

SHORT TITLE: Conveyances; declaring certain recorded deed to be prima facie evidence; requiring use of certain form; repealer; codification; effective date.

STATE OF OKLAHOMA

1st Session of the 44th Legislature (1993)

SENATE BILL NO. 570

By: Douglass

AS INTRODUCED

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. 1992, Section 414), which relates to acquisition and conveyance of real estate, and 16 O.S. 1991, Sections 82, 93 and 95, which relate to title affidavits and real estate deeds; authorizing officers to sign certain documents; deleting requirement of signature by certain persons; creating certain presumptions; modifying contents of certain affidavit; creating certain presumptions; declaring certain recorded deed to constitute prima facie evidence of certain facts; requiring use of certain acknowledgment form; repealing 16 O.S. 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. 1992, 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 officer or ~~attorney-in-fact, or by the president or a vice-president 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 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: (i) one of the officers listed in Sections 93 and 94 of Title 16 of the Oklahoma Statutes on behalf of a corporation, (ii) a partner of a general partnership, (iii) a general partner of a limited partnership, (iv) a member or manager of a limited liability company, (v) a trustee of a trust, (vi) any officer or member of the board of trustees of a religious

corporation, (vii) a court-appointed trustee, receiver, personal representative, guardian, conservator, or other fiduciary, or (viii) 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. Recital 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: (i) commonly recognized abbreviations, contractions, initials, or colloquial or other equivalents; (ii) first or middle names or initials; (iii) simple transpositions that produce substantially similar pronunciations; (iv) articles or prepositions in names or titles; (v) descriptions of entities as corporations, companies or abbreviations or contractions of either; or (vi) name suffixes, such as Senior or Junior; unless other information appears of record indicating that they are different persons; and

12. All other requirements for its execution, delivery, and validity have been satisfied.

B. The presumptions stated in subsection A of this section arise even if the document purports only to release a claim or convey any right, title, or interest of the person executing it or the person on whose behalf it is executed.

SECTION 3. AMENDATORY 16 O.S. 1991, Section 82, is amended to read as follows:

Section 82. ~~An affidavit covering matters named in Section 2 of this act, which may affect the title to real property, or any interest therein, in this state, made by any person having knowledge of such matters or competent to testify concerning them in open court,~~ 83 of this title may be recorded in the office of the county clerk in the county in which the real property is situated. ~~When acknowledged and recorded, the affidavit, or a certified copy of the affidavit, shall be notice of the matters covered therein, insofar as they affect the title to real property, or any interest therein. The affidavit shall not take the place of a judicial proceeding, judgment, decree or Title Standards.~~ Facts stated in a recorded affidavit are presumed to be true as they relate to real estate, its use, or its ownership.

SECTION 4. AMENDATORY 16 O.S. 1991, Section 93, is amended to read as follows:

Section 93. ~~Every~~ Any corporation in executing a deed, or other instrument affecting real estate made by a corporation, with or without the seal of the corporation, must have the name of such corporation subscribed thereto either by an officer or attorney-in-fact ~~or by the president or any vice-president of such corporation, and when made by a public corporation the name of such corporation must be subscribed by the chief officer thereof.~~ Such deed or other instrument, after recording, shall constitute prima

facie evidence that such deed or other instrument is the duly authorized act of the corporation.

SECTION 5. AMENDATORY 16 O.S. 1991, Section 95, is amended to read as follows:

Section 95. Every deed or other instrument affecting real estate, executed by a corporation, must be acknowledged by ~~the~~ an officer or ~~person~~ attorney-in-fact subscribing the name of the corporation thereto, which acknowledgment must be substantially in the following form, ~~to-wit:~~

~~State of Oklahoma,)~~

~~) ss.~~

~~_____ County.)~~

~~Before me, a _____ in and for said county and state, on this _____ day of _____ 191_, personally appeared _____, to me known to be the identical person who subscribed the name of the maker thereof to the foregoing instrument as its (attorney-in-fact, president, vice-president, or mayor, as the case may be) and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation, for the uses and purposes therein set forth prescribed by Section 119 of Title 49 of the Oklahoma Statutes.~~

SECTION 6. REPEALER 16 O.S. 1991, Sections 51, 52 and 94, are hereby repealed.

SECTION 7. This act shall become effective September 1, 1993.

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