

PRESIDENT'S MESSAGE

Summer 2011



Greetings OLTA Members,

Hopefully, you are all surviving this "heat" and avoiding any heat related incidents. Being born in Oklahoma, I can honestly say, I can't remember a time it was this hot, dry **and** miserable. Some of us have recently received some much needed rain, which is a blessing. Sorry Southwest Oklahoma, you are still dry. Hopefully, that will change soon.

Since our last "Title Gram", I have traveled to 2 of our neighboring states. In June, I went to the Texas Land Title Association convention in San Antonio, TX and visited with lots of friends to our South. They were very hospitable and I was pleased there were so many people I have met over the years. They only have legislative sessions every other year and this was their year, so their legislative reps reported several times as to what was happening at the Capitol. They also had an interesting forum with a political columnist and a state representative conducting a "live interview" that was quite interesting and informative. The reporter kept asking the representative if he was running for Lt. Governor this fall and the banter between the two was entertaining and the question was never answered.

This month, I attended the Kansas Land Title Association convention in Topeka, KS.

Our friends to the North were very friendly and again I was surprised there were so many people I knew and have met over the years. They had a very informative Education session about fraud prevention in a down market, foreclosures and claim prevention. One thing that happened on Friday morning, is I awakened to thunder and lightening and rain most of the morning. The high temperature in KS was 95° so it was much cooler compared to the weather in OK.

Our regional meetings are just around the corner, coming up in September, so please look at the dates and times and decide which one you can attend. We have spread these out across the state, so there should be one close to your area for you to attend. I urge you to attend one of these meetings, as they will be informative to what is happening in our state. There will also be 3 hours of CE in the afternoon prior to the Regional Meeting; you will get 2 hours of ethics and 1 hour of legislative update for the continuing education.



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PRESIDENT'S MESSAGE -Continued

Again this year, Okie Tipac will be holding an "on-line" auction in conjunction with the Regional Meetings. If you would like to donate something for the auction, please notify Jim Cichon with your item no later than September 1, 2011. You can contact him at jcichon@smithbrothersabstract.com. Please go to the "Okie Tipac" website (www.okietipac.com) and make your bids. The auction will start at the first Regional Meeting and will continue for 2 weeks after the final meeting, at which time the highest bid will win. So bid high and bid often.

Members, we need your help. We have been informed there will be 2 vacancies on the Oklahoma Abstract's Board next year. These are in District 1 (which is currently held by Linda Carpenter) and District 3 (which is currently held by Monica Wittrock). Both of these ladies have done a fabulous job on the board, but they are term limited and cannot serve another 4 years. It is **important to our industry** to get people with abstract knowledge on the OAB board. If you live in one of these Districts, please consider serving on the board. If you have any questions, I'm sure either of these ladies would gladly answer your questions. You can look on the OAB website, which is www.ok.gov/abstractor. Applications for these 2 positions will open after the first of January, 2012. The terms will begin in July, 2012.

We also have some fall schools coming up in October and November, so please look for the information on these schools in this Title Gram or on the OLTA website.

Try to beat the "heat" and stay cool for the rest of the summer.

Sincerely,



Donna Schmulbach
President
OLTA

TITLEGRAM CHALLENGE

The first five OLTA members to respond with the correct answer will win \$25 in OLTA Bucks! Email your answer to admin@oklahomalandtitle.com today!

QUESTION:

When certifying to "surface rights only", should you include any documents pertaining to "water rights"? **True or False?**

ALERT! ALERT! ALERT! ALERT! **TO OUR OKLAHOMA LAND TITLE ASSOCIATION** **MEMBERS: CLOSING ALERT – CHECK SCAM**

Recently there was an incident reported by the Florida Land Title Association demonstrating how clever some can be in using technology to involve a title agent in a fraud.

The closing happened and the checks were issued and the parties left. Several hours later the couple returned with their settlement proceeds and asked the title agent to wire the funds as the bank would take 24-48 hours to clear the check. Unknown to the title agent, the couple had used a “smart phone” app to take a picture of the front and back of the check to make an immediate deposit into their account. Since this was done with the “smart phone”, there were no marks on the check when it was returned to the agent. The title agent, being a customer oriented agent, put the check in the file and proceeded to make the wire transfer. (NOTE: Make sure you void the check immediately. Some banks take 24 hours to stop payments on checks.)

If you are acting as a closing agent, alert your closers to this situation and make sure you have appropriate procedures in place. Many of the larger institutions are pushing the idea of the Smart Phone App which allows a snap-shot of the instrument to be presented for payment or deposited electronically. Please be on guard to this possibility. It is better to be extra vigilant when a request is made to change a payment method.

OKIE TIPAC AUCTION

Okie TiPAC is doing an online auction in conjunction with the Regional Meetings again this year. They are looking for items such as homemade arts/crafts, holiday items, bed & breakfast stays, golf trips, game tickets, electronics, etc. All items will be posted online and bidding will begin by the opening of the first Regional Meeting. We will begin accepting items immediately. **Please contact Jim Cichon at Smith Brothers Abstract at 918-779-4827 or 918-582-2148 or via email at auctions@OkieTiPAC.com to arrange for information on where to send items or arrange for another method.** Any donations are **GREATLY** appreciated.



EXPANDED OLTA ADVANCED ABSTRACTORS SCHOOL

Get the date circled on your calendar – the School has expanded to a full day course.

OCTOBER 18, 2011
Oklahoma City OSU=OKC

Details to follow.

Six sessions covering the Art of Abstracting – from Technique to the Art Review.

Hear about Portraits or Who can hold title in Oklahoma, about Landscapes or How to read, draw and correct legal descriptions (with expanded hands on time), about Pen and Ink or How to review and arrange a Court Case in your abstract, and Abstract Art or Finding the hidden matters in real estate documents. You'll also hear brief presentations on The Art Technique: Laws, Rules (changes recently put into effect) and the Abstractors Attitude and on The Art Review: The Attorney's Opinion and uses of the abstract of title. Several hands on activities are planned during the various sessions, including more time on drawing out legal descriptions and arranging court cases for inclusion in the abstract.



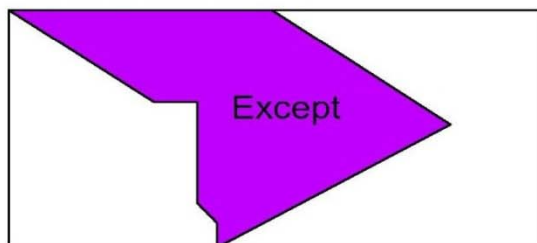
AVOIDING THE NEGATIVE LEGAL DESCRIPTION FROM YOUR OLTA EDUCATION COMMITTEE

Joy J. Scheller

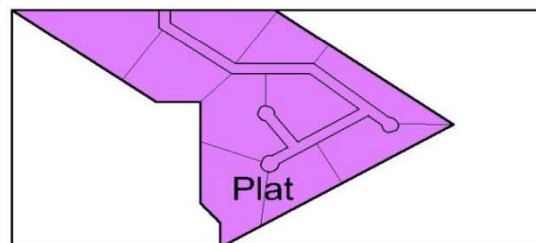
As abstractors we deal with legal descriptions that change all the time. John Doe buys 20 acres, or the North Half of the Northeast Quarter of the Northeast Quarter (N/2 NE/4 NE/4) of Section 12, T10N, R5W, I.M. (a 660' x 1320' tract). John Doe probably made a mortgage when he purchased the 20 acre parcel. Subsequently, he pulls out an irregular shaped parcel of land by metes and bounds for the purposes of development. So how do we describe John Doe's remaining land? In the absence of a survey, we do the logical less and except: The North Half of the Northeast Quarter of the Northeast Quarter (N/2 NE/4 NE/4) of Section 12, T10N, R5W, I.M., LESS AND EXCEPT THE FOLLOWING DESCRIBED TRACT OF LAND: (followed by the metes and bounds for the pulled out parcel). See Picture 1 below. While that seems to be a negative (describing more of what is gone than what is left) you can determine

AVOIDING THE NEGATIVE LEGAL DESCRIPTION Continued FROM YOUR OLTA EDUCATION COMMITTEE Joy J. Scheller

the described remainder and it is acceptable for farm or sectional (Part Quarter/Section/Township/Range) legal descriptions.



Picture 1



Picture 2

But what happens when John Doe plats that irregular parcel into multiple lots with streets as necessary to divide the blocks? See (conceptual) Picture 2 above. Now you have multiple legals and the platted description substitutes for the metes and bounds. So if you were still to describe the remaining land, you would use the North Half of the Northeast Quarter of the Northeast Quarter (N/2 NE/4 NE/4) of Section 12, T10N, R5W, I.M., less and except (the metes and bounds description), now platted as Deer Run Estates, Section 1. An Addition to the City of Antlers, Happy County, Oklahoma, according to the recorded plat thereof.

If you are to describe all the lands under the mortgage, you have a 2 part legal:

TRACT 1: N/2 NE/4 NE/4 Section 12, T10N, R5W, I.M. less and except the metes and bounds description), now platted as Deer Run Estates, Section 1, an Addition to the City of Antlers, Happy County, Oklahoma, according to the recorded plat thereof.

TRACT II: All lots and all Blocks in DEER RUN ESTATES, SECTION 1, an Addition to the City of Antlers, Happy County, Oklahoma, according to the recorded plat thereof. (Or a listing of the lots in the blocks, whichever is your company's practice.)

As he sells lots, the original mortgage is released by virtue of partial releases on the paid off lots. If his loan is maturing and/or he needs to seek additional funds, he may seek to modify the existing loan. As an abstractor, what you often get is:

The North Half of the Northeast Quarter of the Northeast Quarter (N/2 NW/4 NW/4) of Section 12, T10N, Range 5 West, I.M. LESS AND EXCEPT: Lots 2, 5, 9, and 14, Block 1; Lots 1, 7, 8 and 12, Block 2; Lots 3, 6 and 9, Block 3; Lots 2, 5, 10 and 16, Block 5; and Lots 2, 6, 7, 11, 14 and 20, Block 6; DEER RUN ESTATES, SECTION 1, an Addition to the City of Antlers, Happy County, Oklahoma

So what happens when a modification of mortgage (meant to revise the legal to describe all the unreleased land) goes of record with that legal description? Most

AVOIDING THE NEGATIVE LEGAL DESCRIPTION Continued FROM YOUR OLTA EDUCATION COMMITTEE Joy J. Scheller

county clerks will index it to the farm description and make only marginal notes as to EXCEPT lots (as listed). They do not go to the platted index and enter the modification against the lots that were NOT excepted. *They are under no obligation to do so*, they enter the document as to the legal that is given, not as it would be formally and finally interpreted. It is up to the parties involved in the transaction to make the document clear and to reflect the proper legal for the lands to be affected. Without the full legal as to the lands "included", there is no notice in the public records that the mortgage (as modified) affects Lots 1, 3, 4, 6, 7, 8, 10, 11, 12 and 13, Block 1; Lots 2, 3, 4, 5, 6, 8, 10 and 11, Block 2; Lots 1, 2, 4, 5, 7 and 8, Block 3; Lots 1, 2, 3, Block 4; Lots 1, 3, 4, 6, 7, 8, 9, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21, 22, Block 5; and Lots 1, 3, 4, 5, 8, 9, 10, 12, 13, 15, 16, 17, 18, 19, 21 and 22, Block 6; all in DEER RUN ESTATES, SECTION 1.... (those lands were never described in the document).

Let's look visually at what two blocks might look like as a negative legal (the lots that have been released are shaded – lands no longer covered) and as a positive legal (the lots that remain are shaded and now the focus). The following is a simplification of part of the plat, reflecting both the negative and the positive image of the legal. (Note where the emphasis is in each.)



In dealing with real estate documents, abstractors don't get the benefit the county has. Under the laws and rules of abstracting we have to look into the depth of the document – what does it really say? Are there hidden matters, things that have to be reviewed and interpreted? We have to determine the "positive" legal description and act accordingly in our indexing and abstracting.

AVOIDING THE NEGATIVE LEGAL DESCRIPTION Continued FROM YOUR OLTA EDUCATION COMMITTEE Joy J. Scheller

The proper legal is again one with two parts:

TRACT I; The North Half of the Northeast Quarter of the Northeast Quarter (N/2 NE/4 NE/4) of Section 12, T10N, R5W, I.M., LESS AND EXCEPT (the metes and bounds description) now platted as Deer Run Estates, Section 1, an Addition to the City of Antlers, Happy County, Oklahoma, according to the recorded plat thereof.

TRACT II: Lots 1, 3, 4, 6, 7, 8, 10, 11, 12 and 13, Block 1; Lots 2, 3, 4, 5, 6, 8, 10 and 11, Block 2; Lots 1, 2, 4, 5, 7 and 8, Block 3; Lots 1, 2, 3, Block 4; Lots 1, 3, 4, 6, 7, 8, 9, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21, 22, Block 5; and Lots 1, 3, 4, 5, 8, 9, 10, 12, 13, 15, 16, 17, 18, 19, 21 and 22, Block 6; all in

DEER RUN ESTATES, SECTION 1, an Addition to the City of Antlers, Happy County, Oklahoma, according to the recorded plat thereof.

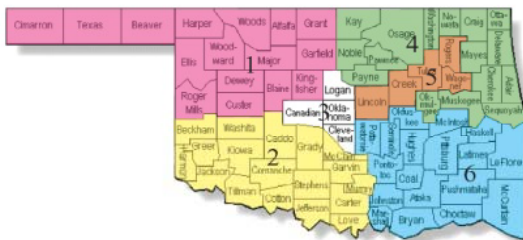
If you have the opportunity to work with the mortgage lender you can help him produce documents with positive legals as opposed to the negative legals so often used. First they must be aware that lands under their mortgage have been platted, and act accordingly in any documents filed subsequent to the filed plat. Then when partial releases are issued, the legal changes again. The lender's file probably contains a spread sheet as to the lots and blocks and what releases have been issued (so he will continue to use the image of the released lots), but his documents should look like the image of the remaining lots (the positive image), so that he imposes the mortgage as modified to the remaining lands.

We won't be looking at images, but at the legals, so be sure to work with your clients and encourage them to be knowledgeable when their borrowers plat lands. When dealing with the lands under a mortgage after platting they need to protect themselves by using the positive legal (what they want included) not the negative legal (what is no longer included). It may be a matter you have to help them with, but the goal is to get a good document of record and to provide the notice needed to protect the lenders mortgage lien. This is an added service your company can provide and gain respect in the bank and mortgage community and possibly increase your business as you've added value to the service you can provide.

UPCOMING EVENTS

Regional Meetings

9/13 Lawton 9/14 OKC 9/15 Enid 9/20 Poteau 9/21 Tulsa



Advanced Abstractors School

October 18th
 OSU/OKC
 900 N. Portland
 Conference Center, 3rd Floor
 Time: 8-5 (Registration 7:30)



Advanced Closing School

October 19th
 OSU/OKC
 900 N. Portland,
 Conference Center, 3rd Floor
 Time: 8-5 (Registration 7:30)



Basic Abstractors School

November 8th and 9th, 2011
 OSU/OKC
 900 N. Portland
 Conference Center, 3rd Floor
 Time: 8-5 (Registration 7:30)

Owners Managers Meeting 2012

President's Day, February 20, 2012
 Oklahoma History Center
 800 Nazih Zuhdi Drive
 Oklahoma City, OK



OLTA Annual Convention 2012

April 21-23 2012
 Embassy Suites
 Norman, OK

2012 Summer Meeting

July 13th and 14st, 2012
 Gaylord Texan
 Grapevine, TX

