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OPINION OF THE GENERAL COUNSEL
Opinion No. 2023-20

QUESTION BY: Polly Irving, County Clerk
DATE: November 22, 2023
SUBJECT: Land Ownership Affidavit

INTRODUCTION

This office has received your request for an official opinion from the General Counsel in which you ask, in effect, the following question:

Must the land ownership affidavit prescribed by SB212 (60 OS § 121(B)) accompany a decree of a court of competent jurisdiction in order for the County Clerk to record such an instrument?

SHORT ANSWER

No. Because a decree issued by a court of competent jurisdiction is not a “deed” for the purposes of SB212, an accompanying land ownership affidavit is not required for the instrument to be recorded.

DISCUSSION

Oklahoma state law has prohibited “any person who is not a citizen of the United States [from] acquir[ing] title to or own[ing] land” in this state since at least 1910. 60 OS § 121(A). However, prior to 2023, there was no meaningful way of enforcing such prohibition on the front end of the transaction. This prompted the Legislature to adopt SB212 (2023 OSL § 327). SB212 requires the County Clerk to “not accept and record any deed” unless the same is accompanied by an affidavit attesting that the person or entity obtaining title thereunder satisfies the state’s prohibition on non-citizen ownership of land. 60 OS § 121(B). Your question concerns the extent to which this new requirement applies to decrees entered by a court of competent jurisdiction.¹

¹ For the purposes of this Opinion, a “court decree” is any order entered by a court of competent jurisdiction, regardless of how styled, affecting ownership of real property. The conclusion reached herein applies with equal force to orders entered in quiet title actions, probate matters, divorce decrees, or any other judicial order regardless of the nature of the underlying case or controversy.

This Office's "cardinal rule" is to "ascertain and give effect to legislative intent and purpose as expressed by statutory language." *Kpiele-Poda v. Patterson-UTI Energy, Inc.*, 2023 OK 11, ¶ 19, 525 P.3d 28, 35. Legislative intent, first and foremost, flows "from a reading of the statutory language and its plain and ordinary meaning." *Johnson v. CSAA Gen. Ins. Co.*, 2020 OK 110, ¶ 19, 478 P.3d 422, 432. "When the language of a statute is plain and clear it will be followed." *Assessments for Tax Year 2012 of Certain Properties Owned by Throneberry v. Wright*, 2021 OK 7, ¶ 63, 481 P.3d 883, 908. Tools of statutory construction will only be employed when statutory language "is susceptible to more than one meaning." *Matter of Estate of Parker*, 2023 OK 50, ¶ 6, 529 P.3d 203, 206.

The plain text of SB212 provides its requirements apply to "deeds" presented to the County Clerk. The question thus becomes whether a court decree can rightfully be classified as a deed. In this jurisdiction, a deed is a "writing... which evidences the *terms of the contract between the parties whereby the title to real property is transferred* from one to the other." *Nat'l Fire Ins. Co. v. Patterson*, 1935 OK 161, 41 P.2d 645, 647 (emphasis added). *Accord K & K Food Servs., Inc. v. S & H, Inc.*, 2000 OK 31, ¶ 7, 3 P.3d 705; *Couch v. Addy*, 1912 OK 793, 129 P. 709. Under the foregoing definition, a court decree is patently not a deed as a deed is, in essence, a contract. A contract "is an agreement to do or not do a certain thing... [which] results from an offer and acceptance." *Gomes v. Hameed*, 2008 OK 3, ¶ 18, 184 P.3d 479, 485. By contrast, a court decree is a judicial judgment "determin[ing] rights, status, or other legal relations" between parties under law. 12 OS § 1651. Whereas as a contract depends upon the voluntary actions of the parties involved, a court decree does not. Under this straightforward definition, a court decree is a not a deed for the purposes of SB212 and, as such, its requirement for an accompanying land ownership affidavit is inapplicable to such an instrument.

While this Office has determined the terms of SB212 to be unambiguous and this Office thus need not resort to the tools of statutory construction, the use of such tools confirms this understanding. One tool this Office relies upon to determine intent is the doctrine of *in pari materia*: "different [legislative enactments] on the same subject... must be construed as a harmonious whole." *Ghoussoub v. Yammine*, 2022 OK 64, ¶ 22, 518 P.3d 110, 115. Under this doctrine, "when the provisions of a statute assign one meaning to a word or phrase, its definition will apply in every other instance in which the same word is found anywhere else in the statutory compilation." *John v. Saint Francis Hosp., Inc.*, 2017 OK 81, ¶ 26, 405 P.3d 681, 690. Using this tool, this Office has no trouble in determining a "deed" is but one method of conveying real property. The Legislature has previously articulated an expansive definition of instruments conveying ownership of land in the Marketable Record Title Act. 16 OS § 71 *et seq.* Therein, the Legislature defined a "title transaction" as:

any transaction affecting title to any interest in land, including title by will or descent, title by tax deed, mineral deed, lease or reservation, or by trustee's, referee's, guardian's, executor's, administrator's, master in chancery's, sheriff's or marshal's deed, *or decree of any court*, as well as warranty deed, quitclaim deed, or mortgage.

16 OS § 78(f) (emphasis added). Clearly the foregoing reveals the Legislature knows how to use all-encompassing terms concerning conveyances when it desires to do so. As this Office "presumes

that the Legislature expressed its intent and that it intended what it expressed" (*Heath v. Guardian Interlock Network, Inc.*, 2016 OK 18, ¶ 14, 369 P.3d 374, 379), "the mention of one thing in a statute impliedly excludes another thing." *Morgan v. State Farm Mut. Auto. Ins. Co.*, 2021 OK 27, ¶ 28, 488 P.3d 743, 750. Because the Legislature expressly included the restrictive term "deed" as opposed to expansive terms such as "conveyance" or "title transaction," this Office must assume this was done so purposefully and evidences the Legislature's intent to limit SB212's application accordingly. Therefore, as used in SB212, a "deed" does not include a court decree and, as such, its requirement for an accompanying land ownership affidavit is inapplicable to the same. Because a court decree is not covered by the terms of SB212, the County Clerk may not require such an instrument be accompanied by a land ownership affidavit in order for the same to be accepted for filing.

CONCLUSION

It is, therefore, the official opinion of the General Counsel that:

1. **The provisions of SB212, codified at 60 OS § 121, apply only to deeds and not to decrees issued by a court of competent jurisdiction. The County Clerk may not require any such court decree be accompanied by the land ownership affidavit prescribed by 60 OS § 121(B) in order for such court decree to be accepted for filing.**

Respectfully submitted,


JOHN TYLER HAMMONS
General Counsel

CC: Board of County Commissioners
County Clerk