

ENGROSSED HOUSE
BILL NO. 2595

By: Wells and Sullivan
(Leonard) of the House

and

Muegge of the Senate

An Act relating to conveyances; requiring instruments affecting title to real property to contain certain legal descriptions; defining term; prescribing requirements; prohibiting presentation of nonconforming instruments for recording; prohibiting recordation of nonconforming instruments; authorizing recovery of expenses related to nonconforming legal descriptions; prescribing measure of damages; providing for time period within which action may be brought; providing for applicability of legal description requirement in instruments presented for recording on and after certain date; providing for applicability of provisions authorizing civil recovery for damages based upon nonconforming instruments; defining terms; requiring releases for certain liens; providing for exceptions; requiring release to contain certain statement; prescribing requirements for filing of lien releases; prescribing time period for filing of release; authorizing procedure for demand of lien release; creating civil cause of action; imposing condition precedent for maintenance of action; authorizing

certain material to be included in pleadings;
authorizing attorney fees for prevailing parties;
providing for codification; and providing an
effective date.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 28.1 of Title 16, unless there is created a duplication in numbering, reads as follows:

A. No instrument affecting title to real property shall be recorded in the real property records of the county in which the real property is located unless the instrument contains a specific legal description.

B. As used in this section, "specific legal description" shall, at a minimum, require that the property be described by referring to:

1. The United States Governmental Survey System using:
 - a. a single section number, if the boundary of the tract is coextensive with a full section, or
 - b. multiple section numbers, if the boundary of the tract is coextensive with multiple sections, or
 - c. fractional subdivisions of a full section, including but not limited to a quarter section or multiple quarter sections, or
 - d. such other fractional subdivisions of a section, quarter section, or other fractional subdivisions as may be required to uniquely describe the parcel or tract of real property;

2. Metes and bounds descriptions consisting of bearings and distances;

3. Descriptions referring to lots and/or blocks as shown on a recorded plat or subdivision; or

4. Such other method as may be required to uniquely describe the parcel or tract of real property.

C. No instrument affecting title to real property shall be presented for recording at the office of any county clerk if the instrument:

1. Does not contain a specific legal description as defined by subsection B of this section; or

2. Contains a legal description of a parcel or tract of real property, title to which is not affected by the instrument presented for recording.

D. No county clerk shall accept an instrument affecting title to real property for recording in the real property records of the county which does not conform to the requirements of subsection B of this section.

E. Any person, whether in an individual or representative capacity, or any legally constituted entity, having an interest in any parcel or tract of real property who is required to incur an expense, or who, upon advice of a fiduciary or agent, incurs an expense that is a result of an instrument affecting title to the tract or parcel in which the person or other legally constituted entity has an interest because of the recordation of an instrument that does not conform to the requirements of this section, may recover the expense related both directly and indirectly to the recordation of the instrument in a civil action from the grantor identified in the instrument or from grantors jointly and severally if there are multiple grantors.

F. The expenses incurred as a result of the recordation of an instrument that does not conform to the requirements of this section may be recovered in a civil action filed within two (2) years after the recordation of the nonconforming instrument or within two (2)

years after the discovery of the nonconforming instrument, whichever period expires later.

G. The provisions of subsection A and subsection C of this section shall be applicable to instruments presented for recording on and after November 1, 1998.

H. Actions brought pursuant to subsection E of this section may only be brought based upon instruments that do not comply with the requirements of subsection A or subsection C of this section which are recorded on or after November 1, 1998.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 181 of Title 42, unless there is created a duplication in numbering, reads as follows:

A. As used in this section:

1. "Lien claimant" means a person or legally constituted entity to which some obligation is owed, either by performance, payment of money or some other obligation and for which a statute authorizes the filing of a lien or notice of lien in the real property records of a county in the state; and

2. "Lien debtor" means a person or legally constituted entity owing some obligation, either by performance, payment of money or some other obligation and against whose real property has been filed a lien or notice of lien by a lien claimant.

B. Unless the statute authorizing the creation of a lien provides for a different procedure for the release of the lien, any lien authorized pursuant to a statute which has been filed in the real property records of a county shall be released by the lien claimant upon performance or payment by the lien debtor.

C. The release required by this section shall clearly recite that it is a full release, if applicable, or a partial release, if applicable, and shall contain the formalities for execution appropriate to the person or entity executing the release or the entity authorized to execute the release upon behalf of a principal.

D. A full release shall be filed in the real property records of each and every county in which the lien was filed. A partial release shall be filed in the real property records of the county in which the real property released from the lien is located, and in each and every county in which the real property is located if the tract or parcel is located in more than one county.

E. A release required by this section shall be filed by the lien claimant in the real property records of the relevant county or counties not later than ten (10) days from the date upon which the underlying obligation has been performed, paid or otherwise satisfied. If the tenth day of the period prescribed by this subsection occurs on a day on which the office of the county clerk is not open for business, the release shall be filed on the next day upon which the office of the county clerk is open for business.

F. Unless otherwise specifically provided by the statutes governing the formation, attachment, enforcement and release of a lien, if a lien debtor has performed an obligation or made payment of the underlying obligation for which a lien has been filed in real property records and the lien claimant does not execute and deliver to the lien debtor an instrument for release of the lien which is acceptable for recording in the real property records of the applicable county or execute and file a release of lien at the lien claimant's expense, then the lien debtor may make a written demand upon the lien claimant, by certified mail, with return receipt requested, in which the lien claimant is notified that the lien claimant has a period of time not to exceed twenty (20) days from the date the notice is received, in order to file a release of the lien and to furnish the lien debtor with a certified copy of the instrument granting the release, clearly indicating the date of filing and the book and page number of the relevant record book maintained by the county clerk's office in which the release has been filed.

G. If a lien claimant fails to respond to the demand of a lien debtor as required by subsection F of this section, a lien debtor shall have a civil cause of action against the lien claimant for wrongful failure to release the lien. The action authorized by this subsection may not be maintained unless the lien debtor has made demand upon the lien claimant as provided by subsection F of this section and the petition in the case shall recite that the demand has been made as required by statute. The plaintiff in the cause of action may recover the sum of One Hundred Dollars (\$100.00) for each day that a lien remains wrongfully unreleased as reflected in the real property records of the county in which the lien was filed.

H. A lien claimant may assert any affirmative defense in a civil action filed pursuant to subsection G of this section as would be relevant to a claim by the lien claimant for a claim asserted by the lien claimant against the lien debtor in an action for a remedy to enforce obligations upon the lien debtor for the underlying obligation.

I. The prevailing party in a civil case authorized by subsection G of this section shall be awarded all attorney fees incurred from the date the case is filed until judgment is rendered and, if applicable, for all attorney fees incurred during the prosecution or defense of an appeal from the time the appeal is perfected until a mandate is obtained from the appellate court.

SECTION 3. This act shall become effective November 1, 1998.

Passed the House of Representatives the 18th day of February, 1998.

Speaker of the House of Representatives

Passed the Senate the ____ day of _____, 1998.

President

of the Senate