STATE OF OKLAHOMA

2nd Session of the 47th Legislature (2000)

HOUSE BILL HB2024 By: Wells

AS INTRODUCED

An Act relating to civil procedure; enacting the Nonjudicial Marketable Title Procedures Act; defining terms; prescribing procedures for requests regarding clouds or apparent clouds upon title to real property; providing procedures permissive; providing for notice; prescribing contents of notice; providing procedures for transmission of notice to respondent; prescribing procedures for responses by respondents; authorizing certain remedies based upon refusal by respondents; providing for treatment of certain actions with respect to certified mail; providing immunity from liability for certain damages based upon response to certain notice; specifying conditions constituting refusal by respondent; authorizing recovery of damages by certain parties to quiet title actions; specifying nature of damages recoverable; authorizing prevailing party defendant to recover certain damages based upon judgment in quiet title action; amending 12 O.S. 1991, Section 1141, as last amended by Section 1, Chapter 57, O.S.L. 1998 (12 O.S. Supp. 1999, Section 1141), which relates to actions to quiet title; modifying provisions related to attorney fees; 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 1141.1 of Title 12, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Nonjudicial Marketable Title Procedures Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1141.2 of Title 12, unless there is created a duplication in numbering, reads as follows:

As used in this act:

1. "Apparent cloud" means an effect, without a judgment of a court of competent jurisdiction, which in the good faith opinion of

a requestor results in a condition of title to real property located in the State of Oklahoma that fails to meet the standard of "marketable title" as defined by the "Oklahoma Title Examination Standards" as adopted and revised by the House of Delegates of the Oklahoma Bar Association;

2. "Certified mail" means that method of transmitting items through the United States Post Office pursuant to which the addressee of the item mailed is either required to indicate an acceptance of delivery or refusal or which results in a record by the United States Post Office that the addressee was contacted regarding the item, but refused delivery or refused to claim the item;

3. "Conveyance" means an instrument, recorded in the real property records of a county of the State of Oklahoma, pursuant to which a grantor makes a transfer of an estate in real property;

4. "Corrective action" means some procedure, other than the execution and delivery of a curative instrument, identified in a notice and communicated to a respondent with the intended effect of removing a cloud or an apparent cloud on the title to real property;

5. "Curative instrument" means a conveyance or instrument identified by a requestor that the requestor in good faith believes has the effect of curing a title defect;

6. "Entity" means a person, firm, partnership, general partnership, limited partnership, corporation, limited liability company, limited liability partnership or other legally constituted entity;

7. "Estate" means a quantity or duration of ownership in real property located in the State of Oklahoma whether in fee simple absolute or some lesser quantity or duration and includes both the surface estate and mineral estate;

8. “Execute” means to subscribe an instrument or a conveyance as either a natural person acting in an individual or a representative capacity;

9. “Good faith” means having a basis in facts ascertainable to a requestor or which should be ascertainable with the exercise of reasonable diligence and the reasonable application of law to facts known or which, through the exercise of reasonable diligence, should be known to a requestor regarding the effect of an instrument upon the title to real property located in the State of Oklahoma;

10. “Instrument” means a document, executed with formalities authorized or required by law, pursuant to which either a conveyance is made or pursuant to which some aspect of the title to real property located in the State of Oklahoma is affected or may be affected;

11. “Interest” means either legal title or an equitable claim which is made in good faith;

12. “Notice” means the document described in Section 3 of this act;

13. “Parcel” means real property capable of separate description from any other real property located in the State of Oklahoma, pursuant to a description which is adequate for a conveyance pursuant to the requirements of the laws of the State of Oklahoma;

14. “Person” means a natural person acting in an individual capacity or a natural person acting in a representative capacity;

15. “Quiet title action” means a civil action filed pursuant to the authority of Section 1141 of Title 12 of the Oklahoma Statutes and in which the plaintiff requests a determination or judgment from the court regarding the title to a parcel of real property;

16. “Real property” means land and fixtures and includes the surface estate and the minerals underlying lands located in the State of Oklahoma;

17. “Refuse” means that the respondent either will not take the action specified in a notice or that the respondent will not take action which the requestor communicates as an acceptable response to the notice;

18. “Requestor” means any person or entity transmitting a notice to a respondent pursuant to Section 3 of this act or if the requestor engages the services of an agent or fiduciary to prepare the notice, the agent or fiduciary of the requestor;

19. “Respondent” means the person or entity to whom a notice is transmitted pursuant to Section 3 of this act or, if the respondent engages the services of an agent or fiduciary to prepare a response to a requestor, the agent or fiduciary of the requestor;

20. “Response” means the document transmitted by the respondent to the requestor within the time prescribed by Section 4 of this act;

21. “Subject parcel” means the specific real property identified in a notice transmitted to a respondent as provided by Section 3 of this act;

22. “Title” means the judicial or nonjudicial conclusion regarding either legal or equitable ownership of real property or an estate in real property located in the State of Oklahoma; and

23. “Title defect” means a deficiency, as measured or determined by reference to the statutes of the State of Oklahoma, cases decided by the courts of the State of Oklahoma or by reference to the Title Examination Standards published by the Real Property Section of the Oklahoma Bar Association, in the legal or equitable title of real property located in the State of Oklahoma.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1141.3 of Title 12, unless there is created a duplication in numbering, reads as follows:

A. Any person or any entity having an interest or claiming an interest with respect to any parcel of real property who in good

faith asserts that there is an instrument filed in the real property records of the county in which the real property, or some portion of the real property, is located and who would otherwise be required to file a quiet title action with respect to the parcel pursuant to the provisions of Section 1141 of Title 12 of the Oklahoma Statutes, may use the procedures authorized by this act to attempt to remove a cloud or an apparent cloud on the title of the real property by requesting a respondent to prepare a curative instrument or to take corrective action.

B. The provisions of this act are permissive and shall not be required as a condition precedent to the filing of a petition to quiet title pursuant to Section 1141 of Title 12 of the Oklahoma Statutes.

C. If making a request pursuant to this act, the requestor shall send a notice to the respondent which shall include:

1. The specific identity of the person or entity requesting the respondent to execute or to execute and deliver a curative instrument or take other corrective action the purpose of which is to remove a cloud or an apparent cloud on the title of the subject parcel;

2. A specific identification of the conveyance, instrument or other document, by reference to:

a. the county or counties in which the instrument or document is filed for record,

b. the book and page number in which the instrument or other document is recorded,

c. the identity of the grantor or the person or entity subscribing the instrument, (if different than the identified grantor),

d. the identity of the grantee or grantees,

e. the legal description of the real property contained in the instrument,

f. the date the instrument was executed,

g. the date the instrument was filed for record, and

h. such other information as may be required in order for the respondent to know with reasonable certainty the exact instrument or instruments to which the requestor is referring;

3. The nature of the assertion by the requestor regarding the effect of the instrument or document as a cloud or an apparent cloud upon the title of the subject parcel; and

4. The nature of the corrective action sought by the requestor, including, but not limited to, the exact instrument or conveyance which the requestor would accept from the respondent as a curative instrument or other corrective action.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1141.4 of Title 12, unless there is created a duplication in numbering, reads as follows:

A. The requestor shall prepare the notice as described in Section 3 of this act and shall transmit the notice by certified mail to the person or entity identified in the notice as the respondent.

B. The respondent shall have a period of thirty (30) days from the receipt of the notice within which to respond to the notice and any request for the execution or delivery of a curative instrument or for corrective action.

C. A respondent may ask for clarification by the requestor or for further information prior to making either a negative response or an affirmative response. The respondent may communicate with the requestor within the period of time required for the respondent to make a response to the requestor, but any request made pursuant to this subsection shall not extend the time within which to respond.

D. The respondent may make a formal request of the requestor for clarification or for further information by certified mail if

the formal request for clarification or additional information is received by the original requestor within the original period of time prescribed by subsection B of this section for a response by the respondent. If a respondent makes a formal request for clarification or for additional information, the original requestor shall have a period of twenty (20) days within which to transmit a clarification or additional information. The respondent shall then have a period of twenty (20) days from the date the clarification or additional information is received in order to provide a final response.

E. If a respondent declines to execute and deliver the curative instrument requested or take the corrective action requested, and the respondent communicates the refusal to the requestor, the requestor may pursue the remedies authorized by this section.

F. If the requestor properly transmits the notice by certified mail and the respondent does not claim the item as indicated by the records of the United States Post Office, the refusal to claim the item shall be treated as a refusal to respond to the request.

G. If a respondent executes and delivers or causes to be executed and delivered the curative instrument requested in the notice or takes the corrective action requested, the respondent shall not be liable for the damages specified in subsection A of Section 5 of this act in a quiet title action notwithstanding that the respondent is named as a defendant in such an action.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1141.5 of Title 12, unless there is created a duplication in numbering, reads as follows:

A. If a requestor prepares a notice pursuant to Section 3 of this act, and:

1. The respondent receives the notice and fails to respond, or

2. The respondent requests clarification or additional information and then subsequently refuses to execute and deliver a

curative instrument or to take the corrective action identified in the notice, or

3. The respondent refuses to claim the notice, or

4. The respondent receives the notice and refuses to take the action requested in the notice,

then in the event that the requestor files an action to quiet title to the subject parcel pursuant to Section 1141 of Title 12 of the Oklahoma Statutes, and the civil action results in a judgment for the plaintiff which could have been accomplished through the execution and delivery of a curative instrument or the taking of corrective action identified in a notice, the plaintiff in the quiet title action, in addition to any other requested relief, shall be entitled to recover damages equal to the actual expenses incurred by the plaintiff in identifying the relevant instrument, preparing the notice to the respondent pursuant to Section 3 of this act, and the expenses of litigation directly related to obtaining judgment quieting title in the plaintiff with respect to the interest or apparent interest forming the basis of the action against the respondent, including costs and reasonable attorney fees.

B. If a defendant in the quiet title action who either failed to respond to a notice pursuant to Section 4 of this act or who refused to execute and deliver a curative instrument or take corrective action identified in the notice prevails in the quiet title action, the defendant in the quiet title action, in addition to any other requested relief, shall be entitled to recover damages equal to the actual expenses incurred by the defendant in responding to the notice from the requestor pursuant to Section 4 of this act, and the expenses of litigation directly related to obtaining judgment quieting title in the defendant or asserting an affirmative defense with respect to the interest or apparent interest forming the basis of the action against the defendant, including costs and reasonable attorney fees.

SECTION 6. AMENDATORY 12 O.S. 1991, Section 1141, as last amended by Section 1, Chapter 57, O.S.L. 1998 (12 O.S. Supp. 1999, Section 1141), is amended to read as follows:

Section 1141. A. An action may be brought by any person in possession, by himself or tenant, of real property against any person who claims an estate or any interest therein adverse to the person bringing the action for the purpose of determining such adverse estate or interest, and such action may be joined with an action to recover possession of such real property by any person not in possession. The person or persons bringing such action shall not be required to allege the particular estate or interest claimed adversely by the person or persons against whom the action is brought, but may allege that the defendants' claim is adverse to that of the plaintiffs.

B. ~~If a written request for the correction of a title defect has been refused without reasonable cause and an action is brought pursuant to the provisions of this section, the court may award reasonable attorneys fees to the prevailing party.~~

~~C.~~ If an action is brought to quiet title alleging that the adverse claim is sham legal process, as defined by Section 1533 of Title 21 of the Oklahoma Statutes, the court may award costs and reasonable attorneys fees to the prevailing party. If the plaintiff prevails in the action, the court shall order the defendant to pay the plaintiff three times the damages that the plaintiff may have sustained as a result of the sham legal process. A quiet title action pursuant to this subsection shall be independent of any criminal action that may be filed against the defendant, and there shall be no requirement that the defendant in such an action be convicted of any criminal act.

SECTION 7. This act shall become effective November 1, 2000.

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