

STATE OF OKLAHOMA

2nd Session of the 56th Legislature (2018)

HOUSE BILL 3253

By: McEachin

AS INTRODUCED

An Act relating to property records; amending 1 O.S. 2011, Sections 21 and 36, which relate to the Oklahoma Abstractors Act; modifying definitions; allowing independent licensed abstractors access to abstract plant in single-source counties in certain situations; amending 16 O.S. 2011, Sections 62 and 78, which relate to conveyances; requiring records relied on for title purposes to statutorily impart constructive notice; requiring estate property distributions or partitions be recorded in county records; modifying definitions; and providing an effective date.

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

SECTION 1. AMENDATORY 1 O.S. 2011, Section 21, is amended to read as follows:

Section 21. As used in the Oklahoma Abstractors Act:

1. "Abstract of title" is a compilation in orderly arrangement of the materials and facts of record, in the office of the county clerk and court clerk, only including those official records which by statute impart constructive notice, affecting the title to a specific tract of land issued pursuant to a certificate certifying to the matters therein contained;

1        2. "Abstract plant" shall consist of a set of records in which  
2 an entry has been made of all documents or matters which legally  
3 impart constructive notice by statute of matters affecting title to  
4 real property, any interest therein or encumbrances thereon, which  
5 are filed, recorded and currently available for reproduction in the  
6 offices of the county clerk and the court clerk in the county for  
7 which such abstract plant is maintained. Such records shall consist  
8 of:

- 9            a. an index in which notations of or references to any  
10 documents that describe the property affected are  
11 included, according to the property described or in  
12 which copies or briefs of all such documents that  
13 describe the property affected are sorted and filed  
14 according to the property described, which is compiled  
15 from the instruments of record affecting real property  
16 in the county offices and not copied or reproduced  
17 from any county index~~+~~l, and  
18            b. an index or files in which all other documents,  
19 pending suits affecting real property and liens,  
20 except ad valorem taxes and special assessments, are  
21 posted, entered, or otherwise included, according to  
22 the name of the parties whose title to real property  
23 or any interest therein or encumbrances thereon is  
24 affected, which is compiled from the instruments of

1 record affecting real property in the county offices  
2 and not copied from any county index;

3 3. "Abstract license" is the authorization for a person working  
4 for a holder of a certificate of authority to search and remove from  
5 county offices county records, summarize or compile copies of such  
6 records, and issue the abstract of title;

7 4. "Act" or "Oklahoma Abstractors Law" means the Oklahoma  
8 Abstractors Act;

9 5. "Board" means the Oklahoma Abstractors Board;

10 6. "Certificate of authority" is the authorization to engage in  
11 the business of abstracting in a county in this state, granted to a  
12 person, firm, corporation, or other entity, by the Oklahoma  
13 Abstractors Board;

14 7. "Permit" is the authorization to build an abstract plant in  
15 a specific county; and

16 8. "State Auditor and Inspector", for the purposes of the  
17 Oklahoma Abstractors Act, means the Oklahoma Abstractors Board.

18 SECTION 2. AMENDATORY 1 O.S. 2011, Section 36, is  
19 amended to read as follows:

20 Section 36. A. Any person, firm, corporation, or other entity  
21 holding a valid abstract license or permit, or any abstract licensee  
22 affiliated with such person, firm, corporation, or other entity,  
23 shall:  
24

1        1. Have free access to the instruments of record affecting real  
2 property filed in any city, county, or state office;

3        2. Be permitted to make such memoranda, notations, or copies of  
4 such instruments of record;

5        3. Occupy reasonable space with equipment for that purpose  
6 during the business hours of such office;

7        4. Make and prepare abstracts; and

8        5. Compile, post, copy, and maintain his or her books, records,  
9 and indexes.

10       B. The records in any city, county, or state office shall not  
11 be taken from the office to which they belong, for any reason,  
12 except that records may be taken from the office of the district  
13 court clerk by an abstractor who is doing business within that  
14 county and has an approved bond on file with the county clerk for a  
15 period of time not to exceed twenty-four (24) hours after first  
16 giving proper receipt to the appropriate clerk or deputy.

17       C. An abstractor shall have the right of access to any  
18 instrument filed of record in a county office, not later than the  
19 close of business of the first business day following the day of  
20 filing. There shall be no fee charged for providing access to the  
21 instrument.

22       D. For purposes of this section, "access" means possession of  
23 said instrument to mechanically reproduce it, either in the office  
24 or out of the office of filing, at the discretion of the county

1 officer having custody of the instrument, which reproduction shall  
2 be completed not later than the close of business of the first  
3 business day following the day of receipt of the document. Provided  
4 if the abstractor fails to return the files within the twenty-four-  
5 hour period, the county officer in his or her discretion may refuse  
6 to allow the abstractor to remove said files at a later date. Any  
7 county officer making such refusal shall send written notice of such  
8 action to the Oklahoma Abstractors Board.

9 E. Access to instruments of record shall be for immediate and  
10 lawful abstracting purposes only. The sale of the instruments of  
11 record for profit to the public either on the internet or any other  
12 such forum by any company holding a permit to build an abstract  
13 plant is prohibited, and a violation of this subsection shall be  
14 considered a violation of the Oklahoma Abstractors Law.

15 F. All certificates of authority or permit holders and abstract  
16 licensees shall be subject to the same obligation to protect and  
17 preserve the public records to which they have access as do the  
18 public officers who have legal custody of such records. Holders of  
19 certificates of authority or permits and abstract licensees shall be  
20 subject to the same penalties for a violation of such duty as said  
21 officers.

22 G. Reliance on the county indexes in the preparation of an  
23 abstract of title shall not be a defense of liability for an error  
24 or omission in an abstract of title.

1        H. An abstract company may grant a licensed abstractor access  
2 to the abstract plant in times of increased orders for abstracts.  
3 In order to compile an abstract in a timely fashion, a licensed  
4 abstractor shall be granted access to the abstract plant to compile  
5 abstracts in situations involving a violation of the statutory  
6 deadlines imposed by Section 32 of this title.

7        SECTION 3.        AMENDATORY        16 O.S. 2011, Section 62, is  
8 amended to read as follows:

9        Section 62. ~~(a)~~ A. Any purchaser for value acquiring an  
10 interest in real estate from one who claims such interest,  
11 immediately or remotely, under a conveyance of record for ten (10)  
12 or more years in the records of the county wherein the land is  
13 located, only if such records by statute impart constructive notice,  
14 prior to such purchase shall acquire a valid and marketable title to  
15 such interest as against any person claiming adversely to such  
16 recorded conveyance for any of the following reasons: ~~(1) that~~

17        1. That such conveyance was executed by an incompetent person,  
18 unless the county court records in the county wherein the land is  
19 located, or the county records therein, reflect the appointment of a  
20 guardian prior to said deed, or a judicial determination of the  
21 incompetency of the grantor, in which event Sections 61 through 66  
22 of this title shall not apply, ~~(2) that;~~

23        2. That such conveyance was executed by a corporation to an  
24 officer thereof, which fact may or may not appear on the face of the

1 deed, without proper authority therefor being had by the officers  
2 executing said conveyance, ~~(3) that~~

3 3. That such conveyance was executed by an attorney-in-fact  
4 under a recorded power of attorney which power had terminated by  
5 reason of matters not affirmatively shown in the county records 7i or  
6 ~~(4) that~~

7 4. That such conveyance was never delivered 7.

8 Provided, however, this section shall not apply as against such  
9 person claiming adversely to any such conveyance for any of the  
10 foregoing reasons if prior to such purchase, or within one (1) year  
11 from October 27, 1961, the effective date of Sections 61 through 66  
12 of this title, or from the effective date of Section 62, as amended,  
13 of this title, whichever later occurs, such person shall have filed  
14 of record in the county wherein the land is located a notice setting  
15 forth his or her claim and the basis thereof; and provided, further,  
16 that this section shall not apply as against any person in  
17 possession of the land either by occupancy or by occupancy of a  
18 tenant at the time such purchaser acquires his or her interest.

19 ~~(b)~~ B. Any purchaser for value acquiring an interest in real  
20 estate from one who claims such interest, immediately or remotely,  
21 by or through a conveyance from one purporting therein to be a  
22 guardian, executor, or administrator, which conveyance has been of  
23 record for ten (10) or more years in the county wherein said land is  
24 located, only if such records by statute impart constructive notice,

1 prior to such purchase, and which conveyance either has the approval  
2 of the court endorsed upon it, or has been confirmed by an order of  
3 the court, shall acquire a valid and marketable title to such  
4 interest to the full extent that such conveyance purports to convey  
5 the same as against any of the following persons: ~~(1) any~~

6 1. Any ward or wards named in said conveyance, his or ~~their~~ her  
7 heirs, devisees, representatives, successors, or assigns, ~~(2) the;~~  
8 or

9 2. The State of Oklahoma or any other person claiming under the  
10 estate of any decedent named in said conveyance, the heirs,  
11 devisees, or representatives of such decedent, their successors, or  
12 assigns, or any creditors of said decedent~~;~~ .

13 Provided, however, that this section shall not apply to any  
14 person mentioned in ~~(1) or (2) above~~ paragraph 1 or 2 of this  
15 subsection who for any reason claims adversely to such conveyance,  
16 or contends that such conveyance did not divest him or her of his or  
17 her interest as purported by such conveyance if prior to such  
18 purchase, or within one (1) year from October 27, 1961, the  
19 effective date of Sections 61 through 66 of this title, or from the  
20 effective date of Section 62, as amended, of this title, whichever  
21 is the later, such person shall file of record in the county wherein  
22 the land is located a notice setting forth his or her claim and the  
23 basis thereof; provided, further, this section shall not apply as  
24 against any person in possession of the land, by occupancy or by



1 occupancy of a tenant, at the time such purchaser acquires his or  
2 her interest.

3 ~~(e)~~ C. Any purchaser for value acquiring an interest in real  
4 estate from one who claims such interest, immediately or remotely,  
5 by or through ~~(1) any~~:

6 1. Any decree of distribution or of partition in a decedent's  
7 estate ~~entered by and of record in a court~~ recorded in the records  
8 of the county wherein the land is located, only if such records by  
9 statute impart constructive notice, for a period of ten (10) years  
10 prior to such purchase, or ~~(2) any~~

11 2. Any such decree entered by a court for any county in this  
12 state which decree has been of record in the county ~~wherein the~~  
13 ~~decree was entered~~ or in the ~~deed~~ records of any county or counties  
14 in which any part of the land or lands is located, only if such  
15 records by statute impart constructive notice, for a period of ten  
16 (10) years prior to such purchase, shall acquire a valid and  
17 marketable title to such interest as against any claim or interest  
18 of the estate of said decedent or any heir or devisee, his or her  
19 successors or assigns, of said decedent or any creditors of said  
20 decedent. Provided, however, this section shall not apply if prior  
21 to such purchase, or within one (1) year from October 27, 1961, the  
22 effective date of Sections 61 through 66 of this title, or from the  
23 effective date of Section 62, as amended, of this title, whichever  
24 later occurs, such heirs, devisee, or representative of such estate

1 files of record in the county wherein the land is located a notice  
2 setting forth the nature of his or her claim; provided, further,  
3 this section shall not apply as against any person claiming  
4 adversely to such decree who is in possession of the land by  
5 occupancy or by occupancy of a tenant, at the time said purchaser  
6 acquires his or her interest.

7 ~~(d)~~ D. Any purchaser for value acquiring an interest in real  
8 estate from one who claims such interest, immediately or remotely,  
9 by or through any of the following muniments: ~~(1)~~ a

10 1. A sheriff's or marshal's deed executed pursuant to an order  
11 of a court having jurisdiction over the land affected confirming a  
12 judicial sale or directing the issuance of such deed, ~~(2)~~ any;

13 2. Any final judgment of a court having jurisdiction over the  
14 land affected determining and adjudicating the ownership of such  
15 land or any interest therein or partitioning same, ~~(3)~~ any;

16 3. Any conveyance by a receiver executed pursuant to an order  
17 of any court having jurisdiction and directing issuance thereof or  
18 directing a sale of such land or any interest therein, ~~(4)~~ any;

19 4. Any conveyance executed by a trustee or purported trustee  
20 referring to a trust agreement or referring to named beneficiaries  
21 or otherwise indicating the existence of an express trust where the  
22 trust agreement has not been recorded in the county where the land  
23 is situated, ~~(5)~~ a;

1        5. A purported certificate tax deed or resale tax deed executed  
2 by the county treasurer of the county wherein the land is located~~+~~,  
3 which muniment, if a conveyance has been of record in the county  
4 wherein the land is situated, only if such records by statute impart  
5 constructive notice, for a period of ten (10) years prior to such  
6 purchase, or, if a judgment has been entered for a period of ten  
7 (10) years prior to such purchase and, where such judgment is  
8 ~~entered~~ recorded in those county records by statute that impart  
9 constructive notice, by a court outside the county where the land  
10 affected is located, has been recorded in the records of the ~~court~~  
11 ~~clerk or county clerk of the~~ county in which such land is located,  
12 only if such records by statute impart constructive notice, shall  
13 acquire a valid and marketable title to such interest as against the  
14 claims of the following: (A) any person or the heirs, devisees,  
15 personal representatives, successors or assigns of such person who  
16 was named as a defendant in the judgment preceding the sheriff's or  
17 marshal's deed referred to in ~~subparagraph (1) above~~ paragraph 1 of  
18 this subsection and whose rights or claims were not preserved by the  
19 terms of such judgment and who claims an interest by reason of any  
20 defect, jurisdictional or otherwise, in the proceedings resulting in  
21 such judgment, (B) any person or the heirs, devisees, personal  
22 representatives, successors or assigns of such person who was named  
23 as a defendant in the judgment referred to under ~~subparagraph (2)~~  
24 ~~above~~ paragraph 2 of this subsection and whose rights or claims were

1 not preserved by the terms of such judgment and who claims an  
2 interest by reason of any defect, jurisdictional or otherwise, in  
3 the proceedings resulting in such judgment, (C) any person or the  
4 heirs, devisees, personal representatives, successors or assigns of  
5 such person who was named as a defendant or owner or party in  
6 interest in the proceedings referred to in ~~subparagraph (3) above~~  
7 paragraph 3 of this subsection, (D) any person or the heirs,  
8 devisees, personal representatives, successors or assigns of such  
9 person who claims as a settlor, trustee or beneficiary or by,  
10 through or under such settlor, trustee or beneficiary of the trust  
11 referred to in ~~subparagraph (4) above~~ paragraph 4 of this  
12 subsection, (E) any and all owners or claimants of such land or  
13 interest therein whose ownership or claim originated prior to such  
14 deeds as are referred to in ~~subparagraph (5) above~~ paragraph 5 of  
15 this subsection and the heirs, devisees, personal representatives,  
16 successors or assigns of such owners or claimants~~+~~. Provided,  
17 however, this section shall not apply as against any such person  
18 claiming adversely to such muniments set forth hereinabove if prior  
19 to such purchase, or within one (1) year from October 27, 1961, the  
20 effective date of Sections 61 through 66 of this title, or from the  
21 effective date of Section 62, as amended, of this title, whichever  
22 later occurs, such person shall have filed of record in the records  
23 of the county wherein the land is located a notice setting forth his  
24 or her claim and the basis thereof; provided, further, that this

1 section shall not apply against any person claiming adversely to  
2 such muniment who is in possession of the land by occupancy or by  
3 occupancy of a tenant at the time said purchaser for value acquires  
4 his or her interest. The State of Oklahoma and its political  
5 subdivisions or a public service corporation or transmission company  
6 which has facilities of service installed on, over, across or under  
7 any part of the land shall, to that extent, be deemed to be in  
8 possession thereof for purposes of the foregoing provision.

9 SECTION 4. AMENDATORY 16 O.S. 2011, Section 78, is  
10 amended to read as follows:

11 Section 78. ~~(a)~~ As used in Sections 71 through 80 of this  
12 title:

13 1. "Marketable record title" means a title of record as  
14 indicated in Section 71 of this title, which operates to extinguish  
15 such interests and claims, existing prior to the effective date of  
16 the root of title, as are stated in Section 73 of this title;;

17 ~~(b)~~ 2. "Records" includes ~~probate and other official public~~  
18 ~~records, as well as records in the county clerk's office.~~ only those  
19 official public records which by statute impart constructive notice;

20 ~~(c)~~ 3. "Recording," when applied to the official public records  
21 of any office or court, includes filing;;

22 ~~(d)~~ 4. "Person dealing with land" includes a purchaser of any  
23 estate or interest therein, a mortgagee, a levying or attaching  
24

1 creditor, a land contract vendee, or any other person seeking to  
2 acquire an estate or interest therein, or impose a lien thereon~~;~~;

3 ~~(e)~~ 5. "Root of title" means that conveyance or other title  
4 transaction in the chain of title of a person, purporting to create  
5 the interest claimed by such person, upon which he or she relies as  
6 a basis for the marketability of his or her title, and which was the  
7 most recent to be recorded as of a date thirty (30) years prior to  
8 the time when marketability is being determined. The effective date  
9 of the "root of title" is the date on which it is recorded~~;~~ and

10 ~~(f)~~ 6. "Title transaction" means any transaction affecting  
11 title to any interest in land, including title by will or descent,  
12 title by tax deed, mineral deed, lease or reservation, or by  
13 trustee's, referee's, guardian's, executor's, administrator's,  
14 master in chancery's, sheriff's or marshal's deed, or decree of any  
15 court, as well as warranty deed, quitclaim deed, or mortgage.

16 SECTION 5. This act shall become effective November 1, 2018.

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