ENROLLED HOUSE
BILL NO. 1664

By: Davis, Wells, Holt and Sullivan (Leonard) of the House

and

Smith of the Senate

An Act relating to procedures involving real property; amending 12 O.S. 1991, Section 1509, which relates to partition; modifying reference for purposes of transmitting certain report and notice; amending 16 O.S. 1991, Sections 1, 27a and 76, which relate to conveyances; authorizing legal entities to own and transfer real property; defining term; providing for certain dissolved entities; modifying certain defects cured after instrument recorded for certain time period; providing for application to certain instruments recorded at certain times; modifying reference; providing for effect of certain instruments affecting title to real property; specifying conditions under which root of title not created; providing for effect of instruments other than those related to certain mineral interests; defining term; providing for applicability of section to certain interests; and providing an effective date.

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

SECTION 1. AMENDATORY 12 O.S. 1991, Section 1509, is amended to read as follows:

Section 1509. A. The commissioners shall make partition of the property among the parties according to their respective interests, if such partition can be made without manifest injury. But if such partition cannot be made, the commissioners shall make a valuation and appraisement of the property. They shall make a report of their proceedings to the court, forthwith. For the purpose of this section the term "party" shall mean one who has been adjudged to own an undivided interest in the property involved in the action.

B. Within ten (10) days after the report of commissioners is filed with the court clerk, the attorney for the plaintiff shall forward by certified mail to the attorney of record for ~~each~~ every other party in the case and to each party not represented by an attorney, a copy of the commissioners' report and a notice stating that the time limit for filing an exception or an election to take the property at the appraisement, if partition cannot be made, is not later than twenty (20) days from the date the report was filed. Before the expiration of the said twenty (20) days, the court may fix a different and longer period for the filing of an election. The mailing of notice as required herein shall be certified by affidavit to be filed, attached to the original notice. If a party

has been served by publication, the notice of said time limit shall be published in one issue of a newspaper qualified to publish legal notices, at least ten (10) days prior to the expiration of the date to file exception or election.

C. The time limit for filing an exception or an election to take property at appraisement, as prescribed in subsection B of this section, shall be calculated from the date the report of the commissioners is filed in the case. On failure of the attorney for plaintiff to give notice within the time prescribed in subsection B of this section, the court, on application of any party, may extend the time for filing an exception or an election for the period not to exceed twenty (20) days from the date the application is heard.

SECTION 2. AMENDATORY 16 O.S. 1991, Section 1, is amended to read as follows:

Section 1. A. Any person at least eighteen (18) years of age, being otherwise qualified thereto, and all persons upon whom the rights of majority have been conferred, ~~and corporations, to the extent and in the manner authorized by law, owning real estate in the State of Oklahoma may mortgage, convey, or otherwise dispose of, or make any contract relating to real estate or any interest therein~~ and any legal entity, may own and transfer real property. Provided, that any persons of whatsoever age, who have been legally married and who are otherwise qualified, may ~~dispose of and make contracts relating to real estate~~ own and transfer real property acquired after marriage.

B. A transfer of real property may be made to, and title taken in, the name of a legal entity or of an office, in which case the title vests in the entity or the person from time to time holding the office.

C. As used in this section, "entity" or "legal entity" means a corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership, limited liability company, joint venture, an unincorporated association formed for the purposes authorized by the Interlocal Cooperation Act in Section 1003 of Title 74 of the Oklahoma Statutes or any other entity otherwise authorized by statute to hold title to real property.

D. Unless otherwise provided by statute, a defunct or dissolved entity continues in existence for the purpose of transferring real property.

SECTION 3. AMENDATORY 16 O.S. 1991, Section 27a, is amended to read as follows:

Section 27a. A. When any instrument ~~of writing~~ shall have been~~, or may hereafter be on record~~ recorded in the office of the county clerk in the proper county for the period of five (5) years, and ~~there is a defect in such instrument because it~~ the instrument contains any of the following defects:

1. It has not been signed by the proper ~~officer of any corporation, or because the corporate~~ representative of a legal entity;

2. The representative is not authorized to execute the instrument on behalf of the legal entity;

3. A power of attorney has not been filed of record for an attorney in fact executing the instrument;

4. The seal of the ~~corporation~~ legal entity has not been impressed on such instrument~~,~~ or ~~because~~ the record does not show such seal~~, or because such~~;

5. The instrument is not acknowledged~~, or because a~~;

6. A deed or conveyance does not bear endorsement of approval by the appropriate governmental planning authority having jurisdiction~~,~~; or ~~because of any~~

7. Any defect in the execution, acknowledgment, recording or certificate of recording the same,
such instrument shall, from and after the expiration of five (5) years from the filing thereof for record, be valid as though such instrument had, in the first instance, been in all respects duly executed, acknowledged, approved by the appropriate planning authority having jurisdiction, and certified~~, and such instrument shall, after the expiration of five (5) years from the filing of the same for record, impart to subsequent purchasers, encumbrancers, and all other persons whomsoever, notice of such instrument of writing so far as and to the same extent that the same may then be recorded, copied or noted in such books of record, notwithstanding such defect~~. Such instrument or the record thereof or a duly-authenticated copy thereof shall be competent evidence without requiring the original to be produced or accounted for to the same extent that written instruments, duly executed and acknowledged, or the record thereof, are competent~~: Provided, that~~. However, nothing herein contained shall be construed to affect any rights acquired by grantees, assignees or encumbrancers subsequent to the filing of such instrument for record and prior to the expiration of five (5) years from the filing of such instrument for record.

B. This section shall apply to instruments recorded before or after November 1, 1995. However, with respect to those recorded before such date, the five-year period specified above shall not expire until one (1) year after the effective date of this act.

SECTION 4. AMENDATORY 16 O.S. 1991, Section 76, is amended to read as follows:

Section 76. ~~This act~~ A. Sections 71 through 80 of this title shall not be applied to bar any lessor or his successor as a reversioner of his right to possession on the expiration of any lease; or to bar or extinguish any mineral or royalty interest which has been severed from the fee simple title of the land; or to bar or extinguish any easement or interest in the nature of an easement, or any rights granted, reserved or excepted by any instrument creating such easement or interest; or use restrictions or area agreements which are part of a plan for subdivision development or to bar any right, title or interest of the United States by reason of failure to file the notice herein required.

B. As used in this section, "stray instrument" means an instrument executed by a person or entity, or a decree of distribution entered in the estate of a decedent, who or which does not otherwise appear in the chain of record title to a tract of real property. A stray instrument shall not create a root of title pursuant to Sections 71 through 80 of this title if the following conditions exist:

1. There is apparent from the record an otherwise valid, uninterrupted chain of record title traceable to an instrument which is a root of title as defined by Sections 71 through 80 of this title; and

2. A current owner of the property under the chain of title referred to in paragraph 1 of this subsection records an affidavit that alleges that the current owner or owners are in possession of the property and that the parties claiming under the stray instrument own no interest in the property. If there are multiple owners, any one or more of the owners may execute the affidavit on behalf of all owners.

C. An instrument executed by a person or entity, or a decree of distribution entered in the estate of a decedent who or which does not otherwise appear in the chain of record title to a tract of real property, except as an owner of a severed mineral interest therein,

shall not create a root of title pursuant to Sections 71 through 80 of this title.

D. As used in this section "severed mineral interest" includes mineral leasehold interests or working interests, mineral royalty interests and overriding royalty interests, and ownership of minerals without any ownership interest in the surface estate other than the rights of ingress and egress and for use of the surface for mineral development and exploration.

E. This section shall not apply to the interest of any person or entity who or which claims a valid interest under any such stray instrument as defined herein and who shall, no later than November 1, 1996, file with the county clerk of the county where the land or interest is located, a notice of such claim, setting forth the basis thereof, and specifically referring to this section.

SECTION 5. This act shall become effective November 1, 1995.

Passed the House of Representatives the 16th day of May, 1995.

Speaker of the House of Representatives

Passed the Senate the 17th day of May, 1995.

President of the Senate