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# TITLE NEWS



OFFICIAL PUBLICATION

The American Title Association



TITLE COURSE

Prepared by

Wm. GILL, Sr.



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NO. 4

## FOREWORD

This Title Course was prepared primarily for use of those engaged in the business of abstracting titles to real property within the State of Oklahoma. It must be remembered that Legislative Acts are often repealed or amended and new laws enacted. Supreme Court decisions likewise affect the practices of title companies. For these reasons abstracters must necessarily be familiar with Legislation and Court decisions affecting real estate titles. The abstracter must determine what matters affect the title and anything which does not affect the title should not be shown. It will therefore be noted that the title profession has an important role in all realty transactions, and the responsibility is by far greater than clerical.

June 1, 1946.

# **ABSTRACTING OF TITLES**

BY

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PREPARED FOR

OKLAHOMA TITLE ASSOCIATION



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# TITLE COURSE

## LESSON NO. 1

\* \* \*

### ORIGIN OF SURVEYS, ETC.

By adoption of the Constitution of the United States, all property located within the original colonies became the property of each state; therefore, there was no public land within the boundaries of the thirteen colonies.

All property of the thirteen colonies was described by "Metes and Bounds," the description usually running from the foot of some mountain or the mouth of some stream or a river bank, and many, many cases, commencing at a tree or a stump.

Later, as additional lands were acquired, the Government found it necessary to prepare for sale or settlement of various tracts known as public lands. These public lands had to be surveyed into smaller tracts suitable for sale, allotment and homestead.

In 1784 Continental Congress appointed a committee to devise a system of measurement. The first plan devised and used to some extent in Virginia, called for the subdividing of public lands into tracts 10 miles square. These 10-mile tracts were then subdivided into 100 smaller tracts numbered from 1 to 100 commencing at the Northwest corner and numbering to the east and then back West.

In 1785, at the suggestion of Thomas Jefferson, the Continental Congress reduced the unit of measurement to six miles each way. These new units were called "Townships" and the sections were numbered from 1 to 36, commencing at the Southeast corner, numbering West and then back East.

### THE RECTANGULAR SYSTEM

In 1805 the PRESENT SYSTEM known as the "Rectangular System" was adopted. This system was first used in the Northwest Territory and most of the Territory West of the Mississippi (except Texas) was surveyed in this manner. The surveying of all public lands is done by the GENERAL LAND OFFICE of the Government.

### HOW TO COMMENCE A SURVEY, et.:

In making a survey by the "Rectangular System" it is necessary to have a "Starting Point" and from such point a line is run due North to the North boundary line of the State, District or Territory to be surveyed. This North and South line is known as the "Prime or Principal Meridian"—in Oklahoma it is called the INDIAN MERIDIAN.

There is likewise established a "BASE LINE" running East and West, at approximately right angles.

Lines are next run North and South parallel with the Prime Meridian six miles apart, beginning at the Meridian. These lines mark the country off into strips six miles wide; each strip being known as a "RANGE." Ranges, either East or West, are numbered from the Principal Meridian.

After the Range lines are run, the East and West lines are established. The first line so run being the "BASE LINE," all East and West lines cross the Meridian at right angles. Every six miles contain East

and West lines and run parallel with the base line, cutting the ranges into sections, known as CONGRESSIONAL TOWNSHIPS, but referred to simply as "TOWNSHIPS." All Townships are numbered commencing with Number One both North and South of the base line. (See Plate 1.)

**OWING TO THE CURVATURE OF THE EARTH'S SURFACE** lines extending toward the MAGNETIC POLE become closer together. Therefore you can see the impossibility of running lines necessary, or township and range lines, which would make a square tract or contain the required area.

ALL TOWNSHIPS ARE NARROWER at the North side than the South side, the North end being approximately three rods or 49.5 feet narrower than the South end.

IN ORDER TO KEEP THESE LINES AS NEAR SIX MILES APART AS POSSIBLE, usually every 24 miles North from the base line a stop or correction line is established known as a "STANDARD PARALLEL" (or Correction Line). GUIDE MERIDIANS are likewise established at intervals of usually 24 miles. The survey is again moved over so that the North and South lines will be six miles apart.

After the establishment of a Meridian and a Base Line, and after Townships have been formed, it is then necessary to survey and number each Township into 36 Sections, containing approximately 640 acres each. These sections being numbered from One to Thirty-Six commencing with Number One of the NORTHEAST corner of the Township and numbered to the West and then back East. (See Plate 2.)

**ALL SECTIONS CANNOT CONTAIN 640 ACRES EACH** on account of the earth's curvature heretofore mentioned and ON ACCOUNT of the impossibility of absolute accuracy in surveying, and because the lines surveyed are not always parallel, a Township of more or less than 36 exact sections containing 640 acres each is produced.

**TO TAKE CARE OF THIS DISCREPANCY** the Sections on the North and West side of the Township contain an irregular number of acres known as "FRACTIONAL SECTIONS." Therefore we usually have a Township with 25 FULL Sections and 11 FRACTIONAL Sections.

THE 11 FRACTIONAL SECTIONS of a Township where fractional sections are caused by the curvature of the earth's surface and inaccurate surveys are SECTIONS 1 to 6 along the North side of the Township, and Sections 7, 18, 19, 30 and 31 along the West side of the Township. There is never a fractional section caused by the curvature or inaccurate survey any place EXCEPT along a Township or Range line. In a very few EXCEPTIONAL CASES it may so happen that fractional sections will border on the SOUTH or EAST side of a Township—this, however, is very rare. (See Plate 3.)

As Sections 1 to 6 contain more or less than 640 acres, it is surveyed to make 320 acres in the SOUTH HALF. The NORTH HALF is then divided so that the SOUTH HALF of the Northeast Quarter and the SOUTH HALF of the Northwest Quarter will each contain 80 acres. (See Plate 4 for plat of Section 1.)

THE REMAINING STRIP of land along the NORTH side of the Section is then divided into FOUR lots, each given a number; the acreage of each lot always being 40 acres, more or less, and ascertained by the Land Office. The Northeast lot numbered ONE and the remaining lots numbered TWO, THREE and FOUR, running to the West.

IN SECTIONS 6, 7, 18, 19, 30 and 31, the SURPLUS or DEFICIT acreage is placed in the WEST HALF of the Section along the West line of the Township and divided in the same manner as though it were along the NORTH line of the Township, EXCEPT the NORTHWEST lot is numbered ONE, and the remaining lots are numbered to the SOUTH. (See Plate 5 for plat of Section 7.)

SECTION 6, lying in the extreme Northwest corner of the Township, would therefore contain lots both along the North side and the West side.

IT HAS ALWAYS BEEN THE RULE of the surveyor to survey and establish as many 80 acre tracts as possible or practical in each Section.

A SECTION IS THE SMALLEST subdivision usually actually surveyed by the Government Surveyors, and at each Section corner is a MARKER known as "MONUMENT OF SURVEY." Sections, however, are DIVIDED into Quarter Sections containing 160 acres, etc., which will be discussed later under Descriptions.

**FRACTIONAL SECTIONS CANNOT BE DESCRIBED IN THE SAME MANNER AS A "FULL SECTION."**

TOWNSHIPS BORDERING ON OR CONTAINING Indian or Timber Reservations, National Parks, Townsites, Lakes or Rivers usually contain Fractional Sections caused by such reservation, lake or river taking out of the Public Lands irregular tracts and uneven acreage.

Perhaps the most pronounced or noticeable number of Government Lots occur along a river—many times a quarter section will contain as many as 12 or 18 lots—varying in size from a fraction of an acre up to 40 acres, more or less. (See Plate 6.)

**WHERE LOTS OCCUR ALONG A RIVER** occasionally such lots have been surveyed and designated as "Lot No.—on the North Bank" or on "the South Bank"—"East" or "West" bank of such river. This is caused by two different groups of surveyors working on the Survey—one group at one time and on one side of the river, and the other group later and on the side unsurveyed. (See Plate 7.)

**A MEANDER LINE:** A Meander Line is a Guide line run along a stream or body of water for the purpose of establishing the course of the bank of such stream or body of water and to procure data with which to plat fractional sections (Government Lots) and to compute the area thereof.

PLATE 1

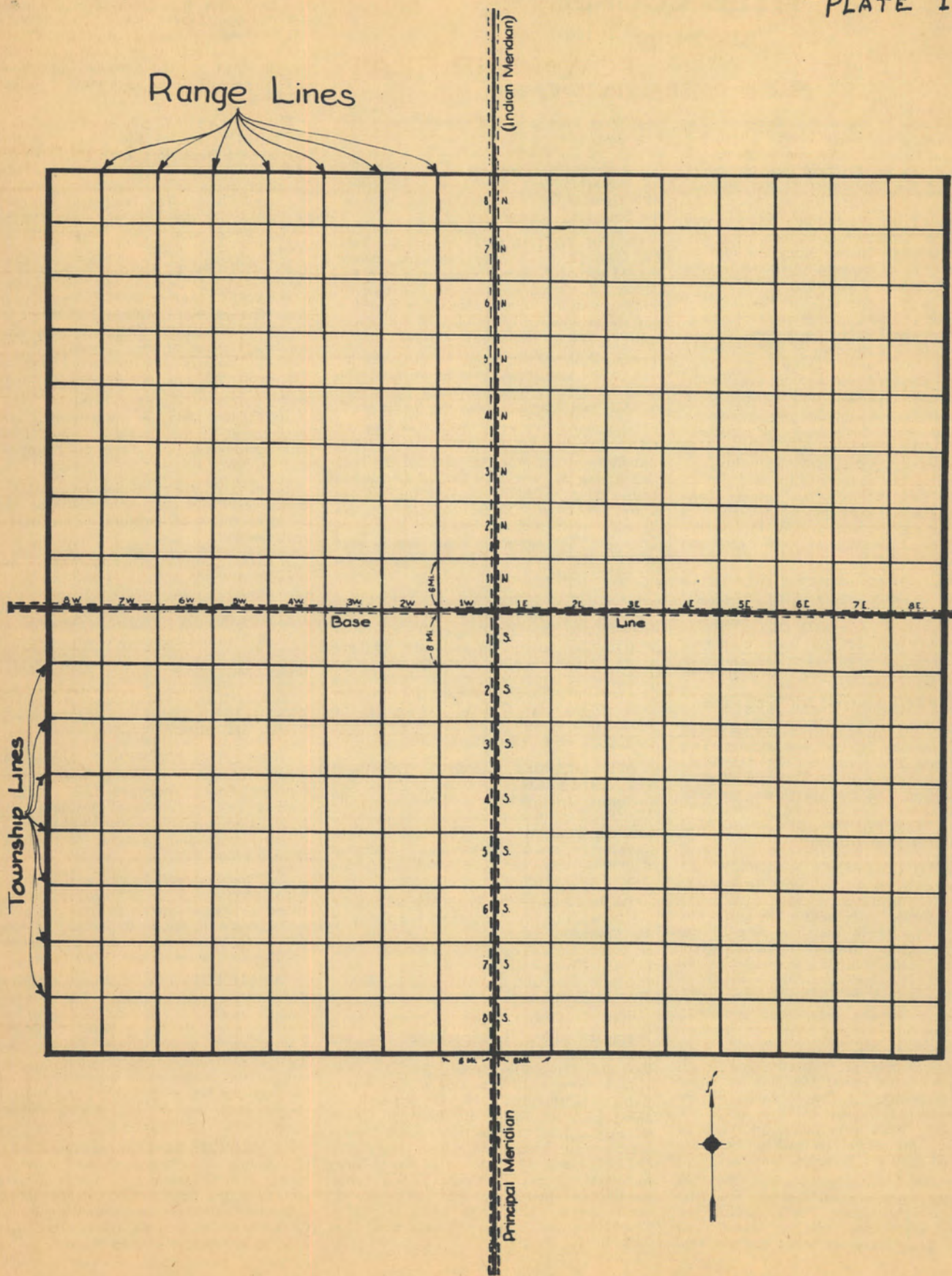


PLATE 2

# TOWNSHIP PLAT

County \_\_\_\_\_

Sec. \_\_\_\_\_ Township No. \_\_\_\_\_ Range \_\_\_\_\_ of \_\_\_\_\_ Principal Meridian  
NORTH

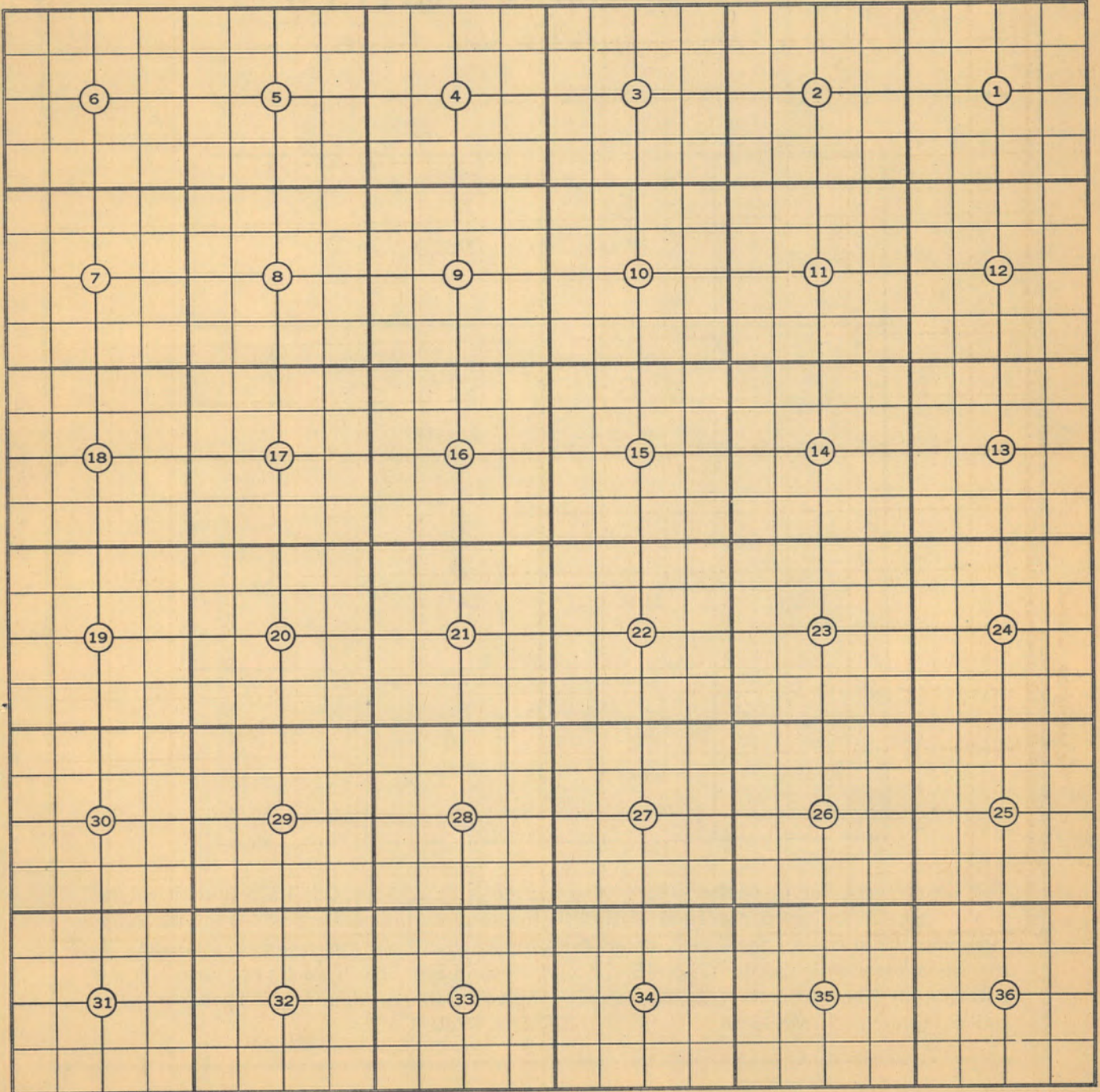


PLATE 3

# Sec. 36, T. 12 N., R. 1 W.

According to the Govt. Survey thereof

	5 42.48-A.	1 37.32-A.	
	6 42.49-A.	2 37.33-A.	
	639.56		
	7 42.50-A.	3 37.36-A.	
	8 42.51-A.	4 37.57-A.	

The Government Survey of the W $\frac{1}{2}$  of this section is dated Sept. 23, 1873 and shows the E $\frac{1}{2}$  of Sec. 36 as being a portion of the "Pottawottomie Indian Reserve"—not surveyed. However, the survey of the E $\frac{1}{2}$  is dated August 12, 1873. In this township lots occur in the same manner in Sections 12, 13, 24 and 25 as in Sec. 36. Lots also occur along the entire north and west side of the township. The east boundary line of the township is the Indian (principal) Meridian. THIS IS INDEED A RARE CASE.

# Sec. 1 Twp. 13 N., Range 1 E.

PLATE 4

Lot 4 40.70-A	Lot 3 40.50-A	Lot 2 40.30-A	Lot 1 40.10-A





# Sec. 7 Twp. 13 N., R. 1 E.

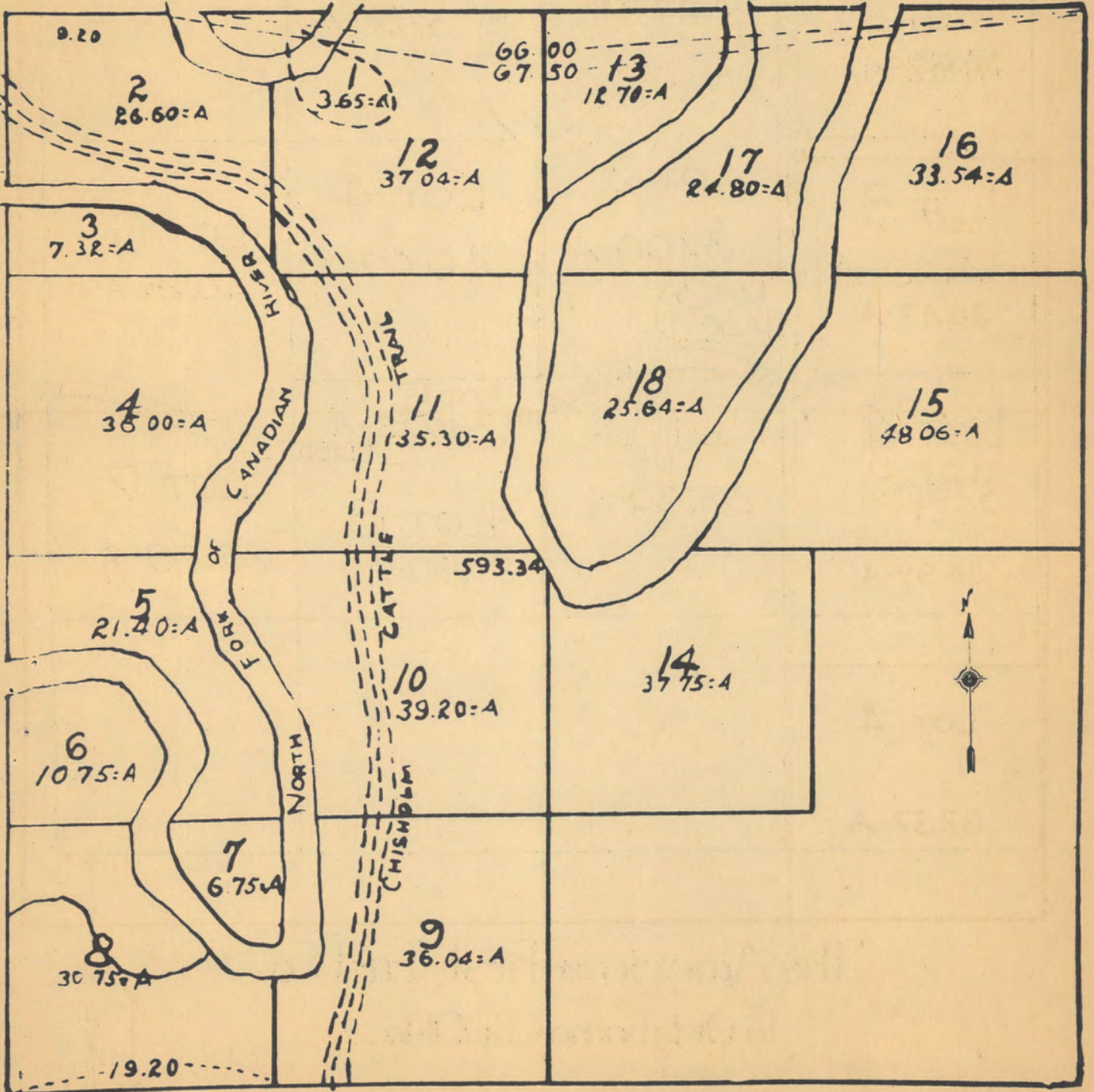
PLATE 5

LOT 1 36.02-A		
LOT 2 36.47-A		
LOT 3 36.92-A		
LOT 4 37.37-A		

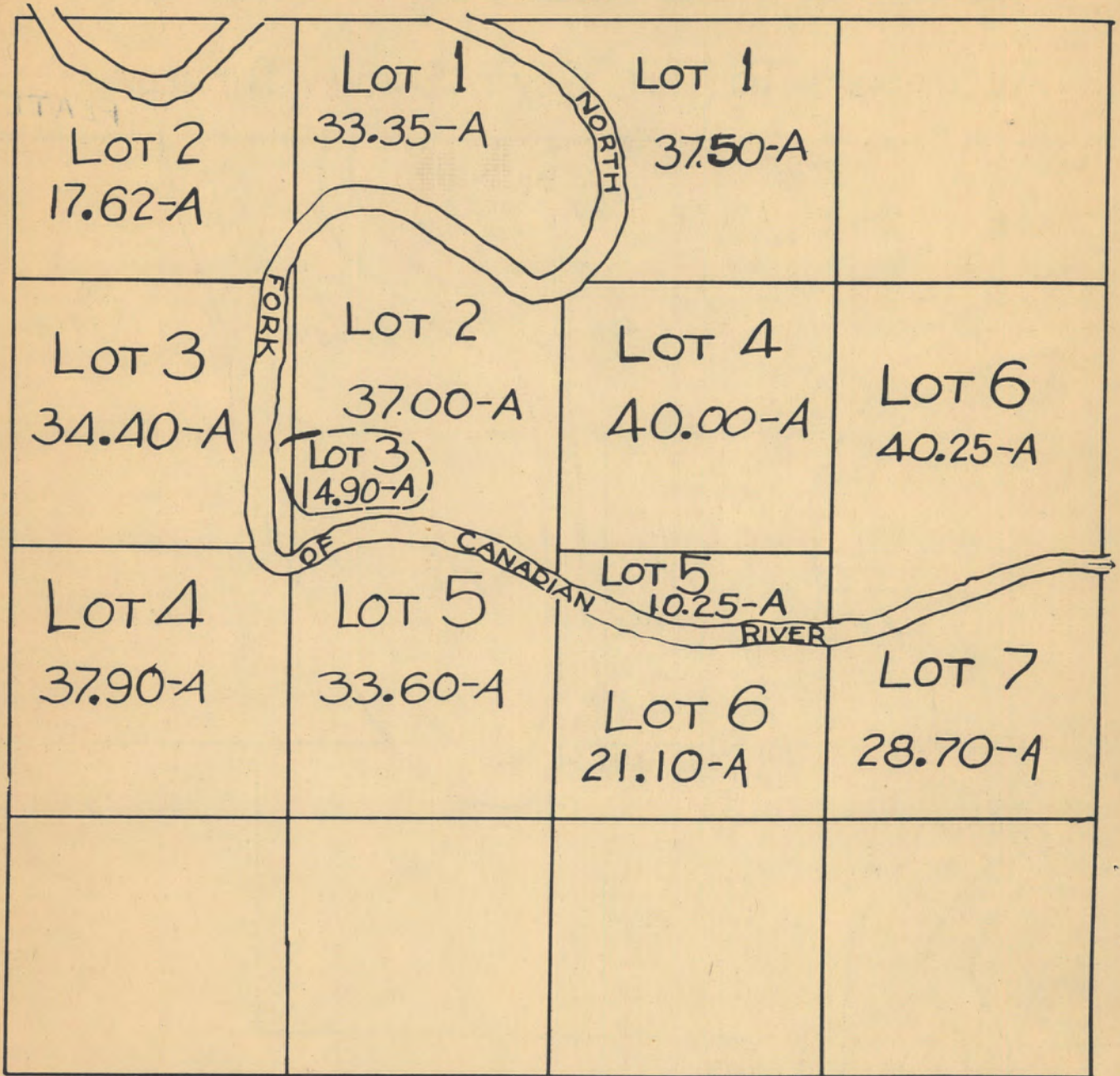


# Sec. 31 T. 12 N., R. 3 W.

ACCORDING TO THE GOVT. SURVEY THEREOF PLATE 6



# Sec. 21 Twp. 12N., R. 1E.



The American-First Trust Co.  
In Oklahoma City, Okla.



THE ACREAGE OF GOVERNMENT LOTS is not computed by the surveyor "on the ground" and such "guide line" is very essential and necessary for this purpose.

Quite often you encounter a description which follows the MEANDER of a Stream, merely meaning "a general direction along a meander line." A Meander line has been held **not** to be a boundary line but merely a guide line.

THE GENERAL RULE of the Land Department is to establish this **Meander Line** at "**MEAN HIGH WATER MARK**," meaning according to some Court Decisions, to be a line which lies beyond the part wrested from vegetation.

THE RIVER BED of a non-navigable stream is presumed to belong to the adjacent property owner and if the course of the river changes, and the **change is gradual**, the Riparian owner follows the stream in its change.

\* \* \*

THE LAND WITHIN THE STATE OF OKLAHOMA is a portion of the land acquired by the Government from France in 1803, known as the "Louisiana Purchase" and was principally disposed of in the following manner:

**(EASTERN OKLAHOMA OR THE INDIAN TERRITORY.)** Oklahoma admitted to Statehood, November 16, 1907.

1. By Patent to Members of the Various Indian Tribes and Negro Freedmen: (Homestead, Surplus and Fractional Allotments.)
2. Indian Reservations, Military and University Grants.
3. Government Townsites.
4. Government Unallotted Land Sales.
5. Government Segregated Coal Land Sale. (All Asphalt and Coal Reserved for the Indian Tribe.)

**(WESTERN OKLAHOMA OR OKLAHOMA TERRITORY.)**

1. In 1889 five Counties of Central Oklahoma, including Oklahoma County were thrown open for settlement and homestead upon the payment of \$1.25 per acre and certain residential requirements. The Government Patent was issued at subsequent dates to the settlers meeting the requirements. Other sections of Western Oklahoma were opened for settlement in similar manner.
2. Sections 16 and 36 in every Township in Western Oklahoma, and all indemnity lands in lieu of Sections 16 and 36 theretofore selected, were given to the State of Oklahoma for the use and benefit of the public common schools. Excepting therefrom any such Sections embraced in permanent Indian, Military, Park or other Government Reservations, and excepting such sections previously owned by any Indian Tribe or member thereof or previously homesteaded.
3. Government Townsites.
4. Indian Reservations, Patents to Members of Various Indian Tribes, Timber Reservations, Military Reserves and Public Parks all operated and supervised by the Government, and University Grants by the Government which are in addition to the common school lands.

## LESSON NO. 1—QUESTIONS

- (1) By what name is our present system of survey known? When was it adopted?
- (2) What branch of the Government has charge of the surveying of public lands?
- (3) What is a Prime or Principal Meridian?
- (4) What is the Indian Meridian?
- (5) Define a Base Line?
- (6) What is a Range? How numbered?
- (7) What is a Township?
- (8) How are Townships numbered?
- (9) Why are all Townships narrower at the North side than the South side?
- (10) What is the difference in width between the North and South sides of a Township?
- (11) How often are Correction Lines established?
- (12) What is a Standard Parallel?
- (13) Define a Guide Meridian.
- (14) How many Sections are in a Township? How are they numbered?
- (15) What is the acreage of each Section?
- (16) What Sections contain more or less than 640 acres? Why?
- (17) Define a Government Lot.
- (18) How are Government Lots numbered in Sections 1 to 6? In Sections 7, 18, 19, 30 and 31?
- (19) What is the smallest subdivision usually surveyed by the Government?
- (20) What is a "Monument of Survey"?
- (21) What causes a Fractional Section other than curvature of the earth's surface and errors in surveying, and what is the most common cause?
- (22) In a Section where a river occurs, can you have more than one Government Lot with the same number? Why?
- (23) Define a Meander Line.
- (24) For what reason is a meander line established?
- (25) In what manner is the acreage of Government Lots computed?
- (26) What is meant by a "Mean High Water Mark"?
- (27) When and in what manner was the territory within the State of Oklahoma acquired?
- (28) Name the two territories of Oklahoma prior to Statehood.
- (29) Give the date of Statehood.
- (30) Give at least four ways the Government used in disposing of land in Eastern Oklahoma.
- (31) In what manner did the Government dispose of land in Oklahoma Territory?

## LESSON NO. 1—ANSWERS

- (1) The Rectangular System. Year 1805.
- (2) General Land Office.
- (3) A North and South dividing line (a starting point for surveying purposes) is a Prime or Principal Meridian.
- (4) The North and South dividing line in Oklahoma is known as the Indian Meridian.
- (5) Every six miles running East and West, at approximately right angles with the Prime, Principal or Indian Meridian, are run lines known as the Base Line.
- (6) Each six-mile strip described in Answer 5 constitutes a Range. Ranges are numbered both East and West (for example, Range 1 East, 2 East, etc., and Range 1 West, 2 West, 3 West, etc.).
- (7) East and West lines are likewise run every six miles. These lines are known as "Township lines"—the six-mile square thus created by the running of North and South and East and West lines is called a Township.
- (8) All Townships are numbered commencing with Number 1 both North and South of the base line.
- (9) The curvature of the earth's surface prevents all lines from being exactly six miles apart. North and South lines become closer together as you go toward the magnetic pole (North).
- (10) Approximately 49.5 feet or 3 rods narrower on the North end.
- (11) Usually every 24 miles.
- (12) A correction line is known as a "standard parallel."
- (13) A "Guide Meridian" is a line established usually every 24 miles. (Note: Where the correction line or Standard Parallel intersects with a Guide Meridian is the new survey starting point.)
- (14) 36, 1 to 36 commencing with No. 1 at the Northeast corner of the Township and numbered to the West and then back to the East, etc.
- (15) Approximately 640 acres.
- (16) Sections 1 to 6, and Sections 7, 18, 19, 30 and 31 (or Sections bordering along the North and West side of a Township). Errors in survey and the curvature of the earth's surface prevent all sections being "full sections."
- (17) A Government Lot is a tract of land containing 40 acres more or less.
- (18) Government lots in Sections 1 to 5 are numbered from East to West, Lot 1 being in the extreme Northeast corner of the Quarter Section, Section 6 lying in the extreme Northwest corner of a Township contains lots along both the North and West sides, and Government lots in Sections 7, 18, 19, 30 and 31 are numbered commencing with Lot 1 in the extreme Northwest corner of the Section and remaining lots numbered South.
- (19) A Section.
- (20) A "Monument of Survey" is a marker set at each Section corner by the surveyor.
- (21) Townships bordering on Indian or Timber Reservations, National Parks, Townsites, lakes and rivers usually cause Government lots.
- (22) Yes. One group of surveyors may survey down to a river and another group survey up to the river from the other side, thus each group will number the lots surveyed by each on the side of the river where such group is working. Therefore you have Lot No.—on the East Bank or West Bank, etc.

*What is NW cor 300. lot in Sec 6 Numbered (4 or 1)*

(23) A "Meander Line" is a Guide line run along a stream or body of water for the purpose of establishing the course of the bank.

(24) It is established for the purpose of securing data to determine the acreage of Government lots—the surveyor cannot actually and physically survey to the center of a river or even along the rugged banks—therefore he sets up a "Meander" or guide line.

(25) Computed in the General Land Office from data furnished by the surveying crews. At least it is not computed "on the ground" but later from notes and data secured by the surveyors.

(26) A "mean high water mark" is a line which lies beyond that part wrested from vegetation.

(27) By purchase from France in 1803.

(28) Oklahoma Territory and Indian Territory.

(29) November 16, 1907.

(30) Any four of following: By patent to members of various Tribes of Indians or Negro freedmen; Indian Reservations, Military and University Grants; Government Townsites; Unallotted Lands; Segregated Coal Lands.

(31) Homesteading by original settlers; University grants; Indian, Military, Park or other Government Reservations; Gifts to Indian Tribes and by patents to members of such Tribes; Government Townsite.

# TITLE COURSE

## LESSON NO. 2

\* \* \*

### PLATTING OR SUBDIVIDING LAND INTO LOTS, BLOCKS, ETC.

Much that is applicable to the survey of farm land likewise applies to the subdivision of land into blocks or town lots. The main essentials are:

**FIRST:** A definite starting point, clearly set out, with the corners marked accurately with permanent "Monuments" set out on the plat. The plat corners must accurately fit the tract of land.

**SECOND:** A careful and accurate survey of the tract into streets, parks (if any parks), lots, alleys, and the placing of permanent stones or iron stakes at the corner of all blocks, and smaller stakes at the corners of lots.

**THIRD:** The platting of the subdivision on paper, showing all blocks, lots, streets, alleys, parks, etc., the exact size or dimension of each lot, block, alley or street and any other information which in after years may be of assistance in definitely locating any property in the subdivision. (See Plate 8.)

The plat must be executed and acknowledged by the owner and streets dedicated to the public. If the property is within three miles of the city limits, the plat must be approved by the Planning Board, and the City Council, and the County Engineer, before filing in the office of the County Clerk. In some localities a bonded abstractor's certificate certifying to the record ownership, liens, right-of-ways, easements, encumbrances, and unpaid taxes, if any, is also required.

**AFTER THE PLAT IS ONCE FILED AND THE STREETS ARE DEDICATED TO THE PUBLIC,** there is no way of ever rescinding or vacating the plat, without 100 per cent of the property owners in the addition joining in the vacation, or except by suit filed in the District Court, asking for a cancellation or vacation of the plat in which case service, as required by the statute relative to the vacation of plats, is had upon all lot owners.

**A STREET WHEN ONCE DEDICATED is always subject to reopening** upon application of 51 per cent or more of the property owners abutting upon said street within one block in either direction or if the City Council deems it necessary to the best interest of the public it **may be ordered reopened without expense** to the city. Any alley may be closed or reopened by ordinance passed by the City Council, either upon application of property owners or otherwise.

**MANY PLATS CONTAIN RESTRICTIONS** against the kind of building to be erected upon the addition or parts thereof, the cost, the size and the distance the improvements must be set back from some particular lot line, etc., or restrictions against Negro occupancy or ownership. These restrictions are put in the plat for the protection of future owners and **cannot be waived EXCEPT** in the manner set out in the plat. In the absence of any provisions permitting the change of restrictions, the approval of any change must be secured by **100 per cent**

**of the property owners in the addition—** not in a particular block.

**IT IS GENERALLY AGREED, HOWEVER,** that the Planning Board has authority to designate any section of the city (REGARDLESS of the provisions or restrictions in a plat) as a "Business Section," "Apartment, Duplex or Residence Section," etc., subject to the general rule that the Board may impose restrictions additional to those in the plat, but ordinarily can not lessen the plat restriction.

Original additions or parts thereof are often times later resubdivided or amended. The size of the lots are changed or made to face a different direction, etc. An amended plat or resubdivision of **less than the entire original addition,** however, will not have the effect of waiving or changing the restrictions in the original plat. (See Plate 9.)

The legality of such replats, amended plats, or resubdivisions is often questioned by the attorneys, and frequently a lot will be described in more than one way or a metes and bounds description used to cure such objection.

**AN UNRECORDED PLAT:** An unrecorded plat is a plat of a subdivision or addition which has not been recorded in the County Clerk's office. Before approving a plat the Planning Board and the City Council sometimes require that the owner dedicate or deed to the City approximately 5 per cent of the area platted for park purposes. The Oklahoma courts have not passed upon the legality of such a requirement, but since this is the practice in Oklahoma City, lots are sometimes sold "according to an unrecorded plat." This practice in Oklahoma County has been curtailed, however, since the passage of the Regional Planning Board Act in 1943, applicable only to that county, which, among other things, prohibits recording a conveyance to less than five acres unless a plat has been approved by the Planning Board and recorded.

**DESCRIPTIONS:** A description is a statement of the land involved in a real estate transaction.

Every description should be definite enough to permit the surveyor to accurately locate the property described from the description itself without referring to the boundary line of any other piece of property and should be so clearly set out that there will be no doubt whatever as to the exact location of the property intended to be described.

The main object of a description is to furnish means of identification, and when the description is sufficient to enable the surveyor to locate the property with absolute certainty, **it is a sufficient description.**

It has long been the custom of most everyone conveying property or preparing real estate instruments to follow the description given in former deeds, and unless a description is very certain and definite, it may be almost impossible to locate the property 20 or 30 years hence.

A DESCRIPTION of a tract or parcel of land included in a plat or a Government or official survey, where possible, should always include the words "according to the recorded plat thereof" or "according to the official or Government survey thereof." When this is done, the plat or official survey, actually becomes a part of the description with reference to location, notes, lines, land marks, monuments, etc., as complete as if the plat, survey, field notes, etc., were actually incorporated in the deed. It sometimes happens that errors are made in plats, and when this happens the actual survey takes precedence, if there is a conflict between the plat and survey.

The following table will be very helpful when checking or preparing descriptions:

1 vara:	33 1/3 inches.
1 link:	7.92 inches.
1 rod:	16.5 feet.
1 chain:	66 feet or 4 rods or 100 links.
1 mile:	5,280 feet or 80 chains or 320 rods.
1/2 mile:	2,640 feet or 40 chains or 160 rods.
The length and breadth of a 40-acre tract is	1,320 feet or 20 chains or 80 rods.
The length and breadth of a 10-acre tract is	660 feet or 10 chains or 40 rods.
The width of a 5-acre tract would be	330 feet or 5 chains or 20 rods.
One acre contains	43,560 square feet.
One acre is approximately	208 3/4 feet square.

**GENERALLY, DESCRIPTIONS MAY BE CLASSIFIED IN THE FOUR FOLLOWING WAYS:**

**FIRST:** "A RECTANGULAR OR GOVERNMENT SURVEY" description being a subdivision of a section or a government lot located within a subdivision of a section and generally referred to as a "Farm land" description.

**SECOND:** "LOT AND BLOCK" descriptions which are according to a plat or map. The quantity or size of the tract conveyed is determinable only by reference to some map or plat which may or may not be recorded.

**THIRD:** "METES AND BOUNDS" description, "METES" are measures of length, inches, feet, yards, rods, chains, or links. "BOUNDS" are boundaries both natural and artificial. "METES" determine a certain quantity of land, such as square feet, square rods, acres, etc. "BOUNDS" confine that quantity within certain fixed limits. Hence the use of the statement of "by metes and bounds" has the meaning of limitation, that is, it fixes definitely the contents and the limits of a piece of land.

A less complicated definition is "a description commencing at a certain fixed point and going to another given point and following all boundary lines of the tract or parcel of land conveyed."

**ANGLES:** This is probably the most confusing part of descriptions generally, as few persons clearly understand the angle or the direction of lines. Following you will find three diagrams that will hereinafter be referred to as Diagrams Nos. 1, 2 and 3.

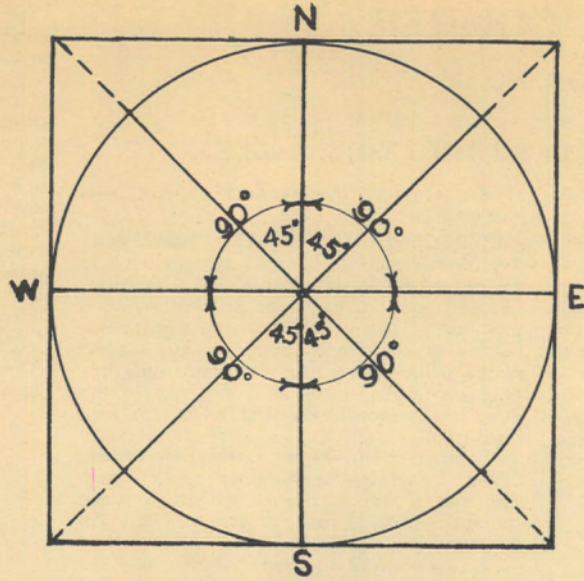


Diagram 1.

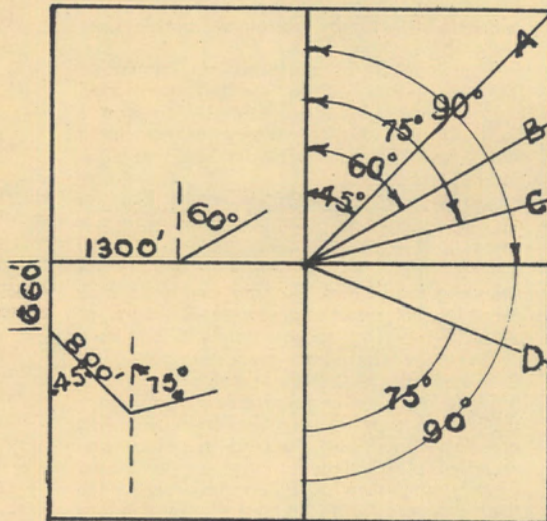


Diagram 2.

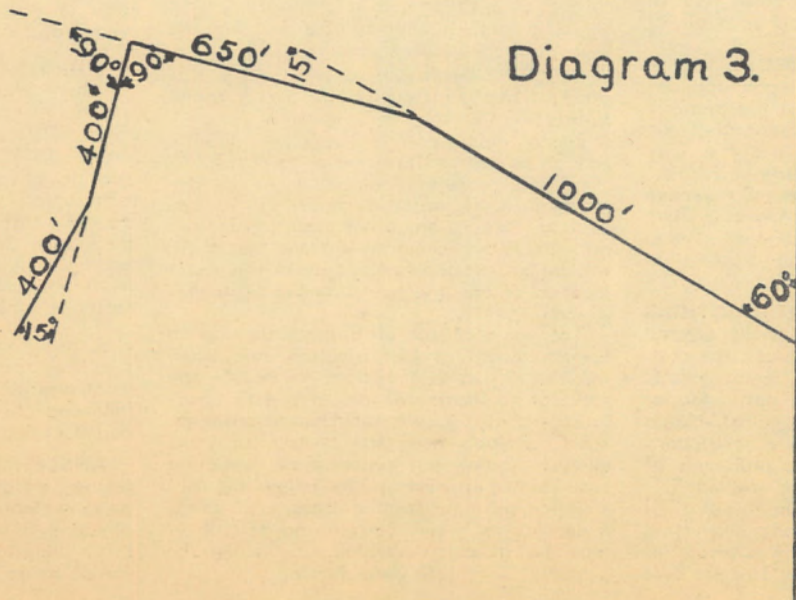


Diagram 3.

Angles are used in descriptions where the lines do not run due North, South, East or West. Such angles are measured by degrees, minutes and seconds, and are divisions of the circumference of a circle containing 360 degrees. Each degree contains 60 minutes and each minute 60 seconds. Even though we frequently encounter minutes and seconds in descriptions they are of such small variance that they are of little importance to title men in the drawing of a metes and bounds description, therefore we shall deal only in degrees. By dividing a circle in four equal parts, by two lines running in opposite directions we make four right angles. A right angle contains 90 degrees. To make this more clear, see Diagram 1. This diagram is a circle superimposed upon a section of land, using the center of the section for the center of the circle. Most angles in descriptions are measured from a true meridian. As you know, a true meridian is a line running due North and South. For example, let's take the line running through the center of the NE 1/4 in Diagram 1. It would be described as: "Beginning at the center of the section and running thence **NORTH** 45 degrees East." The line through the NW 1/4 would be: "Thence North 45 degrees West." In each instance the angle is measured between the meridian and the line drawn. Let's take the line through the SW 1/4. In this instance we have passed the line that would ordinarily be termed the base line, and the lines run in a Southerly direction, therefore it would be described as: "Thence **SOUTH** 45 degrees West." The line in the SE 1/4: "Thence South 45 degrees East. Even though the angles in each instance between the base line and the line drawn are equal to the angles between the meridian and the line drawn we still measure the angle between the meridian and the line drawn, and not the angle between the base line and the line drawn. This is due to the methods of survey, whereby angles are determined from a compass.

For further examples take the lines A, B, C, and D in Diagram 2. Line A: Thence North 45 degrees East. Line B: Thence North 60 degrees East. Line C: Thence North 75 degrees East. Line D: Thence **SOUTH** 75 degrees East.

In many descriptions we frequently encounter angles where we do not have a section line for a meridian. For example, take the lines in the NW 1/4 of Diagram 2. This line would be described: "Beginning at the Southwest corner of the NW 1/4; thence East 1,300 feet; thence North 60 degrees East." In this description it is necessary for us to take the point where the angle begins and draw an imaginary meridian due North and South so that we may measure our angle. Another example in the Southwest Quarter of Diagram 2. "Beginning at the NW corner of the SW 1/4; thence South 660 feet; thence South 45 degrees East 800 feet; thence North 75 degrees East."

It is never the worry of an abstractor to write descriptions with 10 angles, for that can be done only by a surveyor on the land, but it becomes necessary for an abstractor to draw a plat frequently of a description that contains angles. So therefore he should equip himself with a protractor, which is an instrument for measuring angles. It is a half circle divided in degrees from 1 to 180.

Frequently we encounter another type of angle, which is still on the same principle, yet not measured from lines running in true directions, but measured between the extension of the last described line and the next line to be described. See Diagram 3. A description of Diagram 3 will no doubt be self-explanatory: "Beginning at a point on the East line of the Section; thence North 60 degrees West, for a distance of 1,000 feet; thence deflecting to the left, on an angle of 15 degrees, from the last mentioned course, for a distance of 650 feet; thence to the left on an angle of 90 degrees, from the last mentioned course, for a distance of 400 feet; thence deflecting to the right on an angle of 15 degrees, from the last mentioned course, for a distance of 400 feet."

To make more clear the meaning of "to the left and right," you must place yourself, imaginarily, upon the line that you are drawing. And when you get to a point where you deflect to the left or right, imagine yourself standing there looking in the direction that the line would go if extended, then "to the left" would be on your left side, etc.

**FOURTH:** Description by "Monuments." "Which may also, at least partially, include a metes and bounds description." A monument may be defined as a "**LANDMARK WHICH IS USED FOR THE PURPOSE OF INDICATING A BOUNDARY OF A PARCEL OF LAND.**" It may be either natural or artificial.

"Natural Monuments" are rivers, lakes, streams, trees, mountains, rocks or springs.

"Artificial Monuments" are landmarks or signs erected by human means, such as a fence, wall, house, street, alley, post, stakes, canal or drainage ditch.

A monument may consist of an "imaginary line" caused by a produced street or alley or the intersection point of two produced streets, etc.

This is the most dangerous of all descriptions, the danger of which becomes apparent in after years when it is found that rivers change their course; lakes, streams and even mountain boundaries may change in time; trees will be cut or blown down; fences, walls, houses, posts and stakes are easily moved; canals and drainage ditches may be filled in; streets may be closed, widened or the names changed.

**LESSON NO. 2—QUESTIONS**

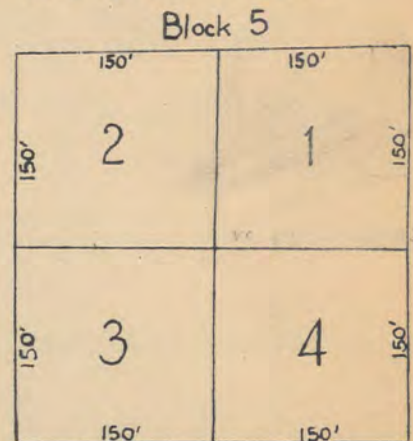
- (1) Name the main essentials of platting a subdivision of land.
- (2) What official approval must be obtained before filing the plat?
- (3) What is required of the owner of a subdivision before filing the plat with the County Clerk?
- (4) In what manner may a plat be vacated?
- (5) What is the procedure, and who has authority to re-open a street once dedicated?
- (6) What is meant by "dedicating a street"?
- (7) Explain the purpose of a "restriction."

- (8) Name three common restrictions usually found in a plat.
- (9) In what manner may restrictions be changed?
- (10) Define an "unrecorded plat."
- (11) What is a "description"?
- (12) What constitutes a "sufficient description"?
- (13) When should the word "according to the official or Government survey thereof" be used, or "according to the recorded plat thereof"?
- (14) What is the effect of inserting the above statement in a conveyance?
- (15) Give four general classifications of descriptions.
- (16) Define a "Metes and Bounds description."
- (17) Define Monuments. Give the two classifications of monuments and name five of each class.

**PROBLEMS**

(18) Plat the following descriptions and write a description (in the space provided below) for the remaining portion undscribed.

- (1) S 50' of N 100' of W 140' of Lot 1.
- (2) E 10' of N 100', Lot 1.
- (3) S 15' of E 130', Lot 1.
- (4) N 35' of S 50' and S 15' of W 20' of Lot 2.
- (5) W 50' of N 100', Lot 2.
- (6) E 100' of W 140', Lot 2.



Remaining part of Lot 1, Block 5, describe as follows:

- (1) \_\_\_\_\_
- (2) \_\_\_\_\_
- (3) \_\_\_\_\_

*More detail on restrictions  
What about time limits  
What is meant by "run with the land"*



Remaining of Part of Lot 2, Block 5, describe as follows:

- (4) \_\_\_\_\_
- \_\_\_\_\_
- (5) \_\_\_\_\_
- \_\_\_\_\_
- (6) \_\_\_\_\_
- \_\_\_\_\_

(19) Locate on the Plat the following description:

COMMENCING at the SW corner of Lot 3, go North 50' East 80', North 10', East 65', South 40', East 5', South 10', West 150'.

(20) Write a description for the center 37 feet of Lot 4 (being 37' North and South, and 150' East and West):

- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

**LESSON NO. 2—ANSWERS**

(1) A definite starting point with corners accurately and permanently marked; a survey of the tract into streets, parks, if any, lots and alleys with permanent marks; a plat showing all blocks, lots, streets, etc., with exact size or dimensions.

(2) The planning board and city council or the city engineer, with the exception of Oklahoma County which by special statute comes under the Regional Planning Board.

(3) The plat must be executed and acknowledged by the owner and the street dedicated to the public and approved as outlined in answer No. 2.

(4) Upon approval of 100% of the property owners or by suit filed in the District Court asking for cancellation and vacation of the plat.

(5) A street may be opened upon application of not less than 51% of the abutting property owners or by the city council.

(6) A dedicated street means a street given to the public.

(7) The purpose of a restriction is to prevent future owners from doing the things prohibited or restricted in the plat.

(8) Common restrictions are the kinds, costs and size of buildings; the distance the improvements must be set back from the lot line; restrictions against Negro occupants or owners.

(9) Restrictions cannot be waived except in the manner set out in the plat or by consent of 100% of the property owners in the addition.

(10) An unrecorded plat is a plat not placed of record.

(11) A description is a "statement of the land involved in a real estate transaction."

(12) A description is deemed a "sufficient description" when the description is sufficient to enable the surveyor to locate the property with absolute certainty.

(13) When describing property surveyed by the Government (ordinarily farm-lands), add the words "according to the official or Government survey thereof." In describing property included in a plat, add the words "according to the recorded plat thereof."

(14) The effect of using the wording mentioned in answer No. 13 is that the plat or survey is actually incorporated in the deed.

(15) A rectangular or government survey description; a lot and block description; a metes and bounds description; a description by monuments.

(16) A metes and bounds description is merely a description which furnishes definitely the contents and the limits of a particular piece of land.

(17) A monument is a land mark used for the purpose of indicating a boundary of a parcel of land. The two classifications are "natural" and "artificial." Natural monuments are rivers, lakes, streams, trees, mountains, rocks and springs. Artificial

monuments are land marks or signs erected by human means—a fence, wall, house, street, alley, posts, stakes, canal or drainage ditch.

(18) A metes and bounds description could be used—the remaining portion might be described several ways. Suggested descriptions are as follows:

(1) Description of remaining portion could be described as the East 10' of lot 1 and the North 50' of the West 140', and South 50' of the West 140'.

(2) Description of remaining portion is the West 140' and the South 50' of the East 10' of Lot 1.

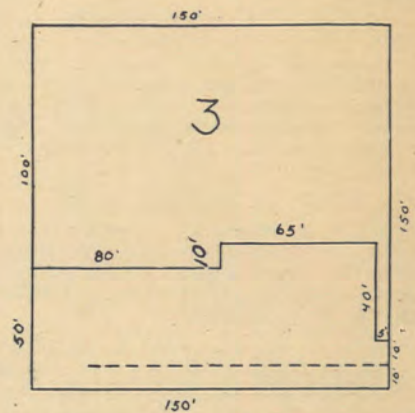
(3) Description of remaining portion is the West 20' and the North 135' of the East 130' or it could be described as the North 135' and the South 15' of the West 20' of Lot 1.

(4) Description of remaining portion is the North 100' and the East 130' of South 15' of Lot 2.

(5) Description of remaining portion is the East 100' and the West 50' of the South 50' or it might be described as the South 50' and the North 100' of the East 100' of Lot 2.

(6) Description of the remaining portion would be the East 10' and the West 40' of Lot 2.

(19)



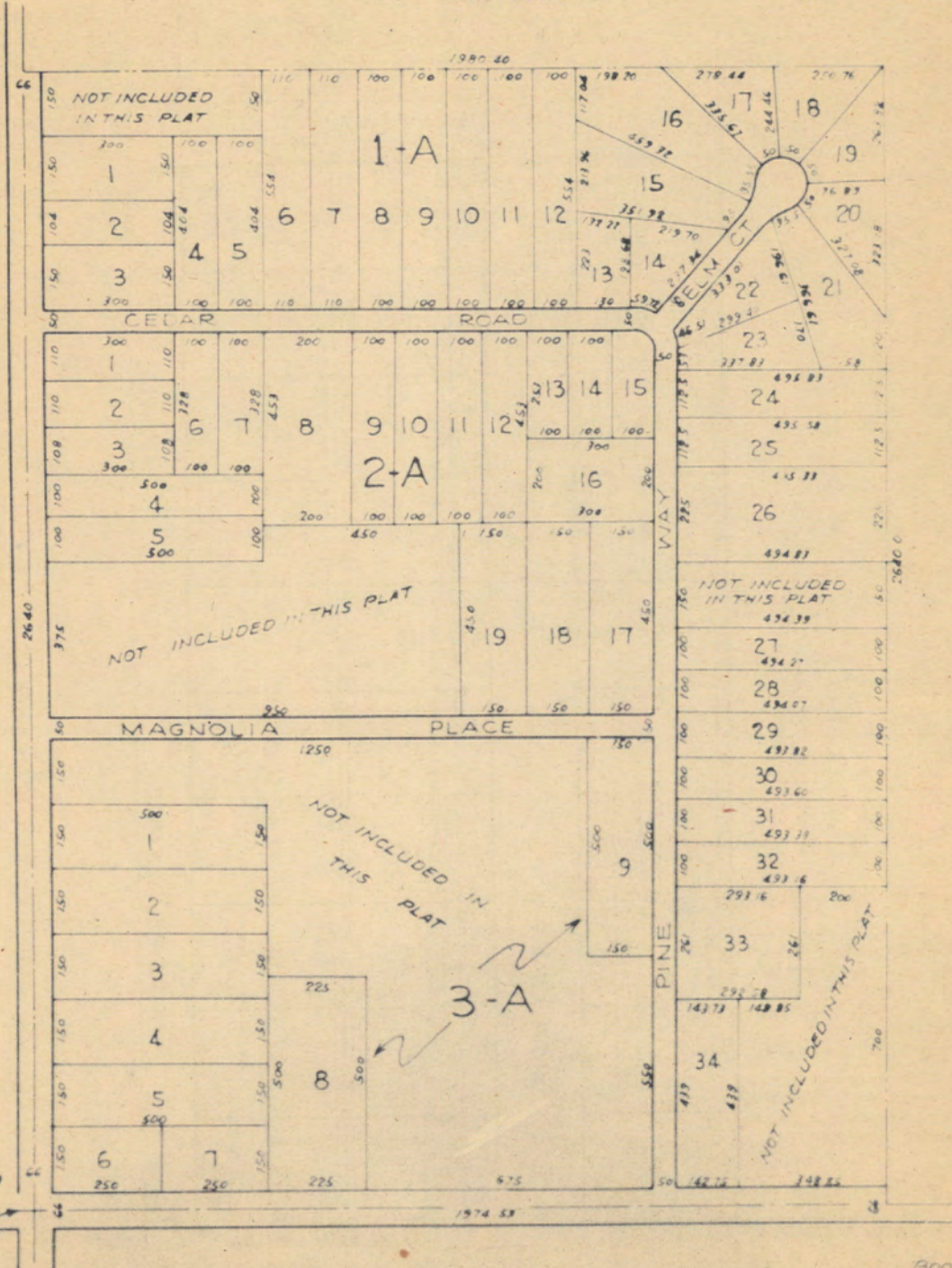
(NOTE: By reason of an erroneous description the South side of the tract described is 10' North of the South boundary line of block 3.)

(20) A description of the center 37' of Lot 4 could be either the North 37' of the South 93.5' or the South 37' of the North 93.5'. This 37' may be also described by metes and bounds.

PLATE 8

PROSPERITY ACRES

A SUBDIVISION OF THE  
W 1/2 OF SW 1/4 & W 1/2 OF E 2 OF SW 1/4 OF SEC 20-T11N-R2W  
— OKLAHOMA COUNTY —



S.W. Cor. Sec. 20  
T11N-R2W

Entry No.

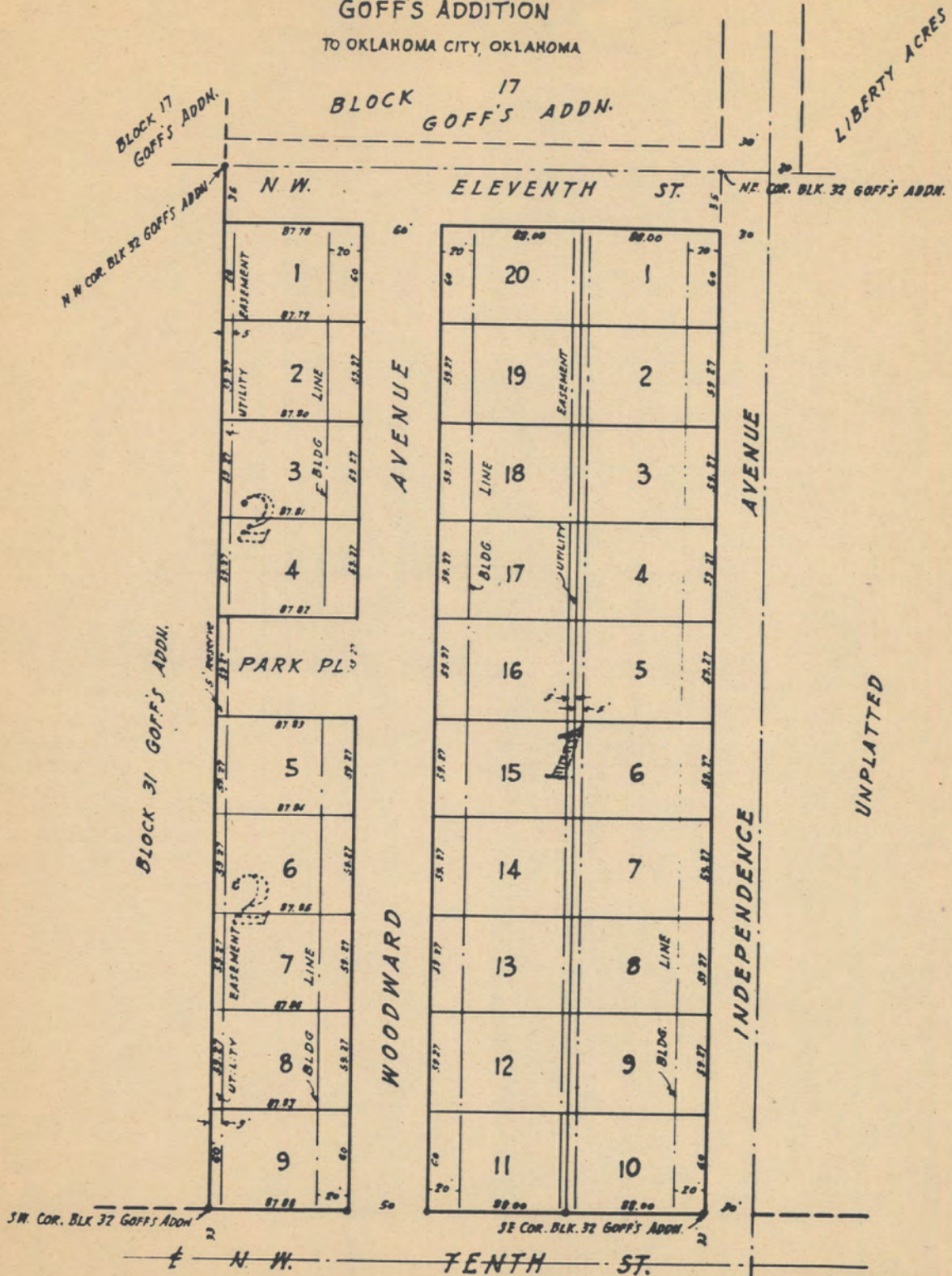
AMERICAN FIRST TRUST COMPANY  
IN OKLAHOMA CITY

Book Page

8

PLATE 9

SUBDIVISION OF  
 BLOCK (32) THIRTYTWO,  
 GOFF'S ADDITION  
 TO OKLAHOMA CITY, OKLAHOMA



BOOK 24 PAGE 29

ENTRY NO

American-First Trust Company  
in Oklahoma City

# TITLE COURSE

## LESSON NO. 3

\* \* \*

### DESCRIPTIONS ACCORDING TO THE RECTANGULAR SYSTEM:

Are simple and easy when once thoroughly understood. As heretofore explained, the smallest subdivision actually surveyed by the Government is usually a section—when describing a section or subdivision thereof, in addition to the section number there must be added the township and range number and whether North, East, South or West, etc. Keep in mind that the top of the section is always North and then divide the section into four quarter sections, viz: NE $\frac{1}{4}$ —NW $\frac{1}{4}$ —SE $\frac{1}{4}$ —SW $\frac{1}{4}$ . This gives you 160-acre tracts. 80-acre tracts would be the North, East, South or West  $\frac{1}{2}$  of the 160-acre subdivision above given. If 40-acre tracts are desired, divide the 160-acre tract into 4 quarters, viz: NE $\frac{1}{4}$  of NE $\frac{1}{4}$ ; NW $\frac{1}{4}$  of NE $\frac{1}{4}$ ; SE $\frac{1}{4}$  of NE $\frac{1}{4}$  and SW $\frac{1}{4}$  of NE $\frac{1}{4}$ . If 10-acre tracts are desired, the same process is used in dividing the 40-acre tracts which would give you: NE $\frac{1}{4}$  of NE $\frac{1}{4}$  of NE $\frac{1}{4}$ , etc. If 5-acre tracts are wanted, simply add the North, East, South, or West  $\frac{1}{2}$  of the 10-acre tract, viz: W $\frac{1}{2}$  of NE $\frac{1}{4}$  of NE $\frac{1}{4}$  of NE $\frac{1}{4}$ , etc. If a 2 $\frac{1}{2}$ -acre subdivision is wanted, follow the plan of dividing the 5-acre tract into either North, East, South or West  $\frac{1}{2}$ , as may be desired, which would give you the N $\frac{1}{2}$  of W $\frac{1}{2}$  of NE $\frac{1}{4}$  of NE $\frac{1}{4}$  of NE $\frac{1}{4}$ . (See Plates 10 and 11).

**KEEP IN MIND ALWAYS**, that a full or exact section should be 80 chains or 5280 feet, if more or less than this distance occurs—an apparent easy description may result in considerable confusion, causing an overlap on "the other fellow's property."

**GOVERNMENT FIELD NOTES:** The Federal Statute provides that whenever a survey of any District is completed, the Surveyor General shall deliver to the Secretary of State of the respective State, including such surveys, all field notes, maps, records and papers pertaining to such surveys. Copies of such evidence and notes of the original government survey are found in the office of the County Clerk or Engineer.

A simple definition of a "Government Field Note" would be the notes made by the surveyors when on the ground or "out in the field" making the original Government Survey—such notes giving distances, markers, monuments, etc.

**GOVERNMENT LOTS** should never be described as the "NE $\frac{1}{4}$  of the NE $\frac{1}{4}$  etc.", but as Lot 1—simply because a Government Lot never contains exactly 40 acres—IT MUST BE "MORE OR LESS." And where you can do so "Tie your lot down" to the quarter section—you may have more than one Government Lot in the same section with the same number. (See Plate 7).

Frequently you will find a description calling for a Government Lot on the "Right Bank" or the "Left Bank" of a river. The Government plat always shows the course of a river which is indicated by a small

arrow, usually at the intersection of the river with a township line, pointing the direction the river runs.

In order to determine which is the "Right" or "Left" bank, it is only necessary to face the direction the stream runs or the direction the arrow points—to your right would be the "Right bank" and to your left, the "Left bank." (See Plate 7).

An example of a very confusing description is contained in the prior plat of Lincoln Terrace Addition to Oklahoma City, wherein a deed conveys the party platting the land: "All the unplatted part of the NE $\frac{1}{4}$ "—a description of this kind is very uncertain and indefinite. Before this description could be located, it would be necessary to examine the records and determine the exact boundary line of all property in the quarter section previously platted.

Many a time you will find a description starting from a point "which point is at the intersection" of a certain street with some other street—for example, in the unplatted part of Millers Boulevard Addition to Oklahoma City, deeds were given commencing at the intersection of 10th or 11th Street and Villa Avenue. The Deeds so given made no reference to the streets as shown by any particular plat. Several years ago the names of the streets were changed—Park Place is now what was formerly 11 Street—12th Street becomes 11th, etc. You can readily see the confusion caused by such a description.

**IF IT IS NECESSARY** to commence a description at a certain street intersection, the description should definitely state that the Street intersection commenced at "is the street intersection shown in a certain plat," giving the book and page in which the plat is recorded.

Other descriptions which have caused considerable confusion and trouble in later years describe the starting point as being at the intersection of certain streets if produced or at the intersection of a certain street if produced and a section or quarter section line. Before locating a description of this kind you are forced to refer to the original plat showing the location of the street produced and if the name of the street has since been changed more confusion is caused.

Other confusing descriptions have been made to run to the right-of-way of a certain railroad or streetcar right-of-way. Later the right-of-way may be moved or additional parallel right-of-ways obtained—or the name of the railroad changed—making it most impossible to locate the property intended to be conveyed.

A description commencing or going to the bank or center of a river is likewise subject to criticism. The river channel may later be changed or a new channel cut, making it hard to determine the exact location of the property intended to be conveyed.

**WHERE POSSIBLE TO AVOID IT**, no description should ever be written unless a definite starting and stopping point is given—and if ascertainable the approximate distance between such points, together with the approximate acreage, if the description covers acreage.

**WHERE IT BECOMES NECESSARY** to do this then any streets referred to or railroad right-of-ways mentioned or rivers named should be definitely designated "according to a certain recorded plat," or "the main or spur line or right-of-way" at a certain specified date or "as located and described in a deed recorded in Book \_\_\_\_\_, Page \_\_\_\_\_." When a description includes a "Call" going to a river, the location of the river should be definitely located by adding the "original channel" or "the revised channel" or "as located by the Government survey," etc.

Lot and block descriptions, as a general rule, are not complicated. GREAT CARE should be taken, however, in writing descriptions which call for less than a full lot—for example—a description calling for the North 75 feet of a lot might not convey what you intended to convey if the lot was 83 feet wide at one end and 87 feet at the other and if the lot lines did not run due north, east, south or west.

If the original plat has been amended be certain to add "according to the amended recorded plat thereof." A description calling for a lot in "Barrow Addition" would describe nothing if the recorded plats showed a "Barrows First" and a "Barrows Second" Addition.

When writing a description of property included in an UNRECORDED PLAT or a VACATED PLAT you must always give a metes and bounds description or you will probably describe nothing.

It is always better to definitely describe by mentioning the property intended to be conveyed, rather than to describe a larger amount and then except therefrom certain portions thereof. For example—a deed conveying all of a block except three lots should describe the lots actually intended to be described rather than to say "All of block 1, except lots 3-5 and 7," etc. This same plan should likewise be followed when describing farm land. As previously mentioned, a good example of such a description which has proven extremely bothersome is in Lincoln Terrace Addition when a conveyance called for "all the unplatted part of the NE $\frac{1}{4}$ ," etc.

PLATE 10

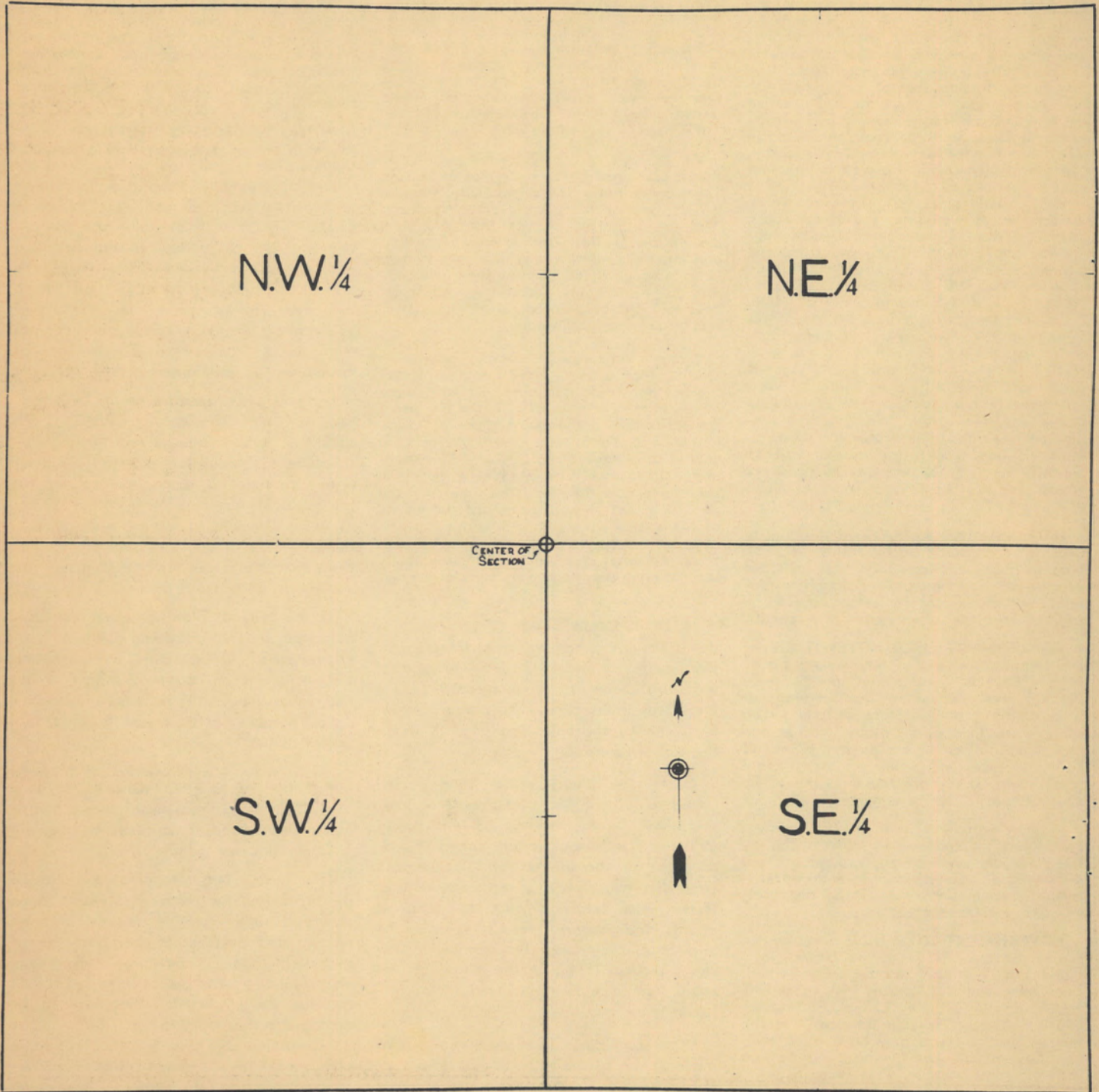
Full Section

SEC.

TWP.

RANGE

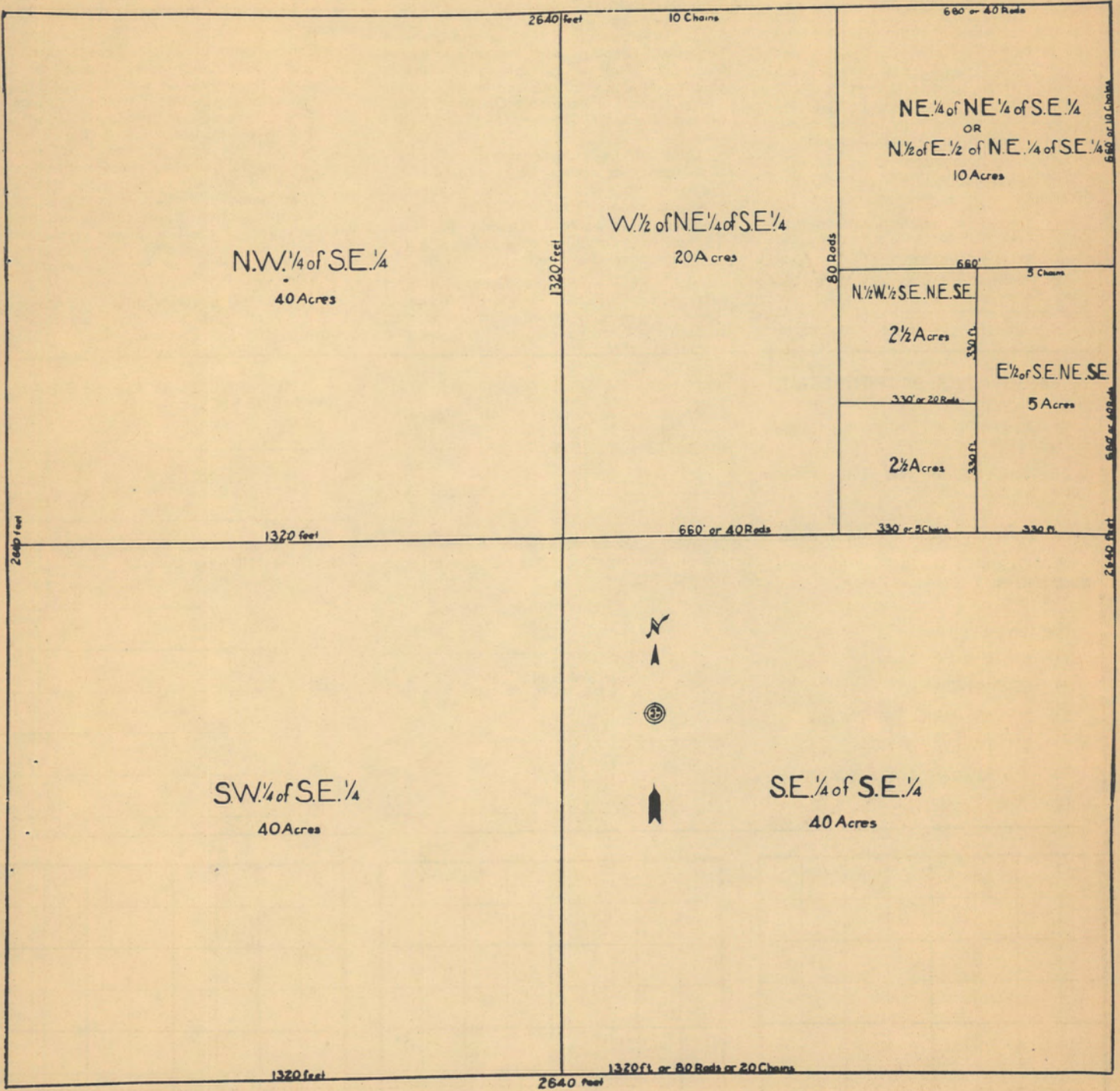
SCALE



LES

# PLATE 11

S.E.  $\frac{1}{4}$  of Section    SEC.    TWP.    RANGE    SCALE



**LESSON NO. 3—QUESTIONS**

(NCTE: Some of these questions are based on matters discussed in Lesson No. 2.

- (1) Explain the method of subdividing a section containing 640 acres into 160-80-40-10 and 5-acre tracts.
- (2) Describe a 2½-acre tract according the rectangular system, also by metes and bounds.
- (3) Give the distance between section corners in chains, in feet, in rods.
- (4) What is meant by "Government field notes"? Where may they be found?
- (5) How may you determine the right or left bank of the river?
- (6) Write a simple metes and bounds description of your own composition.
- (7) Write a description locating the property described entirely by natural monuments. By artificial monuments.
- (8) Write a proper description for a piece of property bounded on the North, East and South by streets and on the West by a railroad right-of-way, the distances

being unknown, you furnishing the name of the streets and railroad.

- (9) Write a "metes and bounds" description, supplying the distances yourself between each point, commencing your description at the Southeast Quarter of Section 1. Township 11 North, Range 3 West, then go North to the M. K. & T. Railway; then down the North Canadian River to Pecan Street and then back to the place of beginning keeping your description within the South Half (S½) of the Northeast Quarter (NE¼) of the Southeast Quarter (SE¼) and the Southeast Quarter (SE¼) of the Southeast Quarter (SE¼) of Section 1.
- (10) Write a description of a lot and block and that portion of a vacated street adjoining your lot. You furnish the lot, block, addition and name of street.
- (11) How would you describe the North 75 feet of a lot 83 feet wide on one end and 87 feet on the other?
- (12) How would you describe lot 5 of section 3, Township 11 North, Range 3 West, if a portion of your lot was located in both the Northeast Quarter (NE¼) and

the Northwest Quarter (NW¼) of the section?

- (13) Draw a plat of the following description: A tract of land containing 8 acres, more or less, located just east of the property deeded by John Doe to his wife in 1906, more particularly described as follows:

Commencing at the southeast corner of the John Doe property; thence East along Pecan Avenue a distance of 165 feet where Ash Street would intersect Pecan Avenue if produced South; thence Northeasterly along the West right-of-way line of the C. O. & G. Railway to the alley running through Block 3, Muskrat Addition, thence West along said alley, if produced, to the intersection of said alley with the East line of the Doe property; thence South along said East line a distance of 330 feet to the place or point of beginning.

- (14) Write a rectangular description of a tract of land 5610 feet North and South and 165 feet East and West.

**LESSON NO. 3—PROBLEMS**

- 1)—Locate in the NE¼ the following tracts: 110 A.
- 2)—Locate in the NW¼ the following tracts: 95 A. - 10 A.
- 3)—Locate in the SE¼ the following tracts: 80 A. - 5 A.
- 4)—Locate in the SW¼ the following tracts: 40 A. - 30 A. - 2½ A.

\* \* \*

Plat the following:

- 1) E½ E½ E½ NE¼.
- 2) SE SW NE NE.
- 3) N½ SW NE & SW NW NE.
- 4) S½ SW SW SW NE.
- 5) S½ S½ N½ NW & SW NW.
- 6) W½ S½ SE.

- 7) NW SW SW & W½ NE SW SW.

Write a description for the following tracts located in the SE¼ or SW½: 85 A., 70 A., 32½ A., 20 A., 7½ A., 15 A.

\* \* \*

Write a shorter description than the following and give the total acreage of each description:

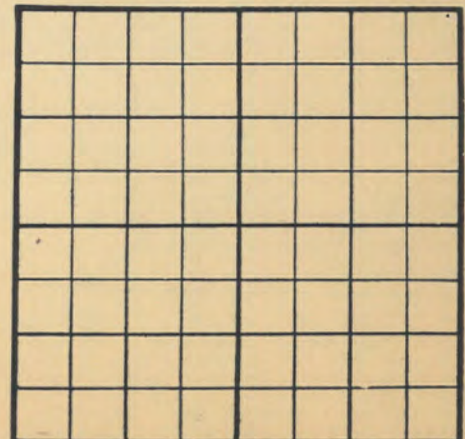
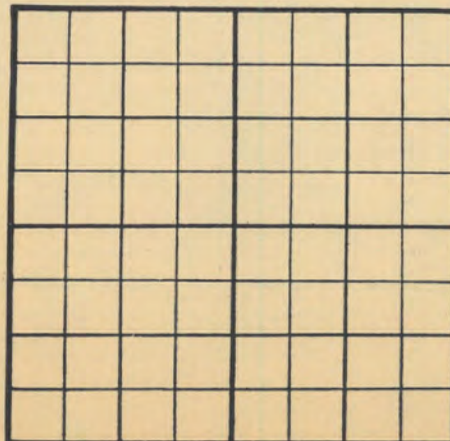
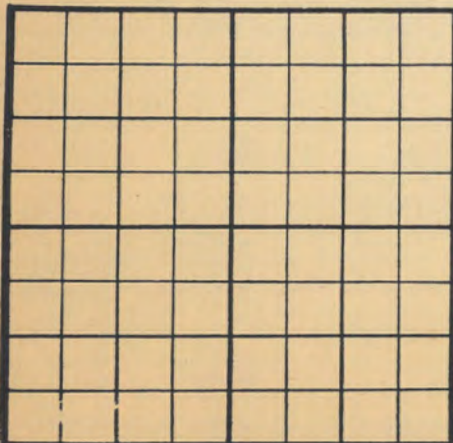
- 1) N½ E½ SW SE & SE SW SE.
- 2) S½ SW SW & N½ SW SW & W½ W½ SE SW & E½ W½ SE SW.
- 3) W½ S½ NE SW.

- 4) NE NE NE SW & S½ NE NE SW & NW NE NE SW.

- 5) W½ S½ NE.

Give the dimensions in rods, chains and feet of the following tracts:

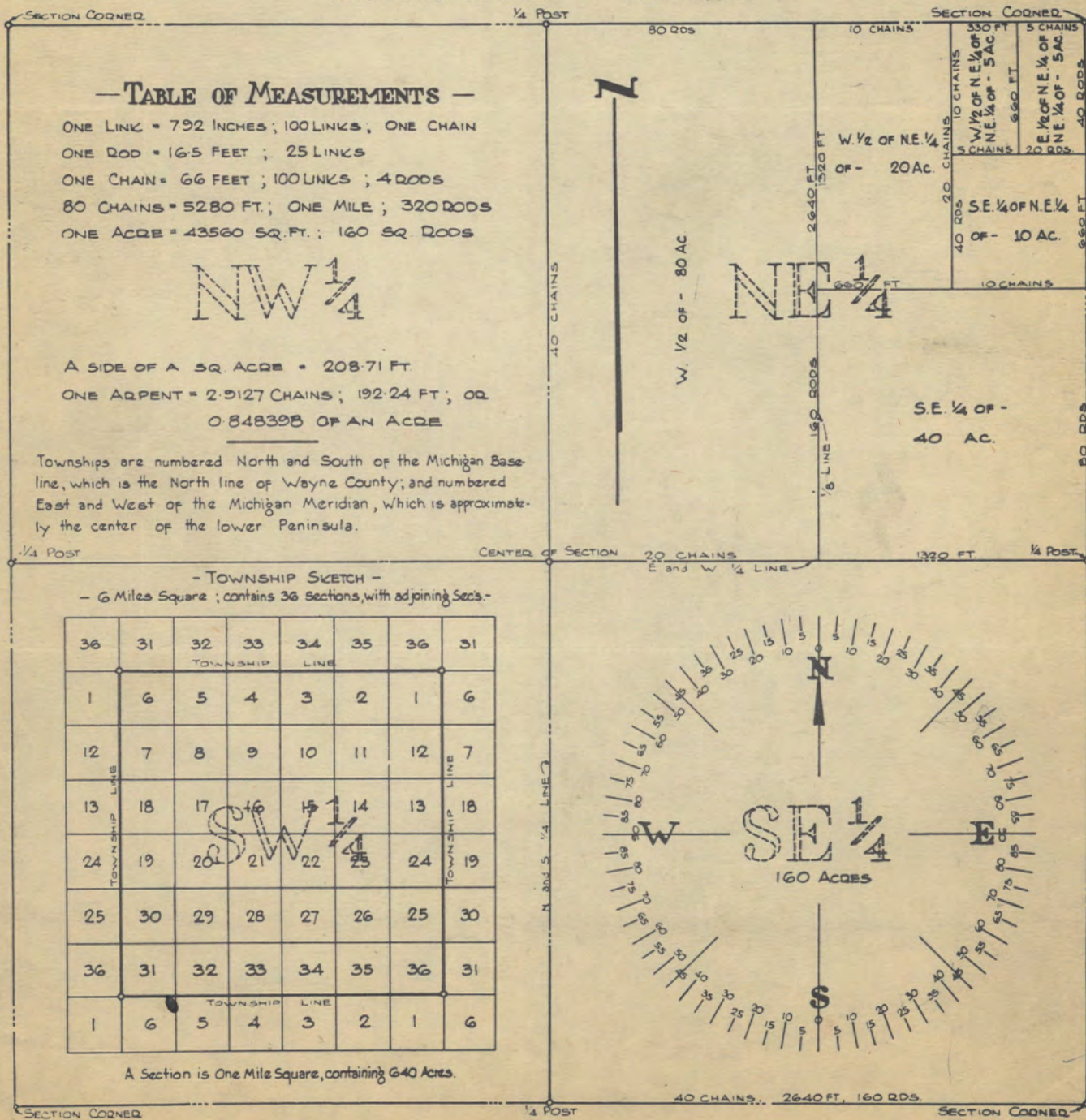
- 640 A. \_\_\_\_\_
- 320 A. \_\_\_\_\_
- 160 A. \_\_\_\_\_
- 80 A. \_\_\_\_\_
- 40 A. \_\_\_\_\_
- 10 A. \_\_\_\_\_



# Abstract and Title Guaranty Company

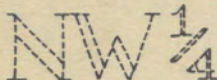
DETROIT, MICHIGAN

A SECTION OF LAND = 640 ACRES



**- TABLE OF MEASUREMENTS -**

ONE LINK = 7.92 INCHES ; 100 LINKS ; ONE CHAIN  
 ONE ROD = 16.5 FEET ; 25 LINKS  
 ONE CHAIN = 66 FEET ; 100 LINKS ; 4 RODS  
 80 CHAINS = 5280 FT. ; ONE MILE ; 320 RODS  
 ONE ACRE = 43560 SQ. FT. ; 160 SQ. RODS



A SIDE OF A 50 ACRE = 208.71 FT.  
 ONE ARPENT = 2.9127 CHAINS ; 192.24 FT. ; OR  
 0.848398 OF AN ACRE

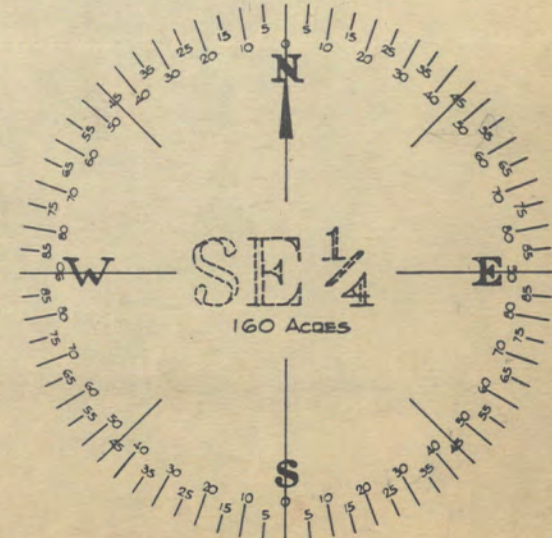
Townships are numbered North and South of the Michigan Base-line, which is the North line of Wayne County; and numbered East and West of the Michigan Meridian, which is approximately the center of the lower Peninsula.

**- TOWNSHIP SKETCH -**

- 36 Miles Square ; contains 36 Sections, with adjoining Sec's. -

36	31	32	33	34	35	36	31
TOWNSHIP LINE							
1	6	5	4	3	2	1	6
12	7	8	9	10	11	12	7
13	18	17	16	15	14	13	18
24	19	20	21	22	25	24	19
25	30	29	28	27	26	25	30
36	31	32	33	34	35	36	31
TOWNSHIP LINE							
1	6	5	4	3	2	1	6

A Section is One Mile Square, containing 640 Acres.





**LESSON NO. 3—ANSWERS**

(1) Keep in mind that the top of the section is always North. Divide the section into four quarter sections, viz: Northeast, Northwest, Southeast and Southwest for 160-acre tracts. An 80-acre tract would be the North, East, South or West half of the 160-acre description given above. 40-acre tracts are described by dividing the 160-acre tracts into four quarters, viz: Northeast of Northeast; Northwest of Northeast; Southeast of Northeast and Southwest of Northeast; or a 40-acre tract may be described by taking either the North Half, East Half, South Half or West Half of an 80-acre tract. If a 10-acre tract is described the same process is used in dividing the 160 acres into a 40-acre tract, viz: Northeast of Northeast of Northeast, etc. If a 5-acre tract is desired, simply add the North, East, South or West Half of the 10-acre tract, viz: West Half of Northeast of Northeast of Northeast, etc.

(2) A 2½-acre description would be the North, East, South or West Half of a five-acre tract unless described by metes and bounds. Not knowing which five-acre tract the student may select, an answer cannot be given.

(3) The distance between the section corners (meaning along the side of a 640-acre tract) would be 80 chains, 5280 feet or 320 rods.

(4) A Government field note means the notes made by a surveyor when on the ground or "out in the field" at the time of making survey. Field notes may be found in the office of the Secretary of State, County Clerk or County Engineer.

(5) You may determine which is the right or left bank of a river by facing the direction the stream runs—to your left is the "left bank," to the right the "right bank." A small arrow pointing the direction the river runs appears upon the Government plats.

(6) Not knowing what description the student will give, no answer can be given.

(7) A description by natural monuments must be a description commencing, going to and ending at a river, lake, stream, tree, mountain rock or spring. A description by artificial monuments must commence, run to and stop at a land mark or sign erected by human means, such as a fence, wall, house, street, alley, posts, stakes, canal or drainage ditch.

(8) Not knowing what description stud-

ent will give, answer to this question cannot be given.

(9) Not knowing what description the student will give, answer to this question cannot be given.

(10) Not knowing what description the student will give, answer to this question cannot be given.

(11) The North 75' of Lot ..., Block ..., according to the record plat thereof.

(12) Lot 5 of Section 3, Township 11 North, Range 3 West, (since you are using a lot number it makes no difference in which quarter section the lot is located). If there are two lots numbered 5 in the same section it would be necessary to add "on the right bank, etc." or "on the left bank, etc."; or the "East" or "West" bank of the river.

(13) Not knowing what description of the 8-acre tract will be given, a plat of this tract cannot be given.

(14) Not knowing in what part of the two sections the student will locate this tract of land, a description cannot be given. The tract described, however, will be entirely across one section and 330 feet into the next section and will be 2½ acres wide (165 ft.)

**LESSON NO. 3**

**ANSWERS TO PROBLEMS**

1)—Locate in the NE¼ the following tracts: 110 A.

2)—Locate in the NW¼ the following tracts: 95 A. - 10 A.

3)—Locate in the SE¼ the following tracts: 80 A. - 5 A.

4)—Locate in the SW¼ the following tracts: 40 A. - 30 A. - 2½ A.

(NOTE: The tracts platted constitute one answer. The same acreage could be located elsewhere in the quarter section).

\* \* \*

Plat the following:

1) E½ E½ E½ NE¼.

2) SE SW NE NE.

3) N½ SW NE & SW NW NE.

4) S½ SW SW SW NE.

5) S½ S½ N½ NW & SW NW.

6) W½ S½ SE.

7) NW SW SW & W½ NE SW SW.

Write a description for the following tracts located in the SE¼ or SW½: 85 A., 70 A., 32½ A., 20 A., 7½ A., 15 A.

Not knowing what description will be used an answer cannot be given.

\* \* \*

Write a shorter description than the following and give the total acreage of each description:

1) N½ E½ SW SE & SE SW SE.  
(Ans. E½ SW¼ SE¼—20 acres).

2) S½ SW SW & N½ SW SW & W½ W½ SE SW & E½ W½ SE SW.  
(Ans. SW¼ SW¼ and W½ SE¼ SW¼—60 acres).

3) W½ S½ NE SW.  
(SW¼ NE¼ SW¼—10 acres).

4) NE NE NE SW & S½ NE NE SW & NW NE NE SW.

(Ans. NE¼ NE¼ ~~SW~~¼ — 10 acres). *see letter 4-21-46*

5) W½ S½ NE.  
(Ans. SW¼ NE¼—40 acres).

Give the dimensions in rods, chains and feet of the following tracts:

640 A. (320x320 rods—80x80 chains and 5280x5280 feet).

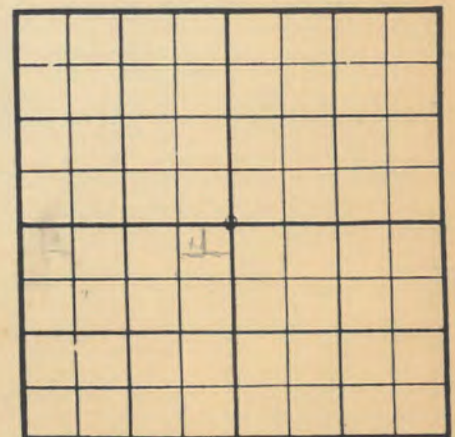
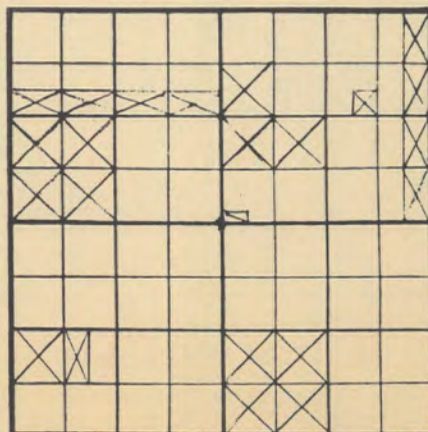
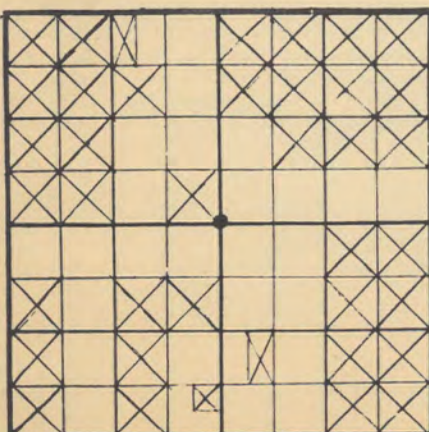
320 A. (160x320 rods—40x80 chains and 2640x5280 feet).

160 A. (160x160 rods—40x40 chains and 2640x2640 feet). *see letter 4-21-46*

80 A. (80x80 rods—20x40 chains and 1320x2640 feet).

40 A. (80x80 rods—20x20 chains and 1320x1320 feet).

10 A. (40x40 rods—10x10 chains and 660x660 feet).



# TITLE COURSE

## LESSON NO. 4

\* \* \*

The land within the State of Oklahoma passed to the United States in 1803 having been acquired from the FRENCH DOMINION, known as the LOUISIANA PURCHASE. The source of title to all lands in Oklahoma, as far as abstractors are concerned, is the United States.

Land cannot be without ownership—the rightful owners may be hard to determine—but, nevertheless, ownership exists. Complete ownership carries with it the right to use and possess; the right to enjoy and the right to sell or dispose of it.

**PROPERTY CLASSIFIED:** Property is either (1st) real and immovable, or (2nd) personal and movable.

**REAL PROPERTY IS:** (a) Land. (b) That which is affixed to land. (c) That which is incidental or appurtenant to land. (d) That which is immovable by law.

**PERSONAL PROPERTY** is every kind of property that is not real property.

**LAND:** Land is the solid material of the earth, whatever may be the ingredients of which it is composed, whether soil, rock or other substance.

**FIXTURES:** A thing is deemed to be affixed to land when it is attached to it by roots, as in the case of trees, vines or shrubs, or imbedded in it, as in the case of walls, or permanently resting upon it, as the case of buildings or permanently attached to what is thus permanent as by means of cement, plaster, nails, bolts or screws.

**APPURTENANCES:** A thing is deemed to be incidental or appurtenant to land when it is by right used with the land for its benefit, as in the case of right-of-way or water course, or of a passage for light, air or heat, from or across the land of another. Sluice boxes, flumes, hose, pipes, railway tracks, cars, blacksmith shops, mills, and other machinery or tools used in working or developing a mine, are to be deemed affixed to the mine.

**OWNERSHIP AND POSSESSION:** Ownership of property is the right of one or more persons to possess and use the property to the exclusion of others. Others may have rights which limits the control of the owner. Any possession which is lacking in the right of free enjoyment and free disposition is known as "restricted" or "limited ownership. Possession undoubtedly carries with it the intention to hold, but possession does not mean ownership. The absolute owner is entitled to possession.

After becoming the owner of property and coupled with it the right to dispose of same, there arose the necessity of a procedure for making subsequent transfers. For awhile this was accomplished by the owner voluntarily surrendering possession to the new owner. Naturally this did not prove satisfactory. Sometimes the buyer and seller would meet on the land to be sold, and in

the presence of witnesses, the seller would pass to the buyer a handful of soil, with appropriate words, which indicated the property was being sold and transferred to the buyer. The new owner would then go into possession and as long as he remained in possession he was considered the true owner. This system was a failure. If the new owner was dispossessed, or was called to war—or a visit—he might come back and find someone else in possession. If his witnesses were "absent" or "forgetful"—the owner would be unable to regain possession.

Thus there arose the use of a "written memorandum" to support the sale. This written memo was no doubt very crude when first used. When a sale was made the memorandum was torn in half and one piece given to each buyer and seller. This likewise prove unsatisfactory. When the buyer needed to prove his right to possession the seller could sometimes not be found or the other half of the deed could be "conveniently lost" or "destroyed"—the owner could therefore be dispossessed. Out of the unsatisfactory experiences of the past grew the use of a "deed" signed by the seller and delivered to the buyer.

**STATUTE OF FRAUDS:** Later to reduce the risk of loss, dishonesty, etc. the Legislative enactment known as the "Statute of Frauds" was adopted. This statute provides, among other things, that no sale or agreement to sell land or an interest therein, shall be binding upon anyone unless the agreement or memorandum thereof be made in writing and signed by the party bound. From this arose the various instruments now used in real estate transactions.

**CLASSES OF TRANSFER OF TITLE:** Legally speaking there exists but two methods of acquiring title to real estate, viz:

1. Title by descent or operation of law. (Meaning when the owner dies without leaving a will in which case title "descends" or "passes" to the heirs or the person or persons who the law says inherit the real estate, and if the deceased has no heirs—title goes to the State).
2. Title by purchase. (Which includes not only the ordinary voluntary sale, or mortgage, or lease, but also the transfer by will).

Still another classification could include 4 methods by which title may be transferred, viz: (1) By descent or operation of law. (2) By Will. (3) By voluntary alienation. (4) By involuntary alienation. (Numbers 1, 2 and 4 will be discussed fully under Probate and District Court powers and procedure). No. 3 is any voluntary sale made by the owner.

### A TITLE—WHAT IS IT?

Generally speaking, a title is the evidence of one's right or of the extent of his interest, the means whereby the owner is enabled to assert or maintain his possession.

Therefore, to prove title, it became necessary for owners to preserve each instrument effecting his real estate. In many cases this was impossible. Deeds were lost, stolen or destroyed by fire, etc. Consequently, there arose a great need of a system to prevent loss by reason of the foregoing. Furthermore, an innocent purchaser not knowing the true owner, might be led to purchase real estate from parties not owning it. A mortgage was of no real protection—there might be other mortgages. This problem was solved by the adoption of:

**THE RECORDING SYSTEM** for real estate titles. Under this system a real estate transaction is not binding upon one who has no actual knowledge of the transaction, unless the instrument in writing, in consummation of such transaction, in legal form, executed and acknowledged in compliance with the laws of the State in which the real estate is located, is made a matter of public record, as provided by law.

The laws of the various states prescribe the method of recording various instruments and proceedings affecting the title; also the office wherein the instrument or proceedings are to be filed.

The purposes of the RECORDING SYSTEM are:

1. To preserve the instruments of title and the evidence of their voluntary execution.
2. To give the public notice of the change of ownership of property or the existence of liens thereon.

From the very moment any instrument entitled to record, is filed with the County Clerk, the public has knowledge of the transaction therein mentioned. In Oklahoma, the County Clerk immediately endorses upon each instrument to be recorded, the time of filing, gives the instrument a file number, which is the next consecutive number after the last instrument filed, and enters it upon a record known as the "Reception Record"—later it is indexed, recorded, proof read, the book and page where recorded noted thereon, and returned to the proper party.

Prior to statehood, the eastern portion of Oklahoma, known as the "Indian Territory" used the recording system. The recorder, however, was the Deputy United States Court Clerk and Ex-officio Recorder. The District of the Clerk covered more territory than one county. After statehood, therefore, it was necessary to certify and transcribe that portion of the records of the Deputy U. S. Court Clerk, to the county in which the land described was located. The western portion of Oklahoma or "Oklahoma Territory" likewise used the Recording System, such records however, being kept by the Register of Deeds.

**NOTICE—KINDS OF:** The courts, where possible, will protect "Innocent Purchasers" of real estate but there are three kinds of notice which the law provides for a prospective buyer of real estate, namely:

1. Actual
2. Constructive
3. Presumptive

**Actual Notice** is any information the prospective buyer receives that someone else

has or claims to have, some interest in the property. A party in possession would give notice of some claim.

**Constructive Notice** is notice disclosed by the records. (Which would include, in addition to the county clerk's records, those in the office of the county treasurer, district and county court).

**Presumptive Notice** is that notice which results from information that would lead a prudent or reasonable person to ascertain the existence of some outstanding claim or right NOT disclosed of record. (For example—a Warranty Deed excepts a mortgage—an oil and gas lease—a contract, etc.) The prospective buyer is **PRESUMED TO HAVE NOTICE OF THE EXISTENCE OF A CLAIM** and is bound to make some investigation of such mortgage, oil lease, contract, etc.

## ABSTRACTS

The necessity of locating all matters of record affecting a tract of real estate, in order to determine the condition of the title thereto, brought about the introduction of the abstract. Prior to March 29, 1937, in Oklahoma, anyone filing a bond in the sum of \$5,000.00, signed by a surety company or with three or more sufficient sureties, when approved by the County Commissioners, could engage in the abstract business. The purpose of the bond is to protect anyone who relies upon the abstractor's certificate from loss, and also to protect the county from the destruction or injury of any records. The bond may run for a period specified therein, but not exceeding five years. Any abstractor who falsely certifies to the records in any manner is guilty of a felony. Since the passage of an act effective March 29, 1937, anyone not theretofore in the business who desires to enter it must make such bond and have an independent set of abstract books or indexes compiled from instruments of record and not copied from the County Clerk's indexes.

**WHAT IS AN ABSTRACT?** An abstract may be defined as a "compilation, a synopsis or a statement of all recorded facts which in any material way affect the title, to the property abstracted." Such facts are usually arranged chronologically, and are intended to show the origin of the title, including all subsequent transactions of any nature, and a showing of any pending suits, liens, judgments, unpaid taxes and special assessments for improvements. Sometimes instruments are shown for reference only.

The purpose of the abstract is to afford the prospective buyer, or mortgagee, a speedy, convenient and safe method of ascertaining the condition of the title. By its use the purchaser or attorney may see the exact condition of the title as disclosed by the record, without having to make a specific inspection of the original instruments; or without making a lengthy search of the various records where information concerning the title is found.

**AN ABSTRACT SHOULD SHOW** all the material parts of each instrument effecting the title or any court proceedings in which the property abstracted is involved. It

should be so complete that no reasonable inquiry remains unanswered, and so brief that the mind of the examiner shall not be confused with unnecessary matters, and so arranged that the examiner may form an opinion of the title as he examines the abstract sheet by sheet.

The value of the abstract not only consists of the accuracy of the information it contains but the form and arrangement of such information in order that it may be easily examined by the examiner. Some examiners will require information not wanted by other examiners. Therefore, it becomes necessary to some extent at least, to be governed by local conditions, and practices when making an abstract.

### ABSTRACT SHOULD CONTAIN PLATS:

No abstract is considered complete unless it contains plats showing the acreage of government lots and surveys, platted additions, subdivisions and re-plats, resubdivisions or amended plats. In addition to all matters of record, where possible, the abstract should show location of right-of-ways, easements, rivers, pipe lines, drainage ditches, etc. A complete title plant usually has a large number of maps showing the location of railroads, right-of-ways, pipe lines, etc. Give the customer and title examiner all the information possible. It is considered "good abstracting" to go outside the record and insert any plat or information which will help the examiner locate the property described.

Frequently it is helpful to show plats or instruments adjacent to the property abstracted "for reference only."

**RELYING UPON THE CORRECTNESS** of the abstract anyone who suffers a loss can recover actual damages from the abstract company.

The work of the abstract company may be divided into principal subdivisions, viz: (1) That of making and maintaining an abstract plant, and (2) That of turning out the product. Both parts of the work require a high degree of accuracy. Neither can be slighted for the other. An error in the plant may result in an error in the abstract. An error in the abstract may result in a loss. If not direct money loss, certainly a loss in reputation. **THEREFORE EACH EMPLOYEE** should know for certain what to do—**OR DO NOTHING**. The risk is too great to "experiment" or "take a chance."

When compiling an abstract, a search must be made of the records in every office which, by law, has been designated as the proper depositor for instruments affecting the title to real estate. The offices where instruments or proceedings will be found are usually the following offices: County Clerk; Court Clerk (both District and County Court Division); County Treasurer and sometimes City Clerk and United States Court Clerk.

### THE ABSTRACTOR'S FINAL CERTIFICATE COVERS THE FOLLOWING:

All instruments in the office of the County Clerk, including notice of unpaid income tax due the United States Government;

All proceedings in the County Court—being estates, guardianships of minors and incompetents, sanity proceedings, etc.;

Superior Court records, if any; District Court suits; judgments; liens (mechanics' and materialmen's); and notice of unpaid state income tax;

Suits in Common Pleas Courts (in Tulsa and Oklahoma Counties) affecting title to real estate;

Taxes unpaid—tax sales; special assessments of any nature (including personal, intangible and corporation taxes).

Unless requested, it is not customary to certify to City Hall or U. S. Court records.

TO CORRECT AN ERRONEOUS IMPRESSION THAT ABSTRACTING IS A SIMPLE TASK, A MEMBER OF THE OKLAHOMA TITLE ASSOCIATION SUBMITS THE FOLLOWING NECESSARY PROCEDURE WHEN PREPARING AN ABSTRACT:

When an order is received by any abstractor, the following procedure is necessary:

1. Order is entered and given a number.
2. Check customer's credit.
3. Assign order to a particular compiler or closing desk.
4. Any instruments to be filed are copied.
5. If instrument requires U. S. Revenue Stamp and none are affixed, abstractor attends to this.
6. Such instruments are then sent to the Court House for record.
7. Cash is advanced for recording fee, in most cases.
8. Usually cash is advanced for payment of mortgage tax.
9. Mortgage tax receipt must be obtained from Treasurer.
10. In numerous instances the abstractor advances general, personal, paving or sewer taxes.
11. Obtain tax receipts from the Treasurer or City Clerk.

AFTER THE ORDER IS ENTERED AND STARTED ON ITS WAY, THE FOLLOWING PROCEDURE IS NECESSARY:

12. Check the land or lot and block index.
13. Check miscellaneous index.
14. Abstract all instruments to be shown.
15. Check for Notice of Unpaid Federal Income tax liens, filed with County Clerk.
16. Check Clerk's Reception Record for instruments not yet indexed or just filed.
17. If town property, and a new abstract, check plat records to ascertain if correct lot and block numbers and dimensions are shown on blue print.
18. If farm property, check Government survey and furnish plat of same.

AFTER ALL TRANSACTIONS IN THE COUNTY CLERK'S OFFICE ARE FOUND, THEN THE FOLLOWING WORK IS NECESSARY TO ASCERTAIN WHETHER OR NOT COURT PROCEEDINGS, JUDGMENTS, ETC., HAVE BEEN HAD WHICH AFFECT THE TITLE:

19. Check Court Clerk's records for notice of State Income Tax Liens.

20. Check for U. S. Court and Bankruptcy proceedings.

21. Check District Court records for District Court suits, attachments, executions, judgments, mechanic and materialman liens, etc.

22. Where court cases, judgments, liens, etc., occur, check for complete or partial dismissal, releases, waivers, etc.

23. Check Court minutes and records for orders not yet entered and for cases, judgments, liens, etc., not yet indexed.

24. Check Sheriff's records for attachments not yet entered or served.

25. Check County Court records for administration, guardianship or insanity proceedings, making additional investigation for matters not yet entered upon the records or indexes.

26. Recheck any Court proceedings previously shown in every abstract to ascertain if corrective or additional proceedings have been had.

27. Abstract any Court cases found in either District or County Court.

**AFTER THIS HAS BEEN DONE, THE TAX CHECKER DOES THE FOLLOWING:**

28. Check General Taxes.

29. Check Paving Tax Rolls.

30. Check back tax rolls for old entries including sidewalk and weed tax.

31. Check Personal Tax Rolls.

32. If a corporation appears in the title, check public service corporation tax rolls.

33. Check tax ferret rolls.

34. If sold for taxes, check individual or County Sale Record to ascertain if property has been redeemed from sale.

35. If sold at Re-Sale and Tax Deed not recorded, check re-sale record for name of purchaser.

36. If farm land situated within a drainage district, drainage tax must be checked.

37. If corporation appears in title secure statement from Secretary of State that such corporation legally exists and statement from Tax Commission that annual License Tax is paid.

38. If an Estate appears in title, secure statement from State Tax Commission regarding inheritance tax.

After all of the above data has been secured the order is then returned to the office of the Company for compiling, numbering, preparation of certificate and final closing. Statement of charges or bill is prepared and the abstract delivered. There yet remains the posting of the charge by the Auditor. When paid the credit is entered or if payment is not made, the usual monthly statement, and sometimes delivery to attor-

ney for collection or a "charge-off, bad account."

After the abstract has been examined, there yet remains the usual attorney's requirements to be checked.

#### LESSON NO. 4—QUESTIONS

(1) Give the two classifications of property and define each.

(2) Define land.

(3) Define appurtenances.

(4) Define ownership.

(5) Define the "Statute of Frauds."

(6) In what manner may real estate be acquired?

(7) What is a "title" to real estate?

(8) What is the "Recording System"? Its purpose?

(9) Name three kinds of notice a prospective purchaser of real estate has of the claim of some other party, and define each.

(10) What is necessary to qualify as an abstracter in Oklahoma?

(11) What is an abstract?

(12) What is the purpose of an abstract?

(13) To whom and under what conditions is an abstract company liable for errors?

(14) The records of what county offices must be searched when preparing an abstract?

(15) To what does the abstracter certify in an abstracter's final certificate?

#### LESSON NO. 4—ANSWERS

(1) Real Property and Personal Property. Real property is land and that which is affixed to, incident or appurtenant to land. Personal property is every other kind of property.

(2) Land is the solid material of the earth, whether soil or rock, etc.

(3) Anything actually annexed to land or used with it is deemed an "appurtenance."

(4) Ownership is the right to possess and use property to the exclusion of others. (Such ownership may be a partial ownership or an interest therein or it may be a complete and full ownership.)

(5) The "Statute of Frauds" is an act which provides, among other things, that no sale or agreement to sell land or an interest therein, shall be binding upon anyone unless a written memorandum or agreement is signed by the party bound.

(6) Real estate may be acquired in two ways: (1) Title by descent or operation of law (meaning by inheritance or by descending to those entitled to receive it). (2) Title by purchase or voluntary conveyance.

(7) A "Title" is the evidence of one's right or the extent of his interest—or the means whereby the owner is able to assert or maintain possession.

(8) The "Recording System" provides that instruments in writing affecting real estate shall be filed with the County Clerk (or other proper official) for record. The purpose of such system is to give the public notice of such transaction and to preserve the instruments of title and the evidence of their voluntary conveyance.

(9) Three kinds of notice a prospective purchaser of real estate has—(1) Actual, meaning direct or actual information he has of someone else's claim. (2) Constructive notice, any notice disclosed by the public records. (3) Presumptive notice, any information that would lead a prudent or reasonable person to suspect that someone else might have or claim an interest therein.

(10) File a bond in the sum of \$5,000, secure approval of same by County Commissioners. Such bond may be a surety bond or signed by three or more sufficient sureties (since March 29, 1937, in addition to the bond an abstractor must also have a complete set of indexes, etc.).

(11) An abstract is a compilation, a synopsis or a statement of all recorded facts which affect the title to the property abstracted. (It is an abstract of **everything on record**, whether it be recorded instruments, suits, liens, taxes, judgments, etc.)

(12) The purpose of an abstract is to show who owns the property or an interest therein, whether mortgaged, leased, etc. (It shows the true condition of the title.)

(13) An abstracter is liable upon his bond for damages anyone may sustain by relying upon the correctness of the abstract. It is a felony to falsely certify to any matter of record.

(14) County Clerk, Court Clerk, and County Treasurer. (If certificate covers any City or U. S. Court records such information must be obtained from City Hall or U. S. Court Clerk's office.)

(15) An abstracter's certificate generally covers the following:

(a) Instruments of record in County Clerk's office, including notice of income tax due Federal Government;

(b) Proceedings in the County Court;

(c) Superior Court (if any); District Court records, including pending suits; judgments; liens; and Notice of Unpaid State Income Tax;

(d) Suits in Common Pleas Court (if any, occurring only in Tulsa and Oklahoma Counties);

(e) Taxes unpaid—tax sales (meaning general and special);

(f) Personal, Intangible and Corporation Taxes.

# TITLE COURSE

## LESSON NO. 5

\* \* \*

Since the records in the office of the County Clerk are first searched, this office will first be discussed.

The County Clerk (formerly Register of Deeds) among other things is charged with the care and custody of all books, records, maps, papers, plats, etc., affecting the title to real estate. He must see that such records are not defaced, mutilated, changed or injured in any manner. A reception record is kept showing the nature of all instruments filed, time of filing, fee charged, description and to whom returned. He is required to keep a numerical index as well as a miscellaneous index, a direct and inverted index of deeds and mortgages. The County Clerk also keeps a record of all platted additions and subdivisions.

A record is kept of tax resales certified by the County Treasurer and where an individual tax sale certificate holder applies for a tax deed the proceedings prior to the issuance of the tax deed will be found in the County Clerk's office, on file and not of record.

**ANY INSTRUMENT**, if properly acknowledged, and otherwise conforms to the law, shall be by him recorded, upon payment of the recording fee, which is set by law. Any instrument may be set aside and declared to be void by the Court, if the signature thereto was obtained by fraud, duress or force and fear, or other unlawful means, or for an illegal consideration.

A record of Notice of Unpaid Income Tax certified to him by the Government, is kept and when such Notice is received by him, a lien attaches upon the real estate of the party owing same.

### SOME INSTRUMENTS FOUND IN THE COUNTY CLERK'S OFFICE AFFECTING TITLE TO REAL ESTATE ARE:

- (1) **FINAL RECEIPT:** (Evidence of final payment, issued pending final approval and delivery of patent.)
- (2) **PATENT:** (Conveyance from Government issued to homesteaders, purchasers of Government unallotted and segregated coal lands.)
- (3) **INDIAN PATENTS:** (Government conveyance issued to members of an Indian Tribe in compliance with Government treaty. Abstract should disclose whether homestead or allotment.)
- (4) **TRUSTEE DEED:** (Conveying Government Townsite lots.)
- (5) **DEEDS:**
  - a. Warranty (Statutory; providing full warranty).
  - b. Special Warranty (limited liability).
  - c. Quit Claim. (Usually correction, to remove cloud or where owner refused to warrant the title.)

d. Right-of-Way. (Conveying right-of-ways and sometimes are only grants or easements for specific purposes and convey no title.)

e. Trust Deed. (Executed in compliance with a trust.)

f. Cemetery. (Conveying cemetery lots—never abstracted.)

g. Commissioner of Land Office or State Patents. (Conveys "School Land" or property acquired under foreclosure of mortgages made from School Land or Home Ownership funds.)

h. Tax Deeds—Individual. (Executed by County Treasurer to the individual holding a Tax Sale Certificate, after individual has given statutory notice, etc., of intention to ask for Tax Deed.)

i. Resale Tax Deeds. (An instrument conveying all interest of the County acquired by the purchase of a tax sale certificate two years prior thereto. Such instrument purports to convey absolute title.)

j. **County Commissioners Deed:** (Conveys County property).

### THE FOLLOWING DEEDS ARE ALWAYS ISSUED IN COMPLIANCE WITH ORDER OF THE FEDERAL, DISTRICT OR COUNTY COURT:

- (6) **TRUSTEE:** (Executed by Trustee in bankruptcy and conveys assets of a bankrupt).
- (7) **RECEIVER DEED:** (Federal or District County—conveys property of an insolvent corporation).
- (8) **BANK COMMISSIONER DEED:** (Conveys assets of failed bank).
- (9) **DEEDS, VARIOUS KINDS:** (Executed in compliance with Courts interpretation of powers under wills and trusts. Also specific performance of contracts and in partition in probate cases etc.)
- (10) **SHERIFF'S DEED:** (Executed in connection with foreclosure proceedings, attachment, execution, partition or special court order).
- (11) **ADMINISTRATOR'S DEED:** (Conveys property of deceased person leaving no will).
- (12) **EXECUTOR'S DEED:** (Conveys property of deceased person leaving a will).
- (13) **GUARDIAN'S DEED:** (Conveys property of a minor or incompetent person).
- (14) **COURT ORDERS:** (Some Court Orders are in effect deeds. Where the party fails or refuses to execute a deed in compliance with such an order, the order itself becomes a conveyance).

### THE FOLLOWING INSTRUMENTS ARE EXECUTED IN CONNECTION WITH LOANS UPON REAL ESTATE:

- (15) **MORTGAGE:** (A conveyance as security for the payment of a debt or the performance of an obligation.)
  - (16) **EXTENSION OF MORTGAGE:** (Extends time of payment and is in lieu of a new mortgage).
  - (17) **ASSIGNMENT OF RENT:** (Assigns rent—usually effective if mortgagor defaults).
  - (18) **ASSIGNMENT OF MORTGAGE.**
  - (19) **RELEASE OF MORTGAGE:** (Complete, partial and marginal).
  - (20) **TRUST DEED:** (Usually so termed when executed by Corporations in connection with Corporate Bond issues and sometimes cover **after acquired** property).
  - (21) **OIL & GAS LEASE:** (An agreement, for a term of years, granting the right to explore for oil and gas—usually giving  $\frac{7}{8}$ ths of production).
  - (22) **COMMUNITY OIL & GAS LEASE:** (Same, except executed by various property owners, each owner to share pro rata).
  - (23) **CHANGE OF DEPOSITORY:** (Designation of a certain bank where payments called for in an Oil and Gas Lease are to be made).
  - (24) **ASSIGNMENTS OR CERTIFICATE OF INTEREST:** (Conveys all or part of an oil lease or an interest therein).
  - (25) **RELEASE OF OIL & GAS LEASE.**
  - (26) **MINERAL DEEDS:** (Conveys a portion of the mineral, oil and gas rights, perpetual or for a term of years).
  - (27) **ROYALTY DEED:** (Usually conveys a portion of the mineral, oil and gas rights but may convey only a portion of same when and if produced under the terms of an existing lease).
  - (28) **PIPE LINE GRANTS OR EASEMENTS:** (Permitting the construction of pipe lines, and water lines.)
- MISCELLANEOUS INSTRUMENTS:**
- (29) **CONTRACTS:** (For sale or purchase of real estate, leases, mineral rights, etc.)
  - (30) **EASEMENTS:** (Permits the construction and maintenance of roads, telephone, pipe lines, public utilities, joint driveway, etc.)
  - (31) **POWER OF ATTORNEY:** (Delegating authority by owner to someone else to sell, mortgage, manage, etc. property of owner. May be revoked at will and is void upon death or incompetency of grantor.)
  - (32) **OPTION:** (Grants the exclusive privilege to buy at the terms set forth. It is not a sale nor an agree-

ment for a sale. It merely gives the holder the right to purchase if he so desires.)

- (33) **PARTY WALL AGREEMENT:** (Concerning a dividing wall between two buildings to be used as an exterior wall for each. Each has an easement in it for the support of the building on his own land. The land of each, however, belongs to the respective owner, but the title to each is subject to the easement to which the other is entitled. The terms and conditions of the agreement entirely govern the rights of each party and the limitations and cost to be borne by each.)
- (34) **RATIFICATION:** (Approval of something that has happened in the past.)
- (35) **AFFIDAVITS:** (Correcting mis-spelling of names, mistakes, identification of parties executing conveyances, notice of interest in realty, etc.)
- (36) **PROOF OF HEIRSHIP:** (Statement as to the heirs of a deceased person.)
- (37) **CERTIFICATES:** (As to expiration of Notary's Commission; Appointment of Executor, Administrator and Guardian by Foreign Court; Concerning birth and death, etc.)
- (38) **COURT ORDERS:** (Certified Copies of Order Confirming Sale, Executor, Administrator, Guardian, Trustee, Receiver, Sheriff—Restraining Orders, Rights of Majority, Journal Entries, Bankruptcy Discharge, etc.)
- (39) **ORDINANCES:** (Passed by City Council vacating streets, alleys, authorizing sale or lease of property, execution of easements, etc.)
- (40) **COMMISSIONERS RESOLUTIONS:** (Closing or opening highways, approving and authorizing sale of property, granting of easements, right-of-ways, pipe line grants, execution of leases, etc.)
- (41) **DECLARATION OF TRUST AND PARTNERSHIP AGREEMENTS:** (These instruments usually provide the name and manner of operation of a company or business to be owned by two or more persons.)

In addition to the above are many other miscellaneous instruments which the abstractor cannot classify—the lawyers cannot interpret and the Courts are puzzled at the true intent of the makers.

**ABSTRACTERS SHOULD NEVER ATTEMPT TO ABSTRACT MISCELLANEOUS INSTRUMENTS.** Watch for exceptions and "reverter clauses" in deed, etc. Often mortgages will cover "after acquired property" and instruments which you think to be regular in form may contain "trick clauses," interlineations or "strike outs," which will materially change the effect of the instruments. Employees should follow this rule always: **IF YOU DON'T KNOW WHAT TO DO—DO NOTHING. TAKE NOTHING FOR GRANTED—THE RISK IS TOO GREAT.**

**A CHAIN OF TITLE:** Is made up of a number of links—each link representing a transfer from one owner to another from the beginning of the title down to the date of the abstractor's certificate.

**ESTATE:** Is the interest a person has in property (real or personal).

**HOMESTEAD:** The Constitution of Oklahoma provides that every family may have a homestead. The homestead, if not located in any city, shall consist of not more than 160 acres, which may be in one or more parcels, to be selected and claimed as a homestead by the owner. If the homestead is within any city, it shall not be larger than one acre of land, with a value not exceeding \$5,000.00. In no event, however, shall the homestead be reduced to less than one-fourth (1/4) of an acre without regard to value.

The homestead may be used both for residence and business purposes. The homestead interest therein shall not exceed in value the sum of \$5,000.00.

The homestead is exempt from forced sale for the payment of debts except for part purchase price, taxes or for work and material used in constructing improvements thereon. The homestead in Oklahoma, however, may be mortgaged and the mortgage foreclosed.

Any instrument or conveyance of any character effecting the homestead must be signed by both the husband and wife.

**FEE SIMPLE TITLE:** Fee Simple is the greatest interest and the most absolute in the rights conferred that one can have in real property. It is the entire and absolute interest in property and land, and carries with it everything within or belonging to it.

**LIFE ESTATE:** A life estate is an interest in real property, the duration of which is limited to the life of some person.

**JOINT TENANCY:** An estate in joint tenancy is where real estate is granted to two or more persons to hold in fee simple for life, for years or at will, with the right of survivorship.

**TENANCY IN COMMON:** A warranty deed given to two or more people creates a "Tenancy in Common." Any one of such tenants may dispose of his interest in the common property, and the purchaser will become tenant in common with the others. Likewise the interest of one co-tenant may be sold on execution, and the purchaser at such sale will tenant in common with the others. Neither of the co-tenants, however, can sell any specific part of the common property so as to entitle the purchaser to possession of the part conveyed.

**COMMUNITY PROPERTY LAW:** Oklahoma has a community property law which became effective July 26, 1945; under which there is a presumption that property acquired by a husband or wife on or after that date, except that acquired by gift, devise, descent or as compensation for personal injuries, shall be deemed to be community property and each spouse shall be vested with an undivided one-half interest therein. It is also provided that such rule

would apply to property of spouses who had filed elections to come under the previous elective community property law, such elections having been effective from the first day of the month after they were filed with the Secretary of State and in the office of the County Clerk of the county of residence of the spouses.

This act does not affect existing laws relative to the sale, encumbrance or other disposition of the homestead.

Death or divorce operates to dissolve the community. In case of death, the surviving spouse is given the right to liquidate the community property in the same manner that surviving partners may act upon the death of one partner; and such surviving spouse is not thereby disqualified from acting as administrator or executor of the separate estate of the decedent. In case of divorce, the court can decree community property as it determines is equitable.

As to titles acquired after the effective date of the community property law, in addition to the requirement that spouses join in conveyances to satisfy the laws relative to homesteads, it is much to be preferred that grantors disclose their marital status from the time they acquired title to the time of the conveyance. For example, if title was acquired by John Jones, it should be stated, "John Jones, a single man now and at all times since acquiring the property hereinafter described," or "John Jones and Mary Jones, husband and wife, now and at all times since acquiring the property hereinafter described." It is preferable, also, that in such conveyances, where possible, the marital status of the grantee be shown, together with the name of the spouse, if married. Where such marital status of grantors and grantees is not shown in the conveyances of record, an affidavit showing the same is usually required for the benefit of the grantee and not to be recorded.

Even though a conveyance is made to one spouse only after the effective date of the act, if the name of the other spouse thereafter appears upon the record, abstractors will make the usual court and judgment search and showing as to the latter as well as to the record titleholder.

**A MARKETABLE TITLE:** A marketable or merchantable title is synonymous with a perfect title or clear title of record; and is one free from apparent defects, grave doubts and litigious uncertainty, and consists of both legal and equitable title fairly deductible of record.

**TENANT:** Any person in the possession of real property, with assent of the owner, is presumed to be a tenant.

**MARRIAGE:** Marriage is a personal relation arising out of a civil contract to which the consent of both parties legally competent of contracting and entering into is necessary. Marriage will not affect the property rights of either of property acquired or owed prior to marriage. The homestead cannot be sold or encumbered without the joinder of both. It is not necessary for the husband or wife to join in a deed conveying separate property of the other, but all

attorneys require it to eliminate any question of a homestead right or claim. Under the community property law (effective July 26, 1945, or the effective date of elections, filed by spouses under the previous law) the property of each spouse owned before the act or acquired afterwards by gift, devise, descent or for personal injuries is separate property, and all other is community property.

No male under the age of 21, or female under the age of 18, shall enter into marriage relation, except upon written consent of parent or guardian, and no male under 18 or female under 15 shall marry, even with consent of parent or guardian, provided, however, the Courts may authorize such marriage in certain cases provided by statute.

**DEBTOR:** Everyone who owes to another the performance of an obligation.

**CREDITOR:** The party to whom such obligation is owing.

**NOTARIES PUBLIC:** Are now appointed by the Secretary of State of Oklahoma for a term of four years, and may act in any county in the state. Among other powers, the Notary Public has authority to take acknowledgments of persons executing deeds and other instruments in writing required to be proved or acknowledged. A Notary Public must affix his seal, and show the date of the expiration of his commission or appointment. He is required to make a \$1,000.00 bond, and is required to keep a written record of every acknowledgment taken.

**GRANTOR:** The party making the grant (deed, etc., and if a mortgage the term "mortgagor" is sometimes used, and a lease, the term "lessor.")

**GRANTEE:** The party to whom the grant is given (if a mortgage, sometimes "mortgagee," or a lease "lessee.")

**MINOR:** A person who has not reached the age of majority or is under age to legally transact business.

**PARTNERSHIP:** Generally speaking, a partnership is the association of two or more persons for the purpose of carrying on business together, and dividing its profits between them and likewise sharing its losses. A partnership can be formed only by consent of all parties, and no new partner can be taken into partnership without the consent of all parties thereof.

A partnership as such has no entity capable of holding the legal title to real estate in Oklahoma. An attempted conveyance to a partnership at most will only pass an equitable title to the persons composing the partnership and the legal title will remain in the grantors.

## LESSON NO. 5—QUESTIONS

(1) Briefly define the duties of the County Clerk relative to real estate transactions.

(2) What county officer keeps a record of notice of unpaid income tax, and when does such unpaid income tax become a lien upon real estate?

(3) Name 25 kinds of instruments usually found of record in the County Clerk's office.

(4) What is a "chain of title"?

(5) What is a homestead?

(6) Can the homestead be sold to satisfy any debts or liens? If so, what debts?

(7) Define a "fee simple title."

(8) What is a "life estate"?

(9) Give the difference between "joint tenancy," and "tenancy in common."

(10) Define a "marketable title."

(11) What is a "deed"?

(12) In Oklahoma who may marry, and what effect does marriage have upon the property rights of either the wife or husband?

(13) Is it necessary for the wife or husband to join in a deed conveying property of the other? Why?

(14) What is the difference between a debtor and creditor?

(15) What is the duty of a Notary Public, and what record must such notary keep?

(16) What is the difference between a grantor and a grantee?

(17) Define a "minor."

(18) Define a "partnership."

## LESSON NO. 5—ANSWERS

(1) Duties of County Clerk relative to realty transactions: Has care and custody of all books, records, maps, papers, plats, etc. affecting real estate. Must keep a Reception Record showing nature of instrument filed, time filed, fee charged, description and to whom instrument is returned; keeps a numerical and miscellaneous index, a direct and inverted index for deeds and mortgages and a record of all platted additions and subdivisions; also a record of tax sale and tax resales.

(2) This may be answered either of two ways:

(1) County Clerk—Notice of Income Tax due U. S. Government.

(2) Court Clerk—Notice of Income Tax due State of Oklahoma. Either becomes a lien, when certified to such county officer, upon real estate owned by such delinquent taxpayer.

(3) Any 25 of the instruments listed in Lesson No. 5.

(4) A "chain of title" is a common expression. It refers to each instrument filed from the beginning of the title down to the date of the certificate. Each instrument representing a "link."

(5) A "homestead" is one's home. If farm property it may be not more than 160 acres—if in the city, not more than one acre with a value not exceeding \$5,000.00. Regardless of the value, however, a homestead shall not be reduced to less than 1/4 of an acre. (The value apparently is of no consequence except for city home-

steads in excess 1/4 of an acre in which event it is limited to a value of \$5,000.00.

(6) The homestead may be sold for balance of purchase price due; unpaid taxes; work or material used in constructing improvements or a mortgage may be foreclosed.

(7) A "fee simple title" is "everything." The entire and absolute interest in the property.

(8) A "Life Estate" is an interest in real property limited to the duration of the life of some person.

(9) A "Joint Tenancy" is where two or more persons hold real estate jointly for life, the survivor of the two to take the interest of the other. One of the joint tenants cannot convey his interest. "Tenants in common" are joint owners as long as either desire to remain joint owners, either may convey his interest and neither will become the owner of the others interest upon the death of the other. Neither own a controlling interest; consequently, cannot convey an interest which would give a new "Tenant in common" right of possession of the interest conveyed to the exclusion of the other.

(10) A "Merchantable Title" is neither a perfect title nor the opposite of a bad title. It's merely a title about which there is no fair or reasonable doubt.

(11) Any instrument conveying a part or all interest in a tract of real estate could be called a "deed."

(12) Any male of the age of 21 years or any female of the age of 18 years may marry. If a male between the ages of 18 and 21 or a female between the ages of 15 and 18 secure consent of parent or guardian, such may then marry. Under certain conditions males under 18 and females under the age 15 may marry upon approval of the District Court. Marriage does not in any manner effect the property rights of either of property acquired or owned prior to marriage.

(13) Not as a matter of law unless there is a question of homestead involved. Attorneys usually require joint signatures to eliminate any question of homestead rights or claims.

(14) A "Debtor" is one who owes—a "Creditor" is the one to whom such obligation is owing.

(15) Among other powers, a Notary Public may take acknowledgments of persons executing instruments; he must affix his seal; show the date of expiration of his commission and keep a written record of all acknowledgments taken.

(16) A "Grantor" is the party making the grant and a "Grantee" is the party to whom the grant is given.

(17) A "Minor" is a person not of age or under age to legally transact business.

(18) A "Partnership" is the association of two or more persons for the carrying on of business together, dividing profits and sharing losses together.

# TITLE COURSE

## LESSON NO. 6

### TAXES, SPECIAL ASSESSMENTS, TAX SALES, ETC.

**TAXES:** The taxing power is vested in the State and political subdivisions of the State as authorized by the State Legislature, and is inherent in the Government. All property that may be taxed on the ad valorem basis is assessable at its fair cash value. All taxable property shall be listed and assessed each year at its fair cash value as of the first day of January each year as soon as practical after the 15th day of January; provided that real property shall be listed and assessed only once in two years beginning in 1915, which makes the assessment of real estate fall on the odd year.

The **COUNTY TREASURER** by law is made the collector of all general taxes, and if special assessments or paving taxes are not paid to the City Clerk on or before September 1st of each year, the special assessment rolls are certified to the County Treasurer and such collections thereafter are made by him. (Date of payment to the City Clerk of special assessments in cities operating under charter form of government may be different.)

Taxes are a first lien upon real estate, and even have priority over a first mortgage, mechanic and materialmen liens, or purchase price money. The consolidated State, County, School District and City levies of ad valorem taxes is called the "GENERAL TAX" and is extended on the tax rolls against each piece of property assessed.

Ad valorem (general taxes) are due on the first day of November and may now be paid in two equal installments. Each installment becomes delinquent as follows: First installment, January 1st; second installment, April 1st. Each installment bears penalty from date of delinquency at rate of 1 per cent per month. Provided, the first installment shall not become delinquent until 30 days after the tax rolls are delivered to the County Treasurer.

The general tax rolls are prepared by the County Assessor and certified to the County Treasurer for collection

### PROPERTY SUBJECT TO TAXATION

All property in this State unless otherwise provided, shall be subject to taxation.

All real estate except the following is subject to taxation:

- (1) All property used for free public libraries, free museum and public cemeteries.
- (2) All property used exclusively for religious purposes and all property belonging to fraternal orders or societies occupied wholly by the fraternal order or society. If only partly so used, only the portion so used is exempt.

(3) All property of the United States and of this State and of any County and municipalities.

(4) All fraternal and other orphan homes.

(5) Such property as may be exempt by reason of treaty stipulations between the Indians and the United States Government.

(6) All property devoted solely to the use of scientific educational, benevolent institutions, colleges or societies.

**SINCE ALL REAL ESTATE** is subject to taxation (except as above mentioned) the abstract should so show if no assessment has been made, and if the property is listed as an "EXEMPT" that notation shall be made.

**PERSONAL TAXES.** Personal property is likewise subject to taxation and in the same manner as real estate EXCEPT personal property shall be listed and assessed every year as soon as practical after the 15th day of January. Such taxes being known as "PERSONAL TAX." Personal taxes are liens upon delinquent taxpayer's realty after the levy of an alias tax warrant issued by County Treasurer to Sheriff.

**INTANGIBLE TAXES** are a lien to the same extent as other personal taxes.

**SPECIAL ASSESSMENTS.** When not less than 51 Per cent of the property owners in a certain district wish to have special improvements made, such as paving, or sewer, upon application to the City Council and after statutory notice has been given, an improvement district is created. The cost of such improvement is divided equitably, upon a square foot basis, and spread over an area within one-half of a block each direction of the pavement or the district served by sewer improvement, and charged entirely against the property. Bonds are issued to pay the costs. Property owners are given the option of paying cash for such improvements. If paving is not paid for in full before the bonds are issued, the cost is divided and spread over a period of ten years, payable in ten equal installments, with interest, payable August 1st of each year. Sewer assessments are payable in three equal installments, payable December 15th of each year. (This procedure might vary in cities operating under charter form of government.)

**Irrigation Districts** may be formed in Oklahoma to be financed and operated by such district in its corporate name as provided by statute. If necessary, bonds not exceeding a term of twenty years, may be voted. Collection of interest and principal are made by the County Treasurer for the use and benefit of the district, from assessments made by the County Assessor against real property within the district. Provisions exist for the refunding of such bonds under cer-

tain conditions, also for the exclusion or inclusion of lands after the creation of a district.

The records showing the creation, boundaries of such districts are filed for record with the County Clerk, including a map of the districts and all canals, etc. Abstracters should be careful to watch for any portion of the proceedings affecting title. When abstracting a tract of ground crossed by a canal, a plat of same should be included in the abstract, since many conveyances may convey a portion of real estate lying north, east, south or west of a canal.

The abstract should also show the conditions of any special assessments levied for the creation or operation of Irrigation Districts.

**Drains and Ditches:** In Oklahoma the County Commissioners of any county are authorized to create drainage districts and to levy special assessments for the retirement of warrants or bonds issued for the purpose of constructing drains and ditches, or to straighten, widen, alter or deepen or open any open or underground, non-navigable, natural stream or water-course, etc. The amount of such special assessments is based upon the benefits accruing to the property involved. The County Commissioners are especially given the power of eminent domain for drainage purposes. The term of special assessment bonds is fixed by the Commissioners. However, the first annual payment must be made not later than four years from date. Delinquent assessments may be foreclosed the same as any other special assessment bond, and the lien of such assessment is prior to all liens except state, county or municipal taxes.

All drainage district proceedings are filed with the County Clerk, including a survey and map of the district showing the location of ditches, etc. A plat showing the location of such ditches, etc., should be shown in the abstract to any property involved. The County Clerk is required to keep a "Drainage Assessment Book," showing all assessments and payment thereof as made, against each separate tract of land. Actual payment of any assessment is made to the County Treasurer.

Procedure is provided for the dissolution of any drainage district, by court action, filed by the County Attorney. It may not be necessary to show any additional matters in an abstract other than the status of special assessments. The facts in each case would determine.

**TAX SALES.** Each November, after notice as required by law is published, each tract of real estate on which the general tax for the preceding year or paving tax for the current year has not been paid, is sold at a TAX SALE. If an individual does not buy it, the County does. A Tax Sale Certificate is issued for each tract sold and the number of such certificates is entered upon the tax rolls opposite such description. A tax sale record is kept for individual and county sales (each record separate), all certificates are listed in numerical order. If the certificate is purchased by the County it is known as a "COUNTY SALE" and if by



anyone else as an "INDIVIDUAL SALE." A complete return of all such sales is made by the County Treasurer to the County Clerk.

If the holder of an Individual Tax Sale Certificate desires to pay subsequent taxes against the property covered by such certificate, he may do so and have the amount so paid endorsed upon the back of the "Individual Certificate"—this explains the statement frequently seen in abstracts, that taxes for a certain year were sold and that subsequent taxes have been "ENDORSED."

**TAX DEEDS.** The purchaser of a Tax Sale Certificate, if an individual, may after two years from the date of its issuance, give notice to the owner of the property, either by personal service or publication as required by law, receive a Tax Deed from the County Treasurer. Provided, of course, that the owner does not exercise his legal right of redeeming such property by the payment of all taxes, penalty and costs—such payment being made to the County Treasurer for the benefit of the certificate holder. When redeemed the certificate is then cancelled and the holder thereof receives his original investment plus interest.

Tax Sale proceedings leading up to the issuance of a Tax Deed are usually never shown in an abstract, **except by request.** Where a Tax Deed has been issued upon an Individual Certificate the following should be shown:

- (1) Original Tax Roll with Assessor's Certificate thereto.
- (2) Copy of Tax Sale record with any subsequent endorsements or notations appearing thereon. (Kept by County Treasurer.)
- (3) Notice of the original Tax Sale and Treasurer's return to the County Clerk (including affidavit of publication).
- (4) Copy of Tax Sale Certificate.
- (5) Notice of Application for Tax Deed and any service or attempt to obtain service upon the owner, including, if any, affidavit for service by publication, proof of publication or notice, affidavit of mailing or posting. (All of these proceedings are in the County Clerk's office and NOT RECORDED. The Tax Deed is always shown, if recorded.)

**RESALE TAX DEEDS.** Where the certificate is held by the County and redemption has not been made by the owner within two years from date of the certificate, the County Treasurer gives notice, which is published (as required by statute), that he will sell to the highest bidder at "RESALE" the property described in the certificate and issue a "RESALE TAX DEED." A complete return of his action is certified to the County Clerk. The proceedings usually shown, when requested, relative to a resale are as follows:

- (1) Original Tax Roll with County Assessor's Certificate to the County Treasurer.
- (2) Tax Sale Certificate and Tax Sale record with any subsequent endorsements or notations appearing thereon.

- (3) Treasurer's Notice of Tax Sale (filed with the County Clerk) including affidavit of publication of notice, together with Treasurer's return.
- (4) Notice of Tax Resale, including affidavit of publication, filed with County Clerk.
- (5) Return of Resale by Treasurer showing the amount and to whom sold. (Filed with County Clerk.)

None of these proceedings are recorded but merely filed with the County Clerk.

**COUNTY MAY BID AT TAX RESALE.** The County Treasurer is empowered, in the absence of a legal bid by any other bidder, to purchase for the County any property offered at a Tax Resale, taking title in the name of the Chairman of the Board of County Commissioners, and his successors in office, for the use and benefit of the County. After acquiring title the County collects rents, enforces ejectments and makes repairs, etc. **Unless requested** to show the proceedings listed under "Resale Tax Deeds," the abstractor should show only the Resale Tax Deed.

**SALE OF PROPERTY PURCHASED BY COUNTY AT RESALE.** Any property acquired by the County at a Tax Resale may be sold as required by law. When any sale is consummated "the County Treasurer shall file, with the County Clerk, the original bid, proof of publication and report and approval of sale by the Board of County Commissioners, and it shall be the duty of the County Clerk to record the same, and index it against each and every tract or parcel sold."

When requested, the abstract should show such proceedings.

The laws of Oklahoma also provide that any lands acquired by the County at Resale may be conveyed to the State as forest lands, watershed protection, erosion and flood control, parks, etc., without reimbursement therefor. Provided, however, that the State Planning and Resources Board deems such lands suitable therefor.

**GENERAL.** Tax Deeds are supposed to vest in the holder thereof a fee simple title, free of all prior taxes, with the possible exception of special assessments. **IF TITLE IS ALONE BASED UPON A TAX DEED OR RESALE DEED,** it is not generally considered sufficient unless proper suit to quiet title has been brought and personal service had upon the former owner of the property sold at tax sale, unless he has conveyed to the tax sale purchaser. Many examiners also require an action to quiet title against the Board of County Commissioners and County Treasurer adjudicating the validity of the tax sale, in which the defendants do not disclaim but raise an issue as to the validity of the tax sale.

When abstracting property sold at Tax Resale, where prior taxes are presumably "CANCELLED," the abstractor's certificate should always make mention of the years "Included in the Resale." A statement that such taxes are "Cancelled by Resale" is not proper unless the Tax Rolls have such a statement thereon. The abstractor certifies

to the record and the most common notation appearing on the Tax Rolls is apparently the statement, "In-Resale."

The Resale Tax Deed is always shown if of record, otherwise the abstractor should show in the final certificate, a notation of when and to whom the deed was issued.

**PUBLIC SERVICE CORPORATION.** The real estate of public service corporations is not assessed in the same manner as real estate of individuals or other corporations. In lieu of real estate and personal taxes, an assessment is levied against public service corporations presumed to be equal to the reasonable fair cash value of all property owned by such public service corporation in the County in which such property is located. This tax is known as "PUBLIC SERVICE CORPORATION TAX" and a separate tax roll is kept by the County Treasurer containing such assessments and the amount of taxes to be paid. Therefore, when abstracting property belonging to such corporations, it is necessary to ascertain whether or not this tax has been paid. Any unpaid taxes must be set out in the final certificate since such tax is a lien upon any and all property of the corporation. Telephone, telegraph, railroad, natural and artificial gas, pipe line and electric companies, etc., are "PUBLIC SERVICE CORPORATIONS."

**TAX FERRET.** The statute provides that the County Commissioners may enter into a contract with an individual, whose duty it will be to collect personal property taxes. Former statutes relating to tax ferrets for discovery and assessment of omitted real estate have been repealed; but there may be unpaid items on old "Ferret Roll" made before the repeal.

**HOMESTEAD EXEMPTION.** Homesteads are exempted from ad valorem taxation to the extent of \$1,000.00 of the assessed valuation. Record title must have been in the claimant on January 1st, and the exemption must be claimed each year on or before March 15th.

## LESSON NO. 6—QUESTIONS

- (1) In whom is the taxing power vested?
- (2) At what value is property supposed to be assessed?
- (3) When and how often is real estate assessed?
- (4) Who collects General Taxes? Special Assessments?
- (5) What liens have priority over the lien of taxes?
- (6) What constitutes "General Taxes"? When are they due and how payable?
- (7) Who prepares the Tax Rolls?
- (8) What property in Oklahoma is subject to taxation?
- (9) Define "Personal Taxes."
- (10) When are personal taxes a lien upon real estate?
- (11) Define a "Special Assessment."
- (12) Over what period of time may special assessments be paid?

(13) Define a Tax Sale (Individual and County).

(14) Explain "Endorsed" taxes.

(15) Where will the records pertaining to tax sales be found?

(16) When may a holder of a Tax Sale Certificate obtain a deed?

(17) When necessary to show proceedings leading up to the issuance of a Tax Deed, what proceedings should be shown?

(18) Give the difference between a "Tax Deed" and a "Resale Tax Deed."

(19) What proceedings should be shown, leading up to and including a resale?

(20) Can the County bid at a Tax Resale?

(21) In what manner should taxes included in resale be shown in Abstracter's Certificate?

(22) Name five public service corporations, and explain the difference between the method of taxation of same, and the method of taxing other property belonging to individuals or ordinary corporations.

(23) Define "Tax Ferret" and "Ferret Items" or "Ferret Roll."

(24) Explain "Homestead Exemption."

### LESSON NO. 6—ANSWERS

(1) The taxing power is vested in the State and political subdivisions of the State, as authorized by the Legislature, and is inherent in the Government.

(2) Real estate is presumably assessed at its fair cash value.

(3) Every two years (on the odd year starting with 1915) real estate is assessed.

(4) The County Treasurer collects general taxes; the City Clerk collects special assessments until the first day of September, at which time the rolls are delivered to the County Treasurer.

(5) Taxes are a first lien, no other lien has priority over taxes.

(6) The State, County, School District and City ad valorem levies combined constitute "General Taxes." Such taxes are due November 1st and may be paid in two equal installments, such installments become delinquent January 1st, and April 1st; provided, however, the first installment shall not become delinquent until 30 days after the tax rolls are completed.

(7) The County Assessor prepares the tax rolls.

(8) All property except property listed under Sub-headings Nos. 1 to 6, inclusive, Paragraph 6 of Lesson 6

(9) Personal tax is a tax paid upon personal property.

(10) Personal tax is a lien for a period of two years against real estate belonging to the party against whom the tax is assessed, the lien of personal tax continues, however, as long as such real estate continues to belong to such party.

(11) A special assessment is an assessment made against a tract of real estate for improvements—such as paving, sewer, drainage, etc.

(12) Usually ten years for paving, three years for sewer tax.

(13) Each November, property upon which the tax for the preceding year is unpaid is sold by the County Treasurer as provided by law. If bought by an individual it is an "Individual Sale" and if bought by the County, a "County Sale."

(14) Subsequent taxes may be paid by the holder of such Certificate and the amount of such payments endorsed upon the Sale Certificate. This is known as "endorsed" taxes.

(15) The County Clerk's office has the records pertaining to tax sales.

(16) He may apply for a Tax Deed two years after date of issuance if property has not been redeemed by the owner.

(17) When requested, show proceedings listed in Lesson No. 6, numbered from 1 to 5 inclusive, second paragraph, "Tax Deeds."

(18) A Tax Deed is a deed obtained by the holder of a Tax Sale Certificate, a Resale Tax Deed is a deed issued by the County Treasurer, re-selling property to which the County holds a certificate.

(19) Proceedings showing a Tax Resale (when requested) shown in an abstract are: (See Items 1 to 5 inclusive, listed under "Resale Tax Deeds.")

(20) Yes, if no other legal bid received, the County may bid.

(21) The abstracter's certificate should show whatever notation appearing upon the tax rolls where property has been sold at a resale. For example: If the rolls show "Endorsed in Resale" or "Cancelled by Resale Deed" or merely "In Resale," such notation, should be shown. Never should the abstracter certify that such taxes are "Cancelled" unless the rolls so show. **The abstracter certifies to the record.**

(22) Public Service Corporations are: Telephone, telegraph, railroad, natural and artificial gas, pipe lines, electric companies, etc. Each public service corporation pays a "Public Service Corporation Tax" in lieu of a real estate or personal tax.

(23) A Tax Ferret is employed by the County Commissioners on a commission basis to "ferret out," "dig up" or "find" property which has not been assessed. Such tax items so found are known as "Ferret Items" and appear on a special roll known as the "Ferret Roll."

(24) The homestead of a taxpayer is exempt from ad valorem taxation in the amount of \$1,000.00, if the record title was in the claimant on January 1st, provided claim for exemption is filed on or before March 15th.

# TITLE COURSE

## LESSON NO. 7

\* \* \*

**UNITED STATES OR FEDERAL COURT CASES.** It is not customary for abstracters to certify proceedings in the United States Court, except upon request.

Before any party has access to the Federal Court on questions involving titles to real estate, he must be a non-resident of the State and the value of the real estate must be \$3,000 or more. Occasionally, non-residents will bring suits to quiet title, foreclosure of mortgage suits, etc., in the Federal Court. Many suits have been filed, particularly on the eastern side of the State, by the Government, seeking to recover and quiet title to lands belonging to Indians.

Another type of case which abstracters are frequently called upon to show is receivership matters, in which case real estate belonging to the defunct corporation has been ordered sold by the court.

**BANKRUPTCY.** The purpose of bankruptcy is to excuse the bankrupt from further obligation to pay any indebtedness which all of his assets fail to satisfy.

The theory of bankruptcy is not for the purpose of punishing the bankrupt or to relieve him of his just debts and obligations, but rather to bring about an equitable adjustment to the end that each of his creditors may receive a proportionate amount of the assets of the bankrupt and that the bankrupt may then be discharged from any further liability from such debts as are listed, and thus have an opportunity to begin his business life anew.

The homestead of the bankrupt can never be sold for the payment of any of the debts.

There are two methods by which the court may adjudicate an individual or corporation a bankrupt. One is upon application of the creditors. This is known as "involuntary" bankruptcy. The other way is upon application of the person or corporation, and is known as "voluntary" bankruptcy.

Any corporation is subject to the provisions of the Bankruptcy Act, with the exception of municipalities, railroad companies, insurance companies, banks and building and loan associations.

When abstracting property involved in bankruptcy proceedings, it is necessary to show the following:

1. Petition for Adjudication.
2. Notice to Creditors or any service upon anyone, including any publication thereof.
3. Order of Adjudication.
4. Appointment of Trustee and Qualification of Trustee.
5. Petition to Sell, Orders, Notice, Proof of Publication of Sale, and Return of Sale and Order Approving.

The bankrupt's homestead does not become a part of the bankrupt estate, and the

title remains unchanged. If any of the real estate is heavily mortgaged, or if there is no equity therein, it may be "abandoned as cumbersome," and is not further involved.

There are times when only a partial showing of the bankruptcy proceedings is required in order to show the status and effect of judgments docketed against the bankrupt.

(Under the terms of the Frazier-Lemke Bankruptcy Bill, property owners may retain possession of real estate when certain conditions exist and certain requirements are met. There are provisions also for certain corporate reorganizations and arrangements, without a formal adjudication of bankruptcy. Since abstracters generally do not certify to Federal Court matters, discussion of these particular matters will be omitted.)

**MECHANICS' AND MATERIALMEN'S LIENS.** Any person furnishing material or labor for the construction of improvements upon real estate, for which payment has not been made, may within 60 days if a subcontractor, and four months if a contractor, from the date of last furnishing such material or labor, file a lien with the District Court (Court Clerk) of the County in which the real estate is situated, setting up the description of the property, the kind of material or labor furnished and the amount yet due.

This lien is docketed upon a docket specially prepared for this purpose, and becomes a lien against the real estate described until satisfied. Such lien, however, will only operate as a lien for a period of one year from the date of filing, at which time it will automatically cease to be a lien, unless within such period there is filed in the District Court a suit to foreclose the lien. Provided, however, if there is attached to the lien a note representing all or any part of the amount claimed, the party filing the lien has one year from the maturity of the note to file suit, and the time of expiration of such lien shall likewise be continued.

Statutory provision also is made for the property owner to obtain a release of the lien by giving notice to the lien claimant and making bond; and any such proceedings will be found in the office of the Court Clerk.

The abstracter must always watch for an assignment of a lien which has been filed but may not appear upon the lien docket.

A lien is released in the same manner as any ordinary judgment. In the event a lien is not released, and the suit has not been filed to foreclose the lien within the time specified above, it is the duty of the Court Clerk to make a notation upon the lien docket that such lien has been discharged "by operation of law."

**COMMON PLEAS COURT.** Oklahoma and Tulsa Counties are the only counties having a Common Pleas Court. The jurisdiction of the two courts varies, and since this court

only exists in two counties, it will not be further discussed.

**DISTRICT COURT CASES AND PROCEEDINGS.** The office of the Clerk of the District Court, County Court, and Superior Court have been consolidated and is now designated as "Court Clerk." Usually all of the records pertaining to District Court matters are kept in separate offices and vaults and designated or referred to as the "District Court Division"—County Court records are referred to as the "County Court Division." Superior Courts were established only in a few of the large counties and for the purpose of relieving the congestion of the District Courts. The Superior Court has concurrent jurisdiction with the District Court. All records of the Superior Court will be found in the office of the Court Clerk, all Superior Courts in the State having been abolished, with the exception of two or three counties.

Generally speaking, the only State Courts now having original jurisdiction in real estate matters are the District Court, Superior Court and the County Court. In some few instances the Supreme Court has jurisdiction, however, abstracters never search or certify to Supreme Court records and these instances will not be discussed.

The District Courts and Superior Courts have original jurisdiction in all suits involving title to real estate, damage suits, money judgments, etc. Frequently, County Court matters are appealed to the District Court, Justice of Peace appeals are likewise taken to the District Court and **MIGHT INVOLVE REAL ESTATE**, as will be explained later. **THEREFORE, THE ONLY SAFE RULE** for the abstractor to follow is upon the theory that **ANY KIND** of a suit in the District Court may affect the property abstracted.

**COURT ACTIONS.** There are two classes of court actions, viz: **CIVIL AND CRIMINAL.** A criminal action is one prosecuted by the State against a person charged with a public offense, for the punishment thereof. All other actions are "CIVIL ACTIONS" or suits.

**NECESSARY PARTIES TO A SUIT.** The necessary parties to any action or suit, is the **PLAINTIFF** (the party complaining or bringing the suit) and the **DEFENDANT** (the adverse party or the party against whom the suit is brought). Additional parties, either plaintiff or defendant, may be added by Court order, or any party desiring to become a party to a suit may do so by "INTERVENING" (meaning to enter a plea setting up his rights).

In the event of the death of the plaintiff or defendant the Court may order the action continued by or against his representatives or successors in interest.

In abstracting Court proceedings, especially those which seek to divest claimants of some right, constantly bear in mind that no person may be deprived of his property without "DUE PROCESS OF LAW," and the abstract must contain sufficient information to enable an examiner to determine whether or not this has been done, **BEARING IN MIND**, however, not to "load down" the abstract with immaterial matters.

The question of "SERVICE" upon the defendant (which is nothing more than legal notice of the filing of the suit or action) is of the greatest importance. The "SUMMONS" (original or alias, which is notice of the filing of a suit), together with the "SHERIFF'S RETURN," affidavits relative to obtaining service by publication, mailing notices, posting notices, proof of publication of notice, waivers, etc., **MUST ALWAYS** be shown in full.

After the "PETITION" (which sets out the cause of the suit) has been filed, and service has been had, the defendant is given a certain time within which to make his defense, and in doing this various pleadings may be filed, **MOST OF WHICH ARE NOT MATERIAL TO SHOW IN AN ABSTRACT.** When all such pleadings have been disposed of and the claims of all parties heard, a "JUDGMENT" is entered which is the official determination of the rights of the parties in an action.

**VERDICT.** If the case has been tried before a jury, the determination of the rights of the parties is called a "VERDICT." Either plaintiff or defendant, if not satisfied with the judgment of the Court, may ask for a "NEW TRIAL" and if denied, "APPEAL" to the Supreme Court.

**JUDGMENTS (GENERAL INFORMATION).** A judgment can be for the recovery of property, sale of property, partition or condemnation of property, etc., or for the recovery of a sum of money and in the latter case is usually called a "money" or "Personal judgment." A personal money judgment cannot be obtained unless personal service has been had upon the defendant or unless the defendant has filed some pleading which has the effect of an appearance or service.

A judgment is a lien upon real estate of the judgment debtor from and after entering upon the District Court Judgment Docket.

A "Transcribed Judgment" is a certified copy of the judgment of another court, with a statement of the costs taxed and likewise becomes a judgment when filed in the District Court and entered upon the Judgment Docket.

Money or personal judgments rendered by the County Court (except by statute judgments for the support of illegitimate children) or of Justice of Peace Courts, do not affect real estate until transcribed to the District Court.

Unless involved, the homestead of the judgment debtor is not affected by a judgment. The abstractor cannot pass upon the question of homestead and must show any and all judgments, however.

The lien of a judgment is always subject to the lien of any prior judgment, mortgage, taxes, etc.

A judgment for costs is a no greater lien than any other judgment, and "outlaws" in the same manner.

Judgments when satisfied are released by a notation upon the Judgment Docket of the satisfaction thereof. Frequently a "Partial Release of Judgment" will be filed releasing

a certain piece of property the lien being continued against all other real estate of the debtor. When a "MONEY OR PERSONAL" judgment is released, neither are shown in the abstract, unless mentioned in a prior abstract certificate.

**GENERAL EXECUTIONS.** An execution is a process or order of the Court, issued by the Clerk, directed to the Sheriff of the County in which the property sought to be levied upon is located, and may be directed to more than one County at the same time. An execution cannot be issued until a judgment has been entered. Any property, personal or real, not exempt by law, may be seized and sold to satisfy a judgment.

**EXECUTIONS, HOWEVER, MUST BE ISSUED WITHIN FIVE YEARS FROM THE DATE OF THE JUDGMENT,** and within every five years thereafter, or the judgment shall become dormant and cease to be a lien upon real estate. A judgment may be renewed or revived during the sixth year.

**STATUS OF SUITS.** The status of any suit **WILL ALWAYS BE ONE OF THE FOLLOWING:**

1. It is either a "Pending Suit" (meaning unsettled) or
2. A "JUDGMENT" has been entered which is usually spoken of as a "JOURNAL ENTRY," or the "DECREE" of the Court, after hearing the claims of all parties to the controversy, and
3. Pending on "MOTION FOR A NEW TRIAL," "NOTICE OF APPEAL" to the Supreme Court, or
4. Dismissed (either with or without prejudice, meaning that right to refile or not has been retained), or
5. "TRANSFERRED TO THE FEDERAL COURT."

The condition of the suit **MUST ALWAYS BE SHOWN, IF REAL ESTATE IS INVOLVED,** unless the case has been dismissed and then if previous mention has been made in a former abstractor's certificate.

**ALWAYS REMEMBER** that any District Court Case may affect the title to real estate and it is therefore necessary to **examine all of the papers** to determine whether or not the case affects the property abstracted.

As previously explained, after the filing of the **PETITION** (which states the cause of action or complaint of the plaintiff) legal notice (known as "summons" or "service") is given the defendants. Numerous pleadings may be filed, **MANY OF WHICH ARE NOT MATERIAL** to show in the abstract. It is almost impossible to adopt a hard, fast rule governing the proceedings to be shown since the nature of the case itself will somewhat govern and **the abstractor must be able to determine that which is material.** The general outline given hereafter, however, **should be adopted for the sake of uniformity in abstracting.**

**WHEN OCCURRING, ALWAYS SHOW THE FOLLOWING:**

- Petition.
- Amended or Supplemental Petitions.
- Summons and Alias Summons and Sheriff's Return.

- Waiver or Acceptance of Service.
- Affidavit to Obtain Service by Publication.
- Notice of Publication and Affidavit of Publication.
- Affidavit of Mailing, Posting or Non-Mailing.
- Disclaimers.
- Order Making Additional Parties.
- All Proceedings for Revivor of Action.
- Order Appointing Guardian Ad Litem.
- Answer of Guardian Ad Litem.
- Appointment of Appraisers—Oath and Appraisement.
- Confession of Judgment.
- Final Journal Entries.
- Certificate of Appeal.
- Mandate of Supreme Court.
- Exhibits Attached to Petition.
- Cross-Petition.
- Petition of Intervention or Interplea.
- Restraining Order.
- Partial Dismissal.
- Partial Release of Judgment.
- Objections to Confirmation of Sale.
- Various Court Minutes.
- Motion for New Trial.
- Motion for Order Setting Aside Judgment.
- Stipulations.
- Copy of Appearance Docket.
- Referee's Report (if approved); show order appointing referee, bond and order approving report.

The following are the most common cases filed in the District Court which may be necessary to show, together with a list of proceedings usually shown (**ALWAYS REMEMBER**—in addition to the instruments hereafter listed that it may be necessary to show some of the preceding instruments—**YOU MUST ANALYZE EACH CASE CAREFULLY**):

**1. DIVORCE CASES.** (Where either party owns real estate.)

Show:

- Petition.
- Any Property Settlement or Agreement.
- Summons or Service.
- Journal Entry.

**2. SEPARATE MAINTENANCE.** (When divorce is not wanted and usually ask for an order of the court for weekly, monthly, semi-annually, etc., payment of money for support of wife or family. A separate maintenance action may result in a divorce if the defendant files a cross-petition asking for a divorce. Always mention this case even though no specific property is described, where title is still in either party.)

Show:

- Petition.
- Summons or Service.
- Journal Entry.

**3. FORECLOSURE SUITS.** (Foreclosure of mortgages, liens, conditional sales contracts, deeds, which may in fact have been executed to secure payment of debt, purchase price money, etc.)

Show:

- Petition.
- Summons or Service.
- Journal Entry.
- Special Execution and Order of Sale.
- Appraisement.

Notice of Sale.  
Proof of Publication.  
Sheriff's Return.  
Order of Confirmation.

**4. FORFEITURE OF BOND.** (Where real estate has been listed as security.)

Show:

Petition.  
Summons or Service.  
Journal Entry.

If sale is had, show:

Execution and Order of Sale.  
Notice of Sale.  
Affidavit of Publication.  
Appraisement.  
Return of Sheriff's Sale.  
Order of Confirmation.

**5. PARTITION OF REAL ESTATE.** (The purpose of this suit is to either divide property belonging to more than one person and if not subject to division results in the sale of such property, and an equitable division of the proceeds of the sale among those interested.)

Show:

Petition.  
Summons or Service.  
Appointment of Commissioners  
(Appraisers).  
Report of Commissioners.

(a) Where division can be made the only additional proceedings would be:  
Judgment on Partition (Journal Entry).

(b) Where partition cannot be made, show:  
Election of party to take property at appraised value.  
Order Authorizing Sheriff's Deed.

(c) If none of the interested parties elect to take or if more than one elects to take, show:  
Order of Sale.  
Notice of Sale.  
Affidavit of Publication of Notice.  
Return of Sale.  
Confirmation of Sale.

**6. DISSOLUTION OF CORPORATION.**

(Corporations are dissolved in the following manner:

(a) By the expiration of the time limited by its Articles of Incorporation;

(b) By involuntary dissolution;

(c) By voluntary dissolution.)

**If voluntary:** A corporation may be dissolved by the District Court of the County where its office or principal place of business is situated, upon application to the Court and attached to such application or petition must be proof of the approval of such action by two-thirds of the stockholders; that all debts and claims have been paid, etc. (All statutory requirements.)

**If involuntary:** Dissolution may be asked by any County Attorney in the name of the State, as provided by the statute, the chief basis of such action being the violation of some State law.

Show:

Petition or Application.  
Exhibits Attached to Petition.  
Summons or Service.

(If Notice by Publication—the Usual Proceedings, Journal Entry.)

**7. DISSOLUTION OF PARTNERSHIP.**

Show:

Petition or Application.  
Summons or Service.  
Journal Entry.

**8. VACATION OF PLAT.** (Where 100% consent of the owners cannot be obtained.)

Show:

Petition.  
Summons or Service.  
Journal Entry.

**9. RIGHTS OF MAJORITY.** (The District Court has authority to confer upon minors rights of majority, and to authorize or empower any person under legal age to transact business in general or any business specified, with the same effect as if such act or thing were done by a person of legal age; and such act shall have the same force and effect in law as if done by persons at the age of majority.)

Show:

Petition.  
Notice and Proof of Publication.  
Journal Entry.

**10. REFORMATION OF INSTRUMENTS.**

(Where error in description, consideration or amount of interest conveyed, etc., has occurred.)

Show:

Petition.  
Summons or Service.  
Journal Entry.

(Additional Court Cases will be given in next lesson.)

**LESSON NO. 7—QUESTIONS**

(1) When may a suit involving title to real estate be filed in the Federal Court?

(2) Explain the purpose of bankruptcy.

(3) Give the difference between "voluntary" and "involuntary" bankruptcy.

(4) Who may be declared bankrupt?

(5) Briefly define a mechanic and materialmen's lien, the period of time allowed for the filing of such lien, and in what manner the Court Clerk makes a record of same.

(6) (a) When does the ordinary lien outlaw? (b) When does it outlaw if the lien claimant holds a note for all or part of the amount claimed?

(7) In what manner may a lien be disposed of if same has not been released or foreclosure proceedings filed and has outlawed?

(8) What State courts have original jurisdiction in matters involving real estate titles?

(9) Name and define the two classes of Court actions.

(10) Name and define the usual necessary parties to a suit.

(11) What is meant by the "petition"?

(12) Define "Service," "Summons" and "Sheriff's Return."

(13) Define "judgment;" a "verdict."

(14) When does a judgment become a lien upon real estate?

(15) Define a "transcripted" judgment.

(16) Does a judgment for costs alone become any greater lien than ordinary judgment?

(17) Define "execution." What property is subject to execution?

(18) When can an execution be issued?

(19) When does a "money" or "personal" judgment cease to be a lien upon real estate?

(20) What is the status of a judgment upon which no execution has been issued between the fifth and sixth years?

(21) What will always be the status of any suit?

(22) Name twelve instruments or pleadings which could occur, and which, if occurring, must always be shown in an abstract.

(23) Name eight instruments or pleadings in addition to those you list in answer to Question 22, which may occur and if occurring, must be shown in an abstract.

(24) Briefly explain the purpose of the following District Court cases:

(a) Suit for separate maintenance.

(b) Foreclosure suits.

(c) Forfeiture of bond.

(d) Partition suit.

(e) Dissolution of corporations and partnerships.

(f) Rights of majority.

**LESSON NO. 7—ANSWERS**

(1) When one party is a non-resident and the value of the property is not less than \$3,000, ordinarily the Federal Court will assume jurisdiction.

(2) The purpose of bankruptcy is to excuse the bankrupt from further payment of obligations which all of his assets fail to satisfy.

(3) If a person voluntarily seeks bankruptcy such act is known as "voluntary bankruptcy," and if forced to take bankruptcy by application of his creditors it is "involuntary bankruptcy."

(4) Anyone may be declared a bankrupt upon proper showing, except a municipality, railroad companies, banks, insurance companies and building and loan associations.

(5) A mechanic's or materialmen's lien is a statement of the type of labor or material furnished, and the amount yet due. A sub-contractor has 60 days, and the general contractor four months, in which to file a lien. The Court Clerk makes a record of same upon a lien docket.

(6) (a) An ordinary lien outlaws in one year. (b) If a note is attached, it outlaws one year from the maturity of the note.

(7) The statute provides that when a lien outlaws the Court Clerk will make a notation upon the lien docket that such lien has been discharged "by operation of law."

(8) Generally speaking, courts having original jurisdiction in matters involving real estate titles are District Court, Superior Court and County Court. (In Oklahoma and Tulsa Counties, in certain instances, the Common Pleas Court.)

(9) The two classes of court actions are "civil" and "criminal."

(10) Usual necessary parties to a suit are "plaintiff" and "defendant." The plaintiff is the party suing, and the defendant is the party sued.

(11) The "petition" is the instrument setting out the reason for the suit.

(12) "Service" is the means by which the defendant has been notified of the suit filed. "Summons" is the name of the instrument served upon the defendant advising him that he has been sued. "Sheriff's Return" is the return or statement of the Sheriff showing when and in what manner the interested party was served or notified of the suit.

(13) A "judgment" is an official determination of the rights of the parties in an action. A "verdict" is the finding of a jury.

(14) A judgment becomes a lien upon real estate when entered upon the judgment docket of the District Court or Superior Court, except a County Court judgment for support of illegitimate children which immediately becomes a lien without being transcribed.

(15) A "transcribed judgment" is a judgment which has been transcribed from either a lower court to a higher court or from a court in some other county.

(16) A judgment for costs is no greater lien than any other judgment.

(17) An "execution" is a process or an order of Court directed to the Sheriff to seize and sell certain property for the satisfaction of a debt or in the carrying out of a Court order. Any property not "exempt by law," generally meaning any real estate but the homestead, is subject to execution.

(18) An execution cannot be issued until after a judgment has been entered.

(19) A "money" or "personal" judgment ceases to be a lien at the expiration of five years from date, provided no execution has been issued. If an execution has been issued the judgment remains a lien for another five years from the date of such execution.

(20) The status of a judgment (upon which no execution has been issued) between the fifth and sixth years, is that same ceases to be a lien upon real estate of the judgment debtor, but same may be revived or renewed during that time by proper court action.

(21) The status of every suit must be one of the following:

- (a) Either a Pending Suit, or
- (b) It has gone to judgment, or
- (c) Pending on Motion for New Trial or Appeal, or

(d) Dismissed, with or without prejudice, or

(e) Transferred to the Federal Court.

(22) Any of the twelve instruments listed under the heading "When Occurring, Always Show," etc.

(23) Any of the eight instruments mentioned under the second list of instruments, "It May Be Necessary to Show," etc. These eight must be in addition to those listed in response to Question 22.

(24) (a) A Separate Maintenance Suit is not a suit for divorce, but to require the defendant to maintain and support the wife or family. (b) A Foreclosure Suit is a suit to foreclose a mortgage, a lien, a sales contract, etc. (c) A Forfeiture of Bond Suit occurs when a bond has been forfeited and the surety on the bond lists as security certain real estate. (d) A Partition Suit is a suit brought for the division of property, and if not subject to division the Court orders the property sold and divides the proceeds. (e) When a corporation or partnership desires to cease operating, a suit may be brought by an interested party for the dissolution of such corporation or partnership. (f) The purpose of a "Rights of Majority" proceedings is to have the Court confer upon a minor the power to transact business in general or in a specific case in the same manner as if such person were of legal age.

# TITLE COURSE

## LESSON NO. 8

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### DISTRICT COURT CASES

(Continued)

**1. SPECIFIC PERFORMANCE OF CONTRACT.** (Where party refuses to comply with contract.)

Show:

- Petition.
- Summons or Service.
- Journal Entry.

**2. QUIET TITLE SUITS.** (The purpose of this suit is to remove a cloud caused by some instrument purporting to be evidence of title or to cure errors in court proceedings, parties claiming some right or possession, cancellation of deeds, etc., fraudulently obtained or executed without proper authority, or for recovery of property.)

Show:

- Petition.
- Summons or Service.
- Journal Entry.

**3. CONDEMNATION SUITS.** (Land may be condemned when needed for road or street purposes, railroad right-of-ways or electric railway, parks, schools, public utilities, State, County or Municipal uses.)

Show:

- Petition.
- Summons or Service.
- Order of Condemnation.
- Appointment of Appraisers.
- Award of Appraisers.
- Order Approving Report of Appraisers, and Condemnation of Property.
- Payment of Award (if shown).

**4. RESTORATION OF RECORDS.** Whenever the records of any judgment or decree or other proceeding of any court of this State, or any other public records which have been lost or destroyed, any person interested therein may upon application in writing under oath to the proper Court of the County in which the records were kept, obtain an order from such Court authorizing the restoration of such lost records by the substitution of a certified copy of the original record.

If it is impossible to obtain a certified copy of the original record the interested party may file an application setting out this fact, and the application shall be set down for hearing and the notice of such hearing given. After hearing such application, if the Court thinks proper, a new order shall be made reciting the substance and effect of the lost or destroyed record, which new order shall have the same effect as the original record.

Show:

- Petition and Exhibits Attached.
- Summons or Service.
- Journal Entry.

**5. LIQUIDATION OF FAILED STATE BANKS.** (The State Bank Commissioner has authority to take charge of all assets of a

failed bank but before disposing of same must secure approval of District Court.)

Show:

- Application to Sell.
- Notice (if any).
- Order Authorizing Sale and Confirmation.

**6. ESCHEAT ACTION.** Any real estate within the State of Oklahoma held by an individual, firm or corporation, in violation of State laws, is subject to ESCHEAT, meaning that the title may pass or revert back to the State. Corporations may own only sufficient real estate for the purpose of carrying on the business for which it is organized. If real estate is acquired in its regular course of business, which acquisition would ordinarily be prohibited, it must be disposed of within seven years.

Persons who are not citizens of the United States cannot own real estate in Oklahoma and if any is inherited it must be sold within five years. UNLESS such alien or person who is not a citizen of the United States becomes an actual bona fide resident of Oklahoma; NOR does it apply to any alien owning real estate at the time of the adoption of the Constitution of Oklahoma. Any alien ceasing to be a citizen of Oklahoma must dispose of such real estate within five years from the date he ceases to be a bona fide resident.

Such property held in violation of the Constitution (by an alien) shall be sold, and after paying the costs, the remainder of the sale price is held by the Court Clerk for one year subject to the order of the alien owner, his heirs, or representatives and if not claimed within one year is paid to the State Treasurer for the Common School Fund. Escheat actions are filed by the Attorney General or the County Attorney of the County in which the real estate is situated. This is a very rare proceeding but interesting.

Show:

- Petition.
- Summons or Service.
- Order of Escheat or Condemnation.
- Execution and Order of Sale.
- Appraisal.
- Sheriff's Return of Sale.
- Order Approving Sale.

**7. GENERAL RECEIVERSHIP.** (A receiver may be appointed for any corporation unable to pay its obligations or where, because of mismanagement, it is in danger of losing its assets. Any sale of assets must be made upon Order of Court. A receiver may be appointed by the Supreme Court, District or Superior Court or by the County Court in the absence of the District Judge. The receiver is an officer of the Court acting entirely under the orders of the Court.)

Show:

- Petition.
- Summons or Service.
- Order Appointing Receiver.
- Bond and Oath of Receiver.

Notice to Creditors.

Proof of Publication of Notice.

If sale proceedings are had, show:

- Application for Sale.
- Appointment of Appraisers and Appraisal (if any).
- Order of Sale and Any Notice Given.
- Return of Sale.
- Order and Notice of Hearing Return (if any).
- Order Confirming Sale.

When required, show:

- Final Report of Receiver.
- Order for Hearing and Proof that Notice Required Was Given.
- Order Approving Report and Discharge.

**8. BUILDING AND LOAN COMPANY RECEIVERSHIPS.** The law provides that in the case of an insolvent Building and Loan Association, the State Banking Commissioner has authority to assume full control of the management and assets of the association for the purpose of liquidation, without authority or order of any Court.

Apparently, the general practice for the protection of the Bank Commissioner, is that such Commissioner file an application with the District Court in the County where such association is domiciled for the appointment of himself as Receiver. Thus the Bank Commissioner becomes subject to all orders of the Court. The assets of such association may then be sold at private or public sale, upon order of the Court.

The abstracter should show the application for the appointment of such Receiver, Service, and any Orders, Notices, etc., occurring affecting the property being abstracted.

**9. INJUNCTIONS.** (An injunction is a command to refrain from any particular act. It may be temporary or permanent, and is never allowed except where it appears to the Court that if not granted someone will suffer great injury. Frequently the County or City is restrained from collecting taxes or special assessments.)

Show:

- Petition.
- Summons or Service.
- Restraining Order.

**10. MANDAMUS.** (A mandamus suit is brought for the purpose of forcing someone to perform some act. It may be granted by the Supreme Court, District Court, or County Court in the absence of the District Judge.)

Show:

- Petition.
- Summons or Service.
- Writ of Mandamus (Journal Entry).

**11. APPEAL FROM SURVEY MADE BY SURVEYOR.** (The County Surveyor may make a survey when requested by the owner or when directed by the District or County Court or County Commissioner. All such surveys shall be according to the laws of the United States and instructions issued by the Officer in charge of the Public Land Survey. Adjoining land owners in dispute over boundaries may request the surveyor to make a survey and when notice is given as required by law, the surveyor shall make such survey. Either party may appeal from such survey or decision of the surveyor to the District Court. All surveys of road right-

of-ways, etc., made at the request of the County Commissioners, when requested, shall be filed with the County Clerk.)

Show:

Complete Transcript of All Proceedings Filed.  
Any Additional Summons, Service or Notice.  
Journal Entry.

**12. APPEAL FROM ORDER OF EQUALIZATION BOARD.** (Any property owner dissatisfied with the assessed value of real estate as fixed by the Equalization Board may appeal to the District Court.)

**It is not necessary to show this proceeding.**

**13. APPEAL FROM PLANNING BOARD.** (Any property owner not satisfied with the ruling of the Planning Board relative to restrictions as to the character of buildings permitted, etc., may appeal to the District Court. Usually it is not necessary to show these proceedings in full. When requested, however, show:

Complete Transcript Filed.  
Any Additional Service.  
Journal Entry.

**14. APPEAL FROM JUSTICE OF PEACE COURT.** Any suit commenced in the Justice Court which later discloses the title or boundaries to real estate to be involved, **shall within ten days be transmitted to the District Court** of the County in which the property is located for further proceedings.

If any officer serving a Writ of Attachment issued by a Justice of Peace Court shall find real estate belonging to the party against whom the Writ of Attachment is directed, upon such return being made to the Justice, the Justice shall at the request of the plaintiff, forthwith certify his proceedings to the District Court, and the Clerk thereof shall docket the case and such further action shall be had as if the same had originated in the District Court.

Show:

Transcript from Justice of Peace Court.  
Any Additional Service.  
Journal Entry.

(If Attachment appears, show proceedings listed elsewhere herein in District Court Attachments.)

**15. APPEALS FROM COUNTY COURT.** (Any person not satisfied with an order of the County Court appointing Guardian, Administrators, Executors, or from orders declaring incompetency or restoration of competency, or from order admitting or refusing to admit wills to probate, etc., may appeal to the District Court.)

Show:

Complete Transcript to District Court and copy of the Appearance Docket of the County Court, together with Additional Service and judgment of the District Court.

There will likely be further proceedings in the County Court to be shown following the final decision of the District Court. The nature of the appeal to the District Court will to some extent govern as to what portion of the case you should show.

**16. TAX CASES.** (For the recovery of taxes paid under protest or attacking a tax levy usually do not affect title to real estate and are not shown in an abstract.)

**17. MONEY JUDGMENT SUITS.** Suits on notes, money due, damage suits, contracts, etc., usually do not affect real estate until a judgment has been entered upon the Judgment Docket. EXCEPT, when a Cross-Petition is filed describing real estate, or when an ORDER OF ATTACHMENT may be issued. The plaintiff in any civil action, after the commencement thereof, may have an attachment against the property of the defendant, when certain conditions provided by the statute exist. An attachment affidavit must be filed setting out one of such grounds for attachment. **A Cross-Petition or Attachment may be found in any Money Judgment Suit or Appeal from the Justice of Peace Court.**

Show:

Petition.  
Summons or Service.

If Attachment is asked, the following additional proceedings are had:  
Affidavit for Attachment.  
Attachment Bond.  
Order of Attachment (to Sheriff).  
Sheriff's Return showing Appraisalment of Property.

No further proceedings are had until further or final judgment of the Court. If judgment is entered the following additional proceedings are had:

Show:

Journal Entry.  
Order of Sale.  
Re-Appraisalment of Property.  
Notice of Sale.  
Proof of Publication of Notice.  
Return of Sale.  
Confirmation of Sale.

**18. CONSOLIDATED CASES.** (When separate causes of action involve the same property usually such cases are consolidated and thereafter treated as one case.) When this occurs,

Show:

Petitions.  
Summons or Service.  
Order of Consolidation.  
Customary Additional Proceedings.

**19. TRANSFERRED TO U. S. COURT.** When cases involving title to real estate have been transferred to the United States District Court, the abstracter must make notation thereof in the final certificate, or,

Show:

Copy of Appearance Docket.  
Order of Transfer, or  
Court Minute or Entry of Transfer.

**20. REVIVOR OF JUDGMENT.** All proceedings to revive a judgment are had in the original case where judgment was entered and not by separate action. Where a judgment is transcribed from another county the proceedings to revive would be had in that county.

When necessary, show:

Motion to Revive Judgment.  
Notice of Application to Revive, and  
Any Notice Given.  
Order Reviving Judgment.

**21. GENERAL EXECUTION.** (Where a judgment has been rendered in the County where the property abstracted is located, or where judgment has been transcribed from some other Court.) If judgment is rendered by District Court of the County in which the property abstracted is located,

Show:

Petition.  
Summons or Service.  
Journal Entry.  
Writ of Execution.  
Return of Sheriff Showing Property.  
Appraisalment.  
Notice of Sale.  
Proof of Publication of Notice.  
Confirmation of Sale.

**22. FOREIGN EXECUTION.** (Special execution is issued by the Clerk of the Court in which judgment was rendered direct to the Sheriff of the county in which the property is located and by the Sheriff delivered to the Clerk of the District Court of his county to be entered upon the Execution Docket. After the Sheriff has levied upon the property of the Judgment Debtor he makes a return of his action to the Court Clerk transmitting the following papers: Special Execution and Order of Sale, Appraisalment of Property, Notice of Sale, Proof of Publication of Notice and Return of Sale. The Court Clerks makes a notation upon the Execution Docket and sends all papers to the Court Clerk originally issuing same. The sale made by the Sheriff is subject to confirmation of the Judge of the Court where the judgment originated.)

Show:

Copy of Execution Docket and Any Notations Thereon.

**23. REFEREE.** The District Court may appoint one or more, not to exceed three, referees to hear evidence, etc., and conduct the trial of a case in the same manner as a trial by Court (except in cases where an infant is a party), who, after hearing said cause, shall report in writing their finding, which report, when filed and approved by the Court, becomes the finding or judgment of the Court.

Show:

Petition.  
Summons or Service.  
Appointment of Referee or Referees.  
Oath of Referee.  
Report or Finding of Referee.  
Order Accepting or Approving Report.

**24. REVIVOR OF ACTIONS.** Where a plaintiff or defendant in any action dies, or his power as personal representative ceases, if the right of action can be continued against the remaining parties, if any, the action may be revived against the remaining parties, or it may be continued against the executor, administrator, receiver, heirs, etc. If not revived by agreement, application to revive and summons or other legal service must be had, all of which proceedings should be shown in the abstract.

**It is a safe rule to never take anything for granted and especially when abstracting and searching court records. The largest losses of title companies occur in connection with court matters. Be careful!**



**LESSON NO. 8—QUESTIONS**

(1) John Doe contracts with Richard Roe to purchase a tract of real estate and then refuses to complete the transaction. What kind of suit could be filed by Roe?

(2) Bill Simpson gave a mortgage to a tract of real estate he did not own. The party holding the mortgage dies and the heirs cannot be located. In what manner can the title be cleared?

(3) The Oklahoma City Railway Company needs additional land for the erection of a freight house. The owner of the property desired refuses to sell. How many of the Railway Company obtain such property?

(4) The Garfield County Court House burned and the proceedings in a divorce action affecting title to a house and lot were burned. The attorney representing the plaintiff had complete copies of all proceedings had in such divorce. In what manner may the record be perfected?

(5) (a) Define the term "Escheat." (b) The City Slick Mortgage Company obtained title to a farm by foreclosure of a mortgage. Is it legal for such company to own such property so acquired? (c) Can a foreigner own property in Oklahoma? If so, under what conditions?

(6) A Mortgage Company is unable to meet its obligations although it owns several farms and first mortgages. What can a creditor do to try and protect his unsecured account?

(7) Explain the difference between an "injunction" and a "mandamus" suit.

(8) Use your imagination and give an

illustration of a Justice of Peace action which would be necessary to show in an abstract. Keep in mind, however, that the abstracter never searches the records of the Justice of Peace office.

(9) To what Court may an appeal be had from orders of the County Court?

(10) What is meant by a suit for a "money judgment"?

(11) Give the difference between "general execution" and "foreign execution."

(12) What is meant by "Revivor of Actions"?

**LESSON NO. 8—ANSWERS**

(1) Suit for Specific Performance of Contract.

(2) Suit to quiet title.

(3) By condemnation proceedings against the owners.

(4) By going into the District Court with an action to "Restore Lost Records" and having the copies declared to be of the same effect as the original.

(5) (a) "Escheat" means that the title may pass or revert back to the State. (b) Yes, if sold within seven years. (For holding longer than seven years, statutes now provide a penalty starting at 1% of the assessed valuation and increasing to 6% thereof, to be collected by suit in District Court filed by the County Attorney.) (c) A foreigner cannot own real estate in Oklahoma unless inherited and then for a period of five years; unless such non-citizen becomes a bona fide resident of Oklahoma

or unless he owned such property prior to the adoption of the Oklahoma Constitution; within five years after he ceases to be a citizen of Oklahoma he must dispose of same.

(6) Ask for the appointment of a Receiver.

(7) An "Injunction" is a command to refrain from any particular act; a "Mandamus" is for the purpose of forcing someone to perform some act.

(8) Any suit originally filed in the Justice of Peace Court which involves the title to or the boundaries of real estate must be transmitted to the District Court or if an officer serving a Justice of Peace attachment finds real estate belonging to the party against whom the writ is directed, upon request, the Justice of Peace must certify all proceedings to the District Court. Any "Hypothetical case" stated by the student coming within the above, would be correct.

(9) Appeals from the County Court are made to the District Court.

(10) A "Money Judgment" suit is merely a suit for "Money." Such a suit could be based upon open accounts, notes, contracts, damages, etc.

(11) A general execution is an execution issued by the court in the County where the judgment was rendered or transcribed. A foreign execution is an execution issued by a "Foreign Court" or a court located outside of the County where the property levied upon is located.

(12) "A Revivor of Action" is for the purpose of reviving an action against the then proper parties.

# TITLE COURSE

## LESSON NO. 9

\* \* \*

**COUNTY COURT.** Section 12 of the Constitution of Oklahoma gives the County Court original jurisdiction in all probate matters, and civil cases involving not more than \$1,000.00. An abstractor is never concerned with money judgments in the County Court because no lien attaches until transcribed to the District Court, except judgments for the support of illegitimate children which, by statute, are liens.

When a District Judge is absent from the County or disqualified the County Judge has power to issue writs of mandamus, attachments or injunctions.

The County Court does not have jurisdiction in litigation involving title to real estate except in probate matters.

The County Court has original jurisdiction of estates of deceased persons, minors and incompetents.

The County Court is authorized to open and receive wills and testaments; to admit or refuse to admit them to probate and to allow and record foreign wills; to appoint and remove for cause Executors, Administrators and Guardians; to appoint appraisers of estate; to order the sale of property belonging to estates or minors; to order the payments of debts due from estates of deceased persons and minors; to appoint and remove guardians for infants, insane persons or persons otherwise incompetent; to compel payment and delivery to them of money or property belonging to their wards, to control their conduct and settle their accounts.

The County Court is also given power to approve deeds of adult full blood Indians conveying their inherited lands as provided by laws of the United States.

Any interested person may appeal to the District Court from any order of the County Court.

**WILLS. (General Information)** A will is an instrument in writing, properly witnessed, by the terms of which the maker gives away certain property or otherwise describes the disposition to be made of any property owned by the maker at the date of death.

All wills must conform to the laws relative to that portion of the estate to which the wife or children of the deceased are entitled.

The will may provide for the appointment of one or more trustees to carry out certain requests of the deceased.

**WHO MAY MAKE A WILL.** Every person over the age of eighteen years, of sound mind, may by last will, dispose of all his estate, real and personal, and such estate not disposed of by will is succeeded to as provided by statute, being chargeable in both cases with the payment of all the decedent's debts, as provided in civil procedure.

### WHAT MAY BE DISPOSED OF BY WILL.

Every estate and interest in real or personal property to which heirs, husband, widow, or next of kin may succeed, may be disposed of by will; provided, that no marriage contract in writing has been entered into between the parties; no man while married shall bequeath more than two-thirds of his property away from his wife, nor shall any woman while married bequeath more than two-thirds of her property away from her husband; provided, further that no person who is prevented by law from alienating, conveying or encumbering real property while living shall be allowed to bequeath same by will.

**CUSTODIAN BY WILL (Duties).** Every custodian of a will, within 30 days after receipt of information that the maker thereof is dead, must deliver same to the County Court having jurisdiction of the estate, or to the executor named therein. Failure to do so makes the person failing responsible for all damages sustained by anyone injured thereby. Should any person fail or refuse to deliver a will he may be committed to jail, and kept in close confinement until he does produce it.

Upon the death of a person leaving a will, the will is presented to the court for probate.

In the event the court refuses to admit a will to probate or the deceased does not leave a will directing the disposition of his estate, then an administrator is appointed and the estate distributed in accordance with the laws of "Descent and Distribution" of Oklahoma.

In the event the deceased owns property in the State of Oklahoma at the date of his death, although a resident of another state, and a will has been probated in another state, a certified copy of the proceedings in such state must accompany the petition and be filed in a County in Oklahoma in which some of the property of the deceased is located, and the Foreign Will admitted to probate by the Oklahoma Court. The probating of a will in any one county in which the deceased has real estate is sufficient although he has real estate in various counties.

**EXECUTOR** is a person or persons, corporation or corporations appointed by the Court to carry out the terms of the will. The will usually designates the executor.

**TESTATE.** A person leaving a will at his death is said to have died "Testate." A "Testator" is the party.

When abstracting probate of will proceedings, show the following:

Will.  
Petition for Probate of Will (and Renunciation if any).  
Order for Hearing.  
Notice of Hearing.  
Proof of Posting, Mailing and Publication (if any).

Order Admitting Will to Probate.  
Bond. (If required.)  
Certificate of Probate.  
Letters Testamentary.  
Notice to Creditors.  
Proof of Publication.  
Order Appointing Appraisers.  
Inventory and Appraisement.  
Appointment of Agent. (If any.)

**SALE PROCEEDINGS.** If the will does not give the executor power to sell, the sale proceedings will be the same as an administration sale. If the will gives the executor power to sell, in addition to the above, usually will be found the following:

Return of Sale.  
Order for Hearing Return.  
Notice of Hearing Return.  
Order Confirming.  
Proof of Posting.

Where necessary to show the final closing of an estate, there should be shown:

Final Report.  
Order for Hearing Final Report.  
Notice of Hearing.  
Proof of Publication, Mailing or Posting of Notice.  
Order Approving.  
Final Discharge.  
Estate Tax Clearance.

**INTESTATE.** A person leaving no will at his death dies "Intestate."

In the event an executor is not designated in the will, there is appointed by the Court an "Administrator with will annexed"; or in the event the executor designated in the will is unable or refuses to act, the administrator thusly appointed carries out the provisions of the will under the order of the Court.

**ADMINISTRATOR** is a person or corporation (may be one or more appointed by the County Court to manage, sell or distribute the property of a deceased person in such manner as directed by the Court.

**SPECIAL ADMINISTRATOR.** When there is a necessity existing therefor or when the appointment of a regular administrator is irregular, the Court may, during time required to appoint a regular administrator, appoint a Special Administrator to look after the property, etc. of the estate until such regular administrator has been appointed and qualified. Such appointment of a Special Administrator can be made without notice. Abstractors ordinarily do not show the appointment of a Special Administrator since he does not have authority to dispose of any of the real estate of the deceased.

When abstracting administration proceedings show the following:

Petition for Appointment.  
Nomination and Consent.  
Order for Hearing Petition.  
Notice of Hearing.  
Proof of Posting, Mailing and Publication (if any).  
Order Appointing Administrator.  
Bond.  
Letters of Administration.  
Notice to Creditors.  
Proof of Posting and Publication.  
Order Appointing Appraisers.  
Inventory and Appraisement.

Order Setting Aside Homestead (if abstracting homestead.)  
Appointment of Agent. (If any.)

**SALE PROCEEDINGS.** (Same as Guardianship Sale.)

When showing the closing of an estate show the following:

Final Account or Report.  
Order for Hearing.  
Notice of Hearing.  
Proof of Publication.  
Order Approving Final Account.  
Decree of Distribution.  
Final Discharge.  
Estate Tax Clearance.

**GUARDIANSHIPS.** A guardian is a person or corporation (may be one or more) appointed by the County Court to care for, manage and look after the person or property of a minor or incompetent, as directed by the Court.

The person over whom or whose property a guardian is appointed is known as "a ward."

**A SPECIAL GUARDIAN** may be appointed in the same manner and for the same purpose as a special administrator.

Any guardian may be removed by the Court for cause, and the power of the guardian over the ward ceases when such guardian is removed or whenever the ward marries or becomes of age.

When abstracting guardianship proceedings of a minor show the following:

Petition for Appointment.  
Nomination by minor.  
Order for Hearing Petition.  
Waiver of Notice and Consent.  
Notice of Hearing Petition.  
Proof of Posting, Mailing and Publication. (If any.)  
Order Appointing Guardian.  
Guardian's Bond.  
Letters of Guardianship.  
Order Appointing Appraisers.  
Inventory and Appraisal.

If necessary to show sale proceedings show the following:

Petition to Sell.  
Order for Hearing.  
Waiver of Notice and Consent.  
Notice of Hearing.  
Personal Service, Proof of Posting, Mailing and Publication. (If any.)  
Order or Decree of Sale.  
Additional Bond.  
Notice of Sale.  
Proof of Posting and Publication.  
Bid. (If any.)  
Return of Sale.  
Order for Hearing Return.  
Notice of Hearing Return.  
Proof of Posting Notice.  
Order of Confirmation.

When abstracting proceedings where the

real estate of a minor is mortgaged or leased for oil and gas, in addition to the appointment and inventory and appraisal, show the following:

Petition to Mortgage or Lease.  
Order for Hearing.  
Notice of Hearing.  
Proof of Publication, Posting, Mailing, Waivers. (If any.)  
Return of Sale.  
Order Confirming Sale.

When necessary to show the closing of guardianships show the same proceedings as in the closing of an administration.

**INCOMPETENT.** A person declared by the County Court not to be competent to legally transact business for himself. (A person either temporarily or permanently insane.)

When abstracting property in which the guardianship proceedings of an incompetent occur, the same proceedings will be found as in the guardianship of a minor, except there will be no nomination by the incompetent, and personal service must be had upon the incompetent, and usually service is had also upon the superintendent of the sanitarium or insane asylum.

If the incompetent has been restored to competency show the following:

Petition to Restore to Competency.  
Order for Hearing and any Notice. (If any.)  
Order Restoring to Competency.

It is often necessary to show court minutes extending the time of hearing, change of date of sale, orders Nunc Pro Tunc, etc.

**DETERMINATION OF JOINT TENANCIES AND LIFE ESTATES.** The County Court may determine the fact of death of a joint tenant or life tenant under procedure authorized by statute. In such case, show the following:

Petition for Determination of Death.  
Order for Hearing.  
Notice of Hearing.  
Proof of Publication, Mailing; and Waivers. (If any.)  
Order Determining Death.

**LESSON NO. 9—QUESTIONS**

- (1) What is the jurisdiction of the County Court?
- (2) Define a "will." Who may make a will?
- (3) Define an "executor."
- (4) The deceased owns property at the time of his death in Oklahoma, Tulsa, Muskogee, Garfield, Carter and Kay Counties. If he left a will where should it be presented for probate?
- (5) Explain what is meant by a party having died "Testate" or "Intestate."
- (6) Name 10 papers filed in every case where a will is probated that must always be shown.

(7) Assume that the will gives the executor "power to sell"—name five papers in addition to those given in answer to question No. 6, which usually occur.

(8) Where necessary to show the final closing of an estate what should be shown?

(9) Define an "Administrator" and a "Special Administrator."

(10) When abstracting administration proceedings name ten papers or pleadings that always occur and must be shown.

(11) What is a "Guardian"? A "Minor"?

(12) Define an "Incompetent."

**LESSON NO. 9—ANSWERS**

(1) The County Court has original jurisdiction in all probate matters, (such as estates of deceased persons, guardianship matters, incompetency cases and approval of conveyances from Full Blood Indian heirs.) and suits which do not involve more than \$1,000.00.

(2) A will is an instrument in writing, properly witnessed, which provides for the distribution or handling of property owned by the deceased. Any person over the age of 18 years, of sound mind, may make a will.

(3) An "Executor" is the person, or persons, corporation or corporations, appointed by the Court to carry out the terms of the will.

(4) A will must be probated by the County Court of the County in which the deceased resided at the date of death, (if such a party is a resident of Oklahoma) otherwise, after probate by a proper Court of a Foreign State, it must be again probated in one of the counties in Oklahoma where some of the deceased's property is located.

(5) A party dying "Testate" leaves a will; if he leaves no will he dies "Intestate."

(6) See list of papers filed in "Probation of Wills."

(7) See list of papers filed in "Probation of Wills" ("Sale proceedings").

(8) See list of papers filed in "Closing of Estate."

(9) An "Administrator" is a person or corporation appointed by the Court to handle the affairs and property of the deceased as ordered by the Court. A "Special Administrator" is appointed for the special purpose of doing certain things until such a time as a regular administrator may be appointed.

(10) See List, Lesson No. 9.

(11) A "Guardian" is a person or corporation to handle the person, affairs and property of a minor, as directed by the Court. A "Minor" is a person not of legal age.

(12) An "Incompetent" is a person declared by the County Court to be incompetent to legally transact business for himself.

# TITLE INSURANCE

## LESSON NO. 10

\* \* \*

In this resume, the words "Title Insurance Policy," "Title Guaranty Policy," and "Guaranty Title Policy" are synonymous. They are all one and the same thing, being named differently in different communities. For purposes of this discussion, we shall call all of them a "Title Insurance Policy."

The application of the theory of insurance to titles to land is a natural step in the evolution of titles and handling thereof.

The abstract of title, coupled with the opinion on title of an attorney, no matter how skilled, necessarily must depend upon the record.

Title Insurance goes several steps further and combines the functions of the abstractor, the attorney, and insurer. It places an absolute guaranty behind the work of the title company. Title Insurance guarantees the genuineness of every recorded instrument.

The Supreme Court of Pennsylvania in *Foehrenbach vs. German American Title and Trust Company*, 217 Penn. State, Page 331, defines title insurance in the following language:

"The sole object of title insurance is to cover possibilities of loss through defects that may cloud or invalidate titles. It is for the assumption of whatever risk there may be, in such connection that the premium is paid to, and accepted by, the company which issues the policy. Title insurance is not mere guess work, nor is it a wager. It is based upon careful examination by skilled conveyancers. The quality of a title is a matter of opinion, as to which even men learned in the law of real estate may differ. A policy of title insurance means the opinion of the company which issues it as to the validity of the title, backed by an agreement to make that opinion good in case it should prove to be mistaken, and loss should result in consequence to the insured."

A Title Insurance policy recognizes the possibility of loss, but throws the risk of loss upon the company issuing it instead of upon the property owner. That, in fact, is the reason it maintains reserves. It is a contract of specific indemnity entered into by the insuring title company and the beneficiary.

### TYPES OF POLICY

There are three types, one termed an Owner's or Fee Policy, One termed a Mortgagee or Loan Policy, and, third, a Leasehold policy.

### THE AGREEMENT TO INSURE

While naturally there is a variation in the exact forms used in different sections of the country, the policy, on its face, contains an agreement to insure, sets the total amount of liability assumed, the name of the beneficiary, and the nature of the loss guaranteed against. **It may or it may not (varying with localities) insure against loss**

**by reason of unmarketability of title. All insure against loss by reason of failure of title.** In some jurisdictions by reasons of great disasters, such as fire, a title policy form cannot insure against loss by reason of unmarketability for the simple reason that the destruction of the public records make it impossible for any one to determine that the title ever was or was not marketable.

### SCHEDULE A

Here are set forth the interests or estate of the insured. If it be an owner's form, it may contain references to the deed or other means by which the fee estate is vested in the insured. If the policy is a mortgagee form, there is reference to the mortgage or deed of trust representing the interest protected.

Schedule A also contains the legal description of the land.

### SCHEDULE B

#### Exceptions and Objections

Here are set forth those items against which the Company does not, or cannot, insure. Certain of these are "stock" objections, as, for instance, "Rights of Parties in Possession." That is a matter for investigation and determination (in an Owner's Policy form) by the purchaser of the property or his agent; or, "Subject to Questions which an accurate survey will Disclose." A title policy covers the legal title. It does not cover, nor can it attempt to cover, questions of sufficiency or insufficiency of ground. The purchaser or mortgagee can have this point covered by securing an engineer's survey of the property. If acceptable to the title insurance company in all respects, then this sentence can be deleted from the policy form.

### CONDITIONS AND STIPULATIONS

Here are set forth Conditions and Stipulations under which and subject to which the Company issues its policy. In general, these may be summarized as follows:

Exercises of Eminent Domain by the United States Government or any of the divisions or sub-divisions of the State Government.

Notification to the Company of claims made against title or litigation involving title.

Settlement of all such by the Insurer.

Warranties by the Insured.

Date of Origin of Loss. A title company cannot insure against defects and encumbrances which may be placed upon the property subsequent to the date of the policy. A title policy is not a promise of indemnity against something which may happen in the future but rather against already existing defects in the title to real property, the existence of which may not be discovered until at some future date. Or, stated another way, it puts the financial resources

of the title company behind the Warranty of Title.

Payment of Loss—Right by the company to appeal to the higher Courts.

Subrogation.

Reduction of liability pro tanta by reason of payments of losses upon established claims.

Special Conditions and Reservations according to local searching conditions and the statutes of the state.

### OWNER'S OR FEE POLICY

The Owner's or Fee Policy runs in favor of the owner or owners of the property according to the interest he or they have therein.

### THE MORTGAGEE POLICY

This form runs in favor of the lender against real property, according to the status of the lien of his mortgage or trust deed.

### THE LEASE-HOLD POLICY

The leasehold policy runs in favor of the lessee showing his interest in the property as a leasehold interest.

### PREMIUM CHARGE

Varying with the community, length of search, economic conditions and state statutes and decisions of the courts of the State. There is no annual premium charge.

### TITLE INSURANCE COVERAGE

Title insurance contemplates (1) the abstract of title or its equivalent thru the minute or search sheet of the examiner of the public records, with all its manifold showings of recordings and filings affecting the title to be insured; (2) a careful and methodical examination by one skilled in the law of real property; (3) insurance to the beneficiary, or a bond of indemnity agreeing to save him from loss or damage, under the terms of the policy, by reason of failure of title (and, in numerous jurisdictions, by reason of unmarketability of title).

### PROCEDURE

#### Material Covered

In nearly all title companies, all objections to title are set forth by the original examiner after the title evidence has been carefully studied by the examiner. Some, of minor character, are waived by him. Others, of more grave character, are considered by a senior officer of the legal division of the company. Obviously no title company can insure against known serious defects in title whether they appear of record or not. But there are many objections to title which, with reasonable safety, can be waived (or removed by the senior examiner).

On objections to title of greater complexity, research work can be and is performed by the title company in an effort to arrive at a means to remove these from the company's preliminary report and policy.

Here the practices of the title insurance company over the years in having adhered to definite and fixed principles of interpretation on the point of marketability of title (and yet with due consideration of the statutes and court decisions) bear fruit.

### CURATIVE MATERIAL

Obviously, with the passing of the years, the title company will accumulate an im-

mense amount of data, of instruments—many not recorded—which go far toward the establishment of marketable titles. Most title companies have in their files, for instance, hundreds of affidavits with regard to the marital status of grantors in old conveyances; affidavits of identity, quit claim deeds, and many other types of curative instruments. The responsible title company employs a staff of efficient employees in all its departments for the purpose of making thorough and exhaustive examinations of title and to best use the accumulated curative material.

The Superior Court, of the State of Washington, evidenced its feeling on the matter of determination of marketability (or unmarketability) of title in the case of *Flood vs. Von Marcard*, 102nd Washington, Page 146.

Flood paid \$500 down on a \$10,000 deal. The seller claimed title was good. A prominent Washington title company declined to insure it. Flood demanded his money back. It was refused and he sued. The Superior Court held the title was not merchantable, or marketable. The Court stated:

"That is was not such a title as a buyer would take in exercising ordinary prudence in the conduct of his affairs, which is sufficiently evidenced by the refusal of the title insurance company to guarantee it and the refusal of its General Counsel, whose learning and skill in the law cannot be questioned, to approve the title."

#### INSURANCE OF BAD TITLE?

The answer is definitely, No. Manifestly, no title company will knowingly insure a title which is defective. No company deliberately buys a law suit.

However, as stated by Lloyd L. Axford, in his lifetime the dean of real property lawyers of Michigan, "He who submits a title for examination desires to buy. He requires no assistance to decline to purchase." The responsible title company seeks for ways and means to approve, not to decline, a title.

It thus becomes the duty as well as the privilege of the title company to have made a comprehensive legal examination of the title, to waive objections which are frivolous and inconsequential, but to require clearance of valid objections to title. As to the last named point, this may be done by the procurement of curative material, such as affidavits and quit-claim deeds; sometimes by a suit to quiet title, even sometimes by the passing of time and thus the extinguishment of a cloud upon title—as, for instance, the termination of a reciprocal easement thru the death of the party in whose lifetime the easement remained in existence.

The procedure in the average title insurance company might otherwise be described in this fashion:

1. The original examination of the chain of title by a member of its legal staff.

2. Consideration by a senior officer of the department—perhaps at a staff conference—of all objections to title, and the waiving of various objections to title, based in large measure upon knowledge by the

company of decisions of the court supporting the company's position.

3. As to any remaining objections to title, consideration by the senior officers of the company on the point of waiving or passing certain of these as a "business risk."

#### KNOWN AND VALID OBJECTIONS TO TITLE

A title insurance company, whether or not it insures against loss by reason of unmarketability of title, is not in the business of buying law suits. Hence, it must set up objections to title which, on their face, are dangerous, which make the title unmarketable.

There are, however, certain of these matters which can be eliminated from the preliminary title report and the policy. Among these, under certain conditions, to which careful study is given with a view to waiving, are:

Old, unsettled estates,

Lack of publication of notice by administrators and executors; nor formal election by widow or widower to take under the will;

Ancient mortgages, either uncanceled or improperly cancelled of record;

Imperfect, indefinite and ambiguous descriptions;

Tax titles, the validity of which depend upon the regularity of the proceedings upon which they are based;

The regularity of judicial proceedings appearing in the chain of title;

The rights of children born after the execution of a will;

The question as to whether a will contains apt words to dispose of property acquired after its execution;

The validity of deeds executed under power of attorney.

As to any and all of these cited, and numerous others, there is no one statement which can be made applicable to the forty-eight states of the Union. In some, the title company might pass to waive certain of these; in others, it would be perilous to the reserve account of the insuring company and to its prestige and standing, and thus eventually perilous to its policy holders. Yet, in the main, title companies endeavor to waive these, or certain of these, as a business risk; or sometimes with an understanding there will be a suit to quiet title brought. Ordinarily, such decree will judicially determine the title to be vested in the present title holder without regard to these apparent outstanding interests in or claims upon or against the title. By insuring the title, the company has aided in the closing of still another real estate transaction.

Or, by means of the posting of indemnity, sometimes a bond, (surety bond), or cash, or securities satisfactory to the title company, may be enabled to write its preliminary title report and policy free of these objections to titles, the securities or their equivalent to be held by the title company until later clearances of these objections to title by passage of time, by a suit to quiet title, or by the later delivery of curative material.

#### TITLES TEMPORARILY UNMARKETABLE

Items which make a title at least temporarily unmarketable are these:

Estate in the process of determination;  
Pending suits for money;  
Disputed mechanics' liens;

Titles in process of being quieted by suit.

Under certain circumstances—perhaps by the creation of an Escrow Agreement and the depositing of securities with the title company—the title policy can be written free of references to items such as are noted next above—and thus another real estate transaction is closed.

#### MARKETABILITY

##### Its Meaning

Insurance of title against loss by reason of unmarketability means in effect that the company has stated to the policy holder he has a title which any later buyer is bound to accept; that, failing such acceptance, the title company will respond in court costs and counsel fees to procure a judicial determination that the title IS marketable, or in money damages or otherwise in the event the court holds the title is NOT marketable.

In some of our cities and towns, the public records have been destroyed by fire or other disaster, carrying down with them all records on land titles. In such localities, it is not possible to PROVE good and marketable title from an examination of the public records, for there are no public records left to examine. Professor Henry W. Ballentine, in an article in 32 *Harvard Law Review* 135, says:

"It is one thing to have the rightful ownership and just title to land; it is another thing to have the proof of that right which can be laid before a purchaser or before a jury. Suppose a landowner is ejected from his land and seeks to be reinstated. The deed under which plaintiff acquired title, without evidence of possession by the grantor of the premises conveyed, is not even prima facie proof of title such as to warrant recovery in ejectment. Nor is a connected chain of deeds, which does not reach back to the government or to some grantor in possession, sufficient, unless it reaches back to some common source of title, or to some source acknowledged to be genuine and valid, or unless there is some estoppel to deny title. The proof of a paper title sufficient to make out a prima facie right to possession of land may, therefore, be exceedingly difficult. It involves proving the signature and delivery of every deed; the corporate existence of every corporation in the chain of title; the execution of all powers of attorney; all the statutory notices and formalities in execution, tax and probate sales; all the descents and probate proceedings; in short, every legal step of the transfer of the title, voluntary and involuntary, simple and complex, from a recognized source down must be shown by proper evidence."

Or, quoting another authority:

"A title is marketable if it is a title which a reasonable purchaser, well informed as to the facts and their legal bearings, willing and anxious to perform his contract, would, in the exercise of that prudence which business men ordinarily bring to bear

upon such transactions, be willing to accept and ought to accept." 39 Cyc. 1456.

However, in many jurisdictions of the country, the title insurance company policy insures against loss by reason of failure and unmarketability. Marketability of title is a question on which those learned in the law have differed over the years and will continue to differ. Nor are the courts of the several states in any great harmony. We cite a few instances, for the research work on which we are indebted to Stewart O'Melveny, President of a Los Angeles title company and a distinguished member of the California bar:

A title subject to the condition that no mill, factory, brewery or distillery shall be erected on the land is not marketable. *Batley v. Foerderer*, 162 Pa. 460.

A title is not marketable where it is subject to an easement. *McPherson v. Schade*, 149 N.Y. 16.

If the land is encumbered with the right of a railroad company to pass over it and across it for the purpose of prosecuting and mining minerals, other than coal, such title is not marketable. *Adams v. Henderson*, 168 U.S. 573.

### COSTS OF LITIGATION

As a general proposition, it may be stated that monies paid by the title companies covering claims involving the question of marketability do not run into tremendous figures, that is, insofar as indemnification to the insured be concerned. But the costs of prosecution of litigation, sometimes in defense of title, sometimes in a suit for specific performance of contract, are heavy. Counsel fees and court costs, when cases are carried to the superior courts, dig heavily into the reserves of the company.

But, on questions of marketability, most companies prefer to assume these expenses and to carry the cases to the higher courts in order to secure judicial determinations on the marketability points involved.

It thus will be readily seen that, on questions involving marketability of title, there are pitfalls, many of them, into which the unwary may fall. And the prudent investor is desirous of title protection for the same reason he should carry his own life, fire, accident and automobile insurance. It is true that, ordinarily, titles do not fail. But it is slight or no comfort to him who does have a title loss to be told that eight hundred other escaped with no loss.

### UNKNOWN DANGERS COVERED BY TITLE INSURANCE

We have seen that title insurance embraces a compilation of the recordings and filings against the title, a careful interpretation of these by one skilled in the law of real property, and insurance. But title insurance goes further. There are many things beyond and behind the record which adversely may affect the title; which may destroy, in whole or in part, the title; many things which, like Banquo's ghost, may rise to haunt the unhappy title holder—and secondarily haunt the real estate operator who caused him to purchase that title.

Title may be perfect "of record," and yet fail, this by reason of hazards which are termed Unknown Dangers. Against these perils, beyond the public records, and wholly beyond the capacity of the examiner to detect, the title insurance policy furnishes

coverage. In point of fact, there is no way except through the medium of insurance that coverage against these unknown dangers could be procured. Hence, there is full warrant under the law of economics that the theory of insurance should thus apply to land titles.

Among these unknown hazards and perils, against which the holder of a title policy is protected, are these:

- Forged Deeds;
- Enumerated Frauds in General;
- False Personations;
- Wrong Identity of Persons;
- Want of Legal Delivery—instruments improperly or prematurely delivered;
- Copyists' and Recorders' Errors;
- Wills void as to afterborn child or pre-termitted heir;
- Decrees and Judgments void for Want of Jurisdiction;

- Invalidity of mortgage or other liens, charges or encumbrances by reason of violation of usury laws;

- Title or priority of mortgages or other liens, charges or encumbrances as affected by Mechanics' Lien Law;

- Identity of Persons;
- False Affidavits;
- Undiscovered Heirs;
- Unknow parties may be interested in the property;

- Secret Marriages;
- Inchoate Dower;
- Flaws in Probate Proceedings—Fraudulent or Defective Probating of Estates;
- Old Tax Titles outstanding;
- Unheralded Divorces;

- Deeds given by Minors;
- Deeds by Parties under disability to own real property by reason of alien birth and descent from certain Asiatic races;

- Mechanics' liens;
- Powers of Attorney which have expired by reason of death of the principle;
- Liability for Inheritance Taxes;

- Claims of the Rightful Owner where an instrument in the chain of title was delivered by one impersonating the true owner.

- Deeds given by persons under disability or wanting in mental capacity to contract, either from degrees of insanity, old age, or extreme intoxication where the grantee has taken an unfair advantage of his condition.

And, for all practical purposes, any other matter or fact not disclosed by the public records, which in law or equity would render void or invalid any transfer of title, proceeding or encumbrance in the chain of record title, recording and registration acts and the law of constructive notice notwithstanding.

Title Insurance guarantees the genuineness of every recorded instrument.

### TITLE INSURANCE AND THE ATTORNEY

A word or two on this is not amiss. It would be well that the purchaser of realty and his real estate agent favorably accept this injunction to use the services of an attorney informed on real property law. He can have much to do for his client in in-

spection of the preliminary title report, on curative material called for, on the final policy, as to form, and as to stock conditions and exceptions; and as to unusual conditions needed to be inserted; and finally to see that the transaction is closed properly and with safety to his client.

### LESSON NO. 10—QUESTIONS

(1) Define and briefly explain the difference between "Title Insurance" and "Title Guaranty."

(2) Name three types of policies or guaranties issued.

(3) For what amount are policies or guaranties usually issued?

(4) Do all title companies insure marketability?

(5) Name two items against which a title company will not ordinarily insure.

(6) Does the holder of a title policy pay an annual premium for title protection?

(7) Is the purpose of title insurance to protect against "known" or "unknown" title defects?

(8) Name not less than fifteen possible defects which could cause loss and which are not disclosed by the records.

(9) Does title insurance eliminate the attorney?

### LESSON NO. 10—ANSWERS

(1) A "Title Insurance" or "Guaranteed Title" is an agreement or contract in accordance with its provisions, whereby the issuing company agrees to protect the assured against loss in a certain amount by reason of title defects. The issuing company is required to defend and pay the expense of any attack made against the title regardless of the merit of such attack, in accordance with the provisions thereof.

There is no difference between Title Insurance and a Guaranteed Title so far as the protection received. If an insurance company gives the protection, the contract is called "Title Insurance"—if not an insurance company, then the term "Guaranteed Title" is used.

(2) Owners or Fee Policy, Mortgagee or Loan Policy and a Leasehold Policy.

(3) For the amount of consideration involved whether it be Owners, Mortgagee or Leasehold.

(4) No, some do not,—all companies insure against loss by reason of failure of title.

(5) Rights of parties in possession, and questions involving survey.

(6) No. There is no annual charge. The original premium is the only cost.

(7) Unknown defects only. No title company will put in circulation a "bum" title. It will point out such defects and advise what should be done so it can be insured or guaranteed.

(8) Any fifteen items listed under "Unknown Dangers Covered by Title Insurance." Remember that title insurance guarantees not only the validity of every recorded instrument but protects against all matters outside of the record.

(9) Most certainly not. The attorney is an important factor in realty transactions. The attorney should carefully review the "Preliminary Title Report," handle curative matters, check the policy as to form, conditions and exceptions and any special provisions necessary etc.

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