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**NOTICE**  
**(The New Texas Title Standards)**

**George A. Snell, III**

# NOTICE

**(The New Texas Title Standards)**

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Significant Differences in Oil and Gas Principles between Producing States: From the Landman's Perspective - Texas and Oklahoma - Co-author - published in The Landman, 11-12/89 and 1-2/90 issues;  
Title Examination of Fee Lands (Constructive Notice Revisited) Author/speaker - Mineral Title Examination III (1992) Rocky Mountain Mineral Law Foundation, Denver, Colorado;  
Probate Estates in Texas, Oklahoma and Louisiana Author/Speaker - 19th Annual NADOA Institute (1992), Dallas, Texas;  
A Comparative Review of Oil & Gas Law: Texas-Oklahoma-Arkansas -Co-Author/Co-Speaker - Natural Resources Law Institute (1993), Hot Springs, Arkansas;  
Due Diligence Title Review: The Problem Areas, Where to Look and How to Solve. -Author/Speaker - Sixth Annual Dallas Energy Symposium (1994), Dallas, Texas;  
Suspense Issues that Affect the Division Order Analyst. - Author/Speaker - 21st Annual NADOA Institute (1994), San Antonio, Texas;  
Non-Consenting Mineral Owners. -Author/Speaker - 24th Annual NADOA Institute (1997), New Orleans, Louisiana;  
Drafting Tips For Oil & Gas Leases and Conveyance - Author/Speaker - University of Texas 24<sup>th</sup> Annual Oil, Gas and Mineral Law Institute (1998), Houston, Texas;  
State Royalty Payment Statutes - State Check Stub Requirement Statutes - Author/Speaker - 2<sup>nd</sup> Annual National Oil & Gas Royalty Conference (1998), Houston, Texas;  
A Model Form Title Opinion Format - Is it Possible? Is it Practical? - Author -Vol. 25, No. 2 - Oil, Gas and Mineral Law Section Report (December, 2000) - State Bar of Texas;  
Shut-In Gas Royalty - How to Avoid a Train Wreck - Author/Speaker - St. Mary's University School of Law Mineral/Royalty Owners & Producers Institute (2002), Midland, Texas;  
Constructive Notice ( A Multi-state perspective) - Author/Speaker - 20<sup>th</sup> Annual Advanced Oil, Gas & Energy Resources Law Institute (2002), Dallas, Texas;  
Pooling - From A to Horizontal - Author/Speaker - St. Mary's University School of Law, Mine Fields & Minerals Institute (2003), Midland, Texas;  
Accessing Local Records - Preparing the Chain of Title - Author/Speaker - Mineral Title Examination IV (2007) Rocky Mountain Mineral Law Foundation, Denver, Colorado;  
Legal Descriptions and Wellbore Assignments - Co-Author/Speaker - 25<sup>th</sup> Annual Advanced Oil, Gas & Energy Resources Law Institute (2007), Houston, Texas.  
Preparing Oil and Gas Title Opinions – How Title Standards Can Help – Author/Speaker – 34<sup>th</sup> Ernest E. Smith Oil, Gas & Mineral Law Institute (2008), Houston, Texas.  
Basics of Oil & Gas Conveyances - Author/Speaker - 29<sup>th</sup> Annual Advanced Oil, Gas & Energy Resources Law Course (2011), Houston, Texas.  
Indices, Recording Systems and Notice – Author/Speaker - Mineral Title Examination V (2012), Rocky Mountain Mineral Law Foundation, Denver, Colorado.  
Shale Plays: Comparative Law Discussion of Other Shale States – Author/Speak – 30<sup>th</sup> Annual Advanced Oil. Gas & Energy Resources Law Course (2012), Houston, TX

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## ACCESSING TEXAS TITLE EXAMINATION STANDARDS

The Texas Title Standards Joint Editorial Board has met quarterly since its inception in 1992. Its purpose is to prepare standards, accurate and practical statements of real estate law and procedure, for all Texas real estate practitioners. The standards presently contain 16 chapters with 100 standards. The topics discussed in this paper are contained within Chapter IV. – Execution, Acknowledgment and Recordation, which consists of the following standards:

- 4.10. Omissions and Inconsistencies
- 4.20. Defective Acknowledgments.
- 4.30. Delivery; Effective Date; Delay in Recordation.
- 4.40. Notice Recording System.
- 4.50. Constructive Notice
- 4.60. Recitals in Instruments In Chain of Title.
- 4.70. Duty Of Inquiry Based On Actual Notice.
- 4.80. Duty Of Inquiry Based On Possession.
- 4.90. Qualification As Bona Fide Purchaser.
- 4.100. Qualification As Lien Creditor.
- 4.110. Electronic Filing and Recordation.
- 4.120. Estoppel by Deed.

Standards 4.40 – 4.90 and 4.120 are the focus herein.

The standards can be obtained for free at the two website identified below or by purchase of the two legal sources identified.

Oil, Gas and Energy Resources Law Section Website - [www.oilgas.org](http://www.oilgas.org)

Click - Library

Click - Title Standards

Real Estate, Probate and Trust Law Section Website - [www.reptl.org](http://www.reptl.org)

Click - General - Information

Click - Lawyers - Texas Title Examination Standards

Texas Property Code - An Appendix following Title 2. Conveyances (pocket part in Volume 1 of the hard copy)

Volume 3A of Texas Practice Series (2005 Thomson/West)) - Leopold, Land Titles and Title Examination, (pages 116-228)

**PROPERTY CODE**  
**TITLE 2—APPENDIX**  
**TEXAS TITLE EXAMINATION STANDARDS**

*By request of the Title Standards Joint Editorial Board of the Real Estate, Probate and Trust Law and the Oil, Gas and Energy Resources Law Sections of the State Bar of Texas, the Texas Title Examination Standards are published in their entirety in the Cumulative Annual Pocket Part for V.T.C.A., Property Code Volume 1 and the V.T.C.A. Interim Update pamphlets. The most recent text may also be found on WestlawNext and Westlaw.*

*As Initially Adopted by the Section of Real Estate, Probate and Trust Law and the Oil, Gas and Energy Resources Law Section of the State Bar of Texas on June 27, 1997, as revised to date.*

**By**

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## **CHAPTER I TITLE EXAMINER**

- 1.10. Purpose Of Title Examination.
- 1.20. Review By Examiner.
- 1.30. Consultation With Prior Examiner.

## **CHAPTER II MARKETABLE TITLE**

- 2.10. Marketable Title Defined.
- 2.20. Correction Instruments.

## **CHAPTER III NAME VARIANCES**

- 3.10. Idem Sonans.
- 3.20. Middle Names Or Initials.
- 3.30. Abbreviations.
- 3.40. Recitals Of Identity.
- 3.50. Suffixes.
- 3.60. Variance In Name Within An Instrument.
- 3.70. Variances In Name Of Spouse.

## **CHAPTER IV EXECUTION, ACKNOWLEDGMENT, AND RECORDATION**

- 4.10. Omissions And Inconsistencies.
- 4.20. Defective Acknowledgments.
- 4.30. Delivery; Effective Date; Delay In Recordation.
- 4.40. Notice Recording System.
- 4.50. Constructive Notice.
- 4.60. Recitals In Instruments In Chain Of Title.
- 4.70. Duty Of Inquiry Based On Actual Notice.
- 4.80. Duty Of Inquiry Based On Possession.
- 4.90. Qualification As Bona Fide Purchaser.
- 4.100. Qualification As Lien Creditor
- 4.110. Electronic Filing And Recordation.
- 4.120. Estoppel By Deed.

## **CHAPTER V LAND DESCRIPTIONS**

- 5.10. Land Descriptions Generally.
- 5.20. Land Descriptions in Patents.
- 5.30. Water Boundaries.
- 5.40. Roads.
- 5.50. Easements.

## **CHAPTER VI CORPORATE CONVEYANCES**

- 6.10. Corporate Existence.
- 6.20. Corporate Authority Presumed.
- 6.30. Foreign Corporations.
- 6.40. Corporate Seal.
- 6.50. Authority Of Particular Officers.
- 6.60. Corporate Name or Signer's Representative Capacity Omitted from Signature.
- 6.70. Name Variances.

## **CHAPTER VII CONVEYANCES INVOLVING PARTNERSHIPS, JOINT VENTURES, LIMITED LIABILITY COMPANIES, AND UNINCORPORATED ASSOCIATIONS**

- 7.10. Conveyance Of Real Property Held In Partnership Or Joint Venture Name.
- 7.20. Authority Of Less Than All Partners Regarding Transactions That Are Not In The Ordinary Course Of Business.
- 7.30. Prior Conveyance In Chain By Partnership Or Joint Venture.
- 7.40. Conveyance Of Partnership Property Held In Name Of Partners.
- 7.50. Conveyance Of Real Property Held In Name Of Limited Liability Company.

## **CHAPTER VIII POWERS OF ATTORNEY**

- 8.10. Validity Of Instrument Executed By An Agent.
- 8.20. [Repealed].

## **CHAPTER IX CONVEYANCES INVOLVING TRUSTEES**

- 9.10. Powers Of Trustee.
- 9.20. Title As "Trustee" Without Further Identification Of Trust.

## **CHAPTER X**

### **CAPACITY TO CONVEY**

- 10.10. Minority.
- 10.20. Mental Capacity.
- 10.30. Guardians.

## **CHAPTER XI**

### **DECEDENTS' ESTATES**

- 11.10. Passage Of Title Upon Death.
- 11.20. Estate Proceedings.
- 11.30. Conveyances By An Executor Or An Independent Administrator.
- 11.40. Conveyances By An Administrator.
- 11.50. Conveyances By Heirs Of An Estate.
- 11.60. Liens For Debts And Taxes.
- 11.70. Heirship Affidavits.
- 11.80. Community Survivors.
- 11.90. Community Administration.
- 11.100. Foreign Wills.

## **CHAPTER XII**

### **BANKRUPTCIES**

- 12.10. Relevance Of Bankruptcy Cases To Real Estate Transactions.
- 12.20. Authority For Prior Transfer.
- 12.30. Reliance Upon Recitals Of Authority For Prior Transfer.
- 12.40. Authority For Proposed Transfer By Debtor Or Trustee.
- 12.50. Authority To Convey Exempted Land In Proposed Transaction.
- 12.60. Authority To Convey Abandoned Land In Proposed Transaction.
- 12.70. Authority To Foreclose Land In Proposed Transaction.
- 12.80. Authority To Convey Or Lease Property Of The Bankruptcy Estate Not In The Ordinary Course Of Business In Proposed Transaction.
- 12.90. Authority To Convey Property Of The Bankruptcy Estate In The Ordinary Course Of Business In Proposed Transaction.
- 12.100. Authority To Convey Property Of The Bankruptcy Estate Free And Clear Of Liens In Proposed Transaction.
- 12.110. Authority To Convey Property After Confirmation Of Plan.
- 12.120. Authority To Mortgage In Proposed Transaction.

- 12.130. Filings In Violation Of The Automatic Stay.
- 12.140. The Discharge And Judgment Liens.
- 12.150. Extension Of Time.
- 12.160. Effect Of Dismissal Of Case.

## **CHAPTER XIII**

### **AFFIDAVITS AND RECITALS**

- 13.10. Affidavit Defined.
- 13.20. Reliance Upon Affidavits.
- 13.30. Affidavits Of Non-Production.
- 13.40. Reliance Upon Recitals.

## **CHAPTER XIV**

### **MARITAL INTERESTS**

- 14.10. Community Property Presumption.
- 14.20. Gifts, Devise And Descent.
- 14.30. Conveyances Between Spouses.
- 14.40. Separate Property Consideration.
- 14.50. Community Property Presumption May Be Rebutted By Showing Of Domicile In Common Law Jurisdiction.
- 14.60. Necessity For Joinder When Community Property Is In Name Of Both Spouses.
- 14.70. Necessity For Joinder When Community Property Is In Name Of Only One Spouse.
- 14.80. No Presumption Of Marriage.
- 14.90. Homestead.
- 14.100. Divorce Or Annulment.

## **CHAPTER XV**

### **LIENS AND LIS PENDENS**

- 15.10. Liens Generally.
- 15.20. Involuntary Mechanics' And Materialmen's Liens.
- 15.30. Judgment Liens.
- 15.40. Implied Vendor's Liens.
- 15.50. Other Involuntary Statutory Liens.
- 15.60. Federal Tax Liens.
- 15.70. Payment Of Ad Valorem Taxes.
- 15.80. Priority Of Ad Valorem Tax Lien.
- 15.90. Lien Priority And Subordination.
- 15.100. Removal Of Lien.
- 15.110. Lis Pendens.

**CHAPTER XVI**  
**FORECLOSURES**

16.10. Nonjudicial Foreclosure.

16.20. Judicial Foreclosure And Execution  
Sales.

16.30. Foreclosure Of Home Equity Loans And  
Reverse Mortgages.

16.40. Deeds In Lieu Of Foreclosure.

## PREFACE

### TEXAS TITLE EXAMINATION STANDARDS

In 1989, the Council of the Section of Real Estate, Probate and Trust Law of the State Bar of Texas approved the formation of a committee to study the formulation and development of title examination standards. Through the newsletter of that Section, Section members were notified of the project. Lawyers from all parts of Texas responded evidencing their interest in working as active participants on this project. Subsequently, the Oil, Gas and Mineral Law Section (now the Oil, Gas and Energy Resources Law Section) of the State Bar of Texas asked to co-sponsor this project.

After substantial study of the use of title examination standards and many hours of drafting and meeting time, proposed standards were published for comment in 1996 in the newsletters of both of the sponsoring sections. Following the receipt of comments from lawyers across Texas, additional revisions were made by the committee (now the “Title Standards Joint Editorial Board”) and the proposed standards were once again published for comment in the Spring of 1997.

At the State Bar of Texas Convention on June 27, 1997, 33 standards were approved by both the Section of Real Estate, Probate and Trust Law and the Oil, Gas and Mineral Law Section. The initial standards constituted the beginning of title examination standards in Texas. Under current procedure, the Title Standards Joint Editorial Board, appointed by these two sections, meets at least semiannually to consider amendments to existing standards and additional standards. As with the initial standards, amendments or new standards are presented to the membership of these two sections prior to formal adoption; however, the Board makes changes to the comments and cautions as needed. In keeping with this process, the Comments, Cautions, Sources, and Histories have been updated from the initial Standards.

### DISCLAIMER AND INTRODUCTION

**Disclaimer:** These title examination standards represent the collective consensus of The Title Standards Joint Editorial Board established by the Section of Real Estate, Probate and Trust Law and the Oil, Gas and Energy Resources Law Section of the State Bar of Texas. These standards should not be construed as reflecting the opinion of the State Bar of Texas, its officers, members or staff. These standards are presented with the understanding that neither the publisher nor the Joint Editorial Board is engaged in rendering legal services. In no event shall the Joint Editorial Board, the reviewers, or the publisher be liable for any direct, indirect, or consequential damages resulting from the use of this publication, including damages resulting from the sole or concurrent negligence of the Joint Editorial Board, its members, the reviewers, or the publisher.

Because statutory law prohibits title insurance companies from insuring against loss by reason of unmarketable title, these standards do not apply to title examination for purposes of title insurance. See Tex. Ins. Code Ann. Section 2502.002. Moreover, these standards do not apply to the exercise of discretion by a title insurance company in determining the insurability of title. Title insurance is a contract of indemnity. *Southern Title Guaranty Co., Inc. v. Prendergast*, 494 S.W.2d 154 (Tex. 1973).

Standards for real estate title examinations are statements that declare an answer to a question or a solution for a problem that is commonly encountered in the process of a title examination. Their purpose is to alleviate disagreements among members of the bar regarding real estate transactions and to set forth propositions (standards) with which title lawyers can generally agree concerning title documents to promote uniformity in the preparation, use, and meaning of such

documents. In other words, title standards can be viewed as a reference that can be consulted in the preparation and examination of title documents. Although standards do not, by themselves, impose compulsory legal requirements, they do establish guidelines upon which a reasonable and practical examination can be based. And although standards should state fundamental and enduring principles, they are subject to amendment as required by changes in governing law and in title and conveyancing practice.

Title standards may address a variety of concerns, including the attitudes and relationships among examiners and between examiners and the public, the appropriate duration of a title search, the effect of the lapse of time on a defective or improperly recorded title document, the appropriate presumptions of fact that can be relied upon in the course of an examination, and the law applicable to commonly encountered situations. Standards should represent the near unanimous opinion of the experienced and competent title bar.

Even with title standards, however, title examiners should advise their clients honestly as to their beliefs and opinions regarding the ownership of a particular interest in land. The judgment of an examiner should necessarily reflect rules of law (both legislative and case law) as well as justifiable presumptions that are applicable to title documents and to fact situations arising from the chain of title appearing of record. For example, when the name of a grantee in one deed corresponds with the name of the grantor in a later deed, the universal practice is to presume that they are the same person. And although there is nothing of record to show that the grantor was competent, that the signature is genuine, or that the deed was actually delivered, the universal practice is to presume that these are facts. Indeed, any attempt to require proof of these matters regarding each document in the chain of title would create chaos.

Of course, when minor title questions do arise, the reaction of different examiners may not always be the same. For example, title examiners may respond differently regarding the effect of a recorded, unacknowledged deed; of a deed that fails to state the marital status of the grantor; or of a deed from a married grantor that does not contain the signature of the grantor's spouse. Thus, a chief objective of title standards is to set forth uniform principles to resolve certain common title problems.

Users of these Standards are cautioned that individual Standards, Comments, and Cautions may not reflect current case law and statutes. There is a lapse of time between the time that changes in law occur and the updating of the Standards, Comments, and Cautions. Users are invited to notify the Joint Editorial Board if they believe that any of the Standards, Comments, or Cautions fail to reflect current law.

#### **Standard 4.40. Notice Recording System**

Because Texas has a "notice" recordation statute, an examiner should not presume that the order of filing or recording of competing instruments establishes priority of right or that unrecorded instruments are subordinate to recorded instruments.

Comment:

Common Law Background: "Our system of registration was unknown to the common law." *Ball v. Norton*, 238 S.W. 889, 890 (Tex. Comm'n App. 1922, judgment adopted). "At common law in England, there was no system of registration or recording, and the rule between claimants of the same title was found in the maxim 'prior in tempore potior est in jure,' which means, he who is first in time has the better right." 2 Maurice Merrill, *Merrill on Notice* § 921 (Vernon 1952). This is still the law except as abrogated by statute. Thus, as between claimants who are not entitled to the special protections conferred by recording statutes, the first in time is first in right.

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First appeared as part of the conference materials for the  
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