

ENROLLED HOUSE
BILL NO. 2783

By: Davis of the House

and

Smith of the Senate

An Act relating to conveyances of real estate; amending 6 O.S. 1991, Section 414, as amended by Section 2, Chapter 295, O.S.L. 1992 (6 O.S. Supp. 1993, Section 414), which relates to acquisition and conveyance of real estate; authorizing certain chairman and vice-chairman to sign certain documents; deleting requirement of attestation by certain persons; creating certain presumptions regarding the evidentiary effect of certain recorded documents; providing for application of certain presumptions; amending 16 O.S. 1991, Section 82, 93 and 95, which relate to title affidavits and real estate deeds; modifying effect of certain affidavit; creating certain presumption for recorded affidavit; modifying certain corporate officers authorized to subscribe certain documents; modifying persons authorized to acknowledge certain corporate instruments; permitting use of certain acknowledgment forms; repealing 16 O.S. 1991, Sections 51, 52 and 94, which relate to presumptions of identity, marketability of title and manner of attestation; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 6 O.S. 1991, Section 414, as amended by Section 2, Chapter 295, O.S.L. 1992 (6 O.S. Supp. 1993, Section 414), is amended to read as follows:

Section 414. A. REAL ESTATE AND EQUIPMENT NECESSARY TO BANK'S OPERATION. A bank or trust company may purchase and hold real estate, equipment, furniture and fixtures necessary for the convenient transaction of its business, the cost of which shall not exceed its capital, surplus and undivided profits. This limitation may be exceeded upon written approval of the Commissioner. A bank or trust company may lease out to such tenants as it deems appropriate any portion of its banking house or premises not utilized in the conduct of its banking operations.

B. REAL ESTATE ACQUIRED IN SATISFACTION OF DEBT. A bank or trust company may purchase and hold real estate conveyed to it in satisfaction of debts previously contracted in good faith in the course of business. All such real estate shall be accounted for individually at the lower of the recorded investment in the loan satisfied or its fair market value on the date of the transfer. The recorded investment in the loan satisfied is the unpaid balance of the loan, increased by accrued and uncollected interest, unamortized

premium, and loan acquisition costs, if any, and decreased by previous direct write down, finance charges and unamortized discount, if any.

C. REAL ESTATE ACQUIRED UNDER JUDGMENT, DECREE OR MORTGAGE FORECLOSURE. A bank or trust company may acquire and hold real estate such as it shall purchase at sale under judgment, decree or mortgage foreclosure, under securities held by it.

D. SALE OF REAL ESTATE ACQUIRED UNDER SUBSECTIONS B AND C. No real estate acquired in the cases contemplated in subsections B and C of this section shall be held for a longer time than five (5) years without the written approval of the Commissioner; provided, further, that if the term of the Commissioner expires within any extension period, it shall be necessary for the bank or trust company to secure the written approval of the succeeding Commissioner to continue to hold said real estate for a further period. Once the bank or trust company is no longer permitted to hold the real estate, the Commissioner shall require of the bank or trust company that the said real estate must be sold at a private or public sale within thirty (30) days of being informed of the Commissioner's requirement. For purposes of this section, ownership interests in oil, gas and other subsurface mineral rights other than mere leasehold interests shall be considered real estate; provided, however, notwithstanding the holding limitation of this section or any other provision contained herein, any bank or trust company which on October 15, 1982, held, directly or indirectly, any oil, gas and other subsurface mineral rights, other than mere leasehold interests, that since December 31, 1979, had not been valued on the books of such bank or trust company for more than a nominal amount, may continue to hold such subsurface rights or interests without limitation.

E. INVESTMENTS AND LOANS TO CORPORATION HOLDING BANK AND TRUST COMPANY PREMISES. Any bank or trust company organized under the laws of this state may invest its funds in the stocks, bonds, debentures or other such obligations of any corporation holding the premises of such bank or trust company, and may make loans to or upon the security of any such corporation, but the aggregate of all such investments and loans together with the investments provided for in subsection A of this section shall not exceed the capital, surplus and undivided profits. This limitation may be exceeded upon the written approval of the Commissioner.

F. CONVEYANCE OF REAL ESTATE. Every conveyance of real estate and every lease thereof for a term of one (1) year or more, made by a bank or trust company, must have the name of such bank or trust company subscribed thereto, either by an attorney-in-fact, ~~or by the president or a~~, vice-president, chairman or vice-chairman of the board of directors of such corporation, ~~and such conveyance of real estate, except when executed by an attorney-in-fact, must be attested by the cashier, assistant cashier, secretary or assistant secretary of such corporation, with the seal of such corporation attached.~~

G. Nothing in this section shall preclude or limit in any manner, investments by a bank permitted under any other section of this Code.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 53 of Title 16, unless there is created a duplication in numbering, reads as follows:

EVIDENTIARY EFFECT OF RECORDED DOCUMENT

A. A recorded signed document relating to title to real estate creates a rebuttable presumption with respect to the title that:

1. The document is genuine and was executed as the voluntary act of the person purporting to execute it;

2. The person executing the document and the person on whose behalf it is executed are the persons they are purported to be and the person executing it was neither incompetent nor a minor at any relevant time;

3. Delivery occurred notwithstanding a lapse of time between dates on the document and the date of recording;

4. Any necessary consideration was given;

5. The grantee, transferee, or beneficiary of an interest created or claimed by the document acted in good faith at all relevant times up to and including the time of the recording;

6. A person purporting to act as an attorney-in-fact pursuant to a recorded power of attorney held the position he purported to hold and acted within the scope of his authority. It shall also be presumed that the principal was alive and was neither incompetent nor a minor at any relevant time;

7. A person purporting to act as:

a. one of the officers listed in Section 93 of Title 16 of the Oklahoma Statutes on behalf of a corporation,

b. a partner of a general partnership,

c. a general partner of a limited partnership,

d. a manager of a limited liability company,

e. a trustee of a trust,

f. any officer or member of the board of trustees of a religious corporation,

g. a court-appointed trustee, receiver, personal representative, guardian, conservator, or other fiduciary, or

h. an officer or member of any other entity,

held the position he purported to hold, acted within the scope of his authority (unless limitations of authority were previously filed of record and indexed against the property in question), and the authorization satisfied all requirements of law;

8. All entities that are parties to the document are in good standing in their jurisdiction of organization;

9. If the document purports to be executed pursuant to or to be a final determination in a judicial or administrative proceeding, or to be executed pursuant to a power of eminent domain, the court, official body, or condemnor was acting within its jurisdiction and all steps required for the execution of the title document were taken;

10. Recitals and other statements of fact in a conveyance are true if the matter stated was relevant to the purpose of the document;

11. Persons named in, signing, or acknowledging the document and persons named in, signing, or acknowledging another related document in a chain of title are identical, if the persons appear in those conveyances under identical names, or under variants thereof, including inclusion, exclusion, or use of:

a. commonly recognized abbreviations, contractions, initials, or colloquial or other equivalents,

b. first or middle names or initials,

c. simple transpositions that produce substantially similar pronunciations,

d. articles or prepositions in names or titles,

e. descriptions of entities as corporations, companies or abbreviations or contractions of either, or

SECTION 7. This act shall become effective September 1, 1994.

Passed the House of Representatives the 17th day of May, 1994.

Speaker of the House of
Representatives

Passed the Senate the 19th day of May, 1994.

President of the Senate