, the title examiner should not require any evidence of release or non-existence of such marital rights.

....

13.6 ASSETS OF PARTNERSHIP NOT SUBJECT TO EXECUTION FOR DEBTS OF INDIVIDUAL PARTNERS

Specific partnership property is not subject to execution on a claim, judgment or lien against a partner of the partnership. A partner in a general partnership formed prior to November 1, 1997, is a co-owner with the other partners of specific partnership property, holding as a tenant in partnership.

Commencing January 1, 2000, the concept of tenancy in partnership will not define the nature of the partners' ownership interests. {new paragraph} A partner's right to possess property is equal with that of the other partners and one (1) partner has no right to possess such property for any other purpose, except with the consent of other partners. A partner's right in specific partnership property is not assignable except in connection with the assignment of all rights of all partners in the same property.

13.7 CONVEYANCES TO AND BY JOINT VENTURES

A.

Comment: Subsection "A" reinstates the essential text of Subsections "A" and "B" under former ~~model~~ Standard 10.8, which was repealed in 1996 following the amendment to 16 O.S. §1. The earlier text remains applicable to conveyance mortgage or other real estate instruments in the chain of title prior to November 1, 1995.

....

C.

....

An instrument to “A and B, members of XYZ joint venture,” does not give notice of the existence of other members because a joint venture can be two people. An instrument to A, “a member of XYZ joint venture,” is notice because one person alone cannot be a joint venture. Similarly an instrument to “A and B, some members of XYZ joint venture,” is notice of the existence of at least one other joint venturer.

D. With respect to a conveyance, mortgage or other real estate instrument executed from and after November 1, 1995, in which title of record appears in the name of a described joint venture, the title examiner is entitled to rely, by analogy, on the concepts embodied in Title Examination Standard 13.3 (relating to conveyances of real property held in the name of a partnership) and in Title Examination Standard 13.4 (relating to the authority of one general partner to act for all partners).

....

Comments: Prior to Oklahoma case law follows a common law rule one joint venturer may bind the other venturer(s) in matters within the scope of the business. Thus, the mutual agency concepts associated with partnership law are applicable. There is specific Oklahoma authority that members of a joint venture have the powers and interests of partners in the disposition of real property held in the name of the joint venture. See *Dobbins v. Texas Co., supra*, 275 P. at 648. Thus, if no limitation on the power to sell or encumber real property appears of record, a conveyance instrument made by any one or more venturers in good faith and in the due course of the enterprise, binds all the co-venturers.

13.8 Recital of Identity, Successorship or Consolidation.

Unless there is some reason disclosed of record to doubt the truth of the recital (e.g., the recordation of a conflicting certificate prepared pursuant to 54 O.S. §310.1), after September 1, 1990, but prior to November 1, 1997, a recital of name change or recital of succession by merger or consolidation of one or more domestic limited partnerships with one or more other domestic limited partnerships or other business entities may be relied upon if contained in a recorded title document properly executed by the successor or resulting entity. “Other business entity” is defined as a corporation, a business trust, a common law trust or an unincorporated business including a partnership, whether general or limited. From and after November 1, 1997, the identification of succession through merger must be evidenced of record by a Statement of Merger, duly certified by the Oklahoma Secretary of State and filed of record with the county clerk in the county in which the partnership real property is located. The Statement of Merger must include the content required under 54 O.S. §1-907.

Authority: 54 O.S. § 1-907 and 310.1; 18 O.S. §1090.2 and §2054.

14.3 Authority of Manager to Act for Limited Liability Company.

The examiner, in the absence of evidence to the contrary, may presume that a manager of a limited liability company was authorized to act on behalf of the company if the manager executes and acknowledges in proper form a recorded instrument for apparently carrying on the business of the limited liability company.

Comment 1: The Oklahoma Limited Liability Company Act as enacted on September 1, 1992, authorized the Articles of Organization to include a statement of restrictions on the authority of the manager. This provision was deleted by 1993 Okla. Sess. Laws, ch. 366, §3, eff. September 1, 1993. The Committee was unable to reach a consensus whether the filing of the Articles of Organization with such restrictions constitutes constructive notice of the restrictions on the authority of the manager.

If a recorded instrument is executed by a domestic limited liability company before September 1, 1993, the examiner should consider whether it is necessary to review a copy of the Articles of Organization filed with the Secretary of State to determine whether these articles contain a statement of restrictions on the authority of the manager.

Comment 2: An instrument executed on behalf of a limited liability company in which the signatory party is identified as a “Manager and Member,” “Member Manager” or “Managing Member” is to be considered as satisfying the provisions of 18 O.S. §2015-(A)-(3).

14.3.1 Delegation of Manager’s Authority.

....

Authority: ~~Title~~ 18 O.S. Sections 2013 & 2016

....

{Editor's note to OSCN: The "next section" and "previous section" functions skip this standard. For example, in standard 14.3, "next section" takes you to 14.4 instead of 14.3.1.}

14.9 Recital of Identity, Successorship or Consolidation

....

Comment: While there seems to be no exact precedent for this sStandard, it is justified as a parallel to Standards 5.3, 12.4, 13.8 and as an extension of Standard 12.1.

14.10 Limited Liability Company with Series

....

Comment 1: Prior to November 1, 2017, if a conveyance has been made to a Series, the examiner should require a corrective conveyance from the original grantor.

....

Authority: 18 O.S. §2054.4.B and 2054.4.C.

Proposal No. 4.

The Committee recommends the following editorial changes to the Title Standards as they appear in the handbook to bring the printed handbook and OSCN into conformity.

13.1 CONVEYANCES TO AND BY PARTNERSHIPS

....

Authority: ~~16 O.S. §1.~~ 54 O.S. §1-201 (for all general partnership conveyances after January 1, 2000) and §307 (for limited partnerships).

13.2 IDENTITY OF PARTNERS

The examiner may rely without further inquiry on the presumption that individuals executing conveyances of partnership-owned real property:

A. As partners of a general partnership, including a fictitious name partnership; or

B. As general partners of a limited partnership, ~~were in fact such members of the partnership on the date of execution, in the absence of recorded evidence or knowledge of facts to the contrary.~~

were in fact such members of the partnership on the date on execution, in the absence of recorded evidence or knowledge of facts to the contrary.

Authority: 54 O.S. §307; 16 O.S. § §1, 52 and 53 (a)(7).

Comment: Section 1-303(a) of the Oklahoma Revised Uniform Partnership Act, effective November 1, 1997, permits the filing of Statements of Partnership Authority with the office of the Secretary of State of the State of Oklahoma, with a certified copy thereof being filed in the office of the county clerk in the counties in which partnership real property is to be conveyed. A Statement of Partnership Authority (duly certified by Oklahoma Secretary of State), if filed and recorded, must include the identity of partners authorized to execute instruments transferring

real property, ~~and~~ record title to which is vested in the partnership by name. Although the filing of a Statement of Partnership Authority is optional, a statement of the authority to convey will be conclusive (and not merely a presumption) in favor of a transferee for value without knowledge to the contrary [Section 1-303(d)]. A Statement of Partnership Authority applies not only to general partnerships formed after November 1, 1997, but also from and after January 1, 2000, to previously formed general partnerships.

13.3 CONVEYANCE OF REAL PROPERTY HELD IN PARTNERSHIP NAME

Real property acquired by a partnership and held in the partnership name may be conveyed only in the partnership name. Any conveyance from the partnership so made, and signed by one or more members of the partnership, which conveyance appears to be executed in the usual course of partnership business,

shall be presumed to be authorized by the partnership, in the absence of knowledge of facts indicating a lack of authority, and the recitals in the instrument of conveyance shall be accepted as sufficient evidence of such authority. The lack of ~~the~~ requisite authority may appear in a Statement of Partnership Authority duly certified by the Oklahoma Secretary of State and recorded in the land records in the county in which the partnership property is located and which contains limitations on the authority of individual partners.

....

Comment: Jane Jones and Robert Smith are partners, doing a real estate business in the name of Enterprise Associates. Real estate is purchased for the partnership and title is taken in the name of Enterprise Associates, a partnership. The partnership wishes to sell the land to Henry Green. The deed should be executed in the name of Enterprise Associates, a partnership. It may be signed by one or both of the partners. Thus, signature can read:

“Enterprise Associates, a partnership, consisting of Jane Jones and Robert Smith, by Jane Jones and Robert Smith,” or “Enterprise Associates, a partnership, by Jane Jones.” If the latter form of execution is used, the deed should show, by its recitals, or evidence should be secured to show, that Jane Jones is one of the partners. The purchaser should have no knowledge negating the presumption that Jane Jones was acting with authority of the partnership. If the deed should read “Enterprise Associates, a partnership, by Jane Jones, one of the partners;”, it should be passed by the title examiner in the absence of any knowledge of lack of authority on the part of Jones.

....

13.4 AUTHORITY OF ONE PARTNER TO ACT FOR ALL

When real property is held by a partnership, and a conveyance is made on behalf of the partnership by one or more, but less than all, of the partners, and the conveyance appears to be executed in the usual course of partnership business, it is presumed, in the

absence of evidence to the contrary, that the conveyance was made by the partner or partners executing it for the purpose of carrying on in the usual way the business or the partnership; and no further evidence of authority of such partner or partners to execute the instrument should be required by the title examiner. If the partner or partners executing the instrument are shown to have the requisite authority in a Statement of Partnership Authority duly certified by the Oklahoma Secretary of State and recorded in the real estate records in the county in which the partnership property is located, the conveyance is conclusive as to transferees with no knowledge of any limitation to the contrary.

Authority: Crane, Handbook on the Law of Partnership §49 (2d ed. 1952); 54 O.S. § §1-1301, 1-302, and 1-303.

13.6 ASSETS OF PARTNERSHIP NOT SUBJECT TO EXECUTION FOR DEBTS OF INDIVIDUAL PARTNERS

....

A partner's right to possess property is equal with that of the other partners and one ~~(1)~~partner has no right to possess such property for any other purpose, except with the consent of other partners. A partner's right in specific partnership property is not assignable except in connection with the assignment of all rights of all partners in the same property.

13.7 CONVEYANCES TO ANY BY JOINT VENTURES

A.

Comment: Subsection “A” reinstates the essential text of Subsections “A” and “B” under former model Standard 10.8, which was repealed in 1996 following the amendment to 16 O.S. §1. The earlier text remains applicable to conveyances, mortgages, or other real estate instruments in the chain of title prior to November 1, 1995.

C.

Comment: Real property or an interest therein acquired prior to November 1, 1995, in furtherance of a joint venture is owned by all joint venturers with each owning an undivided interest equal to such venturer's undivided interest in the joint venture. If title acquired in the name of one or more, but less than all, of the members of the joint venture, the remaining members have an equitable interest in the property.

....

An instrument to “A” and B, members of XYZ joint venture,” does not give notice of the existence of other members because a joint venture can be two ~~(2)~~ people. An instrument to A, “a member of XYZ joint venture,” is notice because one ~~(1)~~ person alone cannot be a joint venture. Similarly an instrument to “A and B, some members of XYZ joint venture,” is notice of the existence of at least one ~~(1)~~ other joint venturer.

D.

Comment: Prior Oklahoma case law follows a common law rule that one (1) joint venturer may bind the other venturer(s) in matters within the scope of the business. Thus, the mutual agency concepts associated with partnership law are applicable. There is specific Oklahoma authority that members of a joint venture have the powers and interests of partners in the disposition of real property held in the name of the joint venture. See *Dobbins v. Texas Co., supra*, 275 P. at 648. Thus, if no limitation on the power to sell or encumber real property appears of record, a conveyance instrument made by any one or more of the venturers in good faith and in the due course of the enterprise, binds all the co-venturers.

14.3 Authority of Manager of Act for Limited Liability Company.

....

Comment 2: An instrument executed on behalf of a limited liability company in which the signatory party is identified as a “Manager and Member,” “Member Manager” or “Managing Member” is to be considered as satisfying the provisions of 18 O.S. §2015-(A)-(3).

14.3.1 Delegation of Manager’s Authority.

....

Authority: ~~Title~~ 18 O.S. Sections 2013 & 2016

....

14.9 Recital of Identity, Successorship or Consolidation

Unless there is some reason disclosed of record or doubt the truth about the recital (*e.g.*, the recordation of a conflicting certificate prepared pursuant to 18 O.S. §2007), then after September 1, 1993, a recital of identity, successorship or consolidation by limited liability company merger or limited liability company name change (*e.g.*, the limited liability company was formerly known by another name) may be relied upon if contained

in a recorded title document properly executed by the surviving or resulting entity.

....

14.10 Limited Liability Company with Series

A. PRIOR TO ~~November~~ NOVEMBER 1, 2004: A properly created or domesticated LLC could not establish Series.

B. BEGINNING ~~November~~ NOVEMBER 1, 2004 THROUGH ~~October~~ OCTOBER 31, 2017: Title to real property which is to be held under properly created LLC with established Series, domestic or foreign, must be acquired, held and conveyed in the name of the LLC, with appropriate indication that such title is held for the benefit of the specific series.

C. BEGINNING ~~November~~ NOVEMBER 1, 2017: Unless otherwise provided in the operating agreement, a Series established in accordance with subsection B of 18 O.S. §2054.4 (with the exception of the business of a domestic insurer) shall have the power and capacity to, in its own name, hold title to assets including real property.

TITLE EXAMINATION STANDARDS COMMITTEE
of the
Real Property Law Section of the O.B.A.

***“FOR THE PURPOSE OF EDUCATING
AND GUIDING TITLE EXAMINATION ATTORNEYS”***

AUGUST 21, 2021 AGENDA

***[NOTE: SEE MEETING DATES & LOCATIONS AT THE
END OF THIS AGENDA]***

They are subject to change at any time at the whim of leadership

***[Note: if you want to download a free pdf copy of the current 2021 TES
handbook, go to www.eppersonlaw.com]***

SATURDAY, AUGUST 21, 2021 -ZOOM ZOOM ZOOM

Speakers (Sub-Comm.)	Standard #	Status	Description
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BUSINESS/GENERAL DISCUSSION OF CURRENT EVENTS

9:30 a.m. – 10:15 a.m.

Secretary Notes:

Charis Ward
clward@firstam.com

Previous Month's TES Committee Minutes:

Charis Ward

Hot Topics / General Questions:

Kraettli Epperson

Legislative Report:

Tyler Larsen

T.E.S. Handbook:

Rhonda McLean

PRESENTATIONS

=====PENDING=====

<u>Epperson</u> Brown Carruth Carson Keen Kempf Reed Seda	New	June Draft	<i>PROBATE VENUE</i> Based on <i>In the Matter of the Estate of Fulks</i> (2020 OK 94), are any of our standards affected by the recent ruling?
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10:45-11:00 a.m. BREAK*****

<u>Keen</u> Reed Wimbish McLean Sullivan Jones Shields Laughlin Wolf McEachin	NEW	August 2 nd Reading	<i>INDIAN TITLE STANDARD</i> Report on status of efforts to identify changes needed throughout the Standards to reflect the impact of Indian ownership of land. The impact on Indian titles through the application of the SLTA and the MRTA may need to be clarified.
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<u>McLean</u> Seda		July Report	<i>SELF-DEALING TRUSTEE</i>
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<u>Larsen</u> Astle Wittrock Schaller Struckle	24.*	August Draft	<i>AFFIDAVITS AND RECITALS</i> The question has come up on how affidavits are to be used in lieu of mortgage releases.
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***** **END OF PRESENTATIONS** *****

<u>Brown</u> <u>Epperson</u> <u>Keen</u> <u>Reed</u> <u>Seda</u>	???	Mar. Report	<i>SLTA</i>
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<u>Carson</u> Dowd Struckle Schaller	17.4	Mar. Report	<i>TRANSFER ON DEATH DEEDS</i> Need to clarify whether all of the beneficiaries need to sign the post-death affidavit.
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<u>Epperson</u> Carruth Dowd McLean Seda Taylor	NEW	Mar. Report	<i>DEFAULT JUDGMENTS</i> Discussion as to motions for default judgments when seeking in light of the <i>Schweigert</i> case.
--	-----	----------------	---

FUTURE TOPICS

<u>Carson</u> Dowd Struckle Schaller	17.4		<i>TRANSFER ON DEATH DEEDS</i> Need to clarify whether all of the beneficiaries need to sign the post-death affidavit.
<u>Brown</u> <u>Epperson</u> <u>Keen</u> <u>Reed</u> <u>Seda</u>	???	July Report	<i>SLTA</i>

Wittrock Schaller Ward	6.9 (New)	Approved	<i>REMOTE ONLINE NOTARY</i> New Standard 6.9 to address new law allowing Remote Online Notaries and recording of electronic documents in tangible form.
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<u>Seda</u> Cato Dowd Wimbish Charney Kempf McDonald Anthony Goins Brown McMillin Loffland McEachin Stuhr Tack	3.2	July 2 nd Reading	<i>AFFIDAVITS AND RECITALS</i> <p>The question has arisen as to whether an Affidavit of Heirship with Will attached (for oil and gas interests) can be used but following intestate law instead of the terms of the attached Will.</p>
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=====UNSCHEDULED=====

=====TABLED TO 2022=====

<u>Epperson</u> Carruth Dowd McLean Seda Taylor	New	June Report	<i>DEFAULT JUDGMENTS</i> Discussion as to motions for default judgments when seeking in light of the <i>Schweigert</i> case.
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Title Update Seminars Director: Kraettli Q. Epperson

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2021 Title Examination Standards Committee
(Third Saturday: January through September)
Time: 9:30 a.m. to 12 noon

<u>Month</u>	<u>Day</u>	<u>City/Town</u>	<u>Location</u>
January	16	REMOTE UNTIL FURTHER NOTICE	
February	20	REMOTE UNTIL FURTHER NOTICE	
March	20	REMOTE UNTIL FURTHER NOTICE	
April	17	REMOTE UNTIL FURTHER NOTICE	
May	15	REMOTE UNTIL FURTHER NOTICE	
June	19	REMOTE UNTIL FURTHER NOTICE	
July	17	OKC	Bar Center
August	21	ZOOM	Conference Center
September	18	Tulsa	Bar Center

Tulsa County Bar Center
1446 South Boston
Tulsa, Oklahoma 74119-3612

Stroud Conference Center
218 W Main St.
Stroud, Oklahoma 74079

Oklahoma Bar Center
1901 N. Lincoln Blvd.
Oklahoma City, OK 73152-3036



MY 10 MOST RECENT GENERAL TITLE ARTICLES

(last revised May 12, 2020)

324. “Seeking Default Judgment: After *Schweigert*”, 91 Oklahoma Bar Journal 54 (April 2020)
306. “Constructive Notice: Oklahoma’s Hybrid System Affecting Surface and Mineral Interests”; 89 Oklahoma Bar Journal 40 (January 2018)
294. “The Oklahoma Marketable Record Title Act ('aka' The 'Re-Recording Act'): An Argument That This 30-Year Curative Act Can Extinguish Co-Tenancies”; 87 Oklahoma Bar Journal 27 (October 15, 2016)
276. “Marketable Record Title: A Deed Which Conveys Only the Grantor’s ‘Right, Title and Interest’ Can be A ‘Root of Title’”; 85 Oklahoma Bar Journal 1104 (May 17, 2014)

256. "The Need for a Federal District Court Certificate in All Title Examinations: A Reconsideration", 83 Oklahoma Bar Journal 2367 (November 3, 2012)
248. "The Real Estate Mortgage Follows the Promissory Note Automatically Without an Assignment: The Lesson of *BAC Home Loans*", 82 Oklahoma Bar Journal 2938 (December 10, 2011)
239. "Oklahoma's Marketable Record Title Act: An Argument for its Application to Chains of Title to Severed Minerals after *Rocket Oil and Gas Co. v. Donabar*", 82 Oklahoma Bar Journal 622 (March 12, 2011)
226. "Marital Homestead Rights Protection: Impact of *Hill v. Discover Card?*" 80 Oklahoma Bar Journal 2408 (November 21, 2009)
214. "Well Site Safety Zone Act: New life for Act", 80 Oklahoma Bar Journal 1061 (May 9, 2009)

162. "Real Estate Homesteads in Oklahoma: Conveying and Encumbering Such Interest", 75 Oklahoma Bar Journal 1357 (May 15, 2004)

Any questions?

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