

2024

TITLE

EXAMINATION

STANDARDS

HANDBOOK

(INCLUDING REVISIONS ADOPTED AND EFFECTIVE NOVEMBER 3, 2023)

Published by the
REAL PROPERTY LAW SECTION
of the
OKLAHOMA BAR ASSOCIATION

OKLAHOMA BAR ASSOCIATION

1901 NORTH LINCOLN BLVD. • P.O. BOX 53036 • OKLAHOMA CITY, OK 73152-3036 • 405.416.7000

Dear Examiner:

The Board of Directors of the Real Property Law Section of the Oklahoma Bar Association is pleased to present the 2024 edition of its annual publication of the Oklahoma Title Examination Standards.

This 2024 Title Examination Standards Handbook contains a complete, current set of Oklahoma's Title Examination Standards, including all changes and additions adopted November 3, 2023, by the House of Delegates of the Oklahoma Bar Association.

This Handbook remains the only convenient single source of officially adopted and current Title Examination Standards.

The Handbook represents the work from year to year of the Title Examination Standards Committee of the Real Property Law Section. Roberto Seda, of Norman, and Barbara L. Carson, of Tulsa, served as Co-Chairs of the Committee during 2023. Michael J. McMillin compiled this year's Standards, prepared the Report of the Title Examination Standards Committee for the Oklahoma Bar Journal, edited this Handbook for publication, and wrote the History for each new or revised Standard.

Questions, comments, and suggestions regarding the Handbook may be directed to the Editor or any officer of the Section. Attorneys practicing in real property and title examination are encouraged to participate in the work of the Title Examination Standards Committee. Inquiries regarding membership on the Title Examination Standards Committee should be directed to the 2023 Committee Chair, Roberto Seda.

All Oklahoma Bar Association members who paid 2024 Real Property Law Section dues receive a copy of the Handbook as one of the benefits of Section membership. Additional copies may be purchased by anyone directly from the Oklahoma Bar Association.

Copies may be ordered by sending a written request together with a check in the amount of \$9.00 payable to **O.B.A. – 2024 Title Examination Standards Handbook**, to: Title Examination Standards Handbook, Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, Oklahoma 73152-3036.

Respectfully submitted,

Michael J. McMillin
Title Examination Standards Handbook Editor

OKLAHOMA TITLE EXAMINATION STANDARDS

AS ADOPTED BY THE HOUSE OF DELEGATES
OF THE
OKLAHOMA BAR ASSOCIATION
ON NOVEMBER 3, 2023

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REAL PROPERTY LAW SECTION
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OKLAHOMA BAR ASSOCIATION
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THE HISTORY OF TITLE EXAMINATION STANDARDS IN OKLAHOMA



The impetus for the adoption of Title Examination Standards in Oklahoma was apparently supplied by the Title Lawyers Group of Oklahoma City under the leadership of Howard T. Tumilty. Seemingly at the instigation of this group and a similar group from Tulsa, the Central Committee of the Oklahoma Bar Association “gave its approval” to ten (10) Standards previously adopted by those groups. The Bar was advised of this action of the Central Committee by the publication of the ten (10) Standards in the *Oklahoma Bar Journal* on September 28, 1946. At the same time, the Bar was informed that additional Standards were under consideration by the title groups and would be “up for discussion” before the Real Property Law Section at the annual meeting of the Association.

In the *Journal* for October 26, 1946, it was said that ten (10) Standards had been “adopted by the Oklahoma Bar Association.” It is interesting to note this change in terminology. The previous announcement was that “the Central Committee had given its approval.” Those Standards which had been “approved” and/or “adopted” were then published. The same announcement stated that the other six (which were not printed) “are being considered” and that other additional Standards would also be submitted for consideration to the Real Property Law Section.

The Report of the Annual Meeting as published in the *Journal* on November 30, 1946, indicated that, at the November 16 meeting of the General Assembly and House of Delegates, eleven (11) additional Standards, previously approved by the Real Property Law Section, “were adopted by the Association.”

On October 31, 1947, the Association approved additional Standards on the recommendation of the Real Property Law Section. Those adopted as printed in the *Journal* were designated as “A” through “G.” The House of Delegates authorized the officers of the Real Property Law Section “to rearrange in more logical order, and to renumber all the Standards heretofore adopted.” This work was completed and published on February 28, 1948. There were then twenty-eight (28) Standards.

On December 2, 1950, an additional Standard was adopted without a numerical designation. By common assent apparently it became “Standard 29.” In December 1952, Standards “30” through “32” were adopted. Standards “33” and “34” were added in December 1959, and four (4) other Standards were amended.

On November 30, 1960, the proposal of the Title Examination Standards Committee to adopt the current grouping and numbering was approved, as was the addition of Authority and Comments to two (2) Standards. The group and numbering of the Standards have been modified from time to time, but the basic format of the Standards has remained the same since 1960.

At the same time, because of events which are detailed in the historical note appended to the current “Standard 1.1,” the seeds of misunderstanding as to the status of that Standard were sown. This uncertainty continued in some segments of the Bar until the 1962 meeting of the Association.

The 1961 meeting of the Association saw the adoption of four (4) new Standards and the amendment of two others.

As a result of the uncertainty of the status of “Standard 1.1,” and as a result of numerous inquiries from members of the Bar as to the Accuracy of differing versions of the Standards published and circulated by various sources, the 1962 Real Property Committee saw the need to compile an authenticated version of the Title Examination Standards. The editorial work was done using the text of the Standards as they were published in the *Journal* where possible, and the Minutes of the Annual Meetings and the Executive Council where necessary. As a part of this editorial work, historical notes were prepared for each Standard.

This editorial work was recommended for adoption by the Real Property Committee. The proposal was approved by the Real Property Law Section and the House of Delegates.

At the same time, recommendations of the Committee (1) settling the controversy over the status of "Standard 1.1," (2) establishing Standards implementing the Simplification of Land Titles Act, (3) modifying two (2) existing Standards, and (4) establishing Standards in relation to federal tax liens were made. All of those recommendations were subsequently approved by the Association.

Subsequent to the 1962 Association meeting, additional editorial work was done to integrate the newly adopted material into the Standards and to reflect the action of the 1962 Association meeting in the appropriate historical notes.

Since 1962, the Title Examination Standards have been published in the *Journal*, in the *Oklahoma Statutes* and in the *Oklahoma Statutes Annotated*. Additionally, the Real Property Law Section has published them annually in a Title Examination Standards Handbook, beginning in 1982.

In those years since 1972 in which changes in the Title Examination Standards were proposed, the proposals were published in the *Journal* prior to the Annual Meeting. At an early time, there were several printings of the proposals. More recently, primarily because of the cost of printing, the proposals have been printed but once.

Under the current procedure, the Section's Title Examination Standards Committee, meeting nine times during the year, develops a number of recommendations which are in turn presented to the Section at its Annual Meeting, for discussion and approval. Those recommendations approved by the Section are forwarded to the House of Delegates for consideration, and, once adopted, become effective immediately. Since the early 1960s, the House of Delegates has approved all of the proposals presented to it by the Section.

In 1982, the Oklahoma Supreme Court, speaking unanimously through Justice Lavender, gave its endorsement to the Title Examination Standards adopted by the Oklahoma Bar Association:

"While [the Oklahoma] Title Examination Standards are not binding upon this Court, by reason of the research and careful study prior to their adoption and by reason of their general acceptance among members of the Bar of this state since their adoption, we deem such Title Examination Standards and the annotations cited in support thereof to be persuasive." *Knowles v. Freeman*, 649 P.2d 532, 535 (1982).

None of the numerous members of the Bar whose efforts had contributed to the formulation of the Standards could fail to feel rewarded by this judicial pat on the back.

The form of the Handbook has not changed significantly over the years. The current changes have been made primarily with the aim of making the Handbook more user-friendly. Any recommendations that would make the Handbook more useful to the users hereof would be appreciated and should be directed to the Editor at mmcmillin@munsonmcmillin.com. This Editor, as the Editor before stated, would be remiss if he did not acknowledge the contributions of the previous editors of this handbook: Professor Joseph F. Rarick, Professor Joyce Palomar, David Butler, John B. Wimbish, and Rhonda J. McLean. To the extent that this Handbook is of use is due primarily to their efforts.

Michael J. McMillin
Edmond, Oklahoma
November 2023

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** Added or amended in 2024*

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ARTICLE I: TITLE EVIDENCE AND EXAMINATION PRACTICES

CHAPTER 1. EXAMINATION GENERALLY

1.1 MARKETABLE TITLE DEFINED

A marketable title is one free from apparent defects, grave doubts and litigious uncertainty, and consists of both legal and equitable title fairly deducible of record.

Cross Reference: See Standard 30.1.

Authority: *Pearce v. Freeman*, 122 Okla. 285, 254 P. 719 (1927); *Campbell v. Harsh*, 31 Okla. 436, 122 P. 127 (1912); *Empire Gas & Fuel Co. v. Stern*, 15 F.2d 323 (8th Cir. 1926); *Sipe v. Greenfield*, 116 Okla. 241, 244 P. 424 (1926); *McCubbins v. Simpson*, 186 Okla. 417, 98 P.2d 49 (1939); *Hawkins v. Wright*, 204 Okla. 955, 226 P.2d 957 (1951).

Comment: Marketable title is a title free of adverse claims, liens and defects that are apparent from the record. Any objections should be reasonable and not based on speculation. For purposes of this definition, words describing the quality of title such as perfect, merchantable, marketable and good, mean one and the same thing.

The Report of the 1995 Title Examination Standards Committee: Recommended amending this Standard to better reflect the corpus of the law defining “marketable title,” in 1995. Recommendation approved by the Real Property Law Section on November 9, 1995, and adopted by the House of Delegates on November 10, 1995.

The Report of the 2020 Title Examination Standards Committee: Recommended certain editorial changes to bring the Title Examination Standards Handbook and the Title Examination Standards as they appear on oscn.net into conformity.

1.2 EXAMINING ATTORNEY’S ATTITUDE

When an examiner finds a situation which the examiner believes creates a question as to marketable title and has knowledge that another attorney handled the questionable proceeding or has passed the title as marketable, the examiner, before writing an opinion, should communicate, if feasible, with the other attorney and afford an opportunity for discussion.

1.3 REFERENCE TO TITLE STANDARDS

It is often practicable and highly desirable that, in substance, the following language be included in contracts for a sale of real estate: “It is mutually understood and agreed that no matter shall be construed as an encumbrance or defect in title so long as the same is not so construed under the real estate Title Examination Standards of the Oklahoma Bar Association where applicable.”

1.4 REMEDIAL EFFECT OF CURATIVE LEGISLATION

Statutes enacted for the purpose of curing irregularities or defects in titles are valid and effective from the effective date of each statute; and in particular:

- A. Every statute is presumed to be valid and constitutional and binding on all parties as of the effective date of each statute. This presumption continues until there is a judicial determination to the contrary.

Authority: 16 C.J.S. *Constitutional Law* § 99; *Tate v. Logan*, 362 P.2d 670 (Okla. 1961); *Swanda v. Swanda*, 207 Okla. 186, 248 P.2d 575 (1952).

- B. Curative statutes that complete imperfect transactions, and statutes of limitation and adverse possession that bar stale demands or ancient rights, are also presumed to be constitutional.

Authority: 53 C.J.S. *Limitation of Actions* § 2; *Shanks v. Sullivan*, 202 Okla. 71, 210 P.2d 361 (1949).

- C. The presumption of constitutionality extends to and includes the Simplification of Land Titles Act, the Marketable Record Title Act, the Limitations on Power of Foreclosure Act and legislation of like purpose.

Authority: 16 O.S. §§ 61-63, 66, 71-80; 46 O.S. § 301; Okla. Atty. Gen. Op., No. 67-444 (March 21, 1968), reprinted 39 O.B.J. 593 (1968); L. Simes, *The Improvement of Conveyancing: Recent Developments*, 34 O.B.J. 2357 (1963).

Caveat: By reason of federal supremacy, tribal treaty rights and the Oklahoma Enabling Act, the Oklahoma curative acts referenced in these Standards have no application or remedial effect on title defects involving restricted Indian title interests. Cure for these defects can only be obtained through compliance with the requirements of applicable acts of Congress.

Authority: U.S. Const. art. I § 8, cl. 3; U.S. Const. art. VI, cl. 2; *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515, 561 (1832); 18 U.S.C. § 1151; Act of June 16, 1906, § 1 (Oklahoma Enabling Act) 34 Stat. 267.

The Report of the 1981 Title Examination Standards Committee: Recommended substantial enlargement of Standard. Recommendation was approved by the Real Property Law Section on December 3, 1981, and adopted by the House of Delegates on December 4, 1981.

The Report of the 2020 Title Examination Standards Committee: Recommended certain editorial changes to bring the Title Examination Standards Handbook and the Title Examination Standards as they appear on oscn.net into conformity.

The Report of the 2023 Title Examination Standards Committee: Recommended Caveat regarding supremacy. Recommendation approved by the Real Property Law Section on November 2, 2023, and adopted by the House of Delegates on November 3, 2023.

1.5 2020 COVID-19 PANDEMIC

- A. Pursuant to a series of Emergency Joint Orders, the Oklahoma Supreme Court suspended all deadlines, prescribed by statute, rule, or order in any civil, juvenile, or criminal cases for the period from March 16, 2020 to May 15, 2020.
- B. Pursuant to the *Third Emergency Joint Order Regarding The COVID-19 State of Disaster* issued by the Oklahoma Supreme Court, for the period from March 16, 2020 to May 15, 2020, all rules, procedures, and deadlines, whether prescribed by statute, rule or order in any civil, juvenile or criminal case were suspended, will be treated as a tolling period. May 16th shall be the first day counted in determining the remaining time to act. The entire time permitted by statute, rule or procedure is not renewed.
- C. Pursuant to the *Third Emergency Joint Order*, “all dispositive orders entered by judges between March 16, 2020 and May 15, 2020 are presumptively valid and enforceable.” When an examiner finds a situation in proceedings under examination where a Judge held a hearing, signed an order, entered a judgment, or otherwise issued a ruling between March 16, 2020 and May 15, 2020, the examiner may rely on the Third Emergency Joint Order’s presumption of validity and enforceability absent instruments in the record or other evidence that rebuts that presumption.

Authority: *Third Emergency Joint Order Regarding the COVID-19 State of Disaster*. 2020 OK 23, 462 P.3d 703; *Second Emergency Joint Order Regarding the COVID-19 State of Disaster*. 2020 OK 24, 462 P.3d 262; and *First Emergency Joint Order Regarding the COVID-19 State of Disaster*. 2020 OK 25, 462 P.3d 704.

Comment 1: Paragraphs 7 and 8 of the *Third Emergency Joint Order* provide instructions for computing deadlines impacted by the period from March 16, 2020 to May 15, 2020:

“7. For all cases pending before March 16, 2020, the deadlines are extended for only the amount of days remaining to complete the action. For example, if the rule required the filing of an appellate brief within 20 days, and as of March 16, ten (10) days remained to file the brief, then the party has 10 days with May 16, 2020 being the first day.

8. For all cases where the time for completing the action did not commence until a date between March 16 and May 15, 2020, the full amount of time to complete the action will be available. May 16th shall be the first day counted in determining the time to act.”

Comment 2: The *Third Emergency Joint Order* clarifies that the period between March 16, 2020 and May 15, 2020 is a tolling period. All applicable statutes of limitations under Oklahoma law were tolled for this period.

Comment 3: The *Third Emergency Joint Order* encouraged Judges “to continue to use remote participation to the extent possible by use of telephone conferencing, video conferencing pursuant to Rule 34 of the Rules for District Courts, Skype, Bluejeans.com and webinar based platforms...Judges are encouraged to develop methods to give reasonable notice and access to the participants and the public.”

The Report of the 2020 Title Examination Standards Committee: Recommended amending Standard 30.13 to clarify previous subparagraph G and move such language to the beginning of the Standard.

CHAPTER 2. THE ABSTRACT

2.1 RECERTIFICATION UNNECESSARY

It is unnecessary that attorneys require the entire abstract to be certified every time an extension is made. For the purpose of examination, an abstract should be considered to be sufficiently certified if it is indicated that the abstractors were bonded at the dates of their respective certificates. It is not a defect that at the date of the examination the statute of limitations may have run against the bonds of some of the abstractors.

Authority: L. Simes & C. Taylor, Model Title Standards, Standard 1.3, at 12 (1960); Kansas Title Standard 2.2; Montana Title Standard 22; Nebraska Title Standard 22; 74 O.S. §§ 227.14 and 227.29.

Comment 1: Title Standard 26, requiring re-certification of abstractors' certificates after five (5) years, adopted November, 1946, was repealed by the House of Delegates on November 30, 1960. The request for withdrawal came from counties where re-certification charges were considered excessive. Investigation disclosed Standard 26 was not in the line with similar Standards of other states and particularly the model Standard prepared by Professor Lewis M. Simes and Mr. Clarence D. Taylor, under the auspices of the Section of Real Property, Probate and Trust Law of the American Bar Association.

Comment 2: It is not the purpose of the Standard to discourage or prevent the examining attorney from requiring re-certification when in the examining attorney's judgment abstracting errors or omissions have occurred, or when the examining attorney has reason to question the accuracy of all or a particular portion of an abstract record.

Comment 3: Abstractors in Oklahoma have been required to be bonded since prior to statehood. The 1899 Okla. Sess. Laws P. 53 was enacted March 10, 1899. It has been retained since that time subject to the Revision of 1910, which added a provision for a corporate surety and made it clear that the abstractor's liability on the bond extended to any person injured.

Comment 4: The limitation applicable to an action for damages on an abstractor's bond is five (5) years from the date of the abstractor's certificate, 74 O.S. § 227.29. In 1984, these provisions were made a part of the "Oklahoma Abstractors Law." See 74 O.S. § 227.14.

The Report of the 1960 Title Examination Standards Committee: Recommended that Title Standard 26 be withdrawn and the model Standard approved in lieu thereof. Recommendation approved by the Real Property Law Section and adopted by the House of Delegates on November 30, 1960, and the new Standard re-numbered Standard 1.1.

The Report of the 1962 Title Examination Standards Committee: Recommended that the caption to Standard be amended by adding the word "UNNECESSARY" so that the caption would read "RECERTIFICATION UNNECESSARY" and recommended the addition of authorities and comments. Recommendations approved by the Real Property Law Section and adopted by the House of Delegates on November 29, 1962.

The Report of the 2020 Title Examination Standards Committee: Recommended certain editorial changes to bring the Title Examination Standards Handbook and the Title Examination Standards as they appear on oscn.net into conformity.

2.2 TRANSCRIPTS OF COURT PROCEEDINGS

Transcripts of court proceedings affecting real estate certified by a court clerk or abstractor are equally satisfactory and should be accepted by the examining attorney.

Authority: 20 O.S. § 1005; 12 O.S. §§ 2902, 3001, 3002, 3003 and 3005; 28 O.S. § 31; 19 O.S. § 167; 74 O.S. §§ 227.14 and 227.29; Op. Atty. Gen. No. 80-95 (July 31, 1980); *Arnold v. Board of Com'rs. of Creek County*, 124 Okla. 42, 254 P. 31 (1926).

Comment: Court clerks are directed to retain or microfilm all records on file in their offices, 20 O.S. § 1005, and are authorized to make certified copies of and authenticate such documents, 28 O.S. § 31. Such certified or authenticated documents are admissible in evidence, 12 O.S. §§ 2902, 3001, 3003 and 3005.

Abstractors are required to be bonded or maintain errors and omissions insurance in specified amounts, 74 O.S. § 227.14. Court clerks are required to be bonded under the county officers' blanket bond, 19 O.S. § 167; Op. Atty. Gen. No. 80-95 (July 31, 1980). The 5-year Statute of Limitations applies to both bonds. The Statute begins to run as to the court clerk's bond from the accrual of the cause of action, *Arnold v. Board of Com'rs. of Creek County*, *supra*. The Statute begins to run as to the abstractor's bond or errors and omissions insurance from the date of issuance of the abstract certificate, 74 O.S. § 227.29.

The Report of the 1984 Title Examination Standards Committee: Recommended the repeal of this Standard in 1984. Recommendation was approved by the Real Property Law Section on November 1, 1984, and adopted by the House of Delegates on November 2, 1984. It was explained at the annual Section meeting that the legislation relied upon in making the 1967 revision of the Standard had been repealed and that additional time was needed to study what form a new Standard on the subject should take.

The Report of the 1987 Title Examination Standards Committee: Recommended the readoption of this as the body of this Standard in the same language in which it stood at the time of its repeal in 1984. Research revealed that there was still adequate statutory authority to support the Standard in its prior form. This authority is set out in the new "Authority" and "Comment." Recommendation was approved by the Real Property Law Section on November 12, 1987, and adopted by the House of Delegates on November 13, 1987.

The Report of the 2020 Title Examination Standards Committee: Recommended certain editorial changes to bring the Title Examination Standards Handbook and the Title Examination Standards as they appear on oscn.net into conformity.

2.3 UNMATURED SPECIAL ASSESSMENTS

A Title Examiner is warranted in requiring that the abstract have a certificate showing unmatured installments of special assessments, if any, which may affect the land under examination.

Comment: There are numerous governmental bodies empowered to levy special assessments which are valid liens against real property. A Final Certificate stating that there are no unpaid installments of special assessments against the real estate under examination would not necessarily disclose unmatured installments of special assessments which might be valid encumbrances thereon.

The practice of covering the matter by specifically stating in the title opinion that the opinion does not cover unmatured special assessments is not recommended.

The Report of the 2020 Title Examination Standards Committee: Recommended certain editorial changes to bring the Title Examination Standards Handbook and the Title Examination Standards as they appear on oscn.net into conformity.

CHAPTER 3. INSTRUMENTS IN THE RECORD

3.1 INSTRUMENTS BY STRANGERS

- A. An instrument or abstract thereof seen by a title examiner in the course of examination of title, which is executed by any person or other legal entity who, at the time of such execution, did not own some interest in the property as shown by the record, or owned a lesser interest than the instrument purports to convey, charges the examiner and his or her client with knowledge of any interest which such person or entity in fact had which a reasonable inquiry would reveal.

If a reasonable inquiry does not reveal that such person or entity did in fact have some interest in the subject property or as great an interest as such person or entity conveyed, or if it appears from the context of the situation that the person or entity did not in fact have some such interest, then the examiner may waive objection to the defect caused by the said instrument, if the instrument is not such an instrument as is or could become a root of title under the Marketable Record Title Act.

Authority: *Tenneco Oil Co. v. Humble Oil & Refining Co.*, 449 P.2d 264 (Okla. 1969); See *Pearson v. Mullins*, 369 P.2d 825-829 (Okla. 1962); 25 O.S. § 13.

Comment: Since the decision in *Tenneco, supra*, the Standard as it existed prior to *Tenneco* permitting examiners to ignore stray instruments, even with its caveat, and the Standard as it was amended in 1976 (see Standard 3.1, 1988 Title Examination Standards Handbook) are not supported by the law and therefore ought not to be continued. While it is true that many stray instruments are the result of a scrivener's error in drafting the description, it is also true that an instrument may appear to be stray because the grantor failed to record the instrument which carried title to said grantor. When the situation is of this latter kind, the case comes under the facts and decision in *Tenneco, supra*. For this reason, the examiner who knows of a stray instrument must make such inquiry that will assure the examiner that the grantor in the stray instrument did not have some interest in the property even though it be not of record.

A stray instrument or abstract thereof which is or could be a root of title under the Marketable Record Title Act, 16 O.S. §§ 71-80, may not be disregarded by the examiner, but must be regarded as creating, or potentially creating, a root of title under the Marketable Record Title Act.

Authority: *Mobbs v. City of Lehigh*, 655 P.2d 547 (Okla. 1982); 16 O.S. §§ 71-80.

Comment: See Comment, Standard 30.7 and Comment 4, Standard 30.9; see also 60 O.S. § 515.1, relating to condominium unit instruments involving over conveyances.

- B. Subject to the provisions of 3.1 C, a stray instrument or abstract thereof which is or could be a root of title under the Marketable Record Title Act, 16 O.S. §§ 71-80, may be disregarded by the examiner, if:
1. The stray instrument has been filed of record for less than thirty (30) years, and
 2. There is a title transaction filed of record subsequent to the stray instrument which would prevent the stray instrument from becoming a root of title, and
 3. Reasonable inquiry by the examiner reveals the person or entity which executed the stray instrument did not in fact have some interest in the subject property or did not have as great an interest as such person or entity conveyed, or if it appears from the context of the situation that the person or entity which executed the stray instrument did not in fact have some interest in the subject property.

Otherwise the stray instrument must be regarded as creating or potentially creating, a root of title under the Marketable Record Title Act and creating a valid cloud on title.

- C. Pursuant to 16 O.S. § 76, an instrument which is executed by a person or entity, or a decree of distribution entered in the estate of a decedent, who or which does not otherwise appear in the chain of title to the property cannot be the basis of a root of title under the Marketable Record Title Act, and therefore the examiner may waive any defect caused by such instrument, if: (1) there is apparent from the record an otherwise valid, uninterrupted chain of title traceable to an instrument which is a root of title as defined by the Marketable Record Title Act, and (2) a current record owner of the property executes and records an affidavit alleging the current owner or owners are in possession of the property and that the parties claiming under the instrument in question own no interest in the property.

Authority: 16 O.S. § 76.

Caveat: 16 O.S. § 76 does not directly address the situation where an otherwise “stray” instrument, as defined under the Statute has been of record for more than thirty (30) years and is, at the time, the apparent root of title. However, because of the requirement of Section 76(b)(1), that there must be an “otherwise” valid chain traceable to an instrument “which is a root of title as defined by Sections 71 through 80” of Title 16, it would appear that the mere recording of an affidavit after the stray instrument had already ripened into a root of title would not be sufficient to revoke the status of such stray instrument as a root of title. The issue is not directly addressed by the Statute, nor by a reported decision.

The Report of the 1988 Title Examination Standards Committee: Recommended an additional revision. Recommendation approved by the Real Property Law Section on December 8, 1988, and adopted by the House of Delegates adopted on December 9, 1988.

The Report of the 1995 Title Examination Standards Committee: Recommended revising Standard both for purposes of clarification and to reflect the Legislature’s adoption in 1995 of 16 O.S. § 76, which was intended to cure most stray deed problems. Recommendation approved by the Real Property Law Section on November 9, 1995, and adopted by the House of Delegates on November 10, 1995.

The Report of the 2004 Title Examination Standards Committee: Recommended an amendment to more clearly organize this Standard and to clarify the circumstances under which the affidavit provided for in 16 O.S. § 76 can be used. Recommendation approved by the Real Property Law Section on November 11, 2004, and adopted by the House of Delegates on November 12, 2004.

The Report of the 2016 Title Examination Standards Committee: Recommended an amendment to clarify the circumstances under which a stray instrument may be disregarded. The Real Property Law Section approved the proposal on November 3, 2016, and the House of Delegates adopted the recommendation on November 4, 2016.

The Report of the 2020 Title Examination Standards Committee: Recommended certain editorial changes to bring the Title Examination Standards Handbook and the Title Examination Standards as they appear on oscn.net into conformity.

3.2 AFFIDAVITS AND RECITALS

- A. Recorded affidavits and recitals should cover the matters set forth in 16 O.S. § 83. They cannot substitute for a conveyance, administration of an estate, or probate of a will, except as provided in 16 O.S. § 67.
- B. Affidavits and recitals should state facts rather than conclusions and should reveal the basis of the maker’s knowledge. The value of an affidavit or recital is not reduced if the maker is interested in the title.

- C. Oklahoma Statutes have authorized the use of affidavits to affect title to real property for several purposes. The specific Statute should be consulted and the requirements of the Statute should be followed carefully.
- D. Special attention should be given to the provisions of 16 O.S. § 67 – *Acquiring Severed Mineral Interests from Decedent – Establishing Marketable Title*:
1. 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 acquire a marketable title ten (10) years after the recording of the affidavit by following the five (5) specific steps set forth in Part C of Section 67. The Act applies only to severed minerals, not leasehold interests. Section 82 provides 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.
 2. Although not specifically required by 16 O.S. § 67, it is recommended that the affidavit contain sufficient factual information to make a proper determination of heirship. Such information 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. During the ten year period of 16 O.S. § 67, 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.
 3. Title 16 O.S. § 67 is unclear when an unprobated will is attached, whether title passes to the intestate heirs or to the devisees under the will. 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 rights to enforce under the will. A foreign will that has not been probated in Oklahoma is ineffective to establish any interest or title in the persons claiming thereunder. If the decedent died with a will, strong consideration should be given to a probate of the estate.
 4. If the decedent died intestate, strong consideration should be given to an administration of the estate or a judicial determination of death and heirship during the ten-year period before the title becomes marketable by a properly prepared 16 O.S. § 67 affidavit.

Authority: 16 O.S. §§ 53, 67, 82, 83.

Comment 1: This Standard does not supplant other Standards or statutes providing for use of affidavits, such as 16 O.S. § 67 or 58 O.S. § 912.

Comment 2: Affidavits affecting real property include: Affidavits to Terminate Joint Tenancy or Life Estates (58 O.S. § 912); Multi Subject Information Affidavit (16 O.S. §§ 82-83); Memorandum of Trust (60 O.S. § 175.6a).

Comment 3: Affidavits to Terminate Joint Tenancy or Life Estates under 58 O.S. § 912 may be recorded with only a jurat or only an acknowledgment, or both. Since this provision is specific to § 912, prudence dictates that an affidavit which is not prepared under § 912 contain both a jurat and acknowledgment. See 16 O.S. § 26.

Comment 4: Before the affidavit or unprobated will has been of record for ten (10) years, it is not uncommon for the title examiner to recommend to the party paying royalty owners to consider assuming the business risk of waiving the requirements of marketable title, which might include a

probate administration, or judicial determination of death and heirship, and assume the business risk of relying upon the affidavit called for in 16 O.S. § 67.

Comment 5: *Yeldell v. Moore*, 1954 OK 260; 275 P.2d 281. Oklahoma cases discuss the “factum” of a will: whether the will is legally executed in statutory form; legal capacity of the testator; the absence of undue influence, fraud and duress, *Ferguson v. Paterson*, 191 F.2d 584 (10th Cir. 1951); *Matter of the Estate of Snead*, 1998 OK 8, 953 P.2d. 1111; *Footte v. Carter*, 1960 OK 234, 357 P.2d 1000. In Oklahoma the district court determines the validity of a will, interprets the will and determines the heirs. A probate proceeding is necessary to determine if there are pretermitted heirs, allow for spousal elections, determine if there is any marital property, and confirm the absence of liens for taxes and debts.

Comment 6: *Smith v. Reneau*, 1941 OK 99; 2112 P.2d 160. The decree of the court administering the estate is conclusive as to the legatees, devisees and heirs of the decedent, *Wells v. Helms*, 105 F.2d 402 (10th Cir. 1939).

Comment 7: The use of (non-judicial) heirship affidavits under 16 O.S. § 67 may also be suspect in the context of restricted citizens (members) of the Five Civilized Tribes in light of the Act of June 14, 1918, 40 Stat. 606 (25 U.S.C. 375) and Section 3 of the Act of August 4, 1947, 61 Stat. 731 which confers exclusive jurisdiction upon the courts of Oklahoma to judicially determine such heirship in accordance with the Oklahoma probate code.

The Report of the 1986 Title Examination Standards Committee: Recommended original Standard. Recommendation was approved by the Real Property Law Section on November 19, 1986, and adopted by the House of Delegates on November 20, 1986.

The Report of the 1996 Title Examination Standards Committee: Recommended revising this Standard for purposes of clarification and to respond to legislative amendments to Title 16, Oklahoma Statutes. Recommendation was approved by the Real Property Law Section on November 14, 1996, and adopted by the House of Delegates on November 15, 1996.

The Report of the 2001 Title Examination Standards Committee: Recommended amending the Authority and Comment to Standard 3.2 to acknowledge the passage of 16 O.S. § 67 addressing affidavits of heirship applicable to severed mineral interests, 72 O.B.J. 3002 (2001). Recommendation approved by the Real Property Law Section on November 15, 2001, and adopted by the House of Delegates on November 16, 2001.

The Report of the 2013 Title Examination Standards Committee: Recommended amending this Standard to establish guidelines for the use of affidavits to establish marketable title to severed mineral interests. Recommendation approved by the Real Property Law Section on November 14, 2013, and adopted by the House of Delegates on November 15, 2013.

The Report of the 2020 Title Examination Standards Committee: Recommended amending Standard 3.2(A). to clarify affidavits cannot be used in place of an estate administration and to clarify that an affidavit related to severed minerals as provided in 16 O.S. § 67 is an exception of 3.2(A).

The Report of the 2020 Title Examination Standards Committee: Recommended certain editorial changes to bring the Title Examination Standards Handbook and the Title Examination Standards as they appear on oscn.net into conformity.

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, 82 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.

The Report of the 2021 Title Examination Standards Committee: Recommended a new Standard be included to assist title examiners with the application of an affidavit of heirship regarding severed mineral interests. Recommendation was adopted by the Real Property Law Section and the House of Delegates in 2021.

3.3 OIL AND GAS LEASES AND MINERAL AND ROYALTY INTERESTS

The recording of a certificate supplied by the Oklahoma Corporation Commission under 17 O.S. §§ 167 and 168, covering property described in an unreleased oil and gas lease or a mineral or royalty conveyance or reservation for a term of years, the primary term of which has expired prior to the date of the certificate, which certificate reflects no production and no exceptions from the property described in the lease, mineral or royalty conveyance or reservation, creates a presumption of the marketability of the title to such property as against third parties who may assert that such lease, conveyance or reservation is, in fact, valid and subsisting. Provided; such a certificate must also include such additional land which said property may have been spaced

or unitized by either the Corporation Commission or by recorded declaration pursuant to the lease or other recorded instrument as of the date of the expiration of the primary term.

Comment: Said Act originally applied only to oil and gas leases, as did the Standard as originally adopted October 1947. The Act was amended in 1951 so as to cover term mineral conveyances, as well as oil and gas leases, and the Standard was then amended in November, 1954. By said Act, such certificates constitute *prima facie* evidence that no such oil and gas lease or term mineral conveyance is in force, which, if not refuted, will support a decree for specific performance of a contract to deliver a marketable title. The facts in *Wilson v. Shasta Oil Co.*, 171 Okla. 467, 43 P.2d 769 (1935), disclose that the Court only held that proof to establish marketability cannot be shown by affidavit of non-development. *Beatty v. Baxter*, 208 Okla. 686, 258 P.2d 626 (1953), is deemed not to affect *prima facie* marketability as provided for in the statute.

Note: *This Standard does not apply to Osage County, where oil and gas operations are not under the control and supervision of the Corporation Commission.*

Caveat: The Corporation Commission has been known to issue clear certificates of non-development when, in fact, a well has been drilled and not plugged; therefore, cautious attorneys will also advise their clients to satisfy themselves there is no well nor production upon any of said property and that the lease is not being kept alive by in lieu royalty payments or production not reported to the Corporation Commission. The examiner should also be aware that the documents evidencing spacing or unitization may either be unrecorded or only appear in the records of the Corporation Commission.

The Report of the 1962 Title Examination Standards Committee: Recommended that the first two (2) sentences and the last sentence of the comment as it appears above also be officially adopted. Recommendation was adopted by the Real Property Law Section and the House of Delegates in 1962.

The Report of the 1980 Title Examination Standards Committee: Recommended that the Caveat be added. Recommendation was approved by the Real Property Law Section on December 3, 1980, and adopted by the House of Delegates on December 5, 1980.

The Report of the 1982 Title Examination Standards Committee: Recommended an amendment to Standard. Recommendation approved by the Real Property Law Section, and adopted by the House of Delegates on December 2, 1982.

The Report of the 1987 Title Examination Standards Committee: Recommended amending the body of the Standard and the "Caveat." The amendment added the words "reflecting no production and no exceptions" to the first sentence of the body of the Standard and the words "clear" and "therefore" to the first sentence of the "Caveat." The amendment added the last sentence of the "Caveat" also. Recommendation approved by the Real Property Law Section on November 12, 1987, and adopted by the House of Delegates on November 13, 1987.

The Report of the 1991 Title Examination Standards Committee: Recommended amending the operative language from "renders a title marketable as against an unreleased oil and gas lease or conveyance or reservation" to "creates a presumption of marketability" against persons claiming under such lease or conveyance or reservation, to correlate with the statutory language. Recommendation approved by the Real Property Law Section on November 14, 1991, and adopted by the House of Delegates on November 15, 1991.

The Report of the 2020 Title Examination Standards Committee: Recommended certain editorial changes to bring the Title Examination Standards Handbook and the Title Examination Standards as they appear on oscn.net into conformity.

3.4 CORRECTIVE INSTRUMENTS

A grantor who has conveyed by an effective, unambiguous instrument cannot, by executing another instrument, make a substantial change in the name of the grantee, decrease the size of the premises or the extent of the estate granted, impose a condition or limitation upon the interest granted, or otherwise derogate from the first grant, even though the latter instrument purports to correct or modify the former. However, marketability dependent upon the effect of the first instrument is not impaired by the second instrument.

Authority: Patton & Palomar on Land Titles § 83 (3d ed. 2003); Decennial Digests, *Deeds*, Key No. 43; *Kirkpatrick v. Ault*, 177 Kan. 552, 280 P.2d 637 (1955); *Walters v. Mitchell*, 6 Cal. App. 410, 92 P. 315 (1907); *Lytle v. Hulen*, 128 Or. 483, 275 P. 45 (1929).

Comment: This standard addresses a situation in which the grantor acts without the joinder of the grantee(s) named in the original conveyance, or their successor(s). A corrective instrument executed by both the grantor and grantee, or their successors, that is otherwise in proper form is effective to modify the prior conveyance.

The Report of the 2023 Title Examination Standards Committee: Recommended new comment to assist title examiners with understanding corrective instruments. Recommendation approved by the Real Property Law Section on November 2, 2023, and adopted by the House of Delegates on November 3, 2023.

3.5 INSTRUMENTS WHICH ARE ALTERED AND RE-RECORDED

The act of re-recording an instrument, after it has been materially altered, does not of itself destroy the rights of the parties to the original unaltered instrument.

To give effect to a material alteration of a previously recorded document affecting title to real property, the instrument must be re-executed, re-acknowledged, re-delivered and re-recorded. However, a grantor cannot unilaterally derogate from a previous grant; see Standard 3.4.

A material alteration to an instrument is defined as an alteration which changes the legal effect of the instrument or the rights and liabilities of the parties to the original instrument.

Authority: 15 O.S. § 239; *Briggs v. Sarkey*, 418 P.2d 620 (Okla. 1966); *Smith v. Fox*, 289 P.2d 126 (Okla. 1954); *Boys v. Long*, 268 P.2d 890 (Okla. 1954); *DeWeese v. Baker-Kemp Land Trust Corporation, et al.*, 187 Okla. 1341, 102 P.2d 884 (1940); *Sandlin v. Henry*, 180 Okla. 334, 69 P.2d 332 (1937); *Criner v. Davenport-Bethel Co.*, 144 Okla. 74, 289 P. 742 (1930); *Eneff v. Scott*, 120 Okla. 33 250 P. 86 (1926); *Sipes v. Perdomo*, 118 Okla. 181, 127 P. 689 (1925); *Orr v. Murray*, 95 Okla. 206, 219 P. 333 (1923); *Francen et ux. v. Okla. Star Oil Co.*, 80 Okla. 103, 194 P. 193 (1921); Patton & Palomar on Land Titles, § 65 (3rd ed. 2003).

Comment: What constitutes a material alteration varies depending on the court's analysis of the facts of each case. As to changing a name of a party to an instrument, see *Sipes v. Perdomo*, *Sandlin v. Henry* and *Criner v. Davenport-Bethel Co.*, *supra*, and *American National Bank of Wetumka v. Hightower*, 87 P.2d 311, 315 (Okla. 1939).

Caveat: There is an important distinction in authority between alteration of instruments which evidence a completed and fully executed transaction (deeds, mortgages, *etc.*) and alteration of instruments which are executory in nature (promissory notes, checks, contracts, *etc.*). The general rule is that alteration of an executory instrument vitiates the executory duties of non-consenting parties,

while unconsented alteration of an instrument evidencing an executed transaction does not destroy the rights of the parties to the original agreement, but does vitiate the altered document.

Authority for Caveat: 15 O.S. § 177 (definition of executed and executory); *Valley State Bank v. Dean*, 47 P.2d 924 (Colo. 1935); *McMillan v. Pawnee Petroleum Corp.*, 151 Okla. 4, 1 P.2d 775 (1931) (deed as executed contract); *Eastman Nat. Bank v. Naylor*, 130 Okla. 229, 266 P. 778 (1928); *First National Bank v. Ketchum*, 68 Okla. 104, 172 P. 81 (1918), (material alteration in a negotiable instrument after its execution and delivery as a complete contract avoids it except as to parties consenting to the alteration); 2 Am. Jur. 2d, *Alteration of Instruments*, § 9.

The Title Report of the 1992 Title Examination Standards Committee: Recommended Standard 4.5. Recommendation was approved by the Real Property Law Section on November 12, 1992, and adopted by the House of Delegates on November 13, 1992.

3.6 LIS PENDENS

Oklahoma law recognizes the doctrine of lis pendens. The doctrine has its genesis in common law and equity jurisprudence and has been partially codified at 12 O.S. §2004.2.

The recorded lis pendens notice does not impress the affected property interest with a lien, encumbrance or defect but rather operates to bind third parties with notice that any interest in the real property affected by the pending litigation will be subject to the outcome of the litigation.

A recorded lis pendens notice is simply notice of pending litigation which may affect the described real property. The examiner should carefully review the underlying litigation and determine whether the litigation affects the interests under examination. No release of the lis pendens notice need be recorded.

Authority: 12 O.S. §2004.2, *White v. Wensauer*, 1985 OK 26, 702 P.2d 15 (Okla. 1985).

The Report of the 2018 Title Examination Standards Committee: Recommended the addition of a new title standard to make clear the purpose and effect of the filing of Lis Pendens. Recommendation approved by the Real property Law Section on November 8, 2018, and adopted by the House of Delegates on November 9, 2018.

CHAPTER 4. CAPACITY TO CONVEY

4.1 MINORITY

In the absence of actual or constructive notice to the contrary, it is presumed that a grantor is not a minor. If it appears that a person in the chain of title was a minor, the examiner must determine that a conveyance from such person occurred after (i) such person attained the age of majority as defined at the time of the conveyance, (ii) such person had the rights of majority conferred upon him/her by a court of competent jurisdiction, or (iii) such person has been legally married and was otherwise qualified and the real estate was acquired by such person after marriage. A conveyance which has not been disaffirmed within one year after the minor attains the age of majority is valid.

Authority: 16 O.S. § 53; Patton & Palomar on Land Titles § 336 (3d ed. 2003); C. Flick, Abstract and Title Practice § 343 (2d ed. 1958); *cf. Giles v. Latimer*, 40 Okla. 301, 137 P. 113 (1914); 10 O.S. §§ 91-94; 15 O.S. §§ 17, 19; 16 O.S. § 1.

Comment: The definition of marketable title taken together with the presumption of majority in an action to disaffirm a conveyance recognized in *Giles v. Latimer*, *supra*, justify a title examiner in relying upon the grantor of a conveyance being an adult unless on actual or constructive notice to the contrary.

The Report of the 1984 Title Examination Standards Committee: Recommended adoption of Standard. Recommendation approved by the Real Property Law Section, November 1, 1984, and adopted by the House of Delegates on November 2, 1984.

The Report of the 1997 Title Examination Standards Committee: Recommended an amendment to reflect the adoption of 16 O.S. § 53 relating to rebuttable presumptions arising from recorded instruments. Recommendation approved by the Real Property Law Section on November 6, 1997, and adopted by the House of Delegates on November 7, 1997.

4.2 MENTAL CAPACITY TO CONVEY

In the absence of actual or constructive notice to the contrary, it is presumed that a grantor has mental capacity to convey. An adjudication of incompetency in a sanity or mental health case filed prior to June 3, 1977, pertaining to a grantor constitutes constructive notice of lack of capacity. Mental health cases filed on or after June 3, 1977, pursuant to 43A O.S. § 54.4 (now § 5-401) do not result in adjudications of incompetency. On or after June 3, 1977, lack of capacity must be established (i) in a mental health case filed prior to that date, (ii) in a civil action, or (iii) in a guardianship proceeding.

If lack of capacity has been established, restoration may be accomplished by:

A. MENTAL HEALTH CASES

1. Final order of the court having jurisdiction of a proceeding pursuant to 43A O.S. § 7-112.
2. Final order of the court having jurisdiction pursuant to 43A O.S. § 111.
3. Filing with the district court clerk in the original proceedings a certificate of restoration to competency pursuant to 43A O.S. §§ 7-110 and 7-111.

B. GUARDIANSHIP PROCEEDINGS

1. Final order of the court of the county in which the person was adjudged insane or mentally incompetent pursuant to 30 O.S. §§ 3-116 (formerly 58 O.S. § 854).

2. Final order of the court having jurisdiction discharging the guardian without appointing another guardian, 30 O.S. §§ 3-117 (formerly 58 O.S. § 855).

Authority: 16 O.S. § 53; Patton & Palomar on Land Titles §§ 336, 536 and 538 (3d ed. 2003); Flick, Abstract and Title Practice § 3444 (2d ed. 1958); *cf. Robertson v. Robertson*, 654 P.2d 600 (Okla. 1982).

Comment: The definition of marketable title taken together with the presumption of competency in an action to cancel a conveyance recognized in *Robertson v. Robertson*, *supra*, justify a title examiner in relying upon the grantor of a conveyance being competent unless on actual or constructive notice to the contrary.

Under the Simplification of Land Titles Act, a purchaser for value from one claiming under a conveyance is protected from a claim of the incompetency of the grantor, unless the county or court records reflect such incompetency. See Standard 29.1 *et seq.*

The Report of the 1984 Title Examination Standards Committee: Recommended adoption of Standard. Recommendation approved by the Real Property Law Section on November 1, 1984, and adopted by the House of Delegates on November 2, 1984.

Citations to statutes in Title 43A updated in 1987 by direction of the Title Examination Standards Committee to reflect the complete recodification of the title by the Legislature in 1986.

Citations to statutes in Title 58 updated in 1988 to reflect the complete recodification of the guardianship statutes by the Legislature in 1988.

The Report of the 1997 Title Examination Standards Committee: Recommended an amendment to reflect the adoption of 16 O.S. § 53 relating to rebuttable presumptions arising from recorded instruments. Recommendation approved by the Real Property Law Section on November 6, 1997, and adopted the House of Delegates on November 7, 1997.

The Report of the 2020 Title Examination Standards Committee: Recommended certain editorial changes to bring the Title Examination Standards Handbook and the Title Examination Standards as they appear on oscn.net into conformity.

4.3 CAPACITY OF CONSERVATEES TO CONVEY

While appointment of a conservator does not presuppose mental incapacity, a conservatee is thereafter unable to make a contract which creates an obligation against the estate of the conservatee (except for necessities). Investment, management, sale or mortgage of property in the estate of a conservatee must be made in accordance with the laws governing guardianships.

Authority: 30 O.S. §§ 3-215 and 3-219 (formerly 58 O.S. §§ 890.5 & 890.10 prior to December 1, 1988; and 30 O.S. §§ 3-205 & 3-210 from December 1, 1988 to November 1, 1989).

Comment: In *Lindsay v. Gibson*, 635 P.2d 331 (Okla. 1981), the Oklahoma Supreme Court held that a gift conveyance from the conservatee to the conservator and other siblings of the conservatee was invalid. In *Matter of Conservatorship of Spindle*, 733 P.2d 388 (Okla. 1986), the Court held that a physically disabled but mentally competent ward is not legally disabled from making a gift to her conservator, overruling *Lindsay* to that extent.

Caveat: 1989 Okla. Sess. Laws, ch. 276, (codified as 30 O.S. § 3-211 *et seq.*) amended the conservatorship statutes to provide that a conservator may only be appointed with the consent of the ward, and further that all conservatorships created prior to November 1, 1989, with the consent of the ward would remain valid. 1992 Okla. Sess. Laws, ch. 395 § 2, effective September 1, 1992, (codified as 30 O.S. § 3-220), further provides that each such conservatorship shall be presumed to have been

created by consent unless otherwise established by documents filed in the conservatorship or by other evidence.

The Report of the 1984 Title Examination Standards Committee: Recommended adoption of Standard. Recommendation approved by the Real Property Law Section on November 1, 1984, and adopted by the House of Delegates on November 2, 1984.

The Report of the 1989 Title Examination Standards Committee: Recommended amendment to reflect the Legislature's amendment of conservatorship statutes in 1989 Okla. Sess. Laws, ch. 276, it was recommended to change "necessaries" to "necessities," changing the "Authority" citation, and adding a Caveat. It was also recommended to amend the "Comment" to reflect the overruling of previously-cited case law. Recommendation approved by the Real Property Law Section on November 16, 1989, and adopted by the House of Delegates on November 17, 1989.

The Report of the 1993 Title Examination Standards Committee: Recommended amending the second sentence of the Caveat to the Standard to incorporate 1992 legislation. Recommendation approved by the Real Property Law Section on November 4, 1993, and adopted by the House of Delegates on November 5, 1993.

The Report of the 2020 Title Examination Standards Committee: Recommended certain editorial changes to bring the Title Examination Standards Handbook and the Title Examination Standards as they appear on oscn.net into conformity.

CHAPTER 5. NAME VARIANCES

5.1 ABBREVIATIONS AND IDEM SONANS

Identity of parties should be accepted as sufficiently established in the following cases, unless the examiner is otherwise put on inquiry.

- A. Abbreviations of first or middle names: Where there are used commonly recognized abbreviations, derivatives or nicknames, such as "Geo." for George, "Jon." for John, "Chas." for Charles, "Alex." for Alexander, "Jos." for Joseph, "Thos." for Thomas, "Wm." for William, "Lse." for Louise; and
- B. Nicknames of first or middle names: Where there are used commonly recognized nicknames, such as, "Susan" for Suzanna, "Ellen" for Eleanor, "Liz" for Elizabeth, "Katie" for Katherine, "Jack" for John, "Rick" for Richard, "Bob" for Robert, "Bill" for William; and
- C. Application of Doctrine of *Idem Sonans* to first, middle and last names or surnames: Where the names, although spelled differently, sound alike or phonetically similar or when their sounds cannot be distinguished, such first names as in "Sarah" and "Sara", "Catherine" and "Katherine", "Jeff" and "Geoff", "Mohammed" and "Mohammad", "Li" and "Lee", and such last names as in "Fallin" and "Fallon", "Green" and "Greene", "McArthur" and "MacArthur"; and
- D. In all instruments or court proceedings where (1) in one instance name or names of a person is or are used, and in another instance the initial letter or letters only of any such name or names is or are used but the surnames are the same or *idem sonans*; (2) in one instance a name or initial letter is used, and in another instance is omitted, but in both instances the other names or initial letters correspond and the surnames are the same or *idem sonans*; or (3) in one instance the middle name or initial is present and in another instance, the middle name or initial is absent, but the surnames are the same or *idem sonans*.

A greater degree of liberality should be indulged with the greater lapse of time and in the absence of circumstances appearing in the abstract to raise reasonable doubt as to the identity of the parties.

Authority: 16 O.S. § 53; Patton & Palomar on Land Titles §§ 73-78 (3d ed. 2003); *King v. Slepka*, 194 Okla. 11, 146 P.2d 1002 (1944); *Collingsworth v. Hutchinson*, 185 Okla. 101, 90 P.2d 416 (1939); *Maine v. Edmonds*, 58 Okla. 645, 160 P. 483 (1916); Annot., 57 A.L.R. 1478 (1928). West Digest System, Century Digest, *Names*, Key Number 4; Decennials, 4 and 5, *Deeds*, Key Number 31.

The Report of the 1997 Title Examination Standards Committee: Recommended an amendment to reflect the adoption of 16 O.S. § 53 relating to rebuttable presumptions arising from recorded instruments. Recommendation approved by the Real Property Law Section on November 6, 1997, and adopted by the House of Delegates on November 7, 1997.

The Report of the 2016 Title Examination Standards Committee: Recommended that the standard be revamped in order to modernize the wording of the Standard and to give the examiner greater guidance in dealing with the topic covered by the Standard. The Real Property Law Section approved the proposal on November 3, 2016, and the House of Delegates approved the recommendation on November 4, 2016.

The Report of the 2020 Title Examination Standards Committee: Recommended certain editorial changes to bring the Title Examination Standards Handbook and the Title Examination Standards as they appear on oscn.net into conformity.

5.2 VARIANCE BETWEEN SIGNATURE OF BODY OF DEED AND ACKNOWLEDGMENT

Where the given name or names, or the initials, as used in a grantor's signature on a deed vary from the grantor's name as it appears in the body of the deed, but the grantor's name as given in the certificate of acknowledgment agrees with either the signature or the body of the deed, the certificate of acknowledgment should be accepted as providing adequate identification.

Authority: 16 O.S. § 33; Patton & Palomar on Land Titles §§ 79 and 80 (3d ed. 2003); Basye, Clearing Land Titles § 36 (1953); 1 C.J.S. *Acknowledgments* § 92(3); *Woodward v. McCollum*, 16 N.D. 42, 111 N.W. 623 (1907) (Henry S. Woodward and Harry S. Woodward); *Blomberg v. Montgomery*, 69 Minn. 149, 72 N.W. 56 (1897) (Isabella A. Dern and Isabella Dern, Myrtie B. Thorp and Myrtie Thorp, and George B. Conwell, Sr., and G.B. Conwell, Sr.); *Paxton v. Ross*, 89 Iowa 661, 57 N.W. 428 (1894) (Michael Thompson and M. Thompson); *Rupert v. Penner*, 35 Neb. 587, 53 N.W. 598, 17 L.R.A. 824 (1892) (Archibald T. Finn and Arch T. Finn); *Gardner v. City of McAlester*, 198 Okla. 547, 179 P.2d 894 (1946); *O'Banion v. Morris Plan Industrial Bank*, 201 Okla. 256, 204 P.2d 872 (1948); L. Simes & C. Taylor, Model Title Standards, P. 38 (1960).

Comment: The Oklahoma form of acknowledgment for individuals provides that the official taking the acknowledgment shall certify that the person named was known to the official to be the identical person who executed the instrument. This is similar to the acknowledgment forms in most other states and is sufficient to create a presumption of identity when the signature differs from the body of the deed but the acknowledgment agrees with one or the other.

The cases from North Dakota, Minnesota, Iowa and Nebraska, cited above, support this rule and are typical of the many cases on the subject. No Oklahoma cases directly on point have been found. However, in the *Gardner* and *O'Banion* cases, *supra*, the Court held the acknowledgments sufficient to identify the persons executing the instruments although the names were omitted from the acknowledgments. This indicates the rule will be sustained in Oklahoma, if and when the point is raised.

The Report of the 2020 Title Examination Standards Committee: Recommended certain editorial changes to bring the Title Examination Standards Handbook and the Title Examination Standards as they appear on oscn.net into conformity.

5.3 RECITAL OF IDENTITY

A recital of identity, contained in a conveyance executed by the person whose identity is recited, may be relied upon unless there is some reason to doubt the truth of the recital.

Authority: 16 O.S. § 53; Basye, Clearing Land Titles § 36 (1953); Patton & Palomar on Land Titles § 79 (3d ed. 2003); L. Simes & C. Taylor, Model Title Standards, Standard 5.4 at 37 (1960).

Comment: This Standard concerns statements of identity such as that Alfred E. Jones and A.E. Jones are the same person. It is not intended to apply where names differ in substantial and material ways.

The Report of the 1997 Title Examination Standards Committee: Recommended an amendment to reflect the adoption of 16 O.S. § 53 relating to rebuttable presumptions arising from recorded instruments. Recommendation approved by the Real Property Law Section on November 6, 1997, and adopted the House of Delegates on November 7, 1997.

CHAPTER 6. EXECUTION, ACKNOWLEDGMENT AND RECORDING

6.1 DEFECTS IN OR OMISSION OF ACKNOWLEDGMENTS IN INSTRUMENTS OF RECORD

With respect to instruments relating to interests in real estate:

- A. The validity of such instruments as between the parties thereto is not dependent upon acknowledgements, 16 O.S. § 15.
- B. As against subsequent purchasers for value, in the absence of other notices to such purchasers, such instruments are not valid unless acknowledged and recorded, except as provided in Paragraph “C” herein, 16 O.S. § 15.
- C. Such an instrument which has not been acknowledged or which contains a defective acknowledgment shall be considered valid notwithstanding such omission or defect, and shall not be deemed to impair marketability, provided such instrument has been recorded for a period of not less than five (5) years, 16 O.S. §§ 27a and 39a.

The Report of the 1981 Title Examination Standards Committee: Recommended Standard. Recommendation approved by the Real Property Law Section and adopted by the House of Delegates in 1982.

The Report of the 1988 Title Examination Standards Committee: In 1988, the Oklahoma Legislature amended 16 O.S. § 27a by changing from ten (10) to five (5) years the period of time for which an instrument must have been of record to validate its recording if it is not acknowledged or has a defective acknowledgment. This amendment made it possible to combine “C” and “D” of the Standard as it was formerly constituted. These changes were recommended by the Report of the 1988 Title Examination Standards Committee. Recommendation approved by the Real Property Law Section on December 8, 1988, and adopted by the House of Delegates on December 9, 1988.

During the consideration of the 1988 proposal to amend this Standard, the Committee directed the editor, if the proposal was adopted, to record in the History that the Committee had considered the proposition that the Oklahoma Legislature’s 1988 amendment to § 27a applied to acknowledgments generally and was not limited to acknowledgments by corporations only. The Committee accepted that proposition as valid and therefore amended this Standard applying to acknowledgments generally.

6.2 OMISSIONS AND INCONSISTENCIES IN INSTRUMENTS AND ACKNOWLEDGMENTS

Omission of the date of execution from a conveyance or other instrument affecting the title does not, in itself, impair marketability. Even if the date of execution is of peculiar significance, an undated instrument will be presumed to have been timely executed if the dates of acknowledgment and recordation, and other circumstances of record, support that presumption.

An acknowledgment taken by a notary public in another state which does not show the expiration of the notary’s commission is not invalid for that reason.

Inconsistencies in recitals or indications of dates, as between dates of execution, attestation, acknowledgment or recordation, do not, in themselves, impair marketability. Absent a peculiar significance of one of the dates, a proper sequence of formalities will be presumed notwithstanding such inconsistencies.

Authority: Patton & Palomar on Land Titles §§ 353, 356, 362 and 366 (3d ed. 2003); P. Basye, Clearing Land Titles §§ 233-236 and 247-249 (1953); 26 C.J.S., *Deeds* §§ 22a. and f., and 53a; *May v. Archer*, 302 P.2d 768 (Okla. 1956); *Maynard v. Hustead*, 185 Okla. 20, 90 P.2d 30 (1939); *Scott v. Scott*, 111 Okla. 96, 238 P. 468 (1925). Vol. 1 C.J.S. *Acknowledgments* § 876; Annot., 29 A.L.R. 980 (1928); *Kansas City &*

S.E. Ry. Co., v. Kansas City & S.W. Ry. Co., 129 Mo. 62, 31 S.W. 451 (1895); *Sheridan County v. McKinney*, 79 Neb. 220, 112 N.W. 329 (1907); (See also acknowledgment curative statutes.)

Comment: An indication of the date of execution is not essential for any purpose. It is a recital, like other recitals; important, if the date is in issue; helpful, in any case; presumptively correct, but subject to rebuttal or explanation. The same is true of the date of attestation and, generally, of acknowledgment. The only crucial date, that of delivery, is not normally found in the instrument. Hence, omission of the date from one of an ordinary series of conveyances may be disregarded. Even though a special importance attaches to the date of execution, as in the case of a power of attorney, a presumption of timely execution (e.g., in proper sequence in relation to other instruments) should be indulged if supported by other dates and circumstances of record.

As recitals of dates may be omitted or explained, are notoriously inaccurate and are more generally in error than are the actual sequences of formalities, inconsistencies in the indicated dates of formalities (e.g., acknowledgment dated prior to execution; execution dated subsequent to indicated date of recordation) should be disregarded. Further, the inconsistency or impossibility of a recited date should not be regarded as vitiating the particular formality involved. An act curative of the formality will eliminate any question as to its date. If, however, under the circumstances indicated by the record, a peculiar significance attaches to any of the dates (e.g., priorities; important presumption), inconsistency or impossibility should not be disregarded.

6.3 REVENUE STAMPS

The absence of Internal Revenue or Oklahoma Documentary Stamps from an instrument or its record does not impair or affect the marketability of the title or necessitate inquiry.

Authority: J. Palomar, Patton & Palomar on Land Titles § 367 (3d ed. 2003); P. Basye, Clearing Land Titles § 235 (1953). Similar Standards: Colo. 20; Conn. 23; Mont. 20; Mo. 16; N.M. 17; N.Y. 15; Utah 40; Wyo. 8. L. Simes & C. Taylor, Model Title Standards, Standard 6.4 at 45 (1960) followed as a model.

The Report of the 1973 Title Examination Standards Committee: The current wording and authorities were recommended. Recommendation was adopted November 30, 1973, by the House of Delegates. The Standard for which this substitution was made read: "The absence of revenue stamps on a deed does not affect the marketability of the title." The Standard in that form had been adopted in September 1946 renumbered in 1946 and 1948.

6.4 DELIVERY; DELAY IN RECORDING

Delivery of instruments acknowledged and recorded is presumed in all cases. It is also presumed that delivery occurred on the date of the instrument's execution. Delay in recording, with or without record evidence of the intervening death of the grantor, does not end the presumption or create an unmarketable title. However, as an added exceptional protection to their clients, examiners may satisfy themselves as to the facts by inquiry outside the record title.

Authority: *Watkins v. Musselman*, 205 Okla. 514, 239 P.2d 418 (1951); *Fisher v. Pugh*, 261 P.2d 181 (Okla. 1953); *State, ex rel. Comm'rs of Land Office v. Leecraft*, 279 P.2d 323 (Okla. 1955); *Wasson v. Collett*, 204 Okla. 360, 230 P.2d 258 (1951); *Hamburg v. Doak*, 207 Okla. 517, 251 P.2d 510 (1952); *McKeever v. Parker*, 204 Okla. 1, 226 P.2d 425 (1950); 12 O.S. §§ 2902 and 3005; P. Basye, Clearing Land Titles § 13 (1970); Powell on Real Property, § 898(2) (1997); 26a C.J.S. *Deeds*. §§ 185, 187 and 204g; L. Simes & C. Taylor, Model Title Standards, Standard 6.3, at 43-45 (1960).

Comment: The presumption of delivery of recorded instruments inheres in our system of proving titles by public records. This is the law in Oklahoma. The presumption is strengthened by our statute creating a rebuttable presumption of delivery, 16 O.S. § 53(3), and by statutes making certified copies of recorded instruments affecting real estate *prima facie* evidence in all courts without further authentication. The presumption is not overcome by inferences to the contrary drawn from the record. When the record shows a long delay in recording or the death of the grantor prior to the recording of the instrument, the following procedures are suggested: (1) if the instrument has been recorded longer than fifteen (15) years, do not inquire; (2) if the abstract or records or convenient inquiries do not reveal the death of the grantor, do not inquire further; and (3) if death occurred between the dates of execution and recording, inquire but appraise the situation realistically with a view to the probability of a claim of non-delivery. Affidavits resulting from such inquiry may be recorded. However, recording is unnecessary and may create more doubts than previously existed. It should be emphasized that delay in recording and post-mortem recordation are in themselves unobjectionable and do not render a title unmarketable. The actual risk inherent in non-delivery is easily over-emphasized. By use of presumptions, estoppel and other legal theories, courts properly display an almost insurmountable hostility to claims against innocent purchasers of apparently clear titles.

The Report of the 1998 Title Examination Standards Committee: Recommended brief amendments to respond to the Legislature's adoption of 16 O.S. § 53 relating to rebuttable presumptions arising from recorded instruments, and 16 O.S. § 82 relating to uses of affidavits. Recommendation approved by the Real Property Law Section on November 12, 1998, and adopted by the House of Delegates on November 13, 1998.

6.5 FOREIGN EXECUTIONS AND ACKNOWLEDGMENTS

An instrument executed and acknowledged or proved in any state, territory, District of Columbia or foreign country, in conformity with the law of such state, territory, District of Columbia or foreign country, or in conformity with the Federal Statutes, shall be valid as to execution and acknowledgment, only, as if executed within this state in conformity with the provisions of law of this state.

Authority: 16 O.S. § 37b.

The Report of the 1980 Title Examination Standards Committee: Recommended Standard. Recommendation approved by the Real Property Law Section on December 3, 1980, and adopted by the House of Delegates on December 5, 1980.

6.6 SHORT FORM ACKNOWLEDGMENTS

The use of the appropriate "short-form" acknowledgment authorized by the Uniform Law on National Acts within an instrument appearing of record, in lieu of any applicable "long-form" acknowledgment authorized by law, shall not be deemed to be a title defect.

Authority: 49 O.S. § 111 *et seq.*; § 120.

Comment: The "long-form" acknowledgments include, among others, those appearing in 16 O.S. §§ 33, 42, and 95.

The Report of the 1994 Title Examination Standards Committee: Recommended Standard. Recommendation approved by the Real Property Law Section on November 17, 1994, and adopted by the House of Delegates on November 18, 1994.

6.7 VALIDITY OF INSTRUMENTS EXECUTED BY ATTORNEYS-IN-FACT

- A. An instrument affecting title to real estate executed by an attorney-in-fact duly appointed and empowered, and not subject to the provisions of Paragraphs “B”, “C” or “D” below, is acceptable to vest marketable title in the grantee, if:
1. The power of attorney, other than a durable power of attorney, was executed, acknowledged and recorded in the manner required by law; or
 2. The power of attorney is a durable power of attorney recorded in the manner required by law and:
 - a. Executed after November 1, 1988, under the Uniform Durable Power of Attorney Act (58 O.S. §§ 1071-1077); or
 - b. Executed between June 16, 1965 and September 1, 1992, under the provisions of the Special Power of Attorney Act (58 O.S. §§ 1051-1062); or
 - c. Executed after November 1, 1998, under the provisions of the Uniform Statutory Power of Attorney Act (15 O.S. §§ 1001-1020).
 3. Notwithstanding the foregoing, an instrument executed by an attorney-in-fact that has been recorded for at least five (5) years is valid even though no power of attorney was recorded in the office of the county clerk of the county in which the property is located.
- B. An instrument that otherwise conforms with the provisions of Paragraph “A” above fails to vest title in the grantee if a revocation of the power of attorney by either:
1. The principal; or
 2. A conservator, guardian or other fiduciary of the principal appointed by a court of the principal’s domicile, has been recorded in the same office in which the instrument containing the power of attorney was recorded.
- C. An instrument that otherwise conforms with the provisions of Paragraph “A” above fails to vest title in the grantee if, prior to November 1, 2015, the power of attorney has otherwise terminated by law and such termination either appears in the abstract or is within the personal knowledge of the examiner.
- D. An instrument that otherwise conforms with the provisions of Paragraph “A” above fails to vest title in the grantee if, on or after November 1, 2015, notice of revocation of the power of attorney has been recorded in the county clerk’s office in the county in which the power of attorney was recorded.

Authority: 15 O.S. §§ 1001-1020; 16 O.S. §§ 3, 20, 21, 27a and 53; 58 O.S. §§ 1071 *et. seq.*

- E. An instrument that otherwise conforms with the provisions of Paragraph “A” above fails to vest title in the grantee if, prior to November 1, 2015, the power of attorney has terminated by law by reason of the appointment of a conservator or guardian of the principal as set out below:
1. For a durable power of attorney which does not contain a nomination of the person to act as conservator or guardian, such power of attorney terminates by reason of the appointment, on or after November 1, 2010, of a conservator of the estate, or guardian of the estate, of the principal in such power of attorney and upon notice of such appointment as required by statute; or
 2. For a durable power of attorney containing a nomination of the person to act as conservator or guardian, such power of attorney terminates by reason of the appointment, on or after November 1, 2010, of a conservator of the estate, or guardian of the estate or guardian of the person, of the principal in accordance with such nomination contained in the power of attorney upon notice of such appointment as required by statute.

Authority: 58 O.S. § 1074.

Comment 1: Notwithstanding the foregoing, an instrument executed by an attorney-in-fact that has been recorded for at least five (5) years is valid even though no power of attorney was recorded in the office of the county clerk of the county in which the property is located, provided no conservator or guardian for the principal in the power of attorney has been appointed on or before the date of such instrument. See 16 O.S. § 27a.

Comment 2: The form of the notice of the appointment referenced above and to whom such notice must be given is not specified in the statutes.

Comment 3: The death, disability or incapacity of a principal who has previously executed a written power of attorney, whether durable or otherwise, does not revoke or terminate the agency as to the attorney-in-fact who, without actual knowledge of the death, disability or incapacity of the principal, acts in good faith under the power. Any action so taken, unless otherwise invalid or unenforceable, binds the principal and successors in interest. See 58 O.S. § 1075.

A power of attorney executed in another state shall be considered valid for purposes of the Uniform Durable Power of Attorney Act if the power of attorney and the execution of the power of attorney substantially comply with the requirements of the Uniform Durable Power of Attorney Act (58 O.S. §§ 1071-1077) or the uniform Statutory Power of Attorney Act (15 OS. §§ 1001-1020).

The Report of the 1983 Title Examination Standards Committee: Recommended Standard. Recommendation approved by the Real Property Law Section on November 3, 1983, and adopted by the House of Delegates on November 4, 1982.

The Report of the 1993 Title Examination Standards Committee: Recommended revising Standard to reflect the Legislature's amendment of relevant statutes. The recommendation included, as a consequence of the 1993 amendment to 58 O.S. § 1071, deleting the former Caveat regarding conveyances and encumbrances of homestead interests. The Committee's proposal also added a Comment regarding the effect of a revision of 58 O.S. § 1075. Recommendation approved by the Real Property Law Section on November 4, 1993, and adopted by the House of Delegates on November 5, 1993.

The Report of the 1994 Title Examination Standards Committee: Recommended amending Standard to reflect various revisions of the Durable Power of Attorney Act. Recommendation approved by the Real Property Law Section on November 17, 1994, and adopted by the House of Delegates on November 18, 1994.

The Report of the 1997 Title Examination Standards Committee: Recommended adding Subsection A.3 and supporting authority. Recommendation approved by the Real Property Law Section on November 6, 1997, and adopted by the House of Delegates on November 7, 1997.

The Report of the 2013 Title Examination Standards Committee: Recommended amending Standard to point out that a power of attorney terminates upon the appointment of a guardian or custodian for the attorney-in-fact's ward. Recommendation approved by the Real Property Law Section on November 14, 2013, and adopted by the House of Delegates on November 15, 2013.

The Report of the 2015 Title Examination Standards Committee: Recommended an amendment to Standard 6.7 to add a new Standard 6.7 D and to amend Standards 6.7 C and 6.7 E to reflect changes in 58 O.S. § 1074. Recommendation approved by the Real Property Law Section on November 5, 2015, and adopted by the House of Delegates on November 5, 2015.

6.8 POWERS OF ATTORNEY FOR FEDERAL AGENCIES

The examiner should accept a recorded instrument executed by an attorney-in-fact for a federal agency if:

- A. A power of attorney is published in the Federal Register; and
- B. The recorded instrument specifically refers to the citation in the Federal Register for the power of attorney.

Authority: 16 O.S. § 20.

The Report of the 1995 Title Examination Standards Committee: Recommended new Standard, the substance of which had been in former Standard 9.2, now 12.2, before 9.2 was totally revised in 1995. Recommendation approved by the Real Property Law Section on November 9, 1995, and adopted by the House of Delegates on November 10, 1995.

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 a 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 described 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.

The Report of the 2001 Title Examination Standards Committee: Recommended new Standard to assist title examiners with the application of new legislation regarding Remote Online Notaries. Recommendation was adopted by the Real Property Law Section and the House of Delegates in 2021.

CHAPTER 7. MARITAL INTERESTS

7.1 MARITAL INTERESTS: DEFINITION; APPLICABILITY OF STANDARDS; BAR OR PRESUMPTION OF THEIR NON-EXISTENCE

The term “Marital Interest”, as used in this chapter, means the rights and restrictions placed by law upon an individual landowner’s ability to convey or encumber the homestead and the protections afforded to the landowner’s spouse therein.

Severed minerals cannot be impressed with homestead character and, therefore, the Standards contained in this chapter are inapplicable to instruments relating solely to previously severed mineral interests.

Marketability of title is not impaired by the possibility of an outstanding marital interest in the spouse of any former owner whose title has passed by instrument or instruments which have been of record in the office of the county clerk of the county in which the property is located for not less than ten (10) years after the date of recording, where no legal action shall have been instituted during said ten (10) year period in any court of record having jurisdiction, seeking to cancel, avoid or invalidate such instrument or instruments on the ground or grounds that the property constituted the homestead of the party or parties involved.

Authority: 16 O.S. § 4.

Comment 1: See Title Examination Standard 6.7 as to use of powers of attorney.

Comment 2: Following the decisions of the Court of Appeals for the Tenth Circuit in *Bishop v. Smith* and the United States Supreme Court in *Obergefell v. Hodges*, same sex marriages are legal in Oklahoma. All standards that refer to a Martial Interst are equally applicable to same sex married couples. Any references to huband and wife, spouses, or married couples should be read to apply to all legal marriages.

Authority: *Bishop v. Smith*, 760 F.3d 1070 (10th Cir. 2014); *Obergefell v. Hodges*, 576 U.S. 644 (2015).

The Report of the 1970 Title Examination Standards Committee: Recommended amending Standard. Recommendation approved by the Real Property Law Section on December 3, 1970, and adopted by the House of Delegates on December 4, 1970.

The Report of the 1983 Title Examination Standards Committee: Recommended to substantially modify the previous Standard of the same number. Recommendation approved by the Real Property Law Section on November 3, 1983, and adopted by the House of Delegates on November 4, 1983.

The Report of the 1984 Title Examination Standards Committee: Recommended adding the first two (2) paragraphs. Recommendation was approved by the Real Property Law Section on November 1, 1984, and adopted by the House of Delegates on November 2, 1984.

The Report of the 2020 Title Examination Standards Committee: Recommended certain editorial changes to bring the Title Examination Standards Handbook and the Title Examination Standards as they appear on oscn.net into conformity.

7.2 MARITAL INTERESTS AND MARKETABLE TITLE

Except as otherwise provided in Standard 7.1, no deed, mortgage (other than a purchase money mortgage) or other conveyance by an individual grantor shall be approved as sufficient to vest marketable title in the grantee unless:

- A. The body of the instrument contains the grantor's recitation to the effect that the individual grantor is unmarried; or
- B. The individual grantor's spouse, identified as such in the body of the instrument, subscribes the instrument as a grantor; or
- C. The grantee is the spouse of the individual grantor and that fact is recited by the grantor in the body of the instrument; or
- D. In the event a recorded conveyance of nonhomestead property has been executed by a married grantor without being joined by his or her spouse, said conveyance shall be marketable if one of the following instruments is placed of record:
 - 1. An affidavit executed by the nonjoining spouse stating that the property conveyed was nonhomestead property; or
 - 2. A conveyance executed by the nonjoining spouse, with or without others, relinquishing any claim to an interest in the property to the same grantee, or to a successor or successors in interest, with a recitation that the property was nonhomestead property.

Comment 1: There is no question that an instrument relating to the homestead is void unless both spouses subscribe it. *Grenard v. McMahan*, 1968 OK 75, 441 P.2d 950, *Atkinson v. Barr*, 1967 OK 103, 428 P.2d 316, but also see *Hill v. Discover Bank*, 2008 OK CIV APP 111, 213 P.3d 835. It is also settled that both spouses must execute the same instrument, as separately executed instruments will be void. *Thomas v. James*, 1921 OK 414, 202 P. 499. It is essential to make the distinction between a valid conveyance and a conveyance vesting marketable title when consulting this standard. This distinction is important because the impossibility of determining from the record whether or not the land is homestead, requires the examiner, for marketable title purposes, to (1) assume that all real property is homestead, and (2) consequently, always require joinder of both spouses on all conveyances. A deed of non-homestead real property, signed by a title-holding married person without the joinder of their spouse, will be valid as between the parties to the deed, and can confer marketable title upon the satisfaction of Sub-Part (D) above.

Comment 2: While 16 O.S. § 13 states that "The husband or wife may convey, mortgage or make any contract relating to any real estate, other than the homestead, belonging to him or her, as the case may be, without being joined by the other in such conveyance, mortgage or contract," joinder by both spouses must be required in all cases due to the impossibility of ascertaining from the record whether the property was or was not homestead or whether the transaction is one of those specifically permitted by statute. See 16 O.S. §§ 4 and 6 and Okla. Const. Art. XII, §2. A well-settled point, prior to the amendment of 16 O.S. § 13, effective November 1, 2019, was that one may not rely upon recitations, either in the instrument or in a separate affidavit, to the effect that property was not the homestead. Such recitation by the grantor may be strong evidence when the issue is litigated, but it cannot be relied upon for the purpose of establishing marketability. *Hensley v. Fletcher*, 172 Okla. 19, 44 P.2d 63 (1935). However, the 2019 amendment authorized the use of affidavits and conveyances, executed by the nonjoining spouse and placed of record within ten (10) years of the filing of a conveyance described in 16 O.S. § 13(B), to evidence the property was not homestead and establish marketability.

Comment 3: If an individual grantor is unmarried and the grantor's marital status is inadvertently omitted from an instrument, or if two (2) grantors are married to each other and the grantors' marital status is inadvertently omitted from an instrument, a title examiner may rely on an affidavit executed and recorded pursuant to 16 O.S. § 82 which recites that the individual grantor was unmarried or that the two (2) grantors were married to each other at the date of such conveyance.

Caveat: These recitations may not be relied upon if, upon “reasonable inquiry” the purchaser could have determined otherwise. *Keel v. Jones* 413 P.2d 549 (Okla. 1966).

Comment 4: A non-owner spouse may join in a conveyance as part of a special phrase placed after the habendum clause, yet be omitted from the grantor line of a deed, and still be considered a grantor to satisfy paragraph B of this title Standard. *Melton v. Sneed*, 188 Okla. 388, 109 P.2d 509 (1940).

The Report of the 1983 Title Examination Standards Committee: Recommended Standard. Recommendation approved by the Real Property Law Section and adopted by the House of Delegates on November 3, 1983.

The Report of the 1986 Title Examination Standards Committee: Recommended that Section B be added to the Standard. Recommendation approved by the Real Property Law Section on November 20, 1986, and adopted by the House of Delegates on November 21, 1986.

The Report of the 2003 Title Examination Standards Committee: Recommended amending this Standard for clarification and to reflect the finding in *Melton v. Sneed*, 1940 OK 502, 109 P.2d 509. Recommendation approved by the Real Property Law Section on November 13, 2003, and adopted by the House of Delegates on November 14, 2003.

The Report of the 2010 Title Examination Standards Committee: Recommended amendments to the comment to this section to more accurately reflect the legal authority on which the Standard is based. Recommendation approved by the Real Property Law Section on November 18, 2010, and adopted by the House of Delegates on November 19, 2010.

The Report of the 2014 Title Examination Standards Committee: Recommended an addition to the first comment to this Section to explain and clarify the reasoning and purpose of the Standard. Recommendation approved by the Real Property Law Section on November 13, 2014, and adopted by the House of Delegates on November 14, 2014.

The Report of the 2017 Title Examination Standards Committee: Recommended the amendment to Comments 1 and 2 to Standard 7.2 to reflect the ruling of the United States Supreme Court recognizing the legality of same sex marriages. Recommendation approved by the Real Property Law Section of November 2, 2017, and adopted by the House of Delegates on November 3, 2017.

The Report of the 2019 Title Examination Standards Committee: Recommended the amendment to Standard 7.2 to add new sub-paragraph "D" and to revise the Comments to reflect the amendment of 16 O.S. § 13. Recommendation approved by the Real Property Law Section of November 2, 2017, and adopted by the House of Delegates on November 3, 2017.

The Report of the 2020 Title Examination Standards Committee: Recommended certain editorial changes to bring the Title Examination Standards Handbook and the Title Examination Standards as they appear on oscn.net into conformity.

7.3 MARITAL INTERESTS PURCHASE MONEY MORTGAGES

The homestead interest of a spouse who is not in title to homestead property is inferior to the lien of a purchase money mortgage. Therefore, the validity of a purchase money mortgage is not affected by the failure of a non-title-holding spouse to execute a purchase money mortgage on homestead property.

Authority: *Cimarron Federal Savings Association v. Jones*, 1991 OK CIV APP 67, 832 P.2d 426, approved for publication and given precedential effect, *Cimarron Federal Savings Association v. Jones*, 1992 OK 55, 832 P.2d 420.

The Report of the 1983 Title Examination Standards Committee: Recommended Standard. Recommendation approved by the Real Property Law Section and adopted by the House of Delegates on November 3, 1983.

The Report of the 1986 Title Examination Standards Committee: Recommended adding Section “B” to Standard. Recommendation approved by the Real Property Law Section on November 20, 1986, and adopted by the House of Delegates on November 21, 1986.

The Report of the 2003 Title Examination Standards Committee: Recommended amending Standard for clarification and to reflect the finding in *Melton v. Sneed*, 1940 OK 502, 109 P.2d 509. Recommendation approved by the Real Property Law Section on November 13, 2003, and adopted by the House of Delegates on November 14, 2003.

The Report of the 2010 Title Examination Standards Committee: Recommended amendments to the comment to this Standard to more accurately reflect the legal authority on which the Standard is based. Recommendation approved by the Real Property Law Section on November 18, 2010, and adopted by the House of Delegates on November 19, 2010.

The Report of the 2013 Title Examination Standards Committee: Recommended amending Standard to point out that the validity of purchase money mortgage is not affected by the failure of a non-titled spouse to execute the purchase money mortgage. Recommendation approved by the Real Property Law Section on November 14, 2013, and adopted by the House of Delegates on November 15, 2013.

CHAPTER 8. JOINT TENANCIES AND LIFE ESTATES

8.1 TERMINATION OF JOINT TENANCY ESTATES AND LIFE ESTATES

- A. The termination of the interest of a deceased joint tenant or life tenant may be established on a conclusive basis by one of the following methods:
1. By proceeding in the district court as provided in 58 O.S. § 911;
 2. By a valid judicial finding of the death of the joint tenant or life tenant in any action brought in a court of record; or
 3. By filing documents that satisfy 58 O.S. § 912C.
- B. The termination of the interest of a deceased joint tenant or life tenant may be established on a *prima facie* basis by one of the following methods:
1. By recording certified copies of letters testamentary or letters of administration for the estate of the deceased joint tenant or life tenant; or
 2. By recording an affidavit from a person other than those listed in 58 O.S. § 912C which:
 - a. Has a certified copy of the decedent's death certificate attached;
 - b. Includes a legal description of the property; and
 - c. States that the person named in the death certificate is one and the same person as the deceased joint tenant or life tenant named in the previously recorded instrument which created or purported to create the joint tenancy or life tenancy in such property, and identifying such instrument by book and page where recorded.

See TES Standard 25.5 Oklahoma Estate Tax Lien.

Authority: 16 O.S. §§ 53 A(10), 82-84; 58 O.S. §§ 23, 133, 282.1, 911 and 912; 60 O.S. §§ 36.1 and 74; 68 O.S. §§ 804, 804.1, 811 and 815.

Comment: Title 58 O.S. § 912 is a procedural statute, and may be applied retroactively because it does not affect substantive rights; see Opin. Atty. Gen. 74-271 (February 10, 1975), *Texas County Irr. & Water v. Okla. Water*, 803 P.2d 1119 (Okla. 1990), and *Shelby-Downard Asphalt Co. v. Enyart*, 67 Okla. 237, 170 P. 708 (1918). The death of a joint tenant or a life tenant may be conclusively established under § 912 regardless of the date of death and regardless of the date of filing of the affidavit.

A retained life estate [e.g., Mom conveys Blackacre to Son, reserving a life estate to herself] is included in the life tenant's taxable estate at death, 68 O.S. § 807(A)(3). However, a non-retained pure life estate, unaccompanied by a general power of appointment, is not subject to Oklahoma estate tax, and an estate tax lien release is not required in such instance. For example, if Mom conveys Blackacre for life to Son, remainder over to Granddaughter, Son has a pure life estate which is not included in his gross estate at his death and is not taxable nor subject to the estate tax lien. An estate tax lien release is not required in such a case. But if Mom were to have given Son not only the life estate but also a general power of appointment [as specially defined at 68 O.S. § 807(A)(9)] over the remainder, such a life estate with a power would be included in Son's taxable estate, and a lien release would be required.

The marketability of title may also be impaired by the lien of Federal estate tax. See Title Standard No. 25.2.

The Report of the 1992 Title Examination Standards Committee: Recommended the substantial revision and simplification of this Standard in response to major changes in 1992 to 58 O.S. § 912. The

Committee recommended that the Standard should no longer be bifurcated into separate headings for non-judicial termination of joint tenancies and judicial termination of joint tenancies and life estates, since the 1992 amendment of § 912 permits the termination by affidavit both of joint tenancies composed of persons other than two (2) spouses and of life estates. The Committee also recommended omission of the former Standard's differing requirements for affidavit forms based upon the date on which the affidavits were made, since, under the 1992 amendment of § 912, the effectiveness of the affidavit form is controlled by the date the affidavit is filed rather than the date the affidavit was made, 63 O.B.J. 2903, 2905 (1992). Recommendations approved by the Real Property Law Section on November 12, 1992, and adopted by the House of Delegates on November 13, 1992.

The Report of the 1994 Title Examination Standards Committee: Recommended amending Standard to broaden the class of documents that can be filed to evidence the termination of the interest of a deceased joint tenant or life tenant, to amend and add citations of authority, and to add the Comment regarding the possible impairment of the survivor's title by a federal estate tax lien. Recommendation approved by the Real Property Law Section on November 17, 1994, and adopted by the House of Delegates on November 18, 1994.

The Report of the 1997 Title Examination Standards Committee: Recommended amending Standard both to reflect new authority that makes recorded affidavits *prima facie* evidence of the facts they recite and to clarify when a deceased life tenant's estate may be subject to an estate tax lien, 68 O.B.J. 3295-96. Recommendation approved by the Real Property Law Section on November 6, 1997, and adopted by the House of Delegates on November 7, 1997.

The Report of the 2000 Title Examination Standards Committee: Recommended amendments to the format of Standard for purposes of clarity. Recommendation approved by the Real Property Law Section on November 16, 2000, and adopted by the House of Delegates on November 17, 2000.

The Report of the 2010 Title Examination Standards Committee: Recommended amending Standard to reflect the effect of the repeal of the Oklahoma Estate Tax. Recommendation approved by the Real Property Committee on November 18, 2010, and adopted by the House of Delegates on November 19, 2010.

The Report of the 2013 Title Examination Standards Committee: Recommended amending Standard 8.1.B. to reflect that the applicable statutes do not require that the signer of the affidavit have personal knowledge of the matters set forth in the affidavit. Recommendation by the Real Property Law Section on November 14, 2013, and adopted by the House of Delegates on November 15, 2013.

The Report of the 2016 Title Examination Standards Committee: Recommended that Standard 8.1C be amended to reflect the uncertainty of the status of Oklahoma estate tax liens. The Real Property Law Section approved the recommendation on November 3, 2016, and the House of Delegates approved the recommendation on November 4, 2016.

The Report of the 2017 Title Examination Standards Committee: Recommended the amendment to Standard 8.1C to reflect new legislation concerning the attachment, duration and release of Oklahoma Tax Liens on deaths occurring prior to January 1, 2010. Recommendation approved by the Real Property Law Section of November 2, 2017, and adopted by the House of Delegates on November 3, 2017.

The Report of the 2020 Title Examination Standards Committee: Recommended the amendment to Standard 8.1C to reflect the passage of ten (10) years since the repeal of the Oklahoma Estate Tax. Also recommended certain editorial changes to bring the Title Examination Standards Handbook and the Title Examination Standards as they appear on oscn.net into conformity.

8.2 DIRECT CONVEYANCES

Title 60 O.S. § 74, which became effective May 7, 1945, authorizes the creation of joint tenancy or a tenancy by the entirety by direct conveyance. The attitude of the Bar toward this section should be as follows:

- A. In drawing such conveyances, attorneys should draw direct conveyances as provided in the section. Transfers through third parties are no longer necessary.
- B. In examining titles, attorneys should pass direct conveyances which comply with the section, provided the conveyance is satisfactory in other respects, whether the conveyance was made before or after the effective date, May 7, 1945.

Comment: While the section has not been passed on by the Supreme Court, it is expected the Court will follow the Standard because: (1) the section is constitutional, *Hill v. Donnelly*, 56 Cal. App. 2d 387, 132 P.2d 867 (1942); (2) the court has not previously held direct conveyances executed prior to May 7, 1945, to be invalid; (3) the enactment of the section establishes the legislative policy or intention of approving direct conveyances, whether created before or after the adoption of the section. Hence, it is to be presumed that the court will recognize this policy and approve direct conveyances made prior to May 7, 1945. This was done by the Court in *United States v. 12,800 Acres of Land*, 69 F. Supp. 767 (D. Neb. 1947). Also, see former Title Standard No. 9.3, repealed in 1987 as obsolete because of the passage of time, which approved corporate deeds attested by an assistant secretary prior to the amendment of 16 O.S. § 94, in 1933, to permit such attestation.

8.3 ONE GRANTEE

A conveyance to a single grantee, although purporting to convey to joint tenants or being a joint tenancy form of deed, should be treated as a conveyance to the named grantee only and requires no corrective action.

The Report of the 1970 Title Examination Standards Committee Supplemental Report: Recommended Standard. Recommendation approved by the Real Property Law Section on December 3, 1970, and adopted by the House of Delegates on December 4, 1970.

CHAPTERS 9-11. RESERVED FOR FUTURE USE

ARTICLE II: ENTITIES

CHAPTER 12. CORPORATIONS

12.1 NAME VARIANCES

Where a corporation appears in the title, the fact that there are minor differences in the name due to the use of abbreviations such as "Co." in place of "Company," or "Corp." in place of "Corporation," or "&" in place of "and," or "Inc." in place of "Incorporated," or "Ltd." in place of "Limited," does not overcome the presumption that the names refer to the same corporation. A greater degree of liberality should be indulged with the greater lapse of time and in the absence of circumstances appearing in the abstract to raise reasonable doubt as to the identity of the corporation.

12.2 REBUTTABLE PRESUMPTIONS CONCERNING CORPORATE INSTRUMENTS EXECUTED IN PROPER FORM

If a recorded instrument from a corporation is executed and acknowledged in proper form, the title examiner may presume that:

- A. the persons executing the instrument were the officers they purported to be,
- B. the officers were authorized to execute the instrument on behalf of the corporation,
- C. the corporation was authorized to acquire and sell the property affected by the recorded instrument, and
- D. the corporation was legally in existence when the instrument was executed.

From and after September 1, 1994, recorded instruments must be signed on behalf of a domestic corporation by a president, vice president, chairman or vice chairman of the board of directors. A corporate instrument executed in another state may be accepted if it is executed either by the proper officers under Oklahoma law or by the proper officers under the laws of the state where the instrument was executed.

Before September 1, 1994, corporation instruments were required to be executed by a corporate president or vice president, attested by a corporate secretary or assistant secretary, and impressed with the corporate seal. Instruments from banks could be attested by a cashier or assistant cashier.

Authority: 16 O.S. §§ 53, 93.

The Report of the 1983 Title Examination Standards Committee: Recommended substantial changes in the second paragraph of Standard. Recommendation approved by the Real Property Law Section on November 3, 1983, and adopted by the House of Delegates on November 4, 1983.

The Report of the 1986 Title Examination Standards Committee: Recommended changing many of the statutory citations included in this Standard. It was also recommended that the fifth (now sixth) paragraph of the body of the Standard be amended to reflect the change in significance of the subject matter of that paragraph prior to and after the 1986 amendments. Recommendations approved by the Real Property Law Section on November 12, 1987, and adopted by the House of Delegates on November 13, 1987.

The Report of the 1988 Title Examination Standards Committee: Recommended amending Standard to changing from ten (10) years to five (5) years the period of recordation necessary to cure defective corporation executions, acknowledgments, recordings or certificates of recording to conform this Standard to the amended statute. Recommendation approved by the Real Property Law Section on December 8, 1988, and adopted by the House of Delegates on December 9, 1988.

The Report of the 1995 Title Examination Standards Committee: Recommended a complete rewriting of Standard to reflect the impact of the new statutes on corporate executions, jurisdictional issued and the use of affidavits. Recommendation approved by the Real Property Law Section on November 9, 1995, and adopted by the House of Delegates on November 10, 1995.

The Report of the 2020 Title Examination Standards Committee: Recommended certain editorial changes to bring the Title Examination Standards Handbook and the Title Examination Standards as they appear on oscn.net into conformity.

12.3 CONCLUSIVE PRESUMPTIONS CONCERNING INSTRUMENTS RECORDED FOR MORE THAN FIVE (5) YEARS

The following defects may be disregarded after an instrument from a legal entity has been recorded for five (5) years:

- A. the instrument has not been signed by the proper representative of the legal entity,
- B. the representative is not authorized to execute the instrument on behalf of the legal entity,
- C. the instrument is not acknowledged, and
- D. Any defect in the execution, acknowledgment, recording or certificate of recording the same.

Authority: 16 O.S. §§ 1 and 27a.

The Report of the 1995 Title Examination Standards Committee: Recommended new Standard (utilizing the number of the previously repealed Standard relating to attestation, which is no longer required on corporate instruments) to reflect the impact of the new statutes on corporate executions, jurisdictional issues and the use of affidavits. Recommendation approved by the Real Property Law Section on November 9, 1995, and adopted by the House of Delegates on November 10, 1995.

The Report of the 1999 Title Examination Standards Committee: Recommended amending Standard because 16 O.S. § 94, requiring attestation of the corporate seal on deeds executed by a corporation, had been repealed more than five (5) years previously. The repeal of said statute and the passage of the five (5) years were deemed to obviate the need to cure a now non-existent defect. Recommendation approved by the Real Property Law Section on November 11, 1999, and adopted by the House of Delegates on November 12, 1999.

The Report of the 2010 Title Examination Standards Committee: Recommended amending Standard to reflect that its provisions were applicable to all legal entities and not just to corporations. Recommendation approved by the Real Property Law Section on November 18, 2010, and adopted by the House of Delegates on November 19, 2010.

The Report of the 2020 Title Examination Standards Committee: Recommended certain editorial changes to bring the Title Examination Standards Handbook and the Title Examination Standards as they appear on oscn.net into conformity.

12.4 RECITAL OF IDENTITY, SUCCESSORSHIP, OR CONVERSION

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 18 O.S. § 1144 or § 1090.2), then:

- A. A recital of succession by corporate merger or corporate name change (e.g., the corporation was formerly known by another name) may be relied upon if contained in a recorded title document properly executed by the surviving or resulting corporation.

- B. After September 1, 1990, a recital of succession by merger or consolidation of one or more corporations with one or more limited partnerships may be relied upon if contained in a recorded title document properly executed by the surviving or resulting entity.
- C. On or after November 1, 1998, a recital of succession by merger or consolidation of one or more corporations with one or more business entities, as defined in 18 O.S. § 1090.2(A), may be relied upon if contained in a recorded title document properly executed by the surviving or resulting entity.
- D. On or after January 1, 2010, a recital by a business entity, as defined in 18 O.S. § 2054.1(A), of a conversion to a domestic limited liability company may be relied upon if contained in a recorded title document properly executed by the domestic limited liability company.

Authority: 18 O.S. § 1144 (effective November 1, 1987), 1088 (effective November 1, 1986), 1090.2 (effective November 1, 1998), and 2054.1 (effective January 1, 2010).

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

The Report of the 1980 Title Examination Standards Committee: Recommended adoption of Standard. Recommendation approved by the Real Property Law Section on December 3, 1980, and adopted by the House of Delegates on December 5, 1980.

The Report of the 1987 Title Examination Standards Committee: Recommended amendment of Standard as a result of the extensive revision of Title 18 effective November 1, 1986. Recommendation approved by the Real Property Law Section on November 12, 1987, and adopted by the House of Delegates on November 13, 1987.

The Report of the 1991 Title Examination Standards Committee: Recommended a complete revision of Standard to include mergers of corporations with limited partnerships, as now allowed by statute. Recommendation approved by the Real Property Law Section on November 14, 1991, and adopted by the House of Delegates on November 15, 1991. See also Title Standard 13.8.

The Report of the 2011 Title Examination Standards Committee: Recommended additional provisions to Standard to reflect recent statutory provisions regarding the conversion of legal entities. Recommendation approved by the Real Property Law Section on November 3, 2011, and adopted by the House of Delegates on November 4, 2011.

The Report of the 2020 Title Examination Standards Committee: Recommended certain editorial changes to bring the Title Examination Standards Handbook and the Title Examination Standards as they appear on oscn.net into conformity.

12.5 POWERS OF ATTORNEY BY LEGAL ENTITIES

- A. If a recorded instrument has been executed by an attorney-in-fact on behalf of a legal entity, the examiner should accept the instrument if:
 - 1. the power of attorney authorizing the attorney-in-fact to act on behalf of the legal entity is executed in the same manner as a conveyance by a legal entity,
 - 2. the power of attorney is recorded in the office of the county clerk,
 - 3. the power of attorney shows that the attorney-in-fact had the authority to execute the recorded instrument, and
 - 4. the power of attorney was executed before the recorded instrument was executed.
- B. Notwithstanding paragraph A above, if a recorded instrument has been executed by an attorney-in-fact on behalf of a legal entity, the examiner should accept the instrument if the instrument has been

of record for at least five (5) years even though power of attorney has not been recorded in the office of the county clerk of the county in which the property is located.

Authority: 16 O.S. §§ 3, 20, 27a, 53, 93.

The Report of the 1995 Title Examination Standards Committee: Recommended new Standard to respond to statutory changes in Title 16. Recommendation approved by the Real Property Law Section on November 9, 1995, and adopted by the House of Delegates on November 10, 1995.

The Report of the 1997 Title Examination Standards Committee: Recommended adding a new Subsection “B” with supporting authority and renumbering the remainder of the Standard. Recommendation approved by the Real Property Law Section on November 6, 1997, and adopted by the House of Delegates on November 7, 1997.

The Report of the 2010 Title Examination Standards Committee: Recommended amending Standard to reflect that its provisions applied to all legal entities and not just to corporations. Recommendation approved by the Real Property Law Section on November 18, 2010, and adopted by the House of Delegates on November 19, 2010.

The Report of the 2020 Title Examination Standards Committee: Recommended certain editorial changes to bring the Title Examination Standards Handbook and the Title Examination Standards as they appear on oscn.net into conformity.

CHAPTER 13. PARTNERSHIPS AND JOINT VENTURES

Caveat: *Oklahoma has enacted the Revised Uniform Partnership Act, codified at 54 O.S. §§ 1-100 through 1-1207. On or after January 1, 2000, the Oklahoma Revised Uniform Partnership Act will govern all partnerships and limited liability partnerships formed under Oklahoma law, including general partnerships formed prior to the enactment of the Revised Uniform Partnership Act.*

13.1 CONVEYANCES TO AND BY PARTNERSHIPS

A general partnership, a limited liability partnership, and a limited partnership are separate entities authorized to take, hold and convey real property.

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

The Report of the 1965 Title Examination Standards Committee: Recommended substantially amending Standard, Resolution No. 8, and Exhibit E, *id.* at 2098 and 2186. Recommendation approved by the Real Property Law Section and adopted by the House of Delegates on December 2, 1965.

The Report of the 1996 Title Examination Standards Committee: Recommended revisions to Standard in response to changes in 16 O.S. §§ 1 and 53 and for purposes of clarification. Recommendation approved by the Real Property Law Section on November 14, 1996, and adopted by the House of Delegates on November 15, 1996.

The Report of the 2001 Title Examination Standards Committee: Recommended amendments to Standard reflect the State's adoption of the Revised Uniform Partnership Act (the "Revised Act"), including its treatment of partnerships as entities. Recommendation approved by the Real Property Law Section on November 15, 2001, and adopted by the House of Delegates on November 16, 2001.

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.

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 the Oklahoma Secretary of State), if filed and recorded, must include the identity of partners authorized to execute instruments transferring real property, 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.

The Report of the 1965 Title Examination Standards Committee: Recommended amending Standard substantially, Resolution No. 8, and Exhibit E. Recommendation approved by the Real Property Law Section and adopted by the House of Delegates on December 8, 1965.

The Report of the 1985 Title Examination Standards Committee: Recommended further amendments. Recommendation approved by the Real Property Law Section on November 14, 1985, and adopted by the House of Delegates, as amended by the Section, on November 15, 1985.

The Report of the 1996 Title Examination Standards Committee: Recommended revisions in response to changes in 16 O.S. §§ 1 and 53 and for purposes of clarification, 67 O.B.J. 3247, 3253. Recommendation approved by the Real Property Law Section on November 14, 1996, and adopted by the House of Delegates on November 15, 1996.

The Report of the 2001 Title Examination Standards Committee: Recommended amendments to reflect the State's adoption of the Revised Uniform Partnership Act (the "Revised Act"), including its treatment of partnerships and entities. Recommendation approved by the Real Property Law Section on November 16, 2001, and adopted by the House of Delegates on November 17, 2001.

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 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.

Authority: 54 O.S. §§ 1-201(a), 1-302(a) and 325.

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, the 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.

Suppose title to partnership real estate has been taken in the name of Enterprise Associates, a partnership, and the partnership consists of Jane Jones and Robert Smith. Suppose Jane Jones and Robert Smith and their spouses execute a conveyance of the property to Henry Green, the deed making no reference to a partnership. If the conveyance to Henry Green has occurred prior to November 1, 1997, Green would have only an equitable title to the land. See 54 O.S. § 10(2) (repealed November 1, 1997). The passing of equitable title under the Uniform Partnership Act, § 10(2) has been deleted from the Revised Uniform Partnership Act. After November 1, 1997, such a conveyance will be a nullity.

The Report of the 1973 Title Examination Standards Committee: Recommended Standard. Recommendation was approved by the Real Property Law Section on November 29, 1973, and adopted by the House of Delegates on November 30, 1973.

The Report of the 2001 Title Examination Standards Committee: Recommended amendments to reflect the State's adoption of the Revised Uniform Partnership Act (the "Revised Act"), including its treatment of partnerships as entities. Recommendation approved by the Real Property Law Section on November 15, 2001, and adopted by the House of Delegates on November 16, 2001.

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 of 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. §§ 1-301, 1-302, and 1-303.

Comment: The provisions of the Revised Uniform Partnership Act authorizing the voluntary filing and recordation of various statements, and providing conclusive effect thereby, may justify the examiner in requiring that affirmative evidence of authority appear in the real estate records for any conveyance of partnership property in which record title was vested in the partnership by name.

The Report of the 1973 Title Examination Standards Committee: Recommended Standard. Recommendation approved by the Real Property Law Section on November 29, 1973, and adopted by the House of Delegates on November 30, 1973.

The Report of the 2001 Title Examination Standards Committee: Recommended amendments to reflect the State's adoption of the Revised Uniform Partnership Act (the "Revised Act"), including its treatment of partnerships as entities. Recommendation approved by the Real Property Law Section on November 17, 2001, and adopted by the House of Delegates on November 16, 2001.

13.5 NO MARITAL RIGHTS IN PARTNERSHIP REAL PROPERTY

No homestead or other marital rights attach to the interest of a 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.

Authority: 54 O.S. §§ 1-203 and 1-302(a).

Comment: Suppose real property has been conveyed to "Enterprise Associates, a partnership, consisting of Jane Jones and Robert Smith," and a conveyance of the same property is then made to Henry Green, signed in the name of "Enterprise Associates, a partnership, by Jane Jones and Robert Smith, co-partners." Both Jones and Smith are married, but their spouses do not join in the conveyance. Green gets a marketable title, and nothing further is required to explain why the spouses did not join.

Suppose real property has been conveyed to Jane Jones and Robert Smith, a co-partnership. A conveyance is then made of the same property to Henry Green, executed by “Jane Jones and Robert Smith, a co-partnership.” The spouses of Jones and Smith do not join in the conveyance. Green gets a marketable title, and nothing further is required.

Suppose a conveyance to the co-partnership, as in the preceding hypothetical case. In this case, the partnership does not sell the real property, and Jane Jones dies leaving a surviving spouse. The surviving spouse cannot claim homestead rights in the land.

The Report of the 1973 Title Examination Standards Committee: Recommended Standard. Recommendation approved by the Real Property Law Section and adopted by the House of Delegates on November 30, 1973.

The Report of the 1983 Title Examination Standards Committee: Recommended correction of typographical and punctuation errors. Recommendation approved by the Real Property Law Section on November 3, 1983, and adopted by the House of Delegates on November 4, 1983.

The Report of the 2001 Title Examination Standards Committee: Recommended amending the “Authority” for Standard to reflect the State’s adoption of the Revised Uniform Partnership Act (the “Revised Act”), including its treatment of partnerships as entities. Recommendation approved by the Real Property Law Section on November 15, 2001, and adopted by the House of Delegates on November 16, 2001.

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.

A partner’s right to possess property is equal with that of the other partners and one 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.

Authority: 54 O.S. §§ 1-204 and 1-501.

The Report of the 1980 Title Examination Standards Committee: Recommended Standard. Recommendation approved by the Real Property Law Section on December 3, 1980, and adopted by the House of Delegates on December 5, 1980.

The Report of the 2001 Title Examination Standards Committee: Recommended amendments to reflect the State’s adoption of the Revised Uniform Partnership Act (the “Revised Act”), including its treatment of partnerships as entities. Recommendation approved by the Real Property Law Section on November 15, 2001, and adopted by the House of Delegates on November 16, 2001.

13.7 CONVEYANCES TO AND BY JOINT VENTURES

- A. Prior to November 1, 1995, a joint venture was not recognized as a legal entity capable of holding title to real property in Oklahoma in the name of such joint venture. If a conveyance to a joint venture in its name alone appears in the chain of title and is executed or recorded prior to November 1, 1995, a correction instrument should be obtained from the original grantor to the members of the joint venture who are persons capable of holding title to real property in Oklahoma as of the date of the instrument.

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.

- B. A conveyance instrument dated after November 1, 1995, in which the grantor or grantee appears as a named joint venture is effective to transfer title to real estate in Oklahoma.

Authority: 16 O.S. § 1.

- C. If title to real estate is held by persons with an indication that such persons are joint venturers, any conveyance, mortgage or other real estate instrument executed prior to November 1, 1995, should be executed by such persons who then appear of record as grantees (without notice of other joint venturers). The names of the joint venturers should be followed by a recital of the name of the joint venture.

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 is 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.

A title examiner who is without notice of the existence of additional joint venturers is not required to examine the joint venture agreement. However, if instruments in the chain of title suggest other members exist, the examiner should review the joint venture agreement to determine the authority of the record title holders to transfer the equitable rights of non-record title holders and the joint venture agreement will have to be recorded. If that authority is not clearly granted in the agreement, all joint venturers must join in the instrument transferring the interest.

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).

Authority: *Clark v. Addison*, 311 P.2d 256, 260 (Okla. 1957); *Boles v. Akers*, 116 Okla. 266, 244 P. 192 (1925); *Dobbins v. Texas Co.*, 136 Okla. 40, 275 P. 643 (1929).

Comment: Prior Oklahoma case law follows a common law rule that 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 of the venturers in good faith and in the due course of the enterprise, binds all the co-venturers.

- E. Due to the fact that homestead or other marital rights may attach to the interests in real property held in the name of an individual joint venturer (or held in the name of two or more joint venturers as tenants-in-common), a deed, mortgage or other instrument of record for less than ten (10) years which is executed by a married joint venturer should also be executed by the spouse of such joint venturer and should contain a recitation of the fact that such persons are married to each other. In the event an individual joint venturer is single, a recitation of that fact should appear within such deed, mortgage or other instrument.

Authority: See R. Cleverdon, *Ownership and Conveyancing of Land by Joint Adventurers Within the State of Oklahoma*, 52 O.B.J. 2137 (1981), and authority collected therein, 16 O.S. § 1.

The Report of the 1982 Title Examination Standards Committee: Standard recommended by the Real Property Law Section on December 2, 1982, and adopted by the House of Delegates on December 3, 1982.

The Report of the 1984 Title Examination Standards Committee: Recommended substantial revisions of Paragraphs “B” and “C.” Recommendation approved by the Real Property Law Section with minor revisions on November 1, 1984, and adopted by the House of Delegates, as amended, on November 2, 1984.

The Report of the 1988 Title Examination Standards Committee: Recommended the addition of “Comment” in (B). Recommendation approved by the Real Property Law Section on December 8, 1988, and adopted by the House of Delegates on December 9, 1988.

The Report of the 2001 Title Examination Standards Committee: Recommended revising Standard 13 with request to joint ventures. Earlier Oklahoma law did not consider joint ventures to be legal entities having capacity to hold or convey real property. An earlier version of Title Examination Standard 10.8 (prior to reorganization) reflected prior law. In 1995, the Legislature amended Section 1, Title 16 Okla. Stat. and vested joint ventures with entity status. Consequently, in 1996, prior Title Examination Standard 10.8 was repealed. Oklahoma case authority applied concepts from the Uniform Partnership Act to joint venture relationships. With the adoption of the entity treatment of general partnerships under the Revised Uniform Partnership Act, the opportunity was available to re-address an appropriate title examination Standard for joint ventures. The 2001 revisions to Title Examination Standard 13 integrated the treatment of joint ventures and partnership law governing real property matters, 72 O.B.J. 3002. Recommendation approved by the Real Property Law Section on November 15, 2001, and adopted by the House of Delegates on November 16, 2001.

The Report of the 2017 Title Examination Standards Committee: Recommended the amendment to Standard 13.7 to reflect the ruling of the United States Supreme Court recognizing the legality of same sex marriages. Recommendation approved by the Real Property Law Section of November 2, 2017, and adopted by the House of Delegates on November 3, 2017.

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.

The Report of the 1991 Title Examination Standards Committee: Recommended adoption of Standard to accommodate recent statutory provisions for partnership mergers. Recommendation approved by the Real Property Law Section on November 14, 1991, and adopted by the House of Delegates on November 15, 1991.

The Report of the 2001 Title Examination Standards Committee: Recommended amendments to reflect the State's adoption of the Revised Uniform Partnership Act (the "Revised Act"), including its treatment of partnerships as entities. Recommendation approved by the Real Property Law Section on November 15, 2001, and adopted by the House of Delegates on November 16, 2001.

CHAPTER 14. LIMITED LIABILITY COMPANIES

14.1 LIMITED LIABILITY COMPANIES MAY OWN PROPERTY

Limited liability companies are capable of holding title to real property in Oklahoma from and after September 1, 1992.

Authority: 18 O.S. § 2003.

The Report of the 1994 Title Examination Standards Committee: Recommended new Chapter (originally Standards 25.1 through 25.8 inclusive) as a result of the Legislature's recognition of the LLC form of business organization in 18 O.S. § 2001 *et seq.* (1992 and revised 1993). Recommendation approved by the Real Property Law Section on November 17, 1994, and adopted by the House of Delegates on November 18, 1994.

14.2 IDENTITY OF MANAGER OF LIMITED LIABILITY COMPANY

If a person acknowledges in proper form in a recorded instrument that such person executed the instrument as a manager on behalf of a limited liability company, the title examiner may presume that the person held the position of a manager of the limited liability company. Person is defined in 18 O.S. § 2001 as an individual, a general partnership, a limited partnership, a limited liability company, a trust, an estate, an association, a corporation or any other legal or commercial entity.

Authority: 16 O.S. § 53; 18 O.S. §§ 2001, 2005, 2006; 49 O.S. §§ 112, 113, 118; 12 O.S. § 2902.

The Report of the 1997 Title Examination Standards Committee: Recommended adding 16 O.S. § 53 to the citations of authorities. Recommendation approved by the Real Property Law Section on November 6, 1997, and adopted by the House of Delegates on November 7, 1997.

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.

Authority: 16 O.S. § 53; 18 O.S. §§ 2005, 2019, 2042; 1992 Okla. Sess. Laws, ch. 148 § 6, eff. September 1, 1992.

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 "Manager and Member," "Member Manager," or "Managing Member" is to be considered as satisfying the provisions of 18 O.S. § 2015(A)(3).

The Report of the 1997 Title Examination Standards Committee: Recommended adding 16 O.S. § 53 to the citations of authorities. Recommendation approved by the Real Property Law Section on November 6, 1997, and adopted by the House of Delegates on November 7, 1997.

The Report of the 2009 Title Examination Standards Committee: Recommended amending the second Comment to clarify what is an acceptable execution of an instrument for a limited liability company. Recommendation approved by the Real Property Law Section on November 5, 2009, and adopted by the House of Delegates on November 6, 2009.

14.3.1 DELEGATION OF MANAGER’S AUTHORITY

The execution of an instrument affecting real estate on behalf of a limited liability company by a person in a capacity other than manager shall, in the absence of recorded evidence to the contrary, be deemed sufficient regarding the authority of such person to bind the limited liability company if an acknowledged document executed by a manager of the limited liability company delegating authority to such person is recorded in the office of the county clerk in the county in which the real estate is located. The document shall clearly evidence the delegation of the manager’s rights and powers to the person in such person’s individual, agent or officer capacity, as applicable, for the purpose of execution of the instrument or instruments on behalf of the limited liability company.

Authority: 18 O.S. §§ 2014 and 2016.

Comment: In the event no manager has been appointed, the member or members of the limited liability company shall act as manager.

The Report of the 2013 Title Examination Standards Committee: Recommended the adoption of new Standard to establish what is required to document the delegation of authority by a manager of a limited liability company. Recommendation approved by the Real Property Law Section on November 15, 2013, and adopted by the House of Delegates on November 16, 2013.

14.4 CONVEYANCE OF PROPERTY HELD IN NAME OF LIMITED LIABILITY COMPANY OR ITS MEMBERS OR MANAGERS

- A. Property acquired by the limited liability company and held in the name of the company may be conveyed in the name of the company.
- B. If property is conveyed to a person as a member or manager without reference to a named limited liability company, that person may execute a subsequent conveyance in the same capacity.
- C. If property is conveyed to a person as a member or manager with reference to a named limited liability company, that person may execute a subsequent conveyance in the same capacity.

Authority: 18 O.S. § 2019.1

14.5 NO MARITAL RIGHTS IN PROPERTY OWNED BY LIMITED LIABILITY COMPANY

No homestead or other marital rights attach to the interest of a manager or member in specific property owned by a limited liability company.

Authority: 18 O.S. § 2032.

14.6 ASSETS OF LIMITED LIABILITY COMPANY NOT SUBJECT TO EXECUTION FOR DEBTS OF MANAGERS OR MEMBERS

Specific property owned by a limited liability company is not subject to execution on a claim, judgment or lien against a member or manager of the company.

Authority: 18 O.S. §§ 2032, 2034.

14.7 LIMITED LIABILITY COMPANY DEEMED TO BE LEGALLY IN EXISTENCE

If a recorded instrument is executed and acknowledged in proper form on behalf of a limited liability company, the title examiner may presume that the limited liability company was legally in existence when the instrument was executed.

Authority: 18 O.S. § 2039.

14.8 FOREIGN LIMITED LIABILITY COMPANIES DEEMED TO BE LAWFULLY ORGANIZED AND REGISTERED TO DO BUSINESS

If a recorded instrument is executed and acknowledged in proper form on behalf of a foreign limited liability company, the title examiner may presume that the company was properly formed in the jurisdiction in which it was organized and that it was registered to do business in this state when the instrument was executed.

Authority: 18 O.S. §§ 2042, 2043, 2048, 2049.

Comment: A foreign limited liability company need not be registered in Oklahoma to acquire and convey title to real property located in Oklahoma.

Authority: 18 O.S. §§ 2048, 2049 and 2055.3

The Report of the 2020 Title Examination Standards Committee: Recommended the addition of authority and a comment to Standard 14.8 to clarify the authority of a foreign limited liability company to acquire and convey title to real property located in Oklahoma.

14.9 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 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.

Authority: 18 O.S. § 2019.1 (effective September 1, 1990); 18 O.S. § 1144 (effective November 1, 1987), § 1088 and § 1090.2; and 54 O.S. §§ 1-907 and 310.1.

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

The Report of the 2003 Title Examination Standards Committee: Recommended adding Standard 14.9 to this chapter. Recommendation approved by the Real Property Law Section on November 13, 2003, and adopted by the House of Delegates on November 14, 2003.

14.10 LIMITED LIABILITY COMPANY WITH SERIES

- A. PRIOR TO NOVEMBER 1, 2004: A properly created or domesticated LLC could not establish Series.
- B. BEGINNING NOVEMBER 1, 2004 THROUGH OCTOBER 31, 2017: Title to real property which is to be held under a 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 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.

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.

Comment 2: Beginning November 1, 2004 through October 31, 2017, because a series is merely an attribute of the LLC, the series could not hold real property in its own name independent of the LLC. Examples of acceptable designations of the grantor or grantee in a conveyance to or from an LLC for a Series would be one of the following:

- A) Master, LLC, an Oklahoma limited liability company, as Nominee for its Series ABC;
- B) XYZ, LLC, a Texas limited liability company, on behalf of its Series ABC;
- C) DEF, LLC, a Delaware limited liability company, for the benefit of its Series 2016-A.

Comment 3: Beginning November 1, 2004, if an LLC, prior to the establishment of a Series acquired property, the LLC shall convey to:

- A) The LLC for the benefit of the Series; or
- B) The Series (on or after November 1, 2017).

Comment 4: Beginning November 1, 2017, to ensure the Series is not prohibited from holding title to real property in its own name, the examiner may rely upon a properly recorded affidavit of the LLC Manager, stating the Series at the time it acquired title to the real property, had the power and capacity to hold real property.

Comment 5: This Standard does not address the situation of real property held by a wholly owned subsidiary LLC, which is an entity capable of acquiring, holding and conveying real property in its own name.

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

The Report of the 2016 Title Examination Standards Committee: Recommended a new Standard 14.10 be adopted to define how title to real property should be held by a limited liability company with Series. The Real Property Committee approved the recommendation on November 3, 2016, and the House of Delegates approved the recommendation on November 4, 2016.

The Report of the 2017 Title Examination Standards Committee: Recommended the amendment to Standard 14.10 and to Comments 1 and 2 to reflect new legislation that a series in a limited liability company with series is capable of holding title to real property if not prohibited from doing so by the operating agreement of the master limited liability company. Recommendation approved by the Real Property Law Section of November 2, 2017, and adopted by the House of Delegates on November 3, 2017.

The Report of the 2019 Title Examination Standards Committee: Recommended the amendment to Standard 14.10 to add new sub-paragraph "A" and new "Comment 1" and to renumber the previous sub-paragraphs and Comments, to clarify the ownership in a Series LLC during various time periods. Recommendation approved by the Real Property Law Section of November 2, 2017, and adopted by the House of Delegates on November 3, 2017.

CHAPTER 15. TRUSTS AND TRUSTEES

15.1 POWERS OF TRUSTEE

The trustee of an express trust has the power to grant, deed, convey, lease, grant easements upon, otherwise encumber and execute assignments or releases with respect to the real property or interest therein which is subject to the trust. A trustee's act is binding upon the trust and all beneficiaries thereof, in favor of all purchasers or encumbrances without actual knowledge of restrictions or limitations upon the trustee's powers by the terms of the trust, and without constructive knowledge imposed by the trust instrument containing restrictions and limitations having been recorded in the county where the real estate is located.

Authority: 60 O.S. §§ 171 *et seq.*, 175.7 and 175.45; and see 60 O.S. § 175.24 for a listing of the extensive powers which a trustee has unless they have been denied to the trustee by the trust agreement or a subsequent order of a court.

Comment: In a declaration of legislative intent enacted as part of the legislation, it is said that trusts are private instruments and therefore need not be recorded unless the trustor desires to put the public on notice of restriction on the trustee's powers.

The Report of the 1983 Title Examination Standards Committee: Recommended new Standard. It was renumbered "22.1" by the Real Property Law Section prior to the Section's approval of the Standard after the Section referred the recommended "Standard 22.1" back to the Committee on November 3, 1983. It was adopted as renumbered by the House of Delegates on November 4, 1983.

The Report of the 1987 Title Examination Standards Committee: Recommended amendment of the first sentence to refine the statement of the trustee's powers. In the second sentence, the deletion of the words "done after October 1, 1979" (the effective date of an amendment to 60 O.S. 175.45) was recommended, and language relating to notice was to be refined. It was further recommended that additional statutory and case citations be added to "Authority." Recommendations approved by the Real Property Law Section on November 12, 1987, and adopted by the House of Delegates on November 13, 1987.

15.2 TITLE TO PROPERTY HELD UNDER AN EXPRESS PRIVATE TRUST

- A. Any estate in real property may be acquired and held in the name of an express private trust which is a legal entity. Where real property is so acquired, any conveyance, assignment, or other transfer of such property shall be made in the name of such trust by the trustee or trustees of said trust.
- B. Where real property is transferred or acquired in the name of an express private trust after November 1, 1989, the trustee or trustees shall file a memorandum of trust, containing the date of creation of the trust, and the name of the trustee or trustees of the trust, in the office of the county clerk of the county where the real property is located. Where real property is transferred to or acquired in the name of a trustee or trustees as trustee(s) of a named express private trust, no memorandum of trust is required.
- C. When the deed of conveyance from the express private trust contains all information statutorily required to be contained in a memorandum of trust, the examiner may deem the deed to have satisfied the need for such memorandum of trust.

Authority: 60 O.S. §§ 175.6a, 175.7, 175.17, 175.24 and 175.45.

Comment 1: The Legislature, in its 1988 Session, adopted 60 O.S. § 171(B), which was intended to simplify the problem addressed by the former Standard. The Legislature, in its 1989 Session, adopted

new law codified as 60 O.S. §§ 175.6(a) and 175.6(b) and amended 60 O.S. § 171 by deleting Paragraph “B” therefrom.

Comment 2: A conveyance to “The Smith Family Trust” as grantee is a conveyance to the trust itself, and would require compliance with 60 O.S. § 175.6a. In contrast, a conveyance to “Taylor Smith, Trustee of the Smith Family Trust” as grantee is a conveyance to the trustee on behalf of and as fiduciary for the trust and does not require the filing of a memorandum or trust as described in 60 O.S. § 175.6a.

The Report of the 1984 Title Examination Standards Committee: Recommended Standard. Recommendation approved by the Real Property Law Section on November 1, 1984, and adopted by the House of Delegates on November 2, 1984, as amended.

The Report of the 1988 Title Examination Standards Committee: Recommended repeal of Standard and the adoption of an explanatory “Caveat” in its place, 59 O.B.J. 3098, 3109. Recommendation approved by the Real Property Law Section on December 8, 1988, and adopted by the House of Delegates on December 9, 1988.

The Report of the 1989 Title Examination Standards Committee: Recommended the repeal of the 1988 Standard 22.2, as a result of the Legislature’s repeal of 60 O.S. § 171(B), and enactment of new law on the subject in 1989. In place of the previous “Caveat,” the Committee recommended a “Comment” which would alert the title examiner to both Acts, 60 O.B.J. 2502, 2518. Recommendation approved by the Real Property Section on November 16, 1989, and adopted by the House of Delegates on November 17, 1989.

The Report of the 1995 Title Examination Standards Committee: Recommend adoption of Standard to reflect changes in 60 O.S. §§ 175.6(a) and 171. Recommendation approved by the Real Property Law Section on November 9, 1995, and adopted by the House of Delegates on November 10, 1995.

The Report of the 2008 Title Examination Standards Committee: Recommended amending Standard to clarify those circumstances in which a memorandum of trust must be filed on record. Recommendation approved by the Real Property Law Section on November 20, 2008, and adopted by the House of Delegates on November 21, 2008.

The Committee proposes to add a new Standard No. 15.2.1 to clarify who is a proper grantor of conveyance by an Express Private Trust or the Trustee of an Express Private Trust.

15.2.1 CONVEYANCES BY AN EXPRESS PRIVATE TRUST OR BY THE TRUSTEE OR TRUSTEES OF AN EXPRESS PRIVATE TRUST

- A. When record title to real property is held in the name of a trustee or trustees of a named express private trust, a subsequent, otherwise valid, conveyance identifying such trust as the grantor, rather than the trustee or trustees of such trust as the grantor, shall not be deemed to be a defect of title, subject to compliance with 60 O.S. § 175.6a.
- B. When record title to real property is held in the name of an express private trust, rather than in the trustee or trustees of such trust, a subsequent, otherwise valid, conveyance identifying the trustee or trustees of the named trust as the grantor shall not be deemed to be a defect of title, subject to compliance with 60 O.S. § 175.6a.

Authority: 16 O.S. § 1 and 60 O.S. §§ 175.6a, 175.7, 175.16, 175.17, 175.24 and 175.45.

The Report of the 2015 Title Examination Standards Committee: Recommended new Standard No. 15.2.1 to clarify who is proper grantor in certain trust transactions. Recommendation approved by the

Real Property Law Section on November 5, 2015, and adopted by the House of Delegates on November 5, 2015.

The Report of the 2020 Title Examination Standards Committee: Recommended certain editorial changes to bring the Title Examination Standards Handbook and the Title Examination Standards as they appear on oscn.net into conformity.

15.3 PRESENCE OF WORDS “TRUSTEE,” “AS TRUSTEE,” OR “AGENT”

- A. The words “trustee,” “as trustee,” or “agent” following the name of a grantee or mortgagee, without additional language actually identifying a trust, do not give notice that, or put one on inquiry whether, a trust does exist or any person except the grantee or mortgagee does have a beneficial interest.

A subsequent conveyance by such grantee, whether or not such grantee’s name is followed by such words in the subsequent conveyance, vests title in the conveyee of the subsequent conveyance free of all claims of others. If such grantee making a subsequent conveyance is an individual and the property conveyed could be subject to the right of homestead (see Title Examination Standard 7.1), the subsequent conveyance must also be executed by such grantee’s spouse, or must show that such grantee has no spouse, or the trust must be identified so as to make 60 O.S. § 175.45 applicable.

An assignment or release by such mortgagee, whether such mortgagee’s name is followed by such words or not in the assignment or release, vests ownership in the mortgage in the assignee or completely releases the property from the mortgage as to all persons claiming thereunder.

- B. The presence of the words “trustee” or “as trustee” following a grantee’s name in a deed will put the examiner on notice that the real property conveyed is subject to a beneficial interest in a person other than the grantee when written evidence, establishing that an express trust does exist with respect to the property conveyed, is recorded in the office of the county clerk of the county where the property is located. The written evidence may be recorded before or after the grantor’s death, so long as it is recorded prior to conveyance of the property by the party who took title “as trustee.”

Authority: 60 O.S. §§ 156-157 and 175.45.

The Report of the 1985 Title Examination Standards Committee: Recommended Standard. Recommendation approved by the Real Property Law Section on November 14, 1985, and adopted by the House of Delegates on November 15, 1985.

The Report of the 1989 Title Examination Standards Committee: Recommended amending Standard by denominating the former text of the Standard as Section (A) and adding new text as Section (B) and a Caveat. The new text reflected 1989 amendments to 60 O.S. §§ 156-157. Recommendation approved by the Real Property Law Section on November 16, 1989, and adopted by the House of Delegates on November 17, 1989.

The Report of the 1995 Title Examination Standards Committee: Recommended amending the Standard to clarify the place for filing written evidence of an express trust and to improve it grammatically. Recommendation approved by the Real Property Law Section on November 9, 1995, and adopted by the House of Delegates on November 10, 1995.

15.4 ESTATE TAX CONCERNS OF REVOCABLE TRUSTS

Where title to real property is vested in the name of a revocable trust, or in the name of a trustee(s) of a revocable trust, and a subsequent conveyance of such real property is made by a trustee(s) of a revocable trust, who is other than the settlor(s) of such revocable trust, a closing letter from the Internal Revenue Service, if the estate is of sufficient size to warrant the filing of a federal estate tax return, should be filed of

record in the office of the county clerk where such real property is located unless evidence, such as an affidavit by a currently serving trustee of the revocable trust is provided to the title examiner to indicate that one of the following conditions exists:

- A. The non-joining settlor(s) was/were alive at the time of the conveyance; or
- B. The settlors were husband and wife, and:
 - 1. One settlor is deceased; and
 - 2. The sole surviving settlor is the surviving spouse of the deceased settlor; and
 - 3. The assets of the trust, pursuant to the terms of the trust, pass to the benefit of the surviving settlor spouse, upon the death of the deceased settlor spouse; or
- C. The sole settlor is deceased and the assets of the trust, pursuant to the terms of the trust, pass to the benefit of the surviving spouse of the deceased settlor, upon the death of the settlor; or
- D. More than ten (10) years have elapsed since the date of the death of the non-joining settlor(s) or since the date of the conveyance from the trustee(s) and no federal estate tax lien or warrant against the estate of the non-joining settlor(s) appears of record in the county where the property is located.

See TES Standard 25.5 Oklahoma Estate Tax Lien.

Authority: 68 O.S. §§ 804 and 804.1; 68 O.S. §§ 807(A)(3) and 811; 26 U.S.C. §§ 2038, 2056 and 6324(a); and 16 O.S. § 82 *et seq.*

The Report of the 1995 Title Examination Standards Committee: Recommended new Standard. Recommendation approved by the Real Property Law Section on November 9, 1995, and adopted by the House of Delegates on November 10, 1995.

The Report of the 1996 Title Examination Standards Committee: Recommended a minor revision regarding use of an affidavit to satisfy the inquiry requirement. Recommendation approved by the Real Property Law Section on November 14, 1996, and adopted by the House of Delegates on November 15, 1996.

The Report of the 2001 Title Examination Standards Committee: Recommended amending Standard to address issues that a title examiner faces when dealing with potential estate tax liens upon the passing of title from a revocable trust. Recommendation approved by the Real Property Law Section on November 15, 2001, and adopted by the House of Delegates on November 16, 2001.

The Report of the 2010 Title Examination Standards Committee: Recommended amending Standard to reflect the repeal of the Oklahoma Estate Tax. Recommendation approved by the Real Property Law Section on November 18, 2010, and adopted by the House of Delegates on November 19, 2010.

The Report of the 2011 Title Examination Standards Committee: Recommended a change to the then existing Standard to reflect that the date of death of a non-joining settlor-grantor in a deed is only relevant as to whether an estate tax release is required from the Oklahoma Tax Commission and to update the authority for the federal estate tax marital deduction. Recommendation approved by the Real Property Law Section on November 3, 2011, and adopted by the House of Delegates on November 4, 2011.

The Report of the 2020 Title Examination Standards Committee: Recommended the amendment to Standard 15.4 to reflect the passage of ten (10) years since the repeal of the Oklahoma Estate Tax.

CHAPTER 16. FINANCIAL INSTITUTIONS IN RECEIVERSHIP OR LIQUIDATION

16.1 BANKS

- A. With regard to a state bank chartered by the Oklahoma State Banking Board for which the Federal Deposit Insurance Corporation ("FDIC") has been appointed liquidating agent, title to all assets and property of such bank shall be deemed transferred to and vested in the FDIC when a certificate issued by the Oklahoma State Bank Commissioner evidencing the appointment of the FDIC as such liquidating agent has been filed in the office of the county clerk of the county where such bank was located.
- B. With regard to a national bank for which the FDIC has been appointed receiver, title to all assets and property of such bank shall be deemed to have been transferred to and vested in the FDIC upon the appointment of the FDIC as receiver of such national bank by the United States Comptroller of the Currency, and the FDIC shall thereupon be deemed to have all the rights, powers and privileges then possessed by or thereafter granted by law to a statutory receiver of a national bank.

Marketability, with respect only to the matter of the succession as set forth above of the FDIC to title to interests in real property formerly owned by a bank, is established if the record being examined contains a copy of the applicable certificate of appointment (with respect to a state bank) or a declaration of insolvency (with respect to a national bank) in favor of the FDIC.

Authority: 6 O.S. § 1205(c); 12 U.S.C. §§ 191, 1821(c) and (d).

Comment 1: FDIC is a special statutory receiver and is distinguished from the more familiar equity receivers appointed by the Court, which does not hold title in their own names.

Comment 2: The condition of such title in the FDIC is identical with the condition of title in the name of the failed bank. Any marketability defect in such title shall remain extant until cured by appropriate means.

The Report of the 1988 Title Examination Standards Committee: Recommended Standard. The Executive Committee of the Real Property Section added the additional language between the word "appointment" and the word "in" near the end of "C" before the proposal was submitted. Recommendation approved by the Real Property Law Section on December 8, 1988, and adopted as amended by the House of Delegates on December 9, 1988.

16.2 SAVINGS AND LOAN ASSOCIATIONS AND SAVINGS BANKS

- A. With regard to a savings and loan association or savings bank ("S&L") that is chartered by the State of Oklahoma for which the Federal Savings and Loan Insurance Corporation ("FSLIC") or one of its successors has been appointed receiver, title to all assets and property of such S&L shall be deemed transferred to and vested in the FSLIC or one of its successors upon the execution of a certificate by the Oklahoma State Bank Commissioner evidencing its appointment as such receiver. Such Certificate is filed in the office of the county clerk of the county where the principal office of the S&L is located.
- B. With regard to an S&L chartered under federal law for which the FSLIC or one of its successors has been appointed receiver, title to all assets and property of such S&L shall be deemed to have been transferred to and vested in the FSLIC or one of its successors upon its appointment as receiver by resolution of the Federal Home Loan Bank Board ("FHLBB") or one of its successors, and the FSLIC or one of its successors shall thereupon be deemed to have all the rights, powers and privileges then possessed by or thereafter granted by law to a statutory receiver of a federal S&L.

- C. Prior to August 9, 1989, deeds and other instruments from the FSLIC, as receiver for an S&L, were executed by special representatives appointed by the FHLBB. FSLIC special representatives were appointed in the FHLBB Resolutions appointing the receivers.
- D. If the FSLIC, FDIC, FHLBB, or any of their successors transferred all interests in real property from an S&L to an existing or newly federally chartered S&L, such transfers may be evidenced by a Memorandum of Transfer and/or Assignment filed in each county in which the S&L owned interests in real property. A title examiner may rely upon a recitation in a deed or release of mortgage that the transferee association is the "successor in title" to the transferor S&L "as evidenced by the Memorandum of Transfer and or/ Assignment" and further reciting the book and page of recording and date and county of filing of such memorandum.

Authority: 18 O.S. § 381.77(C) and (D); 12 U.S.C. §§ 1464(d)(6), and 1729(a)-(c); 12 C.F.R. §§ 547.1 *et seq.*; Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Pub. L. No. 101-73 (August 9, *1989), 103 Stat. 183.

Comment: On August 9, 1989, the FSLIC and FHLBB were abolished with the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA") which divided and transferred the duties, responsibilities, assets, liabilities, etc., of those former entities among the FDIC, the Office of Thrift Supervision ("OTS"), the FSLIC Resolution Fund, the Resolution Trust Corporation ("RTC"), the Federal Housing Finance Board ("FHFB"), and other federal agencies.

Basically, all assets and liabilities of the FSLIC were transferred to the FSLIC Resolution Fund, EXCEPT those assets and liabilities that were transferred to the RTC. All assets and liabilities held by receivers of S&Ls closed after January 1, 1989, were transferred to the RTC. The authority of the FHLBB was transferred to the Director of the OTS; EXCEPT all authority with regard to the Federal Home Loan Banks was transferred to the FHFB and EXCEPT certain FHLBB powers that were transferred to the FDIC or the Federal Home Loan Mortgage Corporation ("FHLMC").

The RTC has no employees. Rather it (and its predecessor, the FSLIC) has employed the FDIC, under a Management Agreement, to perform many of the duties of the RTC. The FDIC can be removed from its managerial position only with Congressional approval.

With respect to transfers, mergers, consolidations, etc., by receivers or conservators, Section 212(a) of FIRREA specifically authorizes the FDIC to merge any insured depository institution (a new term to describe a savings and loan association, savings bank or bank) with another or to "*transfer* any asset or liability of the institution in default *without any approval, assignment, or consent* with respect to such transfer" EXCEPT, if the transferee is another depository institution, the approval, if necessary, "of the appropriate federal banking agency for such institution." (Emphasis added.)

Section 501 of FIRREA provides that the RTC, as successor to the FSLIC as receiver or conservator, shall have the same powers and rights to carry out its duties with respect to S&Ls as the FDIC has under the Federal Deposit Insurance Act (including the transfer provision above).

The Report of the 1989 Title Examination Standards Committee: Recommended Standard. Recommendation approved by the Real Property Law Section on November 16, 1989, and adopted by the House of Delegates on November 17, 1989.

The Report of the 1990 Title Examination Standards Committee: Recommended revising Standard 24.2 to reflect FSLIC's succession by the FSLIC Resolution Fund and the Resolution Trust Corporation. The Committee's recommendation also omitted the former last sentence of Paragraph "B" regarding recording of the Federal Home Loan Bank Board resolution in the office of the county clerk of the county where the principal office of the S&L is located. Recommendation approved by the Real

Property Law Section on November 15, 1990, and adopted by the House of Delegates on November 16, 1990.

CHAPTER 17. TITLE THROUGH DECEDENTS' ESTATES

17. NOTICE TO THE REGIONAL DIRECTOR OF THE BUREAU OF INDIAN AFFAIRS

Caveat: The examiner is advised that notice must be given to the Regional Director for the Eastern Oklahoma Regional Office of the Bureau of Indian Affairs, successor to the Muskogee Area Director and successor to the Five Civilized Tribes Superintendent of certain probate proceedings of a member of the Five Civilized Tribes in which a final order was entered after August 4, 1947.

In any such probate proceeding in which a final order was entered after August 4, 1947, but on or before December 31, 2018, which proceeding includes property restricted in the hands of a decedent of one-half or more quantum of Indian blood, written notice must have been served on the Regional Director for the Eastern Oklahoma Regional Office of the Bureau of Indian Affairs (or its predecessor) within ten (10) days of the filing of the probate proceeding. Failure to serve notice is jurisdictional, rendering the proceedings nonbinding on the United States of America and void as to any restricted property interest. However, service beyond the ten-day requirement is a procedural defect which is waived by subsequent general entry of appearance, election not to remove, or removal by the United States of America.

Authority: Act of August 4, 1947, 61 Stat 731 (Stigler Act); *Anderson v. Peck*, 53 F.2d 257 (N.D. Okla. 1931); *United States v. Thompson*, 128 F.2d 173 (10 Cir. 1942).

In any such probate proceeding in which a final order was entered after December 31, 2018, (regardless of the decedent's date of death), which includes property restricted in the hands of the decedent of any quantum of Indian blood, written notice must have been served on the Regional Director for the Eastern Oklahoma Regional Office of the Bureau of Indian Affairs within ten (10) days of the filing of the probate proceeding. Failure to serve notice is jurisdictional, rendering the proceedings nonbinding on the United States of America and void as to any restricted property interest. However, service beyond the ten-day requirement is a procedural defect which is waived by subsequent general entry of appearance, election not to remove, or removal by the United States of America.

Authority: H.R. 2606 PL 115-399, 132 Stat. 5331 (Dec. 31, 2018) (Amendment to Stigler Act); *Anderson v. Peck*, 53 F.2d 257 (N.D. Okla. 1931); *United States v. Thompson*, 128 F.2d 173 (10 Cir. 1942).

The Report of the 2022 Title Examination Standards Committee: Recommended new standard to assist title examiners with understanding notice requirements. Recommendation approved by the Real Property Law Section on November 2, 2022, and adopted by the House of Delegates on November 3, 2022.

The Report of the 2023 Title Examination Standards Committee: Recommended additional language to the Caveat to assist title examiners with understanding notice requirements and recommending certain editorial changes. Recommendation approved by the Real Property Law Section on November 2, 2023, and adopted by the House of Delegates on November 3, 2023.

17.1 CONVEYANCE TO ESTATE

A conveyance to the estate of a deceased individual, executed prior to November 1, 1995, is inadequate since such a grantee was not an entity capable of holding title prior to November 1, 1995. In such cases, a deed should be obtained from the grantor or the grantor's successors, and in order to obtain possible equitable interests, a deed also should be obtained from the heirs or devisees of the decedent named. On or after November 1, 1995, a conveyance to the estate of a deceased individual is adequate.

Authority: 16 O.S. § 1; *Simmons v. Spratt*, 1 So. 860 (Fla. 1887); *McInerney v. Beck*, 10 Wash. 515, 39 P. 130 (1895); *Nilson v. Hamilton*, 53 Utah 594, 174 P. 624 (1918); *Neal v. Harber*, 35 Ga. App. 631, 134 S.E. 349 (1926); *Kenaston v. Lorig*, 81 Minn. 454, 84 N.W. 323 (1900); Patton & Palomar on Land Titles § 339 (3d ed. 2003); 4 Tiffany, Real Property § 967 (3d ed. 1939), Annot. 148 A.L.R. 252 (1944). *Contra*; *McKee v. Ellis*, 37 Tex. Civ. App. 365, 83 S.W. 880 (1904); *Black v. Brown*, 129 Ark. 270, 195 S.W. 673 (1917).

The Report of the 1998 Title Examination Standards Committee: Recommended revisions to reflect amendments to 16 O.S. § 1 and to clarify terms, 69 O.B.J. 3475 (1998). Recommendation approved by the Real Property Law Section on November 12, 1998, and adopted by the House of Delegates on November 13, 1998.

17.2 FINAL ACCOUNT – TAX FINDING

The provision of the Oklahoma Income Tax Act [68 O.S. § 885 (1951)] to the effect that no final account of any fiduciary shall be allowed by any probate court of the state unless such account shows, and the judge of said court finds, that all taxes imposed by the provisions of said Act, or prior income tax laws, upon said fiduciary or on the decedent for whose estate he/she acts, which may have become payable, have been paid, and that all taxes which may become due are secured by bond, deposit or otherwise, is not jurisdictional and failure to comply with said Act does not deprive the probate court of authority to allow any such final account.

Authority: State *ex rel. Williamson v. Longmire*, 281 P.2d 949 (Okla. 1955).

17.3 REFERENCE TO PROPERTY IN PROBATE DECREES

A decree of distribution in a probate case describing property, the record title to which does not appear in the decedent, should be considered an instrument subject to Standard 3.1.

Authority: 16 O.S. § 78(f).

The Report of the 1989 Title Examination Standards Committee: Recommended entirely new text for Standard. Recommendation approved by the Real Property Law Section on November 16, 1989, and adopted by the House of Delegates on November 17, 1989.

The Report of the 1992 Title Examination Standards Committee: Recommended that Standard be renumbered from 4.5 to 4.6. Recommendation approved by the Real Property Law Section on November 12, 1992, and adopted by the House of Delegates on November 13, 1992.

17.4 TRANSFER-ON-DEATH DEEDS

A deed appearing of record executed in accordance with the “Non-testamentary Transfer of Property Act” should be accepted as a conveyance of the grantor’s interest in the real property described in such deed effective upon the death of the grantor, provided that an affidavit evidencing the death of such grantor has been recorded, as specified in the Act, and no evidence appears of record by which:

- A. The conveyance represented by such deed has otherwise been revoked, disclaimed or has lapsed pursuant to the provisions of the Act; or
- B. The designation of the grantee beneficiary or grantee beneficiaries in such deed has been changed via a subsequent transfer-on-death deed pursuant to the provisions of the Act.

Authority: 58 O.S. § 1251, *et seq.*

Comment 1: On and after November 1, 2008, through October 31, 2011, a disclaimer under the provisions of the Act may be executed only within a period of time ending nine (9) months after the

death of the owner/grantor. On and after April 20, 2015, for deaths occurring prior to November 1, 2011 and for which there is no disclaimer of interest in the real estate, the recording of the acceptance affidavit is not subject to the nine-month limitation set out in Section 1252 D. On and after November 1, 2011, the property reverts to the estate of the deceased grantor if the affidavit described in § 1252 C and D is not recorded within nine (9) months of the grantor's death.

Comment 2: Pursuant to the provisions of the Act, releases for Oklahoma estate taxes and, if applicable, federal estate taxes for the deceased grantor, together with a death certificate, shall be attached to the affidavit evidencing the death of the grantor except no tax releases or death certificate are required in instances in which the grantor and grantee were husband and wife. No Oklahoma estate tax release is required for the estate of a grantor who died on or after Jan. 1, 2010.

Comment 3: The examiner should be aware that the grantor's interest is subject to the homestead rights of a surviving spouse pursuant to Article 12 Section 2 of the Oklahoma Constitution. The examiner should be provided with satisfactory evidence which must be recorded, such as an affidavit as to marital status or death certificate of the grantor showing no surviving spouse. If the evidence provided to the examiner reveals that the grantor had a spouse at the time of death, and the surviving spouse did not execute the Transfer on Death Deed under examination, the examiner shall require a quit claim deed from the surviving spouse, showing marital status and joined by spouse, if any.

Comment 4: The examiner should be aware that an ambiguity will arise in 58 O.S. § 1254 (B) if the grantor records more than one transfer-on-death deed ("TOD deed") conveying fractional interests, unless the owner/grantor has expressed an intent in the subsequent deed or deeds not to revoke the previous deed or deeds. For instance, if "X" owns Greenacre and conveys fifty percent (50%) to "A" by TOD deed, and later "X" conveys fifty percent (50%) to "B" by a TOD deed, the conveyance to "B" would create uncertainty as to whether "A" and "B" each had fifty percent (50%) for a total of one-hundred percent (100%) or only "B" had fifty percent (50%) with the remaining fifty percent (50%) being vested in the grantor's estate.

Comment 5: On and after November 1, 2008, through October 31, 2011, in instances in which the TOD deed lists multiple grantees/beneficiaries as joint tenants, the death of one or more of such grantees prior to the death of the grantor in the deed may preclude the creation of the estate of joint tenancy for the surviving grantees under the precepts of the requisite unities for a joint tenancy estate. A question remains as to whether the interest of the grantor vests, via the TOD deed, in the surviving grantees as joint tenants or as tenants-in-common or fails to vest in such grantees due to the fact the estate of joint tenancy may not have been created in such surviving grantees at the time of death of the grantor. On and after November 1, 2011, the death of a joint tenant beneficiary before the death of the grantor will not invalidate the joint tenancy estate of the surviving joint tenant beneficiaries.

Comment 6: On and after November 1, 2008, through October 31, 2011, if the grantor and grantee were husband and wife, it is not necessary to attach the death certificate described in Section 1252(D) to the acceptance described in Section 1252(C).

Comment 7: On and after November 1, 2011, regardless of the marital status of the grantor and grantee, it is necessary to attach the death certificate described in Section 1252(D) to the acceptance described in Section 1252(C).

Comment 8: Commencing November 1, 2010, pursuant to 58 O.S. § 1252(C), grantee/beneficiary, in order to accept the real estate pursuant to a TOD deed, shall record an affidavit with the county clerk unless such grantee/beneficiary has recorded a timely executed disclaimer.

Comment 9: It is an unsettled point of law as to whether or not amendments to 58 O.S. § 1251 *et seq.*, will apply retroactively to a TOD deed executed prior to the effective date of any amendment.

Comment 10: If the Grantor of a TOD deed revokes the TOD deed, no further instrument is required to terminate the potential interest of the Grantee of the revoked TOD deed. A TOD deed can be revoked by recording in the land records of the County where the TOD deed is recorded any one of the following executed by the Grantor of the TOD deed:

- (i) an instrument specifically revoking the TOD deed,
- (ii) a subsequently executed TOD deed covering the real property described in the original TOD deed, or
- (iii) a subsequent deed which immediately vests in the grantee of the deed the title to the real property described in the TOD deed.

Authority: 58 O.S. §§ 1252A, 1254 A and B and 1257.

The Report of the 2008 Title Examinations Standards Committee: Recommended adoption of Standard 17.4 in response to the enactment in 2008 of 58 O.S. § 1251 *et seq.*, Transfer-on-Death Deeds. Recommendation approved by the Real Property Law Section on November 20, 2008, and adopted by the House of Delegates on November 21, 2008.

The Report of the 2010 Title Examination Standards Committee: Recommended adding additional Comments to the Standard to reflect the repeal of the Oklahoma Estate Tax and to highlight several issues which are left unanswered by the current provisions of 58 O.S. § 1251. Recommendation approved by the Real Property Law Section on November 18, 2010, and adopted by the House of Delegates on November 19, 2010.

The Report of the 2011 Title Examination Standards Committee: Recommended comments to Standard to reflect issues which arise as a result of the 2011 amendment to 58 O.S. § 1251 *et seq.* Recommendation approved by the Real Property Law Section on November 3, 2011, and adopted by the House of Delegates on November 4, 2011

The Report of the 2015 Title Examination Standards Committee: Recommended an amendment to Standard 17 to reflect the provisions of the Non-Testamentary Transfer of Property Act, as it has been amended from time to time. Recommendation approved by the Real Property Law Section on November 5, 2015, and adopted by the House of Delegates on November 5, 2015.

The Report of the 2019 Title Examination Standards Committee: Recommended an amendment to Standard 17 to clarify the intent of the comment and to clarify no additional instruments are required after a transfer on death deed has been revoked. Recommendation approved by the Real Property Law Section on November 7, 2019, and adopted by the House of Delegates on November 8, 2019.

17.4.1 ACCEPTING AN INTEREST PURSUANT TO A TRANSFER-ON-DEATH DEED

To accept the transfer of a conveyance to multiple grantee beneficiaries in a Transfer-on-Death Deed, each individual beneficiary must accept and record the Affidavit affirming the acceptance of the conveyed real property interest under the Transfer-on-Death Deed.

Authority: 58 O.S. §1252.

Comment 1: All beneficiaries must execute and record an acceptance in order to receive their respective interest under a Transfer on Death Deed. As an example, A executes a Transfer on Death Deed naming X, Y, and Z as beneficiaries. X and Y execute and record the acceptance required under the statute. Z does not. In this situation, the 1/3 interest that would have gone to Z reverts to A's

estate to be distributed by proceedings pursuant to applicable law and statute. Under this scenario, the 1/3 interest which reverts to A's estate may ultimately be distributed to a party other than or in addition to Z.

Comment 2: It is irrelevant whether the grantees/beneficiaries execute a single document, or they execute their respective acceptances on separate documents.

The Report of the 2022 Title Examination Standards Committee: Recommended new standard to assist title examiners with documentation required for acceptance of an interest pursuant to a Transfer-on-Death Deed. Recommendation approved by the Real Property Law Section on November 2, 2022, and adopted by the House of Delegates on November 3, 2022.

17.5 SCOPE OF DETERMINATION OF HEIRSHIP

Any proper judicial determination of heirship of a decedent is a valid determination of heirship of all the real property owned by decedent at the time of decedent's death and is not limited to the real property specifically described in such judicial determination. The marketability of any portion of a decedent's property will not be affected by the fact that a proper judicial determination of heirship fails to describe a particular portion of the real property owned by the decedent at the time of his death.

If there is a proper judicial determination of heirship which does not specifically describe the property under examination, the examiner should take steps to have proof of that determination filed of record against the property being examined.

Authority: 58 O.S. §§ 692.1; 84 O.S. §§ 251 and 257.

Comment 1: This Standard may be used anytime the fact situation fits within its parameters. While the Standard can be taken advantage of in situations involving restricted Indians, its scope is not intended to be limited to fact situations involving restricted Indians.

Comment 2: One of the situations that the Standard is intended to address is where the record reflects a full blood allottee of one of the Five Civilized Tribes dies owning, for example, the NW/4 of a section of real estate which was part of allottee's allotment. The record does not reflect that the restrictions of alienation have been removed from this allottee. The record also reflects that "A," purporting to be the sole heir of the allottee, deeds the NW/4 to "B," which deed is approved by the appropriate authority. At a later time, "B," or his successors in title, sub-divide the NW/4 into a platted subdivision. A judicial determination of heirship pursuant to 84 O.S. § 257, *et. seq.* is brought by the then owner of Lot 1, Block 1 of the platted subdivision alleging the allottee died owning real property that was part of the now-platted subdivision and that "A" was the sole heir of the allottee and became the owner of all the real property owned by allottee at the death of the allottee. Notice of this proceeding must be given to the Regional Director of the Five Civilized Tribes as require by law. A decree is entered in that matter determining that "A" is the sole heir of the allottee, entitled to take all of the property owned by the Allottee at the time of his death, and quieting the title of Lot 1, Block 1 in the name of the Plaintiff. The finding that "A" is the sole heir of the allottee is valid as to all property the allottee owned at the time of his death, including the other lots in the platted subdivision. No other determinations of heirship would be required to make title to all of the other lots in the subdivision marketable.

Caveat: The examiner should keep in mind that a recital of heirship contained in a County Court proceeding for the approval of a deed executed by a restricted Indian heir is not considered a "proper determination of heirship" as that term is used in this Standard. See *Semple Oklahoma Indian Land Titles* § 107 and *Homer v. Lester*, 1923 Okla. 340.

Caveat: The Standard does not apply to situations where title to real property is being quieted or otherwise determined by adverse possession or similar legal theories.

Caveat: When dealing with real property situated within the historical boundaries of the Five Civilized Tribes, the title to which remains in whole or in part in restricted Indian status, the examiner should be aware that federal agencies may not recognize this Standard as it relates to the heirship proceedings brought exclusively under the procedures found in 84 O.S. § 257 *et. seq.* for title to real property not specially described in those proceedings.

The Report of the 2014 Title Examination Standards Committee: Recommended Standard to establish the scope and effect of a statutory action to determine the heirship of a decedent. Recommendation approved by the Real Property Law Section on November 13, 2014, and adopted by the House of Delegates on November 14, 2014.

CHAPTER 18. CONVEYANCES BY MISCELLANEOUS ENTITIES

18.1 CONVEYANCES BY RELIGIOUS ASSOCIATIONS

A conveyance from a grantor which the examiner concludes to be a religious association may be approved if:

- A. The conveyance recites that the grantor is a corporation and is executed in proper corporate form; or
- B. Alternative articles of religious association are of record for the grantor and the conveyance is executed in conformity therewith.

All other religious associations are considered to be unincorporated charitable associations and title must be vested in a legal entity capable of holding title in trust for the religious association prior to its conveyance.

Authority: 18 O.S. §§ 543, 562, 1002. *Jones v. Alpine Investments, Inc.*, 764 P.2d 513 (Okla. 1987); *Richardson et al. v. Harsha*, 98 P. 897 (Okla. 1908).

The Report of the 1994 Title Examination Standards Committee: Recommended new Standard. Recommendation approved by the Real Property Law Section on November 17, 1994, and adopted by the House of Delegates on November 18, 1994.

CHAPTERS 19-22. RESERVED FOR FUTURE USE

ARTICLE III: LIENS AND ENCUMBRANCES

CHAPTER 23. JUDGMENT LIENS, EXECUTION AND ATTACHMENT

23.1 JUDGMENT LIENS

A. Judgments of state and federal courts (except judgments pursuant to the Federal Debt Collection Procedures Act of 1990)

A judgment lien, pursuant to a judgment of a court of record of this state (except judgments pursuant to the Small Claims Procedure Act which are discussed in Paragraph "C" below, and except judgments for alimony which are discussed in Title Examination Standard 23.2) or of the United States (except those subject to the Federal Debt Collection Procedures Act of 1990, 28 U.S.C. § 3001 et seq., which are discussed in Paragraph "B" below):

1. Can be created on or after October 1, 1993, on the real estate of the judgment debtor within a county by filing a Statement of Judgment in the office of the county clerk in that county;
2. Could be created on or after June 1, 1991, and prior to October 1, 1993, on the real estate of the judgment debtor within a county by filing an affidavit of judgment, with a certified copy of such judgment attached to such affidavit of judgment and incorporated by reference in such affidavit of judgment, in the office of the county clerk in that county;
3. Could be created on or after January 1, 1991, and prior to June 1, 1991, on the real estate of the judgment debtor within a county by a certified copy of such judgment in the office of the county clerk in that county;
4. Could be created on or after November 1, 1988, and prior to January 1, 1991, on the real estate of the judgment debtor within a county by filing an affidavit of judgment, with a certified copy of such judgment attached to such affidavit of judgment and incorporated by reference in such affidavit of judgment, in the office of the county clerk in that county;
5. Could be created on or after October 1, 1978, and prior to November 1, 1988, on the real estate of the judgment debtor within a county by filing a certified copy of such judgment in the office of the county clerk in that county; and
6. Could be created, as to judgments of state courts of record, prior to October 1, 1978, (a) on the real estate of the judgment debtor within the county in which the judgment was rendered by entry of such judgment upon the judgment docket in the office of the district court clerk in that county, and (b) on the real estate of the judgment debtor within any other county in the state by filing a certified copy of such judgment with, and entry of the judgment upon the judgment docket of, the district court clerk in that county.

Note: A federal court judgment, for which a lien was sought to be created prior to October 1, 1978, was not a lien on the real estate of the judgment debtor within any county in the state, except in all counties where a permanent record of such judgment of the United States Court is kept open to the public, until a certified copy of such judgment had been filed and docketed in the office of the state district court clerk of the county in which the real estate is located.

B. Judgments pursuant to the Federal Debt Collection Procedures Act

A judgment, order or decree entered on or after May 28, 1991, in favor of the United States in a civil proceeding in a federal court regarding a debt owing to the United States arising from an obligation specified in the Federal Debt Collection Procedures Act of 1990, 28 U.S.C. § 3001 et seq., shall, pursuant to the Act, be a lien for twenty (20) years on real property of the judgment debtor in a county on filing a certified copy of the

abstract of a judgment, order, or decree with the county clerk in the same manner as a federal tax lien, which, in Oklahoma County only, is indexed in the same manner as a financing statement.

“United States” means a federal corporation, an agency, department, commission, board or other entity of the United States, or an instrumentality of the United States. Such judgment, order, or decree in favor of the United States may be renewed for one additional period of twenty (20) years after court approval upon the filing of a notice of renewal in the same manner as the judgment, order, or decree. Renewal does not apply to a judgment, order or decree in favor of the United States which was entered more than ten (10) years before May 28, 1991.

Caveat 1: The provisions of Section 3201(a) of the Federal Debt Collection Procedures Act of 1990, regarding creation of a judgment lien, appear to be limited to judgments in civil actions, notwithstanding the fact Section 3002(8) references both civil and criminal proceedings within the definition of a “judgment” as used in the Act.

Caveat 2: The text of Section 3005 of the Federal Debt Collection Procedures Act, 28 U.S.C. § 3001 *et seq.*, providing for renewal of the lien of a judgment entered within ten (10) years prior to May 28, 1991, does not specifically address the effect, if any, of the Act upon a judgment which became unenforceable and ceased to operate as a lien under law existing prior to May 28, 1991.

C. Judgments pursuant to the Small Claims Procedures Act

A judgment lien, pursuant to a judgment rendered in the small claims division of the district court:

1. Can be created on or after October 1, 1982, on the real estate of the judgment debtor within a county by filing a Statement of Judgment in the office of the county clerk in that county;
2. Could be created on or after October 1, 1979, and prior to October 1, 1982, on the real estate of the judgment debtor within a county by (a) entry of such judgment upon the judgment docket in the office of the district court clerk of the county in which the judgment was rendered, and (b) filing a certified copy of such judgment in the office of the county clerk in the county in which the lien was sought to be imposed, and such judgment could not be a lien until it had been both entered and filed, as described above; and
3. Could be created prior to October 1, 1979, on the real estate of the judgment debtor within a county by entry of such judgment upon the judgment docket in the office of the district court clerk of the county in which the lien was sought to be imposed.

Authority: 12 O.S. § 706, *Gilbreath v. Smith*, 50 Okla. 42 150 P. 719 (1915); *Long Bell Lumber Co. v. Etter*, 123 Okla. 54, 251 P. 997 (1927); *Flanagan v. Clark*, 156 Okla. 230, 11 P.2d 176 (1932).

Caveat: The examining attorney should be aware of the possibility that a judgment which has been rendered, but not filed with the county clerk, might be filed with the county clerk and become a lien after the effective date of the opinion of the examiner but before the client acquires an interest in the property.

Comment 1: Judgments entered upon the judgment docket in the office of the district court clerk in the county in which the land is located prior to October 1, 1978, unless extinguished by release of operation of law, constitutes liens upon non-exempt land and should not be disregarded. See 1943 Okla. Sess. Laws, ch. 12, § 1.

Comment 2: In determining the effectiveness of the lien of a judgment filed in the office of the county clerk pursuant to 12 O.S. § 706, the examiner should take into consideration the law of the case in *Will Rogers Bank & Trust Company v. First National Bank of Tahlequah*, 710 P.2d 752 (Okla. 1985).

Comment 3: Note that 1991 Okla. Sess. Laws, ch. 251, § 9, contains provisions, among others, which restored, until the effective date of the 1993 Act, the requirement of attaching an affidavit to any judgment to be filed with the county clerk for purposes of making such judgment a lien on the real property of the judgment debtor and repealed the statutory prohibition on the issuance of execution or the conduct of proceedings for the enforcement of judgment within ten (10) days after the judgment is filed with the court clerk. It also repealed the statutory forms of judgment enacted in 1990 Okla. Sess. Laws, ch. 251, § 1, which were not restored by the 1993 legislation. However, be aware of the case of *Mapco, Inc. v. Means*, 538 P.2d 593 (Okla. 1975).

Comment 4: The references to “filing” in the office of the county clerk, as used in this title examination Standard, means presented with tender of filing fee, and accepted by the county clerk.

D. Duration of a judgment lien

The lien of a judgment, which is dependent upon the enforceability of the judgment as detailed in 12 O.S. § 735, runs from the date the judgment lien is created under 12 O.S. § 706, until the judgment lien is extinguished by the failure to extend the lien of the judgment pursuant to 12 O.S. § 759.

Authority: *U.S. Mortgage v. Laubach*, 2003 OK 67, 73 P.3d 887.

Comment: In the absence of completion of one of the listed actions under 12 O.S. § 735, the endpoint of the initial term for the enforceability of the judgment is as follows:

1. Prior to November 1, 2002 – Five (5) years after the date the judgment is rendered in any court of record in this state; and
2. On and after November 1, 2002 - Five (5) years after the date the judgment is filed in any court of record of this state.

The Report of the 2013 Title Examination Standards Committee: Recommended amending Standard 23.1.D to accurately reflect the provisions of 12 O.S. § 735 as to the commencement point from which the initial five (5) year term for the enforceability of a judgment is measured. Recommendation approved by the Real Property Law Section on November 15, 2013, and adopted by the House of Delegates on November 16, 2013.

E. Release of judgment lien

A release of a judgment lien, pursuant to 12 O.S. § 706, must be filed in the office of the county clerk in the county in which the lien is to be released, unless the judgment lien was extinguished as set out in Paragraph “D” above.

Authority: 12 O.S. § 706(E).

Note: See Title Examination Standards 34.1 and 34.2 regarding the effect of bankruptcy on judgment liens.

The Report of the 1985 Title Examination Standards Committee: Recommended Standard be amended and renumbered. Recommendation approved by the Real Property Law Section on November 14, 1985, and adopted by the House of Delegates on November 15, 1985.

The Report of the 1986 Title Examination Standards Committee: Recommended addition of the next-to-last sentence of the first paragraph. Typographic corrections were made from the floor. Recommendation approved by the Real Property Law Section on November 20, 1986, and adopted by the House of Delegates on November 21, 1986.

The Report of the 1988 Title Examination Standards Committee: Recommended an affidavit of judgment be filed in the office of the county clerk in the county in which the land is located to perfect

a judgment lien on the land. Recommendation approved by the Real Property Law Section on December 8, 1988, and adopted by the House of Delegates on December 9, 1988.

The Report of the 1990 Title Examination Standards Committee: Recommended, due to legislative changes, the enactment of 1990 Okla. Sess. Laws, a new Section “A” and re-designation of succeeding sections. The Committee also recommended a new third paragraph to the Comment to call the examiner’s attention generally to ch. 251’s new requirements regarding form of judgments and decrees and enforcement of judgments. Recommendations approved by the Real Property Law Section on November 15, 1990, and adopted by the House of Delegates on November 16, 1990.

The Report of the 1991 Title Examination Standards Committee: Recommended several amendments to the Standard to accommodate legislative changes. A prefatory note was added to call attention to the extended lien provisions of the Federal Debt Collection Procedures Act of 1990. To reflect changes in the method of perfecting judgments as liens, changes were made in the body of the Standard, a new Paragraph “C” was added and subsequent paragraphs were relettered. Recommendation approved by the Real Property Law Section on November 14, 1991, and adopted by the House of Delegates on November 15, 1991.

The Report of the 1992 Title Examination Standards Committee: Recommended several amendments to Standard to note the effect of the Federal Debt Collection Procedures Act of 1990 and the Uniform Federal Lien Registration Act on the liens of certain judgments in favor of the United States and certain of its agencies and instrumentalities. The 1992 Report (1) added a parenthetical to except judgments subject to the Federal Debt Collection Procedures Act of 1990 from the Standard’s Paragraph “A,” and (2) added a new Paragraph “F” and a Caveat to Paragraph “F.” Recommendation approved by the Real Property Law Section on November 12, 1992, and adopted by the House of Delegates on November 13, 1992.

The Report of the 1993 Title Examination Standards Committee: Recommended amending Standard to reflect the Legislature’s amendment of 12 O.S. § 706, effective October 1, 1993, and to make the Standard’s presentation more clear. Recommendation approved by the Real Property Law Section on November 4, 1993, and adopted by the House of Delegates on November 5, 1993.

The Report of the 2004 Title Examination Standards Committee: Recommended amending 23.1 to add Paragraphs “D” and “E” to define duration of judgment liens in-light of Oklahoma case law and to clarify how these liens are released. Recommendation approved by the Real Property Law Section on November 11, 2004, and adopted by the House of Delegates on November 12, 2004.

23.2 LIEN FOR PROPERTY DIVISION ALIMONY OR SUPPORT ALIMONY ORDERED IN A DIVORCE DECREE

A. Lien for property division alimony on or after September 1, 1991

An order for the payment of property division alimony in a divorce decree, whether payable in a single sum or periodically, shall be a lien against the real property of the person against whom the property division alimony is awarded (“the debtor spouse”) and provide constructive notice to subsequent purchasers and lienors if:

1. The order states the amount of alimony as a definite sum(**Caveat*); and
2. The order expressly provides for a lien on the debtor spouse’s real property; and
3. Either
 - a. The court’s order providing for a lien is recorded in the office of the county clerk for the county in which the real property is situated; or

- b. The debtor spouse acquired some or all of the interest in the real property that is subject to the lien via the divorce decree.

B. Lien for property division alimony before September 1, 1991

An order for the payment of property division alimony in a divorce decree, whether payable in a single sum or periodically, shall be a lien upon the real property of the debtor spouse and provide constructive notice to subsequent purchasers and lienors if:

1. The order states the amount of alimony as a definite sum(**Caveat*); and
2. Either
 - a. The court's order providing for a lien is recorded in the office of the county clerk for the county in which the real property is situated, or
 - b. The debtor spouse acquired some or all of the interest in the real property subject to the lien via the divorce decree.

C. Lien for support alimony on or after September 8, 1976

An order for the payment of support alimony in a divorce decree, whether payable in a single sum or periodically, shall be a lien upon the real property of the debtor spouse and provide constructive notice to subsequent purchasers and lienors if:

1. The order states the amount of alimony as a definite sum(**Caveat*); and
2. The court's order expressly provides for a lien on the debtor spouse's real property; and
3. Either
 - a. The court's order providing for a lien is recorded in the office of the county clerk for the county in which the real property is situated; or
 - b. The debtor spouse acquired some or all of the interest in the real property subject to the lien via the divorce decree.

D. Lien for support alimony before September 8, 1976

An order for the payment of support alimony in a divorce decree, whether payable in a single sum or periodically, shall be a lien upon the real property of the debtor spouse and provide constructive notice to subsequent purchasers and lienors if:

1. The order states the amount of alimony as a definite sum*; and
2. Either
 - a. The court's order providing for a lien is recorded as provided under the judgment lien statute (see Title Examination Standard 23.1), or
 - b. The debtor spouse acquired some or all of the interest in the real property subject to the lien via the divorce decree.

E. Duration of decree-ordered lien for property division or support alimony

An examiner shall disregard a lien for the payment of either property division or support alimony in a divorce decree as extinguished by operation of law within the following time frames:

1. A lien payable in a single lump sum with no stated due date is extinguished five (5) years after the date of pronouncement of the lien by the court in a divorce case;
2. A lien payable in a single lump sum with a stated due date is extinguished five (5) years after the due date of the lump sum obligation as set out in the divorce decree;

3. A lien payable in installments is incrementally extinguished as to each installment five (5) years after the due date of each installment, and the examiner shall disregard the lien, as extinguished, five (5) years after the due date of the final installment; and
4. A lien payable in a single lump sum which is due upon the occurrence of a designated event (e.g., sale of real property) is extinguished five (5) years after the designated event occurs. For constructive notice, evidence of the occurrence of the designated event must appear in the record.

Authority: *First Community Bank of Blanchard v. Hodges*, 1995 OK 124; *Record v. Record*, 1991 OK 85; *Dilbeck v. Dilbeck*, 2013 OK 1: 12 O.S. § 95; 42 O.S. § 23; and 12 O.S. § 696.2.

Comment: The title examiner should confirm that the divorce decree has been filed with the court clerk in order to determine whether the time for appeal has run.

Authority: 12 O.S. § 696.2(E).

The Report of the 2003 Title Examination Standards Committee: Recommended adding new Section E to Standard 23.3. Recommendation approved by the Real Property Law Section on November 13, 2003, and adopted by the House of Delegates on November 14, 2003.

The Report of the 2013 Title Examination Standards Committee: Recommended revising the authority cited in Standard 23.3(G) to make the examiner aware of the holding in *Dilbeck v. Dilbeck*, 83 O.B.J. 2211 on October 13, 2013. Recommendation approved by the Real Property Law Section on November 15, 2013, and adopted by the House of Delegates on November 16, 2013.

F. Lien for arrearage in the payment of alimony

An arrearage in the payment of property division alimony or support alimony that has been reduced to a judgment may be a lien against the real property of the debtor spouse when such judgment is filed as provided under the judgment lien statute.

Authority: 12 O.S. §§ 181 & 706; 16 O.S. § 15; 43 O.S. § 134 (formerly numbered as 12 O.S. § 1289), and the following prior versions thereof: 1987 Okla. Sess. Laws, ch. 130, § 1, effective June 3, 1987, 1976 Okla. Sess. Laws, ch. 61, § 1, effective September 8, 1976, and 1968 Okla. Sess. Laws, ch. 161, § 1; the following prior versions of 43 O.S. § 120 (then numbered as 12 O.S. § 1278); 1976 Okla. Sess. Laws, ch. 154, § 1, 1975 Okla. Sess. Laws, ch. 350, § 1, effective October 1, 1975; Robert G. Spector, 63 O.B.J. 3473-74 (December 5, 1992).

Caveat 1: The statement of a definite sum is not a requirement when the creditor spouse is awarded a specific asset in lieu of alimony, *Mayhue v. Mayhue*, 706 P.2d 890 (Okla. 1985) (percentage of royalties from oil lease); *Frensley v. Frensley*, 177 Okla. 221, 58 P.2d 307 (1936) (interest in proceeds of a trust); *Clark v. Clark*, 460 P.2d 936 (Okla. 1969) (involving an insurance policy).

Caveat 2: A statement of the amount of alimony as a definite sum is not a requirement in a separate maintenance action, *Hughes, v. Hughes*, 363 P.2d 155 (Okla. 1961).

Caveat 3: It is not necessary to comply with the judgment lien perfection provisions of 12 O.S. § 706 (i.e., a “statement of judgment”) where the divorced spouse has a decree imposed lien to secure payment of alimony; the mere filing of the divorce decree with the county clerk, without a “statement of judgment,” will establish the lien priority; *First Community Bank of Blanchard v. Hodges*, 907 P.2d 1047 (Okla. 1995).

Comment: For constructive notice purposes, with both property division and support alimony, the court’s decree or order should be recorded with the county clerk. Nevertheless, if a lien for property division alimony or support alimony is specifically created in a divorce decree and that divorce decree

is a link in the chain of title to the real property, courts have held subsequent *bona fide* purchasers and lienors to have constructive notice of the lien, even though the court's decree or order creating the lien was never recorded in the office of the county clerk, *Watkins v. Watkins*, 922 F.2d 1513 (10th Cir. 1991) (purchaser takes real property with the constructive notice of what appears in the chain of title; because the divorce decree is what gave the ex-husband title to the property and that divorce decree revealed the existence of the lien in favor of the ex-wife, a *bona fide* purchaser would be on constructive notice of her lien); *United Oklahoma Bank v. Moss*, 793 P.2d 1359 (Okla. 1991). Thus, when the debtor spouse acquires part or all of the title to real property through a divorce decree, language in the decree which creates a specific lien on that property cannot be ignored, even though the decree or order has not been recorded in the office of the county clerk.

The Report of the 1983 Title Examination Standards Committee: Recommended substantial changes in this Standard. Recommendation approved by the Real Property Law Section on November 3, 1983, and adopted by the House of Delegates on November 4, 1983.

The Report of the 1991 Title Examination Standards Committee: A prefatory note referring to recent case law *United Oklahoma Bank v. Moss*, 793 P.2d 1359 (Okla. 1991), and *Watkins v. Watkins*, 922 F.2d 1513 (10th Circuit 1991), and statutory changes, 43 O.S. § 134 (C), was recommended. Recommendation approved by the Real Property Law Section on November 14, 1991, and adopted by the House of Delegates on November 15, 1991.

The Report of the 1993 Title Examination Standards Committee: Recommended revising Standard to reflect both a 1991 amendment of 43 O.S. § 134 and two (2) 1991 cases cited in the former prefatory note to the Standard. The Committee also recommended a substantial reorganization of Standard for purposes of clarity. Recommendations approved by the Real Property Law Section on November 4, 1993, and adopted by the House of Delegates on November 5, 1995.

23.3 EFFECT OF JUDGMENTS IN DIVORCE CASES AWARDING REAL PROPERTY TO PARTY LITIGANT

Judgments of the district court awarding real property to either litigant to a divorce action are effective to pass title to such real property. It is not necessary that the decree contain language that it shall operate as a conveyance. The decree must be recorded in the office of the county clerk in the county where the land is located to give constructive notice of the transfer of title.

Authority: 12 O.S. § 181.

Comment: For the purposes of marketability of title, any decree must clearly identify such real property. The property must be specifically described by an adequate legal description. Identification of the real property by street address is not sufficient.

Where property settlement incorporated by reference in a divorce decree divided all assets in properties acquired during marriage and directed that all property not specifically awarded in agreement was to be given to husband, fact that wife failed to execute instruments of conveyance to husband did not entitle her to judgment in her suit against former husband's estate seeking stay of disposition of property pending determination as to property held in joint tenancy, the divorce decree terminated joint tenancy of the parties, *Tiger v. Estate of Akers*, 554 P.2d 1213 (Okla. Ct. App. 1976).

Caveat: While constructive notice is given by the filing of the judgment in the office of the county clerk where the property is located, see Comment to Title Standard 23.2.F above as to the holding in *Watkins v. Watkins*, 922 F.2d 1513 (10th Cir. 1991), concerning the constructive notice effect of a judgment not filed in the office of the county clerk of the county where the land is located.

The Report of the 1971 Title Examination Standards Committee: Recommended Standard. Recommendation approved by the Real Estate Law Section on December 2, 1971, and adopted by the House of Delegates on December 3, 1971.

The Report of the 1985 Title Examination Standards Committee: Recommended amendment. Recommendation approved by the Real Property Law Section on November 14, 1985, and adopted by the House of Delegates on November 15, 1985.

The Report of the 2002 Title Examination Standards Committee: Recommended addition of the "Caveat" regarding the effect of constructive notice of certain divorce decrees not recorded in the land records. Recommendation approved by the Real Property Law Section on November 21, 2002, and adopted by the House of Delegates on November 22, 2002.

23.4 CHILD SUPPORT ARREARAGE LIENS PURSUANT TO 43 O.S. § 135

A lien against real property, then owned or subsequently acquired by a person owing child support payments, is evidenced as follows:

A. On or after October 1, 1985, but prior to May 15, 1986

By filing a certified copy of an order of a district court or an administrative order of the Department of Human Services evidencing an arrearage in child support payments with the clerk of the county in which such property is located, which lien relates back in time to when the arrearage was reduced to judgment, is created and is superior to all other liens except the lien of a first mortgage.

Authority: 43 O.S. § 135; 1985 Okla. Sess. Laws, ch. 297, § 20.

Comment: The party authorized to release this lien is not identified by the statute creating said lien.

B. On or after May 15, 1986, but prior to October 1, 1987

By filing a certified copy of an order of a district court or an administrative order of the Department of Human Services, evidencing an arrearage in child support payments with the clerk of the county in which such property is located, which lien shall exist from the time the order is filed of record. The priority of this lien is established by the time that the order is filed of record.

Authority: 43 O.S. § 135, renumbered from 12 O.S. § 1289.1 by 1989 Okla. Sess. Laws, ch. 33, § 1, effective November 1, 1989.

Comment: Liens for arrearages in child support payments created by orders filed on or after May 15, 1986, may be released by the person entitled to the support or the Department of Human Services on behalf of its clients and recipients. For purposes of identifying the parties on whose behalf of the Department of Human Services may release the above-described liens, a "recipient" is defined as a party who has assigned to the Department of Human Services his/her rights to support from another person in consideration of receiving aid to families with dependent children, 56 O.S. § 237(C)(1), and "client" is defined as a party, not receiving aid to families with dependent children, who has applied to the Department of Human Services to collect his/her child support payments. See 56 O.S. § 237(D).

C. On or after October 1, 1987, but prior to July 1, 1997

1. By filing a certified copy of an order of a district court or an administrative order of the Department of Human Services evidencing an arrearage in child support payments with the clerk of the county in which such property is located, which lien shall exist from the time the judgment or order is filed of record; or

2. By filing a certified copy of a judgment or order, providing for payment of child support pursuant to which a past due amount has accrued, with the clerk of the county in which such property is located, which lien shall exist from the time a past due amount has accrued and notice and opportunity for a court or administrative hearing to determine the amount that is past due has been given to the person ordered to make such payments.

Authority: 43 O.S. § 135; 1987 Okla. Sess. Laws, ch. 230, § 15.

D. On or after July 1997, but prior to November 1, 2000

1. By filing a certified copy of an order of a district court or an administrative order of the Department of Human Services evidencing an arrearage in child support payments with the clerk of the county in which such property is located, which lien shall exist from the time the judgment or order is filed of record; or
2. By filing a certified copy of a judgment or order, providing for payment of child support pursuant to which a past due amount has accrued, with the clerk of the county in which such property is located, which lien shall exist from the time a past due amount has accrued and, prior to implementation of the central payment registry, notice and opportunity to contest the amount past due has been given to the obligor. If the payments are made through the central payment registry (as created by 43 O.S. § 410 *et seq.*), past due amounts of child support shall become a lien upon real property of the person ordered to make such payments at the time such payments become past due.

Authority: 43 O.S. §§ 135, 410 *et seq.*; 1997 Okla. Sess. Laws, ch. 402, § 15.

Note: The examining attorney should be aware of the possibility of undisclosed liens pursuant to the procedures outlined above. See First Community Bank of Blanchard v. Hodges, 907 P.2d 1047 (Okla. 1995).

E. On or after November 1, 2000

By filing a statement of judgment with the county clerk of the county where the property is located that complies with 12 O.S. § 706 pursuant to the applicable provisions of 43 O.S. § 135, 43 O.S. § 137 and 12 O.S. § 759.

Authority: 43 O.S. §§ 135 and 137, and 12 O.S. § 759.

The Report of the 1987 Title Examination Standards Committee: Recommended Standard. Recommendation approved by the Real Property Law Section on November 12, 1987, and adopted by the House of Delegates on November 13, 1987.

The Report of the 1993 Title Examination Standards Committee: Recommended revising Standard to incorporate the renumbering of the former 12 O.S. § 1289.1 to 43 O.S. § 135. The Report also recommended adding a Caveat to note statutory requirements for notice and that a hearing be given a person ordered to make child support payments. Recommendations approved by the Real Property Law Section on November 4, 1993, and adopted by the House of Delegates on November 5, 1993.

The Report of the 1999 Title Examination Standards Committee: Recommended revising Standard 23.4 to reflect statutory changes that had been adopted in 1997 and 1987, 70 O.B.J. 2931 (1999). Recommendation approved by the Real Property Law Section on November 11, 1999, and adopted by the House of Delegates on November 12, 1999.

The Report of the 2001 Title Examination Standards Committee: Recommended amending Standard 23.4 to reflect the change that 43 O.S. § 135, 2000 Okla. Sess. Laws, ch. 394, § 6, made in the manner in which a lien on real property owned by a person owing child support payments may be evidenced.

Recommendation approved by the Real Property Law Section on November 15, 2001, and adopted by the House of Delegates on November 16, 2001.

The Report of the 2014 Title Examination Standards Committee: Recommended amendment to Section 23.4E of Standard to clarify the legal basis for the Standard. Recommendation approved by the Real Property Law Section on November 13, 2014, and adopted by the House of Delegates on November 14, 2014.

23.5 NOTICE REQUIREMENTS FOR EXECUTION SALES

A. Notice of sale

1. On or after March 23, 1985. As to all sheriff's sales of real property upon general or special execution occurring on or after March 23, 1985, but prior to November 1, 1986, efforts must have been taken which were reasonably calculated to afford personal notice of the sale to those parties who had an interest or estate in the property sold and whose actual whereabouts were known or could have been ascertained with due diligence. The record of the proceedings should reflect that such steps have been taken.

Authority: 12 O.S. § 757, 764; *Cate v. Archon Oil Co., Inc.*, 695 P.2d 1352 (Okla. 1985); *Bomford v. Socony Mobil Oil Co.*, 440 P.2d 713 (Okla. 1968); *Mullane v. Central Hanover Bank and Trust Co.*, 339 U.S. 306 (1949); *Mennonite Bd. of Missions v. Adams*, 462 U.S. 791 (1983).

Comment: The rule of *Cate v. Archon Oil Co.*, *supra*, was made effective prospectively to all sales governed by 12 O.S. §§ 757 & 764 after issuance of mandate, which occurred March 22, 1985.

2. On or after November 1, 1986. As to all sheriff's sales of real property upon general or special execution occurring on or after November 1, 1986, but prior to November 1, 1987, such sales shall be set aside on motion by the court to which the execution is returnable unless the party causing the execution to be issued:
 - a. Causes a written notice of sale containing the legal description of the property to be sold and the date, time and place where the property will be sold to be mailed, by first-class mail, postage prepaid, to:
 - i. The judgment debtor; and
 - ii. Any holder of an interest in the property to be sold; and
 - iii. All other persons of whom the party causing the execution to be issued has notice who claim a lien or any interest in the property;

At least ten (10) days prior to the date of the sale, if the names and addresses of such persons are known; and

- a. Causes publication notice to be given in conformity with 12 O.S. § 764(a)(2); and
- b. Files in the case an affidavit of proof of mailing and of publication or posting; and
- c. Causes such sale to be held at least thirty (30) days after the date of first publication of the notice required in 12 O.S. § 764(a)(2).

The record of the proceeding should reflect that such steps have been taken.

Authority: 12 O.S. § 764; *Cate v. Archon Oil Co., Inc.*, 695 P.2d 1352 (Okla. 1985); *Bomford v. Socony Mobil Oil Co.*, 440 P.2d 713 (Okla. 1968); *Mullane v. Central Hanover Bank and Trust Co.*, 339 U.S. 306 (1949); *Mennonite Bd. of Missions v. Adams*, 462 U.S. 791 (1983).

Comment: 12 O.S. § 764 was amended effective November 1, 1986, to provide the specific notice requirements set forth above.

3. On or after November 1, 1987. As to all sheriff's sales or real property upon general or special execution occurring on or after November 1, 1987, such sales shall be set aside on motion by the court to which the execution is returnable unless the party causing the execution to be issued:
- a. Causes a written notice of sale, executed by the sheriff if executed on or after November 1, 1987, containing the legal description of the property to be sold and the date, time and place where the property will be sold to be mailed by first-class mail, postage prepaid, to:
 - i. The judgment debtor; and
 - ii. Any holder of an interest of record in the property to be sold whose interest is sought to be extinguished, except mechanic's and materialmen's lien claimants, provided that the instrument evidencing such interest was filed prior to the filing of the notice of the pendency of the action; and
 - iii. Any mechanic's or materialmen's lien claimant whose lien claim has not expired, is sought to be extinguished and either:
 - (a) Has been perfected, either before or after the filing of the notice of the pendency of the action; or
 - (b) Has not been perfected, but of which the party causing the execution to be issued has notice; and
 - iv. All other persons, of whom the party issuing execution has notice who claim a lien or interest in the property, including those who disclaimed in the principal action, whose interest is sought to be extinguished, and show interest is not otherwise negated by the effect of 12 O.S. § 2004.2.

At least ten (10) days prior to the date of the sale, if the names and addresses of such persons are known, and

- b. Causes publication notice, executed by the sheriff if executed on or after November 1, 19 to be given in conformity with 12 O.S. § 764(a)(2); and
- c. Files in the case an affidavit of proof of mailing and of publication or posting; and
- d. Causes such sale to be held at least thirty (30) days after the date of first publication of the notice required in 12 O.S. § 764(a)(2).

The record of the proceedings should reflect that such steps have been taken.

Authority: 12 O.S. §§ 764, 2004.2; 42 O.S. ch. 3; *Cate v. Archon Oil Co., Inc.* 695 P.2d 1352 (Okla. 1985); *Bomford v. Socony Mobil Oil Co.*, 440 P.2d 713 (Okla. 1968); *Mullane v. Central Hanover Bank and Trust Co.*, 339 U.S. 306 (1949); *Mennonite Bd. of Missions v. Adams*, 462 U.S. 791 (1983).

Comment 1: 12 O.S. §§ 764 and 2004.2 were amended effective November 1, 1987, to provide the specific notice requirements set forth above.

Comment 2: 12 O.S. §§ 766 authorizes an undersheriff or deputy sheriff to execute the notice required by 12 O.S. § 764 as amended effective November 1, 1987.

Comment 3: Notices should be mailed to all parties who disclaimed in the principal action, if such parties might possess an equity of redemption, *Sooner Federal S&L v. Okl. Cent. Cr. Union*, 790 P.2d 526 (Okla. 1989).

Caveat: The issue of whether an execution sale of an oil and gas leasehold interest is a sale of real property or a sale of personal property has not been decided by the Oklahoma Supreme Court. See *Cate v. Archon Oil Co.*, *supra*.

B. Notice of confirmation sale

1. On or after November 1, 1986. As to all sheriff's sales of real property upon general or special execution, for which the writ of execution was returned on or after November 1, 1986, but prior to November 1, 1987, the party causing the execution to be issued shall:
 - a. Cause a written notice of hearing on the confirmation of the sale to be mailed by first-class mail, postage prepaid, to the following persons and entities whose names and addresses are known:
 - i. The judgment debtor; and
 - ii. Any holder or record of an interest in the property; and
 - iii. All other persons of whom the party causing the execution to be issued has notice who claim a lien or any interest in the property;

At least ten (10) days before the hearing on the confirmation of sale, and

- b. If the name or address of any such person is unknown, cause publication notice to be given in conformity with 12 O.S. § 765(a)(1); and
- c. File in the case an affidavit of proof of mailing and, if required, of publication.

The record of the proceedings should reflect that such steps have been taken.

Authority: 12 O.S. § 765; *Bomford v. Socony Mobil Oil Co.*, 440 P.2d 713 (Okla. 1968); *Mullane v. Central Hanover Bank and Trust Co.*, 339 U.S. 306 (1949); *Mennonite Bd. of Missions v. Adams*, 462 U.S. 791 (1983).

Comment: 12 O.S. § 765 was amended effective November 1, 1986, setting forth the specific notice requirements listed above.

2. On or after November 1, 1987. As to all sheriff's sales of real property upon general or special execution, for which the writ of execution was returned on or after November 1, 1987, the party causing the execution to be issued shall:
 - a. Cause a written notice of hearing on the confirmation of the sale to be mailed by first-class mail, postage prepaid, to the following persons and entities whose names and addresses are known:
 - i. All persons to whom mailing of the notices of the execution sale was required to be made pursuant to 12 O.S. § 764; and
 - ii. The high bidder at such sale;

At least ten (10) days before the hearing on the confirmation of sale, and

- b. If the name or address of any such person is unknown, cause publication notice to be given in conformity with 12 O.S. § 765(a)(1); and
- c. File in the case an affidavit of proof of mailing and, if required, of publication.

The record of the proceedings should reflect that such steps have been taken.

Authority: 12 O.S. §§ 764, 765; *Bomford v. Socony Mobil Oil Co.*, 440 P.2d 713 (Okla. 1968); *Mullane v. Central Hanover Bank and Trust Co.*, 339 U.S. 306; *Mennonite Bd. of Missions v. Adams*, 462 U.S. 791 (1983).

Comment: 12 O.S. §§ 764, 765 and 2004.2 were amended effective November 1, 1987, setting forth the specific notice requirements and limitations thereon set forth above.

The Report of the 1986 Title Examination Standards Committee: Recommended new Standard. The Committee received several suggestions from members of the Real Property Law Section. The Executive Committee of the Section amended the recommendation substantially before submission to the Section. Recommendation approved by the Real Property Law Section on November 20, 1986, and adopted by the House of Delegates on November 21, 1986, as amended.

The Report of the 1987 Title Examination Standards Committee: Recommended several changes in Standard. Recommendation approved by the Real Property Law Section on November 12, 1987, and adopted by the House of Delegates on November 13, 1987.

The Report of the 1991 Title Examination Standards Committee: Recommended the addition of 12.4, A, 3, a, iv, to correspond to the statutory language and recent case law, and comment number 3 following Paragraph “A” to point out recent case law on the rights of disclaiming parties. Recommendation approved by the Real Property Law Section on November 14, 1991, and adopted by the House of Delegates on November 15, 1992.

23.6 MONEY JUDGMENTS FILED AGAINST AN OIL AND GAS LEASEHOLD INTEREST

The interest vested in the owner of an oil and gas leasehold estate is not “real estate” within the meaning of 12 O.S. § 706; therefore, a money judgment filed in the office of the county clerk of the county in which the oil and gas leasehold is located does not create a lien on said oil and gas leasehold.

Authority: *First National Bank of Healdton v. Dunlap*, 122 Okla. 288, 254 P. 729 (1927); *Hinds v. Phillips Petroleum Company*, 591 P.2d 697 (Okla. 1979).

The Report of the 1986 Title Examination Standards Committee: Recommended Standard. Recommendation approved by the Real Property Law Section on November 20, 1986, and adopted by the House of Delegates on November 21, 1986.

23.7 RETURN OF WRITS OF SPECIAL EXECUTION

- A. The 60-day time limit for a return of execution imposed by 12 O.S. § 802 does not apply to special executions.
- B. The failure of the sheriff to return a writ of special execution on or before a return date set by the court is an irregularity which is cured by confirmation of the sale by the court.

Authority: 12 O.S. § 732; *Price v. Citizens’ State Bank of Mediapolis*, 23 Okla. 723, 102 P. 800 (1909).

The Report of the 1990 Title Examination Standards Committee: Recommended Standard to address the applicability of 12 O.S. § 732 to writs of special execution. Recommendation approved by the Real Property Law Section on November 15, 1990, and adopted by the House of Delegates, November 16, 1990.

23.8 PROPERTY ACQUIRED BY FARM CREDIT SYSTEM; RIGHT OF FIRST REFUSAL

- A. After January 6, 1988, agricultural real estate acquired by an institution of the Farm Credit System (a Federal Land Bank, a Farm Credit Bank, or a Production Credit Association) as a result of a loan foreclosure or a voluntary conveyance from a borrower is subject to a right of first refusal vested in the “previous owner” to repurchase or lease the property. A “previous owner” is the person or entity from which or whom the Farm Credit System lender acquired title, by foreclosure or by voluntary conveyance in lieu of foreclosure, to land which had been mortgaged to such lender to secure the debt of such previous owner or of another.

- B. If the previous owner waived his right of first refusal, the original or an authentic copy of the executed waiver should be furnished and may be recorded, with an appropriate affidavit where required.
- C. Where the property was not sold to the previous owner, and no waiver was obtained, the examiner should be furnished with the following:
 - 1. Evidence of notification by the lender to the previous owner by certified mail, at least thirty (30) days [fifteen (15) days for notifications between January 6, 1988, and August 17, 1988] prior to private sale to any other party, of the previous owner's right to purchase the property at the appraised value as determined by an accredited appraiser, and of the previous owner's right to offer to purchase the property at a price less than the appraised value.
 - 2. If such sale was a private sale, an affidavit from an officer or agent of the lender that:
 - a. The previous owner failed to submit any offer to purchase within thirty (30) days [fifteen (15) days for offers between January 6, 1988, and August 17, 1988] after notice; or
 - b. The previous owner submitted an offer to purchase within the requisite time, but the offer was for less than the appraised value, and that the lender gave notice to the previous owner of the rejection of the previous owner's offer within fifteen (15) days after receipt of such offer, and that the institution thereafter sold the property to a third party for a stated price which is equal to or greater than the previous owner's offer; or
 - c. After the lender rejected an offer from the previous owner to purchase the property at a price less than the appraised value, and the lender thereafter sold the property to a third party for a price less than the previous owner's offer, or on different terms and conditions from those previously extended to the previous owner, the lender first gave notice to the previous owner of its intention to accept an offer from a third party for a price less than the previous owner's offer, or on terms and conditions different from those first extended to the previous owner, by certified mail, and that the previous owner did not, within fifteen (15) days from such certified mail notice, submit an offer in writing to purchase the property under such different terms and conditions.
 - 3. If such sale occurred at public auction or pursuant to some other public bidding procedure:
 - a. Proof that the previous owner was notified by certified mail in advance of the public auction, competitive bidding process or other similar public offering by a notice containing the minimum bid amount, if any, required to qualify as acceptable to the institution, and also containing the terms and conditions to which the sale would be subject; and
 - b. An affidavit from an agent or officer of the lender, if the property was sold to a third party other than the previous owner, that the previous owner did not bid an amount equal to or more than the amount for which the property was sold to the third party.
- D. A certified mail notice is sufficient, whether or not received or accepted by the previous owner, if mailed one (1) time to the last known address of the previous owner.

Authority: 12 U.S.C. § 2219a [Farm Credit Act of 1971, § 4.36, as amended by Agricultural Credit Act of 1987, Pub. L. No. 100-233 (January 6, 1988), tit. I, § 108, 101 Stat. 1582 and Agricultural Credit Technical Corrections Act of 1988, Pub. L. No. 100-399 (August 17, 1988), tit. I, § 104, 102 Stat. 990].

Comment: Note that the right of first refusal provisions applies only to "agricultural real estate." Some Farm Credit System loans are made on rural housing and not agricultural real estate. Such Rural housing would not be affected by and is not subject to the right of first refusal legislation. Farm Credit Administration regulations provide that the "previous owner" includes the prior record owner where the owner's land was used as collateral for the loan even though the prior record owner was not a borrower, 12 C.F.R. § 614.4522(a)(2). Similar provisions apply to leases of agricultural property owned

by Farm Credit System institutions. The “accredited appraiser” referred to in the statute is not elsewhere defined. The Ninth Farm Credit District, which includes Oklahoma, accredits certain appraisers, and utilizes such approved appraisers in determining the appraisal values.

Loans in a pool backing securities or obligations guaranteed by the Federal Agricultural Mortgage Corporation (“Farmer Mac”) are exempted from the right of first refusal provisions, even if held by, originated by, or serviced by Farm Credit System institutions, provided that the borrower was given notice of such exemption at the time of loan origination, and opportunity to refuse to allow the loan to be pooled; see Section 8.9 of the Farm Credit Act of 1971, 12 U.S.C. § 2279aa-9. Loans in such a pool which were originated by non-Farm Credit System institutions are not subject to the statutory right of first refusal, even if later assigned to a Farm Credit System entity.

The Report of the 1990 Title Examination Standards Committee: Recommended Standard to assist title examiners when a foreclosure or deed in lieu of foreclosure in favor of an FCSI is encountered in the chain of title. Recommendation approved by the Real Property Law Section on November 15, 1990, and adopted by the House of Delegates on November 16, 1990.

23.9 PROPERTY ACQUIRED BY FARM SERVICE AGENCY, A/K/A FARMERS HOME ADMINISTRATION; RIGHT OF FIRST REFUSAL

- A. After January 6, 1988, agricultural real estate acquired by the Farm Service Agency, previously known as the Farmers Home Administration (all subsequent references to the Farm Service Agency shall incorporate this reference to said agency previously having been known as the Farmers Home Administration), as a result of a loan foreclosure or a voluntary conveyance from a borrower is subject to a number of rights and preferences in favor of the borrower, and certain other entities, to repurchase or lease the property.
- B. The examiner should be furnished satisfactory evidence that, in compliance with the applicable statutes, regulations and cases, the Farm Service Agency has either obtained waivers from the borrower and other protected entities, or has complied with the appropriate notice procedures, and that all administrative appeal rights, if any, have been exhausted.

Authority: 7 U.S.C. § 1985 [Consolidated Farm and Rural Development Act, Pub. L. No. 87-128 (August 8, 1961), tit. VII, § 335(c), 75 Stat. 315, as amended by Agricultural Credit Act of 1987, Pub. L. No. 100-233 (January 6, 1988), tit. VII, § 610, 101 Stat. 1568]; 7 C.F.R. § 1951.911; Food, Agricultural, Conservation and Trade Act of 1990, Pub. L. No. 101-624 (November 28, 1990), 103 Stat. 3359.

Comment: Because of the nature of problems and possible variations of Indian land titles which might be involved with the Farm Service Agency, the examiner should rely on the usual methods for examining titles to Indian lands as well as on the applicable statutes, regulations and cases.

The examiner may wish to obtain an affidavit with the appropriate copies of notices appended, from the local county Farm Service Agency supervisor. A possible form of affidavit is as follows:

PRESERVATION RIGHTS AFFIDAVIT

STATE OF OKLAHOMA,
COUNTY OF _____, ss.

I, _____, am the Farm Service Agency County Supervisor for _____ County, Oklahoma. I am personally familiar with the administrative servicing of the account of _____.

The above mentioned account was serviced as directed by Farm Service Agency regulations found at 7 C.F.R. part 1951, sub-part S, and in conformance with 7 U.S.C. §§ 1985, 2000, *et seq.*

The United States of America, acting through the Farm Service Agency, acquired title to the real property described in Exhibit A, attached hereto, on _____, 20__.

This office sent Notice of Availability of Lease Back/Buy Back Rights to the above individual by certified mail on _____.

A copy of the Notice is attached hereto as Exhibit B.

The property apparently contained the former owner's homestead so Notice of Availability of Homestead Protection was sent to the former owner by certified mail on _____. A copy of the Notice is attached hereto as Exhibit C.

(or)

To my knowledge, the property does not contain the former owner's homestead. The former owner: _____ failed to respond to the Notice within the required time.

(or)

_____ applied for preservation of rights and did not qualify.

Immediate Previous Farm Operator:

I am not aware of any immediate previous farm operator.

(or)

The immediate previous farm operator was notified by certified mail, attached hereto as Exhibit D, and failed to respond to the Notice within the required time.

(or)

Responded to the Notice but did not qualify.

To my knowledge, no other parties, individuals or entities are entitled to Notice under the provisions of the above cited statutes and regulations. The time for requesting preservation rights has passed and the time to appeal any adverse decision concerning preservation rights has passed.

Notice of availability for sale of the property described in Exhibit A was: posted in the Farm Service Agency county office, and mailed to the previous owner, and immediate previous farm operator (tenant), if any, and published for 3 consecutive weeks, between the dates of _____ and _____ in the _____, a newspaper regularly published in _____ County. A copy of the form of publication notice is attached hereto as Exhibit E.

There was no other applicant to purchase the property except _____, the purchaser.

(or)

All unsuccessful applicants to purchase the property were notified of denial of their applications and the time to appeal such adverse decisions has passed.

County Supervisor Farm Service Agency.

Subscribed and sworn to before me this _____ day of _____, 20__.

The Report of the 1991 Title Examination Standards Committee: Recommended new Standard to deal with such situations in the chain of title. Recommendation approved by the Real Property Law Section on November 14, 1991, and adopted by the House of Delegates on November 15, 1991.

23.10 RURAL HOMESTEAD PROPERTY SUBJECT TO MORTGAGES OF THE FARM SERVICE AGENCY, A/K/A FARMERS HOME ADMINISTRATION, OR SMALL BUSINESS ADMINISTRATION; HOMESTEAD PROTECTION RIGHTS

- A. After December 23, 1985, homestead real estate subject to mortgages of the Farm Service Agency, previously known as the Farmers Home Administration (all subsequent references to the Farm Service Agency shall incorporate this reference to said agency previously having been known as the Farmers Home Administration), or of the Administrator of the Small Business Administration with respect to property subject to farm program loans made under the Small Business Act, 15 U.S.C. §631 *et seq.*, for any of the purposes authorized for loans under Subtitles “A” or “B” of the Consolidated Farm and Rural Development Act, 7 U.S.C. §§ 1921 *et seq.*, may be subject to certain homestead protection rights in favor of the owner/borrower.
- B. The examiner should be furnished satisfactory evidence, that, in compliance with the applicable statutes, regulations and cases, the Farm Service Agency, or Small Business Administration, has either obtained waivers from the borrower and other protected entities, or has complied with the appropriate notice procedures, and that all administrative appeal rights, if any, have been exhausted.

Authority: 7 U.S.C. § 2000 [Consolidated Farm and Rural Development Act, Pub. L. No. 87-128 (August 8, 1961), tit. VII, § 352, as amended by Food Security Act of 1985, Pub. L. No. 99-198 (December 23, 1985), tit. VII, § 1321, 99 Stat. 1532, and by Agricultural Credit Act of 1987, Pub. L. No. 100-233 (January 6, 1988), tit. VII, § 614, 101 Stat. 1675]; 7 C.F.R. § 1951.911; see also 15 U.S.C. §§ 631 *et seq.* (Small Business Act).

Comment: See Comment to Standard 23.9 regarding a possible affidavit to evidence Farm Service Agency compliance of record.

The Report of the 1991 Title Examination Standards Committee: Recommended new Standard to assist examiners with respect to such situations encountered in the chain of title. Recommendation approved by the Real Property Law Section on November 14, 1991, and adopted by the House of Delegates on November 15, 1991.

23.11 FOREIGN MONEY JUDGMENTS AND LIENS

- A. Foreign Money Judgments. An authenticated copy of a money judgment rendered by a court of the United States, or by any other court entitled to full faith and credit in Oklahoma, may be filed in the district court clerk’s office in any county in Oklahoma. Such money judgment shall have the same effect as a money judgment of a district court in Oklahoma, subject to the provisions regarding notice and possible stay outlined in the Uniform Enforcement of Foreign Judgments Act, Title 12 O.S. §719, *et seq.*
- B. Lien Created Pursuant to a Foreign Money Judgment. A judgment lien, pursuant to a properly-filed foreign money judgment, can be created by compliance with the provisions of Title 12 O.S. §706.

Authority: Taracorp v. Dailey, 2018 OK 32, and Automotive Finance Corporation v. Rogers, 2019 OK CIV APP 16.

Comment: It should be noted that a foreign money judgment can be filed in Oklahoma, as outlined above, at any time during the period in which the original judgment or any renewal of the original judgment is enforceable pursuant to the laws of the state of origin for such judgment.

Note: See Title Examination Standard 35.4 regarding the lack of authority of a foreign state court to establish or convey title to Oklahoma real property.

The Report of the 2019 Title Examination Standards Committee: Recommended new Standard to order to reflect results in the holdings of Taracorp V. Dailey, 2018 OK 32, and Automotive Finance Corporation v. Rogers, 2019 OK CIV APP 16 as to foreign money judgments. Recommendation approved by the Real Property Law Section on November 7, 2019, and adopted by the House of Delegates on November 8, 2019.

CHAPTER 24. MORTGAGES AND OTHER LIENS

24.1 RELEASE BY QUIT CLAIM DEED

A quitclaim deed by a mortgagee to a mortgagor or subsequent owner is sufficient to release the mortgage, unless the mortgagee specifically excepts the mortgage in the deed.

Authority: See 55 Am. Jur. 2d *Mortgages* § 1384 (1971); 46 O.S. § 16; *Anchor Stone & Materials Co. v. Pollok*, 344 P.2d 559 (Okla. 1959), *Garrett v. Reinhart*, 169 Okla. 249, 36 P.2d 884 (1934).

24.2 RELEASE OF MORTGAGE TO MULTIPLE MORTGAGEES

- A. If a mortgage is payable to two (2) or more mortgagees alternatively, one (1) mortgagee acting alone can release the mortgage. For example, if a mortgage is payable to “A or B,” a release from either “A” or “B” is sufficient.
- B. If a mortgage executed on or after January 1, 1963, is payable to two (2) or more mortgagees jointly and severally, all mortgagees must join in the release of the mortgage. For example, if a mortgage is payable to “A and B,” both “A” and “B” must execute releases to discharge the mortgage. This is a reversal of prior law: If the mortgage to “A and B” is executed before January 1, 1963, and on its face appears to secure a single debt, a release from either “A” or “B” executed before January 1, 1963, is sufficient.
- C. If the mortgage is ambiguous as to whether it is payable to the mortgagees alternatively, the examiner should presume that it is payable to the persons alternatively. For example, if the mortgage is payable to “A and/or B,” a release from either “A” or “B” is sufficient.

Authority: 12A O.S. § 3-110(d); *Gill Equipment Co. v. Freedman*, 339 Mass. 303, 158 N.E. 2d 863 (1959); *Jens-Marie Oil Co. v. Rixse*, 72 Okla. 93, 178 P. 658 (1918); *Wright v. Ware*, 58 Ga. 150 (1877); Joyce Palomar, Patton & Palomar on Land Titles § 567 (3d ed. 2003); G. Thompson, *Real Property* § 4692 (Supp. 1958); L.A. Jones, *Mortgages* § 1224 (8th ed. 1928).

Comment: This Standard, as originally adopted in 1953, was based upon the common-law rule on joint mortgages incorporated in Negotiable Instrument Law of Oklahoma, 1909 Okla. Sess. Laws, ch. 24, art. II § 8 and art. III, § 41. This rule was repealed effective January 1, 1963, when the Uniform Commercial Code was adopted in Oklahoma and was replaced by a new rule codified as 12A O.S. § 3-116, 1991 Okla. Sess. Laws, ch. 177, § 35, effective January 1, 1992, moved the current rule to 12A O.S. § 3-110(d) and added the presumption that mortgages with ambiguous payee language should be construed as payable to the mortgagees alternatively.

The Report of the 1962 Title Examination Standards Committee: Recommended the change indicated in the Comment. Recommendation approved by the Real Property Law Section and adopted by the House of Delegates in 1962.

The Report of the 1964 Title Examination Standards Committee: Recommended amending second paragraph of Standard. Recommendation approved by the Real Property Law Section and adopted by the House of Delegates in 1964.

The Report of the 1993 Title Examination Standards Committee: Recommended revising Standard to indicate the amendment of 12A O.S. § 3-116, effective January 1, 1992, which renumbered to 12A O.S. § 3-110(d), the part of the former § 3-116 to which this Standard pertains. The Committee also recommended a third paragraph to add that a mortgage with ambiguous payee language, i.e., language that is unclear as to whether the debt secured by the mortgage is payable to mortgagees jointly or in the alternative, should be presumed to be payable to the mortgagees alternatively.

Recommendation approved by the Real Property Law Section on November 4, 1993, and adopted by the House of Delegates on November 5, 1993.

24.3 RELEASE BY PERSONAL REPRESENTATIVE

A mortgage release executed by the personal representative of a decedent's estate is sufficient where the personal representative was appointed in Oklahoma, or in any other state of the United States or the territories thereof, provided a certified copy of the personal representative's letters testamentary or of administration reflecting that the person is the duly qualified and acting personal representative of the mortgagee's estate is filed with the county clerk in the county in which the mortgage is recorded.

Authority: 58 O.S. § 262; 46 O.S. § 14.

The Report of the 2014 Title Examination Standards Committee: Recommended new Standard to clarify the authority of a personal representative of an estate, appointed either by an Oklahoma court or a court of another jurisdiction, to release a mortgage. Recommendation approved by the Real Property Law Section on November 13, 2014, and adopted by the House of Delegates on November 14, 2014.

24.3.1 RELEASE OF CORRECTIVE OR RE-RECORDED INSTRUMENTS EVIDENCING LIENS OR ENCUMBRANCES

Each instrument of record evidencing a lien or encumbrance must be described in the release thereof, except when an instrument acknowledging a lien or encumbrance appears followed by a similar instrument in which it is stated on the face of the instrument that the latter instrument is given to correct some defect in the former instrument, or when it appears on the face of the latter instrument that it is merely a re-recording of the former instrument. Specifically, where the latter instrument shows that it evidences the identical lien as the former instrument, a release of either the latter or former instrument, which does not specifically describe the other, is sufficient to discharge said lien or encumbrance.

The Report of the 1964 Title Examination Standards Committee: Recommended amendment to Standard. Recommendation approved by the Real Property Law Section and adopted by the House of Delegates in 1964.

The Report of the 1996 Title Examination Standards Committee: Recommended minor amendments to Standard for purposes of clarification. Recommendation approved by the Real Property Law Section on November 14, 1996, and adopted by the House of Delegates on November 15, 1996.

The Report of the 2002 Title Examination Standards Committee: Recommended renumbering and amendment of Standard to clarify that a recorded release reciting either an original recorded instrument which evidences a lien or a subsequent re-recorded correction instrument releases the lien or encumbrance. Recommendation approved by the Real Property Law Section on November 21, 2002, and adopted by the House of Delegates on November 22, 2002.

24.3.2 ASSIGNMENT OF CORRECTIVE OR RE-RECORDED INSTRUMENTS EVIDENCING LIENS OR ENCUMBRANCES

Each instrument of record evidencing a lien or encumbrance must be described in an assignment thereof, except when an instrument acknowledging a lien or encumbrance appears, followed by a similar instrument in which it is stated on the face of the instrument that the latter instrument is given to correct some defect in the former instrument, or when it appears on the face of the latter instrument that it is merely a re-recording of the former instrument. Specifically, where the latter instrument shows it evidences the identical lien or encumbrance as the former instrument, an assignment of either the latter or former instrument, which does not specifically describe the other, is sufficient to assign said lien or encumbrance.

The Report of the 2002 Title Examination Standards Committee: Recommended Standard. Recommendation approved by the Real Property Law Section on November 21, 2002, and adopted by the House of Delegates on November 22, 2002.

24.4.1 ERRORS IN RELEASES

Releases of encumbrances, leases, or other instruments which contain errors in recitals of the date, date of recording, book and page of record, or names of parties to the original instruments being released, should be considered sufficient if said releases give enough correct data to identify the instruments being released with reasonable certainty.

The Report of the 2002 Title Examination Standards Committee: Recommended renumbering and amending Standard for consistency with its recommended new Standard 24.4.2. Recommendation approved by the Real Property Law Section on November 21, 2002, and adopted by the House of Delegates on November 22, 2002.

24.4.2 ERRORS IN ASSIGNMENTS

Assignments of encumbrances, leases, or other instruments which contain errors in recitals of the date, date of recording, book and page of record, or names of parties to the original instrument should be considered sufficient if said assignments give enough correct data to identify the interests being assigned and the name(s) of the assignee(s) with reasonable certainty.

The Report of the 2002 Title Examination Standards Committee: Recommended Standard. Recommendation approved by the Real Property Law Section on November 21, 2002, and adopted by the House of Delegates on November 22, 2002.

24.5 RELEASE OF ASSIGNMENT OF RENTS

When an encumbrance appears followed by an assignment of rents showing that the latter is between the same parties and is a part of the transaction referred to in the encumbrance, a release of the encumbrance without any specific mention of the assignment of rents will be sufficient.

24.6 DEED FROM MORTGAGOR TO MORTGAGEE

Deeds from mortgagors to mortgagees are subject to close scrutiny by the court if it should be asserted they were given as additional security; nevertheless, such deeds do not warrant the rejection of the title unless there is some affirmative showing in the title that they were given merely as additional security.

Authority: *Messner v. Carroll*, 60 Okla. 90, 159 P. 362 (1916); *Starritt v. Longcor*, 179 Okla. 219, 65 P.2d 979 (1937); *Ware v. Tyer*, 199 Okla. 96, 182 P.2d 519 (1947); *Davis v. Moore*, 387 P.2d 483 (Okla. 1963); Patton & Palomar on Titles, 3rd ed., Ch. 8 (2003).

The Report of the 1964 Title Examination Standards Committee: Recommended adding the *Ware* and *Davis* cases, *supra*, to Authority." Recommendation approved by the Real Law Section, and adopted by the House of Delegates in 1964.

24.7 EFFECT OF INDEFINITE REFERENCE TO MORTGAGE

After October 21, 1966, a reference to or recital of the existence of a prior mortgage in a deed or mortgage or record for one (1) or more years, of itself, shall not put any person upon actual or constructive notice of the existence of such prior mortgage, nor shall such reference put any person upon inquiry in regard to such prior

mortgage, unless the reference identifies the prior mortgage by book number and page number of the records of the county clerk where such mortgage is recorded.

Authority: 46 O.S. §§ 201-204; P. Basye, Clearing Land Titles § 138 (2d ed. 1970).

Caveat: The curative statute forming the basis of this Standard does not change the rule that a mortgage filed for record but not actually recorded, or erroneously indexed, is nevertheless constructive notice, even though the indefinite reference in a subsequent deed or mortgage is itself not notice.

The Report of the 1965 Title Examination Standards Committee: Recommended Standard. Recommendation approved by the Real Property Law Section and adopted by the House of Delegates on December 2, 1965.

24.8 UNENFORCEABLE MORTGAGE AND MARKETABLE TITLE

No mortgage, contract for deed or deed of trust barred under the provisions of 46 O.S. § 301 shall constitute a defect in determining marketable record title.

Authority: 46 O.S. § 301.

Caveat: The examiner should be aware that the above Standard may not apply to mortgages which are part of a nationwide federal program in which the United States Government, or one of its agencies, is the mortgagee. See *United States v. Ward*, 985 F.2d 500 (10th Cir. 1993).

Comment 1: As a result of the repeal of 12A O.S. § 3-122, Paragraph “B” of this Standard was repealed in 1995. It provided that, for a debt payable on demand, the due date of the last maturing obligation for the purposes of 46 O.S. § 301 was the date of execution of the mortgage.

Comment 2: 46 O.S. § 301.B states that if enough information is provided on the face of the mortgage, contract for deed, or deed of trust to calculate the final due date of the last maturing obligation of the instrument, even if the final due date is not specifically stated, the lien is unenforceable after the expiration of seven (7) years from the date of the last maturing obligation.

The Report of the 1980 Title Examination Standards Committee: Recommended Standard. Recommendation approved by The Real Property Law Section on December 3, 1980, and adopted by the House of Delegates on December 5, 1980.

The Report of the 1986 Title Examination Standards Committee: Recommended adding a second paragraph to Standard. Recommendation approved by the Real Property Law Section on November 20, 1986, and adopted by the House of Delegates on November 21, 1986.

The Report of the 1994 Title Examination Standards Committee: Recommended adding the Caveat to Standard. Recommendation was approved by the Real Property Law Section on November 17, 1994, and adopted by the House of Delegates on November 18, 1994.

The Report of the 1995 Title Examination Standards Committee: Recommended repeal of the second paragraph of Standard (which paragraph had been adopted in 1986) due to the repeal of 12A O.S. § 3-122. Recommendation approved by the Real Property Law Section on November 9, 1995, and adopted by the House of Delegates on November 10, 1995.

The Report of the 2004 Title Examination Standards Committee: Recommended addition of second comment to Standard 24.8 to reflect the amendment of 46 O.S. § 301.B. Recommendation approved by the Real Property Law Section on November 11, 2004, and adopted by the House of Delegates on November 12, 2004.

24.9 LAPSED FINANCING STATEMENTS

A financing statement which constitutes a “fixture filing” under 12A O.S. § 1-9-102(40) and 1-9-502 (a) and (b), other than:

- A. A real estate or oil and gas leasehold mortgage which is effective as a “fixture filing” under 12A O.S. § 1-9-301; and
- B. A financing statement filed with the Oklahoma Secretary of State under 12A O.S. § 1-9-501(b) which states that the debtor is a transmitting utility; and
- C. A financing statement filed in connection with a public transaction or a manufactured home transaction, if it indicates that it is filed in connection with a public finance transaction or a manufactured home transaction under 12A O.S. § 1-9-515(b), may be disregarded as lapsed provided:
 - 1. Five (5) years has lapsed from either:
 - a. The date of filing such financing statement; or
 - b. The date of commencement of the most recent five (5) year period through which the financing statement has been continued; and
 - 2. No continuation statement has been filed in the office of the county clerk in the county in which the financing statement was originally filed within the six (6) months prior to the expiration of the current five (5) year period of such financing statement.

Authority: 12A O.S. §§ 1-9-501(b) and 1-9-515(b).

Comment 1: A continuation statement may be filed within six (6) months prior to the expiration of the current five (5) year period of the financing statement. See 12A O.S. § 1-9-515(d).

Comment 2: A record of a mortgage that is effective as a financing statement filed as a fixture filing remains effective until the effectiveness of the mortgage terminates under real property law. See 12A O.S. : 1-9-515(g).

The Report of the 1993 Title Examination Standards Committee: Recommended Standard. Recommendation approved by the Real Property Law Section on November 4, 1993, and adopted by the House of Delegates on November 5, 1993.

The Report of the 2006 Title Examination Standards Committee: Recommended amending Standard 24.9 to reflect amendments made to Article 9 of Oklahoma’s version of the Uniform Commercial Code. Recommendation approved by the Real Property Law Section on November 16, 2006, and adopted by the House of Delegates on November 16, 2006.

24.10 MECHANICS’ AND MATERIALMEN’S LIENS

Unreleased mechanics’, materialmen’s or other improvement liens filed on or after October 1, 1977, shall be disregarded after the lapse of one (1) year from the filing of the lien if no action to foreclose or adjudicate the lien has been instituted. As to such liens filed prior to October 1, 1977, with a promissory note attached, the lien shall be disregarded after the lapse of one (1) year from the maturity of the note if no action to foreclose or adjudicate the lien has been instituted. After October 1, 1977, no clerk is authorized to release these liens, except as provided in 42 O.S. § 147.1. A release of the lien should be required if an action to foreclose or adjudicate the lien was timely instituted.

Authority: 42 O.S. §§ 147.1, 172 and 177.

Caveat: If suit to foreclose or adjudicate the lien is timely instituted and the case is dismissed other than on the merits, or if a judgment in favor of plaintiff is reversed, the plaintiff shall have one (1) year

from the date of dismissal or reversal to institute a new action, 12 O.S. § 100, *Newman v. Kirk*, 164 Okla. 147, 23 P.2d 163 (1933).

The Report of the 1981 Title Examination Standards Committee: Recommended amending Standard. Recommendation approved by the Real Property Law Section and adopted by the House of Delegates in 1981.

The Report of the 1983 Title Examination Standards Committee: Recommended adding the Caveat and the last sentence of Standard. Recommendations approved by the Real Property Law Section on November 3, 1983, and adopted by the House of Delegates on November 4, 1983.

The Report of the 1992 Title Examination Standards Committee: Recommended adding a clause to the third sentence of Standard to respond to the exception created by 42 O.S. § 147. Recommendation approved by the Real Property Law Section on November 12, 1992, and adopted by the House of Delegates on November 13, 1992.

24.11 IMPROPERLY EXECUTED ASSIGNMENTS OF MORTGAGE

If a release of mortgage has been properly executed, recorded and acknowledged, the marketability of the title described in the released mortgage will not be affected by the fact that one (1) or more assignments of the released mortgage appearing of record were not executed and/or acknowledged in accordance with law.

Authority: 16 O.S. § 53.

Comment: This Standard is not intended to cure a situation in which an assignment was not executed by the record holder of the mortgage or where no assignment exists of record so that the ownership of the mortgage cannot be tracked of record, or where the assignment does not contain enough information to establish of record which mortgage is being assigned.

The Report of the 2005 Title Examination Standards Committee: Recommended Standard. Recommendation approved by the Real Property Law Section on November 3, 2005, and adopted by the House of Delegates on November 4, 2005.

The Report of the 2011 Title Examination Standards Committee: Recommended to change the comment to this Standard to clarify the situations that the Standard is addressing. Recommendation approved by the Real Property Law Section on November 3, 2011, and adopted by the House of Delegates on November 4, 2011.

24.12 ASSIGNMENTS TO NOMINEES OR AGENTS

- A. An examiner shall consider the lien of a mortgage held of record by a nominee or agent assigned or released if the assignment or release:
1. Is executed by the nominee or agent, where the beneficial owner or principal is not identified of record; or
 2. Is executed by the nominee or agent in the name of the beneficial owner or principal, where the beneficial owner or principal is identified of record; or
 3. Is executed by the beneficial owner or principal, where the beneficial owner or principal is identified of record, even if the lien of the mortgage is vested of record in the nominee or agent; or
 4. Is executed by either the beneficial owner or the nominee, as nominee, if the lien of the mortgage is vested in both the beneficial owner and the nominee; or
 5. Is executed by either the principal or the agent, if the lien of the mortgage is vested of record in both the principal and the agent.

- B. If the mortgage lien is granted to a person or entity “as nominee” or “as agent,” the lien of the mortgage is vested in such person or entity. If the identity of the beneficial owner or principal is not disclosed of record, then the examiner need not inquire as to the identity of the beneficial owner or principal. In such situations, the examiner may rely on the instruments executed by the nominee or agent as record holder of the mortgage lien.

Comment: In its consideration of this Standard, the Committee has taken notice of the evolving nature of lending practices concerning the wide distribution of interests in the debt represented by mortgage notes and derivative interests created only from various parts of the debt represented by such notes. While the Committee is aware of the old adage that the lien follows the debt, the Committee is also aware that lenders are becoming more apt to designate one (1) party to hold record title to the lien of the mortgage in order to facilitate commerce in these multiple and/or derivative interests in the debt. However, the Committee is also cognizant of the importance placed on the ability of the public to rely on the public record with respect to conveyances of and encumbrances upon real estate. Therefore, in adopting the foregoing Standard, the committee has been diligent in its efforts to balance the facilitation of commerce with the requirement that certain transactions must be fully memorialized in the public record.

The Report of the 2006 Title Examination Standards Committee: Recommended Standard to guide examiners in the situation where mortgages or other instruments are granted or assigned to nominees or agents, including but not necessarily limited to transactions involving the Mortgage Electronic Registration System, Inc. (“MERS”). Recommendation approved by the Real Property Law Section on November 16, 2006, and adopted by the House of Delegates on November 17, 2006.

24.13 STANDING OF NOMINEE OR AGENT

A nominee or agent has standing to bring a cause of action to foreclose the lien of a mortgage, if the agent or nominee remains the record holder of the mortgage lien.

Authority: 12 O.S. § 2017A; *Mortgage Electronic Registration Systems, Inc. v. Azize*, Case No. 2D05-4544 (Fla. App. 2/21/2007); *Greer v. O’Dell*, 305 F.3rd 1297 (11th Cir. 2002).

Comment: An examiner’s opinion of the adequacy of such foreclosure proceedings shall be formed in the same manner as in a review of any other foreclosure action.

The Report of the 2007 Title Examination Standards Committee: Recommended Standard to clarify to examiners what parties have standing to bring a mortgage foreclosure action. Recommendation approved by the Real Property Law Section on November 8, 2007, and adopted by the House of Delegates on November 9, 2007.

24.14 INCOMPLETE MORTGAGE FORECLOSURES

The title to real property shall be deemed marketable regarding a mortgage foreclosure action in which no sheriff’s sale has occurred or, the sheriff’s sale has been vacated or set aside by order of the court, if the following appear in the abstract:

- A. A properly executed and recorded release of all of the mortgages set out in the foreclosure action as to the real property covered by the title examination;
- B. If a statement of judgment or affidavit of judgment has been filed in the land records of the county clerk in the county in which the real property is located evidencing a judgment lien for a money judgment granted in the foreclosure action and the judgment lien has not expired by the passage of time, a release of the

judgment lien filed in the land records of the county clerk in the county in which the real property is located;

- C. (1) A dismissal, with or without prejudice, of the entire mortgage foreclosure action filed in the court case, by the plaintiff and any cross-petitioners, or by court order; or (2) a partial dismissal, with or without prejudice, of the mortgage foreclosure action, filed in the court case, by the plaintiff and any cross-petitioners or by court order, dismissing the action insofar as it relates to or affects the subject real property; and
- D. If a deed-in-lieu of foreclosure has been recorded, the items listed in A, B, and C above, as applicable, and a release of any attorney's lien created pursuant to 5 O.S. § 6.

Authority: 12 O.S. §§ 686 and 706; *Anderson v. Barr*, 1936 OK 471, 62 P.2d 1242; *Bank of the Panhandle v. Irving Hill*, 1998 OK CIV APP 140, 965 P.2d 413; *Mehojah v. Moore*, 1987 OK CIV APP 43, 744 P.2d 222; *White v. Wensauer*, 1985 OK 26, 702 P.2d 15; and *Hub Partners XXVI, Ltd. v. Barnett*, 2019 OK 69.

Comment: In instances in which a proper dismissal of the foreclosure action has been filed, in the court case, the absence of a release of a notice of *lis pendens* of such foreclosure action shall not be deemed to be a defect in the marketability of the title. A release of *lis pendens* is not a substitute for a dismissal of the foreclosure action.

The Report of the 2011 Title Examination Standards Committee: Recommended new Standard be adopted for guidance to a title examiner as to what is required when title is being passed to property that is subject to a pending but incomplete mortgage foreclosure proceeding. Recommendation approved by the Real Property Law Section on November 3, 2011, and adopted by the House of Delegates on November 4, 2011.

The Report of the 2014 Title Examination Standards Committee: Recommended amendment to Standard to add a Paragraph D to outline the required documentation when a deed in lieu of foreclosure is given in settlement of a filed foreclosure action. Recommendation approved by the Real Property Law Section on November 13, 2014, and adopted by the House of Delegates on November 14, 2014.

The Report of the 2020 Title Examination Standards Committee: Recommended the amendment to Standard 24.14 to reflect the effect of *Hub Partners XXVI, Ltd. v. Barnett*, 2019 OK 69.

24.15 ATTORNEY'S LIENS.

A title examiner shall disregard, as extinguished, an attorney's lien on real property, created on or before Thursday, August 21, 2014, pursuant to Title 5 O. S. § 6, unless a Notice of Attorney's Lien had been recorded, on or before Monday, August 24, 2015, in the county clerk's office of the county in which the lien is sought to be preserved.

Authority: 5 O.S. § 6.

Comment: See Title 5 O.S. § 6 for information regarding the procedure to create and extend an attorney's lien on real property initially created on or after Friday, August 22, 2014, being the effective date of the 2014 amendment to the statute by which the requirement for recordation of Notice of Attorney's Lien, outlined above, was promulgated.

The Report of the 2016 Title Examination Standards Committee: Recommended a new Standard to set out the extinguishment date of old attorney's liens and to define how an attorney's lien is to be

preserved. The Real Property Law Section approved the recommendation on November 3, 2016, and the House of Delegates approved the recommendation on November 4, 2016.

24.16 MISSING ASSIGNMENTS OF MORTGAGES

A recorded affidavit, based on the affiant's personal knowledge, containing the following information shall be deemed sufficient to evidence the assignment of a mortgage in a circumstance in which a valid, recordable assignment of the mortgage is not recorded:

- A. Identifying information for the mortgage, including the date of the mortgage, recording information, including book and page or document number, as applicable, and the legal description contained in the mortgage, and
- B. A photocopy of the promissory note or notes which evidence the indebtedness secured by the mortgage, and
- C. A photocopy of proper indorsement of the promissory note or notes in sufficient form to document the transfer of such note(s) by and between the parties who would otherwise appear on the missing assignment of the mortgage, and
- D. A statement by the affiant that the promissory note(s) attached to the affidavit are true and correct copies of the promissory note(s) secured by the mortgage, and
- E. A statement by the affiant that the person or entity shown on the indorsement as the current indorsee/holder on the promissory note(s) is in possession of the note(s) and that such note(s) is either payable to bearer or to such identified person or entity, or, that such person or entity is in possession of the note(s) which has not been indorsed either by special indorsement or blank indorsement, and
- F. A statement by the affiant that an assignment of the mortgage by and between the parties to the promissory note(s) referenced in Paragraph E above is not recorded.

Authority: *Deutsche Bank National Trust Company v. Byrams*, 2012 OK 4; *Engle v. Federal National Mortgage Association* 1956 OK 176; Title 16 O.S. § 82, et. seq.

The Report of the 2017 Title Examination Standards Committee: Recommended a new Standard to give guidance in how to obtain marketable title in a situation where there is a missing assignment in a chain of assignments and the mortgage has been release of record. Recommendation approved by the Real Property Law Section of November 2, 2017, and adopted by the House of Delegates on November 3, 2017.

CHAPTER 25. TAX LIENS

CAVEAT:

1. *The material in this Chapter is subject to comparatively rapid change. Therefore, particular attention should be paid to the date of adoption, as reflected in the history of each Standard.*
2. *In addition, Chapter 25 does not deal with the federal priority statute, 31 U.S.C. § 3713(a).*

25.1 THE GENERAL FEDERAL TAX LIEN

Note: Although the special estate and gift tax liens are treated in Standards 25.2, 25.3, and 25.4, respectively, it is important to remember that such special tax liens are separate liens and are in addition to the general tax lien.

A. Scope

Any federal tax, with any applicable interest, penalties and costs, without notice and from the time of assessment, is a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to the person liable to pay the tax. Although the lien is effective as of the time of assessment, an enforceable general federal tax lien arises only when the following three (3) events have occurred: (1) a tax assessment is made; (2) the taxpayer is given proper notice of the assessment and demand for payment; and (3) the taxpayer fails to pay the assessed taxes within ten (10) days after notice of assessment and demand for payment. The lien is not valid as to any purchaser, holder of a security interest (under federal law, “security interest” means a lien on real or personal property), mechanic’s lienor or judgment lien creditor until notice thereof has been filed for record in the office of the county clerk in which the land is located.

Authority: 26 U.S.C. §§ 6321, 6322 and 6323.

Comment 1: Property subject to the general federal tax lien includes, but is not limited to, the taxpayer’s interest in:

- a. After-acquired property, 42 O.S. § 8; *Glass City Bank of Jeanette, Pa. v. United States*, 326 U.S. 265, 66 S.Ct. 108, 90 L.Ed. 56 (1945).
- b. Property held in joint tenancy, 60 O.S. 1961 § 74; *United States v. Brandenburg*, 106 F. Supp. 82 (S.D. Cal. 1952).
- c. Homestead property, *Tillery v. Parks*, 630 F.2d 775 (10th Cir. 1980) (federal tax liens arising solely through the tax liability of a tax debtor may attach to the tax debtor’s interest in the homestead property owned by the tax debtor) and *United States v. Rodgers*, 461 U.S. 677, 103 S.Ct. 2132, 76 L.Ed. 236 (1983).

Comment 2: Title 26 U.S.C. § 6323(b)(6) provides, in part, that even if notice of lien has been filed, the general federal tax lien will not be valid against the holder of (1) local liens for real property taxes, special assessments and charges for services provided by a government-owned public utility which, under local law, are entitled to priority over security interests which are prior in time to such local liens, assessments and charges; (2) mechanic’s lien for repairs on a personal residence but only to a maximum amount of \$5,000 and only in a building containing not more than four (4) dwelling units; and (3) attorney’s liens to the extent an attorney holds a lien or contract enforceable against a judgment or other amount. Title 26 U.S.C. § 6323(c) provides, in part, a temporary priority for certain types of commercial financing for forty-five (45) days after a tax lien is filed. The relative priority of general federal tax liens against liens securing commercial transactions and financing agreements (including real property construction financing) is fixed by 26 U.S.C. § 6323(d).

Comment 3: The general federal tax lien does not have priority over a purchase money mortgage, *United States v. New Orleans R.R.*, 79 U.S. (12 Wall.) 362, 20 L.Ed. 434 (1870); *Slodov v. United States*, 436 U.S. 238 (1978); *Troyer v. Mundy*, 60 F.2d 818 (8th Cir. 1932).

Comment 4: The general federal tax lien is not valid against any purchaser, holder of a security interest, mechanic's lien or judgment lien creditor until notice thereof has been properly filed:

- a. From 1913 to 1925, federal tax lien notices in Oklahoma were required to be filed in the office of the United States District Court for the judicial district in which the land was located. See Act of March 4, 1913, 37 Stat. 1016, now 26 U.S.C. § 6323(f)(1)(A)(I).
- b. Subsequent to February 14, 1925, notices in Oklahoma have been and are required to be filed in the office of the county clerk of the county in which the land is located. See 26 U.S.C. § 6323(f)(1)(A)(i).
- c. It is not necessary that the notice contain a description of the land thereby affected, Treas. Reg. § 301.6323(f)-1(c); *United States v. Union Central Life Insurance Co.*, 368 U.S. 291, 82 S.Ct. 349, 7 L.Ed. 2d 294 (1961). Note that 19 O.S. § 298 refers to conveyances, etc., but does not pertain to federal tax liens.
- d. Actual knowledge of the assessment of the general federal tax lien does not deprive a purchaser, holder of a security interest, mechanic's lien or judgment lien creditor of priority until the notice of the lien is filed, *United States v. Beaver Run Coal Co.*, 99 F.2d 610 (3rd Cir. 1938). Some courts, though, intimate that actual knowledge may take the place of filing of notice. See annotation at 2 L.Ed. 2d 1845. However, actual knowledge affects the priorities as to securities, motor vehicles, personal property purchased in casual sales, insurance policy loans, passbook loans and commercial transaction financing under the provisions of 26 U.S.C. §§ 6323(b)(1), (2), (4), (10), and 6323(c)(1).

Comment 5: A trustee in bankruptcy is a "judgment creditor" under the terms of 26 U.S.C. § 6323, *United States v. Speers*, 382 U.S. 266, 86 S.Ct. 411, 15 L.Ed. 2d 314 (1965).

Comment 6: Note *United States v. McDermott*, 507 U.S. 448, 113 S.Ct. 1526, 123 L.Ed. 2d 128 (1993), in which a federal tax lien was held to have priority over a previously filed judgment lien with respect to taxpayer's real property acquired after the filing of both liens.

B. Duration

The general federal tax lien continues until it is satisfied or becomes unenforceable by REASON OF LAPSE OF TIME.

The limitation period for such liens is generally as follows:

1. Liens Assessed Prior to November 5, 1990.
 - a. The limitation period for liens assessed prior to November 5, 1990 is six (6) years and thirty (30) days from the date of assessment. As to those liens for which the limitation period of six (6) years and thirty (30) days from date of assessment had run as of November 5, 1990, and for which the lien period had not been extended, suspended or renewed, the lien shall be deemed to have expired.
 - b. As to those liens for which the limitation period of six (6) years and thirty (30) days from date of assessment had not run as of November 5, 1990, the lien period shall be ten (10) years and thirty (30) days from date of the original tax assessment.

2. Liens Assessed On or After November 5, 1990.

As to those liens filed on or after November 5, 1990, the lien period shall be ten (10) years and thirty (30) days from the date of assessment.

Authority: 26 U.S.C. §§ 6322, 6502 and 6503.

Caveat: The elapse of the applicable statutory period for the general federal tax lien does not, in itself, constitute conclusive evidence that the lien has expired. The examiner should be aware of the various methods, set out in the statute, by which the applicable limitation period may be extended or suspended, and the general federal tax lien may be renewed. Examples of some of these methods are set out below.

Comment: The effective period of a lien may be extended, and the running of such period may be suspended. For example, the effective period may have been extended or suspended: (1) by written agreement with the taxpayer. See 26 U.S.C. § 6502(a); (2) by waiver of the statute of limitation by the taxpayer pending acceptance or rejection by the government of a compromise offer; (3) for the period during which assessment or use of creditors' process was prohibited (and while a related proceeding is on the docket of the Tax Court) and for sixty (60) days thereafter. See 26 U.S.C. § 6503(a)(1); (4) for the period during which assets of the taxpayer were in the control or custody of any court and for six (6) months thereafter. See 26 U.S.C. § 6503(b); (5) for the period during which collection is hindered or delayed by the fact that the taxpayer is outside of the United States, if such absence is continuous for a period of at least six (6) months [such period not to expire until six (6) months after the date of return to the United States]. See 26 U.S.C. § 6503(c); (6) for the period, not in excess of two (2) years from the date of instituting bankruptcy or receivership proceedings, to thirty (30) days after the notice from the receiver or other fiduciary is given. See 26 U.S.C. § 6872; (7) for the period equal to the period from the date property of a third party is wrongfully seized or received by the Secretary to the date the Secretary returns the property or the date on which a judgment secure pursuant to 26 U.S.C. § 7426 with respect to such property becomes final, and for thirty (30) days thereafter. See 26 U.S.C. § 6503(f); (8) as to estate taxes, for the period of any extension of time for payment granted under the provisions of 26 U.S.C. § 6161(a)(2) or (b)(2) or under the provisions of 26 U.S.C. §§ 6163 or 6166, 26 U.S.C. § 6503(d); or (9) as to Title 11 cases, for the period during which the Secretary is prohibited by reason of such case from making the assessment and for sixty (60) days thereafter. See 26 U.S.C. § 6503(h).

Various statutory provisions also suspend the running of time on account of military service. See 50 U.S.C. App. § 573; 26 U.S.C. § 7508. The period during which a tax may be collected by levy is not extended or curtailed by reason of a judgment against the taxpayer. See 26 U.S.C. § 6502(a).

A general federal tax lien may be renewed by refileing the Notice of Federal Tax Lien. In order to maintain the enforceability of the lien from date of assessment through the renewal period, a notice of lien must be refiled within the one (1) year period ending thirty (30) days after the expiration of the applicable six (6) or ten (10) year period discussed above. If the Notice of Federal Tax Lien is not refiled during this period, the lien shall be deemed to have expired at the end of the applicable limitation period. Provisions exist in the statute for a second and subsequent renewal of the lien period by a second refileing of the notice of lien within the time periods set out in the statute. See 26 U.S.C. § 6323(g).

Caveat: A notice of lien may be refiled after the last refile date stated on the face of the notice of lien, in instances in which the limitation period on collection after assessment has not expired. In such instances, the notice of lien refiled after the last stated refileing date shall be effective from the date of such refileing. See 26 U.S.C. § 6325(f)(2).

C. Release and Discharge

A certificate of release, discharge, subordination or non-attachment of any internal revenue lien generally may be relied upon by a bona fide purchaser, holder of a security interest, mechanic's lien or judgment lien creditor for value, as conclusive that the entire lien has been released or that the lands described in the certificate have been discharged from the tax lien.

Authority: 26 U.S.C. § 6325(f).

Comment 1: The issuance of such a certificate is not conclusive in all cases that the lien is extinguished. The certificate may be revoked for reasons cited in 26 U.S.C. § 6325(f)(2). It is not conclusive that the tax liability has been paid and, in the hands of the taxpayer, such property may still be subject to a lien upon notice and refiling. See 26 U.S.C. § 6325(f)(3). Reliance by the taxpayer upon such certificate is a mistake of law by which the government may not be stopped, *Miller v. Commissioner*, 23 T.C. 565 (1954), *aff'd.*, 231 F.2d 8 (5th Cir. 1956). In the hands of a transferee as defined in 26 U.S.C. § 6901, the property may still be subject to tax liability, *Commissioner v. Angier Corp.*, 50 F.2d 887 (1st Cir. 1931), *cert. denied*, 284 U.S. 673, 52 S.Ct. 129, 76 L.Ed. 569 (1931).

Comment 2: A certificate of release of a lien may be issued if either of the conditions set forth in 26 U.S.C. § 6325(a)(1) or (2) is met.

Comment 3: A certificate of discharge of property may be issued if any of the conditions set forth in 26 U.S.C. § 6325(b)(1), (2), or (3) is met.

Comment 4: A certificate of subordination may be issued if the conditions set forth in 26 U.S.C. 6325(d)(1), (2), or (3) is met.

Comment 5: A certificate of non-attachment may be issued where, because of a confusion of names or otherwise, a notice of lien has been filed, and the lien is clouding title to property belonging to a person other than the taxpayer. See 26 U.S.C. § 6325(e).

The Report of the 1986 Title Examination Standards Committee: Recommended Standard be amended completely. Recommendation approved by the Real Property Law Section on November 20, 1986, and adopted by the House of Delegates on November 21, 1986.

The Report of the 1994 Title Examination Standards Committee: Recommended amending Section "B" of Standard to reflect 1990 amendments to the Internal Revenue Code and adding Comment 6 to Section "A". Recommendation approved by the Real Property Law Section on November 17, 1994, and adopted by the House of Delegates on November 18, 1994.

The Report of the 1995 Title Examination Standards Committee: Recommended amending Comment 1.C of Standard to clarify the synopsis of the case holding cited there. Recommendation approved by the Real Property Law Section on November 9, 1995, and adopted by the House of Delegates on November 10, 1995.

The Report of the 2003 Title Examination Standards Committee: Recommended adding Part 3 to the introductory Caveat to Standard 25.1.A, and various amendments to both clarify and reflect changes in federal law. Recommendations approved by the Real Property Law Section on November 13, 2003, and adopted by the House of Delegates on November 14, 2003.

25.2 THE FEDERAL ESTATE TAX LIEN

A. Scope

The total estate tax ultimately determined to be due in respect of the gross estate of a decedent is a lien in favor of the United States upon such gross estate, except that part of such gross estate as is used for the payment of charges against the estate and expenses of its administration allowed by any court having jurisdiction thereof. Said lien attaches immediately upon death and without notice.

Authority: 26 U.S.C. §§ 2031-2044, 2056 and 6324(a).

Comment 1: Types of property, as defined by federal law, which may be in the gross estate but not in the probate estate include but are not limited to: insurance upon the life of the decedent with respect to which the decedent possessed any incident of ownership; property owned jointly or by the entirety; property subject to a power of appointment; property which decedent transferred during decedent's lifetime, but in which decedent retained certain incidents of ownership and transfers taking effect at death. The taxable estate may be increased by taxable gifts made after December 31, 1976.

Comment 2: The federal estate tax lien is not valid as against a mechanic's lien or, subject to the conditions provided in 26 U.S.C. § 6323(b), any other lien or security interest described in 26 U.S.C. § 6323(b); See 26 U.S.C. § 6324(c)(1).

Comment 3: The provisions of 26 U.S.C. § 2204 relating to discharge of fiduciary from personal liability do not operate as a release of any part of the gross estate from the lien for any deficiency that may thereafter be determined to be due, unless such part of the gross estate (or any interest therein) has been transferred to a purchaser or a holder of a security interest, in which case such part (or such interest) is not subject to a lien or to any claim or demand for any such deficiency, but the lien attaches to the consideration received from such purchaser or holder of a security interest, by the heirs, legatees, devisees or distributees.

B. Duration

The federal estate tax lien continues as a lien on all of the property in which the decedent's gross estate (except that part of such gross estate as is used for the payment of charges against the estate and expenses of its administration, allowed by any court having jurisdiction thereof) for ten (10) years from the date of death or until it becomes unenforceable by reason of lapse of time.

Authority: 26 U.S.C. § 6324(a)(1).

Comment 1: The granting of a request for an extension of time for filing the return or paying the tax will prolong the period for assessment and may create a later lien under the general federal tax lien (see Standard 25.1). See 26 U.S.C. § 6503(d).

Comment 2: Such requests are authorized under 26 U.S.C. § 6161(a)(2), for reasonable cause; 26 U.S.C. § 6163, reversionary or remainder interest; 26 U.S.C. § 6166, interest in closely held business; 26 U.S.C. § 6081, automatic six (6)-month extension of time for filing return.

Comment 3: The duration of the estate tax lien may be limited to ten (10) years regardless of any government collection action, *United States v. Cleavenger*, 517 F.2d 230 (7th Cir. 1975), but see *United States v. Saleh*, 514 F.Supp. 8 (D.N.J. 1981) (holding that an estate tax lien can be enforced more than ten (10) years after the decedent's death when the foreclosure action is filed within the ten-year period).

C. Divestiture or Release

Lands included in a decedent's estate sold to pay charges and expenses are divested of the federal estate tax lien to the extent that the proceeds are used to pay charges and expenses allowed by the district court, provided no notice of a general federal tax lien has been filed/recorded in the county clerk's office.

Authority: 26 U.S.C. § 6324(a)(1).

Comment 1: The divesting of the estate tax lien depends upon a question of fact: were the proceeds of the sale used for the payment of allowed charges and expenses? Hence, preservation of evidence of the actual disposition of the proceeds of the sale is essential.

Comment 2: Release of estate tax liens or discharge of property from such liens can be secured for sales during administration if the tax has been fully satisfied or otherwise provided for, 26 U.S.C. § 6325 (a) and (b). Applications for release or discharge should be made to the District Director, Attention: Estate and Gift Tax; See 26 U.S.C. § 6325(c).

Comment 3: Probate files should contain the Estate Tax Closing Letter [IRS form letter 627(SC)(Rev. 9-83)] and, if proof of settlement of the federal estate tax is required by a title examiner or other interested party, such proof should be made by a copy of said letter together with canceled check(s) or receipt(s) showing payment of the net estate tax set forth in said letter and interest and penalties (if any).

Comment 4: A certificate of non-attachment may be issued where, because of a confusion of names or otherwise, a notice of lien has been filed, and the lien is clouding title to property belonging to a person other than the taxpayer. See 26 U.S.C. § 6325(e).

The Report of the 1986 Title Examination Standards Committee: Recommended Standard be amended completely. Recommendation approved by the Real Property Law Section on November 20, 1986, and adopted by the House of Delegates on November 21, 1986.

The Report of the 2011 Title Examination Standards Committee: Recommended amending the Caveat and the last sentence of the Standard to update the authority for the federal estate tax marital deduction. Recommendation approved by the Real Property Law Section on November 3, 2011, and adopted by the House of Delegates on November 4, 2011.

25.3 FEDERAL ESTATE TAX SPECIAL LIENS UNDER 26 U.S.C. § 6324A AND § 6324B

Federal law provides in two (2) situations for a special federal estate tax lien in lieu of the regular federal estate tax lien. In the case of real property valued for federal estate tax purposes at its current use value pursuant to an election under 26 U.S.C. § 2032A, the special estate tax lien attributable to the enhanced value based upon highest and best use continues until the lien is satisfied, becomes unenforceable by reason of lapse of time, or until it is established to the satisfaction of the Secretary that no further tax liability may arise under 26 U.S.C. § 2032A(c) with respect to such property.

In the case of an estate which has elected to pay taxes on a deferred basis in installments under 26 U.S.C. § 6166, the special estate tax lien attributable to the deferred taxes plus certain interest continues until satisfied or until unenforceable by reason of lapse of time. Such special lien continues notwithstanding the issuance of an estate tax closing letter and evidence of payment of tax shown thereon. The special federal estate tax lien is in lieu of the regular estate tax lien.

If notice of the special lien is not filed in the office of the county clerk of the county where the land is located by the Director of Internal Revenue or his delegate, the lien is not perfected and no release shall be necessary.

Authority: 26 U.S.C. §§ 2032A, 6166, 6324A, and 6324B.

Comment: Effective for estates of decedents dying after December 31, 1976, the Tax Reform Act of 1976 allows a personal representative to elect to value real property used for farming or in a closely held business, by the decedent or a member of decedent's family on the date of the decedent's death, based on its current value as a farm or in the closely held business rather than on the basis of its potential "highest and best" use for other purposes. The "qualified use" valuation cannot reduce the gross estate by more than \$750,000; the maximum reduction amount was \$500,000 prior to 1981, \$600,000 in 1981, and \$700,000 in 1982.

When the personal representative elects under 26 U.S.C. § 2032A to value real property used for farming or in a closely held business on the basis of its current value, a lien equal to the adjusted tax difference attributable to the interest attaches to the property. The adjusted tax difference is the difference between the estate tax liability and what the liability would have been had the election not been made. The amount attributable to the interest is an amount that bears the same ratio to the adjusted tax difference as the excess of the fair market value of the property over the special value bears to the excess of the fair market value of all qualified property over the special value of all qualified property. Qualified replacement property purchased after an involuntary conversion of qualified real property is also subject to the special lien.

The lien continues until the tax benefits are recaptured or potential liability ends. See 26 U.S.C. § 6324(b).

The special lien can be subordinated if it is determined that the interests of the United States will be adequately secured after the subordination. See 26 U.S.C. § 6325(d)(3).

The estate tax closing letter does not disclose that an election under 26 U.S.C. § 2032A has been made; however, the Internal Revenue Service generally files a lien for the adjusted tax difference.

Under 26 U.S.C. § 6166, as amended by the Economic Recovery Tax Act of 1981, an estate of a decedent dying after 1981 may defer estate taxes for up to fourteen (14) years if the value of the decedent's closely held business interest exceeds thirty-five percent (35%) of the adjusted gross estate. The estate makes only annual interest payments during the first four (4) years and pays the balance in ten (10) annual installments of principal and interest. See 26 U.S.C. § 6166. When the time to pay the estate tax has been extended under 26 U.S.C. § 6166, or under 26 U.S.C. § 6166A in the case of decedents dying before 1982, the personal representative can elect a lien for the taxes attributable to the closely-held business under 26 U.S.C. § 6324A in lieu of the regular estate tax lien under 26 U.S.C. § 6324A(a). All persons having an interest in the property must sign a written agreement consenting to the creation of the lien and designating an agent for dealing with the I.R.S. See 26 U.S.C. § 6324A(c). The lien arises when the personal representative is discharged from liability and continues until the deferred amount is paid or becomes unenforceable through lapse of time. See 26 U.S.C. § 6324A(2) and (3).

The Report of the 1986 Title Examination Standards Committee: Recommended Standard be amended completely. Recommendation approved by the Real Property Law Section on November 20, 1986, and adopted by the House of Delegates on November 21, 1986.

25.4 THE FEDERAL GIFT TAX LIEN

A. Scope

The federal gift tax lien attaches at the date of the gift to all property transferred by a donor to a donee.

Authority: 26 U.S.C. § 6324(b).

Comment 1: This lien is a “secret” lien since it does not require recording to be effective.

Comment 2: The federal gift tax lien is not valid as against a mechanic’s lien or, subject to the conditions provided in 26 U.S.C. § 6323(b), any other lien or security interest described in 26 U.S.C. § 6323(b). See 26 U.S.C. § 6324(c)(1).

Comment 3: If the gift tax is not paid when due, the donee of any gift during that same calendar year is personally liable for the tax to the extent of the value of the gift, even though no gift tax was due with respect to the property transferred to such donee, *LaFortune v. Commissioner*, 263 F.2d 186 (10th Cir. 1958); *Bauer v. Commissioner*, 145 F.2d 338 (3rd Cir. 1944).

Comment 4: This lien is in addition to, and not in lieu of, the general federal tax lien available under 26 U.S.C. §6321 [Treas. Reg. § 301.6324-1(d)].

B. Duration

The federal gift tax lien continues until it becomes unenforceable by lapse of time or for ten (10) years after the date of the gift.

Authority: 26 U.S.C. § 6324(b).

Comment 1: This lien is a “secret” lien since it does not require recording to be effective.

Comment 2: The federal gift tax lien is not valid as against a mechanic’s lien or, subject to the conditions provided in 26 U.S.C. § 6323(b), any other lien or security interest described in 26 U.S.C. § 6323(b). See 26 U.S.C. § 6324(c)(1).

Comment 3: If the gift tax is not paid when due, the donee of any gift during that same calendar year is personally liable for the tax to the extent of the value of the gift, even though no gift tax was due with respect to the property transferred to such donee, *LaFortune v. Commissioner*, 263 F.2d 186 (10th Cir. 1958); *Bauer v. Commissioner*, 145 F.2d 338 (3rd Cir. 1944).

Comment 4: This lien is in addition to, and not in lieu of, the general federal tax lien available under 26 U.S.C. §6321 [Treas. Reg. § 301.6324-1(d)].

C. Divestiture

Any part of the gift transferred by the donee (or by a transferee of the donee) to a purchaser or holder of a security interest is divested of the federal gift tax lien; such lien, to the extent of the value of the gift, attached to all the property (including after-acquired property) of the donee (or the transferee) except any part transferred to a purchaser or holder of a security interest.

Authority: 26 U.S.C. § 6324(b).

Comment: The lien is removed, unless discharged by payment or lapse of ten (10) years, only by a transfer to a bona fide purchaser or mortgagee for an adequate and full consideration in money or money’s worth. To the extent property is thereby divested of the lien, the lien attaches to all the property of the donee including after-acquired property, except to the extent transferred to a bona fide purchaser or mortgagee for an adequate and full consideration in money or money’s worth [Treas. Regs. § 301.6324-1(b)].

The Report of the 1986 Title Examination Standards Committee: Recommended Standard be amended completely. Recommendation approved by the Real Property Law Section on November 20, 1986, and adopted by the House of Delegates on November 21, 1986.

25.5 OKLAHOMA ESTATE TAX LIEN

For deaths occurring on or after January 1, 2010, no Oklahoma estate tax lien attaches to the property of the decedent.

For deaths occurring prior to January 1, 2010, the Oklahoma estate tax lien is extinguished upon the expiration of ten (10) years from the date of death of the decedent unless prior thereto the Oklahoma Tax Commission causes a tax warrant to be filed of record in the County where the decedent owned property. In that case, the Oklahoma estate tax lien shall continue as a lien for a period of ten (10) years on all property which was part of the decedent's gross estate not otherwise exempt by the law in any county where the tax warrant was filed until a release of the tax warrant is issued and filed of record. Prior to the release or extinguishment of any such tax warrant, the Oklahoma Tax Commission may refile the tax warrant in the office of the county clerk. A tax warrant so refiled shall constitute and be evidence of the state's lien upon the title to any interest in real property until released or for a maximum of ten (10) years from the date of the refiled tax warrant.

Absent an unreleased tax warrant of record which has not expired, no release or order exempting estate tax liability is required for any of the decedent's property to be marketable.

See also TES 25.6 (B).

Authority: 68 O.S. §§ 231 and 234; 68 O.S. § 804.1 and OAC 710:35-3-9.

History: The original Standard was adopted December 2, 1950, without number designation. The Standard became 29.

The Report of the 1980 Title Examination Standards Committee: Recommended the language following the words "tax liability" in the body of the Standard be substituted for previously used language, that the Statute cited in Authority be changed from 68 O.S. § 989m to the present citation, that the cited opinion of the Attorney General be added to Authority and that a sentence referring to the issuance of certificates by the Oklahoma Tax Commission be deleted from Comment. Recommendation approved by the Real Property Law Section on December 3, 1980, and adopted by the House of Delegates on December 5, 1980.

The Report of the 1996 Title Examination Standards Committee: Recommended amending Standard to correlate more closely with the Statute. Recommendation approved by the Real Property Law Section on November 14, 1996, and adopted by the House of Delegates on November 15, 1996.

The Report of the 2006 Title Examination Standards Committee: Recommended amending Part "B" of Standard to reflect the amendment of 68 O.S. § 815(C) which became effective on November 1, 2006. Recommendation approved by the Real Property Law Section on November 16, 2006, and adopted by the House of Delegates on November 16, 2006.

The Report of the 2008 Title Examination Standards Committee: Recommended amending Standard 25.5 to reflect the Oklahoma Legislature's repeal of the Oklahoma estate tax, effective January 1, 2010. Recommendation approve by the Real Property Law Section on November 20, 2008, and adopted by the House of Delegates on November 21, 2008.

The Report of the 2015 Title Examination Standards Committee: Recommended Caveat be added as preamble to Standard 17.4 to reflect the uncertainty as to whether estate tax liens would attach to real property for deaths that occurred less than ten (10) years prior to the repeal of the Oklahoma Estate Tax as January 1, 2010, and were not barred by limitations on the effective date of the repeal of the Oklahoma estate tax and all statutes relating to the attachment and release of liens arising from payment of estate taxes due under the estate tax statutes prior to their repeal. Recommendation

approved by the Real Property Law Section on November 5, 2015, and adopted by the House of Delegates on November 5, 2015.

The Report of the 2017 Title Examination Standards Committee: Recommended the amendment to Caveat to reflect new legislation concerning the attachment, duration and release of Oklahoma Tax Liens on deaths occurring prior to January 1, 2010. Recommendation approved by the Real Property Law Section of November 2, 2017, and adopted by the House of Delegates on November 3, 2017.

The Report of the 2020 Title Examination Standards Committee: Recommended the amendment to Standard 25.5 to reflect the passage of ten (10) years since the repeal of the Oklahoma Estate Tax.

25.6 OKLAHOMA TAX WARRANTS

A. Warrants Issued by the Oklahoma Employment Security Commission

The filing of a warrant issued by the Oklahoma Employment Security Commission in the county clerk's office shall constitute and be evidence of the state's lien upon the title to any interest in real property in that county owned by the employer against whom such warrant is issued. This lien shall remain in effect on real property until released or for a maximum of ten (10) years after the date of its filing.

Authority: 40 O.S. §§ 3-501, 3-502, and 3-503.

B. Warrants Issued by the Oklahoma Tax Commission

The filing of a warrant issued by the Oklahoma Tax Commission in the county clerk's office on or after October 1, 1979, or in the court clerk's office before October 1, 1979, shall constitute and be evidence of the state's lien upon the title to any real property in that county owned by the taxpayer against whom such warrant is issued.

This lien shall remain in effect upon the title to any interest in real property until released or for a maximum of ten (10) years from the date of its filing. However, the liens created by the filing of tax warrants filed prior to November 1, 1989, will remain valid until November 1, 2001.

Prior to the release or extinguishment of any such tax warrant, the Oklahoma Tax Commission may refile the tax warrant in the office of the county clerk. A tax warrant so refiled shall constitute and be evidence of the state's lien upon the title to any interest in real property until released or for a maximum of ten (10) years from the date of the refiled tax warrant.

Authority: 68 O.S. §§ 231 and 234; *State ex rel. Oklahoma Tax Commission v. Emery*, 645 P.2d 1048 (Okla. App. 1982); *Ladd v. State ex rel. Oklahoma Tax Commission*, 688 P.2d 59 (Okla. 1984).

Comment: 68 O.S. §§ 231 and 234 were last amended effective July 1, 2003, and the limitation of a one-time filing by the Oklahoma Tax Commission has now been removed. Consequently, as long as the Oklahoma Tax Commission refiles the tax warrant in the office of the county clerk prior to the expiration of the ten (10) year period created by the original filing or any proper refiling, the lien shall continue for an additional ten (10) years after the date upon which the warrant was refiled by the county clerk.

Examples: The Oklahoma Tax Commission ("OTC") filed a tax warrant on October 30, 1989. The lien created thereby is valid until only November 1, 2001 (because the tax warranty was filed prior to November 1, 1989), unless it is refiled prior to November 1, 2001.

The OTC filed a tax warrant on November 2, 1989. The lien created thereby is valid only until November 2, 1999, unless it is refiled prior to November 2, 1999.

The OTC filed a tax warrant on January 2, 1992. The lien created thereby is valid only until January 2, 2002, unless it is refiled prior to January 2, 2002.

The Report of the 1996 Title Examination Standards Committee: Recommended new Standard. Recommendation approved by the Real Property Law Section on November 14, 1996, and adopted by the House of Delegates on November 15, 1996.

The Report of the 1998 Title Examination Standards Committee: Recommended Standard by correcting and adding the date prior to which statutes permitted the warrant to be filed in the county clerk's office to give notice and after which the filing had to be made in the county clerk's office. Recommendation approved by the Real Property Law Section on November 12, 1998, and adopted by the House of Delegates on November 13, 1998.

The Report of the 2000 Title Examination Standards Committee: Recommended amending Standard to bring it into compliance with 68 O.S. §§ 231 and 234 as amended. Recommendation approved by the Real Property Law Section on November 16, 2000, and adopted by the House of Delegates on November 17, 2000.

The Report of the 2013 Title Examination Standards Committee: Recommended amending Standard 25.6 to accurately reflect the provisions of the latest amendments to 68 U.S. §§ 231 and 234. Recommendation approved by the Real Property Law Section on November 15, 2013, and adopted by the House of Delegates on November 16, 2013.

25.7 GIFT TAXES, OKLAHOMA

Repealed.

The Report of the 2020 Title Examination Standards Committee: Recommended the repeal of Standard 25.7 to reflect the passage of ten (10) years since the repeal of the Oklahoma Estate Tax.

CHAPTERS 26-28. RESERVED FOR FUTURE USE

ARTICLE IV: CURATIVE ACTS

CHAPTER 29. SIMPLIFICATION OF LAND TITLES ACT

29.1 REMEDIAL EFFECT

The Simplification of Land Titles Act, 16 O.S. §§ 61-63, 66 (§§ 64-65 repealed effective April 10, 1980), is remedial in character and should be relied upon with respect to such claims or imperfections of title as fall within its scope.

Authority: *Lane v. Travelers Inc. Co.*, 230 Iowa 973, 299 N.W. 553 (1941); *Wichelman v. Messner*, 250 Minn. 88, 83 N.W.2d 800, 71 A.L.R.2d 816 (1957); L. Simes & C. Taylor, *The Improvement of Conveyances by Legislation* 271 (1960); P. Basye, *Clearing Land Titles* § 374 (1953), and § 182 (1962 Pock. Part); Patton & Palomar on Land Titles § 563 (3d ed. 2003); Ashabranner, *An Introduction to Oklahoma's First Comprehensive Land Title Simplification Law*, 14 Okla. L. Rev. 516 (1961).

Comment 1: The Simplification of Land Titles Act is similar to a recording statute. It is similar to the marketable title acts adopted in Michigan, Minnesota, Iowa, and other states, which have been held constitutional on the grounds that the Legislature, which has the power to pass recording statutes originally, can amend or alter those statutes and require recording or the filing of a notice of claim to give notice of existing interests, and can extinguish claims of those who fail to re-record, *Lane v. Travelers Ins. Co.*, 230 Iowa 973, 299 N.W. 553 (1941); *Wichelman v. Messner*, 250 Minn. 88, 83 N.W.2d 800, 71 A.L.R.2d 816 (1957); L. Simes & C. Taylor, *The Improvement of Conveyancing by Legislation*, 271 (1960); P. Basye, *Clearing Land Titles*, § 374 (1953), and § 186 (2d ed. 1970); J. Palomar, Patton & Palomar on Land Titles § 563 (3d ed. 2002). In many situations the Simplification Act operates against defects made in the past by parties trying to complete the transaction correctly but who failed to do so in every detail. It will give effect to the intentions of the parties which were bona fide. Usually a full consideration was paid. To this extent, the results will be those of a curative statute. A similar curative statute in Oklahoma, 16 O.S. § 4, has been held constitutional, *Saak v. Hicks*, 321 P.2d 425 (Okla. 1958). In a few situations, the Act will operate against defects considered jurisdictional. In the past, a statute of limitations, with its requirements of adverse possession, followed by a suit to quiet title was considered necessary to eliminate jurisdictional defects. The Simplification Act provides a new and additional method by invalidating the claim and creating marketable title unless claimant files notice of claim within the time provided in the Act (or is in actual possession of the land). Since the Act protects the rights of claimants in actual possession as against a purchaser, the reasoning in *Williams v. Bailey*, 268 P.2d 868 (Okla. 1954), reading a requirement for adverse possession into the tax recording statute, is not applicable.

Comment 2: Where a seller does not have a marketable title due to defects for which the Act affords protection to a "purchaser for value," and no notice has been filed as required by the Act, the attorney for the purchaser may advise the purchaser that a purchase for value will afford protection of the Act and that such a purchaser will acquire a valid and marketable title, provided no one is in possession claiming adversely to the seller.

The Report of the 1962 Title Examination Standards Committee: Recommended adopting Standard. Recommendation approved by the Real Property Law Section and adopted by the House of Delegates on November 29, 1962.

29.2 PROTECTION AFFORDED BY THE ACT

The Simplification of Land Titles Act, 16 O.S. §§ 61-63, 66 (§§ 64-65 repealed effective April 10, 1980), protects any purchaser for value, with or without actual or constructive notice, from one claiming under a conveyance or decree recorded or entered for ten (10) years or more in the county, as against adverse claims arising out of:

- A. (1) Conveyances of incompetent persons unless the county or court records reflect a determination of incompetency or the appointment of a guardian; (2) corporate conveyances to an officer without authority; (3) conveyances executed under recorded power of attorney which has terminated for reasons not shown in the county records; (4) non-delivery of a conveyance.
- B. Guardian's or personal representative's conveyances approved or confirmed by the court as against (1) named wards; (2) the State of Oklahoma or any other person claiming under the estate of a named decedent, the heirs, devisees, representatives, successors, assigns or creditors.
- C. Decrees of distribution or partition of a decedent's estate as against the estates of decedents, the heirs, devisees, successors, assigns or creditors. For decrees of distribution or partition which cover land in a county other than the county in which such decrees are entered and recorded, 16 O.S. § 62(C)(2) does not require that they also be recorded in the county in which the land is located.
- D. (1) Sheriff's or marshal's deeds executed pursuant to an order of court having jurisdiction over the land; (2) final judgments of courts determining and adjudicating ownership of land or partitioning same; (3) receiver's conveyances executed pursuant to an order of any court having jurisdiction; (4) trustee's conveyances referring to a trust agreement or named beneficiaries or indicating a trust where the agreement is not of record; (5) certificate tax deeds or resale tax deeds executed by the county treasurer, as against any person, or the heirs, devisees, personal representatives, successors or assigns of such person, who was named as a defendant in the judgment preceding the sheriff's or marshal's deed, or determining and adjudicating ownership of or partitioning land, or settlor, trustee or beneficiary of a trust, and owners or claimants of land subject to tax deeds, unless claimant is in possession of the land, either personally or by a tenant, or files a notice of claim prior to such purchase, or within "one year from October 17, 1961, the effective date of 16 O.S. §§ 61-66 or from October 1, 1973, the effective date of 16 O.S. § 62 as amended in 1973." The State of Oklahoma and its political subdivisions or a public service corporation or transmission company with facilities installed on, over, across, or under the land are deemed to be in possession.

Authority: 16 O.S. §§ 62 and 66.

The Report of the 1962 Title Examination Standards Committee: Recommended adoption of Standard. Recommendation approved by the Real Property Law Section and adopted by the House of Delegates on November 29, 1962.

The Report of the 1980 Title Examination Standards Committee: Recommended amending Standard to reflect the broadening effect made in legislative changes of 1973 and 16 O.S. § 62, 51 O.B.J. 2726, 2728. The Real Property Law Section, on December 3, 1980, made some changes in style but also deleted the word "county" before "court records" in "A.(1)" and added the last sentence in "C." Recommendations approved by the Real Property Law Section on December 3, 1980, and adopted by the House of Delegates on December 5, 1980, as amended.

29.2.1 RELIANCE ON CERTIFICATE TAX DEED OR RESALE TAX DEED

A title examiner may rely, without further requirement, on a certificate tax deed or resale tax deed as a conveyance of the real property described in such deed, provided:

- A. Title to such real property is, or has been, held of record by a purchaser for value who acquired such title from or through the grantee in such tax deed; and
- B. Such certificate tax deed or resale tax deed has been of record in the county in which the land is situated for a period of not less than ten (10) years.

Authority: 16 O.S. § 62(d).

Caveat: The title acquired via a certificate tax deed or resale tax deed may be subject to the interest of any person in possession of the land claiming title adversely to the title acquired through such deed. See 16 O.S. § 62(d). Also see the following unpublished case: *Johnson v. August*, 2005 OK CIV APP 97.

Caveat: See *Davis v. Mayberry*, 2010 OK CIV APP 94, which applies to tax deeds affecting restricted members of the Five Civilized Tribes.

The Report of the 2007 Title Examination Standards Committee: Recommended new Standard to give examiners guidance regarding when a certificate tax deed or resale tax deed may be relied upon without further requirement. Recommendation approved by the Real Property Law Section on November 8, 2007, and adopted by the House of Delegates on November 9, 2007.

The Report of the 2012 Title Examination Standards Committee: Recommended amending Standard 29.1 to add a Caveat to direct examiners to the holding in *Davis v. Mayberry* in situations where there are tax deeds affecting restricted members of the Five Civilized Tribes. Recommendation approved by the Real Property Law Section on November 15, 2013, and adopted by the House of Delegates on November 16, 2013.

29.3 PURCHASER FOR VALUE

“Purchaser for value” within the meaning of the Simplification of Land Titles Act, 16 O.S. §§ 61-63, 66 (§§ 64-65 repealed effective April 10, 1980), refers to one who has paid value in money or money’s worth. It does not refer to a gift or transfer involving a nominal consideration.

Authority: *Noe v. Smith*, 67 Okla. 211, 169 P. 1108, L.R.A. 1918C, 435 (1917); *Exchange Bank of Perry v. Nichols*, 196 Okla. 283, 164 P.2d 867 (1945).

Comment: The title acquired by a “purchaser for value,” within the meaning of the Simplification of Land Titles Act, will descend or may be devised or transferred without involving “value” and without loss of the benefits of the Act.

The Report of the 1962 Title Examination Standards Committee: Recommended adopting Standard. Recommendation approved by the Real Property Law Section, and adopted by the House of Delegates on November 29, 1962.

29.4 CONVEYANCE OF RECORD

“Conveyance of record” within the meaning of the Simplification of Land Titles Act, 16 O.S. §§ 61-63, 66 (§§ 64-65 repealed effective April 10, 1980), includes a recorded warranty deed, deed, quit claim deed, mineral deed, mortgage, lease, oil and gas lease, contract of sale, easement or right-of-way deed, or agreement.

Authority: 16 O.S. § 61(a).

Comment: The definition of a conveyance of record should not be less than the definition of an interest in real estate in 16 O.S. § 61(a).

The Report of the 1962 Title Examination Standards Committee: Recommended adopting Standard. Recommendation approved by the Real Property Law Section and adopted by the House of Delegates on November 29, 1962.

29.5 EFFECTIVE DATE OF THE ACT

The Simplification of Land Titles Act became effective October 27, 1961. Notices under the Act required to be filed within one (1) year from the effective date of the Act must be filed for record in the county clerk's office in the county or counties where the land is situated, on or before October 26, 1962.

Authority: 16 O.S. §§ 62 and 63.

Comment: An adverse claimant may avoid the effects of the Act by being in possession of the land, either personally or by tenant, or by filing the notice of claim required in Section 63, within ten (10) years of the recording of the conveyance, or entry (or recording) of the decree under which the claim of valid and marketable title is to be made, or within one (1) year of the effective date of the Act, whichever date occurs last. The filing of the notice of claim takes the interest or claim out from under the operations of the Act.

The Report of the 1962 Title Examination Standards Committee: Recommended adopting Standard. Recommendation approved by the Real Property Law Section, and adopted by the House of Delegates on November 29, 1962.

29.6 ABSTRACTING

Abstracting relating to court proceedings under the Simplification of Land Title Act, 16 O.S. § 62(b), (c) and (d), when the instruments have been entered or recorded for ten (10) years or more, as provided in the statute, shall be considered sufficient when there is shown the following in the abstract:

- A. In sales by guardians or personal representatives, the deed and order confirming the sale;
- B. In probate and partition proceedings in District Court, the final decree and estate tax clearance unless not required by 58 O.S. § 912 or 68 O.S. § 815(d), or unless the estate tax lien is barred;
- C. In general jurisdiction court sales under execution the judgment, the deed, the court order directing the delivery thereof and proof of service of the notice of the pendency of such action on the Superintendent of the Five Civilized Tribes, now Area Director of the Five Civilized Tribes, and Election Not to Remove, if any;
- D. In general jurisdiction court partitions, or adjudications of ownership, the final judgment, any deed of partition, any court order directing the delivery thereof and proof of service of the notice of the pendency of such action on the Superintendent of the Five Civilized Tribes, now Area Director of the Five Civilized Tribes, and Election Not to Remove, if any;
- E. Any pleading in which an attorney's lien is claimed by the attorney for a party that is awarded an interest in the property.

The abstractor can make in substance the following notation: "other proceedings herein omitted by reason of 16 O.S. § 61 et seq., and Title Examination Standards Chapter 29.

The Report of the 1983 Title Examination Standards Committee: Recommended substantial change in Paragraph "B" of Standard. Recommendation was approved by the Real Property Law Section on November 3, 1983, and adopted by the House of Delegates on November 4, 1983.

The Report of the 2013 Title Examination Standards Committee: Recommended Standard 29.6 be amended to provide what is required to be shown concerning certain court proceedings to make the

Standard consistent with the provisions of the Simplification of Land Title Act. Recommendation approved by the Real Property Law Section on November 15, 2013, and adopted by the House of Delegates on November 16, 2013.

CHAPTER 30. MARKETABLE RECORD TITLE ACT

30.1 REMEDIAL EFFECT

The Marketable Record Title Act is remedial in character and should be relied upon as a cure or remedy for such imperfections of title as fall within its scope.

Authority: Marketable Record Title Act, 16 O.S. §§ 71-80; L. Simes & C. Taylor, Model Title Standards, Standard 4.1 at 24 (1960); P. Basye, Clearing Land Titles §§ 186 and 574 (2d ed. 1970); J. Palomar, Patton & Palomar on Land Titles § 563 (3d ed. 2003); L. Simes & C. Taylor, The Improvement of Conveyancing by Legislation 253 (1960); L. Simes, *The Improvement of Conveyancing: Recent Developments*, 34 O.B.J. 2357 (1963); “Comment,” Oklahoma Title Standard 29.1. The following cases sustain the constitutionality of marketable title acts: *Bennett v. Whitehouse*, 690 F. Supp. 955 [(W.D. Okla. 1988) (MRTA is constitutional and self-executing; rejecting *Anderson v. Pickering*, 541 P.2d 1361 (Okla. App. 1975))]; *Presbytery of Southeast Iowa v. Harris*, 226 N.W. 2d 232 (Iowa 1975), certiorari denied 423 U.S. 830, 96 S. Ct. 50, 46 L.Ed.2d 48 (1975) (statute does not unconstitutionally deprive vested rights); *Wichelman v. Messner*, 250 Minn. 88, 83 N.W.2d 800 (1957) (Marketable Title Act constitutional; notice and quiet title action not required to invoke the statute); *Lane v. Travelers Ins. Co.*, 230 Iowa 973, 299 N.W. 553 (1941); Annot., “Marketable Title Statutes,” 71 A.L.R.2d 846 (1960); Opinion No. 67-444 of the Attorney General of Oklahoma, dated March 21, 1968, 39 O.B.J. 593-595 (1968).

Caveat: A previous Caveat to this Standard expressed the possibility that the federal courts might consider the Marketable Record Act to be a statute of limitations within the meaning of § 2 of the Act of April 12, 1926, 44 Stat. 239. If those courts should so hold, then the Marketable Record Title Act’s provisions could be relied upon to have barred remedies to protect interests held by restricted Indians of the Five Civilized Tribes.

The Oklahoma Supreme Court held in *Mobbs v. City of Lehigh*, 655 P.2d 547, 551 (Okla. 1982) that the Marketable Record Title Act was not a statute of limitations. The court said that, unlike a statute of limitations which barred the *remedy*, the Marketable Record Title Act had, as its target, the *right* itself.

The Report of the 1988 Title Examination Standards Committee: Recommended substituting a new “Caveat” to reflect the decision in the *Mobbs* case cited therein. Recommendation approved by the Real Property Law Section on December 8, 1988, and adopted by the House of Delegates on December 9, 1988.

The Report of the 2002 Title Examination Standards Committee: Recommended amending the “Authority” to bring current the authorities supporting the Standard. Recommendation approved by the Real Property Law Section on November 21, 2002, and adopted by the House of Delegates on November 22, 2002.

30.2 REQUISITES OF MARKETABLE RECORD TITLE

A Marketable Record Title under the Marketable Record Title Act exists only where:

1. A person has an unbroken chain of title of record extending back at least thirty (30) years; and
2. Nothing appears of record purporting to divest such person of title.

Note: See next two (2) Standards for a further statement regarding these two (2) requirements.

Authority: 16 O.S. §§ 71 and 72; L. Simes & C. Taylor, Model Title Standards, Standard 4.2, at 24 (1960). See 16 O.S. §§ 71, 72, 74 and 78 as to law which became effective on July 1, 1972.

The Report of the 1975 Real Property Law Section: Recommended change from “forty” to “thirty” and the deletion of the former last sentence of the Standard which referred to the amendment of the Marketable Record Title Act changing the period from forty (40) to thirty (30) years. The recommendation was adopted by the House of Delegates.

30.3 UNBROKEN CHAIN OF TITLE OF RECORD

“An unbroken chain of title of record,” within the meaning of the Marketable Record Title Act, may consist of (1) a single conveyance or other title transaction which purports to create an interest and which has been a matter of public record for at least thirty (30) years; or (2) a connected series of conveyances or other title transactions of public record in which the root of title has been a matter of public record for at least thirty (30) years.

Authority: 16 O.S. § 71(a) and (b); L. Simes & C. Taylor, Model Title Standards, Standard 4.3, at 25 (1960).

Comment: Assume “A” is the grantee in a deed recorded in 1975 and that nothing affecting the described land has been recorded since then. In 2005, “A” has an “unbroken chain of title of record.” Instead of a conveyance, the title transaction may be a decree of a district court or court of general jurisdiction, which was entered in the court records in 1975. Likewise, in 2005, “A” has an “unbroken chain of title of record.”

Instead of having only a single link, “A’s” chain of title may contain two (2) or more links. Thus, suppose “X” is the grantee in a deed recorded in 1975; and “X” conveyed to “Y” by deed recorded in 1985; “Y” conveyed to “A” by deed recorded in 2000. In 2005 “A” has an “unbroken chain of title of record.” Any or all of these links may consist of decrees of a district court or court of general jurisdiction instead of deeds of conveyance.

The significant time from which the thirty (30) year record title begins is not the delivery of the instrument, but the date of its recording. Suppose the deed to “A” is delivered in 1975 but recorded in 1985. “A” will not have an “unbroken chain of title of record” until 2015.

Decrees of a court in a county other than where the land lies do not constitute a root of title until recorded in the county in which the land lies.

For a definition of “root of title,” see Marketable Record Title Act, 16 O.S. § 78(e).

The Report of the 2010 Title Examination Standards Committee: Recommended amending the Comments to the Standard to modernize the Comments and demonstrate how the exemptions given are applicable to current fact situations. The recommendation was approved by the Real Property Committee on November 18, 2010, and adopted by the House of Delegates on November 19, 2010.

30.4 MATTERS PURPORTING TO DIVEST

Matters “purporting to divest” within the meaning of the Marketable Record Title Act are those matters appearing of record which, if taken at face value, warrant the inference that the interest has been divested.

Authority: 16 O.S. § 72(d); L. Simes & C. Taylor, Model Title Standards, Standard 4.4, at 26-27 (1960).

Comment: The obvious case of a recorded instrument purporting to divest is a conveyance to another person. 'A' is the grantee in a deed recorded in 1965. The record shows a conveyance of the same tract by 'A' to 'B' in 1975. Then 'B' deeds to 'X' in 2007. Although 'B' had a thirty-year record chain of title in 1995, the deed to 'X' purports to divest it, and "B," thereafter, does not have a title.

A recorded instrument may also purport to divest even though there is not a complete chain of record title connecting the grantee in the divesting instrument with the thirty-year chain. Suppose 'A' is the last grantee in a recorded chain of title, the last deed of which was recorded in 1975. A deed of the same land was recorded in 1985, from "X" to "Y", which recites that "A" died intestate in 1981 and the "X" is "A's" only heir. There is nothing else on record indicating that "X" is "A's" heir. The deed recorded in 1985 is one "purporting to divest" within the terms of the Act. This is the conclusion to be reached whether the recital of heirship is true or not.

Or suppose, again, that "A" is the last grantee in a chain of title, the last deed of which was recorded in 1965. A deed to the same land from "X" to "Y" was recorded in 1975, which contains the following recital: "being the same land heretofore conveyed to me by "A." There is no instrument on record from "A" to "X". This instrument is nevertheless one "purporting to divest" within the terms of the Act.

Suppose that in 1975, "A" was the last grantee in a recorded chain of title, the deed to "A" being recorded in that year. A deed of the same land was recorded in 1985, signed: "A by B, attorney-in-fact." Even though there is no power of attorney on record, and even though the recital is untrue, the instrument is one "purporting to divest" within the terms of the Act.

Suppose that "A" is the last grantee in a recorded chain of title, the last deed of which was recorded in 1935. In 1975 there was recorded a deed to "Y" from "X," a stranger to the title, which recited that "X" and "X's" predecessors have been "in continuous, open, notorious and adverse possession of said land as against all the world for the preceding thirty (30) years." This is an instrument "purporting to divest" "A" of "A's" interest, within the terms of the Act.

On the other hand, an inconsistent deed on record, is not one "purporting to divest" within the terms of the Act, if nothing on the record purports to connect it with the thirty-year chain of title. The following fact situations illustrate this.

"A" is the last grantee in a recorded chain of title, the last deed of which was recorded in 1965. A warranty deed of the same land from "X" to "Y" was recorded in 1975. The latter deed is not one "purporting to divest" within the terms of the Act.

"A" is the last grantee in a recorded chain of title, the last deed of which was recorded in 1965. A mortgage from "X" to "Y" of the same land, containing covenants of warranty, is recorded in 1975. The mortgage is not an instrument "purporting to divest" within the terms of the Act.

Although the recorded instruments in the last two (2) illustrations are not instruments "purporting to divest" the thirty (30) year title, they are not necessarily nullities. The Marketable Record Title can be subject to interests, if any, arising from such instruments. See 16 O.S. § 72(d).

The Report of the 2010 Title Examination Standards Committee: Recommended amending the Comments to Standard to modernize the comments and demonstrate how the exemptions given are applicable to current fact situations. Recommendation approved by the Real Property Committee on November 18, 2010, and adopted by the House of Delegates on November 19, 2010.

30.5 INTERESTS OR DEFECTS IN THE THIRTY-YEAR CHAIN

If the recorded title transaction which constitutes the root of title, or any subsequent instrument in the chain of record title required for a marketable record title under the terms of the Act, creates interests in third parties or creates defects in the record chain of title, then the marketable record title is subject to such interests and defects.

Authority: 16 O.S. § 72(a) and (d); L. Simes & C. Taylor, Model Title Standards, Standard 4.6, at 28-29 (1960).

Comment: This Standard is explainable by the following illustrations:

1. In 1975, a deed was recorded conveying land from “A”, the owner in fee simple absolute, to “B and B’s heirs so long as the land is used for residence purposes,” thus creating a determinable fee in “B” and reserving a possibility of reverter in “A”. In 1985, a deed was recorded from “B” to “C” and “C’s heirs so long as the land is used for residence purposes,” this conveyance being subject to a possibility of reverter in “A”. In 2005, “C” has a marketable record title to a determinable fee which is subject to “A’s” possibility of reverter.
2. Suppose, however, that in 1975, a deed was recorded conveying a certain tract of land from “A”, the owner in fee simple absolute, to “B and B’s heirs so long as the land is used for residence purposes;” and suppose, also, that in 1978 a deed was recorded by “B” to “C and C’s” heirs, conveying the same tract in fee simple absolute, in which no mention was made of any special limitation or of “A’s” possibility of reverter. There being no other instruments of record in 2008, “C” has a marketable record title in fee simple absolute. “C’s” root of title is the deed from “B” to “C” and not the deed from “A” to “B”; and there are no interests in third parties or defects created by the “muniments of which such chain of record title is formed.”

A general reference to interests prior to the root of title is not sufficient unless specific identification is made to a recorded title transaction. See 16 O.S. § 72(a).

The Report of the 2010 Title Examination Standards Committee: Recommended amending the Comments to the Standard to modernize the comments and demonstrate how the exemptions given are applicable to current fact situations. Recommendation approved by the Real Property Law Section on November 18, 2010, and adopted by the House of Delegates on November 19, 2010.

30.6 FILING OF NOTICE

A marketable record title is subject to any interest preserved by filing a notice of claim in accordance with the terms of Sections 74 and 75 of the Marketable Record Title Act.

Authority: 16 O.S. §§ 74 and 75; L. Simes & C. Taylor, Model Title Standards, Standard 4.7, at 29-30 (1960).

Comment: Suppose “A” was the grantee in a chain of record title of a tract of land, a deed to which was recorded in 1960. In 1962, a mortgage of the same land from “A” to “X” was recorded. In 1966, a mortgage of the same land from “A” to “Y” was recorded. In 1978, a deed of the same land from “A” to “B” in fee simple absolute was recorded, which made no mention of the mortgages. In 2007, “Y” recorded a notice of “Y’s” mortgage, as provided in Sections 74 and 75 of the Act. “X” did not record any notice. In 2008, “B” had a marketable record title, which is subject to “Y’s” mortgage, but not to “X’s” mortgage. “B’s” root of title is the 1978 deed. Therefore, “X” and “Y” had until 2008 to record a notice for the purpose of preserving their interests. If “X” had filed a notice after 2008, it would have been a nullity, since “X’s” interest was already extinguished.

The filing of a notice may be a nullity not only because it comes too late, but also because it concerns a subject matter not within the scope of the statute. Thus, recorded notices of real estate commissions claimed or other charges which do not constitute liens on the property have no effect under the Act. See 16 O.S. § 72(b).

The Report of the 2010 Title Examination Standards Committee: Recommended amending Comments to Standard to modernize the comments and demonstrate how the exemptions given are applicable to current fact situations. Recommendation approved by the Real Property Law Section on November 18, 2010, and adopted by the House of Delegates on November 19, 2010.

30.7 THIRTY-YEAR POSSESSION IN LIEU OF FILING NOTICE

If an owner of a possessory interest in land under a recorded title transaction (1) has been in possession of such land for a period of thirty (30) years or more after the recording of such instrument; and (2) such owner is still in possession of the land, any Marketable Record Title, based upon an independent chain of title, is subject to the title of such possessory owner, even though such possessory owner has failed to record any notice of such possessory owner's claim.

Authority: 16 O.S. §§ 72(d) and 74(b); L. Simes & C. Taylor, Model Title Standards, Standard 4.8, at 30-31 (1960).

Comment: The kind of situation which gives rise to this Standard is suggested by the following illustration. "A" was the last grantee in a chain of record title to a tract of land, by a deed recorded in 1975. There were no subsequent instruments of record in this chain of title. "A" has been in possession of the land since 1975 and continues in possession, but has never filed any notice as provided in Section 74 of the Marketable Record Title Act. A deed of the same land, unconnected with "A's" chain of title, from "X" to "Y" was recorded in 1976; no other instruments with respect to this land appearing of title. On the other hand, "A" had a marketable record title in 2005, but in 2006, according to Section 72(d), it is subject to "Y's" marketable record title. Thus, the relative rights of "A" and of "Y" are determined independently of the Act, since the interest of each is subject to the other's deed. "A's" interest being prior in time, and "Y's" deed being merely a "wild deed," under common law principles "A's" title should prevail.

Under 16 O.S. § 74(b), possession cannot be "tacked" to eliminate the necessity of recording a notice of claim.

History: Adopted December 1964.

The Report of the 2010 Title Examination Standards Committee: Recommended amending Comments to Standard to modernize the comments and demonstrate how the exemptions given are applicable to current fact situations. Recommendation approved by the Real Property Law Section on November 18, 2010, and adopted by the House of Delegates on November 19, 2010.

30.8 EFFECT OF ADVERSE POSSESSION

A marketable record title is subject to any title by adverse possession which accrues at any time subsequent to the effective date of the root of title, but not to any title by adverse possession which accrued prior to the effective date of the root of title.

Authority: 16 O.S. §§ 72(c) and 73; L. Simes & C. Taylor, Model Title Standards, Standard 4.9, at 31 (1960).

Comment: [Assume the period for title by adverse possession is fifteen (15) years.]

1. "A" is the grantee of a tract of land in a deed which was recorded in 1950. In the same year, "X" entered into possession claiming adversely to all the world and continued such adverse possession until 1966. In 1967, a deed conveying the same land from "A" to "B" was recorded. No other instruments concerning the land appearing of record, "B" has a marketable record title in 1997, which extinguished "X's" title by adverse possession acquired in 1965.
2. Suppose "A" is the grantee of a tract of land in a deed which was recorded in 1965. In 1991, "X" entered into possession claiming adversely to all the world and continued such adverse possession until the present time. No other instruments concerning the land appearing of record in 1995, "A" had a marketable record title, but it was subject to "X's" adverse possession and when "X's" period for title by adverse possession was completed in 2006, "A's" title was subject to "X's" title by adverse possession.

The Report of the 2010 Title Examination Standards Committee: Recommended amending Comments to Standard to modernize the comments and demonstrate how the exemptions given are applicable to current fact situations. Recommendation approved by the Real Property Law Section on November 18, 2010, and adopted by the House of Delegates on November 19, 2010.

30.9 EFFECT OF RECORDING TITLE TRANSACTION DURING THIRTY-YEAR PERIOD

The recording of a title transaction subsequent to the effective date of the root of title has the same effect in preserving any interest conveyed as the filing of the notice provided for in Section 74 of the Act.

Authority: 16 O.S. § 72(d); L. Simes & C. Taylor, Model Title Standards, Standard 4.10, at 32-33 (1960).

Comment: This Standard is operative both where there are claims under a single chain of title and where there are two (2) or more independent chains of title. The following illustrations show how it operates:

1. Suppose "A" is the grantee of a tract of land in a deed which was recorded in 1960. A mortgage of this land executed by "A" to "X" was recorded in 1965. In 1970, a deed conveying the land from "A" to "B" was recorded, this deed making no reference to the mortgage to "X". In 1999, an instrument assigning "X's" mortgage to "Y" was recorded. In 2000, "B" had a marketable record title. But it was subject to the mortgage held by "Y" because the assignment of the mortgage was recorded less than thirty (30) years after the effective date of "B's" root of title. If, however, "Y" had recorded the assignment in 2001, the mortgage would already have been extinguished in 2000 by "B's" marketable title; and recording the assignment in 2001 would not revive it.
2. Suppose a tract of land was conveyed to "A", "B" and "C" as tenants in common, the deed being recorded in 1960. Then in 1965, "A" and "B" conveyed the entire tract in fee simple to "D" and the deed was at once recorded. In 1985, "D" conveyed to "E" in fee simple, and the deed was at once recorded. No mention of "C's" interest was made in either the 1965 or 1985 deeds. Nothing further appearing of record, "E" had a marketable record title to the entire tract in 1995. This extinguished "C's" undivided one-third (1/3) interest.
3. Suppose the same facts, but assume also that in 1996, "C" conveyed "C's" one-third (1/3) interest to "X" in fee simple, the deed being at once recorded. This does not help "C" any. "C's" interest, having been extinguished in 1995, is not revived by this conveyance.
4. Suppose "A," being the grantee in a regular chain of record title, conveyed to "B" in fee simple in 1960, the deed being at once recorded. Then in 1965, "X," a stranger to the title, conveyed to "Y" in fee

simple, and the deed was at once recorded. In 1985, “Y” conveyed to “Z” in fee simple, and the deed was at once recorded. Then suppose in 1987 “B” conveyed to “C” in fee simple, the deed being at once recorded. In 1995, “Z” and “C” each have a marketable record title, but each is subject to the other. Hence, neither extinguishes the other, and the relative rights of the parties are determined independently of the Act. “C’s” title, therefore, should prevail.

5. Suppose, however, that the facts were the same except that “B” conveyed to “C” in 1997 instead of 1987. In that case, “Z’s” marketable record title extinguished “B’s” title in 1995, thirty (30) years after the effective date of “Z’s” root of title, and “B’s” title is not revived by the conveyance in 1997.

The Report of the 2010 Title Examination Standards Committee: Recommended amending Comments to Standard to modernize the comments and demonstrate how the exemptions given are applicable to current fact situations. Recommendation approved by the Real Property Law Section on November 18, 2010, and adopted by the House of Delegates on November 19, 2010.

30.10 QUIT CLAIM DEED OR JUDICIAL DECREE IN THIRTY-YEAR CHAIN

A recorded quit claim deed or a recorded judiciary decree can be a root of title or a link in a chain of title for purposes of a thirty-year record title under the Marketable Record Title Act.

Authority: 16 O.S. §§ 71 and 78(e) and (f); L. Simes & C. Taylor, Model Title Standards, Standard 4.11, at 33-34 (1960).

Comment: The Marketable Record Title Act defines “root of title” as a title transaction “purporting to create the interest claimed.” See Section 78(e). “Title transaction” is defined to include a variety of transactions, among which is title by quit claim deed, by will and by descent. See Section 78(f).

A quit claim deed can be a root of title to the interest it purports to create. Suppose there is a break in the chain of title, and the first instrument after the break is a quit claim deed. Assume that the first recorded instrument in the chain of title is a patent from the United States to “A”, recorded in 1890, and that the next is a warranty deed from “A” to “B” in fee simple, recorded in 1940. Then, in 1975 there is a quit claim deed from “C” to “D” purporting to convey “the above described land” to “D” in fee simple. Further, assume that there are no other recorded title transactions or notices after this deed and that “D” is in possession, claiming to be the owner in fee simple. Under the Marketable Record Title Act, the 1975 deed is the root of title and purports to create a fee simple in “D”. Therefore, in 2005, “D” has a good title in fee simple.

Clearly the quit claim deed can be a link in a chain of record title under the provisions of the Act. See Sections 71 and 78(f). If it can be an effective link, it must necessarily follow that it can be an effective “root” to the interest it purports to create.

The Report of the 2010 Title Examination Standards Committee: Recommended amending Comments to Standard to modernize the comments and demonstrate how the exemptions given are applicable to current fact situations. Recommendation approved by the Real Property Law Section on November 18, 2010, and adopted by the House of Delegates on November 19, 2010.

The Report of the 2017 Title Examination Standards Committee: Recommended an amendment to Standard 30.10 to make clear that a Judicial Decree and not merely a residuary clause in a will could be used as part of a chain of title. Recommendation approved by the Real Property Law Section of November 2, 2017, and adopted by the House of Delegates on November 3, 2017.

30.11 THIRTY-YEAR ABSTRACT

The Marketable Record Title Act has not eliminated the necessity of furnishing an abstract of title for a period in excess of thirty (30) years.

Authority: 16 O.S. § 76; L. Simes & C. Taylor, Model Title Standards, Standard 4.12, at 35 (1960).

Comment: Section 76 of the Act names several interests which are not barred by the Act, to-wit: the interest of a lessor as a reversioner; mineral or royalty interests; easements created by a written instrument; subdivision agreements; interests of the U.S., etc. These record interests may not be determined by an examination of the abstract for a period of no more than thirty (30) years.

Furthermore, in all cases, the abstract must go back to the conveyance or other title transaction which is the “root of title;” and it will rarely occur that this instrument was recorded precisely thirty (30) years prior to the present time. In nearly every case, the period from the recording of the “root of title” to the present, will be somewhat more than thirty (30) years.

30.12 EFFECTIVE DATE OF THE ACT

The Marketable Record Title Act became effective September 13, 1963. The two (2) year period for filing notices of claim under Section 74 expired September 13, 1965. The Act was amended March 27, 1970, by reducing the forty (40) year period to thirty (30) years, effective July 1, 1972. If the thirty (30) year period expired prior to March 27, 1970, such period was extended to July 1, 1972, and notices of claim could be filed to and including that date.

Authority: As to the original “forty (40) years” Statute, 1963 Okla. Sess. Laws, ch. 31, §§ 4, 5 and 11. As to the present “thirty (30) years” Statute, 16 O.S. §§ 74, 75, and 1970 Okla. Sess. Laws, ch. 92 § 7.

Comment: Remainders, long term mortgages and other non-possessory interests prior to the root of title should be reviewed to see if a notice of claim is required. Also, if the owner is out of possession and the owner has recorded no instruments or other title transactions during the preceding thirty (30) years, consideration should be given to filing a notice of claim.

Prior non-possessory interests may be preserved by reference in an instrument or other title transaction recorded subsequent to the root of title. But the reference must specifically identify a recorded transaction. A general reference is not sufficient. See 16 O.S. § 72(a).

30.13 ABSTRACTING

On September 18, 1996, the State Auditor and Inspector issued Declaratory Ruling 96-1, which rejected the concept of “thirty-year” abstracts and prohibited abstractors from preparing abstracts under this standard after May 1, 1996. Abstracts, compiled and certified on or before May 1, 1996, may still be used as a base abstract when a separate supplemental abstract has been prepared.

For historical reference, base abstracts created in reliance of this standard prior to May 1, 1996 under the Marketable Record Title Act are sufficient for examination purposes when the following is shown in the abstract:

- A. The patent, grant or other conveyance from the government.
- B. The following title transactions occurring prior to the first conveyance or other title transactions in “C” below: easements or interests in the nature of an easement; unreleased leases with indefinite terms such as oil and gas leases; unreleased leases with terms which have not expired; instruments or

proceedings pertaining to bankruptcies; use restrictions or area agreements which are part of a plan for subdivision development; any right, title or interest of the United States.

- C. The conveyance or other title transaction constituting the root of title to the interest claimed, together with all conveyances and other title transactions of any character subsequent to said conveyance or other title transaction; or if there be a mineral severance prior to said conveyance or other title transaction, then the first conveyance or other title transaction prior to said mineral severance, together with all conveyances and other title transactions of any character subsequent to said conveyance or other title transaction.
- D. Conveyances, title transactions and other instruments recorded prior to the conveyance or other title transaction in "C" which are specifically identified in said conveyance or other title transaction or any subsequent instrument shown in the abstract.
- E. Any deed imposing restrictions upon alienation without prior consent of the Secretary of the Interior or a federal agency, for example, a Carny Lacher deed.
- F. Where title stems from a tribe of Indians or from a patent where the United States holds title in trust for an Indian, the abstract shall contain all recorded instruments from inception of title other than treaties except (1) where there is an unallotted land deed or where a patent is to a freedman or inter-married white member of the Five Civilized Tribes, in which event only the patent and the material under "B", "C", "D" and "E" need be shown; and (2) where a patent is from the Osage Nation to an individual and there is of record a conveyance from the allottee and a Certificate of Competency, only the patent, the conveyance from the allottee, the Certificate of Competency, certificate as to degree of blood of the allottee and the material under "B", "C", "D" and "E" need be shown.

The abstractor shall state on the caption page and in the certificate of an abstract compiled under this Standard:

"This abstract is compiled in accordance with Oklahoma Title Standard No. 30.13 under 16 O.S. §§ 71-80."

Authority: 16 O.S. §§ 71-80, 46 O.S. § 203, and Oklahoma Title Examination Standard 24.7.

Comment 1: The purpose of this Standard is to simplify title examination and reduce the size of abstracts.

Comment 2: Deeds, mortgages, affidavits, caveats, notices, estoppel agreements, powers of attorney, tax liens, mechanic liens, judgments and foreign executions recorded prior to the first conveyance or other title transaction in "C" and not referred to therein or subsequent thereto and also probate, divorce, foreclosure, partition and quiet title actions concluded prior to the first conveyance or other title transaction in "C" are to be omitted from the abstract.

Comment 3: Interests and defects prior to the first conveyance or other title transaction in "C" are not to be shown unless specifically identified. The book and page of the recording of a prior mortgage is required to be in any subsequent deed or mortgage to give notice of such prior mortgage. See 46 O.S. § 203 and Title Standard 24.7. Specific identification of other instruments requires either the book and page of recording or the date and place of recording or such other information as will enable the abstractor to locate the instrument of record.

Comment 4: Abstracting under this Standard should also be in conformity with Title Standard 29.6.

The Report of the 1982 Title Examination Standards Committee: Recommended amend Standard. Recommendation approved by the Real Property Law Section on December 2, 1982, and adopted by the House of Delegates on December 3, 1982.

The Report of the 2011 Title Examination Standards Committee: Recommended amending Standard to make clear that a so-called thirty (30) year abstract which was compiled prior to the State Auditor and Inspectors Declaratory Order 96-1 may still be used as a base abstract when a separate supplemental abstract has also been prepared. Recommendation approved by the Real Property Law Section on November 3, 2011, and adopted by the House of Delegates on November 4, 2011.

The Report of the 2020 Title Examination Standards Committee: Recommended amending Standard 30.13 to clarify previous subparagraph G and move such language to the beginning of the Standard.

30.14 FEDERAL COURT PROCEEDINGS

- A. Pre-1958: For lands under examination which are located in any of the counties located in the multi-county jurisdiction of a federal district court, there must be a federal district court certificate covering from inception of title (i.e., Sovereignty) to August 19, 1958.
- B. 1958-1977: For lands under examination which are located in the same county where the federal district court is located, there must be a federal district court certificate covering from August 20, 1958 to September 30, 1977.
- C. Post-1977: For any lands under examination, there is no need for a separate federal district court certification for the period after September 30, 1977.

Authority: 12 O.S. § 2004.2: (A); 16 O.S. § 76(A); 28 U.S.C. § 1964; *Guaranty State Bank of Okmulgee v. Pratt*, 1919 OK 120, 180 P. 376; *Orton v. Citizens State Bank*, 1929 OK 332, 291 P. 15; *Bowman v. Bowman*, 1949 OK 70, 206 P.2d 582; *Hart v. Pharoh*, 1961 OK 45, 359 P.2d 1074; *Mobbs v. City of Lehigh*, 1982 OK 149, 655 P.2d 547; *McClaskey v. Barr*, 48 F. 130, 7 Ohio F. Dec. 55, (November 10, 1891); *Stewart v. Wheeling & Lake Erie Ry.*, 53 Ohio St. 151, 41 N.E. 247 (1895); *City of Mankato v. Barber Asphalt Paving Co.*, 142 F. 329 (8th Cir. 1905); *United States v. Calcasieu Timber Co.*, 236 F. 196 (5th Cir. 1916); *Wilkin v. Shell Oil Company*, 197 F.2d 42 (10th Cir. 1951); *Tilton v. Cofield*, 93 U.S. 163 (1876); *Erie R.R. v. Thompkins*, 304 U.S. 64 (1938); Astle, Dale L., 32 Oklahoma Law Review 812 (1979), “An Analysis of the Evolution of Oklahoma Real Property Law Relating to Lis Pendens and Judgment Liens.”

Comment: Although the thirty (30) year Marketable Record Title Act (16 O.S. §§ 71 to 79) may eliminate the impact of some of the matters in the federal district court arising in the earlier period of time (i.e., pre-1977), the express exceptions to the extinguishing effect of the MRTA (e.g., “easements,” and “any right, title or interest of the United States by reason of failure to file the notice herein required”) cause such matters to continue to impact the title in the present.

The Report of the 2000 Title Examination Standards Committee: Recommended adopting Standard to evidence the fact that the constructive notice aspects of federal court matters are the same for all counties in Oklahoma. Recommendation approved by the Real Property Law Section on November 16, 2000, and adopted by the House of Delegates on November 17, 2000.

The Report of the 2013 Title Examination Standards Committee: Recommended Standard be amended to reflect what an examiner needs to have included in the abstract to be able to render an accurate opinion on the status of Title 83 O.B.J. 2211. Recommendation approved by the Real Property Law Section on November 15, 2013, and adopted by the House of Delegates on November 16, 2013.

The Report of the 2015 Title Examination Standards Committee: Recommended amendment to Comment to Standard 30.14 to accurately reflect the operation of the Market Record Title Act has on

certain interests of the Federal government. Recommendation approved by the Real Property Law Section on November 5, 2015, and adopted by the House of Delegates on November 5, 2015.

CHAPTER 31. FEDERAL NON-JUDICIAL MORTGAGE FORECLOSURE

31.1 SINGLE FAMILY FORECLOSURE ACT OF 1994

The title examiner should consider a federal non-judicial mortgage foreclosure proceeding, regarding a mortgage covering a one (1) to four (4) family residence and held by the United States Secretary of Housing and Urban Development ("HUD"), to have been completed in compliance with the Single Family Foreclosure Act of 1994 ("Act") if the following have been recorded in the office of the county clerk in the county in which the land is located:

1. Notice of Default and Foreclosure Sale ("Notice"), which Notice must be filed with the county clerk not less than twenty-one (21) days prior to the foreclosure sale, and must set out the information specified in the Act, including information regarding:
 - a. The name and address of the foreclosure commissioner; and
 - b. The date the Notice is issued; and
 - c. The names of the HUD Secretary, the original mortgagee, if not the Secretary, and the original mortgagor; and
 - d. The street address and legal description of the property; and
 - e. The date of the mortgage; and
 - f. The book and page of recording of the mortgage and the office in which recorded; and
 - g. A description of the default upon which foreclosure is based; and
 - h. The date, time, and place of the foreclosure sale; and
 - i. A statement that the foreclosure sale is conducted pursuant to 12 U.S.C. §§ 3751, *et seq.*; and
 - j. A description of costs to be paid by the purchaser upon conveyance of title; and
 - k. The amount and method of deposit required at the foreclosure sale and the time and method of payment of the balance of the purchase price.
2. Deed executed by the foreclosure commissioner to the purchaser.
3. Affidavit containing certain recitals required by the Act (unless the recitals are set out in the deed to the purchaser, as allowed by the Act), which recitals must set out:
 - a. The date, time, and place of the foreclosure sale, which sale must be a public auction to be held between 9:00 A.M. and 4:00 P.M. and shall be conducted within the county where the property is located at the place where real estate auctions are customarily held, or at a courthouse or at the site of the property; and
 - b. That the mortgage was held by HUD; and
 - c. The date of the mortgage, together with the book and page of recording and office in which the mortgage was recorded; and
 - d. The particulars regarding service of the Notice, which Notice must be sent by the foreclosure commissioner, to the parties designated in the Act, by certified or registered mail, with return receipt, not less than twenty-one (21) days prior to foreclosure sale; and
 - e. The date and place of filing of the Notice; and
 - f. A statement that the foreclosure was conducted in accordance with the provisions of the Act and with the terms of the Notice; and
 - g. The sale amount.

Authority: 12 U.S.C. §§ 3751, *et seq.*

Comment 1: The Act deems the service of the Notice to be sufficient, whether or not received by the addressee and whether or not a return receipt is received or the Notice is returned. See 12 U.S.C. § 3758(2)(c).

Comment 2: Although the Act requires publication of the Notice in a newspaper of general circulation in the county once each week for three (3) consecutive weeks prior to the foreclosure sale, the Act does not require recordation of the publisher's proof of publication of such Notice.

Comment 3: A purchaser at the foreclosure sale is presumed to be a bona fide purchaser. See 12 U.S.C. § 3763(d).

Comment 4: No right of redemption exists following completion of the foreclosure. See 12 U.S.C. § 3763(e).

Comment 5: The TES Committee, as of the date of creation of the above title examination Standard, is not aware of any court decision determining the constitutionality of the Act.

Comment 6: A separate act for federal non-judicial mortgage foreclosure exists for multi-family property entitled "Multi-family Mortgage Foreclosure Act of 1981." See 12 U.S.C. §§ 3701, *et seq.*

The Report of the 1998 Title Examination Standards Committee: Recommended new Standard as a result of Congress' adoption of 12 U.S.C. § 3751 *et seq.* and its use in Oklahoma by the U.S. Department of Housing and Urban Development. Recommendation approved by the Real Property Law Section on November 12, 1998, and adopted by the House of Delegates on November 13, 1998.

CHAPTERS 32-33. RESERVED FOR FUTURE USE

ARTICLE V: MISCELLANEOUS

CHAPTER 34. BANKRUPTCIES

34.1 BANKRUPTCIES PRIOR TO OCTOBER 1, 1979

With respect to bankruptcy proceedings commenced prior to October 1, 1979, where title to real property is held by a bankrupt (sometimes referred to as “debtor”) at the time of the commencement of bankruptcy proceedings, the title examiner should be furnished with and review copies or abstract of the following instruments:

- A. Where the property is claimed as exempt:
 - 1. Order Approving Bond of Trustee;
 - 2. Trustee’s Report (or inventory) of exempt property setting forth the legal description of the property; and
 - 3. Order Approving Trustee’s Report of Exempt Property, or a certification by either the clerk of the bankruptcy court or an abstractor that no objection to the Trustee’s Report has been filed within fifteen (15) days of the filing of such report, or within such additional time as allowed by the bankruptcy court within such fifteen (15) day period.

Authority: Bankruptcy Rule 403(b), (c) and (e); 31 O.S. §§ 2-3.

- B. Where the property, not claimed as exempt, is abandoned or disclaimed by the Trustee:
 - 1. Order Approving Bond of Trustee;
 - 2. Any of the following:
 - a. Application by the Trustee to disclaim the property as burdensome, and the Order granting the Application; or
 - b. Application by any other interested party for an order directing such disclaimer by the Trustee, and the Order Granting the Application; or
 - c. An Order, entered upon the bankruptcy court’s own initiative, directing the abandonment of such property by the Trustee; and
 - 3. Disclaimer by the Trustee setting forth the legal description of the property.

Authority: Bankruptcy Rule 608; 11 U.S.C. § 44(g); *Bowman v. Towery*, 248 P.2d 1030 (Okla. 1952).

- C. Where the property is not claimed as exempt and is sold by the Trustee:
 - 1. Order Approving Bond of Trustee, which should be recorded with the county clerk where the property is located; and
 - 2. All of the following instruments:
 - a. Petition to sell real property;
 - b. Notice to creditors of such sale; such notice must be given at least ten (10) days prior to the sale, unless a shorter period is evidenced by an order of the bankruptcy court. Such notice (or the waiver thereof) must be shown by:
 - i. Any of the following:
 - (a) If notice was given by mailing, an affidavit or certificate by the bankruptcy court clerk of the mailing of notice to creditors; or

- (b) If notice was given by publication, an affidavit or certificate of such publication notice; or
- (c) If notice was given by both mailing and publication, an affidavit or certificate by the bankruptcy court clerk of such mailing, and an affidavit or certificate of such publication notice.
- ii. Or an order by the bankruptcy court for immediate sale without notice.
- c. An affidavit or certificate of notice to the public of the date, time, place and subject of the sale, in accordance with local bankruptcy court rules (such notice is not required for private sales, however, if a private sale is shown, the examiner must be furnished with the order by the bankruptcy court authorizing that such sale be private);
- d. Order of Sale by the bankruptcy court;
- e. Report or Return of Sale, showing that such sale was conducted in accordance with the Order of Sale; and
- f. Order Confirming Sale.
- 3. Trustee's deed, or deed by debtor in possession, which must be filed for record in the office of the county clerk of the county in which the property is located.

Authority: Bankruptcy Rules 203 and 606; 11 U.S.C. § 44(g).

The Report of the 1983 Title Examination Standards Committee: Recommended Standard. Recommendation approved by the Real Property Law Section and adopted by the House of Delegates on December 2, 1982.

34.2 BANKRUPTCIES ON OR AFTER OCTOBER 1, 1979

A. Exempt assets

Under Section 522 of the Bankruptcy Code, a debtor may claim certain property as being exempt from forced sale for the benefit of its creditors. Therefore, a claim of exemption is a tool by which the debtor may retain property and exclude it from administration by the bankruptcy court.

Where the property under examination is claimed as exempt, the abstract being examined should contain, or the examiner should review certified copies of, the following:

- A. The Petition and Order for Relief, 11 U.S.C. §§ 301, 302 or 303;
- B. The Schedule of Real Property (Schedule "B-1" for cases filed prior to August 1, 1991, or Schedule "A" for cases filed on or after August 1, 1991), showing that the debtor(s)' interest in the property was disclosed, 11 U.S.C. § 521(1) and Fed. R. Bankr. P. 1007(b) and 4002(3);
- C. The Schedule of Exempt Property (Schedule "B-4" for cases filed prior to August 1, 1991, or Schedule "C" for cases filed on or after August 1, 1991), showing that the subject property was claimed as exempt by the debtor(s), 11 U.S.C. §§ 522(b) and (l), Fed. R. Bankr. P. 4003(a);
- D. The docket sheet indicating whether the claim of exemption was subject to an objection by any party in interest.

Note: An objection to the claim of exemption must be filed within thirty (30) days of the conclusion of the meeting of creditors held pursuant to 11 U.S.C. § 341 and Fed. R. Bankr. P. 2003(a), Fed. R. Bankr. P. 4003(b).

1. If the docket sheet indicates that no objection was timely filed, the property is deemed exempt, 11 U.S.C. § 522(l) and *Taylor v. Freeland & Kronz*, 503 U.S.C. 638 (1992).
2. If the docket sheet indicates that an objection was timely filed, the examiner should review a copy of the bankruptcy court's order disposing of the objection.

E. Judgment Liens in Bankruptcy.

1. Judgment liens perfected before November 1, 1997, do not attach to homestead property and do not constitute a lien against such property, 12 O.S. § 706; *Gerlach Bank v. Allen*, 51 Okla. 736, 152 P. 399 (1915), and *Finerty v. First Nat. Bank*, 92 Okla. 102, 218 P. 859 (1923).
2. Judgment liens perfected on or after November 1, 1997, attach to homestead property and constitute a lien against such property, 12 O.S. § 706.
3. When a lien does not attach to real property, there is no need for avoidance proceedings. *David Dorsey Distrib., Inc. v. Sanders (In re: Sanders)*, 39 F.3d 258, 262 (10th Cir. 1994).
4. Any liens or charges that were properly perfected prior to the instigation of bankruptcy proceedings will survive those proceedings unless specifically avoided pursuant to 11 U.S.C. § 522(f) and Fed. R. Bankr. P. 4003(d), 11 U.S.C. §§ 522(c) and (f); *Long v. Bullard*, 117 U.S. 617, 6 S.Ct. 917, 29 L.Ed. 1004 (1886); *Johnson v. Home State Bank*, 111 S.Ct. 2150 (1991); *Farrey v. Sanderfoot*, 111 S.Ct. 1825 (1991); and *Owen v. Owen*, 111 S.Ct. 1833 (1991).

Comment: Except as provided in 11 U.S.C. 552(b) property acquired after commencement of the case is not subject to a pre-petition judgment lien.

5. For the title to real property passing through bankruptcy proceedings to be free and clear of a pre-petition judgment lien, the abstract being examined should contain, or the examiner should review certified copies of, the motion requesting that the lien be avoided pursuant to 11 U.S.C. § 522(f) and Fed. R. Bankr. P. 4003(d) and the order granting said motion. *Id.* and *Coats v. Ogg (In re: Ogg)*, 1999 WL 218774, BAP No. EO-98-028 (10th Cir. 1999).

Comment: BKR 4003(d) provides that a proceeding to avoid a lien under 11 U.S.C. § 522(f) is by motion pursuant to Rule 9014 Fed. R. Bankr. P., which provides at (b) that service shall be as in service of summons pursuant to Rule 7004(h) Fed. R. Bankr. P., which provides for service on an Insured Depository Institution.

B. Abandonment

Abandonment of an asset can take place at any time during the pendency of the bankruptcy proceedings. The procedure can be initiated by a debtor-in-possession or case trustee via the filing of a notice of abandonment with the bankruptcy court and the service of a copy of the notice on each of the parties in interest in the case.

Abandonment is also a creditor's remedy. Any creditor holding an interest in the subject property has the right to file a motion with the bankruptcy court requesting that its collateral be abandoned from the estate. Once its collateral is abandoned from the estate, and the automatic stay imposed by 11 U.S.C. § 362 is lifted, the creditor is free to pursue any of the remedies available to it in accordance with applicable law.

Where the property under examination is abandoned from the bankruptcy estate, the abstract being examined should contain, or the examiner should review, certified copies of the following:

- A. The Petition and Order for Relief, 11 U.S.C. §§ 301, 302 or 303;
- B. The Schedule of Real Property (Schedule "B-1" for cases filed prior to August 1, 1991, or Schedule "A" for cases filed on or after August 1, 1991) showing that the debtor's interest in the property was disclosed, 11 U.S.C. § 521(a)(1) and Fed. R. Bankr. P. 1007(b) and 4002(a)(3);

- C. If a trustee has been appointed in the case, evidence of the qualification of the case trustee to serve in that capacity. Such evidence shall consist of either:
 - 1. Evidence that the trustee has filed with the bankruptcy court a bond in favor of the United States conditioned on the faithful performance of the trustee's official duties and transmitted notice of the acceptance of the office to the court and to the United States trustee within seven (7) days of receipt of the notice of selection, 11 U.S.C. § 322(a) and Fed. R. Bankr. P. 2008; or
 - 2. If the trustee has filed a blanket bond pursuant to Fed. R. Bankr. P. 2010, evidence that the trustee did not reject the appointment within seven (7) days of receipt of notice of the appointment, 11 U.S.C. § 322(a) and Fed. R. Bankr. P. 2008; or

- D. If no trustee has been appointed in the case, evidence of that fact.

Note: The elements indicated above regarding the qualification of a trustee to act in a particular case may be conclusively evidenced through a certificate from the clerk of the bankruptcy court in which the proceedings are pending certifying that either: (1) the debtor is acting as a debtor-in-possession, and thus retains the powers, duties and obligations of a trustee; or (2) that a trustee has qualified. Fed. R. Bankr. P. 2011(a).

- E. If the property was affirmatively abandoned by either the case trustee or a debtor-in-possession:

- 1. The notice of intent to abandon required by Fed. R. Bankr. P. 6007(a).

Note: The notice of intent to abandon property of the estate may be contained within the notice of the meeting of creditors (the "341 meeting") which is mailed to each party in the case at the outset of the proceedings. If the court file contains an order of abandonment, but no pleading specifically labeled as being a notice of abandonment, the examiner should review the notice of meeting of creditors to determine if it contains a general notice of the trustee's ability to abandon property at the 341 meeting.

- 2. Evidence that there was no objection to the notice of abandonment filed within fourteen (14) days of the date of mailing of the notice. Fed. R. Bankr. P. 6007(a) and 9006(f); or
 - 3. The bankruptcy court's order abandoning the property.

- F. If the abandonment is by virtue of a motion filed by a creditor having an interest in the subject property:

- 1. The motion filed pursuant to 11 U.S.C. § 554 (b) and Fed. R. Bankr. P. 6007(b) requesting that the subject property be abandoned from the estate;
 - 2. The bankruptcy court's order ruling on the motion.

- G. If the subject property is disclosed on the schedule of real property filed in conjunction with the Petition, but is not otherwise disposed of during the pendency of the bankruptcy proceedings, it is deemed abandoned to the debtor upon the closing of the case. See 11 U.S.C. § 554(c). In that event, the examiner should review the order discharging the trustee, if one has been appointed, and closing the estate. See Fed. R. Bankr. P. 5009 and 11 U.S.C. § 350(a).

Note: If the subject property is not disclosed on the schedule of real property filed in conjunction with the Petition, it remains un-administered property of the estate upon the closing of the case. See 11 U.S.C. § 554(d). In that event, the examiner should require that the bankruptcy proceedings be re-opened in accordance with 11 U.S.C. § 350(b), so that the property can be scheduled and administered by the bankruptcy court.

C. Sales

Sales of realty held by a bankruptcy estate are governed by Section 363 of the Bankruptcy Code and Rules 2002 and 6004 of the Federal Rules of Bankruptcy Procedure. In the event a bankruptcy trustee is selling an interest in realty that is subject to an ownership interest by someone that is not a debtor, the sale may be conducted only after the successful prosecution of an adversary proceeding within the bankruptcy case. See Fed. R. Bankr. P. 7001(3). In the event an examiner encounters such a situation, the entire adversary proceedings should be reviewed.

Where the property under examination is sold by a bankruptcy trustee or a debtor-in-possession (other than in the ordinary course of business), the abstract being examined should contain, or the examiner should review certified copies of, the following:

- A. The Petition and Order for Relief, 11 U.S.C. §§ 301, 302 OR 303;
- B. The Schedule of Real Property (Schedule "B-1" for cases filed prior to August 1, 1991, or Schedule "A" for cases filed on or after August 1, 1991) showing that the debtor's interest in the property was disclosed. See 11 U.S.C. § 521(a)(1) and Fed. R. Bankr. P. 1007(b) and 4002(a)(3).
- C. If a trustee has been appointed in the case, evidence of the qualification of the case trustee to serve in that capacity. Such evidence shall consist of either:
 - 1. Evidence that the trustee has filed with the bankruptcy court a bond in favor of the United States conditioned on the faithful performance of the trustee's official duties and transmitted notice of the acceptance of the office to the court and to the United States trustee within seven (7) days of receipt of the notice of selection. See 11 U.S.C. § 322(a) and Fed. R. Bankr. P. 2008; or
 - 2. If the trustee has filed a blanket bond pursuant to Fed. R. Bankr. P. 2010, evidence that the trustee did not reject the appointment pursuant to Fed. R. Bankr. P. 2008; or
- D. If no trustee has been appointed in the case, evidence of that fact.

Note: The elements indicated above regarding the qualification of a trustee to act in a particular case may be conclusively evidenced through a certificate from the clerk of the bankruptcy court in which the proceedings are pending certifying that either: (1) the debtor is acting as a debtor-in-possession, and thus retains the powers, duties and obligations of a trustee; or (2) that a trustee has qualified. See Fed. R. Bankr. P. 2011(a).

- E. Evidence that the debtor, the trustee, all creditors and indenture trustees, any committees formed pursuant to Sections 705 or 1102 and the United States trustee received at least twenty-one (21) days notice of the proposed sale. See Fed. R. Bankr. P. 2002(a)(2), (i) and (k).
- F. Evidence that the notice of sale served upon each of the parties delineated above contained at least the following information regarding the transaction:
 - 1. Either:
 - a. The time and place of any public sale; or
 - b. The terms and conditions of any private sale.
 - 2. The time fixed for filing objections to the proposed sale; and
 - 3. A description of the property being sold. See Fed. R. Bankr. P. 2002(c)(1).
- G. Evidence that either:
 - 1. No objection to the proposed sale was filed and served more than five (5) days before the date set for the proposed action or within the time fixed by the court. See Fed. R. Bankr. P. 6004(b); or

2. If an objection was filed, the order of the bankruptcy court disposing of the objection.
- H. A properly executed conveyance from either:
1. The debtor-in-possession; or
 2. The duly appointed and acting trustee in his/her capacity as trustee of the bankruptcy estate. See Fed. R. Bankr. P. 6004(f)(2).

D. Sales free and clear of liens

Section 363(f) of the Bankruptcy Code allows a movant to conduct a sale of estate property free and clear of certain specified interests that may encumber the interest being sold. In a Chapter 12 case, that authority is supplemented by Section 1206. If a sale free and clear of interests is encountered, in addition to the materials indicated in the immediately preceding section, the abstract being examined should contain, or the examiner should review certified copies of, the following:

- A. The notice of sale discussed in TES 34.2.C. Sales E and F should also contain the date of the hearing on the motion and the time within which objections may be filed and served on the debtor-in-possession or trustee. See Fed. R. Bankr. P. 6004(c);
- B. Evidence that the motion filed with the bankruptcy court requesting that the subject property be sold pursuant to Section 363(f) was properly served on the parties who held liens or other interests in the property to be sold. See Fed. R. Bankr. P. 6004(c);
- C. The order of the bankruptcy court disposing of the motion.

E. Transfers pursuant to a confirmed Chapter 11 Plan

In the Chapter 11 context, transfers of interests that are part of the bankruptcy estate may be effectuated through the provisions of a confirmed Chapter 11 plan of reorganization. Where the property under examination is transferred through the terms of a confirmed plan of reorganization, the abstract being examined should contain, or the examiner should review certified copies of, the following:

- A. The Plan and court approved Disclosure Statement
 1. The Plan and Disclosure Statement are filed concurrently. See Fed. R. Bankr. P. 3016(b).
- B. Approval of the Disclosure Statement
 1. When the Plan and Disclosure Statement are filed in accordance with Fed. R. Bankr. P. 2002(b), a hearing for approval of the Disclosure Statement should be set on not less than twenty-eight (28) days notice. See Fed. R. Bankr. P. 3017(a).
 2. Notice of the hearing must be served on:
 - a. The debtor;
 - b. The trustee;
 - c. The creditors and indenture trustees;
 - d. Any equity security holders;

The United States Trustee; and

All other parties in interest, including:

 - i. Any committees appointed pursuant to 11 U.S.C. §§ 1102 and 1114;
 - ii. The S.E.C. [Fed. R. Bankr. P. 2002(j)(1)];
 - iii. The I.R.S. [Fed. R. Bankr. P. 2002(j)(3)];
 - iv. The U.S. Attorney [Fed. R. Bankr. P. 2002(j)(4)];

- v. The department, agency, or instrumentality of the U.S. through which the debtor became indebted to the U.S. *Id.*; and
 - vi. The Secretary of the Treasury. [Fed. R. Bankr. P. 2002(j)(5).]
- 3. Copies of the Plan and Disclosure Statement only need to be served on:
 - a. The debtor;
 - b. Any trustee or committee that has been appointed;
 - c. The S.E.C.; and
 - d. Any party that has filed an Entry of Appearance. See Fed. R. Bankr. P. 3017(a).
- 4. Following the hearing, the Court shall determine whether the Disclosure Statement should be approved. See Fed. R. Bankr. P. 3017(b).
- 5. If the Disclosure Statement is approved, the Court shall fix a time within which:
 - a. The holders of claims and interests may accept or reject the plan; and
 - b. Fix a date for the confirmation hearing. See Fed. R. Bankr. P. 3017(c).
- 6. When the Disclosure Statement is approved, the debtor must mail:
 - a. A copy of the Plan, or a court approved summary;
 - b. A copy of the approved Disclosure Statement;
 - c. A ballot;
 - d. Notice of the time established to file acceptances to, or rejection of, the Plan and of the confirmation hearing;
 - e. A copy of the order approving the Disclosure Statement; and
 - f. Such other information as required by the Court to:
 - i. All creditors;
 - ii. All equity security holders; and
 - iii. The U.S. Trustee. See Fed. R. Bankr. P. 3017(d).
- C. Confirmation of the Plan
 - 1. Notice of the confirmation hearing and the time fixed for filing objections to the Plan and a ballot must be mailed to:
 - a. All creditors;
 - b. All equity security holders. See Fed. R. Bankr. P. 3017(d).
 - 2. An acceptance or rejection of the Plan must:
 - a. Be in writing;
 - b. Identify the Plan or Plans accepted or rejected;
 - c. Be signed by the creditor or equity security holder, or an authorized agent; and
 - d. Conform to the Official Form. See Fed. R. Bankr. P. 3018(c).
 - 3. Objections must be filed and served on the Plan proponent within the time fixed by the Court. See Fed. R. Bankr. P. 3020(b)(1).
 - 4. An objection to confirmation is governed by Fed. R. Bankr. P. 9014. *Id.*
 - 5. The court shall rule on confirmation of the Plan after notice and hearing as provided by Fed. R. Bankr. P. 2002(b), Fed. R. Bankr. P. 3020(b)(2).

6. If no objection is filed, the court may rule that the Plan has been proposed in good faith and not by any means forbidden by law without receiving evidence on such issues. *Id.*

Note: Prior to the entry of an order confirming the Plan, the court may order the debtor to deposit with the trustee or debtor-in-possession all consideration required to be paid on confirmation. If the court so orders, those funds must be placed in a special account established for the exclusive purpose of making the distribution. See Fed. R. Bankr. P. 3020(a).

D. The confirmation order

1. Must conform to the Official Form. See Fed. R. Bankr. P. 3020(c).
2. Notice of entry thereof must be mailed to:
 - a. The debtor;
 - b. The trustee;
 - c. All creditors;
 - d. All equity security holders;
 - e. The U.S. Trustee; and
 - f. All other parties in interest. See Fed. R. Bankr. P. 3020(c).

E. Post-confirmation matters

1. Distribution under the Plan
 - a. After confirmation of the Plan, distribution shall be made to creditors whose claims have been allowed. See Fed. R. Bankr. P. 3021;
 - b. After the estate is fully administered, the court, on motion of a party in interest, shall enter a final decree closing the case. See Fed. R. Bankr. P. 3022.

The Report of the 1982 Title Examination Standards Committee: Recommended Standard. Recommendation approved by the Real Property Law Section on December 2, 1982, and adopted by the House of Delegates on December 3, 1982.

The Report of the 1985 Title Examination Standards Committee: Recommended amending Standard by striking the parenthetical clause in (F)(2) Report. Recommendation approved by the Real Property Law Section and adopted by the House of Delegates on November 15, 1985.

The Report of the 1986 Title Examination Standards Committee: Recommended substantial changes in Standard. The report, as published, inadvertently indicated that Section (F) was to be deleted. Recommendation approved by the Real Property Law Section to retain Section (F). Recommendation approved by the Real Property Law Section on November 20, 1986, and adopted by the House of Delegates on November 21, 1986.

The Report of the 1987 Title Examination Standards Committee: Recommended several amendments to Standard. In the first sentence of the "Comment" to Part (A), the words "or other lien creditor" were added and the words "so long as" were substituted for the word "unless." In the second sentence of the same Part, all that which follows the parenthetical clause was added. In Part (B)(1) following the first parenthetical clause, the words "or abstract of" and the second parenthetical clause were added. In the "Authority" in Part (B), Bankruptcy Rule 2008 was added. In the Comment to Part (B), the clause "unless the automatic stay ... above" and the words "or other lien creditor" were added to the second sentence. In Part (D)(1), the words "or abstract" were added. In the "Authority" following Part (D), Bankruptcy Rule 2008 was added. In Part (E)(1)(a), the final parenthetical language was added. In the "Authority" following Part (E), Bankruptcy Rule 2008 was again added. In Part (F)(2),

the parenthetical clause was added. Recommendation approved by the Real Property Law Section on November 12, 1987, and adopted by the House of Delegates on November 13, 1987.

The Report of the 1988 Title Examination Standards Committee: Recommended addition of (G) to Standard. Numerous other changes to conform Standard with recent amendments to the Bankruptcy Act and to the Bankruptcy Rules were recommended. Several corrections to numbers in citations were recommended. Recommendations approved by the Real Property Law Section on December 8, 1988, and adopted by the House of Delegates on December 9, 1988.

The Report of the 1989 Title Examination Standards Committee: Recommended amending the Standard's requirements regarding review of documents filed in a bankruptcy case to conform to the most current revision of the Bankruptcy Rules. In addition, the amendment recommended changing the language of the introductory paragraph from "review the following instruments" to "review duly certified or otherwise reliable evidence of the following matters;" adding parallel parenthetical language to Paragraphs (B)(1), (D)(1) and (E)(1); revising Paragraphs (G)(3) and (4); and adding a "Comment." Recommendations approved by the Real Property Law Section on November 16, 1989, and adopted by the House of Delegates on November 17, 1989.

The Report of the 1991 Title Examination Standards Committee: Recommended altering rules references from the old bankruptcy rules, and certain interim rules, to the recently adopted Federal Rules of Bankruptcy Procedure, and making certain additional statutory and rules citations in the authorities. Recommendation approved by the Real Property Law Section on November 14, 1991, and adopted by the House of Delegates on November 15, 1991.

The Report of the 1999 Title Examination Standards Committee: Recommended amending Standard 34.2 for the purpose of making it more clear, concise and usable. Recommendation approved by the Real Property Law Section on November 11, 1999, and adopted by the House of Delegates on November 12, 1999.

The Report of the 2000 Title Examination Standards Committee: Recommended amending that portion of Standard 34.2 dealing with exempt sales by adding Paragraph "E," thereunder, to establish how judgment liens, which may or may not attach to homestead property depending on the date of the judgment lien's filing, are dealt with in a bankruptcy proceeding. Recommendation approved by the Real Property Law Section on November 16, 2000, and the House of Delegates adopted in on November 17, 2000.

The Report of the 2013 Title Examination Standards Committee: Recommended amending Standard 34.2.E to reflect that the current law as to judgments obtained in bankruptcy proceedings. Recommendation approved by the Real Property Law Section on November 14, 2013, and adopted by the House of Delegates on November 15, 2013.

The Report of the 2019 Title Examination Standards Committee: Recommended amending Standard 34.2 to correct references and time limits. Recommendation approved by the Real Property Law Section on November 7, 2019, and adopted by the House of Delegates on November 8, 2019.

CHAPTER 35. MISCELLANEOUS

35.1 NON-JURISDICTIONAL DEFECTS IN COURT PROCEEDINGS

Defects or irregularities in court proceedings not involving jurisdiction should be disregarded. Among such matters may be mentioned misjoinder of parties or actions and existence of other than jurisdictional grounds for demurrer.

Authority: *Eaves v. Mullen*, 25 Okla. 679, 107 P. 433 (1910); *White v. Cheatham*, 101 Okla. 264, 225 P. 533 (1924); *Phillips v. Mitchell*, 68 Okla. 128, 172 P. 85 (1917), error dismissed for want of jurisdiction, 248 U.S. 531, 39 S.Ct. 7, 63 L.Ed. 405 (1918); *Kansas City M. & O. Ry. Co. v. Shutt*, 24 Okla. 96, 104 P. 51 (1909); *Abraham v. Homer*, 102 Okla. 12, 226 P. 45 (1924); *Hamil v. Murphy*, 181 Okla. 523, 75 P.2d 405 (1938).

35.2 SERVICEMEMBERS' CIVIL RELIEF ACT

The Servicemembers' Civil Relief Act, and amendments thereto, are solely for the benefit of those in military service; and, if the court has presumed to take jurisdiction and there is nothing in the record that would affirmatively indicate that any party affected by the court proceedings was in military service, the form of the affidavit as to military service or its entire absence from the record does not justify the rejection of the title.

Authority: *Hynds v. City of Ada ex rel. Mitchell*, 1945 OK 167, 158 P.2d 907 (1945); *Wells v. McArthur*, 1920 OK 96, 188 P. 322 (1920); *State ex rel Commissioners of the Land Office v. Warden*, 1946 OK 155, 168 P.2d 1010 (1946); *Snapp v. Scott*, 1946 OK 114, 167 P.2d 870 (1946).

The Report of the 2007 Title Examination Standards Committee: Recommended amending this Standard to reflect the change in the title of the applicable legislation and to update the citations of authority. The House of Delegates adopted the amendment on November 9, 2007.

35.3 ENDORSEMENT UPON DEEDS OF LOT SPLIT APPROVAL (MINOR SUBDIVISIONS) BY ZONING AND LAND USE REGULATING BODY

Note: The title examiner may not rely upon the abstract to determine the necessity for lot split approval. The title examiner should determine whether the land is within a planning area and, if so, the effective date of the plan.

- A. Within cities having a population over 200,000 and which have adopted a master plan as authorized by 11 O.S. § 47-101 *et seq.*, any deed recorded after the adoption of such plan, which:
1. Conveys a tract of less than one (1) entire platted lot; or
 2. Conveys an unplatted tract described by federal survey or metes and bounds, consisting of five (5) acres or less, does not create marketable title unless:
 - a. The deed bears a certificate of approval for lot split purposes by the cognizant planning agency; or
 - b. The legal description contained in the deed was previously approved by the cognizant planning agency and endorsed upon the first deed of record creating such lot split, or upon a certified copy thereof; or
 - c. The legal description contained in the deed was the subject of a prior deed, which prior deed was filed for record before the date of the annexation of the tract by such city; or
 - d. The legal description contained in the deed was the subject of a prior deed which has been of record for at least five (5) years; or

- e. The deed has been of record for at least five (5) years; or
- f. The legal description contained in the deed constitutes a “remainder tract” consisting of the balance of (i) a platted lot, or (ii) an unplatted tract previously held under common ownership with the original severed portion of such unplatted tract as hereinafter described; and
 - i. A deed appearing of record describing the original severed portion of such lot or tract either:
 - a. Bears a certificate of approval for lot split purposes by the cognizant planning agency; or
 - b. Has been of record for at least five (5) years; or
 - ii. The original severed portion of such lot or tract was taken or created in fee by dedication, conveyance or condemnation as a public way, or for any other public use or public purpose.

Authority: 11 O.S. § 47-101 *et seq.*, see § 47-116; 16 O.S. § 27a.

Comment: Subparagraph f(2) must be disregarded if the examiner has reason to believe a dedication or conveyance as a public way has not been accepted by the grantee.

- B. Within a county having within its boundaries more than fifty percent (50%) of the incorporated area of a city having a population of 180,000 or more, where such city and county have adopted a master plan as authorized by 19 O.S. § 863.1 *et seq.*, any deed which:
 - 1. Conveys a tract of less than one (1) entire platted lot; or
 - 2. Conveys an unplatted tract described by federal survey or metes and bounds, consisting of five (5) acres or less; or
 - 3. On or after November 1, 2006, conveys an unplatted tract, regardless of the size of such tract, which conveyance results in a “remainder tract” of five (5) acres or less, shall not be considered valid unless:
 - a. The deed bears a certificate of approval for lot split purposes by the cognizant planning agency; or
 - b. The legal description contained in the deed was previously approved by the cognizant planning agency and endorsed upon the first deed of record creating such lot split, or upon a certified copy thereof; or
 - c. The legal description contained in the deed was the subject of a prior deed, which prior deed was filed for record before June 10, 1963; or
 - d. The tract is situated within a municipality in such county which had not adopted a master plan at the time the first deed creating the lot split was filed for record; or
 - e. The deed has been of record for at least five (5) years; or
 - f. The legal description contained in the deed constitutes a “remainder tract” consisting of the balance of (i) a platted lot, or (ii) an unplatted tract previously held under common ownership with the original severed portion of such unplatted tract as hereinafter described; and
 - i. A deed appearing of record describing the original severed portion of such lot or tract either:
 - a. Bears a certificate of approval for lot split purposes by the cognizant planning agency; or
 - b. Has been of record for at least five (5) years; or
 - ii. The original severed portion of such lot or tract was taken or created in fee by dedication, conveyance or condemnation as a public way, or for any other public use or public purpose.

Authority: 19 O.S. § 863.1 *et seq.*, see § 863.10; 16 O.S. § 27a.

Comment: Subparagraph f(2) must be disregarded if the examiner has reason to believe a dedication or conveyance as a public way has not been accepted by the grantee.

The Report of the 2006 Title Examination Standards Committee: Recommended amending the Standard to reflect the change in the law as reflected by the amendment of 19 O.S. § 863.10 which became effective on November 1, 2006. The Real Property Law Section approved the amendment on November 15, 2006, and the House of Delegates adopted it on November 16, 2006.

CAVEAT: A deed of land within the city limits of the City of Tulsa or within the unincorporated area of Tulsa County, which divides the land into two or more tracts, all of which are greater than five (5) acres, requires that an application be made to the head of the Land Development Services Division of the Indian Nations Council of Governments (INCOG) for exemption from lot split and subdivision requirements. Such exemption shall be endorsed on the face of the deed. This exemption is required regardless of whether the land being divided is unplatted or comprises less than a full platted lot. The failure to obtain the exemption will not affect the marketability of the title.

Authority: Section 10-030 Tulsa Metropolitan Area Subdivision and Development Regulations.

The Report of the 2018 Title Examination Standards Committee: Recommended a caveat to existing standard to make examiners aware of a provision in the new subdivision standards for the City and County of Tulsa regarding the divisions of land involving tracts of five acres or greater. Recommendation approved by the Real property Law Section on November 8, 2018, and adopted by the House of Delegates on November 9, 2018.

- C. Within a county in which there is no city or incorporated town having a population more than 200,000 and in which a city or incorporated town and the county have adopted a comprehensive plan as authorized by 19 O.S. § 866.1 *et seq.*, any deed of a tract within the jurisdictional territory of the cognizant planning agency, recorded after the adoption of such city-county plan, which deed:
1. Conveys a tract of less than one (1) entire platted lot; or
 2. Conveys an unplatted tract described by federal survey or metes and bounds, consisting of ten (10) acres or less, shall not be considered valid unless filed for record before January 1, 1963, or unless:
 - a. The deed bears a certificate of approval for lot split purposes by the cognizant planning agency; or
 - b. The legal description contained in the deed was previously approved by the cognizant planning agency and endorsed upon the first deed of record creating such lot split, or upon a certified copy thereof; or
 - c. The legal description contained in the deed was the subject of a prior deed, which prior deed was filed for record before the date of the adoption of such comprehensive plan; or
 - d. The tract is situated within a municipality in such county which had not adopted a comprehensive plan at the time the first deed creating the lot split was filed for record; or
 - e. The tract consists of more than two and one-half (2-1/2) acres, such county is adjacent to a county which has adopted a master plan as authorized by 19 O.S. § 863.1 *et seq.*, and the cognizant planning agency has adopted its order or rule implementing the 1968 amendment to 19 O.S. § 866.13, providing for lot split approval of conveyances of tracts of two and one-half (2-1/2) acres or less, if the deed was filed before April 8, 1992; or
 - f. The deed has been of record for at least five (5) years; or
 - g. The legal description contained in the deed constitutes a “remainder tract” consisting of the balance of (1) a platted lot, or (2) an unplatted tract previously held under common ownership with the original severed portion of such unplatted tract as hereinafter described, and
 - i. A deed appearing of record describing the original severed portion of such lot or tract either:

- a. Bears a certificate of approval for lot split purposes by the cognizant planning agency; or
- b. Has been of record for at least five (5) years; or
- ii. The original severed portion of such lot or tract was taken or created in fee by dedication, conveyance or condemnation as a public way, or for any other public use or public purpose.

Authority: 19 O.S. § 866.1 *et seq.*, see § 866.13; 16 O.S. § 27a.

Comment: Subparagraph g(2) must be disregarded if the examiner has reason to believe a dedication or conveyance as a public way has not been accepted by the grantee.

Caveat: Since the “ten acre” rule of 19 O.S. § 866.13 can be modified, the examiner should determine whether an order had been made on or after April 23, 1968, effecting such modification.

The Report of the 2014 Title Examination Standards Committee: Recommended an amendment to this Standard to conform the Standard to the governing statute. The Real Property Law Section approved the proposal on November 13, 2014, and the House of Delegates adopted the amendment on November 14, 2014.

35.4 FOREIGN STATE COURT PROCEEDINGS OR ACTIONS

A foreign state court order or decree or a person acting pursuant to the authority of a foreign state court order or decree cannot operate directly to establish title or convey Oklahoma lands. The party seeking to establish or convey title must initiate a proper Oklahoma proceeding or action.

Comment: Common situations which arise in the course of examination include:

- A. The estate of a non-resident decedent which contains real property must be probated or administered by (i) by ancillary proceedings, pursuant to 58 O.S. § 51 *et seq.*, 58 O.S. § 245 *et seq.*, 58 O.S. § 677, *Brooks v. Yarbrough*, 37 F.2d 527; or (ii) by proceeding to determine death and succession or heirship. See 84 O.S. § 251 *et seq.*
- B. The estate of a non-resident ward which contains real property must be properly domesticated in Oklahoma and proper proceedings instituted thereon. See 30 O.S. § 3-317.
- C. An award of Oklahoma real property in a foreign divorce or other civil action must be properly domesticated in Oklahoma and proper proceedings instituted thereon. See 12 O.S. § 719 *et seq.*, *Sharp v. Sharp*, 1916 OK 736, 65 Okla. 76, 166 P. 175 and *West v. West*, 1954 OK 84, 268 P.2d 250. After establishing personal jurisdiction over a party, a foreign state court may compel that party to act with respect to Oklahoma lands by way of that court’s contempt power.

The Report of the 1985 Title Examination Standards Committee: Recommended Standard. The recommendation was amended by the Real Property Law Section by adding the words “or upon a certified copy thereof” in (A)(b), (B)(b) and (C)(b) of the Standard and deleting all of Part (D). Recommendation approved by the Real Property Law Section on November 14, 1985, and adopted by the House of Delegates on November 15, 1985, as amended.

The Report of the 1987 Title Examination Standards Committee: Recommended the “Note” appearing immediately after the title of Standard and that parenthetical material be added to Parts (A)(c) and (A)(d) of the Standard. Recommendation approved by the Real Property Law Section on November 12, 1987, and adopted by the House of Delegates on November 13, 1987.

The Report of the 1988 Title Examination Standards Committee: Recommended amending Standard, which will be found in (A)(e) in which the previous parenthetical clause has been deleted; in the

following “Authority” to which 16 O.S. § 27a has been added; in (C)(f) which has been added; and in the following “Authority” to which 16 O.S. § 27a has been added. These changes reflect the amendments to § 27a referring to governmental planning authorities. Recommendation approved by the Real Property Law Section on December 6, 1988, and adopted by the House of Delegates on December 7, 1988.

The Report of the 1992 Title Examination Standards Committee: Recommended adding clauses to Standard at the end of Paragraphs (B)(2) and (C)(e) to respond to the amendment of 19 O.S. § 863.10 by 1992 Okla. Sess. Law, ch. 47 § 2. Recommendation approved by the Real Property Law Section on November 12, 1992, and adopted by the House of Delegates on November 13, 1992.

The Report of the 1996 Title Examination Standards Committee: Recommended amending Standard to deal with “remainder tracts.” Recommendation approved by the Real Property Law Section on November 14, 1996, and adopted by the House of Delegates on November 15, 1996.

The Report of the 2012 Title Examination Standards Committee: Recommended Standard 35.3.C be amended to clarify that the plan referred to in Standard is a joint city-county plan as is provided for in the governing Statute 87 O.B.J. 2211. Recommendation approved by the Real Property Law Section on November 15, 2012, and adopted by the House of Delegates on November 16, 2012.

The Report of the 2013 Title Examination Standards Committee: Recommended Standard 35.3.C be amended to clarify that the plan referred to in Standard is a joint city-county plan as is provided for in the governing Statute 87 O.B.J. 2211. Recommendation approved by the Real Property Law Section on November 15, 2013, and adopted by the House of Delegates on November 16, 2013.

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