

# KANSAS JUDICIAL COUNCIL BULLETIN

---

DECEMBER, 1946

PART 4—TWENTIETH ANNUAL REPORT

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## MOTION DAYS FOR 1947

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## TITLE STANDARDS

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Adopted by the Bar Association of the  
State of Kansas



## TABLE OF CONTENTS

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	PAGE
FOREWORD .....	188
MOTION DAYS .....	189
STANDARDS FOR TITLE OPINIONS ADOPTED BY THE BAR ASSOCIATION OF THE STATE OF KANSAS TO AND INCLUDING MAY, 1946.....	197
Introduction by Margaret McGurnaghan.....	197
Title Standards .....	198
Index to Title Standards.....	217

## FOREWORD

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In accordance with our past practice, we print the motion days of the district courts for the calendar year 1947.

We also print in this issue the Title Standards adopted by the Bar Association of the state of Kansas, to and including the present year 1946. These have been rearranged and renumbered by Miss Margaret McGurnaghan, of the Topeka Bar, chairman of the state committee, who has also written a brief introduction and an index, which are also published herein. We believe this will be of particular interest to the Bar at this time, not only for current use in examining titles, but also for the consideration of additional curative statutes which may come before the next session of the legislature.

## MOTION DAYS IN DISTRICT COURTS—1947

County	County seat	Judge	Clerk	No. Jud. Dist.	Jan.	Feb.	Mar.	Apr.	May	June	Sept.	Oct.	Nov.	Dec.
Allen.....		Wallace H. Anderson.....	Jessie M. Fry.....	37	8 14	5 19	5 26	2 16	7 13	4 25	3 9	8 22	5	3 17
Anderson.....		Hugh Means.....	Mrs. Mabel Church.....	4	7	7	3	8	2	9	9	13	14	12
Atchison.....		Lawrence Day.....	Hal Waisner.....	2	4 11 18 25	1 8 15 22	1 11 15 22	5 12 17 24	3 10 17 24	7 14 21 28	6 13 20 27	4 11 18 25	1 8 15 22	6 13 20 27
Barber.....		Clark A. Wallace.....	Mrs. Edith Myers.....	24	9	10	7	28	9	5	5	27	6	4
Barton.....		Roy J. McMullen.....	A. J. Bortz.....	20	3	7	4	4	2	3	5	3	3	5
Bourbon.....		Harry W. Fisher.....	Amy Armstrong.....	6	3 10 17 24	7 14 21 28	7 14 21 28	4 11 18 25	2 9 16 23	6 13 20 27	5 12 19 26	3 10 17 24	7 14 21 28	5 12 19 26
Brown.....		John L. Gernon.....	Edna Boicourt.....	22	21	18	18	22	20	17	23	21	18	16
Butler.....		Carl Ackerman W. N. Calkins	Harry R. Martin.....	13	10	4	3	5	6	9	5	3	10	4
Chase.....		Jay Sullivan.....	Mildred Speer.....	5	31	23	28	25	31	27	26	31	23	26
Chautauque.....		Carl Ackerman W. N. Calkins	Cleopha Call.....	13	18	5	11	7	2	4	2	8	15	1
Cherokee.....		Jerome Harman.....	Lois Mason.....	11	7 9	4 6	4 6	8 10	6 8	3 5	2 4	7 9	4 6	2 4



## MOTION DAYS IN DISTRICT COURTS—1947—CONTINUED

COUNTY	County seat	Judge	Clerk	No. Jud. Dist.	Jan.	Feb.	Mar.	Apr.	May	June	Sept.	Oct.	Nov.	Dec.
Cheyenne.....	St. Francis.....	Robert W. Hemphill.....	Charles N. Roberts.....	17	25	22	12	7	26	6	13	8	4	1
Clark.....	Ashland.....	Karl Miller.....	Hope Grimes.....	31	9a	6a	6a	3a	8a	5a	4a	9a	6a	4a
Clay.....	Clay Center.....	Edgar C. Bennett.....	Hazel K. Chestnut.....	21	8	5	3	9	7	2	4	8	3	1
Cloud.....	Concordia.....	W. D. Vance.....	Floyd R. Turner.....	12	6	4	4	7	6	3	22	21	18	17
Coffey.....	Burlington.....	Jay Sullivan.....	Harry W. Mudge.....	5	27	24	31	28	26	30	29	27	24	29
Comanche.....	Coldwater.....	Karl Miller.....	Jessie Channess.....	31	8d	5d	5d	2d	7d	4d	3d	8d	5d	3d
Cowley.....	Winfield.....	Albert Faulcomer.....	Sallie K. Smith.....	19	6	3	3	7	5	2	2	6	3	1
				20	20	17	17	21	19	16	15	20	17	15
Crawford.....	Girard.....	L. M. Resler.....	Grace Webb.....	38	13	3	3	7	5	2	1	6	10	1
Girard div.....	Pittsburg div.....			20	20	17	17	21	12	16	15	20	17	15
Decatur.....	Oberlin.....	Robert W. Hemphill.....	Alice J. Vernon.....	17	23	20	13	16	12	4	11	6	5	8
					.....	24	.....	.....	.....	.....	.....	13	.....	.....
Dickinson.....	Ahilene.....	James P. Coleman.....	Seth Barter, Jr.....	8	6	12	12	21	19	10	8	13	7	12
Doniphan.....	Troy.....	John L. Gernon.....	Beulah M. Swiggett.....	22	22	19	19	23	21	18	24	22	19	17
Douglas.....	Lawrence.....	Hugh Meaus.....	Mrs. Mary Ellen Simmons	4	4	3	8	5	5	7	6	11	3	20
Edwards.....	Kinsley.....	Lorin T. Peters.....	C. E. Burke.....	33	6d	10	3d	7d	5	2d	2d	27	3d	1d
				.....	.....	3d	.....	.....	1d	.....	.....	6d	.....	.....
Elk.....	Howard.....	Frank A. Force.....		13	6	7	10	1	5	2	15	7	6	3
Div. No. 1.....	Div. No. 1.....	Carl Ackerman												
Div. No. 2.....	Div. No. 2.....	W. N. Calkins												
Ellis.....	Hays.....	C. A. Spencer.....	Julius Stramel.....	23	14	3	10	15	19	9	9	20	12	10

## MOTION DAYS IN DISTRICT COURTS—1947—CONTINUED

County	County seat	Judge	Clerk	No. Jud. Dist.	Jan.	Feb.	Mar.	Apr.	May	June	Sept.	Oct.	Nov.	Dec.
Ellsworth.....	Ellsworth.....	A. R. Buzick.....	J. M. Wilson.....	30	27	10	5	21	10	6	6	6	3	13
Finney.....	Garden City.....	Fred J. Evans.....	Mrs. Edna Carter.....	32	13	13a	13a	17a	12	19a	22	23a	13a	18a
Ford.....	Dodge City.....	Karl Miller.....	Ella J. Riley.....	31	11a	8a	8a	5a	10a	7a	6a	11a	8a	6a
Franklin.....	Ottawa.....	Hugh Means.....	Christina Woke.....	4	6	8	4	7	3	10	8	14	15	13
Geary.....	Junction City.....	James P. Coleman.....	C. W. Marston.....	8	13	10	3	15	15	2	5	10	10	11
Gove.....	Gove.....	C. A. Spencer.....	Louise Brown.....	23	15	12	17	18	28	16	13	11	17	8
Graham.....	Hill City.....	William K. Skinner.....	Cora Roberts.....	34	11	3	13	17	12	5	15	2	14	3
Grant.....	Ulysses.....	F. O. Rindom.....	Betty Teegerstrom.....	39	7d	4d	4a	14a	6d	3d	5d	7d	4d	1a
Gray.....	Cimarron.....	Karl Miller.....	Tressie Johnson.....	31	7d	4d	4d	1d	6d	3d	2d	7d	4d	2d
Greeley.....	Tribune.....	Fred J. Evans.....	Laura Holmes.....	32	20d	10	11d	15a	19d	17d	17d	20	11d	16d
Greenwood.....	Eureka.....	Carl Ackerman W. N. Calkins	Alma Long.....	13	20	14	6	3	19	11	3	13	13	16
Hamilton.....	Syracuse.....	Fred J. Evans.....	Amelia J. Minor.....	32	17a	24	21a	16a	21d	16d	15d	27	25a	17a
Harper.....	Anthony.....	Clark A. Wallace.....	Jay B. Pearl.....	24	13	6	6	14	8	16	4	13	5	3
Harvey.....	Newton.....	George L. Allison.....	Mrs. Mabel A. McMullen	9	23	10	27	24	12	26	25	23	10	24
Haskell.....	Sublette.....	F. O. Rindom.....	J. B. Patton.....	39	7a	4a	10a	2a	6a	3a	16a	7a	4a	4a
Hodgeman.....	Jetmore.....	Lorin T. Peters.....	F. S. Haun.....	33	6a	24	3a	7a	19	2a	2a	6a	10	1a
					.....	3a	.....	.....	1a	.....	.....	.....	3a	.....

## MOTION DAYS IN DISTRICT COURTS—1947—CONTINUED

County	County seat	Judge	Clerk	No. Jud. Dist.	Jan.	Feb.	Mar.	Apr.	May	June	Sept.	Oct.	Nov.	Dec.
Jackson.....	Holton.....	Lloyde Morris.....	Chelcia Shelby.....	36	13	7	7	3	5	6	4	6	7	4
Jefferson.....	Oskaloosa.....	Lloyde Morris.....	Nona Crosley.....	36	17	3	3	4	9	2	5	10	3	5
Jewell.....	Mankato.....	W. R. Mitchell.....	Bernice Howard.....	15	10	7	3	4	16	2	19	17	10	5
Johnson.....	Olathe.....	John L. Kirkpatrick.....	Gertrude S. Hedberg.....	10	6	10	3	7	5	9	2	20	10	1
Kearny.....	Lakin.....	Fred J. Evans.....	Bertha Adams.....	32	15a	14	10	11a	21a	16a	15a	21d	10	17d
Kingman.....	Kingman.....	Clark A. Wallace.....	Nell H. Walter.....	24	11	8	24	12	10	2	22	10	7	8
Kiowa.....	Greensburg.....	Karl Miller.....	James Estlack.....	31	8a	5a	5a	2a	7a	4a	3a	8a	5a	3a
Labette.....	Oswego.....	L. E. Goodrich.....	Maye Eller.....	16	24	28	28	25	23	27	26	24	28	19
Oswego div. Parsons div.	.....	.....	.....	.....	20	17	17	28	26	23	15	20	24	15
Lane.....	Dighton.....	Fred J. Evans.....	Eva Cramer.....	32	21d	12a	24	18a	16d	18d	16d	22d	24	16a
Leavenworth.....	Leavenworth.....	J. H. Wendorff.....	Dorothy Harrison.....	1	4	1	1	5	3	7	6	4	1	6
.....	.....	.....	.....	.....	18	15	15	19	17	21	20	18	15	20
Lincoln.....	Lincoln.....	A. R. Burick.....	E. D. Harlow.....	30	3	17	6	3	19	5	4	3	10	15
Linn.....	Mound City.....	Harry W. Fisher.....	Will H. Bayless.....	6	7	4	4	7	6	3	2	7	4	3
.....	.....	.....	.....	.....	21	18	18	15	20	17	16	21	18	17
Logan.....	Russell Springs.....	C. A. Spencer.....	A. W. Rogge.....	23	16	13	13	7	26	23	1	27	22	1
Lyon.....	Emporia.....	Jay Sullivan.....	Mrs. Bess M. Cook.....	5	29	26	26	30	28	25	24	29	26	31
Marion.....	Marion.....	James P. Coleman.....	Virgil Wiebe.....	8	17	3	14	14	5	13	2	6	4	8
Marshall.....	Marysville.....	Edgar C. Bennett.....	Wallace J. Koppes.....	21	10	3	7	11	5	6	5	6	5	5

## MOTION DAYS IN DISTRICT COURTS—1947—CONTINUED

County	County seat	Judge	Clerk	No. Jud. Dist.	Jan.	Feb.	Mar.	Apr.	May	June	Sept.	Oct.	Nov.	Dec.
McPherson.....	McPherson.....	George L. Allison.....	Donald S. Clark.....	9	24 .....	28 .....	10 8	25 .....	23 27	2 27	26 .....	24 .....	28 .....	1 26
Meade.....	Meade.....	Karl Miller.....	Ethel R. Copenhaver....	31	9d .....	6d .....	6d .....	3d .....	8d .....	5d .....	4d .....	9d .....	6d .....	4d .....
Miami.....	Paola.....	John L. Kirkpatrick.....	Ethel Hunt.....	10	8 .....	3 .....	10 .....	14 .....	12 .....	2 16	5 .....	6 .....	3 .....	8 .....
Mitchell.....	Beloit.....	W. R. Mitchell.....	Douglas L. Knarr.....	15	13 .....	5 .....	7 .....	21 .....	15 .....	5 .....	22 .....	15 .....	12 .....	3 .....
Montgomery.....	Independence.....	J. W. Holdren.....	M. D. Smith.....	14	4 .....	1 .....	1 .....	5 .....	3 .....	7 .....	6 .....	4 .....	1 .....	6 .....
Independence div. Coffeyville div.				.....	3 .....	7 .....	7 .....	4 .....	2 .....	6 .....	5 .....	3 .....	7 .....	5 .....
Morris.....	Council Grove.....	James P. Coleman.....	Mrs. Inez Featherston....	8	16 .....	13 .....	13 .....	7 .....	16 .....	16 .....	3 .....	8 .....	3 .....	1 .....
Morton.....	Richfield.....	F. O. Rindom.....	Mrs. Irene Kuder.....	39	8d .....	10a .....	5a .....	3a .....	7d .....	4d .....	3a .....	8d .....	5d .....	5a .....
Nemaha.....	Seneca.....	John L. Gernon.....	Iva Weyer.....	22	20 .....	17 .....	17 .....	21 .....	19 .....	16 .....	22 .....	20 .....	17 .....	15 .....
Neosho.....	Erie.....	Ora McClelland.....	Mamie E. Hayes.....	7	1 .....	5 .....	5 .....	2 .....	7 .....	4 .....	3 .....	1 .....	5 .....	3 .....
Ness.....	Ness City.....	Lorin T. Peters.....	Gladys K. Bondurant....	33	8a .....	5a .....	10 5a	9a 5a	3a .....	4a .....	8 4a	8a .....	5a .....	8 3a
Norton.....	Norton.....	Robert W. Hemphill.....	Arthur V. Poage.....	17	6 13 22	19 .....	14 .....	21 .....	10 .....	3 Aug 25	1 10	9 .....	6 .....	11 .....
Note 3.....				.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Ossage.....	Lyndon.....	A. K. Stavely.....	Jean Neill.....	35	3 .....	7 .....	11 .....	4 .....	2 .....	10 .....	5 .....	3 .....	11 .....	5 .....
Osborne.....	Osborne.....	W. R. Mitchell.....	Elma McColl.....	15	8 .....	3 .....	6 .....	2 .....	12 .....	4 .....	17 .....	20 .....	13 .....	4 .....
Ottawa.....	Minneapolis.....	A. R. Buzick.....	A. H. Finley.....	30	13 .....	11 .....	7 .....	7 .....	9 .....	4 .....	5 .....	27 .....	24 .....	16 .....



## MOTION DAYS IN DISTRICT COURTS—1947—CONTINUED

County	County seat	Judge	Clerk	No. Jud. Dist.	Jan.	Feb.	Mar.	Apr.	May	June	Sept.	Oct.	Nov.	Dec.
Pawnee	Larned	Lorin T. Peters	Rose Wood	33	27 7a	4a	4a	14 8a	2a	3a	3a	13 7a	4a	2a
Phillips	Phillipsburg	Robert Hemphill	Floyd Kessie	17	21 18	9 18	15	15	6	2	9 15	10 7	7	12
Pottawatomie	Westmoreland	Lloyde Morris	Lloyd W. Hope	36	16	6	6	1	8	5	2	9	6	2
Pratt	Pratt	Clark A. Wallace	Willard Davis	24	10	7	10	11	19	6	8	9	10	5
Rawlins	Atwood	Robert W. Hemphill	Louise Portschy	17	24	21	11 17	17	19	5	12	7	3	9
Reno	Hutchinson	Franklin B. Hettinger	G. R. Williams	40	3 10 14 17 21 24	7 14 21 28	7 14 21 28	4 11 18 25	2 9 16 23	6 13 20 27	5 12 19 26	3 10 17 24	7 14 21 28	5
Republic	Belleville	W. D. Vance	Warren A. Scott	12	7	3	5	9	5	4	23	20	19	16
Rice	Lyons	Roy J. McMullen	Laura Saint	20	7	6	7	1	1	6	2	2	7	3
Riley	Manhattan	Edgar C. Bennett	Joseph F. Musil	21	6	7	5	7	9	4	2*	10	7	3
Rooks	Stockton	Wm. K. Skinner	George F. Crane	34	13	13	12	16	5	4	1	1	13	2
Rush	La Crosse	Lorin T. Peters	Gladys Driver	33	13 7d	4d	24 4d	8d	2d	3d	22 3d	7d	4d	2d
Russell	Russell	C. A. Spencer	George W. Brandt	23	6	11	11	16	5	10	10	6	13	11
Saline	Salina	A. R. Buzick	O. H. Ford	30	4	5	10	4	8	3	8	4	1	1
Scott	Scott City	Fred J. Evans	Nellie Scheuerman	32	21a	11d	12a	14	16a	13a	16a	22a	12a	8

## MOTION DAYS IN DISTRICT COURTS—1947—CONTINUED

COUNTY	County seat	Judge	Clerk	No. Jud. Dist.	Jan.	Feb.	Mar.	Apr.	May	June	Sept.	Oct.	Nov.	Dec.
Sedgwick. Div. No. 1. Div. No. 2. Div. No. 3. Div. No. 4.	Wichita.	Ross McCormick. Robert L. NeSmith. Clair E. Robb. I. N. Williams.	L. D. Leland.	18	4 18 11 25	1 15 8 22	1 15 8 22	5 19 12 26	3 17 10 24	7 21 14 28	6 20 13 27	4 18 11 25	1 15 8 22	6 13 20 27
Seward.	Liberal.	F. O. Rindom.	Mrs. Mary Lindley.	39	13a	15a	15a	27a	17a	21a	13a	13a	22a	13a
Shawnee. Div. No. 1. Div. No. 2. Div. No. 3.	Topeka.	George A. Kline. Paul H. Heinz. Dean McElhenry.	Mrs. Genevieve Cowell.	3	11 18 4 25	1 22 8 15	1 22 8 15	5 26 12 19	17 3 24 31	7 28 14 21	20 6 27 13	11 18 4 25	1 22 8 29	13 20 27 27
Sheridan.	Hoxie.	Wm. K. Skinner.	Nannie E. Adams.	34	10	24	14	18	19	6	11	6	15	4
Sherman.	Goodland.	Wm. K. Skinner.	Sylvia Riley.	34	8	15	15	7	20	9	13	4	17	6
Smith.	Smith Center.	W. R. Mitchell.	Lucille Figg.	15	9	6	24	3	14	16	18	16	14	1
Stafford.	St. John.	Roy J. McMullen.	Gertrude Bartle.	20	2	4	6	3	6	5	4	7	6	4
Stanton.	Johnson.	F. O. Rindom.	Tina B. Wilson.	39	8a	24a	4d	2d	7a	4a	8a	8a	5a	4d
Stevens.	Hugoton.	F. O. Rindom.	John F. Fulkerson.	39	27a	5a	24a	3d	8a	5a	5a	27a	6a	5d
Sumner.	Wellington.	Wendell Ready.	Laura McCormick.	25	7	4	4	1	6	3	0	7	4	2
Thomas.	Colby.	Wm. K. Skinner.	N. C. Knudson.	34	9	14	17	19	26	7	12	3	3	5
Trego.	Wakeney.	C. A. Spencer.	D. E. Cypher.	23	13	10	3	14	12	2	8	13	3	9
Waubensee.	Alma.	A. K. Stavely.	Eva Dorman.	35	7	4	4	1	6	3	2	7	3	2

MOTION DAYS IN DISTRICT COURTS—1947—CONCLUDED

COUNTY	County seat	Judge	Clerk	No. Jud. Dist.	Jan.	Feb.	Mar.	Apr.	May	June	Sept.	Oct.	Nov.	Dec.
Wallace.....	Sharon Springs.....	C. A. Spencer.....	Mrs. Ida Ward.....	23	17	14	14	21	27	24	15	28	24	15
Washington.....	Washington.....	W. D. Vance.....	Alta Hannon.....	12	8	5	3	8	7	2	24	22	17	15
Wichita.....	Leoti.....	Fred J. Evans.....	Daisy Dickey.....	32	20a	11a	11a	28	19a	17a	17a	21a	11a	15
Wilson.....	Fredonia.....	Ora D. McClelland.....	J. E. Kenney.....	7	2	6	6	1	1	5	2	2	6	4
Woodson.....	Yates Center.....	W. H. Anderson.....	Myra S. Dumond.....	37	7	4	4	1	6	3	2	14	4	2
					28	18	11	15	27	10	30	28	11	16
Wyandotte.....	Kansas City.....	E. L. Fischer.....	John W. Foley.....	29	4	1	1	5	3	7	6	4	1	6
1st div.....	.....	Willard M. Benton.....	.....	.....	11	8	8	12	10	14	13	11	3	13
2d div.....	.....	Harvey J. Emerson.....	.....	.....	18	15	15	19	17	21	13	18	15	20
3d div.....	.....	Russell C. Hardy.....	.....	.....	25	22	22	26	24	28	27	25	22	27
4th div.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....

Note 4.

e—9:00 a. m. a—10:00 a. m. c—1:30 p. m. d—2:00 p. m.

NOTE 1.—Italicized dates indicate the first day of a regular term of court.

NOTE 2.—In Shawnee county the schedule continues through July and August as follows:

Division 1.—Judge George A. Kline: July 19, and August 9 and 30.

Division 2.—Judge Paul H. Heinz: July 5 and 26, and August 16.

Division 3.—Judge Dean McElhenny: July 12, and August 2 and 23.

NOTE 3.—In Norton county, August 25 is motion day.

NOTE 4.—Wyandotte county has a regular motion day in July in three divisions, 1, 2 and 4:

Division 1.—Judge E. L. Fischer: July 5.

Division 2.—Judge Willard M. Benton: July 12.

Division 4.—Judge Russell C. Hardy: July 26.

\* Riley county—Opening day of term delayed one day—legal holiday.

Wyandotte county—The division having law and equity cases has a motion day on Thursday of each week of term, in addition to above mentioned motion days.

## STANDARDS FOR TITLE OPINIONS

Adopted by the Bar Association of the state of Kansas  
to and including May, 1946

### Introduction by Margaret McGurnaghan

There has been an increasing demand for copies of the title standards adopted by the Bar Association of the State of Kansas which have previously been published in separate pamphlets for 1941, 1942 and 1944, and in the Bar Association Journal for August, 1946. The adoption of these standards has represented the first attempt of the bar in Kansas to achieve uniformity in title requirements. The standards originally adopted in 1941 were immediately accepted by a substantial proportion of the lawyers in Kansas, and according to our best information these standards, with subsequent additions and amendments, are now used by a great majority of the bar. In the following compilation, the title standards adopted in 1941, 1942, 1944 and 1946 have been rearranged, and each question has been given a new number for general reference, preserving the old numbers and the year of adoption.

Each of the recommendations has been the result of exhaustive study and debate. The committee was originally appointed in 1939 and worked almost two years before making its first report, during which time two thousand mimeographed copies of proposed standards were sent to the entire bar of the state, and hundreds of suggestions were made and discussed. Each of these reports has been presented in open meeting of the State Bar Association, and at times has brought out a spirited discussion. While most of the recommendations of the committee have eventually been adopted, a number have been rejected or modified at the annual meeting, so that it can be said that the bar as a whole, rather than a limited group, stands behind these recommendations.

The present members of the committee are Margaret McGurnaghan, Topeka, chairman; W. G. Fink, Fredonia; T. B. Kelley, Great Bend; J. B. McKay, El Dorado; J. S. Brollier, Hugoton; L. Perry Bishop, Paola; O. L. O'Brien, Independence; H. R. Branine, Hutchinson; Elmer W. Columbia, Parsons; and Wilbur H. Jones, Wichita. The following members have also served on the committee: Roscoe E. Peterson, Larned; Laura Rohrer Bauman, Junction City; A. W. Hershberger, Wichita; Joe F. Balch, Chanute; Frank G. Theis, Arkansas City; D. C. Hill, Wamego; John P. Davis, Topeka; Hon. A. K. Stavely, Lyndon; Don Postlethwaite, St. Francis; J. T. Botts, Coldwater; Homer V. Gooing, Eureka; Lester L. Morris, Wichita; Paul H. Jenree, Kansas City; Barton E. Griffith, Topeka; Langdon L. Morgan, Hugoton; and L. E. Clevenger, Salina.

The committee desires that all attorneys in the state who are interested in the examination of real estate, titles submit questions and recommendations for action of the committee, and will appreciate any suggestions which may be made.



## Title Standards

### ABBREVIATIONS

#### *In Names and Idem Sonans*

- (1) Question: Shall we accept abbreviations of names such as Chas., Geo., Jno. and so forth, instead of asking for affidavits of identity? Also, shall we ask for affidavits of identity where the name, though misspelled, sounds the same as the correct name?

Recommendation: We recommend that all common abbreviations, derivatives, and nicknames for christian names be accepted as sufficiently establishing the identity of the parties, and affidavits of identity be not required.

Variations in names that are clearly covered by the doctrine of *idem sonans* should not be the subject of title requirements. The Supreme Court of Kansas has extended the doctrine of *idem sonans* to apply to names that are approximately the same even though their pronunciation is slightly different. (1942 Standards, VI.) (See, also, question 14 below.)

### ABSTRACTERS

#### *Certificates*

- (2) Question: What sort of requirement should be made as to certification of abstracts? Is it necessary that attorneys require that abstracts of title be recertified every time an extension is made?

Recommendation: For the purpose of examination, an abstract should be considered sufficiently certified if it indicates that the abstracters were bonded on the dates of their respective certificates, and it is not a defect that at the date of examination the statute of limitations may have run against the bonds of some of the abstracters. Do not accept abstracts made by abstracters known to be unreliable, whether such abstracters be or be not bonded. (1942 Standards, III.)

#### *Records in Office of Register of Deeds*

- (3) Question: How should abstracters word their certificates in regard to the records in the office of the Register of Deeds?

Recommendation: All abstracters' certificates should certify, in addition to the statement that the abstract shows all conveyances and other instruments of record affecting the real estate described, filed for record or recorded in the office of the Register of Deeds, that it shows "every special clause or condition of any kind or nature other than the covenants of general warranty and quitclaim which appear in any of said instruments; and that the signatures to the several instruments are of record as shown, and that all acknowledgments shown are regular in form, except as otherwise noted." This recommendation should not affect certificates dated prior to the adoption of this recommendation. (1942 Standards, III.)

- (4) Question: An abstract is certified as follows: "We hereby certify the foregoing to be a full and complete abstract of the records of all conveyances touching the real estate first above described, so far as we

have been able to ascertain the same, after a careful examination of the records now in the custody of the Register of Deeds of said County and State." Shall an examiner accept such a certificate?

Recommendation: If the certificate is an old one and made by a reliable abstractor, it might be accepted. In late certificates and new ones, the abstractor should be required to leave out the words "so far as we have been able to ascertain." In other words, even though the abstractor does not use the certificate recommended by the Kansas Title Association, he should not limit it but should certify to everything which applies to that particular piece of real estate which is on file in the office of the Register of Deeds. (1946 Standards, VI.)

### AFFIDAVITS

#### *Adverse Possession*

- (5) Question: Should we accept affidavits of adverse possession to establish a title, and if so, where should we draw the line as to their efficacy?

Recommendation: Do not accept such affidavits to establish title by adverse possession. If such a title must be established, quieting title proceedings should be had. (1942 Standards, I.)

#### *Identity*

- (6) Question: Property is deeded or mortgaged to John Henry Smith and later conveyed or released by John H. Smith, John Smith, or J. H. Smith. Should any requirement be made?

Recommendation: If twenty years or more have elapsed no requirement for an affidavit of identity should be made. If less than twenty years have elapsed an affidavit identifying the parties should be obtained. (1942 Standards, I.)

#### *Interested Parties*

- (7) Question: Should we accept affidavits made by interested parties?

Recommendation: Do not reject such affidavits on the ground of interest. However, the affidavit should be full enough to show the circumstances under which, and means through which, the affiant has knowledge of the facts included therein. (1942 Standards, I.)

#### *Discrepancies and Variations in Names*

- (8) Question: Is the use of recorded affidavits a proper means of correcting discrepancies and variances in names?

Recommendation: Such affidavits can be used. However, the affidavit should be so worded that it shows in itself that the material statements contained in it are based upon the affiant's knowledge, and refer specifically to the instrument, the parties to it, the land description and book and page of record. (1944 Standards, I.)

#### *Unacknowledged*

- (9) Question: An abstract shows unacknowledged affidavits of record. Should these be accepted notwithstanding the statutory provision that an unacknowledged recorded instrument does not impart notice?

Recommendation: Such affidavits should be accepted on any defect which can be cured by affidavit. Not to do so would upset titles and cause confusion. (1946 Standards, I.) Affidavits of heirship. (See questions 45 and 51 below.)

### ATTORNEYS

#### *Attitude in Regard to Titles*

- (10) Question: What should be the attitude of the attorney in examining titles or abstracts of title to real estate, as to the making of objections and requirements?

Recommendation: Many attorneys in Kansas are over-critical in examining titles and appear to have in mind the making of every possible objection and requirement. It should be kept in mind that a marketable title is sufficient in almost every case, and objections and requirements should be made only when the irregularities or defects actually impair the title or reasonably can be expected to expose the purchaser to the hazard of adverse claims or litigation. (1941 Standards, XXIV.)

### CONVEYANCES

#### *Corporation Deeds*

- (11) Question: The title rests in a corporation which later conveys and the deed on its face is regular. What information should we have before accepting such a deed as to whether or not the corporation is still in existence? Should we take the record as it is?

Recommendation: If a client is purchasing property from a corporation, the title examiner should inquire as to its authority to convey. If a corporation deed is of record in the chain of title, it should be accepted as it is. In the absence of any evidence to the contrary, it should be assumed when a deed is properly executed in the name of the corporation that the corporation is legally existing. (1942 Standards, VIII.)

#### *Identity of Grantors*

- (12) Question: A title is shown in the name of Jennie Jones and is conveyed by Jennie Smith with a recital in the deed that she was formerly Jennie Jones. Should further proof of identity be required?

Recommendation: If the body of the deed or the acknowledgment contain the recital, accept the deed. Otherwise require additional proof. (1941 Standards, XI.) (See question 16 below.)

- (13) Question: Property is deeded to John Doe and Mrs. John Doe, his wife, and later conveyed by John Doe and Sarah Doe, his wife. What requirement?

Recommendation: An affidavit should be obtained showing the name of the wife to whom the property is deeded as Mrs. John Doe. (1941 Standards, XII.)

- (14) Question: Where the given name or names or the initials as used in the grantor's signature on an instrument vary from his name as it appears in the body of the instrument, but his name as given in the

certificate of acknowledgment agrees with either the signature or the body of the instrument, is additional proof of identity necessary?

Recommendation: No; the certificate of acknowledgment should be accepted as providing adequate identification. (1944 Standards, V.) (See question 1 above.)

#### *Heirs at Law*

- (15) Question: A deed was executed, say fifteen or twenty years ago, and contains a recital that the grantors are the only heirs at law of the title holder of record. Taking into consideration that the words "heirs at law" have different meanings in different states, should the examiner take the title with this recital (whether or not the record owner was a resident of Kansas) or should he require that the title be quieted?

Recommendation: The title should be quieted. The deed is simply acknowledged and the recitals in it are not made under oath. (1944 Standards, VII.)

#### *Marital Status*

##### *Change of Name by Marriage*

- (16) Question: When the name of a woman is changed by marriage subsequent to her acquisition of title, and she then conveys by an instrument executed in her former name with her married surname added, is she sufficiently identified?

Recommendation: Yes. (1944 Standards, IV.) (See question 12 above.)

##### *Change of Name of Spouse*

- (17) Question: Where a deed represents, either in the body or in the acknowledgment, that the grantors are husband and wife, is it necessary to determine whether such representation is correct when in a preceding instrument in the chain of title the name of the other spouse was different?

Recommendation: The recital may be relied upon if the transaction is an old one. If within the past fifteen years it should be ascertained what became of the other spouse. (1944 Standards, II.)

##### *No Recitals as to Status*

- (18) Question: If a deed contains no recitation as to the marital status of the grantor and no spouse joins in the instrument, what showing is necessary?

Recommendation: There should be an affidavit that the grantor was unmarried at the time of the execution of the deed, or that if married, his spouse was not then and never had been during the existence of the marriage relation a resident of Kansas. (1944 Standards, III.)

#### *Nonresident*

- (19) Question: A deed is made by a nonresident of the state and there is nothing in it which shows his marital status. Should such a deed be accepted?

Recommendation: Do not accept such a deed unless it can be shown by affidavit that the grantor was single at the time of its execution,



or, if married, that the spouse was not when the deed was executed and had not been a resident of Kansas. If this showing cannot be had, the title should be quieted. (See 91 Kan. 757 on merchantability of title on affidavits of possession. (1941 Standards, X.)

#### *Resident*

- (20) Question: A deed is executed by a resident owner and is silent in regard to his marital status. Should the deed be accepted?

Recommendation: There should be a showing that the resident grantor is single or require the title to be quieted. The Supreme Court has held that affidavits of possession attached to the abstract do not necessarily make the title merchantable. (1944 Standards, VI.)

#### *Receiver's Deeds*

- (21) Question: Is a deed made by the receiver and the officers of a corporation which recites the order of the court authorizing it sufficient, without a showing of the proceedings upon which it is based?

Recommendation: Do not accept such a deed without an abstract of the proceedings in the receivership, showing the appointment and qualification of the receiver; the petition for the sale of the real estate, the orders of the court authorizing and confirming the sale, and a showing the receiver is still acting at the date of the deed, unless the deed has been of record more than fifteen years. (1941 Standards, XI.)

#### *Trustee—No Recitals of Powers*

- (22) Question: An instrument is executed to John Jones, Trustee. The abstract shows a conveyance, assignment or release from him as Trustee. Should this be accepted?

Recommendation: Require a full copy of the deed to the Trustee and showing of anything of record revealing the nature of the trust. *Boyer v. Sims*, 61 Kan. 593; *Webb v. Rockefeller*, 66 Kan. 160; *Goss v. Rothrock*, 102 Kan. 272. (Oil and gas lease to trustee for benefit of all lessees; different holding from others. Must have assignment or releases from all.) *Brown v. Parmalee*, 130 Kan. 165. If the instrument divesting the trustee of title has not been of record more than fifteen years and if the record does not disclose the nature of the trust or a trust agreement is not in existence which can be recorded, require an affidavit from some one who knows the facts, giving the names of the beneficiaries under the trust and obtain proper instruments from them divesting them of title. Should the instrument of record be a deed and no showing of the nature of the trust can be obtained, then deed should be obtained from the trustee and his wife. (1941 Standards, XIII.)

#### DEFENDANTS NOT NAMED IN ALTERNATIVE

- (23) Question: If defendants are not named in the alternative and are served by publication, should there be proof they are alive when judgment is taken?

Recommendation: If the judgment has been of record at least fifteen years, it should be taken on presumption the defendants were living

when it was entered. Otherwise, if the defendants are not sued in the alternative, there should be a showing they were living when the judgment was taken. Sending copies of the publication notice by registered mail to defendants served by publication, and asking for return receipt helps to eliminate the question of whether or not they are living. (1941 Standards, XXI.)

## FEDERAL AGENCIES

*Land Bank Commissioner*  
*Federal Farm Mortgage Corporation* }

- (24) Question: A mortgage or the title obtained under it, runs to the Land Bank Commissioner acting pursuant to acts of congress therein stated, and his successors and assigns. Can the mortgage be released or assigned or title conveyed by the Land Bank Commissioner in office at the time of executing the instrument? What steps are necessary to identify the signer? Can the Federal Land Bank be delegated power to act? Is the title obtained a fee simple one? The Federal Farm Loan Act purports to assign by operation of law all Commissioner mortgages to the Federal Farm Mortgage Corporation. Does this eliminate the Land Bank Commissioner from the title? Is release from the Federal Land Bank as attorney in fact under its own seal, sufficient?

Recommendation: The identity of the signer of such instruments requires no investigation; and title from the Federal Land Bank under power of attorney authorizing it to act, properly recorded and abstracted, should be accepted.

In suits in which mortgage shown of record in the name of the Land Bank Commissioner are involved, the committee recommends that only the Federal Farm Mortgage Corporation be made a party defendant and that after setting up such mortgage the following paragraph be used in referring to the interests thereunder:

"Under the provisions of Part 3 of the Emergency Farm Mortgage Act of 1933, as amended (12 U.S.C.A., secs. 1016-19), and of the Federal Farm Mortgage Corporation Act, as amended (12 U.S.C.A., secs. 1020-20h) the above-described note and mortgage are by operation of law the property of and belong to Federal Farm Mortgage Corporation and that said Federal Farm Mortgage Corporation is now the owner and holder of full title thereto and of the indebtedness evidenced and secured thereby." (1941 Standards, XIV.)

*Home Owners Loan Corporation*

- (25) Question: What about a conveyance or other instrument from the Home Owners Loan Corporation?

Recommendation: Require in each instance a recorded showing of the resolution of the Board of Directors authorizing certain persons to act and accept title from the ones the regional office recognizes as having the right to execute instruments. (The Omaha office has said that the Regional Director and the Regional Treasurer should execute deeds to Kansas lands.) (1941 Standards, XV.)

## FORECLOSURES

*By Fiduciary*

- (26) Question: A mortgage is foreclosed by the executor or administrator or guardian of an estate. The fiduciary purchased in his own name at the sale. Should the examiner accept the title, and if so, how long ago should the transaction have occurred in order to be considered safe?

Recommendation: Ordinarily the title should be quieted. If the transaction were an old one and there was no danger of there being incompetents, the title could be passed. (1944 Standards, XI.)

*Certificate of Purchase*—not assigned of record

- (27) Question: A sheriff's certificate of purchase has never been assigned of record and has been lost. Deed is made to some one other than the purchaser at sheriff's sale. The deed may recite "do sell and convey unto X, the holder of the certificate of purchase herein, his heirs," etc., or that "the certificate of purchase has been duly assigned to X," etc. What requirement?

Recommendation: If the sheriff's deed has been of record for at least five years, no requirement should be made. (1944 Standards, VIII.)

*Satisfaction by Clerk of Court*

- (28) Question: If a mortgage is foreclosed, sale made and deed executed, should the clerk be required to satisfy the mortgage of record? If he does not do so, should this be construed as a defect in the title?

Recommendation: Although the title depends upon the sufficiency of the court proceeding and not upon the release executed by the clerk, as such a release is required by statute and is easily procured, it should be obtained. (1942 Standards, VII.)

*Tax Foreclosures*—Sale of Real Estate

- (29) Question: Under section 79-2804, General Statutes of 1935, referring to tax foreclosure sale suits it is provided, "And on the date fixed for such sale by such notice, the said sheriff shall offer each such tract of land, lot or piece of real estate separately for sale, and the same shall be sold at public auction to the highest and best bidder therefor." Does this mean that each lot shall be sold separately, or that all of the tract upon which taxes have not been paid, standing in the name of one individual, if the lots are contiguous, and have been listed for taxation as a body, shall be sold as one tract?

Recommendation: The real estate should be sold as it is described on the tax rolls and as advertised for sale under G. S. 1943 Supp., 79-2303. (1944 Standards, IX.)

## INHERITANCE TAXES

*Filing Finding No Tax Chargeable*

- (30) Question: Where should finding of the State Commission of Revenue and Taxation in regard to inheritance tax be filed when the Commission finds that there is no tax chargeable?

Section 79-1512, G. S. 1935, provides when a tax is chargeable, certified copies shall be filed in the office of the county treasurer and in the probate court. In case no tax is chargeable, a certificate from the Commission filed in the office of the register of deeds is evidence that no tax exists.

But under G. S. 1945 Supp., 59-2249, there may be an administration pending and if sections 59-2250 and 2251 are invoked, heirship cannot be decreed and interests assigned until a showing in regard to inheritance tax is made.

Recommendation: If the Commission finds no tax is due the certificate should be filed in the probate court as well as in the office of the register of deeds. (1941 Standards, XVIII.)

*Decree of heirship and assignment of interest entered prior to finding in regard to inheritance taxes.*

- (31) Question: Is decree entered under G. S. 1945 Supp., 59-2250 and 59-2251 (secs. 226 and 227 of Probate Code) void if entered before the finding in regard to inheritance tax is made by the Commission?

Recommendation: No decree should be entered until after the certificate of the State Commission of Revenue and Taxation has been made and filed in the probate court, if the decedent has died within ten years prior to the date of the filing of the petition for a decree of heirship and assignment of interests.

If death occurred more than ten years prior to the filing of such petition, a specific showing of that fact should be made in the petition and also in the decree of the court, and the decree should adjudge in such circumstances that there is no tax due. (1941 Standards, XIX.)

## INSTRUMENTS OUTSIDE THE CHAIN OF TITLE

### *Deed*

- (32) Question: A stray warranty deed is recorded, properly executed and correctly describing the land. Should this be considered outside the chain of title or would an explanation be necessary?

Recommendation: If such an instrument be of record for more than fifteen years, pay no attention to it unless there is something of record to put one on notice.

If of record less than fifteen years, there should be a showing of what interest the grantor or grantee claims in the land. (1941 Standards, XXII.)

### *Mortgage*

- (33) Question: A mortgage is shown on an abstract with no title shown in the mortgagor at the time of its execution or subsequently thereto. The mortgage is released of record. Should Standard XXII, 1941, be amended to include such mortgages?

Recommendation: Standard XXII should be amended to include such mortgage, the amended Standard to read: "If such deed or mortgage be of record for more than fifteen years, consider it outside the chain of title, unless the examiner has some notice of possession by the



grantor in the deed or mortgage, or the mortgage is made to the record title holder. If the instrument is of record for less than fifteen years, there should be a showing of the interest claimed by the person executing it." (1946 Standards, III.)

### JOINT TENANCY

#### *How Expressed*

- (34) Question: How should joint tenancies be expressed in a deed?

Recommendation: As G. S. 1945 Supp., 58-501 (sec. 1, ch. 181, Laws of 1939) states that such estates must be clearly expressed, the recommendation is made that the granting clause in the deed and the bequest or devise in the will run to "X and Y and the survivor of them as joint tenants and not as tenants in common," and that the habendum and warranty clauses in deeds use the words "to said grantees" without incorporating the words "heirs and assigns."

We call attention to sec. 67-202, G. S. 1935, which provides that "the term 'heirs' or other words of inheritance shall not be necessary to create or convey an estate in fee simple" and also to the statutory forms of deeds set out in sec. 67-203, 204. (1942 Standards, IX.)

- (35) Question: Shall Standard IX, 1942, which refers to deeds taken in joint tenancy, be amended to permit the acceptance of deeds already of record, where the grantees are shown as "John Doe and Mary Doe, his wife, or the survivor of them," or words of similar import?

Recommendation: Accept deeds which clearly express the intention of creating a joint tenancy, such as those using the words "survivor," "in survivorship," or "as joint tenants," but do not accept deeds in which the grantees are described as "A and B," "A and B jointly," "A or B," "A or B jointly," or similar words. (1946 Standards, II.)

#### *Survivorship—Proof of Death of a Joint Tenant*

- (36) Question: Title to property has been taken in joint tenancy and conveyance is made by the surviving joint tenant. What proof of death should be required in order to show title in the survivor?

Recommendation: From and after the date of the adoption of this recommendation, if the estate is administered, enough of the proceedings should be abstracted to show the death of the joint tenant. If the estate is not administered, there should be a certificate establishing death from the proper federal, state or local vital statistics authorities, or a certificate of death signed and sworn to by the undertaker who conducted the funeral, or an affidavit of death from some responsible person who knows the facts. The certificate or affidavit should be recorded in the office of the register of deeds of the county where the land is situated, and shown on the abstract. (1946 Standards, II.)

#### *Taxability—Federal Estates Tax*

- (37) Question: Under the federal law, notwithstanding joint tenancy, estates taxes are due from the decedent if he supplied the money for the purchase of the property. If the estate of the decedent, including all

insurance and the jointly owned property, is less than the federal exemption, what evidence should the purchaser require as to the non-taxability of the estate?

Recommendation: There should be a satisfactory showing, either from administration proceedings or by affidavit if there are no proceedings, that the value of the estate of the decedent, including jointly owned property and insurance, is well under the federal estates tax exemption. (1946 Standards, II.)

## MORTGAGES

### *Conveyance to Mortgagee*

- (38) Question: A mortgage is given on real estate and later the mortgagor conveys to the mortgagee. What requirement should be made to show whether it is an actual sale, or whether the deed is security for the debt?

Recommendation: If the mortgage is released and the deed is an absolute conveyance and the mortgagee conveys by warranty deed, no showing should be required. If the mortgagee is the client and is taking the deed from the mortgagor, there should be an estoppel affidavit and a release of the mortgage. (1944 Standards, XIII.)

### *Deed in Satisfaction of Mortgage*

- (39) Question: The owner of land executed a mortgage upon it and then defaulted in payment of interest, principal or taxes. He makes a deed to the mortgagee or his assigns, subject to encumbrances of record, and the holder of the mortgage releases it. There is nothing in the deed to indicate that the release of the mortgage is a part consideration for the conveyance. Is this sufficient to pass good title to the mortgage holder? Is Standard XIII, 1944, sufficient to take care of this?

Recommendation: Accept the deed as passing title, relying on Standard XIII, which reads as follows: "If the mortgage is released and the deed is an absolute conveyance and the mortgagee conveys by warranty deed, no showing should be required. If the mortgagee is the client and is taking the deed from the mortgagor, there should be an estoppel affidavit and a release of the mortgage." (1946 Standards, III.)

### *Release—Errors in Recitals*

- (40) Question: A release of a mortgage, or oil and gas lease, or other encumbrance contains errors in its recitals as to date of record, the book and page of record, or date or parties to such encumbrance. What requirement, if any?

Recommendation: If the release in the mind of the ordinarily prudent person contains enough correct data to identify the encumbrance intended to be released, the release should be considered sufficient. (1942 Standards, VII.)

*Unrecorded Mortgage Referred to in Chain of Title*

- (41) Question: When a deed is recorded and refers to a mortgage or mortgages which cannot be found on the record, is it necessary to require any further explanation of such mortgage or mortgages? Suppose the deed has been recorded for fifteen or twenty years?

Recommendation: If the deed has been recorded for a sufficient length of time that the statute might have run against the mortgage or mortgages, and if it can be shown that no claim has been made under such mortgage or mortgages and no payments of interest or principal made by the titleholders since the recording of the deed, the title can be taken on such showing; otherwise, quiet title. (1944 Standards, XII.)

*Unreleased Mortgages, Chapter 261, Laws 1945*

- (42) Question: Shall chapter 261, Laws of 1945 (G. S. 1945 Supp., 67-331), relating to unreleased mortgages of record prior to January 1, 1914, be followed?

Recommendation: This act should be followed and all such mortgages be considered void if the affidavit provided for in such act is not recorded prior to July 1, 1946. (1946 Standards, VII.)

## OIL AND GAS LEASES

- (43) Question: Should a requirement be made for a release of an oil and gas lease after the primary or definite term of the lease has expired, or after production has ceased?

Recommendation: A copy of the lease should be shown on the abstract and, if the lease contains the usual provisions and is for a term of years and as long thereafter as oil and/or gas is produced from the leased premises, and no affidavit showing production has been filed during the definite term, as provided by section 55-205, General Statutes, 1935, then no release should be required.

It is recommended, however, that a proper affidavit be recorded and shown on the abstract, stating that no oil or gas was produced during the primary or definite term, or that such production has ceased. Such an affidavit, setting forth facts showing that such production has ceased shall be considered sufficient to show the termination of such a lease after the primary or definite term has expired, and no release shall be required in such case.

The examining attorney should make a requirement that the purchaser satisfy himself that no one is in possession claiming under such oil and gas lease, and that neither oil nor gas is actually being produced upon the land. (1941 Standards, XX.)

*Release—containing errors or irregularities*

- (44) Question: A release of a mortgage, or oil and gas lease, or other encumbrance contains errors in its recitals as to date of record, the book and page of record, or date or parties to such encumbrances. What requirement, if any?

Recommendation: If the release in the mind of the ordinarily prudent person contains enough correct data to identify the encumbrance intended to be released, the release should be considered sufficient. (1942 Standards, VII.)

## PROBATE PROCEEDINGS UNDER THE CODE

*Affidavits of heirship when time for administration of estate expired prior to July 1, 1939*

G. S. Supp. 59-2250 (sec. 226 of Probate Code) as amended in 1941 provides that if an owner of property has been dead more than one year and his estate has not been administered, or if no will has been admitted to probate nor administration had in this state, or in which administration has been had without a determination of the descent of such property, any person interested in the estate or claiming an interest in such property, may petition the probate court of the county of the decedent's residence or of the county wherein real estate of the decedent is situated, to determine its descent.

- (45) Question: Does this apply to estates in which the time for administration had expired prior to July 1, 1939, and showing of heirship by affidavit has been recorded or is attached to an abstract of title or can be readily obtained?

Recommendation: (a) If a person owning an interest in property has been dead for more than one year prior to July 1, 1939, and his estate has not been probated, but there is of record prior to July 1, 1939, in the office of the register of deeds of the county in which the real estate is situated, an affidavit giving all the essential facts necessary to prove heirship and the devolution of the property to the heirs, such affidavit shall be taken as sufficient showing of heirship and the assignment to heirs of their respective interests in such property and no further proceedings shall be required, except showing in regard to inheritance and estate taxes, if necessary.

Recommendation: (b) If a person owning property has been dead for more than one year prior to July 1, 1939, and his estate has not been administered, or if administered, no proper finding of heirship has been made by the court, the title having passed from his heirs at law, a duly executed affidavit showing all the essential facts regarding heirship shall be considered sufficient, whether executed prior or subsequent to July 1, 1939. Such affidavit shall be recorded. If necessary, obtain a showing in regard to inheritance and estate taxes. (For form of affidavit see question 51 below.)

Recommendation: (c) If title is still in decedent's heirs at law or any one of them, and an affidavit of heirship has not been recorded prior to July 1, 1939, if administration has not been had decreeing heirship and assigning interests and the now-claim statute (sec. 215) G. S. 1945 Supp., 59-2239 has become effective, in any transfer from the heirs or heir at law require proceedings under G. S. 1945 Supp., 59-2250, sec. 226 of the Probate Code.

Recommendation: (d) If title to decedent's real estate is still in his heirs at law or any one of them, no administration having been had and no proper affidavit of heirship having been recorded, if a mortgage has been executed by the decedent or by his heirs at law, accept extensions or renewals of such mortgage on affidavits of heirship but require the affidavits to be recorded.



Recommendation: (e) If an estate has been administered and closed prior to July 1, 1939, and the verified petition or affidavit or final order of the court shows the essential facts necessary to decree heirship, accept the findings. Examiners should be willing to take any showing on the abstract which in view of lapse of time would be more reasonable than anything one would be able to obtain now.

Recommendation: (f) If it is deemed necessary to decree heirship and assign interests under G. S. 1945 Supp. 59-2250 and 2251, and the title to the real estate comes through more than one unprobated estate, use one proceeding for the purpose of decreeing heirship and assigning interest. (1941 Standards, I.)

*Certified Copy of Decree or Transcript of Proceedings to other Counties.*

- (46) Question: A decree of descent and assignment of interest was obtained under G. S. 1945 Supp. 59-2250 in one county and a certified copy of the decree sent to another county in which the decedent owned real estate. Was this enough, or should a transcript of the proceedings have been forwarded and in what county office should such transcript be filed?

Recommendation: A full transcript of the proceedings in the court of original jurisdiction should be filed and recorded in the probate courts of all counties in which the decedent owned real estate. (1942 Standards, II.)

*Children—Born or Adopted subsequent to execution of will.*

G. S. 1945 Supp. 59-610 (Sec. 46 of Probate Code) provides that if after making a will the testator marries and has a child, by birth or adoption, the will is thereby revoked. If after making a will the testator is divorced, all provisions in such will in favor of the testator's spouse so divorced are revoked.

- (47) Question: Should after born and after adopted children be disinherited or the section amended?

Recommendation: That there be presented to the legislature an amendment worded similarly to that of Minnesota, providing as follows:

"If any child of the testator, including a posthumous child, born after the making of a will, or a child adopted by said testator after the making of such will, has no provision made for him by the testator by will or otherwise, he shall take the same share that he would have taken if the testator had died intestate, unless it appears that such omission was intentional." (1941 Standards, VI.)

*Closing Estate when time for filing claims has expired.*

- (48) Question: May an estate be closed under the 1939 Code when the nine months' period for filing claims has expired and all claims have been allowed and paid?

Recommendation: Do not close the estate until the year has expired, in order to be sure in an intestate estate a will may not be presented for probate; or in a testate estate, a subsequent will may not appear. (1941 Standards, IX.)

*Descent and Assignment of Interest.**Interest of Petitioner in Property—**Must it be in all property of Decedent?*

- (49) Question: (a) The owner of a tract of land died intestate a number of years ago. The property was mutually divided among his heirs. One heir platted his land into several additions to a town site. The owner of some of the lots in one of the additions obtained a decree of heirship under G. S. 1941 Supp. 59-2250 (sec. 226 of the Code), so far as the whole tract of land was concerned. Were the proceedings good as to any of the land except the lots owned by the petitioner?

(b) A decree of heirship was obtained under G. S. 1941 Supp. 59-2250, on a certain piece of real estate, but in the petition and order the petitioner included all other lands owned by the decedent at the time of his death. As the petitioner had title only to the real estate described in his petition, is the decree good as to the other land?

Recommendation: The probate code provides a method of proof which should not be confused with the fact of heirship. The code requires that the petitioner have an interest in the estate or *claim of interest in such property*, but does not provide that the petitioner must have an interest in all of the property of the decedent. If the decree is properly obtained, it should apply to all such property. (1942 Standards, II.)

*Heirship: What Facts to be shown*

- (50) Question: What facts in regard to heirs should be known in the administration proceedings?

Recommendation: Require that the petition for administration (sec. 59-2219), the petition and order under section 59-2247 (final settlement), the proceedings under section 59-2249 (hearing and final decree), and the proceedings under sections 59-2250 and 2251 contain all the essential facts in regard to heirship which would be contained in a properly drawn affidavit of heirship. (1941 Standards, III.)

- (51) Question: What facts should be shown to establish heirship?

Recommendation: If the decedent were married, it should be shown whether he or she died intestate, whether there was a surviving spouse, naming her or him, whether the decedent was married more than once; the names of all children born to him; whether any died prior to his death leaving issue, either natural or adopted, and whether the decedent ever adopted any child or children, showing whether the children or issue are over twenty-one years of age or not.

If the decedent died unmarried and without issue, it should be shown whether his father and mother or either of them survived him; and if not, whether such parents were married more than once and the names of all his brothers and sisters, either natural or adopted; and if any of them are dead, whether they left surviving them any children, either natural or adopted; and whether such brothers and sisters and nephews and nieces were over the age of twenty-one years. (1941 Standards, IV.)

*Partition suit as an adjudication of heirship.*

- (52) Question: When and upon what showing would a partition suit be accepted as an adjudication of heirship?

Recommendation: Do not accept title under a partition suit when administration of an estate is being had and the estate is not yet closed, or within one year subsequent to the death of the former owner.

If a partition suit is had more than one year after the death of the former owner, and no administration has been had, if the petition and the order of the court set out the essential facts necessary for a determination of heirship, accept such showing.

(See amendment to G. S. 1945 Supp. 59-2250: "*Provided*, Nothing in this act shall be construed to divest district courts of power to determine descent in any proper action.") (1941 Standards, II.)

## NOTICE

*Description of Real Estate Descent Proceedings*

- (53) Question: Under G. S. 1945 Supp., 59-2250 and 59-2251, Proceedings to Determine Descent, should the notice under section 59-2209 contain a description of the land or is reference to the averments of the petition sufficient?

Recommendation: The notice should contain a description of the real estate. (1944 Standards, XIII.)

- (54) Question: Standard XIII, 1944, provides that the notice published under G. S. 1945 Supp., 59-2209, shall contain a full description of the real estate sought to be distributed under sections 59-2250 and 59-2251. Shall this recommendation be amended?

(a) To refer in the notice to the description as contained in the petition or application; or

(b) Will a short reference to the location of the land within the larger area be sufficient in the case of a long metes and bounds description?

Recommendation: The Standard should be amended so that the title will be acceptable without including the description of the real estate in the notice, the notice stating that the real estate involved is that referred to and described in the petition. (1946 Standards, IV.)

(Our Supreme Court has held that in a publication notice under the Code of Civil Procedure, the fact that the land may be misdescribed, or not described at all, does not void the notice, if the notice shows the general nature of the proceeding.)

## SELL, LEASE OR MORTGAGE

G. S. 1945 Supp., 59-2304 (sec. 259 of Probate Code) provides that notice and hearing of the petition to sell, lease or mortgage be given and that it be given in the manner provided by section 59-2209 (sec. 185 of Code).

- (55) Question: Should the notice contain a full description of the property to be sold, leased or mortgaged?

Recommendation: A full description of the property should be used when it is practical to do so. If this is not practical, the notice should show the government or city subdivision in which the real

estate is situated and refer to the petition for a fuller description. It should contain a sufficient description to identify the property. (1941 Standards, VIII.)

SALE BY ADMINISTRATOR OR EXECUTOR AT PUBLIC AUCTION  
WHEN LAND IN TWO OR MORE COUNTIES.

- (56) Question: If an administrator is selling at public auction and the land is situated in two or more counties, should the sale be made in both counties and should notice of sale be published in both counties as in foreclosure proceedings?

Recommendation: Yes, if the tracts are not contiguous; if contiguous, the notice may be given and the sale made in either county. (G. S. 1945 Supp. 59-2308.) (1942 Standards, II.)

TITLE

1. *Under Partial Distribution*

- (57) Question: Shall we accept title to real estate under G. S. 1945 Supp. 59-2246 (partial distribution)?

Recommendation: Do not accept title from the heirs or devisees under a partial distribution until the estate is fully administered and the administrator or executor discharged. It may be needed for the payment of claims. No decree assigning interests can be made prior to the entering of the decree of final distribution. (1941 Standards, V.)

2. *Under Foreign Will*

- (58) Question: What shall be the procedure under the code, when the title comes through a foreign will?

Recommendation: If the estate has been closed in the foreign jurisdiction, a duly authenticated copy of the will, the proceedings admitting it to probate and journal entry of final settlement and of discharge of the executor, should be admitted to probate under G. S. 1945 Supp. 59-801. In addition there should be a showing in regard to inheritance tax due the State of Kansas. If the testator left a surviving spouse, there should be a showing from the court of original jurisdiction whether such spouse accepted or renounced the provisions of the will in his or her behalf. The amendment to 59-801 provides that the probate court upon the admission of such will shall determine whether administration is necessary.

If the estate has not been closed in the foreign jurisdiction, the authenticated copy of the will should be admitted here, an administrator c. t. a. appointed and ancillary proceedings had here. (1941 Standards, V.)

*Witnesses—Testimony*

G. S. 1945 Supp., 59-2224 (sec. 200 of Probate Code) provides that on the hearing of a petition to probate a will at least two of the subscribing witnesses, if within the state and competent to testify, shall be examined; otherwise the testimony of other witnesses may be admitted to prove the capacity of the testator and the due execution of the will,



and as such evidence may admit proof of the handwriting of the testator and of the subscribing witnesses.

- (59) Question: Would the "other witnesses" be capable of testifying as to handwriting or the capacity of the testator at the time of executing the will; that it was duly executed and to state whether or not he was under duress, and so on, as would the witnesses to the will? Would the notice of hearing of the petition to probate given to the heirs, devisees, and legatees obviate any criticism of using "other witnesses"? What about a will executed within the state?

Recommendation: The Code does not provide that a copy of the will shall be sent to the heirs, devisees, and legatees with the copy of the published notice and therefore the committee recommends that subsection 3 of section 59-302 (sec. 18 of Code) be used when witnesses are without the jurisdiction of the court; that commissions be issued as heretofore for the proof of due execution; that other testimony be not used unless all the witnesses to the will are dead, incompetent, or their whereabouts unknown. (1941 Standards, VII.)

#### RIGHTS OF WAY AND ABANDONMENT

- (60) Question: If a railroad or a public highway obtains its right of way by deed and not by way of an easement or by condemnation, and the right of way is afterwards abandoned, what showing of abandonment is necessary?

Recommendation: Obtain certificate from the Highway Commission or from the railroad showing the right-of-way has been abandoned. This should be recorded. In old cases take affidavits of abandonment and nonuser.

However, we call attention to *Nott v. Beightel*, 155 Kan. 94, in which it is held that where a railroad acquired title to real estate by warranty deed, in which deed there was nothing limiting the grantee on the use to be made of the real estate and in which there were no provisions for reversion (or where there is nothing in the contract or conveyance indicating that they have been purchased for a right of way, p. 97), the railroad company takes a fee title and the land does not revert to the original grantor or his heirs when the railroad abandons the use of the land for railway purposes. In such cases it would be necessary to have a deed from the company. (1942 Standards, IV.)

#### SOLDIERS AND SAILORS CIVIL RELIEF ACT OF 1940

- (61) Question: What affidavits should be filed and orders entered for the purpose of obtaining judgments against defaulting defendants under the above act?

Recommendation: If the plaintiff knows that the defaulting defendant is not in the service, or that he is in the service:

Affidavits showing such facts and the source of plaintiff's knowledge should be filed in each instance, and if such defendant is in the service an order of court should be obtained appointing an attorney to answer and represent him in the taking of judgment.

When it is not known whether or not the defaulting defendant is in the service:

As he may be, affidavit showing the plaintiff does not know whether or not he is in the service should be filed, and application made for the appointment of an attorney to represent him. Then proceed with the taking of judgment as though he were in the service. (1941 Standards, XXIII.)

- (62) Question: In what courts should the provisions of the act be followed?

Recommendation: In judgments of district courts in all civil actions where there are defaulting defendants. The Act should be followed in probate courts, especially on orders to sell, lease or mortgage real estate, and on the order of final distribution; and also when judgments are taken in civil actions in city or county courts. (1941 Standards, XXIII.)

### TAX DEEDS

*Recorded within statutory period. Shall title be accepted?*

- (63) Question: Title comes through a very old tax deed which was recorded within the statutory period after its issuance. Should the title be accepted under it without a suit to quiet title?

Recommendation: The title should be quieted unless the attorney is absolutely satisfied that the tax deed is good upon its face. The Committee recommends that Standard XVI, 1941, which deals with tax foreclosure deeds be followed, and that other tax deeds be not accepted until some curative or validating act is passed. (1946 Standards, V.)

*Recorded—but no conveyance under it*

- (64) Question: An abstract shows a tax deed of record, with no conveyance from the tax deed holder. There is a complete chain of title through the fee owners. Should any requirement be made as to the tax deed?

Recommendation: If the tax deed holder is not in possession and the tax deed has been of record more than fifteen years, no claim having been made under it, accept the title. Otherwise, obtain quitclaim deed from the tax title holder or quiet title. (1946 Standards, V.)

*Tax Foreclosures*

- (65) Question: Shall the examiner accept title under a tax deed?

Recommendation: Such deed should be accepted if it is a sheriff's deed obtained under Article 28 of G. S. of Kansas 1935, "Foreclosure and Sale by the County," and the 1941 amendment thereto, if all parties in interest are made parties to the suit and the proceedings properly had. (1941 Standards, XVI.)

### VACATION PROCEEDINGS

*Requirement on vacation*

- (66) Question: What should the title examiner require to be shown on the abstract if an addition or a part of an addition is vacated?

Recommendation: The abstract should contain a complete transcript of the vacation proceedings. In vacation proceedings involving any

streets, alleys and additions, it is recommended that the abstract of title contain an abstract of the petition, full copy of publication notice and proof of publication, an abstract of the vacation order, and the consent of the city where applicable. (1942 Standards, V.)

### VALIDATING STATUTES

#### *When acceptable*

(67) Question: In what circumstances should validating statutes be accepted?

There has been a great difference of opinion among lawyers as to whether these acts shall be accepted at all or whether they shall be considered as applying to instruments of record for a specified period prior to the effective date of the act, or whether they shall be considered continuing statutes.

Recommendation: The Committee recommends that attorneys examining titles to Kansas real estate follow the decisions of our Supreme Court applying to G. S. 1935, 67-237 (*Building & Loan Assn. v. Gordon*, 88 Kan. 263; *Bentley v. Keegan*, 109 Kan. 762; *Brinkman v. Empire Gas & Fuel Co.*, 127 Kan. 551) and construe that section as a continuing validating act; that G. S. 1945 Supp. 79-1529 in regard to canceling inheritance taxes be also considered a continuing act.

Recommendation: So far as other validating acts are concerned, the Committee recommends that such acts be considered as only affecting instruments of record or proceedings had at the time of the passage of the act and of record at the date or for the length of time set for in the act. (1941 Standards, XVII.)



## INDEX TO TITLE STANDARDS

	PAGE
ABBREVIATIONS:	
In names and <i>idem sonans</i> (1).....	198
ABSTRACTERS:	
Certificates (2) (4).....	198
Records in Office of Register of Deeds (3).....	198
AFFIDAVITS:	
Adverse possession (5).....	199
Identity (6).....	199
By interested parties (7).....	199
Discrepancies and Variations in Names (8).....	199
Unacknowledged (9).....	199
ATTORNEYS:	
Attitude in Examination of Abstracts (10) .....	200
CONVEYANCES:	
Corporation Deeds (11).....	200
Identity of Grantors (12), (13), (14).....	200
Heirs at Law—Recital in Conveyance (15).....	201
Marital Status	
Change of name by marriage (16).....	201
Change of name of Spouse (17).....	201
No recitals as to status (18).....	201
Nonresidents (19).....	201
Residents (20).....	202
Receivers' Deeds (21) .....	202
Trustee—No recital of Powers (22).....	202
DEFENDANTS NOT NAMED IN THE ALTERNATIVE (23).....	202
FEDERAL AGENCIES:	
Land Bank Commissioner—Federal Farm Mortgage Corporation (24),	203
Home Owner's Loan Corporation (25) .....	203
FORECLOSURES:	
By Fiduciary (26).....	204
Certificate of purchase—not assigned (27).....	204
Satisfaction of mortgage by Clerk of Court (28).....	204
Tax Foreclosure—Sale of real estate (29).....	204
INHERITANCE TAXES:	
Filing of Finding—No tax chargeable (30).....	204
Decree of heirship and assignment of interest entered prior to find- ing (31) .....	205
INSTRUMENTS OUTSIDE CHAIN OF TITLE:	
Deed (32) .....	205
Mortgage (33) .....	205
JOINT TENANCY:	
How expressed (34) .....	206
What should be accepted as creating (35).....	206
Survivorship—Proof of death of a joint tenant (36).....	206
Taxability—Federal Estates Taxes (37).....	206



**MORTGAGES:**

Conveyances to mortgagee (38) .....	207
Deed in Satisfaction of Mortgage (39).....	207
Release—Errors in recitals (40).....	207
Unrecorded mortgage referred to in chain of title (41).....	208
Unreleased mortgages; Chapter 261, Laws 1945 (42).....	208

**OIL AND GAS LEASES:**

What requirement after primary or definite term has expired? (43) ..	208
Release—containing errors or irregularities (44).....	208

**PROBATE PROCEEDINGS UNDER CODE OF 1939:**

Affidavits of heirship prior to July 1, 1939 (45).....	209
Certified copy of decree or transcript to other counties (46).....	210
Children born or adopted subsequent to will (47).....	210
Closing estate—Time for filing claims expired (48).....	210

**Descent and Assignment of Interest:**

Interest of petitioner in property (49).....	211
--	-----

**Heirship:**

What facts to be shown? (50) (51).....	211
Partition suit as an adjudication of (52).....	212

**Notice:**

Description of real estate (53) (54).....	212
Sell, lease or mortgage—Should full description of property be given? (55) .....	212
Land in different counties; sale by administrator or executor at public auction (56) .....	213

**Title:**

Under partial distribution (57).....	213
Under foreign will (58).....	213

Witnesses to will (59) .....	213
------------------------------	-----

RIGHTS OF WAY AND ABANDONMENT (60).....	214
---	-----

**SOLDIERS' AND SAILORS' CIVIL RELIEF ACT:**

Judgments: What affidavits filed and orders entered (61).....	214
In what courts should provisions of act be followed (62).....	215

**TAX DEEDS:**

Recorded within statutory period—Should title be accepted? (63)....	215
Recorded—but no conveyance under it (64).....	215
Tax foreclosures (65) .....	215

**VACATION PROCEEDINGS:**

What should be shown on abstract? (66).....	215
---	-----

**VALIDATING STATUTES:**

When acceptable (67) .....	216
----------------------------	-----

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