

Land Ownership in Oklahoma: *Updates to 60 O.S. 121*

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Structure

- Origins and history
- Case law and Attorney General opinions
- State Question 788 (2018)
- Senate Bill 212 (2023)
- Affidavits
 - Implementation, questions, and exemptions



History of Alien Land Ownership Laws

- Common law: permitted to own land until alienage established
- *Fairfax's Devisee v. Hunter's Lessee*, 11 U.S. 603 (1813)
 - Common law rule is a part of American law
- *Phillips v. Moore*, 100 U.S. 238 (1879)
 - Object of colonization laws to induce settlement of the country by persons who would cultivate the lands and become permanent residents
- *Hauenstein v. Lynham*, 100 U.S. 483 (1879)
 - Law of nations: liberty of every government to give foreigners only such rights to immovable property within its territory as it may see fit to concede



Federal – 48 U.S.C. 1501—1508

- 1887
- Unlawful for any alien or person not a citizen of the U.S. to acquire title or own any land
 - Exempt: bona fide residents, those who declare intent to become a U.S. citizen, treaties, inheritance, secured debt
- *Larkin v. Washington Loan & Trust Co.*, 31 F.2d 635 (D.C. Cir. 1929)
 - Devise to a foreign corporation is permissible
- 10 year cessation period; alienate or lawfully convey



Oklahoma Constitution – Article 22, § 1

- No alien or person who is not a citizen of the U.S. shall acquire title to or own land in this state
 - Exempt: “Indians born within the United States,” non-citizens who may become bona fide residents of the state
- Legislature to enact laws whereby all non-citizens of the U.S., and heirs, who acquire real estate by devise or descent shall dispose of the land
- 5 year cessation period; forfeiture or escheat



Oklahoma Statute – 60 O.S. § 121

- No alien or person who is not a citizen of the U.S. shall acquire title to or own land in this state
 - Personal property rights
 - Exempt: “Indians born within the United States,” non-citizens who may become bona fide residents of the state
- 5 year cessation period; forfeiture or escheat



Oklahoma Statute – 60 O.S. §§ 122-124

- Section 122 – resident alien can acquire and hold title to land so long as they remain a resident; dispose within five years of non-resident status
- Section 123 – non-resident acquiring land by devise, descent, or purchase, under a legal foreclosure proceeding, may hold the land for five years
- Section 124 – Non-compliant alien holding title can convey fee simple before escheat proceedings



Oklahoma Statute – 60 O.S. §§ 125-127

- Section 125 – Attorney General or District Attorney shall initiate escheat proceedings; 30-days notice
- Section 126 – Owner is a minor and of unsound mind
- Section 127 – Land sold, and proceeds held for owner for one year; then to state school fund



Early Case Law

- *Parwal Inv. Co. v. State*, 1918 OK 498
 - Okla. Const. art. 22, § 2 - prohibits corporations from owning rural farming land
 - Statute rendering a deed void is unconstitutional because the constitutional provision is not self-executing
- *State ex rel. Short v. Benevolent Inv. & Relief Ass'n.*, 1924 OK 1043
 - Okla. Const. art 22, § 2
 - If a corporation acquires land when it exists but the acquisition is ultra vires, corporation can lawfully convey good title if no escheat proceedings
 - Confirmed non-executing holding in *Parwal*



Attorney General Opinions

- 1974 OK AG 214
 - Alien may not hold title to fee simple absolute to real property
 - Corporation or other entity may hold real estate, but upon dissolution of the entity, an alien individual may not acquire title to that land
- 1976 OK AG 253
 - “Person” is more than human being; includes bodies politic and corporate
 - Foreign country is prohibited from holding title to land
 - 1974 opinion relates to corporations created under American jurisdictions
- 1979 OK AG 286
 - Okla. Const. art. 22, § 2 - prohibits corporations from owning rural farming land
 - Foreign corporation is prohibited from acquiring title to Oklahoma land
 - Withdraws 1974 OK AG 214



State ex rel. Cartwright v. Hillcrest Investments, Ltd., 1981 OK 27

- Canadian corporation that filed Articles of Domestication in Oklahoma
- AG institutes suit to acquire several parcels
- Held: alien corporations are subject to land ownership restrictions; however...
- Constitution, Article 22, § 1
 - “person” includes corporations
 - Land ownership restrictions not applicable to a resident of the state
 - Corporate residency established by domesticating in Oklahoma
- No additional statutory restrictions on domesticated foreign corporations



State Question 788 and Land Ownership

- SQ 788 (2018) – permitting licensed legal cultivation, use, and possession of marijuana for medicinal purposes.
- Surge in marijuana grow farms, including those connected to foreign enterprises, entities, and individuals
- Public safety and effects on communities
- Legislative response



Senate Bill 212

- Restrict indirect ownership of land by aliens and non-citizens who are not residents of the state
- Business entity engaging in regulated interstate commerce in accordance with federal law
- Deed recorded with a county clerk must have an accompanying affidavit
- Attorney General may, in his discretion, exempt any deed when deemed necessary



Affidavits - Individual

OAG 2024-1 – INDIVIDUAL

Exhibit to Deed

AFFIDAVIT OF LAND OR MINERAL OWNERSHIP: INDIVIDUAL

STATE OF _____)

) ss.

COUNTY OF _____)

TO: THE ATTORNEY GENERAL OF THE STATE OF OKLAHOMA

Before me, the undersigned _____

(list legal name and any aliases) (the "Affiant"), who, having been first duly sworn, deposes and states as of the date of this Affidavit:

1. I am eighteen (18) years of age or older and have personal knowledge of the statements made herein.
2. I have personal knowledge of the statements made herein.
3. I am:
 a citizen of the United States; or
 not a citizen of the United States, but an alien who is or shall become a bona fide resident of the State of Oklahoma.
4. I acquired title to the real property identified in the Deed to which this Affidavit is attached (the "Property").
5. This Affidavit is executed in accordance with and pursuant to 60 O.S. § 121, which provides in part as follows:

No alien or any person who is not a citizen of the United States shall acquire title to or own land in this state either directly or indirectly through a business entity or trust, except as hereinafter provided, but he or she shall have and enjoy in this state such rights as to personal property as are, or shall be accorded a citizen of the United States under the laws of the nation to which such alien belongs, or by the treaties of such nation with the United States, except as the same may be affected by the provisions of Section 121 et seq. of this title or the Constitution of this state. Provided, however, the requirements of this subsection shall not apply to a business entity that is engaged in regulated interstate commerce in accordance with federal law.

6. I acknowledge and understand that section 121 generally prohibits an alien or person who is not a citizen of the United States from acquiring title to or owning land in the State of Oklahoma. I further acknowledge and understand that section 121 does not prohibit an alien who is or who shall become a bona fide resident of the State of Oklahoma from acquiring title to or owning land in the State of Oklahoma.
7. I acquired title to the Property in compliance with the requirements of 60 O.S. § 121 and no funding source was used in the sale or transfer of the Property in violation of section 121 or any other state or federal law.
8. I acknowledge and understand that making or causing to be made a false statement in this affidavit may subject me to criminal prosecution for perjury and/or being liable for actual damages suffered or incurred by any person or other entity as a result or consequence of the making of or reliance upon such false statement.

FURTHER AFFIANT SAYETH NOT.

AFFIANT

Date

The foregoing instrument was subscribed and sworn to before me this ___ day of _____, 20___, by _____.

My Commission Expires: _____

NOTARY PUBLIC

My Commission Number: _____



Affidavits – Non-exempt Business or Trust

OAG 2024-2 – NON-EXEMPT BUSINESS/TRUST

Exhibit to Deed

AFFIDAVIT OF LAND OR MINERAL OWNERSHIP: NON-EXEMPT BUSINESS OR TRUST

STATE OF _____)

) ss.

COUNTY OF _____)

TO: THE ATTORNEY GENERAL OF THE STATE OF OKLAHOMA

Before me, the undersigned _____

(list legal name and any aliases) (the "Affiant"), who, having been first duly sworn, deposes and states:

1. I am eighteen (18) years of age or older and have personal knowledge of the statements made herein.
2. I am a/an _____ (role, such as titled officer or trustee) of _____ (legal name, along with any trade or fictitious names, of business, trust, or other legal entity) (referred to herein as the "Entity"). I am duly authorized to record this Affidavit on behalf of the Entity, which is taking title to the real property identified in the Deed to which this Affidavit is attached (the "Property"), and to bind the Entity for the consequences of any false statements in this Affidavit.
3. This Affidavit is executed in accordance with and pursuant to 60 O.S. § 121, which provides in part as follows:
No alien or any person who is not a citizen of the United States shall acquire title to or own land in this state either directly or indirectly through a business entity or trust, except as hereinafter provided, but he or she shall have and enjoy in this state such rights as to personal property as are, or shall be accorded a citizen of the United States under the laws of the nation to which such alien belongs, or by the treaties of such nation with the United States, except as the same may be affected by the provisions of Section 121 et seq. of this title or the Constitution of this state. Provided, however, the requirements of this subsection shall not apply to a business entity that is engaged in regulated interstate commerce in accordance with federal law.

4. The Entity acquired title to the Property in compliance with the requirements of 60 O.S. § 121 and no funding source was used in the sale or transfer of the Property in violation of section 121 or any other state or federal law.
5. If the Entity is a trust, its grantee(s), trustees and all direct and contingent beneficiaries are United States citizens or bona fide residents of the State of Oklahoma. If the Entity is a business, its direct and indirect owner(s) is/are United States citizens(s) or bona fide residents of the State of Oklahoma.
6. I acknowledge and understand that making or causing to be made a false statement in this affidavit may subject me to criminal prosecution for perjury and/or subject me and/or the Entity to being liable for actual damages suffered or incurred by any person or other entity as a result or consequence of the making of or reliance upon such false statement.

FURTHER AFFIANT SAYETH NOT.

AFFIANT, individually and as authorized agent of the Entity

Date

The foregoing instrument was subscribed and sworn to before me this ___ day of _____, 20___, by _____.

My Commission Expires: _____

NOTARY PUBLIC

My Commission Number: _____



Affidavits – Exempt Business or Trust

OAG 2024-3 – BUSINESS/TRUST EXEMPTION

Exhibit to Deed

AFFIDAVIT OF LAND OR MINERAL OWNERSHIP: EXEMPT BUSINESS OR TRUST

STATE OF _____)

) ss.

COUNTY OF _____)

TO: THE ATTORNEY GENERAL OF THE STATE OF OKLAHOMA

Before me, the undersigned _____

(list legal name and any aliases) (the "Affiant"), who, having been first duly sworn, deposes and states as of the date of this Affidavit:

1. I am eighteen (18) years of age or older and have personal knowledge of the statements made herein.
2. I am a/an _____ (role, such as titled officer or trustee) of _____ (legal name, along with any trade or fictitious names, of business, trust, or other legal entity) (referred to herein as the "Entity"). I am duly authorized to record this Affidavit on behalf of the Entity, which took title to the real property identified in the Deed to which this Affidavit is attached (the "Property"), and to bind the Entity for the consequences of any false statements in this Affidavit.
3. This Affidavit is executed in accordance with and pursuant to 60 O.S. § 121, which provides in part as follows:
No alien or any person who is not a citizen of the United States shall acquire title to or own land in this state either directly or indirectly through a business entity or trust, except as hereinafter provided, but he or she shall have and enjoy in this state such rights as to personal property as are, or shall be accorded a citizen of the United States under the laws of the nation to which such alien belongs, or by the treaties of such nation with the United States, except as the same may be affected by the provisions of Section 121 et seq. of this title or the Constitution of this state. Provided, however, the requirements of this subsection shall not apply to a business entity that is engaged in regulated interstate commerce in accordance with federal law.

4. For purposes of this Affidavit, I acknowledge and understand that to be "engaged in regulated interstate commerce in accordance with federal law," means all the Entity's business activities in Oklahoma must be either: (a) expressly permitted by federal regulation or federal law, or (b) not prohibited by federal regulation or federal law. I further acknowledge and understand that an entity engaged in or supporting the cultivation of marijuana in Oklahoma is not "engaged in regulated interstate commerce in accordance with federal law." I have read the provisions of 60 O.S. § 121 and this Affidavit and certify that the Entity is engaged in regulated interstate commerce in accordance with federal law.
5. No funding source is being used in the sale or transfer of the Property in violation of section 121 or any other state or federal law.
6. I acknowledge and understand that making or causing to be made a false statement in this affidavit may subject me to criminal prosecution for perjury and/or subject me and/or the Entity to being liable for actual damages suffered or incurred by any person or other entity as a result or consequence of the making of or reliance upon such false statement.

FURTHER AFFIANT SAYETH NOT.

AFFIANT, individually and as authorized agent of the Entity

Date

The foregoing instrument was subscribed and sworn to before me this ____ day of _____, 20____, by _____.

NOTARY PUBLIC

My Commission Expires: _____

My Commission Number: _____



Implementation

- Attorney General promulgates affidavits, may declare deeds exempt
- 77 county clerks working in good faith; advised locally
- Questions on scope, application, business practices, and more
- Who advises who and whose opinion controls?
- Attorney General Opinion
 - Binding on state officers – *State ex rel. York v. Turpen*, 1984 OK 26
 - Binding on county and other local officials – *Hendrick v. Walters*, 1993 OK 162
 - Officers who follow are shielded from liability – *Hendrick*



Interpretation and Construction

- What elements trigger the affidavit requirement?
 - Recording of a deed;
 - Grantee is taking title at the time of recording; and
 - Grantee is a person, business entity, or trust.
- Who signs the affidavit?
 - Individual: each grantee; provided, if more than one grantee and they are attesting to the same facts, those grantees may sign one affidavit (ex: husband and wife taking ownership to land)
 - Business or trust: each grantee, unless a designated representative exists (ex: corporate resolution)



Application

- Do the legislative changes apply retroactively?
 - No
- What is a “deed”
 - Writing which evidences the contract terms whereby title to real property is transferred
 - Court decree?



Land

- 60 O.S. § 6: Solid material of the earth, and includes pore space
- *Boswell Energy v. Arrowhead Homes*, 1999 OK CIV APP 36
- Legislative amendment excludes contents of the pore space
- Instruments assigning, conveying or leasing ONLY oil or gas



Bona Fide Resident

- *In re Initiative Petition No. 379*, State Question 726, 2006 OK 89: equated with a person's honest intent to make a place one's residence or domicile, a conscious decision to make a location an individual's home.
- *Stevens v. Union Graded Sch. Dist.*, 1929 OK 131: "bona fide" carries no added significant to the word "resident"
- Remember: Oklahoma Constitution excepts an individual who *may* or will soon become a bona fide resident
- Professor example



Regulated interstate commerce in accordance with federal law

- All the Entity's business activities in Oklahoma must be either:
 - expressly permitted by federal regulation or federal law, or
 - not prohibited by federal regulation or federal law.
- Not engaged in or supporting the cultivation of marijuana in Oklahoma



Transfer on Death Deed

- Transfer of ownership does not occur until the grantor's death - 58 O.S. § 1252
- Record owner who executes a TODD remains legal and equitable owner until their death - 58 O.S. § 1257
- Grantee is prohibited from signing or consenting to transfer of ownership during lifetime of record owner – 58 O.S. § 1257
- Affidavit at time of recording upon grantor's death?



Domestic Governmental Body

- “Person” includes bodies politic or corporate – 25 O.S. § 16
- Foreign country prohibited from acquiring title to Oklahoma land – 1976 OK AG 253
- Legislative intent is determined from the language
- Discretionary authority to exempt deeds in 60 O.S. § 121



Exempt Deeds – 2024 OK AG 2

- Deeds where the grantee is a domestic governmental body
 - United States, State of Oklahoma or a political subdivision, or a Tribe
- State or federal court orders in probate, divorce, quiet title judgments, or other judicial judgments and decrees affecting title to land
- Deeds that do not convey title at time of recording
 - Transfer on Death Deeds, correction deed that cures a defect
- Deeds conveying only oil and gas, and other mineral interests
 - Leases and assignments



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