

2007 REPORT OF THE TITLE EXAMINATION STANDARDS COMMITTEE OF THE REAL PROPERTY LAW SECTION

Proposed Amendments to Title Standards for 2007, to be presented for approval by the House of Delegates, Oklahoma Bar Association at the Annual Meeting, November 9, 2007. 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, November 8, 2007.

Proposals approved by the Section will be presented to the House of Delegates at the OBA Annual Meeting on Friday, November 9, 2007. 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 adding a new Standard 24.13 to clarify to examiners what parties have standing to bring a mortgage foreclosure action.

Standard 24.13. Standing of Nominee or Agent:

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

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

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

Proposal 2.

The committee recommends adding a new Standard 29.2.1. to give examiners guidance on when a Certificate Tax Deed or Resale Tax Deed may be relied upon without further requirement.

Standard 29.2.1. Reliance on Certificate Tax Deed or Resale Tax Deed:

A title examiner may rely, without further requirement, on a certificate tax deed or resale tax deed as a conveyance of the real property described in such deed, provided:

A. title to such real property is, or has been, held of record by a purchaser for value who acquired such title from or through the grantee in such tax deed; and,

B. such certificate tax deed or resale tax deed has been of record in the county in which the land is situated for a period of not less than ten years.

Authority: 16 O.S. Section 62 (d)

Caveat: The title acquired via a certificate tax deed or resale tax deed may be subject to the interest of any person in possession of the land claiming title adversely to the title acquired through such deed. 16 O.S. Section 62(d). Also see the following unpublished case: Johnson v. August, 2005 OK CIV APP 97.

Proposal 3.

The committee recommends amending Standard 35.2 to reflect the change in the title of the applicable legislation and to update the citations of authority for this standard.

Standard 35.2 ~~SOLDIERS AND SAILORS~~ SERVICEMEMBERS' CIVIL RELIEF ACT

The ~~Soldiers and Sailors' Civil Relief Act of 1940~~ Servicemembers' Civil Relief Act, and amendments thereto, are solely for the benefit of those in military service; and, if the court has presumed to take jurisdiction and there is nothing in the record that would affirmatively indicate that any party affected by the court proceeding was in military service, the form of the affidavit as to military service or its entire absence from the record does not justify the rejection of title.

Authority: Hynds v. City of Ada *ex rel.* Mitchell, 195 Okla. 465, 158 P.2d 907 (1945), 1945 OK 167; Wells v. McArthur, 77 Okla. 279, 188 P.322 (1920), 1920 OK 96; State *ex rel* Commissioners of the Land Office v. Warden, 197 Okla. 97, 168 P.2d 1010 (1946), 1946 OK 155; Snapp v. Scott, 196 Okla. 658, 167 P.2d 870 (1946), 1946 OK 114.