

2019 Real Property and Title

Oklahoma Bar Association Legislative Debrief Day

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Professional

- Munson & McMillin, P.C.
 - Edmond
 - Attorney, Real Estate Practice Lead, 2018-current
- First American Title Insurance Company
 - Oklahoma City
 - Senior Underwriting Counsel, 2017-2018
 - Underwriting Counsel, 2014-2017
- Ezzell & Shepherd, P.L.L.C.
 - Enid
 - Associate Attorney, 2011-2014

Relevant Memberships

- Oklahoma Bar Association
 - Title Examination Standards Committee
 - Legislative Monitoring Committee
 - Real Property Section
 - OBA 5th Leadership Academy
- OKC Real Property Lawyers Association
 - Board Member, 2018-current
- Oklahoma Land Title Association
 - 2019 Leadership Program

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HB 1222 - Lack of Spousal Joinder

by Rep. Perryman; effective November 1, 2019

Old Version - 16 O.S. § 13:

The husband or wife may convey, mortgage or make any contract relating to any real estate, other than the homestead, belonging to him or her, as the case may be, without being joined by the other in such conveyance, mortgage or contract.

- This led to numerous title requirements when one spouse failed to sign on a deed.

HB 1222 - Lack of Spousal Joinder

by Rep. Perryman; effective November 1, 2019

New Version - 16 O.S. § 13:

- A. The husband or wife may convey, mortgage or make any contract relating to any real estate, other than the homestead, belonging to him or her, as the case may be, without being joined by the other in such conveyance, mortgage or contract.
- B. In the event a recorded conveyance of nonhomestead property has been executed by a married grantor without being joined by his or her spouse, said conveyance shall still be considered a valid conveyance of marketable title if one of the following instruments is placed of record:
 - 1. An affidavit executed by the nonjoining spouse stating that the property conveyed was nonhomestead property; or
 - 2. A conveyance executed by the nonjoining spouse, with or without others, relinquishing any claim to an interest in the property to the same grantee, or to a successor or successors in interest, with a recitation that the property was nonhomestead property.

HB 1330 - Surplus Lands from DoT Takings

by Rep. Johns; effective November 1, 2019

Old Version - 69 O.S. § 1001 (D)(2)

2. If the land to be disposed of originally comprised a total taking leaving no abutting remainder, then such shall be sold to the highest bidder, or as otherwise herein provided except that if the land to be disposed of originally comprised a total taking of less than one (1) acre leaving only one abutting property owner of record, then prior to conducting such advertisement and solicitation of bids for the sale of any such lands or interest therein, the Commission shall notify the sole abutting property owner of record to the taking that such has been declared surplus and is to be offered for sale. Such notice shall be sent by registered mail addressed to the last-known address of such person, firm or corporation, with return receipt requested. Such notice shall contain an offer to sell such property to such person, firm or corporation subject to the same conditions as set forth in paragraph 1 of this subsection.

HB 1330 - Surplus Lands from DoT Takings

by Rep. Johns; effective November 1, 2019

New Version - 69 O.S. § 1001 (D)(2)

2. If the land to be disposed of originally comprised a total taking leaving no abutting remainder, then such shall be sold to the highest bidder, or as otherwise herein provided except that if the land to be disposed of originally comprised a total taking of less than three (3) acres leaving only one abutting property owner of record, then prior to conducting such advertisement and solicitation of bids for the sale of any such lands or interest therein, the Commission shall notify the sole abutting property owner of record to the taking that such has been declared surplus and is to be offered for sale. Such notice shall be sent by registered mail addressed to the last-known address of such person, firm or corporation, with return receipt requested. Such notice shall contain an offer to sell such property to such person, firm or corporation subject to the same conditions as set forth in paragraph 1 of this subsection.

HB 2121 - Unclaimed Property Fund

by Rep. Ortega and Sen. Howard; effective November 1, 2019

Current 60 O.S. § 667(A)

Except as provided in subsections B and C of this section, when the State Treasurer determines it to be economically feasible, the Treasurer shall sell abandoned property from safe deposit boxes to the highest bidder at public sale in whatever city in the state affords in the judgment of the State Treasurer the most favorable market for the property involved. The State Treasurer may decline the highest bid and reoffer the property for sale if in the judgment of the State Treasurer the bid is ENR. H. B. NO. 2121 Page 2 insufficient. If in the judgment of the State Treasurer the probable cost of sale exceeds the value of the property, it need not be offered for sale. Any sale held under this section must be preceded by a single publication of notice, at least three (3) weeks in advance of sale in a legal newspaper of general circulation in the county where the property is to be sold, the county of residence of the holder and the county of the last-known address of the owner.

HB 2121 - Unclaimed Property Fund, Pt. 2

by Rep. Ortega and Sen. Howard; effective November 1, 2019

Bill adds the following to the end of 60 O.S. § 667(A):

If no address is listed or if the address is outside this state, the notice shall be published in an Oklahoma newspaper which the State Treasurer believes is most likely to be seen by the owner of the property or by heirs of the owner.

HB 2121 - Unclaimed Property Fund, Pt. 3

by Rep. Ortega and Sen. Howard; effective November 1, 2019

Also adds to 60 O.S. § 668(A)

Existing § 668(A) establishes the “Unclaimed Property Fund” and offers a list of deductions that the State Treasurer can make before making a deposit into the said Fund.

New deduction: 60 O.S. § 668(A)(5)

5. An amount not to exceed twenty-five percent (25%) of the value of the funds in an action to enforce the Uniform Unclaimed Property Act, which is to be used solely to pay attorney fees to any person who was authorized by the State Treasurer to bring the action.

SB442 - County Clerk Fee Increase

by Sen. Haste and Reps. Humphrey and Roberts (Dustin); eff. November 1, 2019

Amends 28 O.S. § 32(C)

- Preservation Fee increased from \$5.00 to \$10.00 on the uniform flat fee schedule for County Clerks in the State of Oklahoma.
- **Which means:** Filing fee for all documents increased by \$5.00

SB 104 - Real Estate Commission: Prizes and Gifts

by Sen. Rosino and Rep. Davis; effective November 1, 2019

Current Law

- 59 O.S. § 858-312 lists out actions that are subject to sanction by the Real Estate Commission. Prior to this new bill, subparagraph 12 read as follows:

Soliciting, selling, or offering for sale real estate by offering "free lots", conducting lotteries or contests, or offering prizes for the purpose of influencing a purchaser or prospective purchaser of real estate.

SB 104 - Real Estate Commission: Prizes and Gifts

by Sen. Rosino and Rep. Davis; effective November 1, 2019

Old Version

- 59 O.S. § 858-312 lists out actions that are subject to sanction by the Real Estate Commission. Prior to this new bill, subparagraph 12 read as follows:

Soliciting, selling, or offering for sale real estate by offering "free lots", conducting lotteries or contests, or offering prizes for the purpose of influencing a purchaser or prospective purchaser of real estate.

New Version

- Subparagraph 12 has been replaced in its entirety with:

Using prizes, money, gifts or other valuable consideration as an inducement to secure customers or clients **to purchase specific property**; however, licensees may use prizes, money, gifts or other valuable consideration for marketing purposes provided they **are not contingent or limited to individuals making an offer or purchasing a specific property.**

SB 346 - Real Estate Appraisals and Sheriff's Sales

by Sen. Bice and Rep. McCall; effective November 1, 2019

Current Version - 12 O.S. § 759(A)

A. When a general execution is issued and placed in the custody of a sheriff for levy, a certified copy of the execution shall be filed in the office of the county clerk of the county whose sheriff holds the execution and shall be indexed in the same manner as judgments. At the time the execution is filed, the court clerk shall collect from the party seeking a general execution all fees necessary for the payment of the disinterested persons for their services in appraising of the subject property pursuant to the requirements of subsection B of this section.

SB 346 - Real Estate Appraisals and Sheriff's Sales

by Sen. Bice and Rep. McCall; effective November 1, 2019

New Version - 12 O.S. § 759(A)

A. When a general execution is issued and placed in the custody of a sheriff for levy, a certified copy of the execution shall be filed in the office of the county clerk of the county whose sheriff holds the execution and shall be indexed in the same manner as judgments. At the time the execution is filed, the court clerk shall collect from the party seeking a general execution all fees necessary for the payment of the disinterested persons or a legal entity for services in appraising the subject property pursuant to the requirements of subsection B of this section.

SB 346 - Real Estate Appraisals and Sheriff's Sales

by Sen. Bice and Rep. McCall; effective November 1, 2019

12 O.S. § 759(B) – Entity Requirements

- Written affidavit of impartiality by the legal entity (no explanation of what this contains or who signs on behalf of the entity)
- A Legal Entity's estimate "shall be developed" by "using at least three independent, credible sources, each of which has estimated the real value of the subject property independently."

SB 737 - Appraisers as Professional Services

by Sen. Leewright and Rep. Newton; effective November 1, 2019

Amends 18 O.S. § 803(A)(6)

- Adds an additional subparagraph to the list of Professional Services covered by the Professional Entity Act:

“aa. A certified real estate appraiser licensed pursuant to Sections 858-700 through 858-732 of Title 59 of the Oklahoma Statutes or listed on the National Registry of Appraisers by the Appraisal Subcommittee in compliance with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) of 1989, and any subsequent laws regulating the practice of real estate appraisal”

Effect

- Now that amended 12 O.S. § 759 allows for appraisals in Sheriff’s sales to be done by legal entities, this bill will allow Appraisers to form entities under the Professional Entity Act.
- This would include P.C., P.L.P., and P.L.L.C.s

SB 915 - Remote Online Notaries, pt. 1

by Sen. Rosino and Rep. Kannady; effective January 1, 2020

New Law: 16 O.S. § 87: Recordation of Electronic Documents in Tangible Form

Definitions

- “Document” means information that is:
 - a. Inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form; and
 - b. Eligible to be recorded in the office of the county clerk;
- “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities;
- “Electronic document” means a document created, generated, sent, communicated, received or stored by electronic means
- (B). A paper or tangible copy of an electronic document that a notary public has certified to be a true and correct copy under subsection C of this section satisfies any requirement of law that, as a condition for recording, the document:
 - 1. Be an original or be in writing;
 - 2. Be signed or contain an original signature, if it contains an electronic signature;
 - 3. Be notarized, acknowledged, verified, witnessed, or made under oath.

SB 915 - Remote Online Notaries, pt. 2

by Sen. Rosino and Rep. Kannady; effective January 1, 2020

New Law: 16 O.S. § 87: Recordation of Electronic Documents in Tangible Form

Under (C), notary must:

1. Reasonably confirmed that the electronic document is in a tamper-evident format;
 2. Detected no changes or errors in any electronic signature or other information in the electronic document;
 3. Personally printed or supervised the printing of the electronic document onto paper or other tangible medium; and
 4. Not made any changes or modifications to the electronic document or to the paper or tangible copy thereof other than the certification described in this subsection.
- (D) states that a county clerk SHALL RECORD if it meets the requirements of this statute
 - (E) provides a form notary certificate
 - (F) certificate attached as provided by D and E is prima facia evidence that requirements have C were satisfied.

SB 915 - Remote Online Notaries, pt. 3

by Sen. Rosino and Rep. Kannady; effective January 1, 2020

New Law: 16 O.S. § 87: Recordation of Electronic Documents in Tangible Form

Subsection (G), retroactive?

G. When any paper or tangible copy of an electronic document shall have been recorded in the office of the county clerk in the proper county, and the document was not certified in accordance with this section, such document shall, from and after the time of the filing thereof for record, be valid as though such document had, in the first instance, been in all respects duly certified in accordance with this section. Such document or the record thereof or a duly authenticated copy thereof shall be competent evidence without requiring the original to be produced or accounted for to the same extent that written documents, duly executed and acknowledged, or the record thereof are competent. **This subsection shall apply to documents recorded before or after January 1, 2020.**

SB 915 - Remote Online Notaries, pt. 4

by Sen. Rosino and Rep. Kannady; effective January 1, 2020

New Law: 49 O.S. § 202 et seq.: Remote Online Notary Act

§ 205. A notary public physically located in this state and authorized to perform remote online notarizations under Section 5 of this act may perform a notarial act by means of communication technology for a remotely located individual who is physically located:

1. In this state;
2. Outside this state but not outside the United States; or
3. Outside the United States if:
 - a. the electronic record:
 - 1) is to be filed with or relates to a matter before a court, governmental entity, public official or other entity subject to the jurisdiction of the United States, or
 - 2) involves property located in the territorial jurisdiction of the United States or a transaction substantially connected to the United States, and
 - b. the notary public has no actual knowledge that the act of making the statement or signing the electronic record is prohibited by the foreign state in which the remotely located individual is located.

SB 915 - Remote Online Notaries, pt. 5

by Sen. Rosino and Rep. Kannady; effective January 1, 2020

New Law: 49 O.S. § 202 et seq.: Remote Online Notary Act

Summary of Other Matters:

- The Secretary of State shall promulgate rules to implement and ensure the effective administration of the Remote Online Notary Act. This section also provides the standards for ensuring integrity, means of performing remote online notarial acts, technology, credential analysis, identity proofing, journals and recordings, forms, etc.
- \$25 application fee to Secretary of State
- § 208 codifies the procedures
- Notary public can charge a max fee of \$25

SB 275 - Judicial Determination of Death

by Sen. Daniels and Rep. Kannady; effective November 1, 2019

Creates a New Law at 63 O.S. § 1-315.1

63 O.S. § 1-315.1 (A) If a death certificate is required to settle a property or financial interest for a person who has allegedly died in this state twenty-five (25) years ago or longer, and the following determinations have been made [by the State Register of Vital Statistics]:

1. Confirmed that no death certificate is on file with State Department of Health
2. All due diligence has been performed and requirements of 63 O.S. 1-317 cannot be met (regular procedure for filing a death certificate).
3. All due diligence has been performed and requirements of 63 O.S. 1-314 cannot be met (procedure for filing a delayed death certificate).

Then a verified petition may be filed with the district court **where the death allegedly occurred** for an order establishing a judicial record of death. C. In those cases which are uncontested the amount of attorney

SB 275 - Judicial Determination of Death, pt. 2

by Sen. Daniels and Rep. Kannady; effective November 1, 2019

63 O.S. § 1-315.1 (B) - Verified Petition shall contain:

1. The full legal name of the person who is allegedly deceased;
2. The date and place of birth of the decedent;
3. The age of the decedent;
4. The date and place of the death of the decedent;
5. The property or financial interest to be resolved;
6. The determinations of the State Registrar of Vital Statistics as required in paragraphs 2 and 3 of subsection A of this section; and
7. Other facts deemed pertinent, which include, but are not limited to, the parents or spouse of the decedent.

SB 275 - Judicial Determination of Death, pt. 3

by Sen. Daniels and Rep. Kannady; effective November 1, 2019

Procedure

- Assigned a Probate Case number
- Notice must be made upon State Department of Health and published once in newspaper § 1-315.1 (C)
- The Court may issue an order establishing the matters pled in the verified petition § 1-315.1 (D)
- No guidance on how long after notice and publication hearing can be set.
- Certified copy of Order filed with State Department of Health, and State can thereafter issue certified copies in the same manner as death certificates. § 1-315.1 (E)
- § 1-315.1 (F) provides that certified copies of this order shall satisfy any statute requiring a death certificate.

H.R. 2606 - Stigler Act Amendments

115th Congress (2017-2018) 915 – by Reps. Cole, Markwayne, Lucas, and Russell; signed by POTUS and effective December 31, 2018

How things work from August 4, 1947 to December 31, 2018

- This affects Five Tribes allotted lands – Cherokee, Chickasaw, Choctaw, Creek (Muscogee), and Seminole
- Restrictions would automatically be removed on allotted lands inherited by heirs who are less than ½ blood
- This resulted in a large amount of Five Tribes allotted lands losing their restricted status.
- The underlying policy of the amendments is to prevent the further automatic loss of allotted lands losing their restricted status.

H.R. 2606 - Stigler Act Amendments

115th Congress (2017-2018) 915 – by Reps. Cole, Markwayne, Lucas, and Russell; signed by POTUS and effective December 31, 2018

Changes:

- Section 1 – restrictions are no longer automatically removed, regardless of blood quantum. Can be removed through other means.
- Section 2 – changes not covered here
- Section 3 – OK State Courts have exclusive jurisdictions over:
 - Guardianship matters affecting 5 tribes
 - Proceedings to administer estates or probates of wills of deceased Indians
 - Actions to determine heirs

Carpenter v. Murphy

Appeal from 10th Circuit Court of Appeals, argued November 27, 2018

- Issue: Whether the 1866 territorial boundaries of the Creek Nation within the former Indian Territory of eastern Oklahoma constitute an “Indian reservation” today under 18 U.S.C. § 1151(a).
- Justice Gorsuch took part in 10th Circuit Court of Appeals decision and has recused himself.
- No decision in 2018-2019 term.
- July 25th, 2019 letter from Oklahoma AG stating that Mike Carpenter has been replaced by Tommy Sharp as Interim Warden of the Oklahoma State Penitentiary and will be automatically substituted as Petitioner.