

Proposed 2020 Legislation Impacting Oklahoma Title and Real Property Attorneys

Version 4

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May 14, 2020 Update

The Legislature has eliminated the requirement for a bill to pass in committee in the opposite Chamber. For example, House Bills no longer have to pass Senate Committees. House Bills will only need to be voted on by the full Senate. Senate Bills by the full House. Please note that the legislature has used the designation “**Direct to Calendar**” on the official oklegislature.gov bill tracking to indicate that they plan to bring a measure to a floor vote. In reviewing the below bills, I saw the “Direct to Calendar” designation several times (and it’s noted for each bill below) but only in one instance was there a subsequent vote on the chamber floor.

In addition to the impact of COVID, the legislature and the Governor are in a battle over the state budget. Based on the reporting done at the capitol, many Policy Bills” are taking a back seat as the budget battle rages on. The reporting has quoted legislative leaders as saying “a limited number of policy bills” will be brought up at the end of session, if there is time.

Here’s what you should keep in mind:

- The legislature must adjourn by the end of May 29, 2020. So that’s the ultimate deadline for something to pass the legislature this term; however,
- We don’t know yet if the Governor might call the Legislature back in some kind of special session later this year where some of these previously abandoned bills could get picked up.
- The best and safest course of action is to keep following news about what the state legislature is doing. As long as they are still debating bills, I will keep putting this out.
- I am not a scholar of the Oklahoma Constitution and I leave questions about whether changes in the legislative process are going to result in litigation challenging the validity of these laws to smarter minds than myself.

Introduction

In response to requests to keep this report brief and topical, the following areas that may be considered relevant to a small number of real property practitioners have been excluded from this report: water rights, oil and gas, taxation, and medical marijuana. While these areas might involve the ownership of real property, more specialized attorneys handle separate legal updates in those areas for the OBA, and I defer to their expertise.

While this report is provided to the Title Standards Committee of the OBA in my role as Legislative Liaison for that Committee, this is my own product, and has not been approved or

blessed by the OBA. If any of the bill summaries offend, the fault is entirely my own, and should not be imputed to the OBA or any of its subdivisions.

If you have additional bills to bring to my attention, would like to suggest additions or revisions to my summaries or explanations of a bill, or have any further inquiries, please contact me at ryan@gossenschaller.com. All versions of this report will be posted to the “Blog Posts” section of www.gossenschaller.com as well as linked on the OBA’s Real Property Message Boards.

Special thanks to Monica Wittrock of First American Title and Rhonda McLean of Munson & McMillin, P.C. for providing me with their own legislative lists in these areas.

Deadlines

Deadline to Pass Committee in Chamber of Origin:	February 27, 2020
Deadline to Pass Chamber of Origin:	March 12, 2020
Deadline to Pass Committee in Opposite Chamber:	April 9, 2020 Suspended Deadline
Deadline to Pass Opposite Chamber:	April 23, 2020 Suspended Deadline
Sine Die Adjournment:	May 29, 2020

List I: Title

These Bills should be monitored for their potential impact on the Title Standards

- Bill No.: HB2916
Brief Title: **Probate Venue Priority** a/k/a Walking back Walker
Sponsor: Loring
Description: Adds the words “First”, “Second”, etc. to the beginning of each paragraph in 58 OS § 5. This is a bill in response to the COCA decision *In re Walker* which eliminated the probate venue priority established by statute.
Status: **5/14 – no vote yet in Senate.** Passed House Unanimously 3/10/2020. Contains emergency language that would make it effective 7/1/2020
- Bill No.: HB2917
Brief Title: **Municipal Liens against Real Property**
Sponsor: Loring
Description: New Law that allows a municipality to hold the owner of a property civilly liable for actual expenses or costs for cleaning, mowing, dismantling and removal of dilapidated buildings, or in relation to abating a public nuisance caused by an abandoned building.
Status: **5/14 – no vote yet in Senate.** Passed House.
- Bill No.: HB3032
Brief Title: **Life of Judgment Liens**
Sponsor: Bush
Description: Judgment length amended from 5 to 20 years.
Status: **Dead.** Never voted on in rules committee.
- Bill No.: HB3552
Brief Title: **Guardianship**
Sponsor: Boatman
Description: Transfer of a Ward’s property and Medicaid eligibility. Should be reviewed to determine that it does not provide an alternative to current procedure of selling property out of a Guardianship.
Status: **5/14 – no vote yet in Senate.** Passed House to Senate
- Bill No.: HB3660
Brief Title: **Civ Pro**
Sponsor: Kannady
Description: Returns to the old Default Judgment rules prior to the Schweigert and Asset Acceptance v. Pham decisions. For those unfamiliar with these cases, they have had an impact on attorneys in Quiet Titles and Foreclosures. As a result of these cases, courts are requiring attorneys to file Motions for Default and, in some

cases, docketing hearing dates for these motions, in cases where Defendants have never entered an appearance.

Status: **5/14 – no vote yet in Senate.** Passed House to Senate

Bill No.: HB3712

Brief Title: **Uniform Partition of Heirs Property**

Sponsor: Kannady

Description: Uniform law procedure for dividing property among heirs. Probably need new title standard if becomes law.

Status: **Dead.** Referred to the Rules Committee – no vote.

Bill No.: HB3743

Brief Title: **Death Certificate Access**

Sponsor: Sims

Description: State Commissioner of Health shall contract with the Oklahoma Tax Commission to make certified copies of death certificates available for issuance at local tag agencies. While not specifically a title law issue, this is being followed because of TES's interest in access to Death Certificates.

Status: **5/14 – no vote yet in Senate.** Passed House

Bill No.: HB3857

Brief Title: **County Resale Returns**

Sponsor: Burns

Description: Claims of the state against property sold at resale are “extinguished with respect to any deed conveying title to the board of county commissioners where such property was bid off in the name of the county.”

Status: **5/14 – no vote yet in Senate.** Passed House

Bill No.: HB4112

Brief Title: **Creates the Uniform Common Interest Ownership Act**

Sponsor: Kannady

Description: Bill would adopt a Uniform Law on Common Interest Ownership (common areas in PUDs, Condominiums, etc.).

Status: **Dead.** Referred to the Rules Committee – no vote.

Bill No.: SB1207

Brief Title: **Foreign LLCs**

Sponsor: Bergstrom

Description: Replaces “foreign” with “any jurisdiction other than this state” and modifies other language

Status: Dead. No Committee vote.

Bill No.: SB1789
Brief Title: **Court of Civil Appeals**
Sponsor: Daniels
Description: Would end direct appeals from District Court to the Supreme Court of Oklahoma. All civil appeals would first be assigned to COCA. Following a COCA ruling, a party can petition for a writ of certiorari from the OK Supreme Court
Status: Dead. Failed in Committee - Judiciary

End of List related to Title Standards

List II - Real Property but not Title

This list contains bills that could impact the general Real Property Lawyer, but do not specifically impact our current Title Standards

Bill No.: HB2821
Brief Title: **Extends Sunset date on Oklahoma’s Abstractor Board**
Sponsor: Gann
Description: Originally extended sunset on Board to 2026 (6 year renewal). I’ve heard that this has been substituted with a bill that only renews it for 1 year, but I’m not seeing that reflected on the bill tracking site yet. My understanding is that there is considerable uncertainty in the State House over the future of licensing boards. The traditional approach for the last several decades in this state was to have semi-autonomous licensing/governing boards that elected their own members. There is pressure to change that. Some would like to completely remove professional licensing and governing boards in Oklahoma, others would like to see the consolidation of these boards into a single office, while still others prefer maintaining the status quo. Last year the board was also set to renew for six years but in the end was only renewed for a term of one year.
Status: **This was rolled into HB2823 – the “Omnibus Board sunset renewal bill” which passed the Senate 44-1 on 5/12/2020 and is now awaiting a House Vote.**

Bill No.: HB2855 / SB1427
Brief Title: **Landlord Tenant**
Sponsor: Pae
Description: Allows victims of domestic violence to terminate lease without penalty by providing a copy of a protective order or police report. Also allows landlord to go after “perpetrator of such violence” to recover for early termination losses.
Status: The Senate Bill has been listed as “direct to calendar” on the bill tracking website, which mean, under the current COVID procedures, they are expecting to take a House vote on the Senate Bill. House Bill Dead. Senate Bill passed Senate and sent to House with Title Stricken.

Bill No.: HB2988
Brief Title: **Landlord Tenant**
Sponsor: Bennett
Description: Max 10% increase in rent with lease renewal
Status: Dead. Never up for a committee vote.

Bill No.: HB3060
Brief Title: **Property Owner's Associations**
Sponsor: McDugle
Description: POA's with a "major item" that has "a deferred maintenance expense or replacement cost that exceeds \$50,000.00" with a useful life of more than 3 years, must set up a reserve account in accordance with the provisions of this new statute.
Status: **Dead.** Never received a full House vote. Passed out of Business and Commerce Committee

Shell Bill substitute

Bill No.: HB3104
Brief Title: **Real Estate Wholesaler Prohibition Act**
Sponsor: Osburn (house) and Rosino (Senate)
Description: Prohibits anyone without a real estate license from marketing an equitable interest in property. The way wholesalers currently operate without a real estate license is they get a property under contract with a seller. They then market the interest in that contract to another buyer. I've heard divergent opinions on whether this bill would prohibit someone with a real estate license from doing the same.
Status: **5/14 – no vote yet in Senate.** No Senate vote as of 4/16. Passed house with title stricken.

Bill No.: HB3296
Brief Title: **Wind Turbine setbacks**
Sponsor: Newton
Description: Prohibits wind energy turbine or facility of over 300 feet within a certain distance of airports.
Status: **Dead.** No committee vote.

Bill No.: HB3331
Brief Title: **Title Insurance**
Sponsor: Perryman
Description: Update – Bill has been revised. Instead of affirmatively requiring an Owner's Policy of Title Insurance whenever a Loan policy is issued, the new version would allow a homeowner to pass on owner's title insurance with an executed informed waiver. My understanding of this Bill is that the Representative is

concerned that parties to a transaction are bearing the expense of title work and a loan policy, but are not receiving any protection on their own investment.

Status: **5/14 – no vote yet in Senate.** 4/16 – No Senate vote yet. Passed House.

Bill No.: HB3334

Brief Title: Banking, transfer of deceased's funds

Sponsor: Fugate

Description: Allows deceased owner's bank account to be used to distribute funds to heirs under \$50k with sworn affidavit by known heirs if no probate filled.

Status: **5/14 – no vote yet in Senate.** 4/16 – No Senate vote yet. Passed House.

Bill No.: HB3706

Brief Title: **Landlord/Tenant – Late Charges**

Sponsor: ~~Kannady~~ Vancuren

Description: Late fees up to 10% of the monthly rent are presumed to be valid

Status: **5/14 – no vote yet in Senate.** 4/16 – No Senate Vote. Passed House with title stricken 88-5. Sponsoring Rep changed.

Bill No.: HB3710

Brief Title: **Revised Landlord Tenant Act**

Sponsor: Kannady

Description: Very long bill, please review. Some of the new law includes a duty to mitigate damages, an obligation of good faith in performance and enforcement of a lease, provides that a court can refuse to enforce a lease if a provision is found to be unconscionable, imposes required disclosures by landlords, required disclosures by tenants, prohibited provisions in leases, and more. Highly recommend following and studying in depth if you represent people who lease residential properties.

Status: Dead. Rules Committee - No vote held.

Bill No.: HB3969

Brief Title: **Mortgage Licensing**

Sponsor: McBride/Rader

Description: 501(c) organizations exempt from state mortgage licensing requirements

Status: **5/14 – no vote yet in Senate.** 4/16 – No Senate vote yet. Passed House.

Bill No.: HB4044

Brief Title: **Trespass Nominal Damages**

Sponsor: McCall

Description: Revises 21 OS §§ 1835 and 1835.1 to include a nominal damages award in a successful trespass action in the lack of actual provable damages.

Status: **5/14 – no vote yet in Senate.** 4/16 – No Senate vote yet. Passed House

Bill No.: SB1270
Brief Title: **Recreates the Red River Boundary Committee**
Sponsor: Bullard
Status: Placed directly on the House Calendar back in early April, which means the original plan was for a House floor vote; however, there have been no votes recorded or notes added to the legislature's website for this bill since the "direct to calendar" notation over a month ago. Passed Senate, engrossed to House

Bill No.: SB1301
Brief Title: **Landlord Tenant**
Sponsor: Montgomery
Description: Increases amount of deduction permissible from rent for repairs made by tenant.
Status: **Dead.** Judiciary Committee. No vote held.

Bill No.: SB1713
Brief Title: **Regulation of residential building design elements; prohibiting certain city and county actions**
Sponsor: David and Martinez
Description: Prohibits a county, municipality, city, or town from enacting residential building design element regulations unless it falls under specific exceptions such as historic districts. Specifically states that it does not affect CCRs entered into by private parties.
Status: Placed directly on the House Calendar in early May, which means the original plan was for a House floor, but no vote held as of 5/14. Passed Senate 39-8 on 3/12.

Bill No.: SB1312
Brief Title: **Ad Valorem Tax Payments**
Sponsor: Pederson
Description: Minor changes to the language about paying Ad Valorem tax. Give closer scrutiny if moves on.
Status: **Dead.** Finance Committee. No vote held..

Bill No.: SB1333
Brief Title: **Landlord/Tenant**
Sponsor: Montgomery
Description: Tenant corrective action upon landlord breach.
Status: **Dead.** No full Senate vote held. Passed amended Judiciary Committee; Title stricken,

Bill No.: SB1743
Brief Title: **Successor Trustees and Creditors Claims**
Sponsor: Howard; Co-author/principal House author: ODonnell

Description: Amends 60-175.18a – allows a successor trustee to file an affidavit with county clerk that would bar creditor claims after 45 days. Appears to be optional, i.e., a trustee can do this if they want to forever bar claims, but they don't have to do it.
Status: **Dead.** No full Senate vote held. Passed amended Judiciary Committee; CR filed; Title stricken.

Bill No.: SB1753
Brief Title: **Real Estate Developments**
Sponsor: Leewright
Description: Title company must provide a certified copy of CC&Rs 30 days prior to closing. Currently the law requires a title company to provide these documents either prior to or at closing. In my experience working with title companies, most of their customers are expecting a transaction to close in less than 30 days, so this bill, as currently written, may artificially delay residential transactions so that this requirement can be met.
Status: Dead. No committee vote held.

Bill No.: SB1815
Brief Title: **Oklahoma Decanting Act**
Sponsor: Howard (JD and LLM); Co-author/principal House author: ODonnell
Description: New law providing for “decanting trusts” in Oklahoma
Status: Placed directly on the House Calendar in early May, which means the original plan was for a House floor, but no vote held as of 5/14. House. Passed out of Senate.

Bill No.: SB1864
Brief Title: **Eminent Domain**
Sponsor: Dahm
Description: Creates a definition for abandoned or blighted structures. Provides requirements for condemnation actions by the government.
Status: **Dead.** No Judiciary Committee vote held.

List III - Civil Procedure and General Practice of Law

These bills do not specifically relate to Title or Real Property law, but fundamentally relate to the practice and procedure of the law.

Bill No.: HB2808
Brief Title: **Amends forms to use in FED actions**
Sponsor: Hardin; author/principal Senate author: Bergstrom
Description: Please review if your practice includes FEDs.
Status: **5/14 – no vote yet in Senate.** Passed House.

Bill No.: HB3390/SB1820
Brief Title: **Legal Representation for State/State Agency**
Sponsor: O'Donnell/David, several cosponsors
Description: As this is outside the scope of title/real property, I won't be going into details on this one, but if you are hired by the state of Oklahoma to be a lawyer for an executive branch agency, this creates some new rules and regulations regarding fees, including caps. I don't know whose day this is going to ruin, but you can no longer bill a state agency more than \$1,000 an hour.
Status: **5/14 – no vote yet in Senate.** 5/14 Senate Bill still needs a full House Vote. SB marked as "Direct to Calendar" in House. HB passed amended Judiciary Committee; SB passed amended by committee substitute General Government committee, CR filed.

Bill No.: SB1268
Brief Title: **Civil Procedure - Dismissals**
Sponsor: Daniels; co-author/principal House author: Walke
Description: Amends 12 OS §2004 to allow for defendants not timely served to apply to the court for a dismissal without prejudice.
Status: Placed directly on the House Calendar in early May, which means the original plan was for a House floor, but no vote held as of 5/14. House.. Passed Senate, Engrossed to House

Bill No.: SB1741
Brief Title: **Business Entities**
Sponsor: Montgomery; co-author/principal House author Kannady
Description: Makes several revisions to the Oklahoma General Corporation Act regarding the use of electronic communication for notices.
Status: Placed directly on the House Calendar in early May, which means the original plan was for a House floor, but no vote held as of 5/14. House. Passed out of Senate 45-0. Passed amended by committee substitute Judiciary Committee;

Bill No.: SB1836
Brief Title: **Standing in Civil Actions**
Sponsor: Daniels
Description: Sets out a statutory definition and criteria for having standing to bring a civil action.
Status: **Dead.** Never received Senate vote. No full Senate vote yet 3/12. Passed as amended Judiciary committee; CR filed; Title Stricken, Emergency clause stricken

Shell Bills

Oklahoma has strict deadlines for bringing new bills each legislative session. In the State House, Representatives can create a “shell” bill that has a title and states that it applies to a specific title of the Oklahoma statutes. These bills do not do anything on their own but often draw attention because their titles contain words like “Reform Act”. Nothing will happen to the majority of these bills. One or two may end up being swapped out for an actual bill later in the process, which is why I check these bill numbers every time I update the report. Sometimes, these shell bills will be brought by Representatives who are close to a particular industry in case that industry has a pressing issue come up over the course of the session that needs a legislative fix.

5/14 Update – No changes to shell bills listed below.

HB3000 – Eminent Domain Reform Act (withdrawn from rules committee, referred to Energy/Natural Resources, but no committee substitute has been filed and no vote taken in committee.)

HB3105 – Lien Reform Act

HB3173 – Real Estate Practice Reform Act

HB3198 – Uniform Partition of Heirs Property Act

HB3412 – Landlord and Tenant Referendum Act of 2020

HB3493 – Title Holding State Reform Act

HB3658 – Title Agents Reform Act

HB3670 – Civil Procedure and Probate Reform Act

HB3671 – Probate Act

HB3708 – Landlord and Tenant Act of 2020

HB3739 – real Estate Contracts and Practices Act

HB3820 – Commissioners of the Land Office Policy Act

HB4045 – Property Reform Act of 2020

HB4100 – Oklahoma Probate Act of 2020