

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 57th Legislature (2019)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 1223

By: Perryman

7
8 COMMITTEE SUBSTITUTE

9 An Act relating to conveyances; amending 16 O.S.
10 2011, Section 67, which relates to claim and purchase
11 of severed mineral interests; prohibiting additional
12 claims of interest after certain sales; stating
13 certain affidavit requirements to establish
14 marketable title for intestate decedent; providing
15 certain procedural requirements; stating certain
16 affidavit requirements to establish marketable title
17 for a testate decedent; amending 58 O.S. 2011,
18 Section 393, as last amended by Section 2, Chapter
19 73, O.S.L. 2017 (58 O.S. Supp. 2018, Section 393),
20 which relates to payment or delivery of property to
21 successor by affidavit; modifying statutory
22 references; and providing an effective date.

23 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

24 SECTION 1. AMENDATORY 16 O.S. 2011, Section 67, is
amended to read as follows:

 Section 67. A. ~~After~~ Subject to Section 8 of Title 84 of the
Oklahoma Statutes, after the date of death of a person who was an
owner of a severed mineral interest in real estate, a person who
claims such interest, immediately or remotely, through an affidavit

1 of death and heirship recorded pursuant to Sections 82 and 83 of
2 this title, shall acquire a valid and marketable title to such
3 interest as against any person claiming adversely to such recorded
4 affidavit on the conditions set forth in subsection € D or F of this
5 section.

6 B. Any purchaser for value acquiring a severed mineral interest
7 in real estate from a person who claims such interest, immediately
8 or remotely, through a recorded affidavit of death and heirship ~~or a~~
9 ~~recital of death and heirship in a recorded title transaction, as~~
10 ~~that term is defined in Section 78 of Title 16 of the Oklahoma~~
11 ~~Statutes,~~ shall acquire a valid and marketable title to such
12 interest as against any person claiming adversely to such recorded
13 affidavit ~~or recital~~ on the conditions set forth in subsection € D
14 or F of this section.

15 C. ~~In~~ If an heir sells and conveys aforesaid intestate interest
16 pursuant to Section 8 of Title 84 of the Oklahoma Statutes, then
17 said intestate share shall be deducted from the decedent's interest
18 and shall no longer be subject to the affidavit. As a result, said
19 heir and his or her successor shall be estopped from claiming any
20 additional interest through the affidavit.

21 D. If a decedent died intestate, in order to establish
22 marketable title pursuant to this section:

23 1. The affidavit ~~or recital~~ must state that the decedent died
24 without a will, ~~or if the decedent had a will, that the will was~~

1 ~~never probated in Oklahoma and a copy of the will is attached to the~~
2 ~~affidavit or recital, or if the will was probated that the severed~~
3 ~~mineral interest was omitted from the final decree of the decedent~~
4 ~~and a copy of the will and final decree is attached to the affidavit~~
5 ~~or recital;~~

6 2. The affidavit ~~or recital must~~ shall list the names of the
7 decedent's heirs and their relationship to the decedent. If there
8 is a surviving spouse and there is a child born to the decedent
9 listed therein, the affidavit shall indicate whether the child was
10 born of the surviving spouse or a different parent. The affidavit
11 shall indicate whether any children were adopted by the decedent;

12 3. The affidavit ~~or recital must~~ shall state that the maker is
13 related to the decedent ~~or otherwise~~ and shall state this
14 relationship. Otherwise, if the maker has personal knowledge of the
15 facts stated therein, he or she shall state the source of personal
16 knowledge;

17 4. The affidavit ~~or the title transaction that contains the~~
18 ~~recital must~~ shall contain a description of the land for which the
19 title may be affected by matters covered in the affidavit and shall
20 have been recorded for at least ten (10) years in the office of the
21 county clerk in the county in which the real property is located;
22 and

23 5. During the ten-year period following the recording of the
24 affidavit ~~or the title transaction that contains the recital,~~ no

1 instrument inconsistent with the heirship alleged in the affidavit
2 ~~or recital~~ was filed in the office of the county clerk in the county
3 in which the real property is located.

4 E. If a decedent died testate, then any person claiming an
5 interest through the decedent shall first deliver and file the
6 decedent's original will to the district court having jurisdiction
7 of the estate. Second, said person shall mail a copy of the
8 affidavit executed under subsection F of this section along with a
9 certified copy of the delivered will to all of the decedent's heirs
10 at law and all devisees named in the will. Third, said person shall
11 record with the county clerk the affidavit, a certified copy of the
12 will and the appropriate certified mail domestic return receipt
13 showing that all heirs and devisees received the above-noted
14 affidavit and copy of the will. Any affidavit satisfying subsection
15 F of this section shall be effective to pass the mineral interest as
16 distributed under the will. If an heir is now deceased, then notice
17 shall be required to be given to the deceased heir's heir.

18 However, if the decedent was survived by a spouse who was not
19 provided at least his or her intestate share in the will or survived
20 by an afterborn or omitted child that was not named in the will,
21 then said surviving spouse or child shall execute and record an
22 instrument consenting to the delivered will.

23 F. In order to establish marketable title pursuant to this
24 section as to a testate decedent:

1 1. The affidavit shall state that the decedent died with a
2 will, list the district court to which the will has been delivered
3 and filed and shall include a certified copy of said will described
4 in subsection E if this section;

5 2. The affidavit shall list the decedent's heirs at law;

6 3. The affidavit shall list those devisees taking under the
7 will;

8 4. The affidavit shall state that the maker is related to the
9 decedent and state this relationship or otherwise has personal
10 knowledge of the facts stated therein;

11 5. The affidavit shall contain a description of the land for
12 which the title may be affected by matters covered in the affidavit
13 and shall have been recorded for at least ten (10) years in the
14 office of the county clerk in the county in which the real property
15 is located; and

16 6. During the ten-year period following the recording of the
17 affidavit, no instrument inconsistent with the heirship alleged in
18 the affidavit is filed in the office of the county clerk in the
19 county in which the real property is located.

20 G. The affidavit described in subsection D and subsection F
21 applies solely to a severed mineral interest and said affidavit
22 should be recorded as a standalone instrument.

23 This section shall apply to affidavits recorded before November
24 1, 1999, as well as to those recorded thereafter, except that, with

1 respect to those recorded before such date, the ten-year period
2 specified above shall not expire until one (1) year after November
3 1, 1999. This section shall not apply as against any person in
4 possession of the land, by occupancy or by occupancy of a tenant, at
5 the time such purchaser acquires an interest in such land.

6 SECTION 2. AMENDATORY 58 O.S. 2011, Section 393, as last
7 amended by Section 2, Chapter 73, O.S.L. 2017 (58 O.S. Supp. 2018,
8 Section 393), is amended to read as follows:

9 Section 393. A. At any time ten (10) or more days after the
10 date of death of a decedent, any person indebted to the decedent or
11 having possession of tangible personal property or an instrument
12 evidencing a debt, obligation, stock, chose in action, or stock
13 brand belonging to the decedent shall make payment of the
14 indebtedness or shall deliver the tangible personal property or an
15 instrument evidencing a debt, obligation, stock, chose in action, or
16 stock brand to a person claiming to be the successor of the decedent
17 upon being presented an affidavit made by or on behalf of the
18 successor stating that:

19 1. The fair market value of property located in this state
20 owned by the decedent and subject to disposition by will or
21 intestate succession at the time of the decedent's death, less liens
22 and encumbrances, does not exceed Fifty Thousand Dollars
23 (\$50,000.00);
24

1 2. No application or petition for the appointment of a personal
2 representative is pending or has been granted in any jurisdiction;

3 3. Each claiming successor is entitled to payment or delivery
4 of the property in the respective proportions set forth in the
5 affidavit; and

6 4. All taxes and debts of the estate have been paid or
7 otherwise provided for or are barred by limitations.

8 B. A transfer agent of any security shall change the registered
9 ownership on the books of a corporation from the decedent to the
10 successor or successors upon the presentation of an affidavit as
11 provided in subsection A of this section.

12 C. The public official having cognizance over the registered
13 title of any personal property of the decedent shall change the
14 registered ownership from the decedent to the successor or
15 successors upon the presentation of an affidavit as provided in
16 subsection A of this section.

17 D. At any time after the date of death of a person who was an
18 owner of a severed mineral interest in real estate, any person who
19 claims an interest, immediately or remotely, through the decedent
20 may file with the county clerk of the county where the mineral
21 interest is located an affidavit of death and heirship in compliance
22 with subsection E D or F of Section 67 of Title 16 of the Oklahoma
23 Statutes. Pursuant to Sections 82 and 83 of Title 16 of the
24 Oklahoma Statutes, there shall be a rebuttable presumption that the

1 facts stated in the recorded affidavit are true as they relate to
2 the severed mineral interest, the death of the decedent, and the
3 relationships, family history and heirship stated therein.

4 E. Any person who knowingly submits and signs a false affidavit
5 as provided in this section shall be fined not more than Three
6 Thousand Dollars (\$3,000.00) or imprisoned for not more than six (6)
7 months, or both. Restitution of the amount fraudulently attained
8 shall be made to the rightful beneficiary by the guilty person.

9 SECTION 3. This act shall become effective November 1, 2019.
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11 COMMITTEE REPORT BY: COMMITTEE ON ENERGY AND NATURAL RESOURCES,
12 dated 02/27/2019 - DO PASS, As Amended.
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