

2023 REPORT OF THE TITLE EXAMINATION STANDARDS COMMITTEE OF THE REAL PROPERTY LAW SECTION

Proposed Amendments to Title Standards for 2024, to be presented for approval by the House of Delegates, Oklahoma Bar Association prior to or at the 2023 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 2023.

Proposals approved by the Section will be presented to the House of Delegates prior to or at the 2023 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 recommends a new comment to Standard 1.4(C) be included to assist title examiners with understanding the impact of curative legislation on restricted Indian interests.

1.4 REMEDIAL EFFECT OF CURATIVE LEGISLATION

...

- 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.

Caveat: By reason of federal supremacy, tribal treaty rights and the Oklahoma Enabling Act, the Oklahoma curative acts referenced in these Standards have no application or remedial effect on title defects involving restricted Indian title interests. Cure for these defects can only be obtained through compliance with the requirements of applicable acts of Congress.

Authority: U.S. Const. art. I § 8, cl. 3; U.S. Const. art. VI, cl. 2; Worcester v. Georgia, 31 U.S. (6 Pet.) 515, 561 (1832); 18 U.S.C. § 1151; Act of June 16, 1906, § 1 (Oklahoma Enabling Act) 34 Stat. 267.

...

Proposal No. 2

The Committee recommends a new comment to Standard 3.4 be included to assist title examiners with understanding when corrective instruments can be accepted.

3.4. CORRECTIVE INSTRUMENTS

Comment: This standard addresses a situation in which the grantor acts without the joinder of the grantee(s) named in the original conveyance, or their successor(s). A corrective instrument executed by both the grantor and grantee, or their successors, that is otherwise in proper form is effective to modify the prior conveyance.

Proposal No. 3

The Committee recommends the following editorial changes to the Title Standards so as to include additional language and correct spelling errors.

17. NOTICE TO THE REGIONAL DIRECTOR OF THE BUREAU OF INDIAN AFFAIRS
Caveat: The examiner is advised that notice must be given to the Regional Director for the Eastern Oklahoma Regional Office of the Bureau of Indian Affairs, successor to the Muskogee Area Director and successor to the Five Civilized Tribes Superintendent of certain probate proceedings of a member of the Five Civilized Tribes in which a final order was entered after August 4, 1947.

In any such probate proceeding in which a final order was entered after August 4, 1947, but on or before December 31, ~~2019~~ 2018, which proceeding includes property restricted in the hands of a decedent of one-half or more quantum of Indian blood, written notice must have been served on the Regional Director for the Eastern Oklahoma Regional Office of the Bureau of Indian Affairs (or its predecessor) within ten (10) days of the filing of the probate proceeding. Failure to serve notice is jurisdictional, rendering the proceedings nonbinding on the United States of America and void as to any restricted property interest. However, service beyond the ten-day requirement is a procedural defect which is waived by subsequent general entry of appearance, election not to remove, or removal by the United States of America.

...

In any such probate proceeding in which a final order was entered after December 31, ~~2019~~ 2018 (regardless of the decedent's date of death), which includes property restricted in the hands of the decedent of any quantum of Indian blood, written notice must have been served on the Regional Director for the Eastern Oklahoma Regional Office of the Bureau of Indian Affairs within ten (10) days of the filing of the probate proceeding. Failure to serve notice is jurisdictional, rendering the proceedings nonbinding on the United States of America and void as to any restricted property interest. However, service beyond the ten-day requirement is a procedural defect which is waived by subsequent general entry of appearance, election not to remove, or removal by the United States of America.

Authority: H.R. 2606 ~~Public Law 116-399~~ PL 115-399, 132 Stat. 5331(Dec. 31, 2018) (Amendment to Stigler Act); Anderson v. Peck, 53 F.2d 257 (N.D. Okla. 1931); United States v. Thompson, 128 F.2d 173 (10 Cir. 1942).