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**Sent:** Wednesday, October 11, 2023 11:01 AM  
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**Subject:** Re: [EXTERNAL] SB 212 - Affidavit

Good morning, Monica, *et al.*

I am sorry for my delayed response. Temporarily, I have been deterred from most things due to COVID-19 and some pressing litigation.

As previously stated, we greatly appreciate the expertise and insights that you all have provided. Continuing that partnership, seeking further input, and maintaining our commitment to transparency, attached here are the latest drafts of the affidavits. Please review and provide us with the benefit of your thoughts.

Concerning the questions below, we will consider each of them and will be sure to return to you this week with answers. Our goal is to have these affidavits in publicly available form next week, and as of now, I see no reason that we miss that mark.

As a general matter, I think we will need to balance the exemptions as we have had significant input from the county clerks, asking for no exemptions so that they do not have to account for a situation where keeping track of what is exempt and what is not, is not only a burden but also likely results in mistakes being made. We also understand and consider the pragmatic side of this, including the fees and issues identified in your e-mail below.

I have pasted our general thoughts below to answer some of the earlier questions. Please also let us know your thoughts on these. Considering your expertise and engaging with these matters every day, you will undoubtedly be thinking through things we are not. So, again, a sincere thank you from us.

I will be working remotely for the next several days. If it is easier and more convenient for you (and others), please call me on my mobile phone (number listed in the signature block below).

**1. The statute says, “acquire title to or own land,” but the affidavit says, “land or minerals.” We want to confirm that the affidavit will also apply to mineral interests since they are real property interests. Is that correct?**

Answer: Yes, the definition of land in 60 O.S. § 6 includes soil, rock, other substance, and pore space (including oil or gas).

**2. Affidavit says “deed,” but what should we do with final decrees or affidavits of death and heirship? Will we have to get every heir/devisee to sign one before we can file the final decree? *If an interest is acquired through succession via a probate or affidavit of death and heirship, will the affidavit be required? What if there is a devise to an individual that is otherwise prohibited from owning under Section 121? If this is an issue, should we modify our probate code to require an inquiry by the judge?***

Answer: It is not required that every heir/devisee sign an affidavit before the final decree can be filed. Section 121 is limited in its application; it only applies to recording a deed. That said, every grantee in a transaction where a deed is to be recorded will have to include the requisite affidavit as an exhibit to the deed. To the extent the Legislature amends the probate code or otherwise requires an affidavit or some check before a transfer of ownership of land, that is likely within the policymaking powers of the legislative branch.

**3. What about a Transfer-on-Death-Deed (TODD)? There’s not a requirement of notice for a TODD; does this now, in effect, make a requirement because you have to get an affidavit from the TODD bene(s)? *Since a TODD is revocable by the Grantor up to when they pass, will the affidavit be required when the TODD is filed? Alternatively, will it be required at the time they accept their interest?***

Answer: If a TODD is a deed that must be recorded, because 60 O.S. § 121 unequivocally states that a “county clerk shall not accept and record *any* deed without an affidavit,” required by that section, the affidavit must be completed by the Grantee and filed at the time that TODD is recorded. (Emphasis added.) Alternatively, to the extent a TODD is not required to be recorded with the county clerk, section 121 does not mandate that an affidavit is filed with a TODD.

**4. What about determining death and heirship in a quiet title? Do I have to have affidavits to attach to my final order? *Similar to Final Decrees.***

Answer: see answer #2, above

**5. What about a partition? Do I have to allege all my owners are citizens? Do I have to prove it? What if one isn't? *In my mind, I see this being an interim issue as the affidavits begin being filed in the land records. However, if an owner is already in the title where no affidavit was filed, will this need to be addressed within the partition?***

Answer: On and after November 1, 2023, any person recording a deed with a county clerk to acquire or own land will have to include the requisite affidavit as an exhibit to the deed. Concerning the question regarding an owner who is already in the title and no affidavit was filed when the owner acquired the land before November 1, 2023, there is no retroactive application of the recent amendments to 60 O.S. § 121.

**6. What about a quiet title w/o a determination of death and heirship? Do you know if the prevailing party has to attach an affidavit with their order? *Same as #5?***

Answer: see answers 2, 3, and 5 above.

**7. If a grantee is a non-citizen, should we tell them they can't be on the deed?**

Answer: Potentially, to the extent that is somehow known or disclosed. As a reminder, enforcement under the provisions of 60 O.S. § 121 is not the responsibility of the county clerk. Furthermore, certain non-citizens are exempt from the prohibition on acquiring title to or owning land. OKLA. CONST. art. 22, § 1; 60 O.S. § 122. These exemptions include any alien who is a lawful permanent, bona fide resident of the State of Oklahoma under the authority of the U.S. Citizenship and Immigration Services (commonly called a "Green Card") and a foreign business entity, such as a corporation or limited liability company where the stock or membership interest is not held by the person who is not a citizen of the United States, that has domesticated in the State of Oklahoma under title 18 of the Oklahoma Statutes.

**8. Will the affidavits be available in Spanish or other languages?**

Answer: Not to our knowledge, and this is not a requirement under 60 O.S. § 121. Do we know if this is a practice or condition concerning other affidavits or documents filed with a county clerk?

**9. Do we refuse to record the deed if the grantee refuses to fill out and sign an affidavit?**

Answer: Yes, the statutes mandate that a county clerk shall not record any deed that does not include the requisite affidavit.

**10. What happens if the original deed (filed in previous years) is only refiled to correct a legal description, name, or typo? Is it required to have an affidavit?**

Answer: Unless this office exempts a deed from having to be filed with an affidavit(s) required under 60 O.S. § 121, any deed, including corrective deeds, must have the requisite affidavit included.

**11. Do you know who we should contact after November 1 with questions about the affidavit?**

Answer: District Attorney or other legal counsel retained by the County Clerk. The individual or office should consult with their independently retained legal counsel, if not a county official. The Attorney General is not authorized to provide legal advice to private citizens of non-state offices or officials.

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