

## **2025 REPORT OF THE TITLE EXAMINATION STANDARDS COMMITTEE OF THE REAL PROPERTY LAW SECTION**

*Proposed Amendments to Title Standards for 2026, to be presented for approval by the House of Delegates, Oklahoma Bar Association prior to or at the 2025 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 2025.

Proposals approved by the Section will be presented to the House of Delegates prior to or at the 2025 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 the following authority be added to Standard 3.2.1, Comment No. 4.*

#### **3.2.1 ACQUIRING SEVERED MINERAL INTERESTS FROM DECEDENT – ESTABLISHING MARKETABLE TITLE**

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Comment 4: Title 16 O.S. § 67 does not address the effect on title of an unprobated will attached to the affidavit. Oklahoma cases have held that until a will is admitted to probate, it is wholly ineffectual to pass title to real property, including any mineral or leasehold interest, and a devisee has no right to enforce any provisions of said will. Oklahoma cases have also held that there is no time limit within which a petition for probate of a will must or can be filed. A will that has been probated in another jurisdiction but has not been probated in Oklahoma is ineffective to establish any interest or title in the persons claiming thereunder without proper Oklahoma proceedings. As a result, there is uncertainty regarding the legal effect of the attached will. See also Yeldell v. Moore, 1954 OK 260; 275 P.2d 281.

### **Proposal No. 2.**

*The Committee recommends the following language be added to the existing comment to Standard 3.4 in order to assist attorneys in drafting corrective instruments.*

#### **3.4 CORRECTIVE INSTRUMENTS**

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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. To be in proper form, a corrective instrument such as a stipulation of interest and cross conveyance must be executed and acknowledged by (1) the original grantor(s) and grantee(s), (2) their respective successor(s) in interest, AND/OR (3) all other affected parties. If there are intervening parties (such as mortgage or easement holders), further corrective language or instruments may be required.

### **Proposal No. 3.**

*The Committee recommends a change to 6.3 to remove language referring to an Internal Revenue document stamp.*

#### **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.

Authority: P. Basye, Clearing Land Titles § 11.15 (3d ed.). Similar Standards: Colo. 9.5.1; Georgia 4.3.

The Report of the 2025 Title Examination Standards Committee: The reference to Internal Revenue or Oklahoma was removed from the Standard.

### **Proposal No. 4.**

*The Committee recommends the following authorities be stricken from Standard 8.1 as the language is out of date and no longer necessary.*

#### **8.1 TERMINATION OF JOINT TENANCY ESTATES AND LIFE ESTATES**

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See TES Standard 25.5 Oklahoma Estate Tax Lien. The marketability of title may also be impaired by the lien of Federal estate tax. See Title Standard No. 25.2.

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.~~

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 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 estate tax. See Title Standard No. 25.2.~~

### **Proposal No. 5.**

*The Committee recommends new standards 9.1 and 9.2 be added to assist title examiners with understanding the impact of allotted lands as they apply to the Five Civilized Tribes.*

#### **Chapter 9 – Five Civilized Tribes Land Titles**

##### **9.1 FIVE CIVILIZED TRIBES ALLOTTED LANDS**

Lands allotted to members of the Cherokee, Chickasaw, Choctaw, Muscogee (Creek), and Seminole Tribes do not follow uniform patterns. Original treaties and Patent terms have been superseded by subsequent acts of Congress and modified by United States Supreme Court decisions.

##### **9.2 BASIC INFORMATION FOR DETERMINING STATUS OF LANDS ALLOTTED TO MEMBERS OF THE FIVE CIVILIZED TRIBES**

The purpose of this Standard is not to determine whether the current status of a particular allotment is or was restricted against alienation, but rather to provide tools and resources to assist the title examiner in making such determination.

The following information will be needed to determine whether such allotment is or was restricted against alienation, and if so, whether such restriction has been removed:

- i) Tribal membership;
- ii) date of Patent from the Tribe;
- iii) whether Patent was homestead or surplus;
- iv) blood quantum of allottee;
- vi) age of allottee at time of conveyance; and
- v) whether any of the following appear of record with the County Clerk where the lands are located:
  - a) a removal of restrictions from the Bureau of Indian Affairs;
  - b) a conveyance from the allottee or the allottee's successor properly approved by the Bureau of Indian Affairs or a court of competent jurisdiction pursuant to the law in effect at that time.

Once all necessary information has been gathered, the title examiner should consult sources such as the Dawes Rolls, Fitzpatrick Indian Title Chart Extended, applicable Federal Acts and any amendments thereto, the relevant Bureau of Indian Affairs Agency Office, and applicable County Clerk and Court Clerk records to determine restricted status.

Comment 1: There are multiple articles, including one by late Title Examination Standards Committee member Faith Orłowski, to assist practitioners with navigating the history and laws regarding Indian title. Faith Orłowski, Oklahoma Indian Titles, 29 Tulsa L.J. 371, (1993).

## **Proposal No. 6.**

*The Committee recommends new standards 10.1 and 10.2 be added to assist title examiners with understanding the impact of allotted lands as they apply to the Osage Tribe.*

### **Chapter 10 – Osage Land Titles**

#### **10.1 OSAGE NATION ALLOTTED LANDS**

This standard pertains to lands allotted to members of the Osage Nation (formerly known as the Osage Tribe of Indians of Oklahoma), whose reservation was established by the Congress of the United States pursuant to: (1) the Treaty between the United States of America and the Great and Little Osage Indians, Sept. 29, 1865, 14 Stat. 687; (2) Article 16 of the Treaty between the United States of America and the Cherokee Nation of Indians, July 19, 1866, 14 Stat. 799; and (3) the Act of June 5, 1872, ch. 310, 17 Stat. 228 (“An Act to Confirm to the Great and Little Osage Indians a Reservation in the Indian Territory”). These lands are not subject to the same framework of restrictions as those of the Five Civilized Tribes or the tribes subject to the General Allotment Act.

#### **10.2 BASIC INFORMATION FOR DETERMINING STATUS OF LANDS ALLOTTED TO MEMBERS OF THE OSAGE NATION**

The purpose of this Standard is not to determine whether the current status of a particular allotment is or was restricted against alienation, but rather to provide tools and resources to assist the title examiner in making such determination.

The following information will be needed to determine whether such allotment is or was restricted against alienation, and if so, whether such restriction has been removed.

- i) Date of Patent from the Tribe;
- ii) Whether Patent was homestead or surplus;
- iii) Blood quantum of allottee;
- iv) Whether a Certificate of Competency has been issued by the Secretary of the Interior; and
- v) Whether a conveyance from the allottee or the allottee’s successor was properly approved by the Bureau of Indian Affairs or a court of competent jurisdiction pursuant to the law in effect at that time.

Once all necessary information has been gathered, the title examiner should consult sources such as: Rarick’s Table of Alienability of Land Allottees [sic] Among the Osage Indians, applicable

Federal Acts (and any amendments thereto), the relevant Bureau of Indian Affairs Agency Office, Osage Nation Real Estate Services, and applicable County Clerk and Court Clerk records to determine restricted status.

Comment 1: The above standard does not apply to mineral interests within the territorial boundaries of the Osage Nation, which were reserved to the tribe under the terms of the Act of Congress of June 28, 1906, 34 Stat. 539.

## **Proposal No. 7.**

*The Committee recommends new standards 11.1 and 11.2 be added to assist title examiners with understanding the impact of allotted lands as they apply to the General Allotment Act.*

### **Chapter 11 – General Allotment Act Land Titles**

#### **11.1 GENERAL ALLOTMENT ACT LANDS**

This standard pertains to lands allotted to members of the tribes subject to the General Allotment Act. Such allotments were made based on trust-type ownership with the allottee owning an equitable and present usable estate in the land, and the federal government retaining legal title to the property. Accordingly, the allottee received a trust patent, with a fee patent to be issued at the end of the applicable trust period.

Comment 1: While the property remains in trust, the examiner should be aware that federal law will control, with state law only applicable once trust status has ended or as provided for by federal law or regulation. Any contracts or conveyances made without the authority of federal law are void.

#### **11.2 BASIC INFORMATION FOR DETERMINING STATUS OF LANDS ALLOTTED UNDER THE ACT**

The purpose of this Standard is not to determine whether the current status of a particular allotment remains in trust, but rather to provide tools and resources to assist the title examiner in making such determination.

In the absence of a recorded fee patent from the United States, the examiner should presume that the property remains in trust status.

However, the examiner may consult additional sources such as: a Title Status Report issued by the relevant Bureau of Indian Affairs Agency Office; other records of the relevant Bureau of Indian Affairs Agency Office; applicable Federal Acts (and any amendments thereto); and applicable County Clerk and Court Clerk records.

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### **Proposal No. 8.**

*The Committee recommends the following changes be made to Standards 17.4.2 and 17.4.3 in order to properly guide examining attorneys when drafting or examining acceptance(s) of land via a Transfer on Death Deed.*

#### **17.4.2 ELEMENTS OF PROPER ACCEPTANCE.**

A designated grantee beneficiary will be deemed to have properly accepted the interest under a Transfer-on-Death Deed if the recorded Affidavit is in substantial compliance with the requirements of 58 O.S. § 1252. The substantial compliance should, at a minimum, include 1) an affirmation that the record owner is deceased, and 2) a legal description of the real estate.

The additional requirements of whether the record owner and designated beneficiary were married at the time of death, and a copy of the Death Certificate should be supplemented at a later time after the nine-month statutory period.

Authority: 58 O.S. §1252.

#### **17.4.23 ERRORS IN AFFIDAVIT OF ACCEPTANCE**

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