

2006 REPORT OF THE TITLE EXAMINATION STANDARDS COMMITTEE OF THE REAL PROPERTY LAW SECTION

Proposed Amendments to Title Standards for 2006, to be presented for approval by the House of Delegates, Oklahoma Bar Association at the Annual Meeting, Nov. 17, 2006. Additions are underlined, deletions are by ~~strikeout~~.

The Title Examination Standards Committee of the Real Property Law Section proposes the following revisions and additions to the Title Standards for action by the Real Property Law Section at its annual meeting in Oklahoma City on Thursday, Nov. 16, 2006.

Proposals approved by the Section will be presented to the House of Delegates at the OBA Annual Meeting on Friday, Nov. 17, 2006. Proposals adopted by the House of Delegates become effective immediately.

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

Proposal 1.

The committee recommends amending Standard 24.9 be amended to reflect recent amendments made to Article 9 of the Oklahoma version of the Uniform Commercial Code.

A financing statement which constitutes a "fixture filing" under ~~12A O.S. §§9-313(1)(b) and 9-401A~~ 12A O.S. §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. § 9-402(5) or (6)~~ 12A O.S. § 1-9-301, and

B. a financing statement filed with the Secretary of State under ~~12A O.S. § 9-403~~ 12A O.S. § 1-9-501 which states that the debtor is a transmitting utility, and

C. a financing statement filed in connection with a public-transaction or a manufactured-home transaction if it indicates that it is filed in connection with a public-finance transaction or a manufactured-home transaction 12A O.S. § 1-9-515(b), may be disregarded as lapsed provided:

1. five (5) years have elapsed from either

(a) the date of filing such financing statement, or

(b) the date of the 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 for 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.

Authority: ~~12A O.S. § 9-401A and § 9-403~~ 12A O.S. § 1-9-502 and 12A O.S. § 1-9-515

Comment: 1 A continuation statement may be filed only within six (6) months prior to the expiration of the current five-year period of the financing statement, ~~12A O.S. § 9-403~~ (3) 12A O.S. § 1-9-515(d).

~~2. A security interest perfected by filing a financing statement remains perfected until sixty (60) days after termination of insolvency proceedings commenced by or against the debtor or until expiration of the current five-year period of the financing statement, whichever later occurs, 12A O.S. § 9403 (2).~~

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

Proposal 2.

The committee recommends adding a new Standard 24.12 to give examiners guidance in the situation where mortgages or other instruments are granted to or assigned to nominees or agents, including but not necessarily limited to transactions involving the Mortgage Electronic Registration Systems, Inc. ("MERS").

Standard 24.12

- 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 may rely on the instruments executed by the nominee or agent as record holder of the mortgage lien.

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

Proposal 3.

The committee recommends amending Standard 25.5 to reflect the change in the law as reflected by the amendment of 68 O.S. § 815(C) which became effective on Nov. 1, 2006.

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 ~~other than a restricted Indian~~, 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.

Proposal 4.

The committee recommends amending Standard 35.3 to reflect the change in the law as reflected by the amendment of 19 O.S. § 863.10 which became effective on Nov. 1, 2006.

B. Within a county having within its boundaries more than fifty percent of the incorporated area of a city having a population of 180,000 or more, where such city and county have adopted a master plan as authorized by 19 O.S. § 863.1 *et seq.*, any deed which

1. conveys a tract of less than one entire platted lot, or
2. conveys an unplatted tract described by federal survey or metes and bounds, ~~consisting of two and one-half acres or less, if filed before April 8, 1992, or consisting of five acres or less, if filed after April 7, 1992, or~~
3. on or after November 1, 2006, conveys an unplatted tract, regardless of the size of such tract, which conveyance results in a "remainder tract" of five acres or less,

shall not be considered valid unless

- a. the deed bears a certificate of approval for lot split purposes by the cognizant planning agency, or
- b. the legal description contained in the deed was previously approved by the cognizant planning agency and endorsed upon the first deed of record creating such lot split, or upon a certified copy thereof, or
- c. the legal description contained in the deed was the subject of a prior deed, which prior deed was filed for record before June 10, 1963, or
- d. the tract is situated within a municipality in such county which had not adopted a master plan at the time the first deed creating the lot split was filed for record, or
- e. the deed has been of record for at least five years, or
- f. the legal description contained in the deed constitutes a "remainder tract" consisting of the balance of (i) a platted lot, or (ii) an unplatted tract previously held under common ownership with the original severed portion of such unplatted tract as hereinafter described, and
 1. a deed appearing of record describing the original severed portion of such lot or tract either
 - a. bears a certificate of approval for lot split purposes by the cognizant planning agency or
 - b. has been of record for at least five years
 2. the original severed portion of such lot or tract was taken or created in fee by dedication, conveyance or condemnation as a public way.

Authority: 19 O.S. § 863.1 *et seq.*, see § 863.10; 16 O.S. § 27a.

Comment: Subparagraph f(2) must be disregarded if the examiner has reason to believe a dedication or conveyance as a public way has not been accepted by the grantee.