

2024 REPORT OF THE TITLE EXAMINATION STANDARDS COMMITTEE OF THE REAL PROPERTY LAW SECTION

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

Proposals approved by the Section will be presented to the House of Delegates prior to or at the 2024 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 Standard 17.4.2 be included to assist title examiners with understanding the impact of errors in the recitals of an acceptance affidavit.

17.4.2 ERRORS IN AFFIDAVIT OF ACCEPTANCE

A beneficiary's affidavit of acceptance which contains errors in recitals of the date, date of recording, book and page/document number of record, or minor errors in the names of parties to the transfer on death deed, should be considered sufficient if said affidavit gives enough correct data to identify the transfer on death deed to which the affidavit refers.

Proposal No. 2.

The Committee recommends a new comment be added to Standard 3.2 to assist title examiners with understanding affidavits and recitals regarding lands maintained by Bureau of Indian Affairs.

3.2. AFFIDAVITS AND RECITALS

Comment 8: The use of affidavits under 16 O.S. § 83 are acceptable for the purpose of establishing blood quantum of restricted citizens (members) of the Five Civilized Tribes as an attribute of family history. Such affidavits may be based solely on the maker's knowledge, but may also be supported by records and sources maintained by the Department of the Interior - Bureau of Indian Affairs, such as B.I.A. Trust Asset and Accounting Management System (TAAMS) title records and Title Status Reports, Certificate of Degree of Indian Blood (C.D.I.B.) cards issued by the B.I.A., information from the Dawes Rolls, or other probative records maintained by the applicable tribal government.

Proposal No. 3.

The Committee recommends the following language be stricken from Standards 23.1A, 23.1C, and 23.4 as the language is out of date and no longer necessary.

23.1 JUDGMENT LIENS

A. Certain judgments of state and federal courts (~~except judgments pursuant to the Federal Debt Collection Procedures Act of 1990~~)

A judgment lien, pursuant to a judgment of a court of record of this state (~~except judgments pursuant to the Small Claims Procedure Act which are discussed in Paragraph “C” below, and except judgments for alimony which are discussed in Title Examination Standard 23.2~~) or of the United States (except those subject to the Federal Debt Collection Procedures Act of 1990, 28 U.S.C. § 3001 et seq., which are discussed in Paragraph “B” below):

- ~~1. can be created on or after October 1, 1993, on the real estate of the judgment debtor within a county by filing a Statement of Judgment in the office of the county clerk in that county.~~
- ~~2. Could be created on or after June 1, 1991, and prior to October 1, 1993, on the real estate of the judgment debtor within a county by filing an affidavit of judgment, with a certified copy of such judgment attached to such affidavit of judgment and incorporated by reference in such affidavit of judgment, in the office of the county clerk in that county;~~
- ~~3. Could be created on or after January 1, 1991, and prior to June 1, 1991, on the real estate of the judgment debtor within a county by a certified copy of such judgment in the office of the county clerk in that county;~~
- ~~4. Could be created on or after November 1, 1988, and prior to January 1, 1991, on the real estate of the judgment debtor within a county by filing an affidavit of judgment, with a certified copy of such judgment attached to such affidavit of judgment and incorporated by reference in such affidavit of judgment, in the office of the county clerk in that county;~~
- ~~5. Could be created on or after October 1, 1978, and prior to November 1, 1988, on the real estate of the judgment debtor within a county by filing a certified copy of such judgment in the office of the county clerk in that county; and~~
- ~~6. Could be created, as to judgments of state courts of record, prior to October 1, 1978, (a) on the real estate of the judgment debtor within the county in which the judgment was rendered by entry of such judgment upon the judgment docket in the office of the district court clerk in that county, and (b) on the real estate of the judgment debtor within any other county in the state by filing a certified copy of such judgment with, and entry of the judgment upon the judgment docket of, the district court clerk in that county.~~

~~Note: A federal court judgment, for which a lien was sought to be created prior to October 1, 1978, was not a lien on the real estate of the judgment debtor within any county in the state, except in all counties where a permanent record of such judgment of the United States Court is kept open to the public, until a certified copy of such judgment had been filed and docketed in the office of the state district court clerk of the county in which the real estate is located.~~

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~~C. Judgments pursuant to the Small Claims Procedures Act~~

~~A judgment lien, pursuant to a judgment rendered in the small claims division of the district court:~~

- ~~1. Can be created on or after October 1, 1982, on the real estate of the judgment debtor within a county by filing a Statement of Judgment in the office of the county clerk in that county;~~
- ~~2. Could be created on or after October 1, 1979, and prior to October 1, 1982, on the real estate of the judgment debtor within a county by (a) entry of such judgment upon the judgment docket in the office of the district court clerk of the county in which the judgment was rendered, and (b) filing a certified copy of such judgment in the office of the county clerk in the county in which the lien was sought to be imposed, and such judgment could not be a lien until it had been both entered and filed, as described above; and~~
- ~~3. Could be created prior to October 1, 1979, on the real estate of the judgment debtor within a county by entry of such judgment upon the judgment docket in the office of the district court clerk of the county in which the lien was sought to be imposed.~~

~~**Authority:** 12 O.S. § 706, *Gilbreath v. Smith*, 50 Okla. 42 150 P. 719 (1915); *Long Bell Lumber Co. v. Etter*, 123 Okla. 54, 251 P. 997 (1927); *Flanagan v. Clark*, 156 Okla. 230, 11 P.2d 176 (1932).~~

~~**Caveat:** The examining attorney should be aware of the possibility that a judgment which has been rendered, but not filed with the county clerk, might be filed with the county clerk and become a lien after the effective date of the opinion of the examiner but before the client acquires an interest in the property.~~

~~**Comment 1:** Judgments entered upon the judgment docket in the office of the district court clerk in the county in which the land is located prior to October 1, 1978, unless extinguished by release of operation of law, constitutes liens upon non-exempt land and should not be disregarded. See 1943 Okla. Sess. Laws, ch. 12, § 1.~~

~~**Comment 2:** In determining the effectiveness of the lien of a judgment filed in the office of the county clerk pursuant to 12 O.S. § 706, the examiner should take into consideration the law of the case in *Will Rogers Bank & Trust Company v. First National Bank of Tahlequah*, 710 P.2d 752 (Okla. 1985).~~

~~**Comment 3:** Note that 1991 Okla. Sess. Laws, ch. 251, § 9, contains provisions, among others, which restored, until the effective date of the 1993 Act, the requirement of attaching an affidavit to any judgment to be filed with the county clerk for purposes of making such judgment a lien on the real property of the judgment debtor and repealed the statutory prohibition on the issuance of execution or the conduct of proceedings for the enforcement of judgment within ten (10) days after the judgment is filed with the court clerk. It also repealed the statutory forms of judgment enacted in 1990 Okla. Sess. Laws, ch. 251, § 1, which were not restored by the 1993 legislation. However, be aware of the case of *Mapco, Inc. v. Means*, 538 P.2d 593 (Okla. 1975).~~

~~**Comment 4:** The references to “filing” in the office of the county clerk, as used in this title examination Standard, means presented with tender of filing fee, and accepted by the county clerk.~~

C. **Duration of a judgment lien**

The lien of a judgment, which is dependent upon the enforceability of the judgment as detailed in 12 O.S. § 735, runs from the date the judgment lien is created under 12 O.S. § 706, until the judgment lien is extinguished by the failure to extend the lien of the judgment pursuant to 12 O.S. § 759.

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D. Release of judgment lien

A release of a judgment lien, pursuant to 12 O.S. § 706, must be filed in the office of the county clerk in the county in which the lien is to be released, unless the judgment lien was extinguished as set out in Paragraph “C” above.

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23.4 CHILD SUPPORT ARREARAGE LIENS PURSUANT TO 43 O.S. § 135

A lien against real property, then owned or subsequently acquired by a person owing child support payments, is evidenced as follows:

A. ~~On or after October 1, 1985, but prior to May 15, 1986~~

~~By filing a certified copy of an order of a district court or an administrative order of the Department of Human Services evidencing an arrearage in child support payments with the clerk of the county in which such property is located, which lien relates back in time to when the arrearage was reduced to judgment, is created and is superior to all other liens except the lien of a first mortgage.~~

~~**Authority:** 43 O.S. § 135; 1985 Okla. Sess. Laws, ch. 297, § 20.~~

~~**Comment:** The party authorized to release this lien is not identified by the statute creating said lien.~~

B. ~~On or after May 15, 1986, but prior to October 1, 1987~~

~~By filing a certified copy of an order of a district court or an administrative order of the Department of Human Services, evidencing an arrearage in child support payments with the clerk of the county in which such property is located, which lien shall exist from the time the order is filed of record. The priority of this lien is established by the time that the order is filed of record.~~

~~**Authority:** 43 O.S. § 135, renumbered from 12 O.S. § 1289.1 by 1989 Okla. Sess. Laws, ch. 33, § 1, effective November 1, 1989.~~

~~**Comment:** Liens for arrearages in child support payments created by orders filed on or after May 15, 1986, may be released by the person entitled to the support or the Department of Human Services on behalf of its clients and recipients. For purposes of identifying the parties on whose behalf of the Department of Human Services may release the above described liens, a “recipient” is defined as a party who has assigned to the Department of Human Services his/her rights to support from another person in consideration of receiving aid to families with dependent children, 56 O.S. § 237(C)(1), and “client” is defined as a party, not receiving aid to families with dependent children, who has applied to the Department of Human Services to collect his/her child support payments. See 56 O.S. § 237(D).~~

C. — On or after October 1, 1987, but prior to July 1, 1997

1. ~~By filing a certified copy of an order or a district court or an administrative order of the Department of Human Services evidencing an arrearage in child support payments with the clerk of the county in which such property is located, which lien shall exist from the time the judgment or order is filed of record; or~~
2. ~~By filing a certified copy of a judgment or order, providing for payment of child support pursuant to which a past due amount has accrued, with the clerk of the county in which such property is located, which lien shall exist from the time a past due amount has accrued and notice and opportunity for a court or administrative hearing to determine the amount that is past due has been given to the person ordered to make such payments.~~

Authority: 43 O.S. § 135; 1987 Okla. Sess. Laws, ch. 230, § 15.

D. — On or after July 1997, but prior to November 1, 2000

1. ~~By filing a certified copy of an order of a district court or an administrative order of the Department of Human Services evidencing an arrearage in child support payments with the clerk of the county in which such property is located, which lien shall exist from the time the judgment or order is filed of record; or~~
2. ~~By filing a certified copy of a judgment or order, providing for payment of child support pursuant to which a past due amount has accrued, with the clerk of the county in which such property is located, which lien shall exist from the time a past due amount has accrued and, prior to implementation of the central payment registry, notice and opportunity to contest the amount past due has been given to the obligor. If the payments are made through the central payment registry (as created by 43 O.S. § 410 *et seq.*), past due amounts of child support shall become a lien upon real property of the person ordered to make such payments at the time such payments become past due.~~

Authority: 43 O.S. §§ 135, 410 *et seq.*; 1997 Okla. Sess. Laws, ch. 402, § 15.

Note: The examining attorney should be aware of the possibility of undisclosed liens pursuant to the procedures outlined above. See First Community Bank of Blanchard v. Hodges, 907 P.2d 1047 (Okla. 1995).

E. — On or after November 1, 2000

~~by filing a statement of judgment with the county clerk of the county where the property is located that complies with 12 O.S. § 706 pursuant to the applicable provisions of 43 O.S. § 135, 43 O.S. § 137 and 12 O.S. § 759.~~

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