

UPDATE: New Title Examination Standards

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CHAPTER

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I. Introduction

This paper addresses recent updates and additions to the Texas Title Examination Standards. Many edits resulted from the legislative sessions over the past few years, but others are newly adopted in 2021. In connection with each updated Standard, the Standard, if new, is set out in full. It is followed by an overview of the Comment provided and any Caution to the title examiner. In other cases where the Standard itself is not new, additions or clarifications are discussed. These Standards, together with the Comments and Cautions, are invaluable tools for assessing the quality of title for mineral transactions, lending underwriting, and title insurance. Practitioners will also find the materials to be a useful reference for any analysis of a real estate transaction or chain of title.

II. Title Examination Standards and the Board

The Title Examination Standards are the product of a Board appointed by the Oil & Gas and Energy Resources Law (OGERL) and Real Estate Probate and Trust Law (REPTL) Sections of the State Bar of Texas. The Board meets quarterly to review legislative changes and case law developments and apply these to modify or change existing standards. The Board also takes on new topics important to the title examiner, title insurance underwriter, and the real estate and mineral practitioner. The Standards are not mandatory but are helpful tools and guidelines. The table of contents is attached as Appendix 1. The standards may also be accessed at REPTL.org and OILGAS.org.

An excellent overview and history of the Title Examination Standards can be found in Becker, D., Title Examination Standards That Affect Your Day-To-Day Practice, Advanced Real Estate Law Course, July 2014, Chapter 2. In 2014, Texas had adopted 91 Standards. As of September, 2021, Texas has adopted 118 Standards. A list of other excellent articles is listed in Appendix 2.

III. New and Revised Standards and Comments

In the past five years, or since 2016, the following standards, commentary, and cautions have been modified, revised, or added:

Standard 2.10. Marketable Title Defined

Caution: Texas Property Code 5.152 (effective September 1, 2019) - Required Mineral Lease Disclosure - Omission may void instrument. Any instrument, other than a top lease, titled as an oil and gas lease or oil and gas royalty lease or the like, that conveys permanently or for a term, any or all of the owner's mineral interest or royalty interest in an existing oil,

gas, or mineral lease is void unless it includes a 14-point caption at the top of each page and above the grantors signature: YOU ARE SELLING ALL OR A PORTION OF YOUR MINERAL OR ROYALTY INTERESTS.

Standard 3.40. Recitals of Identity

Comment: Assumed Names

Tex. Bus & Comm. Code Section 71.103(a) – (effective September 1, 2019)

Business entities must file an assumed name certificate with Secretary of State – an examiner may rely on assumed name certificates, absent inconsistent information.

Standard 4.10. Omissions and Inconsistencies

Comment: Remote Online Notarization (Texas Gov't Code Chpt. 406, Subchapter C) – Compliance with the audio-video requirements for a remote notarization constitutes a “personal appearance” for purposes of an acknowledgment.

Standard 4.130. Warranties of Title

Distinguish exceptions from warranty from reservations and exceptions from title. “Warranties are not a part of the conveyance and do not enlarge the title.” In addition, a reservation generally refers to an interest that the grantor is retaining from the transfer, while an exception to the grant should refer to an interest that the grantor does not own and cannot convey. An exception to the warranty merely excludes an interest from the warranty benefits without retaining an interest in the grantor and without excepting an interest from the grant. But see the discussion in *Chicago Title Insurance Company v. Cochran Investments, Inc.*, 602 S.W.3d (Tex. 2020), wherein a special warranty was held to limit liability and avoid any implied covenant of seisin.

Standard 7.10. Conveyance of Real Property Held In Partnership or Joint Venture Name

Comment: Affidavit of Authority for transactions not exceeding \$1 million - Texas Property Code 12.019. Effective September 1, 2019, partnerships and limited partnerships may utilize an “Affidavit of Authority” designating a separate person as having authority for real

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