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2-2008

# Standards for Examination of Real Estate Titles in Arkansas: What are They and Why Should I Care?

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## Recommended Citation

Warren, Bill, "Standards for Examination of Real Estate Titles in Arkansas: What are They and Why Should I Care?" (2008). *Annual of the Arkansas Natural Resources Law Institute*. Paper 66.  
<http://scholarworks.uark.edu/anrlaw/66>

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## **STANDARDS FOR EXAMINATION OF REAL ESTATE TITLES IN ARKANSAS WHAT ARE THEY AND WHY SHOULD I CARE?**

### WHAT IS A TITLE STANDARD?

A title standard is a statement which declares the answer to a question or a solution for a problem that is commonly encountered in the process of title examination<sup>1</sup>. Put another way an individual title standard usually considers the effect of a precise set of facts on the marketability of title based upon statutory and case law<sup>2</sup>. For example, your client, Tripp Darling, is considering purchasing a hunting lodge in Van Buren County to use as a getaway from his hectic wheeling and dealing in New York or when he simply can't stand to be around his bizarre but lovable family any more. It just so happens that you went to law school with Nick George, Mr. Darling's attorney so you have been hired to examine the title. The title is clean by Arkansas standards, except for this one deed that seemingly has a problem with the description. It is a metes and bounds description which actually describes 253.93 acres. However, at the very end of the description are the following words, "containing 100 acres, more or less". That is the precise set of facts we are dealing with. What is the effect? Does the deed convey the entire 253.93 acres or just 100 acres? You refer to the Arkansas Real Estate Title Standards and locate Standard 21.5 which states in part "A deed calling for 100 acres but describing a tract which contains 253.93 acres conveys the entire 253.93 acres" and cites a remarkably similar case that took place in Randolph County in 1912. Now you have an answer to your question based on case law. You can now report back to Mr. Darling that the seller of the hunting lodge has good title and once the purchase is complete he can come to Arkansas and relax and enjoy the scenic view of tree covered mountains, deer frolicking in the babbling brook and the drilling rig that has been erected approximately 200.01 feet from the front porch of his new lodge.

### PURPOSE OF TITLE STANDARDS

The primary purpose of any set of title standards is to promote a uniform set of standards for the examination of title to real property. While the standards are developed by attorneys they are intended for use by all those who examine title to real property. Many business decisions are made based on title examined by landmen, division order analysts, right of way agents or real estate brokers. The training of these groups varies greatly. Therefore it is necessary to have a set of standards that everyone can rely on. Thus, standards were created "to aid the title examiner in testing the validity of a particular instrument by the law in force at the time of its execution ..."<sup>3</sup> Standards are not intended to take the place of legal research or the opinion of an experienced title examiner, but to point an examiner in the right direction.

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<sup>1</sup> Preface to Texas Title Examination Standards

<sup>2</sup> Introduction to Colorado Real Estate Title Standards

<sup>3</sup> Preface to Paul Jones, Jr., The Arkansas Law of Title to Real Property (1935)

## OVERVIEW OF TITLE STANDARDS NATIONWIDE

At last count there were 27 states with title standards. The earliest continuing standards were adopted in 1938. In fact some states have more than one. In New York, the Erie County Bar Association adopted a set of title standards in 1949, six years before the State of New York and they are still in use today. In addition to the state standards the United States Government has its own set of title standards that “serve as a guide for the preparation of evidence of title for all acquisitions by the United States of land or interests in land, including acquisitions by direct purchase, exchange, donation and condemnation.”<sup>4</sup>

The title standards of eight states<sup>5</sup> plus those of the Department of Justice mentioned above are available on the internet free of charge. The rate charged for a copy of title standards by other states ranges from \$5.00 in Oklahoma to \$130.00 in Michigan. Maine has a subscription service with yearly updates costing \$21.00. While the quality, pricing and availability of the standards varies from state to state, all are consistent in their stated purpose, that is to provide both beginning and experienced title examiners with a guideline for approving title to real property.

## THE BIRTH OF ARKANSAS TITLE STANDARDS

The development of a continuously, evolving set of title standards in Arkansas took nearly a century. During the 20<sup>th</sup> century a set of standards was published about every 30 years, but as far as I know only the latest incarnation has ever been updated. The first attempt was in 1935 by an attorney named Paul Jones, Jr. of Texarkana, Arkansas. Mr. Jones compiled an exhaustive set of rules of law pertaining to all matters relating to real property titled The Arkansas Law of Title to Real Property. It was a hardback book that contained over 1000 pages and covered everything from Indian treaties and concessions from France and Spain to the amount of revenue stamps needed when filing a deed. Mr. Jones’ intent was for the book to be updated periodically by pamphlet, however I do not know if this was ever done.

In 1962 the Jurisprudence and Law Reform Committee of the Arkansas Bar Association recommended adoption of proposed “Title Standards for Arkansas” which had been published in the Arkansas Law Review, Vol. 16, Number 4, beginning at page 376. It is unclear what if anything happened to the “Title Standards for Arkansas” after that. Apparently they were never distributed or published by themselves and were forgotten about until 1991.

In 1991 a young Fort Smith attorney named James E. O’Hern, III, approached the Executive Council and members of the Natural Resources Law Section with the idea of developing title standards for Arkansas. The Section members thought this was a good idea and gave Jim their blessing to proceed. In 1992 Mr. O’Hern came back to the members of the Natural Resources Law Section with a proposed outline of the standards. As a reward for his diligence, at the February 1993 meeting, Jim was appointed the Chair of a committee to work on the development of the standards. By late spring of 1993 the committee had met three times and had come to include members of the Real Estate Law Committee.

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<sup>4</sup> Foreword to Department of Justice Title Standards (2001)

<sup>5</sup> Colorado, Florida, Georgia, New Hampshire, New York, Ohio, Texas and Vermont

The drafting committee used the 1962 proposal as a starting point and began the arduous task of updating and refining the standards, referring frequently to The Arkansas Law of Title to Real Property. Title standards from other states were used for ideas as to formatting and content. Chapters were assigned to individual attorneys, who in turn submitted drafts to the full committee where they were scrutinized, discussed and dissected, and often time rewritten in whole or in part. During this development period Mr. O'Hern made several trips to Oklahoma City to sit in on the Oklahoma Title Standards Committee meetings and also met with the Real Estate Law Committee of the Arkansas Bar Association. The Oklahoma Title Standards are very well done and the workings of their Committee provided valuable insight into how our committee should function once the standards were published.

In February 1994 the committee presented a draft of the proposed standards to the Natural Resources Law Section at the meeting held in conjunction with this Institute. Over 150 copies of the draft were distributed to lawyers, landmen and other title professionals so that they could provide some feedback. Shortly thereafter the Real Estate Law Committee formally signed on as co-sponsor of the project and the Title Standards Committee became a joint subcommittee of the Natural Resources Law Section and the Real Estate Law Committee, which has since become the Real Estate Law Section. In July 1994 the standards were presented to the Annual Meeting of the Arkansas Bar Association. Two articles were published in the Association's quarterly journal, inviting comments. Later in 1994 two more drafting sessions were held to consider the comments received and further refine the standards.

Finally in April 1995 the standards were approved for publication by the Executive Council of the Arkansas Bar Association.<sup>6</sup> After publication copies were distributed free to all of the judges in Arkansas and sold for the first time at the 1996 Natural Resources Law Institute. The Title Standards Committee continued its work, updating and revising the standards and developing new ones. The second edition, published in 2000 contains updates and revisions of the original standards and introduced a chapter on legal descriptions.

## TODAY'S TITLE STANDARDS

The 2000 edition of the Title Standards is divided in to 22 chapters and four appendices. The length of the chapters varies from one paragraph (Chapter 10 – Mechanics' Liens) to four pages (Chapter 4 – Conveyances). There are currently 15 active members on the Title Standards Committee and two inactive members. They represent a large cross-section of the legal community – attorneys who work directly for or represent oil and gas companies, attorneys that own abstract plants, attorneys that work directly for or represent title insurance companies, and real estate practitioners. Each group provides a different perspective and set of experiences to draw from. We still meet quarterly in an effort to keep up with the many changes wrought by our Legislature and Supreme Court. In addition we are currently developing new standards on the Uniform Electronic Recording Act and the Strip and Gore Doctrine. It is our goal to publish a new edition of the Title Standards by the end of the year.

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<sup>6</sup>Most of the material in the preceding three paragraphs is either a paraphrase of or was taken directly from the Introduction to the 2000 Standards for Examination of Real Estate Titles in Arkansas written by Phillip E. Norvell.

## CONCLUSION

The Title Standards are a wonderful reference tool and I encourage you to use them whenever a question arises, whether you are examining title or preparing a document that will create title to real estate. I also encourage you to cite the standards in letters, legal briefs, decrees, ownership reports, and general discussions. Keep in mind that even though the standards have been approved by the Arkansas Bar Association they are not statutes and do not carry the force of law. “The standards represent the work product of learned, practicing attorneys from across the state experienced in real estate title examination. They are intended to be utilized on that basis – that is, a compilation of opinions, research and law, not necessarily as a substitute for a lawyer’s own research. Further, these standards should not be used or relied upon by non-lawyers as a substitute for the advice that only a lawyer can give especially since the law and lawyers’ opinions about it (and, hence, the standards) are in a constant state of evolution.”<sup>7</sup>

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<sup>7</sup> Introduction to Standards for Examination of Real Estate Title in Arkansas (1995)