

How Do I Fix That? *Fixing title defects in Oklahoma*

If you own mineral interest in Oklahoma property, you want that mineral interest to have **marketable title** which is defined as “free from apparent defects, grave doubts and litigious uncertainty, and consists of both legal and equitable title fairly deducible of record.” (Oklahoma Title Standard 1.1) In other words, you want the mineral interest title to be free from any issues.

Marketable title is going to make your minerals more appealing to a buyer and makes things less complicated as time goes on and the mineral interest gets passed down from generation to generation. If you do not have marketable title, there is a title defect (or issue) which is preventing you from this gold standard.

Most title defects can be fixed by one of the following:

1. Subsequent instrument
2. Time
3. Curative Documents
4. Curative Standards
5. Title Standards
6. Judicial Action

Affidavit

An affidavit is a curative document that may be used to fix different title issues. An affidavit is an instrument consisting of statements based on the maker’s knowledge. An affidavit may be used to terminate a joint tenancy or a life estate or to record a memorandum of trust. Issues relating to a person’s age, sex, death, relationship, family history, heirship, name, identity, marital status or possession may be stated in an Affidavit. Affidavits may also fix conflicts and ambiguities in descriptions of land. It is essential that Affidavits adhere to the Oklahoma Statutes and Oklahoma Title Standards. To be effective an Affidavit must be recorded in the County Clerk’s office of the county where the mineral interest is located.

Judicial Action

To fix some title issues, a court proceeding is required. The two court proceedings that are typically used to resolve title defects are a quiet title action or a probate proceeding. A quiet title action corrects a deficiency in the mineral interest’s chain of title. The chain of title is the successive chain of all the owners that owned the mineral interest before you. Quiet title actions may be used to clear up a title chain that is unclear or needs to be corrected.

A probate proceeding distributes a person’s assets after their death. A probate proceeding is required if the mineral interest will not be distributed via joint tenancy, transfer on death, a trust or some other non-probate manner. A probate proceeding can be done if the person died with or without a will.

The attorneys at Robertson & Williams are experts in fixing title defects. We will work with you to find the best solution to your issue, advise you on how to resolve it and draft curative documents or file judicial actions when needed. Contact us today to see how we can help you.

Modified from a presentation by James D. Tack, Jr., Partner at Robertson & Williams, titled "How Do I Fix That? Curing Title Defects: Curative Statutes, Affidavits, Curative Documents"



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