

NAVIGATING REAL ESTATE TRANSACTIONS

A GUIDE TO REAL ESTATE
MATTERS IN OKLAHOMA



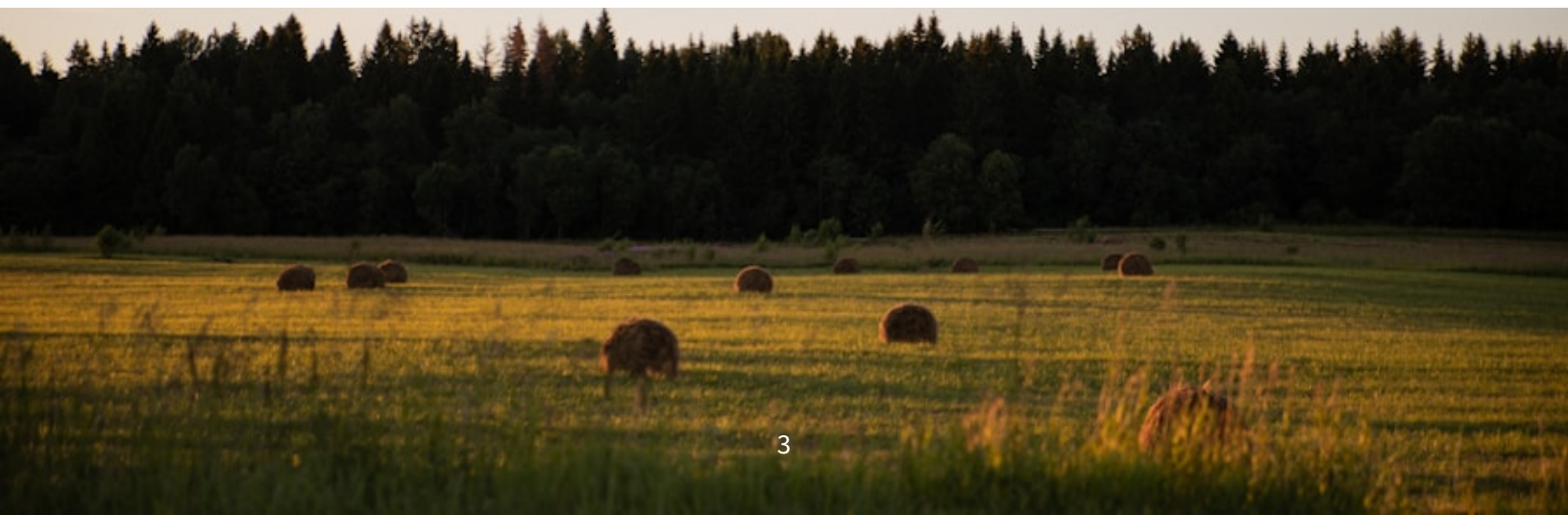
THE
HARTLEY
LAW FIRM, PLLC

Navigating Real Estate Transactions

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Introduction

Buying or selling real estate in Oklahoma is a significant undertaking, often representing one of the largest financial decisions in a person's life. While the excitement of finding a new home or anticipating a successful sale can be all-consuming, it is crucial to navigate the legal landscape with care and understanding. Oklahoma law provides a framework for these transactions, designed to protect the rights and interests of both buyers and sellers. This e-book aims to demystify the legal considerations involved, providing Oklahoma residents with a comprehensive guide to the process.

We will explore the step-by-step legal procedures for both buying and selling land, delve into the specific considerations that arise in residential real estate transactions, and illuminate the critical roles of abstracting and title insurance in ensuring clear property ownership. Furthermore, we will address the recently enacted requirement for buyers to file an affidavit of United States citizenship with their deed, a significant development in Oklahoma real estate law. While the expertise of real estate professionals can be invaluable, this book focuses primarily on the legal aspects, empowering you with the knowledge to make informed decisions and safeguard your interests throughout the transaction.

This guide is designed to be accessible and informative, using clear language and providing practical insights into the legal intricacies of Oklahoma real estate. Each chapter will conclude with a bullet-point summary of key takeaways, allowing for easy review and quick reference. By understanding these legal considerations, you can approach your real estate transaction with greater confidence and minimize the potential for misunderstandings or disputes.

While this guide aims to be comprehensive, it is not a substitute for legal advice from a qualified Oklahoma attorney. Every legal situation is unique, and seeking personalized legal counsel is always recommended. The download or use of this e-book does not constitute an attorney-client relationship.

Chapter 1: The Legal Process of Buying Land in Oklahoma

SUMMARY

The purchase process begins with a written offer and acceptance, forming a legally binding contract.

The purchase contract should detail all essential terms, including price, legal description, closing date, and contingencies (financing, inspection, appraisal, title).

A thorough title examination is crucial to identify any potential issues with the property's ownership history.

Title insurance protects the buyer against financial losses resulting from undiscovered title defects.

A property survey is recommended to verify boundaries and identify any encroachments.

The closing involves signing documents, transferring funds, and legally conveying ownership via a deed.

The buyer must file a specific affidavit of U.S. citizenship (or bona fide residency) with the deed for it to be recorded.

The journey of buying land in Oklahoma involves several distinct legal stages, each with its own set of requirements and considerations. Understanding this process is essential for a smooth and legally sound transaction.

Initial Offer and Acceptance

The process typically begins with the buyer making a written offer to the seller. This offer outlines the proposed purchase price, terms of financing, closing date, and any contingencies (conditions that must be met for the sale to proceed).

In Oklahoma, any agreement for the sale of real estate must be in writing and signed by both parties to be legally enforceable under the Statute of Frauds. A simple verbal agreement is not sufficient.

The seller can accept the offer, reject it, or make a counteroffer, which essentially terminates the original offer and presents new terms for the buyer's consideration. This back-and-forth negotiation can continue until both parties reach a mutual agreement.

Once the offer is accepted in writing, it becomes a binding real estate purchase contract. This contract is the cornerstone of the entire transaction and should clearly detail all the agreed-upon terms.

The Purchase Contract: Laying the Groundwork

The purchase contract is a legally binding document that outlines the obligations of both the buyer and the seller. It should include crucial details such as:

- **Identification of the Parties:** Clearly state the full legal names of the buyer(s) and seller(s).
- **Legal Description of the Property:** Provide an accurate and complete legal description of the land being sold. This is typically found in the seller's deed or abstract of title. Using the correct legal description is vital to avoid future boundary disputes.

- **Purchase Price and Payment Terms:** Specify the agreed-upon purchase price, the amount of any earnest money deposit, the method of payment, and any financing contingencies.
- **Closing Date:** Define the specific date when the sale will be finalized and ownership will be transferred.
- **Contingencies:** Outline any conditions that must be satisfied for the buyer to be obligated to complete the purchase. Common contingencies include:
- **Financing Contingency:** This allows the buyer to terminate the contract if they cannot secure the necessary financing within the specified timeframe.
- **Inspection Contingency:** Grants the buyer the right to have the property professionally inspected and to potentially renegotiate or terminate the contract if significant issues are found. Oklahoma follows a “buyer beware” (caveat emptor) approach, placing the responsibility on the buyer to discover any property defects.
- **Appraisal Contingency:** Protects the buyer if the property appraises for less than the purchase price, allowing them to withdraw from the contract.
- **Title Contingency:** Ensures the buyer receives a clear and marketable title to the property.
- **Personal Property:** Specify which personal property (if any) is included in the sale (e.g., fixtures, appliances).
- **Allocation of Costs:** Determine who is responsible for various closing costs, such as title insurance premiums, recording fees, and survey costs.
- **Disclosures:** Outline any disclosures the seller is legally required to make regarding the property's condition or history. Oklahoma's Residential Property Condition Disclosure Act requires sellers to provide a disclosure statement for residential properties detailing any known defects. While this act applies explicitly to residential properties, sellers of land should still be transparent about any known issues that could affect the buyer's decision.

- **Type of Deed:** Specify the type of deed the seller will provide (e.g., general warranty deed, special warranty deed, quitclaim deed). The type of deed affects the level of protection the buyer receives regarding the title's history. A general warranty deed offers the most protection, warranting the title against defects arising at any time in the past.

Title Examination and Insurance

Once the purchase contract is signed, the buyer typically initiates a title examination. This process involves a thorough review of public records to determine the legal ownership of the property and identify any liens, encumbrances, or other issues that could affect the title's marketability.

In Oklahoma, this examination is often conducted by a title company or an attorney, who will prepare an abstract of the title. The abstract is a chronological history of all recorded documents relating to the property, providing a summary of the title's chain of ownership and any potential claims against it.

Based on the abstract, a title opinion is usually provided by an attorney, outlining any potential title defects or concerns.

To protect their investment and ensure clear ownership, buyers typically purchase title insurance. Title insurance is a policy that protects the buyer (and the lender, if applicable) against financial losses arising from title defects that were not discovered during the title examination. Unlike other types of insurance, title insurance is a one-time premium paid at closing and covers past events that could affect the title. There are two main types of title insurance policies:

- **Owner's Policy:** Protects the buyer's interest in the property.
- **Lender's Policy:** Protects the lender's security interest in the property (required by most mortgage lenders).

Property Survey (Optional but Recommended)

While not always legally required, obtaining a property survey is highly recommended, especially when purchasing land. A survey is a professional measurement of the property boundaries, which can identify any encroachments (where structures from an adjacent property extend onto the subject property, or vice versa) or boundary discrepancies.

Having a survey can prevent future disputes with neighbors regarding property lines and ensure that the buyer is purchasing the exact land described in the legal documents.

Closing the Transaction

The closing, also known as settlement, is the final stage of the land purchase. It is the meeting where all necessary documents are signed, funds are transferred, and ownership of the property is legally conveyed from the seller to the buyer. The closing typically takes place at the office of the title company or an attorney.

Key documents signed at closing include the deed (the legal instrument that transfers ownership), the mortgage documents (if the buyer is financing the purchase), and various settlement statements outlining the financial details of the transaction.

The buyer will pay the remaining purchase price and their share of the closing costs, while the seller will receive the net proceeds from the sale after any outstanding mortgages or liens are paid off.

The deed is then recorded with the county clerk's office in the county where the property is located. Recording the deed provides public notice of the change in ownership and helps establish the buyer's legal title to the land.

The Affidavit of Citizenship

Effective November 1, 2023, Oklahoma law requires that all deeds filed with a county clerk include an affidavit executed by each grantee (buyer). This affidavit attests that the grantee is either a United States citizen or an alien who is or may become a bona fide resident of Oklahoma, is at least 18 years of age, has personal knowledge of these facts, acknowledges the state law on foreign ownership of land, and acknowledges any other relevant state or federal laws.

If the grantee is a business entity or trust, the affidavit must be executed by an officer or trustee, attesting that the entity's direct and indirect owners are U.S. citizens or bona fide residents of Oklahoma.

The Oklahoma Attorney General's office provides the required affidavit forms, which must be used. County clerks are instructed not to accept and record any deed that does not include this completed affidavit.

This new requirement underscores Oklahoma's long-standing laws restricting land ownership by non-U.S. citizens who are not bona fide residents. Buyers need to be aware of this requirement early in the process to ensure a smooth closing and recording of their deeds.

Chapter 2: The Legal Process of Selling Land in Oklahoma

SUMMARY

Sellers of residential property must provide a Residential Property Condition Disclosure Statement. Sellers of land should be transparent about known defects.

Negotiating offers and accepting a written contract creates a legally binding agreement.

Sellers have contractual obligations, including providing access for inspections and maintaining the property.

Sellers must cooperate with the title process and clear any existing encumbrances on the title.

Preparing for and attending the closing involves signing the deed and receiving the sale proceeds.

Sellers are responsible for certain closing costs, such as real estate commissions and potentially abstract updates.

Sellers should be aware of the buyer's new obligation to file an affidavit of citizenship with the deed.

Selling land in Oklahoma also involves a structured legal process that sellers must navigate to ensure a legally sound and successful transaction.

Listing the Property and Initial Agreements

Sellers often begin by engaging a real estate agent to list and market their property. While the intricacies of the realtor-seller relationship are not the primary focus of this book, it's important to understand that the listing agreement between the seller and the real estate agent is a legally binding contract that outlines the terms of their representation, including the commission rate and the duration of the listing.

Sellers can also choose to sell their property without an agent (For Sale By Owner - FSBO). In this case, they are directly responsible for all aspects of the marketing and legal processes.

Seller Disclosures

Oklahoma law requires sellers of residential property to provide a Residential Property Condition Disclosure Statement to potential buyers, outlining any known defects with the property. This disclosure covers various aspects of the property, including structural systems, water and sewer systems, and other potential issues. Providing accurate and complete information is crucial to avoid potential legal problems after the sale.

While the Residential Property Condition Disclosure Act specifically applies to residential properties, sellers of land should still consider disclosing any known material defects or issues that could affect the value or usability of the land. Transparency can build trust with potential buyers and reduce the risk of future disputes.

Negotiating Offers and Accepting a Contract

Once the property is listed, the seller will likely receive offers from potential buyers. The seller can accept an offer, reject it, or make a counteroffer. As with the buying process, any acceptance of an offer or counteroffer must be in writing to create a binding real estate purchase contract under Oklahoma's Statute of Frauds.

During the negotiation phase, sellers should carefully consider all the terms of the offer, including the purchase price, financing contingencies, inspection rights, closing date, and any personal property included.

Fulfilling Contractual Obligations

Once a purchase contract is accepted, the seller has certain legal obligations to fulfill. These typically include:

- Providing access to the property for inspections if the contract includes an inspection contingency.
- Maintaining the property in the condition agreed upon in the contract.
- Providing the necessary documentation for the title examination process, such as existing deeds or abstracts.
- Addressing any agreed-upon repairs or treatments identified during the buyer's inspections.

The Title Process from the Seller's Perspective

While the buyer usually initiates the title examination, the seller plays a crucial role in this process. They are expected to cooperate with the title company or attorney by providing any relevant information about the property's history and ownership.

The title examination may reveal existing liens, mortgages, or other encumbrances on the property. The seller is typically responsible for clearing these encumbrances before the closing so that the buyer receives a clear title. This may involve paying off outstanding mortgages, judgments, or tax liens.

Preparing for Closing

As the closing date approaches, the seller will work with the title company to prepare the necessary closing documents. These typically include the deed that will transfer ownership to the buyer and a settlement statement outlining the financial details of the transaction.

The seller will need to ensure they have the necessary identification and are prepared to sign all required documents at the closing.

Closing the Transaction

At the closing, the seller will sign the deed, transferring legal ownership of the property to the buyer. They will also receive the net proceeds from the sale after all closing costs and any outstanding encumbrances have been paid.

The seller is typically responsible for certain closing costs, which may include:

- Real estate agent commissions (if applicable).
- The cost of updating the abstract of the title (depending on the terms of the contract and local customs).
- Their share of property taxes up to the closing date.
- Any costs associated with clearing title defects.
- Attorney fees (if they have their own legal representation).

The Affidavit of Citizenship and the Seller's Role

The new requirement for the buyer to file an affidavit of citizenship primarily places the obligation on the buyer. However, sellers should be aware of this requirement as it is a necessary step for the deed to be recorded and the transaction to be fully completed.

Sellers should ensure that their purchase contract clearly outlines the buyer's responsibility for complying with this new law. Any delays in the buyer providing the affidavit could delay the recording of the deed and the finalization of the sale.

Chapter 3: Special Issues When Buying or Selling Residential Real Estate

SUMMARY

Sellers must comply with the Oklahoma Residential Property Condition Disclosure Act, revealing known material defects.

Buyers often utilize inspection contingencies to assess the property's condition.

The purchase contract should clearly define which fixtures are included in the sale.

Understanding the status of mineral rights is crucial, as they may be severed from the surface rights.

Properties in subdivisions may be subject to Homeowners Association (HOA) rules and fees.

Sellers of pre-1978 housing must comply with federal lead-based paint disclosure requirements.

Radon testing is recommended, and sellers should disclose any known information.

Special considerations apply to properties with septic systems and private wells.

Buyers should understand property taxes and any potential special assessments.

Homeowners may be eligible for Oklahoma's homestead exemption.

While the fundamental legal processes for buying and selling land apply to residential real estate, there are several special considerations that buyers and sellers of homes in Oklahoma need to be aware of. These often relate to the nature of a dwelling and the laws designed to protect consumers in these transactions.

The Oklahoma Residential Property Condition Disclosure Act

As mentioned earlier, this act (60 O.S. § 831 et seq.) imposes a specific legal obligation on sellers of residential real property to disclose any known material defects to potential buyers.

The disclosure statement must cover a wide range of potential issues, including problems with structural systems (roof, foundation, walls, floors), water and sewer systems, electrical systems, plumbing, heating and air conditioning, and the presence of any hazardous substances or environmental concerns.

Sellers are legally required to complete this disclosure form truthfully and to the best of their knowledge. Failure to disclose known defects can lead to legal liability after the sale.

Buyers should carefully review the disclosure statement and use it as a basis for further investigation, such as a professional home inspection. The act provides certain exceptions to the disclosure requirement, such as for foreclosures or transfers between family members.

Home Inspections

While Oklahoma follows a “buyer beware” approach, the purchase contract often includes an inspection contingency that allows the buyer to have the property professionally inspected. Buyers are typically responsible for hiring and paying for a qualified home inspector.

The inspection report can reveal significant defects or issues that the buyer was not aware of, providing them with an opportunity to renegotiate the purchase price, request repairs, or even terminate the contract, depending on the terms of the inspection contingency. Sellers should be prepared to address any legitimate concerns raised in the inspection report.

Fixtures vs. Personal Property

In residential sales, it's important to clearly distinguish between fixtures (items permanently attached to the property, which are typically included in the sale) and personal property (items that are not permanently attached and are usually not included).

Disputes can arise over items like appliances, light fixtures, window coverings, and landscaping. The purchase contract should clearly specify which items are included in the sale to prevent misunderstandings. Generally, anything bolted, screwed, cemented, or otherwise permanently affixed to the property is considered a fixture.

Mineral Rights

Oklahoma has a unique history related to oil and gas development, and mineral rights are often severed from the surface rights of a property, particularly in certain areas of the state.

When buying residential property, it's crucial to understand whether the mineral rights are included in the sale. If they are not, the owner of the mineral rights has the legal right to access the property to explore for and extract minerals, which could impact the surface owner's use and enjoyment of the land.

The title examination and abstract of title may or may not reveal the status of the mineral rights. This depends on whether the abstract contains all of the instruments related to the property or only the instruments related to the surface of the property. Buyers may want to seek legal advice if they have concerns about severed mineral rights.

Homeowners Associations (HOAs)

Many residential properties, particularly in subdivisions or planned communities, are subject to the rules and regulations of a Homeowners Association (HOA).

Buyers should receive and carefully review the HOA's governing documents (covenants, conditions, and restrictions - CC&Rs; bylaws; rules and regulations) before purchasing a property within an HOA. These documents outline the owner's obligations, restrictions, and fees associated with living in the community.

HOA restrictions can cover a wide range of aspects, including landscaping, exterior modifications, parking, pet policies, and noise levels. Failure to comply with HOA rules can result in fines or other enforcement actions.

Buyers should understand the financial obligations associated with HOA membership, including monthly or annual dues and any potential assessments for standard area maintenance or improvements. Sellers in HOA communities are typically required to provide buyers with copies of the HOA documents.

Lead-Based Paint Disclosure

Federal law requires sellers and landlords to disclose known information about lead-based paint and lead-based paint hazards in housing built before 1978.

Sellers must provide buyers with an EPA-approved information pamphlet on lead hazards and allow them a 10-day period to conduct a lead-based paint inspection or risk assessment (unless the buyer waives this right).

Sellers must also disclose any records or reports they have regarding lead-based paint or lead-based paint hazards in the property.

Radon Disclosure

While Oklahoma does not have a specific state law requiring radon disclosure, the EPA and the Oklahoma Department of Environmental Quality recommend that all homes be tested for radon, a naturally occurring radioactive gas that can cause lung cancer.

Sellers are encouraged to disclose any known information about radon testing or mitigation in the property. Buyers may want to consider conducting their own radon test as part of their home inspection.

Septic Systems and Well Water

For residential properties that are not connected to public water and sewer systems, special considerations apply to septic systems and private wells. Buyers should ensure that the septic system is functioning correctly and has been adequately maintained. Inspections of septic systems are often recommended.

If the property relies on a private well, buyers should consider having the water tested for potability and any potential contaminants. The legal requirements for well construction and water quality are governed by state and local regulations. Sellers should disclose any known issues with the well or septic system.

Property Taxes and Assessments

Buyers of residential property should understand the current property tax rates and how property taxes are assessed in Oklahoma. Property taxes are based on the assessed value of the property and are typically paid annually.

Buyers should also inquire about any special assessments that may be in place or pending, as these can add to the overall cost of ownership.

Homestead Exemption

Oklahoma offers a homestead exemption, which can protect a portion of a homeowner's primary residence from the claims of certain creditors. Buyers who intend to make the property their primary residence should familiarize themselves with the requirements and procedures for claiming the homestead exemption after closing.



Chapter 4: Abstracting and Title Insurance: Protecting Your Property Rights

SUMMARY

An abstract of title is a historical summary of all recorded documents affecting a property's title.

A title examination by an attorney, based on the abstract, results in a title opinion outlining potential defects.

Title insurance protects against financial losses from both discovered and undiscovered title defects.

Owner's title insurance protects the buyer's ownership interest, while lender's title insurance protects the lender's security interest.

Title insurance is a one-time premium paid at closing.

Abstracting and title insurance provide complementary layers of protection for property owners and lenders.

Buyers often have the choice of title company.

The processes of abstracting and obtaining title insurance are fundamental to ensuring clear and marketable title to real property in Oklahoma. They provide crucial layers of protection for both buyers and lenders involved in real estate transactions.

The Abstract of Title: A Historical Record

An abstract of title is a comprehensive historical summary of all publicly recorded documents that affect the title to a specific piece of real property. It acts as a chronological chain of ownership, tracing the title from its original source (often a government patent) to the current owner.

The abstract includes copies or summaries of deeds, mortgages, liens, judgments, probate proceedings, tax sales, and any other legal instruments that could impact the ownership or encumber the property.

In Oklahoma, the abstract is typically prepared by an abstract company, which specializes in researching and compiling these historical records.

The abstract itself does not guarantee a clear title; it merely provides the information necessary for an attorney to examine the title and render a title opinion.

The Title Examination and Title Opinion

Once the abstract is completed, it is usually submitted to an attorney who specializes in real estate law. The attorney conducts a thorough examination of the abstract to determine the current legal owner of the property and identify any potential title defects, encumbrances, or clouds on the title.

A title defect is any legal right or claim that could adversely affect the owner's ability to possess, enjoy, or sell the property. Examples include:

- Errors in prior deeds: Mistakes in legal descriptions or improperly executed documents.
- Undisclosed liens or mortgages: Financial claims against the property that were not satisfied.
- Outstanding judgments: Court orders requiring the owner to pay a debt.
- Unpaid property taxes: Liens placed on the property for delinquent taxes.
- Conflicting ownership claims: Disputes over who has the rightful ownership of the property.

- Easements or restrictions: Legal rights granted to others to use a portion of the property or limitations on how the property can be used.
- Probate issues: Unresolved legal matters related to the inheritance of the property.

After examining the abstract, the attorney issues a title opinion letter. This letter provides a professional legal assessment of the title's marketability, outlining any potential risks or defects identified in the abstract. The title opinion is based solely on the information contained in the abstract and does not provide any insurance or guarantee against undiscovered defects.

Title Insurance: Protecting Against Hidden Risks

Title insurance is a contract that protects the insured party (either the buyer or the lender) against financial losses arising from title defects that were not discovered during the title examination or that may arise in the future.

Unlike other forms of insurance that protect against future events, title insurance primarily covers past events that could affect the title.

There are two main types of title insurance policies:

- Owner's Policy: This policy is purchased by the buyer and protects their ownership interest in the property for as long as they or their heirs own it. It covers losses and legal expenses incurred in defending against covered title claims. The coverage amount is typically equal to the purchase price of the property.
- Lender's Policy: This policy is typically required by mortgage lenders to protect their security interest in the property. The coverage amount usually matches the loan amount and decreases as the mortgage is paid down. The lender's policy does not protect the buyer's equity in the property.

Why is Title Insurance Necessary? Even the most thorough title examination cannot eliminate all potential risks to the title. There may be hidden defects that are not revealed in the public records, such as:

- Forged signatures on prior deeds.
- Mistakes in recording documents.
- Undisclosed heirs.
- Mental incapacity of a previous grantor.

Title insurance provides financial protection and legal defense if a covered title claim arises. The title insurance company will bear the costs of defending against the claim and will indemnify the insured against any covered losses up to the policy limits.

The premium for title insurance is typically a one-time payment made at closing. While it may seem like an added expense, it provides significant peace of mind and financial security for the property owner and the lender.

The Interplay Between Abstracting and Title Insurance

Abstracting and title insurance work together to provide comprehensive title protection. The abstract provides the historical record that forms the basis for the title examination, while title insurance offers financial protection against risks that may not be evident from the abstract alone.

In Oklahoma, it is common practice for buyers to obtain both an abstract of title and an owner's title insurance policy. Lenders almost always require a lender's title insurance policy.

Choosing a Title Company

Buyers often have the right to choose the title company that will handle the abstracting and title insurance for their transaction. It's advisable to research and compare different title companies based on their reputation, experience, and fees.

Realtors can often provide recommendations for reputable title companies in the area.

Chapter 5: The New Oklahoma Affidavit of Citizenship Requirement

SUMMARY

Effective November 1, 2023, Oklahoma requires buyers to file an affidavit of U.S. citizenship or bona fide residency with their deed.

The affidavit must be on the form prescribed by the Oklahoma Attorney General and must contain specific attestations.

If the buyer is a business entity or trust, an officer or trustee must execute the affidavit attesting to the citizenship or residency of the direct and indirect owners or beneficiaries.

County clerks are required to reject any deed submitted for recording without the completed affidavit.

Buyers must be aware of this requirement and ensure the affidavit is properly completed and executed.

Sellers and real estate professionals should also be informed about this new law and its implications for real estate transactions.

A significant recent development in Oklahoma real estate law is the requirement for buyers to file an affidavit with the deed certifying their United States citizenship or bona fide residency status. This law, which took effect on November 1, 2023, has significant implications for all real estate transactions in the state.

Background and Purpose of the Law

Oklahoma has a long-standing constitutional prohibition against non-U.S. citizens owning land in the state, with certain exceptions for those who are or may become bona fide residents. This new affidavit requirement aims to establish a clear record of the buyer's citizenship or residency status at the time of property transfer, thereby facilitating the enforcement of these constitutional provisions and related state statutes.

The law is codified in Title 16, Section 11A of the Oklahoma Statutes.

The Affidavit Requirement

The statute mandates that every deed filed with a county clerk in Oklahoma must be accompanied by an affidavit executed by each grantee (buyer). This affidavit must contain specific information attesting to the following:

- The grantee is a citizen of the United States, OR, if the grantee is not a U.S. citizen, that they are or may become a bona fide resident of the State of Oklahoma.
- The grantee is at least eighteen (18) years of age.
- The grantee has personal knowledge of the facts stated in the affidavit.
- The grantee acknowledges the provisions of Section 5 of Article XXII of the Oklahoma Constitution (the prohibition on alien land ownership) and any other relevant state or federal laws.

Requirements for Business Entities and Trusts

If the grantee is a business entity (such as a corporation, limited liability company, etc.) or a trust, the affidavit must be executed by an officer of the business entity or the trustee of the trust.

In these cases, the affidavit must attest that the direct and indirect owners of the business entity or the beneficiaries of the trust are U.S. citizens or aliens who are or may become bona fide residents of the State of Oklahoma.

The Role of the Oklahoma Attorney General

The Oklahoma Attorney General's office is responsible for developing and providing the required affidavit forms. These official forms must be used, and county clerks are instructed to reject any deed submitted for recording that does not include a properly completed and executed affidavit on the Attorney General's prescribed form.

The Attorney General's website typically provides access to these forms and any related guidance on the new law.

Implications for Buyers

Buyers in Oklahoma must be aware of this new requirement early in the real estate transaction process. They will need to obtain the correct affidavit form from the Oklahoma Attorney General's office, carefully complete it with accurate information, and have it properly executed (signed and notarized) before or at closing.

Failure to provide the completed affidavit with the deed will result in the county clerk refusing to record the deed, which means the legal transfer of ownership will not be officially recognized in the public records. This could lead to significant legal and financial complications for the buyer.

Buyers who are not U.S. citizens but intend to become bona fide residents of Oklahoma should ensure they understand the legal definition of “bona fide resident” under Oklahoma law and can truthfully attest to their intent in the affidavit.

Implications for Sellers

While the primary responsibility for the affidavit lies with the buyer, sellers should also be aware of this new requirement.

Purchase contracts should ideally address the buyer's obligation to comply with this law and ensure that the closing process allows sufficient time for the buyer to complete and execute the affidavit. Sellers may experience delays in the recording of the deed if the buyer fails to provide the necessary affidavit.

The Role of Real Estate Professionals

Real estate agents and brokers in Oklahoma have a responsibility to stay informed about changes in real estate law and to advise their clients accordingly.

They should educate buyers about the new affidavit requirement and ensure they understand the need to complete and submit the form with their deed. Agents may also assist buyers in locating the correct affidavit form and understanding its requirements.

Title companies and closing attorneys will also play a crucial role in ensuring that the affidavit is properly executed and submitted for recording along with the deed.

Potential Issues and Considerations

The new law raises some potential questions and considerations:

- The specific definition and documentation required to demonstrate “bona fide residency” for non-U.S. citizens may need further clarification through case law or Attorney General opinions.
- The process for handling situations where a buyer's citizenship or residency status changes after closing but before recording could present complexities.
- Ensuring consistent application of the law by all county clerks across the state will be important.



Chapter 6: Unveiling Title Defects and Their Remedies in Oklahoma Real Estate

SUMMARY

Title defects are legal flaws, claims, or encumbrances that can affect clear and marketable titles.

Common types of title defects include errors in legal descriptions, forged documents, undisclosed liens, outstanding mortgages, easements, probate issues, and boundary disputes.

Title defects are typically discovered during the title examination process.

Various legal remedies exist to clear title defects, including affidavits, corrective deeds, release of liens, quiet title actions, boundary line agreements, and probate proceedings.

Title insurance provides crucial protection against both discovered and undiscovered title defects by defending the title, attempting to clear defects, and indemnifying the insured for losses.

Addressing title defects is essential for ensuring clear ownership, marketability, peace of mind, and avoiding future legal disputes.

Consulting with a real estate attorney is crucial when dealing with title defects to determine the best course of action.

The concept of “clear and marketable title” is paramount in Oklahoma real estate transactions. Buyers want assurance that they are acquiring full and unencumbered ownership of the property, free from any claims or encumbrances that could jeopardize their rights and interests. However, the history of a property can be complex, and various issues, known as title defects, can arise. Understanding these defects and the legal mechanisms available to remedy them is crucial for both buyers and sellers.

What are Title Defects

Title defects are any legal flaws, claims, or encumbrances that could affect the owner's right to clear and marketable title. These issues range from minor administrative errors to significant legal challenges that could lead to loss of ownership. Title defects can be discovered during the title examination process, which involves a thorough review of the abstract of title and public records.

Common types of title defects in Oklahoma include:

- **Errors in Legal Descriptions:** Mistakes or inconsistencies in the property's legal description in prior deeds or other recorded documents. This can lead to boundary disputes or uncertainty about the exact property being conveyed.
- **Forged or Fraudulent Documents:** Instances where prior deeds, mortgages, or other legal instruments were forged or obtained through fraudulent means, rendering them invalid.
- **Improperly Executed or Recorded Documents:** Deeds or mortgages that were not signed, witnessed, or notarized correctly or were not properly recorded with the county clerk, potentially affecting their legal validity or providing inadequate public notice.
- **Undisclosed Liens and Encumbrances:** Financial claims against the property that were not satisfied and remain attached to the title. These can include mortgages, judgment liens, tax liens (federal, state, or local), mechanic's liens (for unpaid work or materials), and association liens (for unpaid HOA dues).
- **Outstanding Mortgages:** Prior mortgages that were not properly released or satisfied in the public records, even if the underlying debt has been paid.

- **Easements and Restrictions:** Unrecorded or improperly documented easements (rights granted to others to use a portion of the property) or restrictive covenants (limitations on how the property can be used) that were not disclosed.
- **Probate Issues:** Unresolved legal matters related to the inheritance of the property, such as incomplete probate proceedings or claims by omitted heirs.
- **Bankruptcy Issues:** Pending or past bankruptcy filings by previous owners that could affect the transfer of title.
- **Marital Rights:** Potential claims by a former spouse who may have an interest in the property due to divorce or homestead laws.
- **Missing Heirs:** Situations where previous owners died without a clear line of succession, and potential heirs may still have a claim to the property.
- **Tax Sales and Forfeitures:** Issues arising from prior tax sales or forfeitures of the property due to unpaid taxes.
- **Boundary Disputes and Encroachments:** Disagreements with neighboring property owners regarding property lines or instances where structures from an adjacent property extend onto the subject property (or vice versa).

Discovery of Title Defects

Title defects are typically discovered during the title examination process, which is a crucial step in both buying and selling real estate. The abstract of title provides the historical record, and the examining attorney analyzes this record to identify any potential issues. The title opinion letter will outline any defects found and their potential impact on the title's marketability.

Remedies for Title Defects

Once a title defect is identified, various legal remedies may be available to clear the title and ensure a smooth transfer of ownership. The appropriate remedy will depend on the specific nature and severity of the defect. Common remedies include:

- **Affidavits and Corrective Deeds:** Minor errors in legal descriptions, names, or other factual information in previously recorded documents can often be corrected by filing affidavits of correction or obtaining corrective deeds from the original grantor. These documents clarify the error and provide the correct information in the public record.
- **Release of Liens and Mortgages:** Undisclosed or outstanding liens and mortgages must be satisfied and formally released in the public records. This typically involves the seller paying off the debt and obtaining a formal release document (e.g., a release of mortgage or a release of judgment lien) that is then recorded with the county clerk.
- **Quiet Title Action:** For more complex or significant title defects, such as conflicting ownership claims, boundary disputes, or issues with improperly executed or fraudulent documents, a quiet title action may be necessary. This is a lawsuit filed in district court to establish clear ownership of the property. The court will hear evidence from all parties with a potential interest in the property and issue a judgment that definitively determines the legal owner. A quiet title action can be a time-consuming and potentially costly process, but it is often the only way to resolve significant title disputes.
- **Boundary Line Agreements:** In cases of minor boundary disputes or uncertainties, adjacent property owners may enter into a formal boundary line agreement. This agreement, once recorded, legally establishes the agreed-upon property line and can prevent future disputes. A survey is often required to accurately define the boundary.
- **Probate Proceedings:** If a title defect arises due to incomplete or improper probate proceedings, it may be necessary to reopen or initiate new probate actions to properly transfer ownership according to the deceased owner's will or state law.
- **Bankruptcy Court Orders:** If a title defect is related to a prior bankruptcy filing, obtaining an order from the bankruptcy court may be necessary to clear the title.

- **Title Insurance Claims:** If the buyer has purchased an owner's title insurance policy and a covered title defect arises after closing, they can file a claim with the title insurance company. The title insurance company will then be responsible for defending the title against the claim and either clearing the defect or compensating the insured for any losses incurred (up to the policy limits). Title insurance is a crucial safeguard against undiscovered defects.
- **Statutory Remedies:** Oklahoma law provides specific statutory remedies for certain types of title defects, including procedures for releasing ancient mortgages and addressing specific types of liens.
- **Negotiation and Settlement:** In some cases, title defects can be resolved through negotiation and settlement with the party asserting the claim. This might involve paying a sum of money to release a claim or reaching an agreement on an easement or boundary line.

The Role of Title Insurance in Remedying Defects

Title insurance plays a vital role in addressing title defects. While the title examination aims to identify and resolve defects before closing, some defects may remain undiscovered or arise after the policy is issued. If a covered defect is discovered, the title insurance company has a duty to:

- **Defend the Title:** The insurer will pay the legal costs to defend the insured's title against a covered claim.
- **Clear the Title:** The insurer will attempt to resolve the title defect, if possible, by paying off liens, pursuing legal action (like a quiet title action), or taking other necessary steps.
- **Indemnify the Insured:** If the title defect cannot be cleared and results in a loss of ownership or financial damage to the insured, the title insurance company will compensate the insured up to the policy limits.

It's important to understand that title insurance protects against past events and undiscovered defects. It does not cover defects that are created by the insured after the policy date or defects that were known to the insured but not disclosed to the title company.

Importance of Addressing Title Defects

Addressing title defects is crucial for several reasons:

- **Clear Ownership:** It ensures that the buyer receives clear and unencumbered ownership of the property, free from potential legal challenges.
- **Marketability:** A clear title is essential for the owner to sell or mortgage the property in the future. Title defects can significantly impair the property's marketability.
- **Peace of Mind:** Knowing that the title is clear provides peace of mind to the property owner.
- **Avoiding Future Disputes:** Resolving title defects early can prevent costly and time-consuming legal disputes down the road.

Conclusion

Buying or selling real estate in Oklahoma involves a multifaceted legal process. Understanding the key legal considerations discussed in this e-book is essential for a smooth and successful transaction. From the initial offer and acceptance to the final closing and the new affidavit of citizenship requirement, each step has legal implications that can significantly impact your rights and obligations.

By familiarizing yourself with the process of buying and selling land, the special considerations for residential real estate, the crucial role of abstracting and title insurance, and the recent changes in Oklahoma law regarding the affidavit of citizenship, you can approach your real estate endeavors with greater confidence and minimize the risk of legal complications.

While this e-book provides a comprehensive overview of the legal landscape, it is not a substitute for professional legal advice. It is always recommended to consult with a qualified Oklahoma real estate attorney to discuss your specific circumstances and ensure that your interests are fully protected throughout the buying or selling process. Engaging legal counsel can provide invaluable guidance, help you navigate complex issues, and ensure that your transaction complies with all applicable Oklahoma laws.

Armed with knowledge and the support of legal professionals when needed, you can confidently navigate the Oklahoma real estate market and achieve your property ownership or sales goals.





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We are located in Vinita and serve clients throughout Northeast Oklahoma. We would be happy to speak with you about your legal matter.

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