2020 REPORT OF THE TITLE EXAMINATION STANDARDS COMMITTEE OF THE REAL PROPERTY LAW SECTION

Proposed Amendments to Title Standards for 2021, to be presented for approval by the House of Delegates, Oklahoma Bar Association prior to or at the 2020 OBA Annual Meeting. Additions are underlined, deletions are indicated by ~~strikeout~~. Formatting requests that are not to be printed are contained within {curly brackets}.

The Title Examination Standards Sub-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 prior to or at its annual meeting in 2020.

Proposals approved by the Section will be presented to the House of Delegates prior to or at the 2020 OBA Annual Meeting. Proposals adopted by the House of Delegates become effective immediately.

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

Proposal No. 1.

The Committee proposes to make changes to Standards 8.1, 15.4, 25.5 and 25.7 to reflect the passage of 10 years since the repeal of the Oklahoma Estate Tax.

8.1 TERMINATION OF JOINT TENANCY ESTATE AND LIFE ESTATES

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~~C. A waiver or release of the Oklahoma estate tax lien for the joint tenant or life tenant must be obtained unless:~~

~~1. A district court has ruled pursuant to 58 O.S. § 282.1 that there is no estate tax liability;~~

~~2. The sole surviving joint tenant or remainder interest holder is the surviving spouse of the deceased joint tenant or sole life tenant;~~

~~3. The death of the joint tenant is on or after January 1, 2010; or~~

~~4. The Oklahoma estate tax lien has otherwise been released by operation of law.~~

<u>See TES Standard 25.5 Oklahoma Estate Tax Lien.</u>

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 settlors 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:

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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 Federal estate tax lien or warrant against the estate of the non-joining settlor(s) appears of record in the county where the property is located.~~; or~~

~~E. As to the requirement for 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 only, the date of death of the non-joining settlor(s) is on or after January 1, 2010.~~

See TES Standard 25.5 Oklahoma Estate Tax Lien.

25.5 OKLAHOMA ESTATE TAX LIEN

~~Caveat: Generally, the Oklahoma estate tax was repealed for deaths occurring on or after January 1, 2010. No estate tax lien attaches to real property passing from the decedents dying January 1, 2010, and after, and no estate tax release is required to render such real property marketable under these title standards. 68 O.S. § 804.1.~~

~~Oklahoma estate tax lien obligations for decedents dying prior to January 1, 2010 remain in effect but are extinguished ten (10) years after the date of death. 68 O.S. § 804.1.~~

~~The Oklahoma estate tax survives for deaths occurring subsequent to January 1, 2010, to the extent the Oklahoma estate tax may be imposed due to the interaction of the Oklahoma statutes and the computed Federal estate tax credit for state estate and inheritances allowable in the computation of Federal estate taxes on the Federal estate tax return 68 O.S. § 804. Pursuant to 68 O.S. § 804.1, no Oklahoma estate tax lien attaches to any property for deaths occurring on or after January 1, 2010.~~

~~A. Scope~~

~~For decedents who die on or before December 31, 2009, 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 (1) 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.~~

~~Authority: 68 O.S. § 811.~~

~~Comment: The title examiner should be provided with sufficient written evidence to be satisfied that the particular real property falls under one or more of the exceptions as listed above. Otherwise, the title examiner should assume that all real property which is part of the gross estate of the decedent is subject to the lien of the Oklahoma estate tax.~~

~~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.~~

~~Authority: 68 O.S. §§ 811(e) and 815(c); Okla. Atty. Gen. Op. No. 72-122 (May 1, 1972); State *ex rel. Williamson v. Longmire*, 281 P.2d 949 (Okla. 1955).~~

~~Comment: Said statutes are constitutional under authority of *Love v. Silverthorn*, 187 Okla. 114, 101 P.2d 254, 129 A.L.R. 676 (1940).~~

~~C. Repealer~~

~~There will be no Oklahoma estate tax lien on the estate of a decedent with a date of death on or after January 1, 2010.~~

~~Authority: 68 O.S. § 802 Repealed by Laws 2006, 2nd Extr. Sess., HB 1172, c. 42 § 6, eff. January 1, 2010.~~

For deaths occurring on or after January 1, 2010, no Oklahoma estate tax lien attaches to the property of the decedent.

For deaths occurring prior to January 1, 2010, the Oklahoma estate tax lien is extinguished upon the expiration of ten (10) years from the date of death of the decedent unless prior thereto the Oklahoma Tax Commission causes a tax warrant to be filed of record in the County where the decedent owned property. In that case, the Oklahoma estate tax lien shall continue as a lien for a period of ten (10) years on all property which was part of the decedent's gross estate not otherwise exempt by the law in any county where the tax warrant was filed until a release of the tax warrant is issued and filed of record. Prior to the release or extinguishment of any such tax warrant, the Oklahoma Tax Commission may refile the tax warrant in the office of the county clerk. A tax warrant so refiled shall constitute and be evidence of the state's lien upon the title to any interest in real property until released or for a maximum of ten (10) years from the date of the refiled tax warrant.

Absent an unreleased tax warrant of record which has not expired, no release or order exempting estate tax liability is required for any of the decedent's property to be marketable.

See also TES 25.6 (B)

Authority: 68 O.S. §§ 231 and 234; 68 O.S. § 804.1 and OAC 710:35-3-9

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. §§ 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. See 68 O.S. §§ 230, 231 and 234.~~

~~Gifts made on or after January 1, 1982, are not subject to Oklahoma Gift Tax. The Gift Tax Code was repealed by 1981 Okla. Sess. Laws, ch. 237, § 5, effective January 1, 1982.~~

Repealed.

Proposal No. 2.

The Committee recommends a Comment to Standard 14.8 be added to clarify the authority of a Foreign Limited Liability Company to aquire and convey title to real property located in Oklahoma.

14.8 FOREIGN LIMITED LIABILITY COMPANIES DEEMED TO BE LAWFULLY ORGANIZED AND REGISTERED TO DO BUSINESS

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Authority: 18 O.S. §§ 2042, 2043, 2048, 2049.

Comment: A foreign limited liability company need not be registered in Oklahoma to acquire and convey title to real property located in Oklahoma.

Authority: 18 O.S. §§ 2048, 2049 and 2055.3.

Proposal No. 3.

The Committee recommends Standard 24.14 be amended as follows to reflect the effect of Hub Partners XXVI, Ltd v. Barnett, 2019 OK 69.

24.14 INCOMPLETE MORTGAGE FORECLOSURES

The title to real property shall be deemed marketable regarding a mortgage foreclosure action in which no sheriff's sale has occurred~~,~~ or, the sheriff's sale has been vacated or set aside by order of the court, if the following appear in the abstract:

A. A properly executed and recorded release of all of the mortgages set out in the foreclosure action as to the real property covered by the title examination~~,~~; ~~and~~

B. If a statement of judgment or affidavit of judgment has been filed in the land records of the county clerk in the county in which the real property is located evidencing a judgment lien for a money judgment granted in the foreclosure action and the judgment lien has not expired by the passage of time, a release of the judgment lien filed in the land records of the county clerk in the county in which the real property is located~~,~~; ~~and~~

C. (1) A dismissal, with or without prejudice, of the entire mortgage foreclosure action~~,~~ filed in the court case, by the plaintiff and any cross-petitioners ~~in the action~~, or ~~dismissal~~ by court order~~,~~; or (2) a partial dismissal, with or without prejudice, of the mortgage foreclosure action, filed in the court case, by the plaintiff and any cross-petitioners ~~in the action~~ or ~~partial dismissal~~ by court order, dismissing the action insofar as it relates to or affects the subject real property~~.~~; and

D. If a deed-in-lieu of foreclosure has been recorded, the items listed in A, B, and C above, as applicable, and a release of any attorney's lien created pursuant to 5 O.S. § 6.

Authority: 12 O.S. §§ 686 and 706; *Anderson v. Barr*, 1936 OK 471, 62 P.2d 1242; *Bank of the Panhandle v. Irving Hill*, 1998 OK CIV APP 140, 965 P.2d 413; *Mehojah v. Moore*, 1987 OK CIV APP 43, 744 P.2d 222; ~~and~~ *White v. Wensauer*, 1985 OK 26, 702 P.2d 15; and Hub Partners XXVI, Ltd. V. Barnett, 2019 OK 69.

Proposal No. 4.

The Committee recommends Standard 30.13 be amended as follows to clarify previous subparagraph G and move the language to the front of the standard.

30.13 ABSTRACTING

On September 18, 1996, the State Auditor and Inspector issued Declaratory Ruling 96-1, which rejected the concept of "thirty-year" abstracts and prohibited abstractors from preparing abstracts under this standard after May 1, 1996. Abstracts, compiled and certified on or before May 1, 1996, may still be used as a base abstract when a separate supplemental abstract has been prepared.

For historical reference, base abstracts created in reliance of this standard prior to May 1, 1996 ~~Abstracting~~ under the Marketable Record Title Act ~~shall be~~ are sufficient for examination purposes when the following is shown in the abstract:

A. The patent, grant or other conveyance from the government.

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~~G. On September 18, 1996, the State Auditor and Inspector issued Declaratory Ruling 96-1, which prohibits abstractors from preparing abstracts under this standard after May 1, 1996. Abstracts, compiled and certified on or before May 1, 1996, may still be used as a base abstract when a separate supplemental abstract has been prepared.~~

Proposal No. 5.

The Committee recommends a new Standard 1.5 be included to assist title examiners with the various 2020 SCAD order related to Covid-19 (Coronavirus).

1.5 2020 COVID-19 PANDEMIC

A. Pursuant to a series of Emergency Joint Orders, the Oklahoma Supreme Court suspended all deadlines, prescribed by statute, rule, or order in any civil, juvenile, or criminal cases for the period from March 16, 2020 to May 15, 2020.

B. Pursuant to the *Third Emergency Joint Order Regarding The COVID-19 State of Disaster* issued by the Oklahoma Supreme Court, for the period from March 16, 2020 to May 15, 2020, all rules, procedures, and deadlines, whether prescribed by statute, rule or order in any civil, juvenile or criminal case were suspended, will be treated as a tolling period. May 16th shall be the first day counted in determining the remaining time to act. The entire time permitted by statute, rule or procedure is not renewed.

C. Pursuant to the *Third Emergency Joint Order*, "all dispositive orders entered by judges between March 16, 2020 and May 15, 2020 are presumptively valid and enforceable." When an examiner finds a situation in proceedings under examination where a Judge held a hearing, signed an order,

entered a judgment, or otherwise issued a ruling between March 16, 2020 and May 15, 2020, the examiner may rely on the *Third Emergency Joint Order's* presumption of validity and enforceability absent instruments in the record or other evidence that rebuts that presumption.

Authority: *Third Emergency Joint Order Regarding the COVID-19 State of Disaster*. 2020 OK 23, 462 P.3d 703. *Second Emergency Joint Order Regarding the COVID-19 State of Disaster*. 2020 OK 24, 462 P.3d 262. *First Emergency Joint Order Regarding the COVID-19 State of Disaster*. 2020 OK 25, 462 P.3d 704.

Comment 1: Paragraphs 7 and 8 of the *Third Emergency Joint Order* provide instructions for computing deadlines impacted by the period from March 16, 2020 to May 15, 2020:

"7. For all cases pending before March 16, 2020, the deadlines are extended for only the amount of days remaining to complete the action. For example, if the rule required the filing of an appellate brief within 20 days, and as of March 16, ten (10) days remained to file the brief, then the party has 10 days with May 16, 2020 being the first day.

8. For all cases where the time for completing the action did not commence until a date between March 16 and May 15, 2020, the full amount of time to complete the action will be available. May 16th shall be the first day counted in determining the time to act."

Comment 2: The *Third Emergency Joint Order* clarifies that the period between March 16, 2020 and May 15, 2020 is a tolling period. All applicable statutes of limitations under Oklahoma law were tolled for this period.

Comment 3: The *Third Emergency Joint Order* encouraged Judges "to continue to use remote participation to the extent possible by use of telephone conferencing, video conferencing pursuant to Rule 34 of the Rules for District Courts, Skype, Bluejeans.com and webinar based platforms…Judges are encouraged to develop methods to give reasonable notice and access to the participants and the public."

Proposal No. 6.

The Committee recommends Standard 3.2(A) be amended as follows to clarify affidavits cannot be used in place of an estate administration and to clairfy that an affidavit related to severed minerals as provided in 16 O.S. §67 is an exception to 3.2(A).

3.2 AFFIDAVITS AND RECITALS

A. Recorded affidavits and recitals should cover the matters set forth in 16 O.S. §~~§ 82 and~~ 83; they cannot substitute for a conveyance, administration of an estate, or probate of a will, except as provided in 16 O.S. §67.

Proposal No. 7.

The Committee recommends the following editorial changes to the Title Standards as they appear on OSCN to bring the printed handbook and OSCN into conformity.

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 ~~title~~ Examination ~~examination~~ Standards ~~standards~~ of the Oklahoma Bar Association where applicable."

2.1 RECERTIFICATION UNNECESSARY

Comment~~:~~ 1~~.~~: Title Standard 26, requiring re-certification of abstractors' certificates after five (5) years, adopted November, 1946, was repealed by the House of Delegates on November 30, 1960. The request for withdrawal came from counties where re-certification charges were considered excessive. Investigation disclosed Standard 26 was not in the line with similar ~~standards~~ Standards of other states and particularly the model ~~standard~~ Standard prepared by Professor Lewis M. Simes and Mr. Clarence D. Taylor, under the auspices of the Section of Real Property, Probate and Trust Law of the American Bar Association. ~~The 1960 Title Examination Standards Committee recommended that Title Standard 26 be withdrawn and the model standard approved in lieu thereof. The House of Delegates approved this proposal, November 30, 1960, and the new Standard re-numbered Standard 1.1.~~

Comment 2~~.~~: It is not the purpose of the ~~standard~~ Standard to discourage or prevent the examining attorney from requiring re-certification when in the examining attorney's judgment abstracting errors or omissions have occurred, or when the examining attorney has reason to question the accuracy of all or a particular portion of an abstract record.

Comment 3~~.~~: Abstractors in Oklahoma have been required to be bonded since prior to statehood. The 1899 Okla. Sess. Laws P~~p~~. 53 was enacted March 10, 1899. It has been retained since that time subject to the Revision of 1910, which added a provision for a corporate surety and made it clear that the abstractor's liability on the bond extended to any person injured.

Comment 4~~.~~: The limitation applicable to an action for damages on an abstractor's bond is five (5) years from the date of the abstractor's certificate, 74 O.S. § 227.29. In 1984, these provisions were made a part of the "Oklahoma Abstractors Law." See 74 O.S. § 227.14.

3.1 INSTRUMENTS BY STRANGERS

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Comment: Since the decision in *Tenneco, supra*, the Standard as it existed prior to *Tenneco* permitting examiners to ignore stray instruments, even with its caveat, and the Standard as it was amended in 1976 (see Standard 3.1, 1988 Title Examination Standards Handbook) are not supported by the law and therefore ought not to be continued. While it is true that many stray instruments are the result of a scrivener's error in drafting the description, it is also true that an instrument may appear to be stray because the grantor failed to record the instrument which carried title to said grantor. When the situation is of this latter kind, the case comes under the facts and decision in *Tenneco, supra*. For this reason, the examiner who knows of a stray instrument must make such inquiry that will assure the examiner that the grantor in the stray instrument did not have some interest in the property even though it be not of record.

A stray instrument or abstract thereof which is or could be a root of title under the Marketable Record Title Act, 16 O.S. §§ 71-80, may not be disregarded by the examiner, but must be regarded as creating, or potentially creating, a root of title under the Marketable Record Title Act.

{editor's note to OSCN: please indent this second paragraph of the comment to reflect it is a continuation of the comment rather than a continuation of paragraph A}

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Caveat: 16 O.S. § 76 does not directly address the situation where an otherwise "stray" instrument, as defined under the Statute has been of record for more than thirty (30) years and is, at the time, the apparent root of title. However, because of the requirement of Section 76(b)(1), that there must be an "otherwise" valid chain traceable to an instrument "which is a root of title as defined by Sections 71 through 80" of Title 16, it would appear that the mere recording of an affidavit after the stray instrument had already ripened into a root of title would not be sufficient to revoke the status of such stray instrument as a root of title. The issue is not directly addressed by the Statute, nor by a ~~an~~ reported decision.

3.2 AFFIDAVITS AND RECITALS

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C. Oklahoma Statutes have authorized the use of affidavits to affect title to real property for several purposes. The specific ~~statute~~ Statute should be consulted and the requirements of the Statute should be followed carefully.

D. Special attention should be given to the provisions of 16 O.S. § 67 – *Acquiring Severed Mineral Interests from Decedent – Establishing Marketable Title*:

1. In part, 16 O.S. § 67 provides that a person who claims a severed mineral interest, through an affidavit of death and heirship recorded pursuant to 16 O.S. §§ 82 and 83, shall acquire a marketable title ten (10) years after the recording of the affidavit by following the five (5) specific steps set forth in Part ~~part~~ C of Section 67. The Act applies only to severed minerals, not leasehold interests. Section 82 provides that such an affidavit creates a rebuttable presumption that the facts stated in the recorded affidavit are true as they relate to the severed minerals.

2. Although not specifically required by 16 O.S. § 67, it is recommended that the affidavit contain sufficient factual information to make a proper determination of heirship. Such information includes the date of death of the decedent, a copy of the death certificate, marital history of the decedent, names and dates of death of all spouses, a listing of all children of the decedent including any adopted children, identity of the other parent of all children of the decedent, the date of death of any deceased children, and the identity of the deceased child's spouse and issue, if any. During the ten year period of 16 O.S. § 67, if an affidavit fails to include factual information necessary to make a proper determination of heirship, the examiner should call for a new affidavit that contains the additional facts necessary for a proper determination of heirship. If a new or corrected affidavit is filed, the statutory ten-year period would run from the date of recordation of the new or corrected affidavit.

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Comment 1: This Standard does not supplant other Standards or statutes providing for use of affidavits, such as 16 O.S. § 67 or 58 O.S. § 912.

Comment 2: Affidavits affecting real property include: Affidavits to Terminate Joint Tenancy or Life Estates (58 O.S. § 912); Multi Subject Information Affidavit (16 O.S. §§ 82-83); Memorandum of Trust (60 O.S. § 175.6a).

Comment ~~1~~3: Affidavits to Terminate Joint Tenancy or Life Estates under 58 O.S. § 912 may be recorded with only a jurat or only an acknowledgment, or both. Since this provision is specific to § 912, prudence dictates that an affidavit which is not prepared under 912 contain both a jurat and acknowledgment. See 16 O.S. § 26.

Comment ~~2~~4: Before the affidavit or unprobated will has been of record for ten years, it is not uncommon for the title examiner to recommend to the party paying royalty owners to consider assuming the business risk of waiving the requirements of marketable title, which might include a probate administration, or judicial determination of death and heirship, and assume the business risk of relying upon the affidavit called for in ~~Section 67~~ 16 O.S. § 67.

Comment ~~3~~5: *Yeldell v. Moore*, 1954 OK 260; 275 P.2d 281. Oklahoma cases discuss the "factum" of a will: whether the will is legally executed in statutory form; legal capacity of the testator; the absence of undue influence, fraud and duress, *Ferguson v. Paterson*, 191 F.2d 584 (10th Cir. 1951); *Matter of the Estate of Snead*, 1998 OK 8, 953 P.2d 1111; *Foote v. Carter*, 1960 OK 234, 357 P.2d 1000. In Oklahoma the district court determines the validity of a will, interprets the will and determines the heirs. A probate proceeding is necessary to determine if there are pretermitted heirs, allow for spousal elections, determine if there is any marital property, and confirm the absence of liens for taxes and debts.

Comment ~~4~~6: *Smith v. Reneau*, 1941 OK 99; 2112 P.2d 160. The decree of the court administering the estate is conclusive as to the legatees, devisees and heirs of the decedent, *Wells v. Helms*, 105 F.2d 402 (10th Cir. 1939).

Comment ~~5~~7: The use of (non-judicial) heirship affidavits under 16 O.S. § 67 may also be suspect in the context of restricted citizens (members) of the Five Civilized Tribes in light of the Act of June 14, 1918, 40 Stat. 606 (25 U.S.C. 375) and Section 3 of the Act of August 4, 1947, 61 Stat.731 which confers exclusive jurisdiction upon the courts of Oklahoma to judicially determine such heirship in accordance with the Oklahoma probate code.

3.3 OIL AND GAS LEASES AND MINERAL AND ROYALTY INTERESTS

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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~~ Standard was then amended in November, 1954. By said Act, such certificates constitute ~~prima facie~~ *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 ~~faci e~~ facie* marketability as provided for in the statute.

3.4 CORRECTIVE INSTRUMENTS

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Authority: Patton & Palomar on Land Titles § 83 (3d ed. ~~2002~~2003); Decennial Digests, *Deeds*, Key No. 43; *Kirkpatrick v. Ault*, 177 Kan. 552, 280 P.2d 637 (1955); *Walters v. Mitchell*, 6 Cal. App. 410, 92 P. 315 (1907); *Lytle v. Hulen*, 128 Or. 483, 275 P. 45 (1929).

3.5 INSTRUMENTS WHICH ARE ALTERED AND RE-RECORDED

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Authority: 15 O.S. § 239; *Briggs v. Sarkey*, 418 P.2d 620 (Okla. 1966); *Smith v. Fox*, 289 P.2d 126 (Okla. 1954); *Boys v. Long*, 268 P.2d 890 (Okla. 1954); *DeWeese v. Baker-Kemp Land Trust Corporation, et al.*, 187 Okla. 1341, 102 P.2d 884 (1940); *Sandlin v. Henry*, 180 Okla. 334, 69 P.2d 332 (1937); *Criner v. Davenport-Bethel Co.*, 144 Okla. 74, 289 P. 742 (1930); *Eneff v. Scott*, 120 Okla. 33, 250 P. 86 ((1926); *Sipes v. Perdomo*, 118 Okla. 181, 127 P. 689 (1925); *Orr v. Murray*, 95 Okla. 206, 219 P. 333 (1923); *Francen et ux. v. Okla. Star Oil Co.*, 80 Okla. 103, 194 P. 193 (1921); Patton & Palomar on Land Titles, § 65 (3rd ed. ~~2002~~2003).

4.1 MINORITY

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Authority: 16 O.S. § 53; Patton & Palomar on Land Titles § 336 (3d ed. ~~2002~~2003); C. Flick, Abstract and Title Practice § 343 (2d ed. 1958); *cf. Giles v. Latimer*, 40 Okla. 301, 137 P. 113 (1914); 10 O.S. §§ 91-94; 15 O.S. §§ 17, 19; 16 O.S. § 1.

4.2 MENTAL CAPACITY TO CONVEY

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Authority: 16 O.S. § 53; Patton & Palomar on Land Titles §§ 336, 536 and 538 (3d ed. ~~2002~~2003); Flick, Abstract and Title Practice § 3444 (2d ed. 1958); *cf. Robertson v. Robertson*, 654 P.2d 600 (Okla. 1982).

5.1 ABBREVIATIONS AND IDEM SONANS

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B. Nicknames of first or middle names: Where there are used commonly recognized nicknames, such as, "Susan" for Suzanna, "Ellen" for Eleanor, “Liz” for Elizabeth, “Katie” for "~~-~~Katherine, “Jack” for John, "Rick" for Richard, “Bob” for Robert, “Bill” for William; and

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Authority: 16 O.S. § 53; Patton & Palomar on Land Titles §§ 73-78 (3d ed. 2003); *King v. Slepka*, 194 Okla. 11, 146 P.2d 1002 (1944); *Collingsworth v. Hutchinson*, 185 Okla. 101, 90 P.2d 416 (1939); *Maine v. Edmonds*, 58 Okla. 645, 160 P. 483 (1916); Annot., 57 A.L.R. 1478 (1928). West Digest System, Century Digest, *Names*, Key Number 4; Decennials, 4 and 5, *Deeds*, Key Number 31.

5.2 VARIANCE BETWEEN SIGNATURE OF BODY OF DEED AND ACKNOWLEDGMENT

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Authority: 16 O.S. § 33; Patton & Palomar on Land Titles §§ 79 and 80 (3d ed. ~~2002~~2003); Basye, Clearing Land Titles § 36 (1953); 1 C.J.S. *Acknowledgments* § 92(3); *Woodward v. McCollum*, 16 N.D. 42, 111 N.W. 623 (1907) (Henry S. Woodward and Harry S. Woodward); *Blomberg v. Montgomery*, 69 Minn. 149, 72 N.W. 56 (1897) (Isabella A. Dern and Isabella Dern, Myrtie B. Thorp and Myrtie Thorp, and George B. Conwell, Sr., and G.B. Conwell, Sr.); *Paxton v. Ross*, 89 Iowa 661, 57 N.W. 428 (1894) (Michael Thompson and M. Thompson); *Rupert v. Penner*, 35 Neb. 587, 53 N.W. 598, 17 L.R.A. 824 (1892) (Archibald T. Finn and Arch T. Finn); *Gardner v. City of McAlester*, 198 Okla. 547, 179 P.2d 894 (1946); *O’Banion v. Morris Plan*

Industrial Bank, 201 Okla. 256, 204 P.2d 872 (1948); L. Simes & C. Taylor, Model Title Standards, P. 38 (1960).

Comment: The Oklahoma form of acknowledgment for individuals provides that the official taking the acknowledgment shall certify that the person named was known to the official to be the identical person who executed the instrument. This is similar to the acknowledgment forms in most other states and is sufficient to create a presumption of identity when the signature differs from the body of the deed but the acknowledgment agrees with one or the other.

The cases from North Dakota, Minnesota, Iowa and Nebraska, cited above, support this rule and are typical of the many cases on the subject. No Oklahoma cases directly ~~in~~ on point have been found. However, in the *Gardner* and *O'Banion* cases, *supra*, the Court held the acknowledgments sufficient to identify the persons executing the instruments although the names were omitted from the acknowledgments. This indicates the rule will be sustained in Oklahoma, if and when the point is raised.

5.3 RECITAL OF IDENTITY

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Authority: 16 O.S. § 53; Basye, Clearing Land Titles § 36 (1953); Patton & Palomar on Land Titles § 79 (3d ed. ~~2002~~2003); L. Simes & C. Taylor, Model Title Standards, Standard 5.4 at 37 (1960).

7.1 MARITAL INTERESTS: DEFINITION; APPLICABILITY OF STANDARDS; BAR OR PRESUMPTION OF THEIR NON-EXISTENCE

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Severed minerals cannot be impressed with homestead character and therefore, the Standards ~~standards~~ contained in this chapter are inapplicable to instruments relating solely to previously severed mineral interests.

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Authority: *Bishop v. Smith*, 760 F.3d 1070 (10th Cir. 2014); *Obergefell v. Hodges*, 576 U.S. 644 (2015)

7.2 MARITAL INTERESTS AND MARKETABLE TITLE

….

Comment 3: If an individual grantor is unmarried and the grantor's marital status is inadvertently omitted from an instrument, or if two (2) grantors are married to each other and the grantors' marital status is inadvertently omitted from an instrument, a title examiner may rely on an affidavit executed and recorded pursuant to 16 O.S. § 82 which recites that the individual grantor was unmarried or that the two (2) grantors were married to each other at the date of such conveyance.

….

Caveat: These recitations may not be relied upon if, upon "reasonable inquiry" the purchaser could have determined otherwise. *Keel v. Jones* 413 P.2d 549 (Okla. 1966).

8.1 TERMINATION OF JOINT TENANCY ESTATES AND LIFE ESTATES

….

B. The termination of the interest of a deceased joint tenant or life tenant may be established on a *prima facie* basis by one of the following methods:

1. By recording certified copies of letters testamentary or letters of administration for the estate of the deceased joint tenant or life tenant, or

2. By recording an affidavit from a person other than those listed in 58 O.S. § 912C which:

a. ~~has~~ Has a certified copy of the decedent's death certificate attached;

b. ~~includes~~ Includes a legal description of the property; and

c. ~~states~~ States that the person named in the death certificate is one and the same person as the deceased joint tenant or life tenant named in the previously recorded instrument which created or purported to create the joint tenancy or life tenancy in such property, and identifying such instrument by book and page where recorded.

….

Authority: 16 O.S. §§ 53 A(10)~~;~~, 82-84; 58 O.S. §§ 23, 133, 282.1, 911 and 912; 60 O.S. §§ 36.1 and 74; 68 O.S. §§ 804, 804.1, 811 and 815.

8.2 DIRECT CONVEYANCES

….

Comment: While the section has not been passed on by the Supreme Court, it is expected the Court will follow the standard because: (1) the ~~The~~ section is constitutional, *Hill v. Donnelly*, 56 Cal.App.2d 387, 132 P.2d 867 (1942)~~.~~; (2) the ~~The~~ court has not previously held direct conveyances executed prior to May 7, 1945, to be invalid~~.~~; (3) the ~~The~~ enactment of the section establishes the legislative policy or intention of approving direct conveyances, whether created before or after the adoption of the section. Hence, it is to be presumed that the court will recognize this policy and approve direct conveyances made prior to May 7, 1945. This was done by the court in *United States v. 12,800 Acres of Land* , 69 F.Supp. 767 (D. Neb., 1947). Also, see former Title Standard No. 9.3, repealed in 1987 as obsolete because of the passage of time, which approved corporate deeds attested by an assistant secretary prior to the amendment of 16 O.S. § 94, in 1933, to permit such attestation.

12.1 NAME VARIANCES

Where a corporation appears in the title, the fact that there are minor differences in the name due to the use of abbreviations such as "Co." in place of "Company," or "Corp." in place of "Corporation," or "&" in place of "a~~A~~nd," or "Inc." in place of "Incorporated," or "Ltd." In place of "Limited," does not overcome the presumption that the names refer to the same corporation. 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 corporation.

12.3 CONCLUSIVE PRESUMPTIONS CONCERNING INSTRUMENTS RECORDED FOR MORE THAN FIVE (5) YEARS

The following defects may be disregarded after an instrument from a legal entity has been recorded for five (5) years:

….

12.4 RECITAL OF IDENTITY, ~~OR~~ SUCCESSORSHIP, OR CONVERSION

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. § 1144 or § 1090.2), then:

….

C. On or after November 1, 1998, a recital of succession by merger or consolidation or one or more corporations with one or more business entities, as defined in 18 O.S. § 1090.2(A), may be relied upon if contained in a recorded title document properly executed by the surviving or resulting entity.

D. On or after January 1, 2010, a recital by a business entity, as defined in 18 O.S. § 2054.1(A), of a conversion to a domestic limited liability company may be relied upon if contained in a recorded title document properly executed by the domestic limited liability company.

Authority: 18 O.S. § 1144 (effective November 1, 1987), ~~§~~ 1088 (effective November 1, 1986), ~~and §~~ 1090.2 (effective November 1, 1998), and 2054.1 (effective January 1, 2010).

12.5 POWERS OF ATTORNEY BY LEGAL ENTITIES

A. If a recorded instrument has been executed by an attorney-in-fact on behalf of a legal entity, the examiner should accept the instrument if:

1. the power of attorney authorizing the attorney-in-fact to act on behalf of the legal entity is executed in the same manner as a conveyance by a legal entity,
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 legal entity, 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.

Proposal No. 8.

The Committee recommends the following editorial changes to the Title Standards as they appear in the handbook to bring the printed handbook and OSCN into conformity.

1.1 MARKETABLE TITLE DEFINED

….

Authority: *Pearce v. Freeman*, 122 Okla. 285, 254 P. 719 (1927); *Campbell v. Harsh*, 31 Okla. 436, 122 P. 127 ~~91912~~(1912); *Empire Gas & Fuel Co. v. Stern*, 15 F.2d 323 (8th Cir. 1926); *Sipe v. Greenfield*, 116 Okla. 241, 244 P. 424 (1926); *McCubbins v. Simpson*, 186 Okla. 417, 98 P.2d 49 (1939); *Hawkins v. Wright*, 204 Okla. ~~9~~55, 226 P.2d 957 (1951).

1.4 REMEDIAL EFFECT OF CURATIVE LEGISLATION

….

C. The presumption of constitutionality extends to and includes the Simplification of Land Titles Act, the ~~marketable~~ Marketable Record Title Act, the Limitations on Power of Foreclosure Act and legislation of like purpose.

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 ~~Statute~~ of limitations ~~Limitations~~ may have run against the bonds of some of the abstractors.

Authority: L. Simes & C. Taylor, Model Title~~,~~ Standards Standard 1.3, at 12 (1960); Kansas Title Standard 2.2; Montana Title Standard 22; Nebraska Title Standard 22; 74 O.S. §§ 227.14 and 227.29.

….

~~The Report of the 1960 Title Examination Standards Committee: Recommended that Title Standard 26 be withdrawn and the model Standard approved in lieu thereof. Recommendation approved by the Real Property Law Section and adopted by the House of Delegates on November 30, 1960, and the new Standard re-numbered Standard 1.1.~~

….

Comment 4: The limitation applicable to an action for damages on an abstractor's bond is five (5) years from the date of the abstractor's certificate, 74 O.S. § 227.29. In 1984, these provisions were made a part of the "Oklahoma Abstractors Law." See 74 O.S. § 227.14.

The Report of the 1960 Title Examination Standards Committee: Recommended that Title Standard 26 be withdrawn and the model Standard approved in lieu thereof. Recommendation approved by the Real Property Law Section and adopted by the House of Delegates on November 30, 1960, and the new Standard re-numbered Standard 1.1.

2.2 TRANSCRIPTS OF COURT PROCEEDINGS

….

Authority: 20 O.S. § 1005; 12 O.S. §§ 2902, 3001, 3002, 3003 and 3005; 28 O.S. § 31; 19 O.S. § 167; 74 O.S. §§ 227.14 and 227.29; Op. Atty. Gen. No. 80-95 (July 31, 1980); *Arnold v. Board of Com'rs. of Creek County*, 124 Okla. 42, 254 P. 31 (1926).

Abstractors are required to be bonded or maintain errors and omissions insurance in specified amounts, 74 O.S. § 227.14. Court clerks are required to be bonded under the county officers' blanket bond, 19 O.S. § 167; Op. Atty. Gen. No. 80-95 (July 31, 1980). The ~~5~~ five year s~~S~~tatute of l~~L~~imitations applies to both bonds. The Statute begins to run as to the court clerk's bond from the accrual of the cause of action, *Arnold v. Board of Com'rs. of Creek County, supra*. The s~~S~~tatute begins to run as to the abstractor's bond or errors and omissions insurance from the date of issuance of the abstract certificate~~. See,~~ 74 O.S. § 227.29.

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.

3.1 INSTRUMENTS BY STRANGERS

….

Comment: Since the decision in *Tenneco, supra*, the Standard as it existed prior to *Tenneco* permitting examiners to ignore stray instruments, even with its ~~Caveat~~ caveat, and the Standard as it was amended in 1976 (see Standard 3.1, 1988 Title Examination Standards Handbook) are not supported by the law and therefore ought not to be continued. While it is true that many stray instruments are the result of a scrivener's error in drafting the description, it is also true that an instrument may appear to be stray because the grantor failed to record the instrument which carried title to said grantor. When the situation is of this latter kind, the case comes under the facts and decision in *Tenneco, supra*. For this reason, the examiner who knows of a stray instrument must make such inquiry that will assure the examiner that the grantor in the stray instrument did not have some interest in the property even though it be not of record.

A stray instrument or abstract thereof which is or could be a root of title under the Marketable Record Title Act, 16 O.S. §§ 71-80, may not be disregarded by the examiner, but must be regarded as creating, or potentially creating, a root of title under the Marketable Record Title ~~title~~ Act.

3.2 AFFIDAVITS AND RECITALS

….

D. Special attention should be given to the provisions of 16 O.S. § 67 – *Acquiring Severed Mineral Interests from Decedent – Establishing Marketable Title*:

   1. In part, 16 O.S. § 67 provides that a person who claims a severed mineral interest, through an affidavit of death and heirship recorded pursuant to 16 O.S. §§ 82 and 83, shall acquire a marketable title ten (10) years after the recording of the affidavit by following the five (5) specific steps set forth in Part C of Section 67. The Act applies only to severed minerals, not leasehold interests. Section 82 provides that such an affidavit

creates a rebuttable presumption that the facts stated in the recorded affidavit are true as they relate to the severed minerals.

2. Although not specifically required by 16 O.S. § 67, it is recommended that the affidavit contain sufficient factual information to make a proper determination of heirship. Such information includes the date of death of the decedent, a copy of the death certificate, marital history of the decedent, names and dates of death of all spouses, a listing of all children of the decedent including any adopted children, identity of the other parent of all children of the decedent, the date of death of any deceased children, and the ~~identity of the other parent of all children of the decedent, the date of death of any deceased children and the~~ identity of the deceased child's spouse and issue, if any. During the ten year period of 16 O.S. § 67, if an affidavit fails to include factual information necessary to make a proper determination of heirship, the examiner should call for a new affidavit that contains the additional facts necessary for a proper determination of heirship. If a new or corrected affidavit is filed, the statutory ~~10~~ ten-year period would run from the date of recordation of the new or corrected affidavit.

….

4. If the decedent died intestate, strong consideration should be given to an administration of the estate or a judicial determination of death and heirship during the ~~10~~ ten-year period before the title becomes marketable by a properly prepared 16 O.S. § 67 affidavit.

Comment 1: This Standard does not supplant other Standards or statutes providing for use of affidavits, such as 16 O.S. § 67 ~~or 58,~~ or 58 O.S. § 912.

….

Comment 4: Before the affidavit or unprobated will has been of record for ten (10) years, it is not uncommon for the title examiner to recommend to the party paying royalty owners to consider assuming the business risk of waiving the requirements of marketable title, which might include a probate administration, or judicial determination of death and heirship, and assume the business risk of relying upon the affidavit called for in ~~Section 67~~ 16 O.S. § 67.

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. §§ 167 and 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.

3.5 INSTRUMENTS WHICH ARE ALTERED AND RE-RECORDED

….

Authority: 15 O.S. § 239; *Briggs v. Sarkey*, 418 P.2d 620 (Okla. 1966); *Smith v. Fox*, 289 P.2d 126 (Okla. 1954); *Boys v. Long*, 268 P.2d 890 (Okla. 1954); *DeWeese v. Baker-Kemp Land Trust Corporation, et al.*, 187 Okla. 1341, 102 P.2d 884 (1940); *Sandlin v. Henry*, 180 Okla. 334, 69

P.2d 332 (1937); *Criner v. Davenport-Bethel Co.*, 144 Okla. 74, 289 P. 742 (1930); *Eneff v. Scott*, 120 Okla. 33, 250 P. 86 (1926); *Sipes v. Perdomo*, 118 Okla. 181, 127 P. 689 (1925); *Orr v. Murray*, 95 Okla. 206, 219 P. 333 (1923); *Francen et ux. v. Okla. Star Oil Co.*, 80 Okla. 103, 194 P. 193 (1921); Patton & Palomar on Land Titles, § 65 (3rd ed. 2003).

Caveat: There is an important distinction in authority between alteration of instruments which evidence a completed and fully executed transaction (deeds, mortgages, ~~etc~~ *etc*.) and alteration of instruments which are executory in nature (promissory notes, checks, contracts, *etc*.). The general rule is that alteration of an executory instrument vitiates the executory duties of non-consenting parties, while unconsented alteration of an instrument evidencing an executed transaction does not destroy the rights of the parties to the original agreement, but does vitiate the altered document.

Authority for Caveat: 15 O.S. § 177 (definition of executed and executory); *Valley State Bank v. Dean*, 47 P.2d 924 (Colo. 1935); *McMillan v. Pawnee Petroleum Corp*., 151 Okla. 4, 1 P.2d 775 (1931) (deed as executed contract); *Eastman Nat. Bank v. Naylor*, 130 Okla. 229, 266 P. 778 (1928); *First National Bank v. Ketchum*, 68 Okla. 104, 172 P. 81 (1918)~~;~~, (material alteration in a negotiable instrument after its execution and delivery as a complete contract avoids it except as to parties consenting to the alteration); 2 Am. Jur. 2d, *Alteration of Instruments*, § 9.

4.2 MENTAL CAPACITY TO CONVEY

{Titles of subsections A. and B. to be all capitalized.}

4.3 CAPACITY OF CONSERVATEES TO CONVEY

….

Authority: 30 O.S. §§ 3-215 and 3-219 (formerly 58 O.S. §§ 890.5 & 890.10 prior to December 1, 1988; and 30 O.S. §§ 3-205 & 3-210 from December 1, 1988 to November 1, 1989).

Comment: In *Lindsay v. Gibson*, 635 P.2d 331 (Okla. 1981), the Oklahoma Supreme Court held that a gift conveyance from the conservatee to the conservator and other siblings of the conservatee was invalid. In *Matter of Conservatorship of Spindle*, 733 P.2d 388 (Okla. 1986), the Court held that a physically disabled but mentally competent ward is not legally disabled from making a gift to ~~their~~ her conservator, overruling *Lindsay* to that extent.

Caveat: 1989 Okla. Sess. Laws, ch. 276, (codified as 30 O.S. § 3-211 *et seq*.) amended the conservatorship statutes to provide that a conservator may only be appointed with the consent of the ward, and further that all conservatorships created prior to November 1, 1989, with the consent of the ward would remain valid. 1992 Okla. Sess. Laws, ch. 395, § 2, effective September 1, 1992, (codified as 30 O.S. § 3-220), further provides that each such conservatorship shall be presumed to have been created by consent unless otherwise established by documents filed in the conservatorship or by other evidence.

5.1 ABBREVIATIONS AND IDEM SONANS

Identity of parties should be accepted as sufficiently established in the following cases, unless the examiner is otherwise put on inquiry.

….

B. Nicknames of first or middle names: Where there are used commonly recognized nicknames, such as, "Susan" for Suzanna, "Ellen" for Eleanor, “Liz” for Elizabeth,

"Katie" for "Katherine, "Jack" for John, "Rick" for Richard, "Bob" for Robert, "Bill" for William; and

C. Application of Doctrine of *Idem Sonans* to first, middle and last names or surnames: Where the names, although spelled differently, sound alike or phonetically similar or when their sounds cannot be distinguished, such first names as in "Sarah" and "Sara", "Catherine" and "Katherine", "Jeff" and "Geoff", "Mohammed" and "Mohammad", "Li" and "Lee", and such last names as in "Fallin" and "Fallon", "Green" and "Greene", "McArthur" and "MacArthur"; and

5.2 VARIANCE BETWEEN SIGNATURE OF BODY OF DEED AND ACKNOWLEDGMENT

….

Comment: The Oklahoma form of acknowledgment for individuals provides that the official taking the acknowledgment shall certify that the person named was known to the official to be the identical person who executed the instrument. This is similar to the acknowledgment forms in most other states and is sufficient to create a presumption of identity when the signature differs from the body of the deed but the acknowledgment agrees with one or the other.

The cases from North Dakota, Minnesota, Iowa and Nebraska, cited above, support this rule and are typical of the many cases on the subject. No Oklahoma cases directly ~~in~~ on point have been found. However, in the *Gardner* and *O'Banion* cases, *supra*, the Court held the acknowledgments sufficient to identify the persons executing the instruments although the names were omitted from the acknowledgments. This indicates the rule will be sustained in Oklahoma, if and when the point is raised.

7.1 MARITAL INTERESTS: DEFINITION; APPLICABILITY OF STANDARDS; BAR OR PRESUMPTION OF THEIR NON-EXISTENCE

The term "Mineral 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 afford the landowner's spouse therein.

….

Comment 2: Following the decisions of the Court of Appeals for the Tenth Circuit in *Bishop v. Smith* and the United States Supreme Court in *Obergefell v. Hodges*, same sex marriages are legal in Oklahoma. All standards that refer to a Marital Interest are equally applicable to same sex married couples. Any references to husband and wife, spouses, or married couples should be read to apply to all legal marriages.

Authority: *Bishop v. Smith*, 760 F.3d 1070 (10th Cir. 2014); *Obergefell v. Hodges*, 576 U.S. 644 (2015)

7.2 MARITAL INTERESTS AND MARKETABLE TITLE

….

Comment 4: A non-owner spouse may join in a conveyance as part of a special phrase placed after the habendum clause, yet be omitted from the grantor line of a deed, and still be considered a grantor to satisfy p~~P~~aragraph "B". of this title Standard. *Melton v. Sneed*, 188 Okla. 388, 109 P.2d 509 (1940).

8.1 TERMINATION OF JOINT TENANCY ESTATES AND LIFE ESTATES

….

B. The termination of the interest of a deceased joint tenant or life tenant may be established on a *prima facie* basis by one of the following methods:

….

2. By recording an affidavit from a person other than those listed in 58 O.S. § 912C which:

….

c. States that the person named in the death certificate is one and the same person as the deceased joint tenant or life tenant named in ~~a~~ the previously recorded instrument which created or purported to create the joint tenancy or life tenancy in such property, and identifying such instrument by book and page where recorded.

C. A waiver or release of the Oklahoma estate tax lien for the joint tenant or life tenant must be obtained unless:

….

3. The date of death of the joint tenant is on or after January 1, 2010; or

….

Authority: 16 O.S. §§ 53 A(10)~~;~~, 82-84; 58 O.S. §§ 23, 133, 282.1, 911 and 912; 60 O.S. §§ 36.1 and 74; 68 O.S. §§ 804, 811 and 815.

Comment: Title 58 O.S. § 912 is a procedural statute, and may be applied retroactively because it does not affect substantive rights; see Opin. Atty. Gen. 74-271 (February 10, 1975), *Texas County Irr. & Water v. Okla. Water*, 803 P.2d 1119 (Okla. 1990), and *Shelby-Downard Asphalt Co. v. Enyart*, 67 Okla. 237, 170 P. 708 (1918). The death of a joint tenant or a life tenant may be conclusively established under § 912 regardless of the date of death and regardless of the date of filing of the affidavit.

A retained life estate [e.g., Mom conveys Blackacre to Son, reserving a life estate to herself] is included in the life tenant's taxable estate at death, 68 O.S. § 807(A)(3). However, a non-retained pure life estate, unaccompanied by a general power of appointment, is not subject to Oklahoma estate tax, and an estate tax lien release is not required in such instance. For example, if Mom conveys Blackacre for life to Son, remainder over to Granddaughter, Son has a pure life estate which is not included in his gross estate at his death and is not taxable nor subject to the estate tax lien. An estate tax lien release is not required in such a case. But if Mom were to have given Son not only the life estate but also a general power of appointment [as specially defined at 68 O.S. § 807(A)(9)] over the remainder, such a life estate with a power ~~***would***~~ *would be included* in Son's taxable estate, and a lien release would be required.

The marketability of title may also be impaired by the lien of Federal ~~federal~~ estate tax. See Title Standard No. 25.2.

12.2 REBUTTABLE PRESUMPTIONS CONCERNING CORPORATE INSTRUMENTS EXECUTED IN PROPER FORM

If a recorded instrument from a corporation is executed and acknowledged in proper form, the title examiner may presume that:

A. the ~~The~~ persons executing the instrument were the officers they purported to be~~;~~,

B. the ~~The~~ officers were authorized to execute the instrument on behalf of the corporation~~;~~,

C. the ~~The~~ corporation was authorized to acquire and sell the property affected by the recorded instrument~~;~~, and

D. the ~~The~~ corporation was legally in existence when the instrument was executed.

12.3 CONCLUSIVE PRESUMPTIONS CONCERNING INSTRUMENTS RECORDED FOR MORE THAN FIVE (5) YEARS

The following defects may be disregarded after an instrument from a legal entity has been recorded for five (5) years:

A. the ~~The~~ instrument has not been signed by the proper representative of the legal entity~~;~~,

B. the ~~The~~ representative is not authorized to execute the instrument on behalf of the legal entity~~;~~,

C. the ~~The~~ instrument is not acknowledged~~;~~, and

D. the ~~The~~ defect in the execution, acknowledgment, recording or certificate of recording the same.

12.4 RECITAL OF IDENTITY, SUCCESSORSHIP, OR CONVERSION

….

Comment: While there seems to be no exact precedent for this standard, it is justified as a parallel to Standard 5.3 and as an extension of Standard 12.1.

12.5 POWERS OF ATTORNEY BY LEGAL ENTITIES

A. If a recorded instrument has been executed by an attorney-in-fact on behalf of a legal entity, the examiner should accept the instrument if:

1. the ~~The~~ power of attorney authorizing the attorney-in-fact to act on behalf of the legal entity is executed in the same manner as a conveyance by a legal entity~~;~~,

2. the ~~The~~ power of attorney is recorded in the office of the county clerk~~;~~,

3. the ~~The~~ power of attorney shows that the attorney-in-fact had the authority to execute the recorded instrument~~;~~, and

4. the ~~The~~ power of attorney was executed before the recorded instrument was executed.

B. Notwithstanding paragraph ~~Paragraph~~ ~~"~~A~~"~~ above, if a recorded instrument has been executed by an attorney-in-fact on behalf of a legal entity, the examiner should accept the instrument if the instrument has been of record for at least five (5) years even though a power of attorney has not been recorded in the office of the county clerk of the county in which the property is located.

Authority: 16 O.S. §§ 3, 20, ~~53,~~ 27a, 53, 93.

15.2.1 CONVEYANCES BY AN EXPRESS PRIVATE TRUST OR BY THE TRUSTEE OR TRUSTEES OF AN EXPRESS PRIVATE TRUST

….

Authority: 16 O.S. § 1 and 60 O.S. §§ 175.6a, 175.7, 175.16, 175.17, 175.24, and 175.45.