I. Title Examination Standards – OK

- History
  - The Oklahoma Bar Association has been creating and/or approving Title Examination Standards since 1947. Since 1962, the Title Examination Standards have been published in the Oklahoma Bar Journal and in the Oklahoma statutes. In 1982, The Real Property Section of the Oklahoma Bar Association began publishing the standards annually in a Title Examination Standards Handbook.
    - (from: The History of Title Examination Standards in Oklahoma, 2007 Title Examination Standards Handbook.)
  - In 1982, the Oklahoma Supreme Court endorsed the Oklahoma Title Examination Standards: “While the 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.”

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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.

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.
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.
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.
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.

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.

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.

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.

B. 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.

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 or probate of a will.

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.

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.A. §§ 167 & 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.

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.

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.

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.
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.A. § 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.A. § 7-112.
   2. Final order of the court having jurisdiction pursuant to 43A O.S.A. § 111.
   3. Filing with the district court clerk in the original proceedings a certificate of restoration to competency pursuant to 43A O.S.A. §§ 7-110 & 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.A. §§ 3-116 (formerly 58 O.S.A. § 854).
   2. Final order of the court having jurisdiction discharging the guardian without appointing another guardian, 30 O.S.A. §§ 3-117 (formerly 58 O.S.A. § 855).

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.

5.1 Abbreviations and Idem Sonans
Identity of parties should be accepted as sufficiently established in the following cases:
A. Where there are used common abbreviations, derivatives or nicknames for Christian names, such as "Geo." for George, "Jno." for John, "Chas." for Charles, "Alex." for Alexander, "Bob" for Robert, "Eliza" or "Liza" for Elizabeth, "Jos." for Joseph, "Thos." for Thomas, "Wm." for William, "Susan" for Suzanna, "Ellen" for Eleanor, "Rich" for Richard, "Mc" for Mac (as prefix to a name);
B. Names within the rule of the generally accepted doctrine of idem sonans; and
C. In all instruments or court proceedings where in one instance a Christian name or names of a person is or are used, and in another instance the initial letter or letters only of any such Christian name or names is or are used but the sumnames are the same or idem sonans, and in one instance a Christian name or initial letter is used, and in another instance is omitted, but in both instances the other Christian names or initial letters correspond and the sumnames 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.

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.

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.
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 acknowledgments.
B. As against subsequent purchasers for value, in the absence of other notice to such purchasers, such instruments are not valid unless acknowledged and recorded, except as provided in Paragraph C herein.
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.

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.

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.

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.

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.

6.6 Short Form Acknowledgments
The use of the appropriate “short-form” acknowledgment authorized by the Uniform Law on Notorial 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.

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 or C 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; or
   b. executed between June 16, 1965 and September 1, 1992, under the provisions of the Special Power of Attorney Act; or

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 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.

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.

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.

7.2 Marital Interests and Marketable Title

Except as otherwise provided in Standard 7.1, no deed, 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.

8.2 Direct Conveyances

Title 60 O.S.A. § 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.

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 name grantee only and requires no corrective action.
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, corporate 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.  

12.3 Conclusive Presumptions Concerning Corporate Instruments Recorded for More than Five Years  
The following defects may be disregarded after an instrument from a corporation has been recorded for five years:  
A. the instrument has not been signed by a proper officer of the corporation,  
B. the instrument is not acknowledged, and  
C. any defect in the execution, acknowledgment, recording or certificate of recording the same.  

12.4 Recital of Identity or Successorship  
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.A. § 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.  

12.5 Corporate Powers of Attorney  
A. If a recorded instrument has been executed by an attorney in fact on behalf of a corporation, the examiner should accept the instrument if:  
1. the power of attorney authorizing the attorney in fact to act on behalf of the corporation is executed in the same manner as a corporate conveyance,  
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 corporation, 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.
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.

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.

13.3 Conveyance of Real Property Held in Partnership Name

Real property acquired by a partnership and held in the partnership name may be conveyed only in the partnership name. Any conveyance from the partnership so made, and signed by one or more members of the partnership, which conveyance appears to be executed in the usual course of partnership business, shall be presumed to be authorized by the partnership, in the absence of knowledge of facts indicating a lack of authority, and the recitals in the instrument of conveyance shall be accepted as sufficient evidence of such authority. The lack of the requisite authority may appear in a Statement of Partnership Authority duly certified by the Oklahoma Secretary of State and recorded in the land records in the county in which the partnership property is located and which contains limitations on the authority of individual partners.

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.

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.

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.

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.
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.
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.

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).

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.A. § 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.A. § 1-907.

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.

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.A. § 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.

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.

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.

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.

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.

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.

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.

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.A. § 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.

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 encumbrancers 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.

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.

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.A. § 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 there under.

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."

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 copy of the order of the Oklahoma Tax Commission releasing or exempting the estate of the non-joining settlor(s) from the lien of the Oklahoma estate tax, and 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 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 estate tax lien against the estate of the non-joining settlor(s) appears of record in the county where the property is located.

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**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.

C. 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.

### 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 or 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.

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.

17.2 Final Account--Tax Finding

The provision of the Oklahoma Income Tax Act (68 O.S.A. § 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 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.

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.

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.

- Article III
  - Chapter 23- Judgments, 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.A. § 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 filing 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.

**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.A. § 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.

C. JUDGMENTS PURSUANT TO THE SMALL CLAIMS PROCEDURE 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.

D. DURATION OF A JUDGMENT LIEN.
The lien of a judgment, pursuant to 12 O.S. § 706, runs from the date the judgment lien is created until the judgment lien is extinguished by the failure to extend the lien of the judgment pursuant to 12 O.S. § 759.

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.

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*; 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*; 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 that is 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*; 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.

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.

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.

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

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

1. 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. 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.

E. On or after November 1, 2000. By filing a statement of judgment that complies with 12 O.S. § 706 with the county clerk of the county where the property is located.

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.

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

   b. causes publication notice to be given in conformity with 12 O.S.A. § 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.A. § 764(a)(2).

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

3. On or after November 1, 1987. As to all sheriff's sales of 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 whose interest is not otherwise negated by the effect of 12 O.S.A. § 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, 1987, to be given in conformity with 12 O.S.A. § 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.A. § 764(a)(2).

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

B. NOTICE OF CONFIRMATION OF 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:

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 notice of the execution sale was required to be made pursuant to 12 O.S.A. § 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.A. § 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.

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.A. § 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.

23.7 Return of Writs of Special Execution

A. The 60 day time limit for a return of execution imposed by 12 O.S.A. § 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.

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 30 days (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 30 days (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 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 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 time to the last known address of the previous owner.

23.9 Property Acquired by Farm Service Agency, aka 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's 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.

23.10 Rural Homestead Property Subject to Mortgages of the Farm Service Agency, aka 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's 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.A. §§ 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.A. §§ 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.

24.1 Release by Quitclaim 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.
24.2 Release of Mortgage to Multiple Mortgagees

A. If a mortgage is payable to two or more mortgagees alternatively, one 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 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.

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.

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.

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.

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.

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.

### 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 of record for one 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.A. §§ 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.

### 24.8 Unenforceable Mortgages 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.

### 24.9 Lapsed Financing Statements

A financing statement which constitutes a "fixture filing" under 12A O.S.A. § 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.A. § 1-9-301, and

B. a financing statement filed with the Oklahoma Secretary of State under 12A O.S.A. § 1-9-501 which states that the debtor is a transmitting utility,

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 12A O.S.A. § 1-9-515(b),

may be disregarded as lapsed provided:

1. five (5) years has elapsed from either

   (a) the date of filing such financing statement or

   (b) the date of commencement of the most recent five-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-year period of such financing statement.
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 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 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.A. § 147.1. A release of the lien should be required if an action to foreclose or adjudicate the lien was timely instituted.

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 or more assignments of the released mortgage appearing of record were not executed and/or acknowledged in accordance with law.

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, as 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

or 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
25.1 The General Federal 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 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.

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:

   a. The limitation period for liens assessed prior to November 5, 1990 is six years and thirty days from the date of assessment. As to those liens for which the limitation period of six years and thirty 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 years and thirty days from date of assessment had not run as of November 5, 1990, the lien period shall be ten years and thirty 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 years and 30 days from the date of assessment.

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.

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.
B. DURATION.
The federal estate tax lien continues as a lien on all of the property in 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.

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.

25.3 Federal Estate Tax Special Liens Under 26 U.S.C. § 6324A and § 6324B

Federal law provides in two 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.

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.

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.

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, attaches 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.

25.5 Oklahoma Estate Tax Lien

A. SCOPE.
The Oklahoma estate tax lien attaches to all of the property which is part of the gross estate of the decedent, as defined under Article 8 of the Oklahoma Tax Code, immediately upon the death of the decedent, with the exception of property which falls under one or more of the following categories:

1. Property used for the payment of charges against the estate and expenses of administration, allowed by the court having jurisdiction thereof; or

2. Property reported to the Oklahoma Tax Commission by the responsible party or parties which shall have passed to a bona fide purchaser for value, in which case such tax lien shall attach to the
consideration received from such purchaser by the heirs, legatees, devisees, distributees, donees, or transferees; or

3. Property passing to a surviving spouse, either through the estate of the decedent, by joint tenancy or otherwise.

B. DURATION.
The Oklahoma estate tax lien continues as a lien on all of the property in the decedent's gross estate, except for the categories of property as described in A above, for ten (10) years from the death of the decedent, unless an Order releasing taxable estate or Order exempting the estate from estate tax is obtained from the Oklahoma Tax Commission as to the property in question. Subsequent to the lapse of ten (10) years after the death of any decedent, title acquired through such decedent shall be considered marketable as to Oklahoma inheritance, estate or transfer tax liability unless prior thereto a tax warrant filed by the Oklahoma Tax Commission appears of record. If the Oklahoma Tax Commission causes a tax warrant to be filed of record within said ten (10) year period, then a release of that tax warrant must be obtained and filed of record.

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 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 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.

25.7 Gift Taxes, Oklahoma

The procedure for the enforcement of any gift tax which might be due the State of Oklahoma is that prescribed in the Uniform Tax Procedure Act, 68 O.S.A. §§ 201-249, under which no lien attaches until and unless a tax warrant or certificate is filed in the office of the county clerk of the county where the land is located, 68 O.S.A. §§ 230, 231 & 234.


II. Title Examination Standards – TX

- History
  - In 1989, the Section of Real Estate, Probate, and Trust Law of the Texas Bar approved the formation of a committee to study the formulation and development of title examination standards. The Oil, Gas and Energy Resources Law section asked to co-sponsor the project. In 1996 and in 1997, proposed standards were published for comment. In 1997, 33 standards were approved by both the Real Estate, Probate, and Trust Law Section and the Oil, Gas and Energy Law Section. These initial standards were the beginning of the Texas Title Examination Standards. The Texas Title Examination Standards are “statements that declare an answer to a question or a solution for a problem that is commonly encountered in the
process of a title examination.” They do not impose compulsory legal requirements, but they are meant to serve as a reference, and they do “establish guidelines upon which a reasonable and practical examination can be based.”

(from: Preface to the Texas Title Examination Standards)

**Table of Contents**

- Chapter 1 - Title Examiner
- Chapter 2 - Marketable Title
- Chapter 3 - Name Variances

**Standard 1.10. Purpose Of Title Examination**

The purpose of an examination of title and comments, objections, and requirements is to advise an examiner’s client of the status of title and of the methods by which the client may secure marketable title to real property. Based upon the materials examined, the title opinion should advise an examiner’s client of all irregularities, defects, and encumbrances that may reasonably be expected to affect materially the value or use of the property or that may expose the owner to litigation or adverse claims even if the litigation or adverse claims can reasonably be expected to be successfully defended. The examiner does not ordinarily determine the validity or priority of irregularities, defects and encumbrances.

**Standard 1.20. Review By Examiner**

Based upon the intended scope of the examination, an examiner should review any documents, records, deeds, abstracts, affidavits, or other reliable materials that are necessary to form a legal opinion as to the status of title to the property. The materials that are examined should be set forth in the title opinion or as an exhibit to the opinion.

**Standard 1.30. Consultation With Prior Examiner**

When an examiner discovers a situation that creates a question regarding the status of title and an examiner has knowledge that another examiner has examined the title, or is familiar with the situation in the context of other property, an examiner may, before preparing the opinion, communicate with the other examiner if such communication is in the best interests of an examiner’s client and does not violate the Texas Disciplinary Rules of Professional Conduct.

*Source: Oklahoma Title Examination Standards, Std. 1.2.*

**Standard 2.10. Marketable Title Defined**

All title examinations should be based on marketability of title. A marketable title is one that is free from reasonable doubt such that a prudent person, with knowledge of all salient facts and circumstances and their legal significance, would be willing to accept it. To be marketable, a title need not be absolutely free from every possible suspicion. The mere possibility of a defect that has no probable basis does not show an unmarketable title.

**Standard 3.10. Idem Sonans**

An examiner may presume that differently spelled names refer to the same person when the names sound alike or when their sounds cannot be distinguished easily or when common usage by corruption or abbreviation has made their pronunciation identical.
Standard 3.20. Middle Names Or Initials

Unless otherwise put on inquiry, an examiner may presume that the use of a middle name or initial in one instrument and its nonuse in another instrument does not raise an issue of identity that affects title.

Standard 3.30. Abbreviations

An examiner may presume that any customary and generally accepted abbreviation of a first or middle name is the equivalent of the full name.

Standard 3.40. Recitals Of Identity

An examiner may rely upon a recital of identity contained in a conveyance executed by the party whose identity is recited, unless the examiner has a reasonable basis for questioning the recital. If title is held in a name that appears to be a business name, an examiner may rely on a recital of identity that incorporates the words "doing business as" ("dba") or similar words (e.g., "John Smith, dba Wholesome Grocery Store"), unless the form of name or other facts appearing from the materials examined raise a contrary inference.

Standard 3.50. Suffixes

Although identity of a name raises a presumption of identity of a person, an examiner should take note of the addition of a suffix, such as "Jr." or "II," to the name of a subsequent grantor because such a suffix may rebut the presumption of identity with the prior grantee.

Standard 3.60. Variance In Name Within An Instrument

Where a grantor’s signature differs from the grantor’s name as it appears in the body of the deed, but the name given in the acknowledgment agrees with either the signature or the name as it appears in the body of the deed, an examiner should accept the certificate of acknowledgment as providing adequate identification.

Source: Oklahoma Title Examination Standards, Std. 5.2.

Standard 3.70. Variances In Name Of Spouse

If a grantee spouse in one instrument of conveyance is identified only by a title and last name (e.g., "John Smith and Mrs. John Smith, grantees") and such spouse is apparently identified in a succeeding instrument in the chain of title by both a given and last name (e.g., "John Smith and Mary Smith, grantors"), an examiner should require further evidence showing that such spouse (e.g., Mrs. John Smith) in the first instrument is the same person as the spouse (e.g., Mary Smith) in the second instrument. The same requirement should be made if these succeeding forms of identification are reversed (e.g., the grantees in the first instrument are "John Smith and Mary Smith" and the grantors in a succeeding instrument in the chain of title are "John Smith and Mrs. John Smith").

Chapter 4 - Execution, Acknowledgment, and Recordation

Standard 4.10. Omissions And Inconsistencies

Omission of the date of execution from an instrument affecting title does not, in itself, impair marketability. An examiner may presume that an undated instrument has been timely executed if the dates of acknowledgment and recordation, and other circumstances of record, support the presumption. Inconsistencies in recitals or dates (such as among dates of execution, attestation,
acknowledgment, or recordation) do not, in themselves, impair marketability, and an examiner may presume that a proper sequence of formalities occurred.

**Standard 4.20. Defective Acknowledgments**

If a certificate of acknowledgment does not conform to the exact wording of the applicable statute, but shows substantial compliance with the statutory requirements for acknowledgments, an examiner should not require corrective action. If a deed or other instrument contains an acknowledgment in substantial noncompliance with the applicable statute or does not contain any acknowledgment whatever, an examiner should not require that such defects be cured if the instrument has been of record for at least twenty years and no adverse claim appears. Otherwise, the examiner should require a corrected acknowledgment and re-record the instrument, or require and record a new, corrected instrument. A proper jury may substitute for an acknowledgment for instruments recorded on or after September 1, 1989.

*Source:* Oklahoma Title Examination Standards, Stds. 6.1, 6.2.

**Standard 4.30. Delivery; Effective Date; Delay In Recordation**

An examiner may presume the delivery of instruments acknowledged and recorded. Delay in recordation, with or without record evidence of the intervening death of the grantor, does not rebut the presumption or create an unmarketable title; however, as an added exceptional protection to the client, an examiner may choose to make an inquiry outside of the record.

*Source:* Oklahoma Title Examination Standards, Std. 6.4.

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**Chapter 5 - Land Descriptions**

**Standard 5.10. When Defective Land Descriptions Do Not Impair Marketability**

An examiner may presume that errors, irregularities, deficiencies, and inconsistencies in land descriptions in the chain of title do not impair marketability unless, after considering all circumstances of record, (a) a substantial uncertainty exists as to the land involved or (b) the description falls beneath the minimal requirements of sufficiency and definiteness essential to an effective conveyance. When examining marginally sufficient or questionable descriptions, the examiner should consider all relevant factors, including the lapse of time, subsequent conveyances, the manifest or typographical nature of errors or omissions, and accepted rules of construction.

**Chapter 6 - Corporate Conveyances**

**Standard 6.10. Corporate Existence**

Where a corporation is a named party to an instrument in the chain of title, an examiner may presume that the corporation was legally in existence at the time the instrument took effect, if the instrument is executed and acknowledged in the proper form.

**Standard 6.20. Corporate Authority Presumed**

In the absence of actual or constructive notice to the contrary, an examiner may presume that the action of the corporation in acquiring or selling the real property affected by an instrument is within its power.

**Standard 6.30. Foreign Corporations**
Where a corporation organized and doing business under the laws of another state is a named party to an instrument in the chain of title, an examiner may presume that the corporation was authorized to do business in this state or authorized to acquire and dispose of the real property affected by the instrument, if the instrument is executed and acknowledged in the proper form.

**Standard 6.40. Corporate Seal**

An examiner may presume that a corporate seal does not have to appear on an instrument, unless the examiner has actual or constructive notice that the bylaws of the corporation require the seal to have been placed on the instrument.

**Standard 6.50. Authority Of Particular Officers**

Where a corporation is a named party to an instrument in the chain of title, an examiner may presume that the persons executing the instrument were the officers they purported to be and that such officers were authorized to execute the instrument on behalf of the corporation, if the instrument is executed and acknowledged in the proper form.

**Standard 6.60. Name Omitted From Signature**

Where a corporation appears as a party in the body of the instrument and the instrument is otherwise properly executed and acknowledged, an examiner may presume that the signature on the instrument by a corporate representative is sufficient notwithstanding the omission of the corporate name over such signature.

**Standard 6.70. Name Variances**

Although their exact names are not used and variations exist from instrument to instrument, an examiner may presume that a corporation is satisfactorily identified if, from the name(s) used and other circumstances of record, the identity of the corporation can be inferred with reasonable certainty. Variances that an examiner may ordinarily ignore include the addition or omission of the word “the” preceding the name; the use or non-use of the symbol “ & ” for the word “and”; the use or non-use of abbreviations for “company,” “limited,” “corporation” or “incorporated”; and the inclusion or omission of all or part of a place or a location. An examiner may exercise a greater degree of liberality with a greater lapse of time and in the absence of circumstances appearing of record that raise reasonable doubt as to the identity of the corporation. An examiner may rely on affidavits and recitals of identity to obviate variances too substantial or too significant to be ignored.

*Source: Oklahoma Title Examination Standards, Std. 12.1.*

- **Chapter 7- Conveyances Involving Partnerships, Joint Ventures, and Unincorporated Associations**

**Standard 7.10. Conveyance Of Real Property Held In Partnership Or Joint Venture Name**

When title to real property is held in the name of a partnership or joint venture, an examiner may rely upon a conveyance by a general partner on behalf of the partnership or by a joint venturer on behalf of the joint venture if the conveyance appears to be a transfer in the ordinary course of business of the partnership or joint venture.

**Standard 7.20. Authority Of Less Than All Partners Regarding Transactions That Are Not In The Ordinary Course of Business**

If a conveyance of a joint venture or a partnership that is executed by less than all of the joint venturers or partners appears not to be in the ordinary course of business (such as a sale of the sole
asset of the partnership), an examiner should review a copy of the partnership or joint venture agreement or other satisfactory evidence to verify the authority of the signing partner(s) or joint venturer(s) to act on behalf of the partnership or joint venture.

**Standard 7.30. Prior Conveyance In Chain By Partnership Or Joint Venture**

An examiner may assume the authority of an apparent partner or a joint venturer who has executed a prior conveyance in the chain of title on behalf of the partnership or joint venture.

**Standard 7.40. Conveyance Of Partnership Property Held In Name Of Partners**

If title to the property is in the name of the partners, the named partners must execute the conveyance.

**Standard 7.50. Conveyance Of Real Property Held In Name Of Limited Liability Company**

If title is held by a limited liability company, an examiner may rely upon a conveyance that is executed by an officer, agent, manager, or member thereof if the conveyance appears to be consistent with the limited liability company's usual way of doing business.

- **Chapter 8- Powers of Attorney**

**Standard 8.10. Validity Of Instrument Executed By Attorney In Fact Regarding Durable Powers Of Attorney Executed Before September 1, 1993, And All Non–Durable Powers of Attorney**

An examiner should determine that a power of attorney grants sufficient authority to validate the actions of the agent. Any instrument affecting real estate may be executed by an attorney in fact, duly appointed and empowered, unless:

(1) The power of attorney was not executed in writing;

(2) The principal has died or an order of a court has appointed a guardian of the principal's person or estate, or both, unless the court order otherwise provides; or

(3) The power of attorney has expired or terminated by its own terms or by operation of law.

A power of attorney and instruments executed by one having apparent agency power may qualify as "ancient documents."

*Source: Oklahoma Title Examination Standards, Std. 6.7.*

**Standard 8.20. Validity Of Instrument Executed By Attorney In Fact Regarding Durable Powers Of Attorney Executed After September 1, 1993**

An examiner should determine that a power of attorney grants sufficient authority to validate the actions of the agent. Any instrument affecting real estate may be executed by an attorney in fact, duly appointed and empowered, unless the attorney in fact or the third party dealing with the attorney in fact had actual notice that:

(1) The power of attorney was not executed, acknowledged, and recorded as required by law;

(2) A revocation of the power of attorney has been recorded in the same office in which the instrument containing the power of attorney was recorded;
The principal has died or an order of a court has appointed a guardian of the principal’s estate, unless the court order otherwise provides;

(4) The principal was not disabled or incapacitated, as defined by the power; or

(5) The power of attorney has expired or terminated by its own terms or by operation of law.

• Chapter 9- Conveyances Involving Trustees

Standard 9.10. Powers Of Trustee

Unless a trustee’s power is restricted by the trust instrument or by law, the trustee of an express trust has the power to convey, lease, and encumber the real property interest that is subject to the trust. A trustee’s act binds the trust and all beneficiaries as against successors who are without actual or constructive notice of restrictions or limitations upon the trustee’s powers.

Source: Oklahoma Title Examination Standards, Std 15.1.

Standard 9.20. Title As “Trustee” Without Further Identification Of Trust

If property is conveyed to a person identified as “trustee,” but the conveyance does not identify the trust or disclose the names of the beneficiaries, an examiner may presume the authority of the trustee to convey, transfer or encumber the title to the property.

• Chapter 10- Capacity to Convey

Standard 10.10. Minority

In the absence of actual or constructive notice to the contrary, a grantor is presumed to be an adult. If it appears that a person acquired title as a minor, an examiner must first determine that a conveyance from that person occurred after:

(1) the person obtained the age of majority as defined at the time of the conveyance;

(2) the person had the disability of minority removed by a court of competent jurisdiction; or

(3) the person was legally married.

A conveyance that has not been disaffirmed within a reasonable time after the minor attains the age of majority is valid.

Source: Oklahoma Title Examination Standards, Std. 4.1.

Standard 10.20. Mental Capacity

In the absence of actual or constructive notice to the contrary, an examiner may presume that a grantor has the mental capacity to convey. If the lack of capacity has been established, restoration of capacity may be accomplished pursuant to statute.

Source:

Oklahoma Title Examination Standards, Std. 4.2.

Standard 10.30. Guardians
In reviewing a sale or encumbrance of property by a guardian, an examiner must determine that all statutory requirements have been met.

- Chapter 11- Decedents’ Estates

**Standard 11.10. Passage Of Title Upon Death**

A decedent’s property passes to his or her heirs at law or devisees immediately upon death, subject in each instance, except for exempt property, to payment of debts, including estate and inheritance taxes.

**Standard 11.20. Estate Proceedings**

If an owner of property dies, the examiner must determine whether the owner left a will, whether there is a probate proceeding or administration pending, and whether a personal representative is acting. If the records of the county where the land is located do not indicate that a will has been filed for probate, and in the absence of information to the contrary, the affidavit of a person who has knowledge of the facts is usually accepted as satisfactory evidence that the owner died intestate.

**Standard 11.30. Conveyances By An Executor**

Before accepting an executor’s deed, an examiner must be satisfied that all statutory requirements were met in the appointment of the executor and that the executor is qualified to act. A qualified executor, even one under court order, may convey property belonging to the estate if authorized to do so by the will. In addition, a qualified independent executor, even though not authorized by will, may convey if not prohibited by the will and if there are one or more unpaid debts of the estate that are not barred by limitations. In the absence of information to the contrary, the examiner may rely upon an affidavit of an executor or other person who has knowledge of the facts that there are existing debts of the estate.

**Standard 11.40. Conveyances By An Administrator**

An administrator may convey property of a decedent only with authority of the court. Therefore, before accepting an administrator’s conveyance, an examiner must determine that all statutory requirements have been met in the appointment of the administrator and that the administrator is qualified to act and is authorized to make the sale.

**Standard 11.50. Conveyances By Heirs Of An Estate**

If the property owner died intestate, or if the owner died testate but the will is not probated, the examiner must, in the absence of administration, identify the heirs of the decedent, along with the devisees in any unprobated will, and require that all of them join in a conveyance of the property of the decedent.

**Standard 11.60. Liens For Debts And Taxes**

Property of a decedent passes subject to unpaid debts and taxes of the estate. Therefore, the examiner must determine whether these are unpaid. In the absence of information to the contrary, an examiner may rely upon the affidavit of an executor, administrator, or other person who has knowledge of the facts that all debts of the estate have been paid. As evidence that an estate is not large enough to incur federal estate and Texas inheritance taxes, an examiner may rely upon a court-approved inventory, or in the absence of an inventory, the affidavit of a person who has knowledge of the facts. An order of the court probating a will as a muniment of title may be accepted as evidence that all obligations of the estate have been paid other than debts secured by liens on real property. In the latter case, the examiner must determine that the liens do not affect the property under
examination. An examiner may accept, as proof that debts and taxes have been paid, an order closing a court supervised administration or an affidavit closing an independent administration. If federal estate and Texas inheritance taxes are due, satisfaction of the taxes may be proven by a Federal Estate and Generation–Skipping Transfer Tax Closing Letter together with proof of payment of the taxes shown by the letter to be due to the United States and to the State of Texas.

**Standard 11.70. Heirship Affidavits**

In the absence of information to the contrary, an examiner may rely upon an affidavit of heirship with respect to the family history and the identity of heirs of a decedent.

**Standard 11.80. Community Survivors**

If no one has qualified as executor or administrator of the estate of a decedent who was married, the examiner may rely upon a conveyance of community property from the surviving spouse, acting as community survivor pursuant to Tex. Prob. Code Ann. § 160, made for the purpose of paying community debts.

**Standard 11.90. Community Administration**

If a surviving spouse has qualified as community administrator in the manner prescribed in Tex. Prob. Code Ann. §§ 161–177, an examiner

**Standard 11.100. Foreign Wills**

An examiner may rely upon an exemplified copy of a will probated outside of Texas, as being effective to pass title to property in Texas owned by a decedent, if the will and the order admitting the will to probate are probated in Texas pursuant to Tex. Prob. Code Ann. § 95 or are filed in the deed records pursuant to Tex. Prob. Code Ann. § 96.

- **Chapter 12 - Bankruptcies**

**Standard 12.10. Relevance Of Bankruptcy Cases To Real Estate Transactions**

The examiner should consider whether a person in the chain of title or in a proposed transaction is or was a debtor in a bankruptcy proceeding. If the person in the chain of title has been or is a debtor in a bankruptcy proceeding, the land may have been or may be property of the estate, subject to the jurisdiction and control of the bankruptcy proceeding.

**Standard 12.20. Authority For Prior Transfer**

If the examiner has knowledge that the owner or transferor in a prior real estate transaction recorded within two years prior to the current examination was then a debtor in a bankruptcy case, the examiner should determine that the prior transfer was authorized in that case. If the chain of title discloses that the owner or transferor in a prior real estate transaction in the chain of title was then a debtor in a bankruptcy case, the examiner should determine that the prior transfer was authorized in that case.

**Standard 12.30. Reliance Upon Recitals Of Authority For Prior Transfer**

If a copy of an order in the bankruptcy case authorizing a prior real estate transaction in the chain of title has been recorded, the examiner may rely upon the order to determine that the transaction was authorized in the bankruptcy case. If the instrument evidencing the transaction was recorded more than two years prior to the examination, the examiner may rely upon any recitals in the chain of title that the transaction was authorized in bankruptcy case. Recitals may include a statement in the
instrument in the chain of title that the grantor was acting as trustee or debtor in possession, that the property had been exempted or abandoned, that the automatic stay had been lifted or annulled to authorize a foreclosure, or that the transaction evidenced by the instrument had been otherwise authorized in the bankruptcy case.

**Standard 12.40. Authority For Proposed Transfer By Debtor Or Trustee**

If the examiner has knowledge that the owner is the debtor in a bankruptcy case or if the bankruptcy is disclosed in the chain of title in the real property records, the examiner should determine whether the proposed transaction is authorized in that case and should require that a certified copy of the order or other evidence of authority be recorded in the real property records.

**Standard 12.50. Authority To Convey Exempted Land In Proposed Transaction**

If the examiner has knowledge that the current owner is the debtor in a bankruptcy case and the property is to be sold by the debtor based on the debtor’s claim of exemptions in the bankruptcy case, the examiner should require evidence that (1) the land was claimed in the Schedule of Exempt Property as exempt under state law and (2) no objections were made within 30 days after the conclusion of the “first” meeting of creditors or the filing of any amendment to the list or supplemental schedules or such longer time for objection as was granted by the court. The examiner should require that evidence that the property has been exempted be recorded in the real property records.

**Standard 12.60. Authority To Convey Abandoned Land In Proposed Transaction**

If the examiner has knowledge that the current owner is the debtor in a bankruptcy case and the property is to be sold by the debtor based on abandonment of the property in the bankruptcy case, the examiner should require evidence that (1) the trustee in the bankruptcy case or the debtor in possession gave notice of intent to abandon the property and that no objections were filed within 15 days after the mailing of the notice or such other time fixed by the court, (2) the bankruptcy court ordered the property abandoned, by a final nonappealable court order, or (3) the property is scheduled in the bankruptcy case and is not dealt with prior to the closing of the case. The examiner should require that a certified copy of the order of abandonment or other evidence of authority to abandon be recorded in the real property records.

**Standard 12.70. Authority To Foreclose Land In Proposed Transaction**

If a deed of trust encumbering property of the estate or property of the debtor is to be foreclosed and the automatic stay has not otherwise terminated, the examiner should require satisfactory evidence that the mortgagee filed a motion to lift stay, that notice of the motion for relief from the automatic stay was served in accordance with the Bankruptcy Rules and applicable local rules, and that the bankruptcy court granted the motion prior to commencement of the foreclosure. The examiner should require that a certified copy of the order lifting stay or other evidence of lift of stay be recorded in the real property records.

**Standard 12.80. Authority To Convey Or Lease Property Of The Bankruptcy Estate Not In The Ordinary Course Of Business In Proposed Transaction**

If property will be sold or leased by the bankruptcy trustee or debtor in possession, other than in the ordinary course of business, the examiner should require evidence of the following: (1) 20 days’ notice of sale to the debtor, the trustee, all creditors and indenture trustees by mail, unless the court orders the time shortened; (2) no objections to the sale were made or the court by order overruled the objections and authorized the sale; and (3) the order of sale, if any, is nonappealable or is not stayed pending appeal. The examiner should require that a certified copy of the order or other evidence of authority to sell or lease be recorded in the real property records.
Standard 12.90. Authority To Convey Property Of The Bankruptcy Estate In The Ordinary Course Of Business In Proposed Transaction

If property will be sold or leased by the bankruptcy trustee or debtor in possession, in the ordinary course of business, the examiner should require evidence of the following: (1) if the trustee is acting in a Chapter 7 case, the court must authorize the trustee to operate the business and should authorize real estate sales in the ordinary course of business; or (2) if the debtor in possession or trustee is acting in a Chapter 11 case, the authority of the debtor or trustee has not been limited by court order (and no plan has been confirmed). The examiner also should require evidence that the sale will be made in the ordinary course of business be recorded in the real property records.

Standard 12.100. Authority To Convey Property Of The Bankruptcy Estate Free And Clear Of Liens In Proposed Transaction

If property will be sold by the bankruptcy trustee or debtor in possession free and clear of liens, the examiner should require evidence that: (1) 20 days’ notice of sale disclosing that the sale would be made free and clear of liens was given to the debtor, the trustee, all creditors, including the creditors secured by liens on the land, and indenture trustees by mail, unless the court orders the time shortened; (2) the court by order authorized the sale free and clear of liens; and (3) the order of sale is nonappealable or is not stayed pending appeal. The examiner should require that a certified copy of the order be recorded in the real property records.

Standard 12.120. Authority To Mortgage In Proposed Transaction

If property will be mortgaged by the bankruptcy trustee or debtor in possession, the examiner should require evidence of the following: (1) notice of the proposed mortgage to interested parties, including the debtor, all creditors and indenture trustees, by mail; (2) no objections to the mortgage were made or the court by order overruled the objections and authorized the mortgage; and (3) the mortgage is nonappealable or is not stayed pending appeal. The examiner should require that a certified copy of the order be recorded in the real property records.

Standard 12.130. Filings In Violation Of The Automatic Stay

The examiner should not disregard a judgment lien, tax lien notice, or other instrument filed after the commencement of a bankruptcy case and in apparent violation of the automatic stay, because the filing of the instrument may be treated as voidable and may not be considered void, absent action in the bankruptcy case to avoid the instrument.

Standard 12.140. The Discharge And Judgment Liens

An examiner may assume that an abstract of judgment filed against a person who was a debtor in a bankruptcy case is extinguished as a lien against property of the debtor if: (1) the debtor files a motion in the bankruptcy case pursuant to 11 U.S.C. § 522(f) to extinguish the lien as to homestead, notifies the creditor in accordance with the applicable Bankruptcy Rules and local rules, and secures a final order of the bankruptcy court removing the lien; (2) the debtor acquires the property after receiving a discharge from the debt evidenced by the abstract of judgment; or, (3) the property is exempt or is not abandoned in the bankruptcy proceeding, and the debtor receives a discharge from the debt.

Standard 12.150. Extension Of Time

An examiner should be aware that the filing of the bankruptcy case tolls the limitation period in which the trustee may commence an action, if the limitation period had not expired at the time of the filing of
the case, until the later of (1) the end of the period under other law or (2) two years after the order for relief (filing of voluntary bankruptcy). The filing of the bankruptcy case tolls the period in which the trustee may file a pleading or cure a default until the later of (a) the end of the period under other law or (2) 60 days after the order for relief. If applicable nonbankruptcy law or an agreement fixes a period for commencing an action on a claim against the debtor, then the limitation period does not expire until the later of (1) the end of the period under other law or (2) 30 days after the notice of termination or expiration of the stay as to the claim.

**Standard 12.160. Effect Of Dismissal Of Case**

The examiner should be aware that the dismissal of a bankruptcy case reinstates any transfer or lien avoided in the bankruptcy, vacates orders, and revests the property of the estate in the debtor.

- **Chapter 13- Affidavits and Recitals**

**Standard 13.10. Affidavit Defined**

An affidavit is a written statement, under oath, signed by the affiant and evidenced by a jurat.

Comment: A jurat is a certificate signed by an officer authorized to administer oaths before whom an instrument was executed, stating that the instrument was subscribed and sworn to before the officer by the person executing the instrument. An affidavit must contain a jurat to be effective.

**Standard 13.30. Affidavits Of Non–Production**

Concerning an instrument creating an interest that depends upon production (e.g., an oil and gas lease, a mineral or royalty deed, or an assignment), an examiner may rely upon an affidavit which includes facts sufficient to show that the interest has expired by its own terms, although it is preferable to obtain a release from the owner of the interest.

**Standard 13.40. Reliance Upon Recitals**

Recitals are statements of fact made in deeds, leases, mortgages and other documents. Because documents containing recitals are not typically sworn statements, recitals should generally be regarded as having less probative force than affidavits; however, an examiner having no reasonable basis for doubt or suspicion may rely upon recitals as establishing the recited facts.

- **Chapter 14- Marital Interests**

**Standard 14.10. Community Property Presumption**

Except as otherwise provided in this Chapter, an examiner must presume that real property acquired during marriage is community property, whether acquired in the name of one or both spouses.

**Standard 14.20. Gifts, Devise And Descent**

An examiner must consider property acquired during marriage by gift, devise or descent to be the acquiring spouse’s separate property. Where the grantor’s donative intent is clearly demonstrated on the face of the deed, an examiner may presume the property conveyed to be the grantee’s separate property.

**Standard 14.30. Conveyances Between Spouses**

An examiner must consider property conveyed by one spouse to another to have become the grantee’s separate property regardless of whether consideration is recited. However, effective
January 1, 2000, a conveyance or agreement signed by both spouses may convert separate property to community property if such intention is specified.

**Standard 14.40. Separate Property Consideration**

If an examiner determines that the consideration for a conveyance came from a married grantee’s separate estate, the community property presumption is rebutted, and the examiner should consider the property to be the grantee’s separate property. For example, an examiner without knowledge of contrary evidence may rely on a recital in the deed (1) that the consideration was paid out of the grantee’s separate property, or (2) that the property is conveyed to the grantee as separate property.

**Standard 14.50. Community Property Presumption May Be Rebutted By Showing Of Domicile In Common Law Jurisdiction**

An examiner may consider the community property presumption to be rebutted if it is shown the acquiring spouse was domiciled in a common law jurisdiction at the time of acquisition and if there is no indication that community funds or credit were used in the purchase.

**Standard 14.60. Necessity For Joinder When Community Property Is In Name Of Both Spouses**

If property is acquired during marriage by a deed naming both spouses as grantees, an examiner may not give effect to a subsequent conveyance of the property unless (1) it is joined by both spouses or (2) it was made by the husband before January 1, 1968, and did not convey property.

**Standard 14.70. Necessity For Joinder When Community Property Is In Name Of Only One Spouse**

Subject to Standard 14.90, where community property has been acquired in the name of only one spouse, an examiner may rely on the grantee’s authority to execute a subsequent conveyance as grantor, without joinder of the other spouse; however, the examiner should not pass a conveyance of community property held in the name of the wife made before January 1, 1968, without the husband’s joinder or consent.

**Standard 14.80. No Presumption Of Marriage**

Where the examiner is not aware that the grantor was married at the time of acquisition, the examiner need not inquire into the possible existence of a spouse’s community property interest. The examiner should not infer that the grantor was married at the time of acquisition merely from a recital that the grantor is a widow or a widower.

**Standard 14.90. Homestead**

If the property conveyed is or may be the homestead of married persons, whether community property or separate property, an examiner must require the joinder of both spouses, unless it is conclusively shown that the property is not, or is no longer, homestead.

**Standard 14.100. Divorce Or Annulment**

Absent a conveyance or agreement between the parties providing otherwise or a judicial decree imposing an equitable lien, the examiner must treat the separate property of each spouse as unaffected by a divorce or annulment. The examiner must examine the judgment of dissolution and any accompanying property settlement agreement for their effect on community property. Community property not divided by the court or by the spouses is owned equally by the former spouses as tenants in common.
Standard 15.10. Liens Generally

An examiner should identify all liens, both contractual and statutory, relevant to the interests under examination and advise the client regarding any actions that are appropriate to the purpose of the examination. An examiner need not identify a lien that is barred by limitations or is otherwise unenforceable.


The examiner should identify recorded mechanics’ and materialmen’s lien affidavits affecting the title under examination.

Standard 15.30. Judgment Liens

An examiner should identify recorded abstracts of judgment affecting the title under examination.

Standard 15.40. Implied Vendor’s Liens

Absent an express vendor’s lien, if the record indicates, or the examiner otherwise knows that purchase money remains unpaid, the examiner should consider the possible existence of an implied vendor’s lien.

Standard 15.50. Other Involuntary Statutory Liens

The examiner should identify other recorded statutory liens affecting the title under examination.

Standard 15.60. Federal Tax Liens

The examiner should determine whether the land under examination is subject to a federal tax lien.

Standard 15.70. Payment of Ad Valorem Taxes

The examiner ordinarily determines the status of payment of ad valorem taxes.

Standard 15.80. Priority of Ad Valorem Tax Lien

The examiner should ordinarily assume that an ad valorem tax lien is superior to any mortgage, judgment, other lien, or homestead right.

Standard 15.90. Lien Priority and Subordination

Subject to exceptions, an examiner may presume that a lien created and filed for record has priority over a subsequently created competing lien or interest in the same property unless the priority has been altered by a subordination agreement.

Standard 15.100. Removal of Lien

Subject to exceptions, an examiner may presume that a lien on real property is extinguished upon establishing that the secured debt (1) has been paid or (2) has become unenforceable upon expiration of the applicable limitations period.

Standard 15.110. Lis Pendens
The existence of a lis pendens notice requires the examiner to inquire as to the nature of the cause of action, evaluate whether the pending litigation may be relevant to the interests under examination, and advise the client regarding any actions that are appropriate to the purpose of the examination.

• Chapter 16- Foreclosures

Standard 16.10. Nonjudicial Foreclosure

An examiner must determine that all statutory and contractual requirements for a nonjudicial foreclosure sale have been satisfied. Specifically, an examiner must determine (1) that the security instrument confers the power of sale; (2) that there has been a default under the terms of the instrument; (3) that the trustee or substitute trustee was properly appointed; (4) that all statutory requirements in effect at the time of sale have been met; (5) that all additional requirements, if any, contained in the security instrument have been met; and (6) that a trustee’s deed has been delivered.

Standard 16.20. Judicial Foreclosure and Execution Sales

When title is based on a court’s foreclosure of a lien or an execution sale, an examiner may rely on the deed of the officer who conducted the sale only after verifying the existence and apparent validity of the judgment conferring authority to make the sale and of the order of sale or writ of execution and levy.

Standard 16.30. Foreclosure of Home Equity Loans and Reverse Mortgages

An examiner must verify the judicial authority for foreclosures of home equity loans. An examiner must verify the judicial authority for foreclosure of a reverse mortgage unless, before the foreclosure, (1) all borrowers have died or have ceased to occupy the property for more than twelve consecutive months, or (2) the property has been sold or otherwise transferred.

Standard 16.40. Deeds in Lieu of Foreclosure

When examining a deed taken by a lienholder in satisfaction of its secured debt, the examiner should consider the possible right of redemption of a junior lienholder and the validity of a subordinate interest created during the existence of the extinguished debt.

III. The Oklahoma Simplification of Land Titles Act

• 16 O.S. § 61. Definitions
  o For the purposes of this act: (a) An interest in real estate shall include, but not be limited to mortgage liens, interests of purchasers under contract of sale, leases, easements, oil and gas leases, and mineral and royalty interests. (b) A purchaser for value shall include one who has actual or constructive notice of the invalidity of the conveyance, decree or judgment under which his grantor claims immediately or remotely.

• § 62. Purchasers for value of real estate--Reliance upon status of title
  o (a) Any purchaser for value acquiring an interest in real estate from one who claims such interest, immediately or remotely, under a conveyance of record for ten (10) or more years in the records of the county wherein the land is located prior to such purchase shall acquire a valid and marketable title to such interest as against any person claiming adversely to such recorded conveyance for any of the following reasons: (1) that such conveyance was executed by an incompetent person, unless the county court records in the county wherein
the land is located, or the county records therein, reflect the appointment of a guardian prior to said deed, or a judicial determination of the incompetency of the grantor, in which event Sections 61 through 66 of this title shall not apply, (2) that such conveyance was executed by a corporation to an officer thereof, which fact may or may not appear on the face of the deed, without proper authority therefore being had by the officers executing said conveyance, (3) that such conveyance was executed by an attorney-in-fact under a recorded power of attorney which power had terminated by reason of matters not affirmatively shown in the county records, or (4) that such conveyance was never delivered; Provided, however, this section shall not apply as against such person claiming adversely to any such conveyance for any of the foregoing reasons if prior to such purchase, or within one (1) year from October 27, 1961, the effective date of Sections 61 through 66 of this title, or from the effective date of Section 62, as amended, of this title, whichever later occurs, such person shall have filed of record in the county wherein the land is located a notice setting forth his claim and the basis thereof; and provided, further, that this section shall not apply as against any person in possession of the land either by occupancy or by occupancy of a tenant at the time such purchaser acquires his interest.

(b) Any purchaser for value acquiring an interest in real estate from one who claims such interest, immediately or remotely, by or through a conveyance from one purporting therein to be a guardian, executor, or administrator, which conveyance has been of record for ten (10) or more years in the county wherein said land is located prior to such purchase, and which conveyance either has the approval of the court endorsed upon it, or has been confirmed by an order of the court, shall acquire a valid and marketable title to such interest to the full extent that such conveyance purports to convey the same as against any of the following persons: (1) any ward or wards named in said conveyance, his or their heirs, devisees, representatives, successors, or assigns, (2) the State of Oklahoma or any other person claiming under the estate of any decedent named in said conveyance, the heirs, devisees, or representatives of such decedent, their successors, or assigns, or any creditor of said decedent; Provided, however, that this section shall not apply to any person mentioned in (1) or (2) above who for any reason claims adversely to such conveyance, or contends that such conveyance did not divest him of his interest as purported by such conveyance if prior to such purchase, or within one (1) year from October 27, 1961, the effective date of Sections 61 through 66 of this title, or from the effective date of Section 62, as amended, of this title, whichever is the later, such person shall file of record in the county wherein the land is located a notice setting forth his claim and the basis thereof; Provided, further, this section shall not apply as against any person in possession of the land, by occupancy or by occupancy of a tenant, at the time such purchaser acquires his interest.

(c) Any purchaser for value acquiring an interest in real estate from one who claims such interest, immediately or remotely, by or through (1) any decree of distribution or of partition in a decedent's estate entered by and of record in a court of the county wherein the land is located for a period of ten (10) years prior to such purchase, or (2) any such decree entered by a court for any county in this state which decree has been of record in the county wherein the decree was entered or in the deed records of any county or counties in which any part of the land or lands is located for a period of ten (10) years prior to such purchase, shall acquire a valid and marketable title to such interest as against any claim or interest of the estate of said decedent or any heir or devisee, his successors or assigns, of said decedent or any creditors of said decedent; provided, however, this section shall not apply if prior to such purchase, or within one (1) year from October 27, 1961, the effective date of Sections 61 through 66 of this title, or from the effective date of Section 62, as amended, of this title, whichever later occurs, such heir, devisee, or representative of such estate files of record in the county wherein the land is located a notice setting forth the nature of his claim; Provided, further, this section shall not apply as against any person...
claiming adversely to such decree who is in possession of the land by occupancy or by occupancy of a tenant, at the time said purchaser acquires his interest.

(o) Any purchaser for value acquiring an interest in real estate from one who claims such interest, immediately or remotely, by or through any of the following muniments: (1) a sheriff's or marshal's deed executed pursuant to an order of a court having jurisdiction over the land affected confirming a judicial sale or directing the issuance of such deed, (2) any final judgment of a court having jurisdiction over the land affected determining and adjudicating the ownership of such land or any interest therein or partitioning same, (3) any conveyance by a receiver executed pursuant to an order of any court having jurisdiction and directing issuance thereof or directing a sale of such land or any interest therein, (4) any conveyance executed by a trustee or purported trustee referring to a trust agreement or referring to named beneficiaries or otherwise indicating the existence of an express trust where the trust agreement has not been recorded in the county where the land is situated, (5) a purported certificate tax deed or resale tax deed executed by the county treasurer of the county wherein the land is located; which muniment, if a conveyance has been of record in the county wherein the land is situated for a period of ten (10) years prior to such purchase, or, if a judgment has been entered for a period of ten (10) years prior to such purchase and, where such judgment is entered by a court outside the county where the land affected is located, has been recorded in the records of the court clerk or county clerk of the county in which such land is located, shall acquire a valid and marketable title to such interest as against the claims of the following: (A) 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 referred to in subparagraph (1) above and whose rights or claims were not preserved by the terms of such judgment and who claims an interest by reason of any defect, jurisdictional or otherwise, in the proceedings resulting in such judgment, (B) any person or the heirs, devisees, personal representatives, successors or assigns of such person who was named as a defendant in the judgment referred to under subparagraph (2) above and whose rights or claims were not preserved by the terms of such judgment and who claims an interest by reason of any defect, jurisdictional or otherwise, in the proceedings resulting in such judgment, (C) any person or the heirs, devisees, personal representatives, successors or assigns of such person who was named as a defendant or owner or party in interest in the proceedings referred to in subparagraph (3) above, (D) any person or the heirs, devisees, personal representatives, successors or assigns of such person who claims as a settlor, trustee or beneficiary or by, through or under such settlor, trustee or beneficiary of the trust referred to in subparagraph (4) above, (E) any and all owners or claimants of such land or interest therein whose ownership or claim originated prior to such deeds as are referred to in subparagraph (5) above and the heirs, devisees, personal representatives, successors or assigns of such owners or claimants; Provided, however, this section shall not apply as against any such person claiming adversely to such muniments set forth hereinabove if prior to such purchase, or within one (1) year from October 27, 1961, the effective date of Sections 61 through 66 of this title, or from the effective date of Section 62, as amended, of this title, whichever later occurs, such person shall have filed of record in the records of the county wherein the land is located a notice setting forth his claim and the basis thereof; Provided, further, that this section shall not apply against any person claiming adversely to such muniment who is in possession of the land by occupancy or by occupancy of a tenant at the time said purchaser for value acquires his interest. The State of Oklahoma and its political subdivisions or a public service corporation or transmission company which has facilities of service installed on, over, across or under any part of the land shall, to that extent, be deemed to be in possession thereof for purposes of the foregoing provision.

•  § 63. Notice of claim
(a) The notice of claim required to be filed in Section 2 hereof shall contain an accurate and full description of all land affected by such notice, which description shall be set forth in particular terms and not by general inclusions; but, if said claim is founded upon a recorded instrument, then the description in such notice may be the same as that contained in such recorded instrument. The notice shall set forth clearly the basis for and the extent or nature of the claimant's alleged interest, and be signed, acknowledged and filed for record in the county clerk's office of the county or counties where the land described therein is situated. The county clerk of each county shall accept all such notices presented to him which describe land located in the county in which he serves, and shall enter, record, and index the same in the same way that deeds are recorded, and each county clerk shall be entitled to charge the same fees for the recording thereof as are charged for recording deeds. In indexing such notices in his office, each county clerk shall enter such notices in the index of deeds and in the numerical index of deeds. The names of the claimants appearing in such notices are to be entered as grantees in such indexes.

(b) Recording of such notice after a purchase for value has been effected shall not impair the rights of the purchaser for value or the rights of the heirs, successors and assigns of such purchaser.

(c) If any person required under this act to file a notice to protect his rights as against a purchaser for value is a minor or incompetent or unborn contingent remainderman, such notice may be filed by his guardian, person having custody of him, his next friend or any person interested in his estate or any person who represents him as attorney, agent, or in another capacity. Minority, incompetency or other disability shall not suspend the operation of this act.


• § 66. Purpose

The Legislature deems that the needs of the society of this state require that persons claiming interests in real estate contrary to the apparent title as shown by the county records and decrees and judgments of the county courts and courts of general jurisdiction come forward and make public their claims and the basis thereof by filing of record a notice of such claim. This act shall be liberally construed to effect the legislative purpose of simplifying real estate transactions by permitting purchasers to rely upon the status of title as reflected by the county records and by the decrees and judgments of the aforementioned courts.

• § 67. Purchase of severed mineral interest from person claiming interest through recorded affidavit or recital of death and heirship

Any purchaser for value acquiring a severed mineral interest in real estate from a person who claims such interest, immediately or remotely, through a recorded affidavit of death and heirship or a recital of death and heirship in a recorded title transaction, as that term is defined in Section 78 of Title 16 of the Oklahoma Statutes, shall acquire a valid and marketable title to such interest as against any person claiming adversely to such recorded affidavit or recital on the following conditions:
1. The affidavit or recital states that the decedent died without a will;
2. The affidavit or recital lists the names of the decedent's heirs and their relationship to the decedent;
3. The affidavit or recital states that the maker is related to the decedent or otherwise has personal knowledge of the facts stated therein;
4. The affidavit or the title transaction that contains the recital has been recorded for at least ten (10) years in the office of the county clerk in the county in which the real property is located; and
5. No instrument inconsistent with the heirship alleged in the affidavit or recital has been filed in the office of the county clerk in the county in which the real property is located. This section shall apply to affidavits recorded before the effective date of this act as well as
to those recorded thereafter, except that, with respect to those recorded before such date, the ten-year period specified above shall not expire until one (1) year after the effective date of this act. This section shall not apply as against any person in possession of the land, by occupancy or by occupancy of a tenant, at the time such purchaser acquires an interest in such land.

- **§ 68. Abolition of doctrine of constructive possession**
  - The doctrine of constructive possession is abolished only insofar as it applies to the Simplification of Land Titles Act, Section 61 et seq. of Title 16 of the Oklahoma Statutes. Any claims based upon constructive possession before the effective date of this act shall be extinguished unless a notice of the claim is filed with the county clerk of the county where the land or interest is located within one (1) year from the effective date of this act. The notice of the claim shall set forth basis thereof and specifically refer to this section.