Texas Title Examination Standards: Law, Common Sense and the Pirate's Code

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Introduction

• What are Title Standards?
• History of the Texas Title Examination Standards
  • 1989
  • June 27, 1997
  • Amendments and Additions
• How do examiners use Title Standards?
Introduction

• Where can you find the Texas Title Examination Standards?
  • Texas Property Code, Title 2-Appendix
  • Online at:
    • www.reptl.com
Certain Helpful Definitions

- **Acknowledgment** – A written statement included on an instrument certifying that the person signing an instrument:
  - Personally appeared before the notary/officer
  - Was known to the notary/officer to be the person whose name is subscribed to the instrument
  - Acknowledged that he signed the instrument for the purposes and considerations stated in the instrument

- **Constructive Notice** – A legal term meaning that persons are assumed to have knowledge of something by virtue of the fact that it is in the public record
Certain Helpful Definitions

• Bona Fide Purchaser – A party who, in good faith, pays valuable consideration without actual, constructive, or inquiry notice of an adverse claim

• Jurat – A certificate signed by the notary/officer before whom an instrument was executed, stating that the instrument was subscribed and sworn to before the notary/officer executing the instrument

• Rebuttable Presumption - A particular rule of law that may be inferred from the existence of a given set of facts and that is conclusive absent contrary evidence
Helpful Standards

• TTES 1.10 – Purpose of Title Examination
  • Goals of title examiner:
    • Determine the “status of title”
    • Advise client of all irregularities, defects, and encumbrances that
      • May materially affect value or use of property or
      • May expose property owner to litigation or adverse claims – even if the litigation or claims can reasonably be expected to be successfully defended
    • Advise client of methods by which he can secure marketable title to the property
  • Accomplished in a title opinion through comments, objections and requirements
Helpful Standards

• TTES 1.20 – Review by Examiner
  • Based upon the intended scope of the opinion, an examiner will review any documents, records, deeds, abstracts, affidavits or other reliable title materials necessary to form a legal opinion as to the status of the property
  • Often an examination is based upon the entire chain of title, but not always
  • More and more, materials examined include prior title opinions
  • If scope of opinion is limited, the examiner should state that clearly
  • Examiner must tell client what she examined
Helpful Standards

• TTES 1.30 – Consulting with Prior Examiner
  • If an examiner relies upon a prior title opinion and discovers questions regarding the status of title, he has discretion to consult with a prior examiner who may have additional knowledge
  • Only if, however, the communication
    • Is in the best interest of the client and
    • Does not violate the Texas Disciplinary Rules of Professional Conduct
  • Often consultation is difficult because
    • Prior examiner may not be readily available
    • Consultation with prior examiner may be cost prohibitive
    • There is potential for conflicts to arise
Helpful Standards

• TTES 2.10 – Marketable Title Defined
  • A title is marketable if it is a record title that is free from reasonable doubt such that a prudent person, with knowledge of all salient facts and circumstances and their legal significance, would be willing to accept it
  • Marketable title does not have to be free from every possible suspicion
  • The possibility of a defect without a probable basis does not create an unmarketable title
  • A marketable title is not a perfect title
Helpful Standards

• TTES 2.10 – Marketable Title Defined
  • What makes a title unmarketable?
    • The need to rely on facts outside the record
    • Title acquired by adverse possession
    • Title subject to an outstanding oil and gas lease
    • Title subject to an outstanding royalty interest
    • Title subject to an outstanding covenant
    • Title subject to an outstanding easement
    • Title subject to an outstanding mortgage, judgment lien or tax lien
Helpful Standards

• TTES 3.10 – Idem Sonans
  • Idem sonans = sounding the same or alike; having the same sound
  • Rebuttable presumption that differently spelled names refer to the same person when
    • The names sound alike or
    • Their sounds cannot be distinguished easily or
    • Common usage by corruption or abbreviation has made their pronunciation identical
  • Example: Grantee in one deed is Jeff Shrader, but the next deed in the chain is executed by Jeff Schrader
Helpful Standards

- **TTES 3.20 – Middle Names or Initials**
  - Rebuttable presumption that the use of a middle name or initial in one document and its omission in another instrument does not raise a question of identity affecting title
  - Example: Grantee in one deed is Mary Alice Martin, but the next deed in the chain is executed by Mary A. Martin

- **TTES 3.30 – Abbreviations**
  - Rebuttable presumption that any customary and generally accepted abbreviation of a first or middle name is the equivalent of the full name
  - Example: Grantee in one deed is Matt Frech, but the next deed in the chain is executed by Matthew Frech
Helpful Standards

• TTES 3.40 – Recitals of Identity
  • When there is no evidence to the contrary:
    • An examiner may rely upon a recital of identity contained in a conveyance executed by the person whose identity is recited
      • Examples: “Robert T. Jones, Jr., aka Bobby Jones;” “Mary Smith, formerly Mary Jones;” “Mary Lincoln, nee Todd”
    • If title is held in a name that appears to be a business, an examiner may rely on a recital of identity that incorporates the words “doing business as” or similar words
      • Example: John Smith, dba Smith Land Partners
    • Caution: Prudence dictates the exercise of great care in considering recitals of the identity of business entities, particularly when it is practical to obtain documentation (See TTES 6.70)
Helpful Standards

• TTES 3.50 – Suffixes
  • Identity of a name raises a presumption of identity of a person
  • When, however, the name of a later grantor or lessor includes a suffix, such as “Jr.” or “III,” the addition of that suffix may rebut that presumption
  • Example: Grantee in one deed is Ricky Frech, but the lessor under a later oil and gas lease is Ricky Frech, II
    • An examiner will require an affidavit of identity including facts verifying that Ricky Frech and Ricky Frech, II are one and the same person.
Helpful Standards

• TTES 3.60 – Variance in Name within an Instrument
  • Lessor’s signature is different from Lessor’s name as recited in the body of an oil and gas lease
  • Acknowledgment, however, matches either the signature or the body of the lease
  • An examiner can rely on the certificate of acknowledgment as providing adequate identification, because a notarial officer is required to know or have satisfactory evidence that the acknowledging person is, in fact, the person who executed the instrument
  • Only applies in the case of minor name variances: full given name used in one place, but only initials used in another; one middle initial used in the body of the instrument, but another initial used in the signature
Helpful Standards

• TTES 3.70 – Variances in Name of Spouse
  • A grantee’s spouse in a deed is identified only by a title and her husband’s name: “David Palmer and Mrs. David Palmer, grantees”
  • Lessors in an oil and gas lease covering the same property are “David Palmer and Michelle Palmer, husband and wife”
  • An examiner will require further evidence that Mrs. David Palmer is the same person as Michelle Palmer
Helpful Standards

• TTES 4.10 – Omissions and Inconsistencies
  • A missing date of execution from an instrument does not impair marketability
  • If an instrument is undated but includes the dates of acknowledgment and recordation, an examiner can presume the instrument has been timely executed
  • Caution: If, under certain circumstances, a date has a particular significance, inconsistencies shouldn’t be disregarded
    • Example: An oil and gas lease is executed by an attorney-in-fact, but there is a question of whether the applicable power of attorney was executed and delivered before the attorney-in-fact executed the lease
Helpful Standards

• TTES 4.20 – Defective Acknowledgments
  • Generally, only instruments that have been acknowledged or proven by witnesses can be filed for record
  • A proper jurat may substitute for an acknowledgment for instruments recorded on or after September 1, 1989
  • Examples of proper forms of acknowledgments and jurats may be found online at http://www.sos.state.tx.us/statdoc/forms/edinfo-sample-forms.pdf
Helpful Standards

• TTES 4.20 – Defective Acknowledgments
  • If an acknowledgment included on an instrument in the chain of title does not include the exact wording set forth in the applicable statutes, but is in substantial compliance with all statutory requirements, an examiner should not require corrective action.
  • If an instrument in the chain of title includes an acknowledgement that is not in substantial compliance with the statutory requirements, or fails to include an acknowledgment, but the instrument has been filed for record for at least 20 years and no adverse claim appears in the record, an examiner should not require corrective action.
  • For any other instrument containing an acknowledgement that is not in substantial compliance with the statutory requirements, or failing to include an acknowledgment, the examiner should require a corrected acknowledgment and a re-recording of the instrument, or require the recording of a new, corrected instrument.
Helpful Standards

• TTES 4.20 – Defective Acknowledgments
  • An instrument that hasn’t been acknowledged doesn’t affect the validity of the instrument between the parties executing the instrument
  • But, an instrument that is unrecorded and unacknowledged is void as to creditors and subsequent purchasers for value who don’t have notice of that instrument
  • Additionally, even if an instrument is recorded, if it doesn’t include a proper acknowledgment or other proof, it does not impart constructive notice
    • Issue – If an examiner has reviewed a recorded instrument, regardless of whether it includes a proper acknowledgment or other proof, the examiner now has actual notice of the instrument and its contents
Helpful Standards

• TTES 4.20 – Defective Acknowledgments
  • Potential Defects in Acknowledgments:
    • Instrument is executed by John Smith, President of Smith Land Partners, Inc., but is acknowledged by John Smith, individually, not in his capacity of President
    • Oil and Gas Lease dated before August 22, 1963 is executed by David Palmer and Michelle Palmer, husband and wife, but Mrs. Palmer’s acknowledgment isn’t made “privily and apart” – This lease is void as to Michelle
Helpful Standards

• TTES 4.30 – Delivery; Effective Date; Delay in Recordation
  • Conveyances must be delivered before they are effective
  • Presumption that delivery of an instrument has occurred if it has been acknowledged and recorded
  • Unless an instrument includes an effective date, it is effective on the date of delivery
  • In absence of evidence to the contrary, delivery of an instrument is presumed to occur on the date of its execution and acknowledgment
Helpful Standards

- TTES 4.30 – Delivery; Effective Date; Delay in Recordation
  - If there is a delay in the recording of an instrument, the presumption of delivery is not rebutted, nor is an unmarketable title created
  - This is true even if the grantor dies after executing the instrument and before the instrument is recorded
    - In this case, however, as an added exceptional protection to her client, an examiner may wish to satisfy herself as to the facts by inquiry outside the record
Helpful Standards

- TTES 4.40 – Notice Recording System
  - Texas has a “notice” recording system
  - A notice recording system protects a subsequent purchaser or lienholder who acquires an interest in a tract of property without notice of a prior unrecorded conveyance or lien, regardless of when the subsequent purchaser’s deed is recorded, if ever
  - Because a party who takes without notice may lose out to another subsequent purchaser or lienholder who takes without notice, every grantee should promptly record
Helpful Standards

• TTES 4.40 – Notice Recording System
  • Because Texas has a notice recording system, examiners cannot presume that the order of filing or recording of competing instruments establishes priority of right or that unrecorded instruments are subordinate to recorded instruments
  • An instrument that has been properly acknowledged, or otherwise proved, and filed for record imparts constructive notice
Helpful Standards

• TTES 4.40 – Notice Recording System
  • Example of how this works:
    • On March 15, 2015, Susan Jones grants an oil and gas lease to Smith Land, who does not file for record
    • On April 1, 2015, Susan Jones grants an oil and gas lease to Martin Land, a bona fide purchaser
    • Martin Land had no actual notice of the Smith Land lease
    • Because the Smith Land lease wasn’t recorded, Martin Land also had no constructive notice of that lease
    • As between Smith Land and Martin Land, Martin Land prevails
Helpful Standards

• TTES 4.50 – Constructive Notice
  • Instruments filed for record within the chain of title impart constructive notice – even instruments that have been recently filed, but not indexed
  • Chain of title refers to documents showing successive ownership history of a tract of land, commencing with the severance of title from the sovereign down to and including the conveyance to the present owner
  • Instruments outside the chain of title do not impart constructive notice (e.g., instruments from strangers in title; instruments executed by a grantor after the grantor has previously conveyed the property)
Helpful Standards

• TTES 4.60 – Recitals in Instruments in Chain of Title
  • Examiner should advise client of outstanding encumbrances and other matters apparently affecting the title and disclosed by recitals in instruments appearing in the chain of title
  • Unrecorded Agreements – If an unrecorded agreement is referenced in an assignment or other instrument in your chain of title, you have constructive notice of the contents of that agreement unless you can prove you made a diligent search for the agreement and were unable to locate a copy
Helpful Standards

• TTES 4.70 – Duty of Inquiry Based on Actual Notice
  • Inquiry notice results as a matter of law from facts that would prompt a reasonable person to inquire about the possible existence of an interest in property
  • An examiner should advise his client of any matters affecting title that are known by the examiner, even if those matters are not revealed by the record, including unfiled instruments and facts known by the examiner that would impart either actual or inquiry notice of these matters
Helpful Standards

• TTES 4.90 – Qualification as Bona Fide Purchaser
  • An examiner cannot determine whether any party in the chain of title is a bona fide purchaser
  • Because of this, an examiner cannot disregard any interest in the chain of title based upon the assumption that it was extinguished by a bona fide purchaser
  • Exception – except in limited circumstances, if an interest passes to a grantee pursuant to a quitclaim deed, then the grantee and his successors are not bona fide purchasers as to claims existing at the time of the quitclaim deed
Helpful Standards

• TTES 5.10 – Land Descriptions Generally
  • Although an examiner does not determine actual boundaries on the ground, he should determine whether each land description in the chain of title is sufficient to identify the land under examination
  • A conveyance in the chain of title that does not identify the land under examination is ineffective to pass title (e.g., 20 acres out of Section 20)
  • Defective property descriptions are common causes of title failure
Helpful Standards

• TTES 5.20 – Land Descriptions in Patents
  • An examiner may ordinarily rely on the land description contained in a patent recorded in the county records
  • Caution: As to patents to lands sold by the State of Texas between September 1, 1895 (the effective date of the General Mineral Release Act of 1895) and August 21, 1931 (the effective date of the Sales Act of 1931), an examiner should not rely on the patent to ascertain whether the State reserved minerals in the patented lands but should obtain from the General Land Office a letter or certificate of classification or Certificate of Facts, which will indicate any reservation of minerals
Helpful Standards

• TTES 6.10 – Corporate Existence
  • If an instrument involving a corporation has been properly executed and acknowledged, there is a presumption that the corporation was legally in existence at the time the instrument took effect
    • Proper Execution/Acknowledgment:
      • Executed by John Smith, President of Smith Land Partners, Inc.
      • Corporate Acknowledgment: This instrument was acknowledged before me on August 1, 2015 by John Smith, President of Smith Land Partners, Inc., a Texas corporation, on behalf of said corporation.
Helpful Standards

• TTES 6.20 – Corporate Authority Presumed
  • Without contrary evidence, there is a presumption that a corporation buying or selling real property is acting within its power

• TTES 6.30 – Foreign Corporations
  • When a corporation organized under the laws of another state is named in an instrument in the chain of title, there is a presumption that the corporation is authorized to do business in Texas or authorized to acquire and dispose of the real property affected by the instrument
Helpful Standards

• TTES 6.50 – Authority of Particular Officers
  • If an instrument involving a corporation has been properly executed and acknowledged, there is a presumption that the person executing the instrument is the officer he purports to be and that he was authorized to execute the instrument on behalf of the corporation
  • Prior to August 28, 1989, this presumption applied only to conveyances executed by a president or vice president
  • Caution: This presumption applies only to corporate officers – not to attorneys in fact
    • Any instrument or conveyance executed by an attorney in fact must be supported by a power of attorney, which should be filed for record in the county records
Helpful Standards

• TTES 6.60 – Corporate Name or Signer’s Representative Capacity Omitted from Signature
  • Typical Corporate Signature Block:

    Smith Land Partners, Inc.,
    a Texas corporation

    By:_______________________
    John Smith, President

• When the name of the corporation appears in the body of the instrument, it is presumed that the signature on the instrument by a corporate officer is sufficient, even if the corporation’s name or the officer’s capacity is omitted
Helpful Standards

• TTES 6.70 – Name Variances
  • When exact corporate names are not used or minor variations exist from instrument to instrument, it is presumed that a corporation is satisfactorily identified if, based on the circumstances of the record, an examiner can infer the identity of the corporation with reasonable certainty
  • Minor variances that can typically be ignored:
    • Addition or omission of the word “the” preceding the name;
    • Using “&” instead of “and” and vice versa;
    • Using abbreviations for words like “company,” “limited,” “corporation” or “incorporated”;
    • Inclusion or omission of the location of the entity
Helpful Standards

• TTES 7.10 – Conveyance of Real Property Held in Partnership or Joint Venture Name
  • When title to real property is held in the name of a partnership or joint venture, an examiner is able to rely on a conveyance from a general partner on behalf of the partnership or by a joint venturer on behalf of the joint venture, so long as the conveyance appears to be done in the ordinary course of business
Helpful Standards

• TTES 7.40 – Conveyance of Partnership Property Held in Name of Partners
  • When, however, title to real property is held in the names of the partners, all named partners must execute a conveyance
  • Example:
    • Title to property is held by Michelle Sibley and Kimberly Warminski, but your oil and gas lease is executed by Kimberly Warminski, as general partner of Sibley & Warminski, a general partnership
    • You must obtain and record a ratification, with words of present grant, from Michelle Sibley
Helpful Standards

• TTES 7.50 – Conveyance of Real Property Held in Name of Limited Liability Company
  • When title is held by a limited liability company, an examiner is able to rely on a conveyance executed by an officer, agent, manager or member of the LLC if the conveyance appears to be consistent with the LLC’s usual way of doing business
Helpful Standards

• TTES 8.10 – Validity of Instrument Executed by an Agent
  • When examining an instrument executed by an agent or an attorney in fact (AIF), an examiner must determine that the power of attorney (POA)
    • was in effect on the date the instrument was executed and
    • granted sufficient authority to the agent/AIF
Helpful Standards

• TTES 8.10 – Validity of Instrument Executed by an Agent
  • Issues/Cautions
    • POAs are strictly construed in Texas
    • A special POA granting an AIF the power to sell the property, does not include the right to execute an oil and gas lease
    • POAs that comply with the Texas Durable Power of Attorney Act do include the right to execute an oil and gas lease
      • Exception: This applies only to Durable POAs executed on or after September 1, 1997
Helpful Standards

- TTES 8.10 – Validity of Instrument Executed by an Agent
  - Issues/Cautions
    - Examiner must determine that the POA was not revoked prior to the AIF’s execution of the instrument at issue
  - Ways a POA can be revoked
    - Specific act of the principal
    - Terms of the POA
    - Death of the principal
    - Incapacity of the principal, unless the POA provides that it survives incapacity – POAs executed in accordance with the Texas Durable Power of Attorney Act are not affected by incapacity
    - Appointment of a permanent guardian
Helpful Standards

- TTES 8.10 – Validity of Instrument Executed by an Agent
  - Issues/Cautions
    - Examiners often rely upon affidavits from a person with knowledge of the facts that on the date the AIF executed the instrument
      - The principal was alive
      - The POA had not been revoked and
      - The principal was not incapacitated
    - If the POA is a proper statutory durable POA, an examiner may rely on an affidavit from the AIF that the AIF had no actual notice that the POA had been revoked or terminated
Helpful Standards

• TTES 9.10 – Powers of Trustee
  • For any instrument executed by a Trustee of a Trust, an examiner has to confirm the identity and powers of the trustee and whether the trust was in effect at the time of the instrument
    • In order to confirm this, the examiner should either
      • Examine both the trust instrument and the Texas Trust Code or
      • Review a certification of trust that complies with Tex. Prop. Code § 114.086
Helpful Standards

• TTES 9.20 – Title as “Trustee” without Further Identification of Trust
  • When property is conveyed to a person identified as “trustee,” but the instrument doesn’t identify the trust or any beneficiaries, an examiner can presume the authority of the trustee to convey, transfer or encumber title to the property
    • Known as a “blind trust”
    • If there is no further conveyance out of the blind trust and no additional evidence that a trust exists, record title to the property is deemed to be in the named trustee or his successors
Helpful Standards

- TTES 10.10 – Capacity to Convey: Minority
  - Unless an examiner has actual or constructive notice to the contrary, a grantor is presumed to be an adult
  - If it appears that an owner in the chain received title as a minor, an examiner should try to determine whether a subsequent conveyance from that owner was made after:
    - The person obtained the age of majority;
    - The person had the disability of minority removed by a court; or
    - The person was legally married
Helpful Standards

• TTES 10.30 – Capacity to Convey: Guardians
  • When reviewing any instrument affecting real property executed by a guardian, an examiner must determine that all statutory requirements have been met
  • To determine guardian was properly appointed, an examiner should review:
    • Application for appointment of guardian
    • Citation and return
    • Order appointing guardian
    • Guardian’s oath and bond
Helpful Standards

• TTES 10.30 – Capacity to Convey: Guardians
  • To determine that a guardian had the power to sell or lease property, an examiner should review:
    • Application to sell or lease property
    • Citation and return
    • Order of sale
    • Notice of sale
    • Report of sale
    • Any additional bond required by the court
    • Decree confirming sale
    • Conveyance or lease executed by guardian
Helpful Standards

• TTES 11.10 – Passage of Title upon Death
  • A decedent’s property passes to her heirs at law or devisees immediately upon death, subject in each instance, except for exempt property, to payment of debts, including estate and inheritance taxes
  • Notwithstanding this, if letters testamentary or letters of administration are issued, the personal representative of the estate has the right to possession and control of the estate assets for purposes of estate administration
  • A will is not valid to pass title until it has been probated
Helpful Standards

- TTES 11.20 – Estate Proceedings
  - If a property owner dies, an examiner should determine whether the owner left a will, whether there is a probate proceeding or administration pending, and whether a personal representative is acting
  - If the records of the county where the land is located do not indicate that a will has been filed for probate, and in the absence of information to the contrary, the affidavit of a person who has knowledge of the facts is usually accepted as satisfactory evidence that the owner died intestate
Helpful Standards

• TTES 11.30 – Conveyances by an Executor or an Independent Administrator
  • When relying upon a conveyance from an executor or independent administrator, an examiner should determine that all statutory requirements were met in the appointment of the representative, that the representative is qualified to execute the deed, and that the representative’s act is authorized by the will or by law
Helpful Standards

- TTES 11.30 – Conveyances by an Executor or an Independent Administrator
  - To determine that the representative was qualified to execute a conveyance or a lease, the examiner should review:
    - The will
    - The order probating the will and appointing the executor
    - Any required bond
    - Recent letters testamentary or of administration
    - Any other relevant documents that may be of record
Helpful Standards

• TTES 11.40 – Conveyances by an Administrator
  • In an estate proceeding where the administrator is not an independent administrator, the administrator may only convey property with approval of the court
  • In this instance, an examiner should determine that all statutory requirements have been met in the appointment of the administrator and that the administrator is qualified to act and is authorized to make the sale
Helpful Standards

• TTES 11.50 – Conveyances by Heirs of an Estate
  • When an owner dies intestate, or dies testate but the will is not probated, the examiner should, in the absence of an administration, identify the heirs of the decedent, along with the devisees in any unprobated will, and require that all of them join in a conveyance of the property of the decedent
Helpful Standards

• TTES 11.60 – Liens for Debts and Taxes
  • An examiner should determine whether an estate of an owner owes taxes or debts that are not barred by limitations
  • In absence of information to the contrary, an examiner may rely upon the affidavit of an executor, administrator or other person with knowledge of the facts that all debts of the estate have been paid
Helpful Standards

• TTES 11.70 – Heirship Affidavits
  • In absence of information to the contrary, an examiner may rely upon an affidavit of heirship with respect to the family history and the identity of heirs of a decedent
  • In obtaining an affidavit of heirship,
    • It is desirable for the affiant to be a person related to the decedent but who does not inherit from the decedent
    • If no one meeting that standard is available, a person possessing personal knowledge of the decedent is the next choice
    • If neither is available, an interested heir can be used; provided, however, in this instance it is also desirable to obtain a supporting affidavit from a person who has no interest in the estate
Helpful Standards

• TTES 11.100 – Foreign Wills
  • An examiner may rely upon an exemplified copy of a will probated outside of Texas, as being effective to pass title to property in Texas owned by a decedent, if the will and the order admitting the will to probate are filed in the county deed records
  • Caution: an exemplified copy is not merely a certified copy – to be exemplified, the will and the order admitting it to probate must be authenticated in a certain manner
    • Should include a three-way certificate: attested by and with the original signature of the court clerk, with the seal of the court affixed (if there is a seal) together with a certificate containing the original signature of the judge that the attestation is in due form
Helpful Standards

• TTES 13.10 – Affidavit Defined
  • An affidavit is a written statement, made under oath, executed by the affiant and evidenced by a jurat.
  • Form of Jurat:

    STATE OF TEXAS §
    §
    COUNTY OF _________ §

Subscribed and sworn to this _____ day of _______, _____, by ______________.

_________________________________
Notary Public, State of Texas
My Commission Expires: ______________
Helpful Standards

- TTES 13.20 – Reliance upon Affidavits
  - An examiner may rely upon an affidavit unless the examiner has a reasonable basis to question its reliability
  - Frequently encountered types of affidavits:
    - Heirship
    - Family history
    - Identity
    - Marital status
    - Use and possession of property
    - Adverse possession
    - Payment of debts
    - Non-production of oil and gas
Helpful Standards

- TTES 13.20 – Reliance upon Affidavits
  - Factors to consider when relying on affidavits:
    - The date on which the affidavit was made
    - If recorded, the length of time it has been recorded
    - Whether the affiant was interested or disinterested
    - Completeness
    - Whether the affidavit recites facts or merely draws conclusions
    - Whether the affidavit discloses the basis of the affiant’s knowledge
    - The value of the property under examination
    - Whether more reliable and readily obtainable proof is available
    - The cost and feasibility of alternative procedures to establish title
Helpful Standards

• TTES 13.30 – Affidavits of Non-Production
  • When dealing with any type of interest tied to production (e.g., an oil and gas lease, a term mineral or royalty deed, or a term assignment), examiners may rely on affidavits including facts sufficient to show that the interest has expired pursuant to its own terms
  • It is always, however, preferable to obtain a release from the interest owner
Helpful Standards

• TTES 13.40 – Reliance on Recitals
  • Recitals are statements made in deeds, leases and other instruments affecting real property
  • Because these instruments are not typically sworn statements, recitals should generally be regarded as having less probative force than affidavits
  • An examiner having no reasonable basis for doubt or suspicion, however, may rely upon recitals as establishing the recited facts
Helpful Standards

• TTES 15.10 – Liens Generally
  • An examiner should identify all liens, both contractual and statutory, relevant to the interests under examination and advise the client regarding any actions that are appropriate to the purpose of the examination
  • An examiner is not required to identify liens that are barred by limitations or are otherwise unenforceable