



# Oklahoma

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**Legal Guide to  
Doing Business in  
Oklahoma**

June 2015

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 Doing Business in  
 Oklahoma**

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## **DISCLAIMER**

**PLEASE NOTE:** The information contained in this guide is for general reference only and discusses certain laws applicable to doing business in Oklahoma as of June 2015. This publication should not be relied upon in any specific factual or legal situation, does not create an attorney-client relationship, and does not cover all laws or regulations that may be applicable in all circumstances. Readers of this guide should seek independent professional advice from a lawyer authorized to practice in Oklahoma before proceeding to invest or do business in Oklahoma.





## **LEGAL GUIDE TO DOING BUSINESS IN OKLAHOMA**

### **I. INTRODUCTION**

#### **A. Geographic Description**

Oklahoma is the eighteenth largest state with a total land area of roughly 68,679 square miles. It is located equidistant between Los Angeles, New York City and Mexico City. It is bordered by Kansas on the north, Texas to the south and west, Arkansas and Missouri to the east, and Colorado and New Mexico at the tip of the Oklahoma panhandle.

High plains predominate the west, the Arkansas River Basin dominates the east-central region and the Red River Plains are in the south. Oklahoma's four mountain ranges include the Ouachitas, the Arbuckles, the Wichitas, and the Kiamichis. Forests cover approximately 24 percent of Oklahoma.

#### **B. Investment Climate**

A recent study named Oklahoma City as the most recession-proof city in the United States. Oklahoma offers a favorable business climate. It has consistently been one of the lowest taxed states per capita in the nation. Overall, Oklahoma's total business costs ranked tenth lowest, its labor costs ranked among the lowest, and its energy costs ranked seventeenth lowest overall. One recent study ranked Oklahoma as the tenth least expensive state in which to do business.

Oklahoma is more diversified than ever before with employment in such technologically advanced fields as aviation, electronics, telecommunications, biotechnology, plastics, business services, fabricated metals, agriculture and energy. Oklahoma is a prime location to serve the growing manufacturing, merchandising, and distribution economy with commercial airports in major cities, two major international airports, the nation's most inland all weather seaport and fourteen rail carriers. Oklahoma is also America's trucking hub, offering same day delivery to more than 75 million people and overnight delivery to 94 percent of the nation. Hundreds of distribution firms take advantage of Oklahoma's One-Stop fleet registration system.

#### **C. Demographic Description**

Oklahoma's population grew 9.7% percent between 2000 and 2010. Oklahoma has the second largest American Indian population in the nation. Over 321,687 American Indians from 67 tribes make their home in the state and 39 tribes have located their tribal headquarters in Oklahoma.

## **D. Information Resources**

For more information on business and commerce in the State of Oklahoma, visit the official state website at [www.ok.gov](http://www.ok.gov), or the Secretary of State at [www.sos.state.ok.us](http://www.sos.state.ok.us) or the Department of Commerce at [www.okcommerce.gov](http://www.okcommerce.gov).

All statutory references are to the Oklahoma Statutes (2011), as amended.

## **II. BUSINESS ENTITIES**

### **A. Corporations**

The Oklahoma General Corporation Act (the "Corporation Act") controls the formation, operation, and dissolution of Oklahoma corporations. As a general rule, the Corporation Act follows the Delaware General Corporation Law, from which it is derived. The Corporation Act can be found at OKLA. STAT. Tit. 18, §§ 1001 *et seq.*

#### **1. Corporate Formation**

An Oklahoma corporation may be formed by filing a signed copy of the Certificate of Incorporation with the Secretary of State of Oklahoma (the "Secretary of State"). A filing fee of one-tenth of one percent of the authorized capital stock of the corporation, but not less than \$50 (not for profit corporations are only required to pay \$25), is required to be paid to the Secretary of State at the time of filing.

#### **2. Certificate of Incorporation**

The certificate of incorporation must state the name of the corporation, the address of the corporation's registered office in the state, the name of the corporation's registered agent, the nature of business to be conducted, the total number of shares of all classes of stock, the par value of each class of stock or a statement that the shares are without par value, the name and mailing address of the incorporators, and the names and mailing addresses of persons who are to serve as directors if the powers of the incorporators terminate upon filing. A provision of the certificate of incorporation may be made dependent upon facts ascertainable outside the instrument, provided the manner in which the facts must operate upon the provision is clearly and explicitly set forth.

#### **3. Corporate Name**

The corporate name must contain the word "association," "company," "corporation," "club," "foundation," "fund," "incorporated," "institute," "society," "union," "syndicate," or "limited" or abbreviations thereof. The name should also be distinguishable from other corporate, limited liability company, or limited partnership names reserved or registered with the Secretary of State.

#### 4. Bylaws

The bylaws may contain any provision, not inconsistent with law or with the certificate of incorporation, relating to the business of the corporation, the conducting of its affairs, and the rights or powers of its shareholders, directors, officers, or employees. The original bylaws may be adopted, amended or repealed by the incorporators, the initial directors if they are named in the certificate of incorporation, or the board of directors prior to the time payment is received for any of its stock. After the corporation has received payment for any of its stock, the power to adopt, amend or repeal the bylaws must be in the board of directors unless the certificate of incorporation confers this power on the shareholders.

#### 5. Authorized Shares

Every corporation may issue one or more classes of stock or one or more series of stock within any class. Stock may be issued with or without par value and may have full, limited, or no voting powers as designated in the certificate of incorporation. Stock may be issued for cash, services rendered, personal property, real property, leases of real property, or any combination thereof. Shares of stock with a par value may not be issued for a value less than par value.

#### 6. Meetings of Shareholders and Directors

Unless directors are elected by written consent in lieu of an annual meeting, an annual meeting of shareholders must be held for the election of directors on a date and at a time provided for in the bylaws. A failure to hold the annual meeting will not affect otherwise valid corporate acts or cause a dissolution of the corporation. The board of directors may fix a record date for the shareholder meeting not more than 60 nor less than 10 days before the date of the meeting.

The board of directors must consist of one or more members. A vote of the majority of directors present at a meeting in which a quorum is present is the act of the board, unless the certificate of incorporation or the bylaws require a greater number. Directors may take action without meeting if all members of the board consent in writing or by electronic transmission.

#### 7. Authority of Shareholders, Directors and Officers

Shareholders are entitled by the Corporation Act to vote on certain corporate actions such as: merger, amendment to the certificate of incorporation, the sale of all or substantially all of the corporation's assets, and dissolution.

Otherwise, the business and affairs of the corporation are managed under the direction of the board of directors. The board of directors may appoint committees to exercise any of the powers of the board, but no committee may have the power to adopt, amend, or repeal any bylaw of the corporation. Committees also may not approve, adopt, or recommend to the shareholders any action expressly required by the Corporation Act to be submitted to the shareholders, other than the election or removal of directors.

Every corporation has officers with titles and duties as stated in the bylaws or in a resolution of the board of directors. Officers must be chosen in such manner and must hold their offices for such terms as are prescribed by the bylaws or determined by the board of directors. Any number of offices may be held by the same person unless the certificate of incorporation or the bylaws provide otherwise. The certificate of incorporation may confer upon one or more directors, voting powers greater than or less than those of other directors. A failure to elect officers does not dissolve the corporation.

8. Limited Liability

Except as provided in the certificate of incorporation, the shareholders of a corporation are not personally liable for the payment of the corporation's debts, except for liability occurring by reason of their own conduct or acts.

When the certificate of incorporation provides that a shareholder may be personally liable, no suit can be brought against the shareholder for a debt of the corporation until a judgment has been obtained against the corporation and the judgment has not been satisfied.

9. Annual Report and Franchise Tax

All corporations, associations, joint stock companies and business trusts operated for profit doing business within the state must pay franchise tax on capital used or invested in the state. An annual franchise tax statement setting forth certain financial information relating to the calculation of the franchise tax must also be filed with the franchise tax return. Requirements of the annual report and franchise tax are governed by OKLA. STAT. Tit. 68, §§ 1201 *et seq.*

**B. Limited Liability Companies**

The Oklahoma Limited Liability Company Act (the "LLC Act") controls the formation, operation, and dissolution of Oklahoma limited liability companies ("LLC's"). The LLC Act can be found at OKLA. STAT. Tit. 18, §§ 2000 *et. seq.*

1. Formation and Name

One or more persons may form a limited liability company by filing executed articles of organization with the Secretary of State and by paying a \$100 fee to the Secretary of State. The LLC's name must include the designation "limited liability company" or "limited company" or the abbreviation "LLC," "LC," "L.L.C. ," or "L.C. ," and must be distinguishable from the names of other entities filed with the Secretary.

2. Registered Office and Agent

Every domestic LLC must maintain a registered office and agent in the state to receive service of process. The name and address of such agent must be provided in the articles of organization.

### 3. Members and Managers

An LLC may consist of one or more members who either did or did not make a contribution to the LLC to acquire the membership interest. Except as otherwise provided in the articles of organization, an LLC must be managed by or under the authority of one or more managers who may, but need not be, members. Unless otherwise provided in the articles of organization, managers are elected by the members.

### 4. Limitation of Liability

Members and managers are not liable for the LLC's obligations solely because they are members or managers. The articles of organization may eliminate or limit the personal liability of the members and managers for good faith breaches of their duty of care, but the articles of organization may not eliminate or limit liability for a manager's breach of a fiduciary duty of loyalty, for acts undertaken in bad faith, or for any transfer from which the manager derived an improper personal benefit.

### 5. Filing Requirements

Every domestic and foreign LLC registered to do business in this state must file an annual certificate each year with the Secretary of State that confirms it is an active business.

## **C. General Partnerships**

A partnership is an association of two or more persons to carry on a business for profit as owners. Oklahoma partnerships are governed by the Oklahoma Revised Uniform Partnership Act (the "Partnership Act"), which can be found at OKLA. STAT. Tit. 54, §§ 1-100 *et seq.* Except as provided by the Partnership Act, the partnership agreement governs the relations between the partners and between the partners and the partnership. If not addressed by the partnership agreement, the Partnership Act governs those relations.

### 1. Partners as Agents of the Partnership

Each partner is an agent of the partnership for the purpose of its business. An act of a partner apparently performing the ordinary course of the partnership business binds the partnership unless the partner had no authority to act for the partnership in the matter and the person with whom the partner was dealing knows the partner lacks authority. Generally, all partners are jointly and severally liable for all obligations of the partnership.

### 2. Formation

A statement of partnership authority may be filed in the office of the Secretary of State along with a filing fee of \$100. A partnership may become a limited liability partnership by filing a statement of qualification with the Secretary of State and satisfying certain other statutory requirements.

## **D. Oklahoma Limited Partnerships**

Oklahoma limited partnerships are governed by the Oklahoma Uniform Limited Partnership Act of 2010 (the "Limited Partnership Act"), which can be found at OKLA. STAT. Tit. 54, §§ 500-101 *et seq.*

### 1. Formation

A limited partnership is a partnership formed by two or more persons under the laws of this state and having one or more general partners and one or more limited partners. A limited partnership may carry on any business that a partnership without limited partners may carry on, except that a limited partnership may not carry on business as a bank or domestic insurer.

### 2. Name

The name of the limited partnership must contain the words "limited partnership" or abbreviation "L.P." or "LP," and generally, may include the name of any partner. Moreover, the name should be distinguishable from other corporate, LLC, or limited partnership name reserved or registered with the Secretary of State.

### 3. Office and Agent

Each domestic limited partnership must maintain in the state an office and an agent for service of process.

### 4. Formation

For a limited partnership to be formed, a certificate of limited partnership must be filed in the office of the Secretary of State for a fee of \$100. An additional fee of \$50 must be paid for cancellation or amendments. Foreign limited partnerships must register with the Secretary and pay a registration fee of \$300.

### 5. Rights and Liabilities of Partners

Except as provided the partnership agreement, a general partner of a limited partnership has the rights and powers and is subject to the restrictions of a partner in a partnership without limited partners. Except as provided in the partnership agreement or specified by the Limited Partnership Act, a general partner of a limited partnership is jointly and severally liable for obligations of the limited partnership.

Limited partners have the right to obtain certain information regarding the state of the business and financial condition of the limited partnership. Except as provided by the Act, a limited partner is not liable for the obligations of a limited partnership even if he participates in management and control of the limited partnership

## **E. Not for Profit Corporations**

Oklahoma not for profit corporations are governed by the. A complete discussion of the Act can be found in Subsection A above and at OKLA. STAT. Tit. 18 §§ 1001 *et seq.*

### 1. Liabilities of Board of Directors

Members of the board of directors of not for profit corporations are not vicariously liable for the negligence of corporate employees or other directors but may be liable for their own intentional torts or grossly negligent acts or omissions.

Members of the board of directors are not personally liable to the corporation or its members for breach of fiduciary duty as a director unless the breach is made in bad faith or constitutes intentional misconduct or a knowing violation of the law.

## **F. Authorization of Foreign Entities to Do Business**

### 1. Foreign Corporations

A foreign corporation may conduct business in the state, subject to limited exceptions, only after it has filed with the Secretary of State and paid the required fees. A certificate will be issued by the Secretary of State only after the foreign corporation files a certificate issued by an authorized officer of the foreign corporation's jurisdiction of incorporation evidencing the corporation's existence. The foreign corporation must also file a signed statement of an authorized officer of the corporation and pay a filing fee of one-tenth of one percent of the maximum amount of capital invested by the corporation in the state at any time during the fiscal year that the certificate is issued but not less than \$300.

### 2. Foreign Limited Liability Companies

No foreign LLC may transact business in the state, subject to certain limited exceptions, until it registers with the Secretary of State by filing appropriate statements and paying a \$300 fee. A foreign LLC must appoint a registered agent and maintain a registered office to accept service of process or designate the Office of the Secretary of State as the appointed agent.

### 3. Foreign Limited Partnerships

No foreign limited partnership may transact business, subject to certain exceptions, in the state until it registers with the Secretary of State by filing appropriate statements and paying a \$300 fee. A foreign limited partnership must appoint a registered agent to accept service of process or designate the Secretary of State as the appointed agent.

## **G. Assumed Business Names**

A corporation or other business entity doing business in this state under any name other than its legal name must file a report with the Secretary of State setting forth the legal

name of the business, the jurisdiction of organization, the trade name used, a brief description of the business transacted under the name, and the address where the business is to be conducted. The trade name should also be distinguishable from the names of any other business entities that have filed with the Secretary of State.

### **III. OKLAHOMA TRADE REGULATION**

#### **A. Oklahoma Antitrust Law**

The Oklahoma Antitrust Reform Act is found in OKLA. STAT. Tit. 79, §§ 201 *et seq.* and is similar to the federal Sherman Act (the "Antitrust Reform Act"). The Antitrust Reform Act prohibits certain acts that monopolize, restrain trade or commerce, and discriminate in pricing and seeks to correct procedural deficiencies, create new enforcement procedures, and repeal onerous, unconstitutional, or unnecessary provisions.

The Oklahoma Antitrust Reform Act is intended to apply to both single actors and business entities and municipalities are not immune from the Antitrust Reform Act. The act makes it unlawful for any person in control of an essential facility to unreasonably refuse to give a competitor or customer access to the essential facility if the purpose of such denial is to injure competition. This gives the injured competitor or customer a cause of action to enforce this provision of the Antitrust Reform Act so long as the complaining party has not previously sought remedy before the Oklahoma Corporation Commission.

Price discrimination in Oklahoma virtually mirrors section 13(a) of the Robinson-Patman Act found in 15 U.S.C. § 13. In Oklahoma, price discrimination is unlawful but is limited to purchasers of commodities. The Antitrust Reform Act includes the defenses of meeting competition, cost justification, and changing conditions.

The Antitrust Reform Act provides that treble damages, equitable relief, and one-way attorneys' fees are available for private litigants. In addition, the Attorney General may bring a civil action on behalf of a natural person, the State of Oklahoma, or a political subdivision. The statute of limitations for an action under this Act is four years. However, any person or governmental entity may not recover under both this Act and the similar federal law provision based on the same conduct that was the subject of the federal suit.

#### **B. Franchise Regulation**

##### **1. Business Opportunity Sales Act**

The Business Opportunity Sale Act, OKLA. STAT. Tit. 71, §§ 801 *et seq.* (the "Business Opportunity Sale Act"), requires persons offering or selling "business opportunities" to provide each prospective buyer with a disclosure document and to register the business opportunity by filing the disclosure document with the Oklahoma Department of Securities prior to the offer or sale.



The Business Opportunity Sale Act requires the contract of sale to be in writing and to set forth the terms and conditions of the sale. If provisions of the Business Opportunity Sale Act are violated, the Administrator who administers the Act may suspend or revoke registration, enjoin further sales, and refer violations to the Attorney General of Oklahoma (the "Attorney General") or district attorney for criminal prosecution. The purchaser may sue for rescission, damages, interest, costs and attorney fees.

## 2. Franchised Vehicle Dealers

Under OKLA. STAT. Tit. 47 § 565.3, a franchised vehicle dealer proposing to sell, transfer, or assign a franchise agreement, business, or assets of a dealership must notify the manufacturer or distributor whose vehicles the dealer is franchised to sell of the proposed transaction. Irrespective of the conditions of any franchise, or the terms or provisions of any waiver, no manufacturer may terminate, cancel or fail to renew any franchise with a licensed new motor vehicle dealer unless the manufacturer has satisfied state statutory notice requirements and has good cause. The manufacturer may not attempt to cancel or fail to renew the franchise agreement of a new motor vehicle dealer unfairly and without just provocation or without due regard to equity or without good faith.

## 3. Oklahoma Equipment Dealer Buyback and Fair Dealership Statute

Under OKLA. STAT. Tit. 15, §§ 24-251, a supplier is required to repurchase inventory previously purchased and held by the retailer on the date of termination of any dealer agreement, with some exceptions, although the retailer may keep the inventory if he has a contractual right to do so. The supplier must pay to the retailer 100% of the actual dealer cost of all new, unsold, undamaged and complete farm tractors, farm implements, utility and industrial tractors, and the attachments thereto or outdoor power equipment, lawn and garden equipment and attachments thereto, and 90% of the current net price on new, unused and undamaged repair parts.

Under the terms of the statute, net equipment cost means the original invoice price the retailer paid for the merchandise to the manufacturer, wholesaler or distributor, less all applicable discounts allowed, plus the freight cost from the location of the manufacturer, wholesaler or distributor to the location of the retailer. Current net parts price means the price listed in the printed price list or catalog of the manufacturer, wholesaler or distributor in effect at the time the dealer agreement is canceled or discontinued, less any applicable trade and cash discounts.

## **C. Consumer Protection Laws**

The Oklahoma Consumer Protection Act (the "OCPA"), OKLA. STAT. Tit. 15 §§ 751 *et seq.*, provides for protection to buyers against fraud and other practices by sellers. The Attorney General is vested with the authority to enforce the OCPA and civil penalties for violation thereof. Remedies available under the OCPA include declaratory judgment, injunction or restraining order, actual damages, attorney's fees, and recoverable expenses including investigation fees.

The OCPA declares certain acts unlawful when the acts occur during the course of the person's business. These unlawful practices include making knowingly false or misleading representations regarding the brand or make of a good, the certification or association by another, the geography or origin of a good, the originality or newness of a good, or its particular style or model. The OCPA prohibits conducting a "closing out sale" without a license, resuming the same business within one year after such sale, falsely stating that services, repairs, or replacements are needed, misrepresenting mail solicitations as invoices or billing statements, and other unlawful consumer practices. Further, the Act declares certain false advertisements regarding consumer transactions to be unlawful, including "under the guise of obtaining sales personnel" and "bait and switch" advertisements.

The following are additional specific consumer protection laws in Oklahoma:

1. Automobiles
  - a. Oklahoma "Lemon Law"

OKLA. STAT. Tit. 15 § 901 protects consumers of new motor vehicles in Oklahoma. According to this statute, the manufacturer, agent, or authorized dealer of a new vehicle must make repairs in accordance with any express warranties if the consumer reports the problem in writing during the warranties' term or within one year of the vehicle's delivery to the consumer, whichever comes first. If the manufacturer, agent, or dealer cannot repair the vehicle after a reasonable number of attempts, the consumer has the right to receive either a new vehicle or a refund of the full purchase price, less an allowance for use of the vehicle, provided the consumer first uses any arbitration procedure available from the manufacturer. If the vehicle's problems do not substantially impair the vehicle's use or value, or the problem is due to the consumer's abuse, neglect, or unauthorized modifications, the consumer cannot receive relief under this act.

- b. Aftermarket Crash Parts Regulation Act

The Aftermarket Crash Parts Regulation Act, OKLA. STAT. Tit. 15 §§ 951 *et seq.*, regulates the use of aftermarket crash parts by requiring disclosure when any use is proposed of an aftermarket, non-original equipment manufacturer's crash part and requiring that the manufacturers of such aftermarket crash parts be identified. "Aftermarket crash part" means a replacement for any of the non-mechanical sheet metal or plastic parts of the exterior of a motor vehicle. The statute also provides that any aftermarket crash part supplied by a non-original equipment manufacturer must bear the logo or name of its manufacturer, and requires insurers to specifically notify consumers in order to use such parts.

2. Home, Telephone, and Electronic Mail Fraud

a. Commercial Telephone Solicitation

OKLA. STAT. Tit. 15 §§ 775A.1 *et seq.*, provides that no commercial telephone seller shall conduct business in Oklahoma without having registered with the Attorney General at least ten days earlier, and the Act outlines the time limits, fees, and requirements for registration and renewal. The statute further notes that telemarketing practices that are unlawful under this statute are violations of the OCPA, including: conducting business without registering with the Attorney General; failing to allow a purchaser to cancel within three days of receipt of goods or to refund payments within thirty days; failing to disclose a consumer's rights or misrepresentation to the consumer of the nature of the goods or their cost; using identity-blocking devices or devices that automatically dial and engage multiple numbers that result in more than 5% of answered calls being abandoned.

The Oklahoma Telemarketer Restriction Act, OKLA. STAT. Tit. 15 §§ 775B.1 *et seq.*, allows Oklahomans to register with the Attorney General to prevent unsolicited telemarketing calls from reaching their phone numbers. There are exceptions allowed for certain organizations, including solicitations for charitable or religious groups, political candidates and causes, not-for-profit organizations. Consumers can register by internet ([www.http://www.oag.state.ok.us](http://www.oag.state.ok.us)), by mail, or by telephone at (800) 390-5708.

The use of automatic dial announcing devices is regulated under OKLA. STAT. Tit. 15 § 755.1, which provides that the device must be used only when the device disconnects from the called person's line no more than twenty seconds after the called person hangs up. For calls not for collection purposes terminating in Oklahoma, the device can only be used to make a call between 9 a.m. and 9 p.m. The device may be used only for the following calls or recorded messages: those made solely in response to calls initiated by the person to whom they are directed or who has made a written request to be called; those made regarding previously ordered or purchased goods; those made by creditors or their assignees; or those calls initiated by a live operator who gives the caller the option to disconnect prior to the playing of a prerecorded message. The devices cannot be used to dial random or successive lists of numbers.

b. Electronic Mail Messages

OKLA. STAT. Tit. 15 §§ 776.1 *et seq.*, prohibits initiating an electronic mail message if the sender knows or has reason to know that the message misrepresents or conceals its origin or transmission path, or contains false, malicious, or misleading information which purposely or negligently injures a person. The statute prohibits falsely representing that the message is being sent by a legitimate online business or linking the recipient to a web page to a seemingly legitimate online business with the intent of fraudulently using or possessing identifying information. The statute also prohibits selling or otherwise

distributing software that is primarily designed to falsify electronic mail transmission information. The statute declares it unlawful to transmit a commercial electronic mail message that falsifies routing information or contains a false or misleading subject line, and it outlines requirements for sending unsolicited messages with sexually explicit material. Certain actions and practices are also considered violations of the OCPA.

c. Home Solicitation

OKLA. STAT. Tit. 14A §§ 2-501 *et seq.*, governs "home solicitation sales," which are consumer credit sales of goods, other than farm equipment, or services in which the seller or seller's agent engages in a personal solicitation of the sale at a residence of the buyer and the agreement is made at the residence. The term does not include a sale made pursuant to a preexisting revolving charge account, or a sale made pursuant to prior negotiations between the parties at a business establishment at a fixed location where goods or services are offered or exhibited for sale. The act has a "cooling off" law that gives the buyer three days to provide written notice to the seller and cancel the contract. The buyer may not cancel a home solicitation sale if the buyer had requested the seller to provide goods or services without delay due to an emergency, the seller substantially performs on the contract in good faith, and the goods cannot be returned in substantially similar condition.

3. Consumer Credit

a. Credit/Debit Card Numbers

OKLA. STAT. Tit. 15 § 752A, prohibits anyone who accepts credit or debit cards for a consumer transaction from printing more than the last five digits of the account number or the expiration date on the cardholder's electronically printed receipt.

b. Credit Reports

Requests for credit reports are governed by OKLA. STAT. Tit. 56, § 240.7, which provides that consumer reporting agencies may be required to pay fees to obtain credit reports and that there be periodic release to consumer reporting agencies of the names and amounts of child support arrearages of obligors who owe past-due support; obligors will receive notice and an opportunity to be heard before the information is released. Only valid consumer reporting agencies with sufficient capability to use the information are entitled to the credit information.

c. Credit Services

The Credit Services Organization Act, OKLA. STAT. Tit. 24, §§ 131 *et seq.*, outlines the requirements for any credit services organization, or independent contractors who sell or attempt to sell the services of a credit services organization, i.e., improving a buyer's credit record or obtaining an extension of

credit for a buyer. Such organizations may not: charge or receive any money before performing the services agreed upon, absent a surety bond; charge or receive any money solely for referral of the buyer to a retail seller who will extend credit to the buyer upon substantially the same terms as those available to the general public; advise any buyer to make any statement that is untrue or misleading or that should be reasonably known to be untrue or misleading, to a credit reporting agency or to any actual or potential creditor regarding the buyer's credit; or make any false or misleading representations in the offer or sale of the services of a credit services organization or engage in any act, practice, or course of business that operates or would operate as fraud or deception in connection with the services of a credit services organization. Prior to the execution of a contract or agreement between the buyer and a credit services organization or before the organization receives any consideration, the credit services organization must provide the buyer with a statement, signed and in writing, with certain requirements of form and a five-day cancellation period.

d. Debt Collection Agencies

OKLA. STAT. Tit. 15, § 755.1 prohibits the use of automatic dialing devices for collection purposes at any hour that collection calls would be prohibited under the Fair Debt Collection Practices Act, 15 U.S.C. § 1692(c) (generally between 8 a.m. and 9 p.m.). In addition, OKLA. STAT. Tit. 59, § 3107 specifies that lenders must collect past-due accounts in a professional, fair and lawful manner and cannot threaten or pursue criminal action against debtors for unpaid debts. In addition, a debtor will not be subject to any criminal penalty if an instrument is dishonored.

4. Consumers Disclosure of Prizes and Gifts Act

The Consumer Disclosure of Prizes and Gifts Act, OKLA. STAT. Tit. 21, §§ 996.1 *et seq.*, provides that it is a violation of the OCPA to use the term "prize" or "gift" or other similar term in any manner that would be untrue or misleading, or to notify any person via an advertisement that he or she has won a prize and must pay money or rent goods or services to receive the prize, or to notify that he or she will receive a "gift" if as a condition the person must pay shipping or handling fees above a specified amount, or other unlawful conditions are present.

5. Defective Assistive Device Act

The Defective Assistant Devise Act, OKLA. STAT. Tit. 15 §§ 910 *et seq.*, governs the rights of consumers of "assistive devices," including wheelchairs, hearing aids, TDDs, and other devices that aid disabled persons to communicate, see, hear, or maneuver. A one-year express warranty is mandated and repairs to the assistive device must be free of charge within that one-year period. If the device is not repaired after a reasonable attempt (four service visits or a 30-day lapse in service), the manufacturer must replace the device or refund the cost less a reasonable allowance for use within thirty days.

Consumers may submit their disputes to arbitration or pursue other remedies, including double damages, equitable relief, and attorney fees.

6. Funeral Services Licensing Act

The Funeral Services Licensing Act, OKLA. STAT. Tit. 36 §§ 6121 *et seq.*, regulates the funeral services industry, including the Oklahoma Funeral Board, and outlines licensure requirements and minimum standards that all licensees must follow in offering funeral, cremation, and related services. The Prepaid Funeral Benefit Act, OKLA. STAT. Tit. 36 §§ 6121 *et seq.*, governs consumers' use of prepaid funeral benefits and the permit and application requirements.

7. Home Repair Fraud Act

OKLA. STAT. Tit. 15 §§ 765.1 *et seq.*, protects consumers against misrepresentations in home repair agreements, deception or false pretenses to induce consumers to enter transactions, unreasonable payment for home repair, and damage to property.

8. Identity Theft

OKLA. STAT. Tit. 21, § 1533.1 declares it unlawful for any person to willingly obtain another person's personal identifying information, or use the personal identity of another person, with fraudulent intent to use, sell, or allow any other person to use or sell the information to obtain money, credit, or goods without consent. Any person convicted of violating this section is guilty of identity theft, which is a felony offense, and may also be liable for civil damages.

Statutes have been enacted for the protection of various types of consumers and businesspeople in Oklahoma. These include the Uniform Deceptive Trade Practices Act, OKLA. STAT. Tit. 78, §§ 51 *et seq.*, the Health Spa Act, OKLA. STAT. Tit. 59, §§ 2000 *et seq.*, the Emergency Price Stabilization Act, OKLA. STAT. Tit. 15, § 777.1, and the Unsolicited Goods, Wares or Merchandise Act, OKLA. STAT. Tit. 15, § 721 *et seq.* Interested parties should review the specific statutory provisions or contact the relevant state agency for more information.

#### **IV. STATE TAXATION**

##### **A. Individual Income Tax**

Oklahoma residents (and nonresidents who receive gross income of at least \$1,000 of Oklahoma source income) are required to file an Oklahoma income tax return. The tax rates for all residents, part-year residents, and nonresidents are computed using the same scale. The top marginal income tax rate is currently 5.25%. Oklahoma allows various exemptions, and the maximum standard deduction equals the deduction provided for in the Internal Revenue Code. Oklahoma itemized deductions are the same as those defined in the Internal Revenue Code. OKLA. STAT. Tit. 68, §§ 2351 *et seq.* Furthermore, individuals with long-term capital gains from the sale of Oklahoma-based property may

be eligible for an exclusion that effectively exempts such gains from Oklahoma tax. OKLA. STAT. Tit. 68, § 2358(F).

## **B. Corporate Income Tax**

Every partnership, corporation, resident estate and trust, and nonresident estate and trust with Oklahoma source income is required to file an Oklahoma income tax return. Oklahoma levies an income tax of 6 percent on the taxable income of every corporation doing business within or deriving income from a source within Oklahoma. However, educational, religious, charitable, and social corporations and associations are exempt from Oklahoma income tax if they are exempt for Federal income tax purposes. OKLA. STAT. Tit. 68, §§ 2351 *et seq.* Corporations with long-term capital gains from the sale of Oklahoma-based property may be eligible for an exclusion that effectively exempts such gains from Oklahoma tax. OKLA. STAT. Tit. 68, § 2358(D).

## **C. Estate and Gift Tax**

Oklahoma does not presently levy a tax on any transfer of a decedent's property interest, whether principal or income, which transfer took effect at or after death or was made in contemplation of death and does not tax gifts. OKLA. STAT. Tit. 68, §§ 801 *et seq.*

## **D. Franchise Tax**

Oklahoma levies a franchise tax on the associations, business trusts, corporations and joint stock companies doing business in Oklahoma, subject to certain exceptions; the franchise tax does not apply to charities, credit unions, insurance companies, real estate trusts, retirement or pension funds, savings and loan associations, savings banks, savings fund societies, small business investment companies and trust companies, some of which are subject to alternative taxes. The franchise tax is levied at a rate of \$1.25 per \$1,000 of capital (or fraction thereof) invested in Oklahoma. OKLA. STAT. Tit. 68, § 1201 *et seq.*

## **E. Property Tax**

All real and tangible personal property is subject to ad valorem taxation in Oklahoma, unless an exemption is available. The amount of the tax is based on the fair cash value, which is the price the property would bring at a fair voluntary sale. Ad valorem taxes are generally levied by the county excise board for the county in which the property is located; ad valorem taxes on the property of air carriers, public services corporations is, however, levied by the State Board of Equalization. The Oklahoma Constitution provides that total ad valorem taxes in excess of 15% may not be levied in a taxable year. Okla. Const. art. X, § 9; OKLA. STAT. Tit. 68, §§ 2801 *et seq.*

## **F. Sales and Use Tax**

The State of Oklahoma levies a sales tax of 4.5 percent of the gross receipts from the sale or rental of tangible personal property and from the furnishing of specific services, unless an exemption is available. In addition, counties and incorporated cities and towns may

levy sales taxes. While there is no maximum rate that may be levied by cities and towns, a county sales tax may not exceed 2 percent, which is in addition to the applicable state and municipal taxes. OKLA. STAT. Tit. 68, §§ 1301 *et seq.*

The State of Oklahoma also levies a use tax of 4.5 percent on the purchase price of tangible personal property stored, used or consumed in Oklahoma, even if the property was purchased in another state, unless an exemption is available. In addition, municipalities and counties that levy a sales tax may also levy a use tax, which may not exceed the existing local sales tax. OKLA. STAT. Tit. 68, §§ 1401 *et seq.*

#### **G. Severance Tax**

Oklahoma levies a Gross Production Tax on the production of certain natural resources, primarily oil and gas, produced in Oklahoma. The Gross Production Tax is levied at varying rates depending on the natural resource. Oil and gas are currently taxed according to a complicated rate structure based on the depth of the well and the time at which the well was spudded. OKLA. STAT. Tit. 68, §§ 1001 *et seq.*

#### **H. Subchapter S**

A corporation with an election under subchapter S of the Internal Revenue Code is not subject to Oklahoma income tax, and the shareholders must include their proportional shares of the distributive income in their taxable incomes. However, the corporation is taxable on any income allocated to a nonresident shareholder unless the corporation includes with its return an agreement executed by each nonresident stating that they will file an Oklahoma tax return reporting their share of the income. OKLA. STAT. Tit. 68, § 2365.

#### **I. Other Taxes**

Oklahoma also levies various other taxes, such as taxes regarding aircraft, alcoholic beverages, tobacco products, motor fuels and motor vehicles. For additional information on these or other miscellaneous taxes, contact the Oklahoma Tax Commission.

#### **J. Tax Incentives**

Oklahoma has various tax incentives and exemptions including, but not limited to, the College Savings Plan Act (OKLA. STAT. Tit. 70, §§ 3970.1 *et seq.*), the Oklahoma Quality Jobs Program Act (OKLA. STAT. Tit. 68, §§ 3601 *et seq.*), and the Small Employer Quality Jobs Incentive Act (OKLA. STAT. Tit. 68, §§ 3901 *et seq.*). Prior to engaging in business in Oklahoma, businesses should engage local counsel to determine if their businesses may be structured to take advantage of these or other tax incentives currently available in Oklahoma.

Business taxes can be quite complicated and vary based on type of business and the particular facts and circumstances.



## V. LABOR AND EMPLOYMENT

### A. Employment-At-Will

#### 1. Doctrine

Oklahoma is an employment-at-will state, which means that unless an employer and employee have a fixed-term contract, or have agreed that termination will only be for cause, the employment relationship may be terminated by either party for no reason at all, or for any reason that does not violate a state or federal statute or a local ordinance or charter. Burk v. K-Mart Corp., 1989 OK 22, ¶1, 770 P.2d 24, 26

#### 2. Exceptions

In spite of the employment-at-will doctrine, Oklahoma courts do permit suits for breach of implied contract based upon statements contained within employment handbooks. See Langdon v. Saga Corp., 1976 OK CIV APP 65, ¶ 12, 569 P.2d 524, 528. However, general assurances of long-term employment are insufficient to create such claims. Hayes v. Eateries, Inc., 1995 OK 108, ¶5, 905 P.2d 778, 783. There also exists a judicially created exception to the at-will employment doctrine prohibiting discharge for reasons that violate public policy (i.e. policies clearly articulated and firmly established in Oklahoma laws not including employment-based discrimination)). Burk v. K-Mart Corp., at ¶17, 770 P.2d at 28. Finally, in some very limited circumstances, Oklahoma courts have recognized the concept of constructive discharge – but only where the employee can show that the employer's behavior is so objectively offensive that a reasonable person would find it intolerable and would be forced to resign. Collier v. Insignia Fin. Group, 1999 OK 49, ¶¶ 9, 15, 981 P.2d 321, 324, 326.

### B. Right-to-Work

The Oklahoma Constitution makes it illegal to require an employee, as a condition of employment or continuation of employment, to resign or refrain from or join a labor organization. Similarly, an employee's eligibility for hire or continuation of employment cannot be dependent upon the recommendation, approval, or referral of a labor organization. It is also unlawful, in the state of Oklahoma, to deduct union dues or fees from an employee's wages unless such employee has authorized those deductions. OKLA. CONST. art 23 § 1A

### C. Wage & Hour Laws

#### 1. Minimum Wage / Overtime

The Oklahoma Minimum Wage Act employs the same minimum wage schedule as required by the Fair Labor Standards Act. OKLA. STAT. Tit. 40§ 197.2. Oklahoma requires employers–not covered by the federal statute–to pay only \$2/hour to certain classifications of employees. OKLA. STAT. Tit. 40 § 197.5. Additionally, all employers are required to post the State minimum wage poster in their place of employment.

OKLA. STAT. Tit. 40 § 197.6. Oklahoma does not have any separate requirement for the payment of minimum overtime compensation.

## 2. Payment of Wages

Employers are required to pay all wages due to their employees, other than exempt employees and employees of non-private foundations, at least twice a month – on days designated in advance by employers. . OKLA. STAT. Tit. 40, § 165.2. If an employee is terminated, their employer is required to pay the full amount owed less offsets and less any amount over which there is a bona fide disagreement to that employee at the next regularly scheduled payday. . OKLA. STAT. Tit. 40, § 165.3. Severance pay is normally not required in the absence of a published policy, a specific agreement with the employee, or a longstanding practice of the employer. In the event of an employee's death, up to \$3,000 in wages owed are payable directly to the deceased's spouse or dependent children without probate. OKLA. STAT. Tit. 40, § 165.3a. Employers failing to comply with these payment provisions are subject to an administrative fine by the Department of Labor. OKLA. STAT. Tit. 40, § 165.2a. Additionally, a private lawsuit to recover damages and attorney's fees may be sought. . OKLA. STAT. Tit. 40, § 165.9.

## 3. Equal Pay Act

In Oklahoma, it is unlawful to willfully pay women employees less than male employees who are performing comparable work on jobs which have comparable requirements relating to skill, effort, and responsibility – except where the differential is based upon an established merit or seniority system. OKLA. STAT. Tit. 40, § 198.1. OKLA. STAT. Tit. 40, § 198.1.

## 4. Unemployment Compensation

Oklahoma has a system for the payment of unemployment compensation benefits to employees who are out of work through no fault of their own. OKLA. STAT. Tit. 40, § 1-103. Employers are required to pay contributions equal to one and one half (1.5%) of taxable wages paid by the employer with respect to employment to the Unemployment Compensation. OKLA. STAT. Tit. 40, § 3-103. Employees can be disqualified from the receipt of such benefits if found to have engaged in misconduct connected with his or her last work. OKLA. STAT. Tit. 40, § 2-406. In addition, an employee can be disqualified from the receipt of such benefits for being voluntarily out of work. OKLA. STAT. Tit. 40, §§ 2-4 *et seq.* Employers are required to display posters, at their place of employment, concerning the rights, claims for benefits and any other matter relating to the administration of this Act. OKLA. STAT. Tit. 40, § 2-502.

## 5. Benefits

Oklahoma law enforces an employer's established benefit policies, but does not mandate that employers provide such benefits to their employees. When an insured employee or a dependent's group coverage is terminated and it is not subject to COBRA then that employee and their dependents must be offered continued coverage of those benefits for at least 63 days after termination – unless the employee and dependents become covered

by similar plan, the employee fails to make timely premium payments, or the employee is terminated for gross misconduct. Similarly, where an employee has been covered under an employer's group accident and health insurance policy for at least 6 months, that employer must provide coverage for ongoing medical treatment, which arose during the policy period. OKLA. STAT. Tit. 36, § 4509.

#### **D. Medical Exams & Testing**

##### 1. Medical Examinations

Under Oklahoma law, an employee who is required to take a medical exam as a condition of employment, or continued employment, must not be required to pay for the exam. Additionally, if requested within 30 days, the employee must be given a copy of any report regarding such exam at no charge. OKLA. STAT. Tit. 40, § 191.

##### 2. Drug/Alcohol Testing

In Oklahoma, an employer may extend conditional offers of employment, which are subject to the passing of a drug/alcohol test. An employer may refuse to hire an applicant who declines to undergo testing or who tests positive for drugs. An employer may also request or require an employee who transfers to a different position or job, or who is reassigned, to undergo drug/alcohol testing. Additionally, employers may test for drugs/alcohol if there is a reasonable suspicion that an employee has violated the employer's written drug/alcohol policy. Employers may also require drug/alcohol testing if the employer has a reasonable suspicion that drugs or alcohol were the direct cause of a work-related injury accident. Similarly, employers who have adopted a written, detailed, policy – setting forth the specifics of its drug/alcohol testing program – may conduct both random and periodic drug/alcohol tests. Finally, employers may request or require drug/alcohol testing as a routine part of a routinely scheduled fit-for-duty medical examination, or if it is in connection with an employee's return to duty from leave of absence. All information and results relating to an employee's drug test must be kept confidential and separate from other personnel records. OKLA. STAT. Tit. 40, § 554.

#### **E. Occupational Health & Safety**

The Oklahoma Occupational Health and Safety Standards Act extend federal OSHA rules to all employers in the State of Oklahoma. Each employer is required to furnish employment free from recognized hazards commensurate with federal standards. Every employer with 25 or more employees must designate an employee to coordinate all safety programs of the employer, and the employer must provide its workforce with safety training no less than four times per year. Under the statute, employers are also required to notify the Oklahoma City office of the Oklahoma Department of Labor of employment, within 48 hours of the occurrence and in writing, of accidents which result in a fatality to one or more employees or the hospitalization of 5 or more employees. Additionally, no person may discharge or discriminate against any employee for filing a complaint. OKLA. STAT. Tit. 40, § 403.

## **F. Discrimination**

### 1. Anti-Discrimination Act

Much like federal law, the Oklahoma Anti-Discrimination Act (the “OADA”) prohibits discrimination, by companies on the basis of race, color, religion, sex, national origin, age, creed, disability or genetic information. OKLA. STAT. Tit. 25, § 1101. In 2011 (effective 2012), a cause-of action for employment-based discrimination was created and any common law remedies were abolished as the OADA provides exclusive remedies for such cause-of-action. Additionally, the Act is administered by the Attorney General’s Office of Civil Rights Enforcement, which has the authority to hold administrative hearings, and seek enforcement of its orders in Oklahoma District Courts. OKLA. STAT. Tit. 25, § 1350.

### 2. Genetic Non-Discrimination Act

Oklahoma employers may not discriminate based on the results of any genetic testing (i.e., DNA, RNA, chromosome testing). In fact, except for the limited purposes of determining insurance coverage or benefits, an employer may not even request that an employee take such a test. It is, however, lawful for the employer to conduct routine lab tests and collect family medical histories. OKLA. STAT. Tit. 36, § 3614.2.

### 2. Tobacco Use

Oklahoma law prohibits the discrimination or discharge of an employee because the individual is a nonsmoker or smokes or uses tobacco products during non-working hours. It is also unlawful for an employer to require an employee to abstain from smoking or using tobacco products during non-working hours, unless non-smoking is a bona fide occupational qualification or is required by union contract. This provision does not prohibit employers from offering incentives to an employee to participate in wellness programs, including but not limited to smoking cessation programs, in conjunction with the employer providing the employee health insurance coverage. OKLA. STAT. Tit. 40, § 500.

## **G. Workers’ Compensation**

### 1. Scope and Coverage

The Administrative Workers’ Compensation Act (the “AWCA”) is administered by the Oklahoma Workers’ Compensation Commission (the “Commission”). OKLA. STAT. Tit. 85A, §19.

Under the AWCA, employers must pay or provide compensation for the disability or death of an employee resulting from an injury arising out of and in the course of employment – without regard to the cause or fault of such injury (aside from the limited exceptional situations provided by the statute). OKLA. STAT. Tit. 85A, §35. Additionally, employers are required to post a notice at their place of employment

advising employees that they are entitled to certain benefits under the Act. OKLA. STAT. Tit. 85A, §41

For injuries arising on or after February 1, 2014, the AWCA applies and the Court in which matters are heard is the Commission. For injuries arising before February 1, 2014, either the Workers' Compensation Code applies (for injuries occurring on or after August 26, 2011) or the Workers' Compensation Act (for injuries occurring prior to August 26, 2011), and the Court in which matters are heard is called the Workers' Compensation Court of Existing Claims

## 2. Retaliation

Oklahoma law prohibits discrimination against employees who file, testify, or otherwise bring (or help others to bring) Workers' Compensation claims. Additionally, an employer may not discharge or stop insurance benefits of an employee drawing Temporary Total Disability ("TTD") solely because of their absence from work. OKLA. STAT. Tit. 85, § 5.

## **H. Child Labor**

Under Oklahoma law, no child under the age of 16 is permitted to work in any occupation other than those proscribed by the Fair Labor Standards Act. OKLA. STAT. Tit. 40, § 71. Aside from limiting the occupations of child laborers, Oklahoma law prohibits children under the age of 16 from working in any gainful occupation except for agricultural or domestic service, for more than 3 hours on any school day, not to exceed 18 hours per week, when school is in session, 8 hours or less on a non-school day, not to exceed 40 hours per week when school is not in session. "In session" means the period beginning on the first Tuesday after Labor Day through May 31 the following year. Additionally, no such child may work more than 5 consecutive hours unless permitted 1/2 hour cumulative rest period, 1 hour cumulative rest period if for 8 consecutive hours worked. OKLA. STAT. Tit. 40, §75. During the school year, children under age 16 are only permitted to work between the hours of 7:00 a.m. and 7:00 p.m. On a non-school day and during the summer (June 1 through Labor Day), children under age 16 may work up to 8 hours per day, not to exceed 40 hours per week, between the hours of 7:00 a.m. and 9:00 p.m. OKLA. STAT. Tit. 40, § 76.

## **I. Covenants Not To Compete**

In the absence of the sale of a business, the dissolution of partnership, and in some instances certain agreements not to compete with former employers, restrictive covenants are generally not enforceable. OKLA. STAT. Tit. 15, § 217. At most, former employees are not permitted to solicit the sale of goods, services, or the combination of goods and services from the established customers of their former employers. OKLA. STAT. Tit. 15, § 219a. However, a contractual provision which prohibits employees or independent contractors of a person or business from soliciting, directly or indirectly, actively or inactively, other employees or independent contractors of that person or business to

become employees of another person or business, is not to be construed as a restraint from exercising a lawful profession, trade or business. OKLA. STAT. Tit. 15, § 219b.

Oklahoma has adopted the Uniform Trade Secrets Act, making agreements to refrain from disclosing customer lists or other confidential information enforceable. OKLA. STAT. Tit. 21, § 1732.

## **J. Other Employment Laws**

### 1. Referencing and Blacklisting

Employers in Oklahoma may be liable for defamation lawsuits stemming from the unauthorized referencing of employees. OKLA. STAT. Tit. 40, § 173. Employers have limited immunity from such suits if references were provided in good-faith, upon the request of a current or former employee or upon the request of a prospective employer with the consent of the current or former employee. OKLA. STAT. Tit. 40, § 61. Additionally, Oklahoma law prohibits the blacklisting of a former employee with the intent or purpose of preventing that employee from engaging in other employment. OKLA. STAT. Tit. 40, § 172.

### 2. Fraudulent Hiring Practices

It is unlawful to induce, influence, persuade, or engage workers to move from one place to another within the state or into the state with the use of false representations, false advertising, or false characterizations concerning the work to be done, amount of compensation, or the conditions of employment. OKLA. STAT. Tit. 40, § 167.

### 3. Time Off for Voting

It is unlawful to deny employees sufficient time-off to vote, if a request for such leave has been made. Under the statute, voting requests must be made no later than the day before the particular election. Additionally, the employee may not be penalized for the missed time providing proof of voting is furnished but an employer may select the hours in which an employee may be absent from work. OKLA. STAT. Tit. 26, § 7-101.

## **K. Contact Information**

### 1. Oklahoma Department of Labor

Oklahoma City  
3017 N. Stiles  
Suite 100  
Oklahoma City, OK 73105  
(405) 521-6100  
(888) 269-5353  
(405) 521-6018 (fax)  
labor.info@labor.ok.gov

Tulsa  
440 S. Houston, Suite 300  
Tulsa, OK 74127  
(918) 581-2400  
(918) 581-2431 (fax)

- |    |  |   |
|----|--|---|
| 2. | <u>Office of Attorney General</u><br>313 NE 21st St.<br>Oklahoma City, OK 73105<br>(405) 521-3921 - OKC<br>(918) 581-2885- Tulsa<br>(405) 521-6246 (fax) | Tulsa<br>Robert S. Kerr Office<br>Building, Rm 302<br>440 S. Houston<br>Tulsa, OK 74127<br>(918) 581-2733<br>(918) 581-2940 (fax) |
| 3. | <u>Oklahoma Employment Security Commission</u><br>Mailing address<br>PO Box 52003<br>Oklahoma City, OK 73152<br>(405) 557-7100<br>1-888-980-WORK (9675)  | Physical address<br>Will Rogers Memorial Office<br>Bldg<br>2401 N. Lincoln Blvd.<br>Oklahoma City, OK 73105                       |
| 4. | <u>Oklahoma Worker's Compensation Court</u><br>1915 N. Stiles Ave.<br>Oklahoma City, OK 73105<br>(405) 522-8600<br>(800) 522-8210                        | 440 S. Houston Ave. #210<br>Tulsa, OK 71427<br>(918) 581-2714   |

## VI. ENVIRONMENTAL REGULATIONS

Environmental matters are governed by a wide array of laws and regulations, administered and enforced by administrative agencies of federal, state, municipal, and tribal governments. Some environmental laws and regulations are of general application, while many others target specific activities or particular industries. Many environmental laws are administered and enforced at the federal level.

However, several federal environmental laws authorize the federal government to delegate its administrative and enforcement authority to the states.

In addition to government enforcement authority, a number of environmental statutes grant certain private parties “citizen suit” authority to initiate legal action in federal district court to enforce regulatory requirements as well as pursue penalties against an entity for non-compliance. The expanding scope and application of environmental laws and regulations make this a dynamic, broad and complex area of law, only a portion of which can be addressed herein.

At the outset, the primary federal agency regulating environmental matters in the United States is the Environmental Protection Agency (the “EPA”). The EPA is charged with promulgating administrative rules for the majority of environmental laws passed by the U.S. Congress. The EPA also engages in scientific research, environmental monitoring, and conducting investigations, criminal and civil, to ensure compliance with environmental laws and regulations. The EPA is headquartered in Washington, D.C. and

has 10 regional offices, of which Region 6, based in Dallas, Texas, serves Oklahoma, Arkansas, Louisiana, New Mexico, Texas, and 66 Tribal Nations.

In addition to the EPA, other federal agencies administer environmental statutes and regulations, including the U.S. Fish and Wildlife Service, Army Corps of Engineers, Occupational Safety and Health Administration, Food and Drug Administration, Department of Interior and Department of Agriculture.

The Oklahoma Environmental Quality Act (the “OEQA”) and Oklahoma Environmental Quality Code (the “OEQC”) are the primary sources of environmental laws within Oklahoma. OKLA. STAT. tit. 27A, §§ 1-1-101 *et seq.* and OKLA. STAT. tit. 27A, §§ 2-1-101 *et seq.* Several state agencies have delegated authority as well as separate state authority to promulgate and enforce environmental regulations, including incorporation of federal rules by reference. These agencies include the Oklahoma Department of Environmental Quality (the “DEQ”), Oklahoma Water Resources Board (the “OWRB”), Oklahoma Department of Agriculture, Food, and Forestry (the “ODAFF”), the Oklahoma Corporation Commission (the “OCC”), the Oklahoma Conservation Commission, the Oklahoma Department of Mines (the “ODM”), the Oklahoma Department of Wildlife Conservation (the “ODWC”), the Oklahoma Department of Labor (the “ODL”), and the Oklahoma Department of Emergency Management (the “ODEM”). Specific state agency jurisdictional authority for environmental issues is set forth by the Oklahoma Environmental Quality Act, at OKLA. STAT. tit. 27A, § 1-3-101.

The following discussion provides a general summary of the significant Oklahoma laws and environmental programs.

#### **A. Air Quality**

The federal Clean Air Act (the “CAA”), 42 U.S.C. §§ 7401 *et seq.*, regulates the emission of pollutants to the ambient air through a comprehensive permitting program based on attaining or maintaining federally-established national ambient air quality standards (“NAAQS”) by controlling emissions of criteria pollutants, including ozone, particulate matter, carbon monoxide, nitrogen oxides, sulfur dioxide and lead, as well as controlling hazardous air pollutants (“HAPs”), greenhouse gases (“GHGs”) and ozone depleting substances (“ODS”). Through EPA delegation, Oklahoma is primarily responsible for developing source specific emission limits necessary to achieve or maintain NAAQS and implement delegated CAA elements through permitting and enforcement with EPA oversight.

Article V of the Oklahoma Environmental Quality Code pertains to air quality. Through its authority under the Oklahoma Clean Air Act, OKLA. STAT. tit. 27A, §§ 2-5-101 *et seq.*, and EPA delegated authority to implement the federal CAA regulations, ODEQ promulgates and implements rules for the prevention, control and abatement of air pollution and for the establishment of health and safety based standards for air pollutant emissions into the atmosphere. ODEQ also has authority to issue requisite permits and investigate and grant variances from the CAA permit requirements



ODEQ's air quality regulations incorporate by reference provisions of Title 40 of the Code of Federal Regulations (40 CFR). OKLA. ADMIN. CODE 252:100-2-1-:100-2-3, Appendix Q (2014). Sources of air emissions in Oklahoma are regulated by the ODEQ Air Quality Division ("AQD"). The AQD works to protect public health in Oklahoma by monitoring the air quality across Oklahoma and issuing warnings and advisories to the public when air quality conditions could be hazardous to their health, implementing state and federal CAAs to reduce emissions and maintain or improve air quality in Oklahoma, providing the public and regulated industries information and resources on air quality, and responding to public concerns and complaints about air quality.

### 1. Oklahoma Air Quality Permits

ODEQ's AQD implements ODEQ's "Permit Continuum concept." This concept "uses different types of permits for different facilities, depending on size, complexity and environmental risk." Under this program, major sources of air pollutants are issued individual permits, or for qualifying facilities a "Part 70 General Permit" ("GP"), for construction and operation in compliance with federal standards incorporated by reference into ODEQ major source regulation. Minor sources that fall below major source thresholds are permitted by ODEQ pursuant to minor source regulation for construction and operation with either individual permits, or for certain categories of facilities, "General Permits" ("GP") or "Permits by Rule" ("PBR"). See OKLA. ADMIN. CODE 252:100-7-60 (2014). Even smaller sources may be considered "de minimis" or "permit exempt" unless they are subject to federal standards such as the New Source Performance Standards ("NSPS") or National Emissions Standards for Hazardous Air Pollutants ("NESHAPs"). To assist facilities in determining whether an air permit is required, and if so which type, the AQD offers a service called an "Applicability Determination."

A construction permit is required before a new emissions source is constructed or an existing emissions source is modified but after AQD determines the source is designed to meet applicable rules and pre-construction requirements. After construction is completed (of a new facility or modification of an existing facility) and the regulated entity demonstrates it is capable of meeting applicable emissions limitations and pollution control requirements, AQD will issue an operating permit. For entities qualifying for a GP or a PBR, an Authorization or Registration to Construct and an Authorization or Registration to Operate correspond to the construction and operating permit, respectively.

### 2. Air Pollutant Emissions Inventory

Oklahoma submits an annual Oklahoma Emissions Inventory to EPA. The Inventory includes emissions of all sources of regulated air pollutants, including sources qualifying for General Permits or Permits by Rule, but not permit exempt and de minimis facilities. All facilities with an air permit are required to annually report its emissions to ODEQ through a web-based application known as Redbud or by completing a set of forms known as a "Turn Around Document." The Inventory is used to evaluate emission trends over the past year and supports air dispersion modeling, development or modification of air quality rules, and air toxics risk assessment.

3. Additional Programs Administered by ODEQ's Air Quality Division

a. Lead Paint

The Oklahoma Lead-Based Paint Management Act designates ODEQ as the official state agency for implementing the Lead-Based Paint Management Program. OKLA. STAT. tit. 27A, §§ 2-12-101 *et seq.* Certification is required of all individuals and firms that offer and/or perform lead-based paint services as required under EPA's Renovation, Repair, and Painting Rule ("RRP").

4. Asbestos

Asbestos is a hazardous air pollutant. Federal legislation and regulation exists to prevent airborne asbestos exposure in schools, public, and commercial buildings. See 40 CFR § 61.140-157. Section 61.145(a) of the NESHAP regulations requires the "owner or operator of a demolition or renovation activity and prior to the commencement of the demolition or renovation thoroughly inspect the affected facility or part of the facility where the demolition or renovation operation will occur for the presence of asbestos, including Category I and Category II nonfriable ACM." Once the thorough asbestos survey is completed then the owner and/or operator can determine which parts of paragraphs (a), (b), and (c) of the NESHAP regulations apply.

The ODL separately licenses abatement contractors and provides regulations for conducting asbestos abatement. Oklahoma Asbestos Control Act, OKLA. STAT. tit. 40 §§ 450 *et seq.* Both the Commissioner of Labor and the Commissioner of Health have roles under the Oklahoma Asbestos Control Act. See OKLA. STAT. tit. 40, §§ 453 and 457, respectively.

5. Toxics

Oklahoma sets a Maximum Acceptable Ambient Concentrations ("MAAC") of toxic air contaminants. These MAAC standards apply to stationary sources that emit any toxic air contaminant. The MAAC's are at OKLA. ADMIN. CODE 252:100, Appendix O (2014).

**B. Water Quality**

Through construction similar to its sister statute, the federal CAA, the federal Clean Water Act (the "CWA"), 33 U.S.C. §§ 1251 *et seq.*, regulates discharges of pollutants to surface waters through a comprehensive permitting program intended to achieve certain water quality standards ("WQS") and industry wastewater standards by controlling discharges of conventional pollutants, including biochemical oxygen demand, total suspended solids, fecal coliform, and pH, as well as toxic, priority and nonconventional pollutants. Through EPA delegation, Oklahoma is primarily responsible for developing source specific discharge limits necessary to achieve and maintain WQS and implement delegated CWA elements through permitting and enforcement with EPA oversight.

Article VI of the Oklahoma Environmental Quality Code pertains to water quality. Through its authority under Article VI, OKLA. STAT. tit. 27A, §§ 2-6-101 *et seq.*, the

Oklahoma Pollutant Discharge Elimination System Act, OKLA. STAT. tit. 27A, §§ 2-6-201 - 206 and EPA delegated authority to implement the federal CWA regulations, ODEQ promulgates and implements rules intended to prevent, abate and control pollution of waters of the state where such pollution constitutes a public nuisance and otherwise threatens beneficial use, safe drinking water, etc., and prohibiting discharges of pollutants, or placement of pollutants on land where they could likely result in such discharges, to waters of the state. OKLA. STAT. tit. 27A, §§ 2-6-102 and -105. ODEQ also has delegated authority to issue requisite permits and investigate and grant variances from the CWA permit requirements.

ODEQ's water quality regulations adopt by reference provisions of Title 40 of the Code of Federal Regulations (40 CFR). OKLA. ADMIN. CODE 252:606-1-3-5 (2014). Primarily, the ODEQ Water Quality Division ("WQD"), the OWRB and the Oklahoma Conservation Commission share authority to implement the provisions of Article VI and the rules promulgated thereunder. These agencies implement standards associated with the federal CWA and the federal Safe Drinking Water Act ("SDWA"). The EPA did not delegate authority over facilities on Indian lands or industrial activities located in the oil and gas exploration fields, Standard Industrial Classification codes 1311, 1381, 1382, and 1389.

The ODEQ's WQD regulates facilities that treat, transport, store, and discharge wastewater and impacted stormwater runoff through the Oklahoma Pollution Discharge Elimination System ("OPDES"), as well as regulate entities that produce and distribute public drinking water and entities injecting pollutants underground that can impact underground sources of drinking water through WQD's incorporated federal SDWA regulatory provisions. This includes requiring construction permits for water treatment and wastewater facilities, pipeline construction, and water storage within Oklahoma and review and approval of Sludge Management Plans and Storm Water Management Plans. See, e.g., OKLA. ADMIN. CODE 252:616 (2014). Additionally, the WQD Operator Certification Unit trains and licenses all people working in water and wastewater plans, operating groundwater systems, and sewage lagoons in the state.

#### 1. Oklahoma Water Quality Permits

ODEQ's WQD issues water quality discharge permits pursuant to the rules under the OPDES, taking into account effluent limitation guidelines for industry and pollutants, impacts to WQS of the receiving surface waters, and the best professional judgment of the WQD permit writer, OKLA. ADMIN. CODE 252:606 (2014). WQD also oversees implementation of "General Permits" for impacted stormwater runoff from facility operations, construction activities that disturb or planned to disturb one or more acres, as well as a Small MS4 General permit.

In 2012, Oklahoma obtained approval to issue agriculture-related CWA discharge permits. The ODAFF is responsible for implementing Oklahoma's AgPDES program pursuant to the Concentrated Animal Feeding Operations Act (OKLA. STAT. tit. 2, § 20A -1 *et seq.*). This program addresses discharges from concentrated animal feeding operations ("CAFOs"), the application of biological or chemical pesticides, discharges

from forestry activities, if and when applicable, and construction storm water runoff at agricultural operations.

The OWRB is the primary agency responsible for enforcing Oklahoma’s Water Quality Standards (“WQS”), while the Oklahoma Conservation Commission implements WQS for nonpoint sources. The WQS establish water quality benchmarks and serve as the basis for development of water quality-based pollution control programs, including discharge permits. There are three main components of the WQS: (1) designation of beneficial uses, (2) water quality criteria to protect the designated uses, and (3) antidegradation policies. Oklahoma has specifically designated certain types of uses as “beneficial uses” of water. These include public and private water supply, fish and wildlife propagation, agriculture, recreation, navigation, and aesthetics. The OWRB also promulgates that WQS Implementation Rules as a bridge between water quality standards and water quality management.

## 2. Oklahoma Water Use Permits

In addition to WQS, the OWRB is also responsible for appropriation of water rights in Oklahoma. Oklahoma operates under a system of prior appropriation of water rights. The OWRB is the state agency responsible for determining appropriations of stream water and groundwater. Permits must be obtained from the OWRB for all uses of water in Oklahoma with the exception of domestic use. Water is allocated in acre-feet or the amount that would cover one acre of land with water one foot deep or 325,851 gallons. Groundwater is private property that belongs to the overlying surface owner and is subject to reasonable regulation by the OWRB.

## 3. Flood Insurance Program

Finally, the OWRB is the designated agency for the National Flood Insurance Program (“NFIP”) in Oklahoma. The OWRB, along with other state and federal agencies and local governments, implement measures to prevent and mitigate the catastrophic effects of flooding disasters in Oklahoma. Board officials stress implementation of land-use strategies that reduce the likelihood of future flood damages and encourage the safe conveyance of floodwaters.

## **C. Solid and Hazardous Waste Management**

The federal Solid Waste Disposal Act (“SWDA”), 42 U.S.C. §§ 6901 *et seq.* (2014), regulates management of solid waste and hazardous waste through comprehensive permitting and management programs applicable to waste generators, treatment and disposal facilities, from the point of generation through disposal. EPA has delegated to Oklahoma the authority to administer and enforce SWDA requirements as well as the hazardous waste amendments to SWDA entitled the Resource Conservation and Recovery Act (RCRA) requirements, 42 U.S.C. §§ 6934 - 6939g. The Oklahoma Solid Waste Management Act, OEQC Article X, governs all ODEQ regulated non-hazardous waste (OKLA. STAT. tit. 27A, §§ 2-10-101 *et seq.*, noting authority reserved for oil and gas production related waste regulated by the OCC), while the Oklahoma Hazardous

Waste Management Act, OEQC Article VII, governs all hazardous waste (OKLA. STAT. tit. 27A, § 2-7-101, et seq. (2011)), along with EPA delegated authority.

ODEQ also has authority to issue requisite permits and investigate and grant variances from the solid and hazardous waste permitting and management requirements. ODEQ's hazardous waste management regulations adopt by reference provisions of Title 40 of the Code of Federal Regulations (40 CFR). OKLA. ADMIN. CODE 252:205-3-1-:205-3-4 (2014).

The ODEQ Land Protection Division ("LPD") implements the solid and hazardous waste programs, including the SDWA Underground Injection Control ("UIC") permits, except for UIC Class II permits which are issued by the OCC. As part of its duties in administering these programs, the LPD inspects and permits hazardous waste and solid waste treatment, storage and disposal facilities, permits and inspects certain underground injection wells, manages radioactive materials, and oversees the restoration of contaminated land to safe and useful conditions (Brownfields, Voluntary Cleanup, Land Restoration and Site Cleanup Assistance Program). Significantly, ODEQ relies on its delegated program authority, as well as its nuisance authority codified at OKLA. STAT. tit. 27A, § 2-6-105 and other authority at OKLA. STAT. tit. 27A, § 2-7-123 to enforce remediation of contaminated property. Oklahoma has not enacted a statute comparable to the federal Comprehensive Environmental Response, Compensation and Liability Act or CERCLA. 42 U.S.C. § 9601 *et seq.* (2014).

#### **D. Uniform Environmental Permitting Act**

The Uniform Environmental Permitting Act ("UEPA"), Article XIII of the OEQC, is intended to provide uniform procedures for granting and processing permit applications and authorizations issued by the ODEQ. OKLA. STAT. tit. 27A, §§ 2-14-101 *et seq.*, and regulations codified at OKLA. ADMIN. CODE 252:4-7-1, et seq. (2014). Under the UEPA, permits are issued in a three tiered process, with Tier III being the most rigorous. All permit applications are subject to heightened notice and public participation opportunities pursuant to federal requirements for individual state permitting programs.

#### **E. Waste Reduction and Recycling**

Article XI of the OEQC pertains to waste reduction and recycling. It is designed to prevent pollution through source reduction and promote the recycling and reuse or source reduction of hazardous waste. This is primarily achieved through tax credits authorized by the Recycling, Reuse, and Source Reduction Incentive Act, which is administered by the DEQ and the Oklahoma Tax Commission. Any litter reduction programs are developed by the DEQ in conjunction with the Oklahoma Department of Transportation. The Article also contains specific provisions for waste tire recycling, including compensation for facilities accepting and appropriately discarding waste tires, as well as provisions for plastic container labeling, including authorization of misdemeanor convictions for failure to label plastics by type. OKLA. STAT. tit. 27A, §§ 2-11-101 *et seq.*

## **F. Oklahoma Refinery Revitalization Act**

The Oklahoma Refinery Revitalization Act is designed to encourage the expansion of refining capacity within the State by providing incentives for growth and by detailing an accelerated review and approval process of all regulatory approvals for certain refinery facilities. Additionally, the Act seeks to provide legal and technical assistance to state agencies, which may have resources that are inadequate to meet refinery facility permit review demands. The Act explicitly states that none of its provisions should be construed to waive any environmental laws and rules and specifically designates coordination with federal agencies to ensure compliance with a series of federal environmental acts. OKLA. STAT. tit. 27A, §§ 2-16-101 *et seq.*

## **G. Above and Underground Storage Tanks.**

The OCC and ODEQ are the agencies responsible for administering the Oklahoma Storage Tank Regulation Act, within their respective jurisdictional areas. OKLA. STAT. tit. 17, §§ 301 *et seq.* The ODEQ has jurisdiction “over underground and aboveground storage tanks containing hazardous substances and other substances of facilities not within the jurisdiction of the Corporation Commission” as well as “any point source discharge of a pollutant to waters of the United States during site remediation or the off-site disposal of contaminated soil, media, or debris.” *Id.* § 305.

The OCC has exclusive jurisdiction over the remaining underground and aboveground storage tanks. Significantly, the OCC Petroleum Storage Tank Division (“PSTD”) enforces state and delegated federal RCRA underground petroleum storage tank regulations which pertain to the storage, quality, and delivery of regulated substances, including fuels, motor oil and antifreeze, and remediation of petroleum storage tank releases. OKLA. ADMIN. CODE 165:25, 26, 29 (2014).

The OCC PSTD also administers the Petroleum Storage Tank Release Indemnity Fund, created by the Legislature in 1989 to help fuel storage tank owners meet a requirement for liability insurance for damage caused by leaking tanks.

## **H. Other Oklahoma Environmental Authority**

Other significant environmental authority includes the Hazardous Liquid Transportation System Safety Act (OKLA. STAT. tit. 52, §§ 47.1 *et seq.*), Oklahoma Liquefied Petroleum Gas Research, Marketing and Safety Act (OKLA. STAT. tit. 52, §§ 420.20 *et seq.*), Alternative Fuels Conversion Act (OKLA. STAT. tit. 40, §§ 142.3 *et seq.*) and the Rural Water, Sewer, Gas and Solid Waste Management Districts Act (OKLA. STAT. tit. 82, §§ 1324.1 *et seq.*).

## **VII. INTELLECTUAL PROPERTY**

### **A. Trademark and Servicemark**

A Trademark is any word, name, symbol, emblem, or device or any combination thereof that is adopted and used to identify and distinguish goods made or sold or services rendered by others. A trademark is "used" when: 1) it is placed on the goods or their containers, tags, or labels affixed thereto and such goods are sold or distributed in the state; or 2) it is used in connection with the sale or advertising of services in the state. Trademarks may be used by any individual, firm, partnership, corporation, association, union or other organization. OKLA. STAT. Tit. 78, § 21.

A Trademark may be registered in Oklahoma by filing an application with the Secretary of State. The application must be signed by the applicant or by a member of the firm or an officer of the corporation or association applying. The application must include: (a) the name and business address of the person applying for the registration, and, if a corporation, the state of incorporation; (b) the goods or services in connection with which the mark is used; (c) the manner in which the mark is used; (d) the class in which the goods or services are categorized; (e) the date when the trademark was first used anywhere and the date it was first used in the state; (f) a statement that the applicant is the owner of the trademark and that no other person has the right to use such trademark in the state; (g) a specimen or facsimile of the trademark that is in a form compatible with electronic scanning; and, (h) a filing fee of Fifty Dollars. OKLA. STAT. Tit. 78, § 23. The application form can be obtained from the Secretary of State's website at <http://www.sos.ok.gov/business/forms.aspx>.

The Secretary of State will not register a trademark if it consists of or comprises: (a) immoral, deceptive or scandalous matter; (b) matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt or disrepute; (c) the flag or coat of arms or other insignia of the United States, state or municipality, or of any foreign nation, or any simulation thereof; (d) the name, signature or portrait of any living individual, except with his/her written consent; (e) a mark which, when applied to the goods or services of the applicant, is merely descriptive or deceptively misdescriptive, or is primarily geographically descriptive or deceptively misdescriptive, or is primarily a surname; (f) a trademark that so resembles a trademark registered in this state or a non-abandoned trademark previously used in this state if it would likely cause confusion when applied to the goods or services of the applicant; Subsection (e), however, does not prevent the registration of a mark used in this state by the applicant which has become distinctive of the applicant's goods or services. Proof of the applicant's continuous use of the mark in this state or elsewhere for the five years preceding the date of the filing of the application for registration may be used by the Secretary of State to find that the mark has become distinctive. OKLA. STAT. Tit. 78, § 22.

A registered Trademark will be effective for ten years from the date of registration. The Trademark may be renewed for a period of five years by sending an application for renewal and payment of twenty-five dollars to the Secretary of State. The application for

renewal must be filed six months before the previous Trademark expires. The process is the same if an individual or business is renewing an original Trademark or a previously renewed Trademark. OKLA. STAT. Tit. 78, § 25.

Any Trademark and its registration may be assigned with the good will of the business in which the trademark is used, or with that part of the good will of the business connected with the use of and symbolized by the trademark, by paying a fee of twenty-five dollars and recording the assignment with the Secretary of State. An assignment is void against any subsequent purchaser for consideration without notice of that assignment unless the assignment is recorded with the Secretary of State within three months after the date of the assignment or prior to such subsequent purchase. OKLA. STAT. Tit. 78, § 26.

A registered trademark is protected against the use or creation without the consent of the registrant of any reproduction, counterfeit, copy or colorable imitation of such trademark used in connection with the sale, offering of sale, or advertisement of goods or services which is likely to cause confusion or mistake or to deceive as to the source of the goods or services. Any person who infringes on a registered Trademark is liable in a civil action. OKLA. STAT. Tit. 78, § 31. The remedies available to the owner of a Trademark in an infringement action are an injunction, payment of profits derived from the use, wrongful manufacture, display, or sale of the Trademark, and all damages suffered by reason of the wrongful use of the Trademark. However, an infringement under OKLA. STAT. Tit. 78, § 31(b) does not entitle the owner of the trademark to recover profits or damages unless the acts are committed with knowledge that such trademark is intended to be used to cause confusion or mistake or to deceive. OKLA. STAT. Tit. 78, §§ 31 *et seq.*

## **B. Trade Names**

A corporation, business trust, common law trust, limited liability company, or any unincorporated business, including any form of partnership, may conduct any portion of its business under a trade name by filing a report with the Oklahoma Secretary of State. The report must set forth the legal name of the corporation or business entity, the jurisdiction of organization of the corporation or business entity, the trade name under which the business is carried on, a brief description of the type of business being transacted, and the address wherein the business is to be carried on. New trade names must be distinguishable from any other trade name registered or reserved with the Secretary of State that currently exists or has existed in the preceding three years. OKLA. STAT. Tit. 18, § 1140.

The Secretary of State may accept for reservation or filing a name which is the same as or indistinguishable from a name previously filed when one of the following is filed with the Secretary of State: (1) the written consent of the holder of the trade name, fictitious name, or reserved name to use the same or indistinguishable name with the addition of one or more words to make that name distinguishable upon the records, except that the addition of words may not be required where the consenting entity states that it is about to change its name, cease to do business, withdraw from the state, or be wound up(2) a certified copy of a final decree of a court of competent jurisdiction establishing the prior



right of the holder of a reserved name, trade name, or fictitious name to the use of the name in this state; or (3) in the case of any foreign business entity, a resolution adopting a fictitious name not prohibited by this section, which must be used to the exclusion of its true name when transacting business within this state. OKLA. STAT. Tit. 18, § 1141.

If a corporation or other business entity elects to cease doing business in Oklahoma under a trade name it must file a report, in duplicate, with the Secretary of State withdrawing such trade name. OKLA. STAT. Tit. 18, § 1140.1. A corporation or other business entity may also transfer a trade name to another entity by filing, in duplicate, a report with the Secretary of State containing the name of the corporation to which the trade name is transferred and the address wherein such business is to be carried on. OKLA. STAT. Tit. 18, § 1140.2.

A trade name report must be amended when: 1) it contains a false or erroneous statement; 2) there is a change in the kind of business transacted under the trade name; or 3) there is a change in or an additional address where the business is to be carried on. An amended report must set forth the trade name and specify any amendment therein. OKLA. STAT. Tit. 18, § 1140.3.

All filing fees required by the Secretary of State for the various filings can be found in OKLA. STAT. Tit. 18, § 1142.

### **C. Trade Secrets**

Oklahoma has adopted the Uniform Trade Secrets Act. OKLA. STAT. Tit. 78, §§ 85 *et seq.*. The act defines a "trade secret" as information, including a formula, pattern, compilation, program, device, method, technique or process that derives independent economic value by not being generally known or readily ascertainable by other persons who can obtain economic value from its disclosure or use, and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. OKLA. STAT. Tit. 78, § 86.

To prevail on claims under the Oklahoma Trade Secrets Act, the plaintiff must prove by a preponderance of the evidence the existence of a trade secret, misappropriation of that secret by the defendant(s), and the use of that secret by defendant(s) to plaintiff's detriment. *Micro Consulting, Inc. v. Zubeldia*, 813 F. Supp. 1514, 1534 (W.D. Okla. 1990). Trade secret law applies to computer software and protects attaches to a broad range of subject matter including computer programs and accompanying documentation as well as ideas and expression of those ideas contained therein. *Id.*

Actual or threatened misappropriation of a trade secret may be enjoined. The injunction will be terminated when the trade secret has ceased to exist. The court may, however, continue the injunction for a reasonable time in order to eliminate commercial advantage that otherwise would be derived from the misappropriation. In exceptional circumstances, an injunction may condition future use of the trade secret upon payment of a reasonable royalty for no longer than the period of time for which use could have

been prohibited. In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order. OKLA. STAT. Tit. 78, § 87.

In addition to injunctive relief, the court may award damages for both actual loss and unjust enrichment caused by a misappropriation. The damages caused by misappropriation may be measured by imposing a reasonable royalty for a misappropriation's unauthorized disclosure or use of a trade secret. If the misappropriation was willful and malicious, the court may award exemplary damages in an amount not exceeding twice that of the regular damages. OKLA. STAT. Tit. 78, § 88.

An action for misappropriation must be brought within three years after the misappropriation was discovered or by the exercise of reasonable diligence should have been discovered. OKLA. STAT. Tit. 78, § 91. In causes of action based upon trade secrets the court may award reasonable attorney's fees to the prevailing party if: (1) a claim of misappropriation is made in bad faith; or (2) a motion to terminate an injunction is made or resisted in bad faith; or (3) willful and malicious misappropriation exists. OKLA. STAT. Tit. 78, § 89.

The Uniform Trade Secrets Act displaces conflicting tort, restitutionary, and other law of this state providing civil remedies for misappropriation of a trade secret. However, the Act does not affect contractual or criminal remedies, whether or not based upon misappropriation of a trade secret, or other civil remedies that are not based upon misappropriation or a trade secret. OKLA. STAT. Tit. 78, § 92.

Oklahoma imposes a criminal penalty on any person who steals or embezzles a trade secret. Any person who, with the intent to deprive or withhold from the owner thereof the control of a trade secret, or with an intent to appropriate a trade secret to his own use or to the use of another, steals, embezzles or without authority makes a copy of an article representing a trade secret is guilty of larceny or petit larceny. In distinguishing the difference between larceny and petit larceny only the value of the trade secret, and not the value of the article, will be considered. OKLA. STAT. Tit. 21, § 1732.

#### **D. Right of Publicity**

Oklahoma protects a person's right to privacy by statute and common law. In general, it is illegal for any person or corporation to use for the purpose of advertising the name, portrait or picture of any person, without first receiving the consent of that person. If the person is a minor, their parent or guardian must approve, and if the person is deceased either the surviving spouse, personal representatives, or that of a majority of the deceased's adult heirs must approve. It is also illegal to use the name, portrait, or picture of any service member, both active and former members, of the United States Armed Forces without consent. If a person or corporation violates this law they are guilty of a misdemeanor and the person whose rights have been violated may bring a civil action for damages. If the defendant knowingly used such person's name, portrait or picture in an unlawful manner, the jury or court in its discretion may award exemplary damages. OKLA. STAT. Tit. 21, §§ 839.1. Two statues enacted in 1986 specifically define right of

publicity, One statute protects living natural persons and the other protects certain deceased persons. OKLA. STAT. Tit. 12, §§ 1448 *et seq.*

Under common law, Oklahoma has recognized the tort of invasion of privacy. There are four distinct types: (1) unreasonable intrusion upon the seclusion of another; (2) appropriation of the other's name or likeness; (3) unreasonable publicity given to the other's private life; (4) publicity that unreasonably places a person in a false light before the public. *McCormack v. Oklahoma Publ'g Co.*, 613 P.2d 737, 739 (Okla. 1980). A person is liable for invasion of privacy of another for unreasonable publicity given to private life if the matter publicized is of a kind that: (a) would be highly offensive to a reasonable person; and, (b) is not of legitimate concern to the public. The elements of Publicity that unreasonably places a person in a false light are: (a) the false light in which the other was placed would be highly offensive to a reasonable person; and, (b) the actor had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the other would be placed. *Id.*

#### **E. Patents**

Although federal courts have exclusive jurisdiction for patent litigation, Oklahoma passed a bill to deter patent “trolls”. This bill prohibits any person to send written or electronic communication that states the intended recipient is infringing or has infringed on a United States patent and owes compensation to another person if: (1) the communication falsely states that litigation has been filed against the recipients, or threatens litigation if compensation is not paid, or the infringement issue is not otherwise resolved and there is a consistent pattern of such threats having been issued and no litigation having been filed; (2) the communication falsely states the litigation has been filed; or, (3) the assertions contained in the communication lack a reasonable basis in fact or law because: (a) the person or representative asserting the patent does not have the right to license the patent; (b) the communication seeks compensation for a patent that has been held to be invalid or unenforceable; (c) the communication seeks compensation for an expired patent; or, (d) the communication fails to give notice of the person asserting the right of patent, the patent number, or the factual allegations of the infringed patent. Generally, this statute is only applicable to those acting in bad faith and does not hinder an institution from lawfully asserting patent infringement. OKLA. STAT. Tit. 23, § 112.

### **VIII. THE OKLAHOMA COURT SYSTEM AND DISPUTE RESOLUTION**

#### **A. Lower Courts**

##### **1. District Courts**

District courts are courts of general jurisdiction, hearing both civil and criminal matters. There are 26 district courts in the State of Oklahoma, and there are 74 district judges who sit in the judicial district in which they are elected. OKLA. STAT. Tit. 20, §§ 92.1 *et seq.* Each county has at least one associate district judge, and there are 90 special judges. The

districts are divided into nine judicial (districts), each governed by a presiding judge elected by the district and associate judges of that area.

2. Court of Tax Review

The Court of Tax Review is a court of limited jurisdiction that hears and determines all protests against legality and correctness of taxes and levies. The Chief Justice of the Oklahoma Supreme Court assigns each case to a judicial administrative district, the presiding judge of which appoints a panel of three judges of the district court. The 3 judge panel determines in what county the case will be heard. A majority of the three-judge panel is required to render a decision in each case. OKLA. STAT. tit. 68, §§ 3024 *et seq.*

3. Municipal Criminal Court of Record

The Municipal Criminal Courts of Record are courts of limited jurisdiction in Oklahoma and are established in cities with populations that exceed 65,000. There are two such courts, one in Oklahoma City and one in Tulsa. Judges are appointed by their respective city governing bodies and serve two-year terms. The courts have original jurisdiction to hear and determine all prosecutions when a violation of any city ordinance where the court is established is charged, as provided by Article VII, Section 1 of the Oklahoma Constitution. The courts may hold jury trials when the case in question carries a penalty of more than \$500 or a jail sentence of any length. Appeals are made to the Court of Criminal Appeals. OKLA. STAT. tit. 11, §§ 28-101 *et seq.*

4. Municipal Court Not of Record

The Municipal Courts Not of Record are courts of limited jurisdiction in Oklahoma that may be established in any town or city with a population of 65,000 or less. The mayors of the cities and towns where the courts are established appoint judges to two-year terms with the consent of the municipal governing body. The courts have original jurisdiction of all city ordinance violations and may be required to supervise juveniles that are placed on parole, probation, or suspended. Appeals are made to the District Courts in a trial de novo. OKLA. STAT. tit. 11, §§ 27-101 *et seq.*

**B. Appellate Courts**

1. Supreme Court

The Oklahoma Supreme Court has appellate jurisdiction throughout the state in all civil cases at law and in equity. Besides deciding cases, the Court is also responsible for administering the state's entire judicial system and establishing rules of operation for all other courts in the state. The Supreme Court is a constitutional tribunal consisting of nine Justices, each from a separate judicial district. The Supreme Court Justices serve six-year terms, and must be at least thirty years old. The Justices must also have been a qualified elector in their judicial district for at least one year immediately prior to appointment, and must have been a licensed practicing attorney or judge of a court of record for five years preceding appointment. Supreme Court Justices are appointed by the Governor from a

list of candidates prepared by the Judicial Nominating Commission. OKLA. CONST. art. 7, § 2.

2. Court of Criminal Appeals

The Court of Criminal Appeals is the highest court in the state of Oklahoma with appellate jurisdiction in criminal cases. Oklahoma is divided into five Court of Criminal Appeals judicial districts. The court itself consists of five judges, any three of whom constitute a quorum, and the concurrence of three judges is necessary to a decision of the court. The judges have the same qualifications and receive the same salaries as the justices of the Supreme Court. Judges are nominated and appointed by the governor for six year terms. At the expiration of this initial term, a judge may seek retention in a statewide election on a nonpartisan ballot. The Court of Criminal Appeals has exclusive appellate jurisdiction, in state, in all criminal cases appealed from the district courts, superior and county courts and such other courts of record. OKLA. STAT. tit. 20, §§ 31 *et seq.*

3. Court of Civil Appeals

The Court of Civil Appeals is an intermediate appellate court. Each division of the Court of Civil Appeals has jurisdiction to determine or otherwise dispose of cases assigned to it by the Supreme Court, and its final decisions are neither appealable to the Supreme Court nor subject to re-examination by another division of the Court of Civil Appeals.. The court consists of four permanent divisions, two in Tulsa County and two in Oklahoma County. A decision of the Court of Civil Appeals may be reviewed by the Supreme Court if a majority of its Justices direct that a writ of certiorari be granted, and the Supreme Court may, by order, recall a case from the Court of Civil Appeals. OKLA. STAT. tit. 20, §§ 30.1 *et seq.*

**C. Tribal Courts**

1. Tribal Courts in Oklahoma

Indian tribes possess inherent sovereign civil and criminal jurisdiction over lands designated as "Indian Country," which includes formal and informal reservations, dependent Indian communities, and Indian allotments. Indian Country lands remain under tribal and federal jurisdiction unless and until jurisdiction is specifically removed by a Congressional act. Several million acres of Oklahoma land are considered Indian Country.

**D. Alternative Dispute Resolution**

1. Alternative Dispute Resolution

A district court, by agreement of the parties, may refer any civil case for mediation. A referral to mediation may be made at any time while a civil case is pending. Mediation is a process in which an impartial person facilitates communication between the disputing parties to promote understanding, reconciliation, and settlement. District courts may

maintain a list of qualified mediators to assist the parties in selecting a mediator. OKLA. STAT. tit. 12, §1804.

## **IX. OKLAHOMA FINANCIAL AND SECURITIES MATTERS**

### **A. Tax Exempt and Other Financing Means**

Several state and local sponsored financing programs are available to firms wishing to locate or expand in Oklahoma. Generally, government and quasi-government entities provide financing for manufacturing and other projects that promote economic development and other goals targeted by the legislature. The following section briefly outlines Oklahoma's most common tax-exempt financing and other financing means.

#### **1. Oklahoma Finance Authorities**

The Oklahoma Finance Authorities (the “OFA”) provide permanent financing for real estate and equipment. The OFA has both tax-exempt and taxable financing available for most types of industries, including manufacturing, agricultural processing, and certain mining or recreational/tourism facilities. Qualifying projects include: construction of a new plant expansion, of an existing plant or replacement of all or part of the plant.

The Oklahoma Industrial Finance Authority (the “OIFA”) funds bonds issued by local economic development authorities. The maximum funding is \$5 million on fixed collateral assets for up to 15 years. Loans are fixed rate and are below market for tax-exempt qualified projects.

The Oklahoma Development Finance Authority (the “ODFA”) has established a credit enhancement program to bolster the credit of revenue bonds issued by the ODFA for loans to Oklahoma businesses or governmental borrowers. All bonds are state tax-exempt and may be federally tax-exempt. The ODFA may also issue tax-exempt bonds to support certain exempt facilities such as transportation, infrastructure or environmental facilities. OKLA. STAT. Tit. 74, §§ 851 *et seq.*, 5062.1 *et seq.*

#### **2. Small Business Linked Deposit Program**

The Small Business Linked Deposit Program provides below market interest rates for qualified small businesses and certified industrial parks through local financing sources. Small businesses with less than 200 employees and gross annual receipts of less than \$4 million are eligible for loans up to \$1.2 million. Industrial parks certified by the Oklahoma Department of Commerce are eligible for up to \$6 million. OKLA. STAT. Tit. 62, § 88.1 *et seq.*

#### **3. Public Trust Financing: Industrial Revenue Bonds (IRBs)**

Oklahoma authorizes public trust financing for economic development purposes at the state, county and city level. Local authorities may access the Oklahoma Industrial Finance Authority's pool to fund bonds or notes issued. There are over 700 public trust authorities in Oklahoma. An allocation from the Private Activity Bond allocation pool

through the State Bond Advisor's Office is necessary if a federal or state income tax exemption of interest earned is allowed on private activity bonds. OKLA. STAT. Tit. 60, §§ 176 *et seq.*

4. General Obligation Limited Tax Bonds

Many Oklahoma counties and cities have approved General Obligation Limited Tax Bonds (“GOLTBS”) for industrial development. Generally, revenue bonds are issued in association with projects to build particular manufacturing or industrial facilities. Lease income is the primary revenue source to retire the bonds. The funding from the tax levy is secondary and is accessed when lease income is inadequate to meet interest and principal payments on the bonds. This credit enhancement through GOLTBS enables a community to finance 100% of fixed assets. OKLA.. CONST.. art 10, § 35.

5. Tax Increment Financing (TIF)

Cities and counties in Oklahoma may create tax increment districts to provide funding for economic development in distressed areas for up to 25 years. OKLA. STAT. Tit. 62, §§ 850 *et seq.*

6. Sales Tax Financing

Oklahoma cities and counties are authorized, upon a vote of the people, to build facilities and provide other economic development benefits for businesses financed by sales tax collections. Some have pooled economic development funds from this method. OKLA. STAT. Tit. 68, § 1370. OKLA. STAT. Tit. 68, § 2701.

7. Private Activity Bond Allocation

Private Activity Bonds that render interest payments that are federally tax-exempt, in accordance with the Internal Revenue Code, must receive an allocation from the State Bond Advisor's Office. Public Issuers in Oklahoma may issue approximately \$387 million in Private Activity Bonds for the 2015 calendar year. OKLA. STAT. Tit. 62, §§ 695.23 *et seq.*

8. Oklahoma Capital Investment Board

Through its venture capital program the Oklahoma Capital Investment Board facilitates investment in venture capital companies that focus on investing in quality Oklahoma companies. OKLA. STAT. Tit. 74, § 5085.1.

9. Community Development Block Grants

Non-entitlement cities, towns, and counties may apply for grants and/or loans toward the creation of jobs for targeted income groups, known as community development block grants (the “CDBG”). Local units of government apply to the Oklahoma Department of Commerce on behalf of a business. The use of the CDBG resources is for the development of publicly-owned infrastructure that is directly related to the business

location or expansion. Businesses obtaining financing through CDBG programs typically must comply with numerous requirements, such as establishing a certain number of new jobs that varies with the amount of the grant or loan. CDBG grants and loans have varying dollar limitations, ranging from \$100,000 to \$750,000 for grants and up to \$400,000 for loans. The amount of financing that a business may obtain generally depends upon the type of CDBG program and the socio-economic status of the community in which the business operates.

10. Small Business Loan Guarantees

The Small Business Administration's loan guarantee program increases the ability of "small businesses" to obtain loans from private lending institutions. The SBA will serve as a guarantor on loans by certain lending institutions to a qualified small business. What qualifies as a "small business" is determined with reference to the NAICS size standards, which set benchmarks based on the number of employees or the annual receipts of the business. The State of Oklahoma, through its Oklahoma Development Finance Authority and in partnership with Rural Enterprises, Inc., enlarges loans available through additional state funding.

11. Quality Jobs Investment Program

The Quality Jobs Investment Program encourages the growth of equity and near equity capital for Oklahoma businesses. Under the Program, the ODFA can match dollar for dollar an investment enterprise's private capital for helping new and expanding businesses. The primary function of the Program is to use private and public resources to build a more comprehensive and efficient financing infrastructure for businesses expanding or relocating in the State of Oklahoma. OKLA. STAT. Tit. 74, § 5062.8A.

**B. Commercial Banking**

In Oklahoma, state regulation of financial institutions falls within the jurisdiction of the Oklahoma State Banking Department. The Banking Department is headed by the Banking Commissioner, a position appointed by the Governor. The Banking Department also includes a Banking Board, consisting of seven members that include the Commissioner and six prominent individuals with extensive banking experience. The Banking Department regulates state-chartered banks, credit unions, savings and loans, and trust companies as well as cemeteries and money order companies. The primary objectives of the Commissioner and the Board are to maintain a sound banking system, to encourage a competitive banking environment, and to provide convenience to the public.

Oklahoma has both national banks and state-chartered financial institutions that provide businesses with a full range of commercial banking opportunities. According to the Oklahoma Bankers Association, as of 2014 there were approximately 218 commercial banks located in Oklahoma. Total bank assets equaled approximately \$85.7 billion.

The Oklahoma Banking Code allows banks to establish and operate an unlimited number of branches at any location upon prior approval by the Banking Commissioner or the Comptroller of the Currency. Generally, total bank obligations to any person,



association, or corporation may at no time exceed 30% of the bank's total capital not including intangible assets. OKLA. STAT. Tit. 6, §§ 1 *et seq.*

## **C. The Oklahoma Securities Act**

### 1. General

The Oklahoma Uniform Securities Act of 2004 (the “Oklahoma Securities Act”) regulates offers and sales of securities in Oklahoma. Similar to the federal securities laws, the Oklahoma Act is designed to protect and educate investors by regulating the offer and sales of securities through registration, disclosure and other substantive requirements, and prohibiting fraudulent, manipulative, and deceptive practices in connection with the offer or sale of securities.

### 2. Registration

Securities offered for sale or sold within Oklahoma must either be (1) registered with the Oklahoma Department of Securities, (2) exempt from such registration, or (3) covered under Section 18(b) of the Securities Act of 1933. Generally, securities may be registered under the Oklahoma Act through notification, coordination, or qualification. OKLA. STAT. Tit. 71, §§ 1-301 *et seq.*

Under Oklahoma law, every registration statement must specify (1) the amount of securities to be offered in this state; (2) the states in which a registration statement or similar document in connection with the offering has been or is to be filed; and (3) any adverse order, judgment, or decree issued in connection with the offering by a state securities regulator or by any court or the Securities and Exchange Commission. OKLA. STAT. Tit. 71, §1-305.

### 3. Registration Exemptions

The Oklahoma Securities Act contains two broad categories of exemptions from registration. First, the Oklahoma Securities Act allows for certain types of securities to be exempt from registration. Exempt securities under the Oklahoma Act include: (1) securities issued, insured, or guaranteed by the United States, any state, any political subdivision of a state, any public authority agency, any instrumentality of one or more states, or by a person controlled or supervised by and acting as an instrumentality of the United States under authority granted by Congress; (2) securities issued, insured, or guaranteed by foreign governments or political subdivisions thereof with whom the United States maintains diplomatic relations; (3) securities issued or guaranteed by an international banking institution, United States banking institution, a member bank of the Federal Reserve System, or a depository institution that receives a substantial portion of loans backed by the FDIC or NCUSIF, certain trust companies authorized to exercise fiduciary power similar to national banks, and any other depository institution; (4) railroad and public utility securities; (5) securities issued, insured, or guaranteed by insurance companies; (6) non-profit corporate securities; (7) securities of entities operating for religious, charitable, educational, benevolent, fraternal, social, athletic, or reformatory purposes; (8) a security (or any put, call, option, warrant, or subscription

right in a security) that is listed on the New York Stock Exchange, American Stock Exchange, NASDAQ, or other approved security exchange; (9) interests in a non-profit cooperative; and (10) equipment trust certificates on equipment leased or conditionally sold to an individual. OKLA. STAT. Tit. 71, § 1-201.

The second type of exemption is for the particular nature of the transaction by which the securities will be offered and sold. The Oklahoma Securities Act identifies 24 types of securities transactions that are exempt from registration. These transactional exemptions include several non-issuer exemptions; offers and sales to certain institutions (including banks, oil and gas units, and non-profit organizations); offers to an existing security holder of the issuer (if no commission or other remuneration is given for soliciting the security holders); and an offer or sale to a financial or institutional investor or to a broker-dealer, among others. OKLA. STAT. Tit. 71, § 1-202.

#### 4. Broker-Dealer and Investment Adviser Registration

Generally, to transact business in Oklahoma as a broker-dealer, a person must be registered with the Oklahoma Department of Securities, unless an exemption from registration is applicable. OKLA. STAT. Tit. 71, §§ 1-401 *et seq.*

A person is exempt from registration as a broker-dealer if the person has no place of business in Oklahoma and (1) effects transactions in this state exclusively with (i) the issuers of the securities involved in the transactions, (ii) other broker-dealers, (iii) institutional investors, or (iv) an investment advisor managing an investment fund of over \$100,000,000 for the benefit of other investors; (2) is licensed under the securities act of a state in which that person maintains a place of business and offers and sells securities in this state to a person who is an existing customer of the broker-dealer and whose principal place of residence is the same as the state where the broker maintains a place of business; (3) during any period of twelve (12) consecutive months, does not sell to more than three (3) customers in Oklahoma (not including other exempt transactions), so long as that person is licensed under the laws of a state in which he or she maintains their principal place of business; or (4) effects transactions with a preexisting customer who moves to Oklahoma after the customer relationship is established, provided that the broker is registered in the state where the relationship was established and where the customer had a principal place of residence, and provided that the broker files an application to become registered as an Oklahoma broker within forty-five (45) days after the transaction and does not engage in another transaction in Oklahoma for 75 days after the application is filed. OKLA. STAT. Tit. 71, § 1-401(B).

Similarly, an investment adviser must register with the Oklahoma Department of Securities in order to transact business in Oklahoma, unless an exemption from registration is applicable. OKLA. STAT. Tit. 71, § 1-403(B).

A person is exempt from registration as an investment adviser if (1) the person is licensed as an investment adviser under the laws of another state, has no place of business within this state, and the person's only clients in this state are other investment advisers; broker-dealers; institutional investors; preexisting clients who have a principal place of residence

in another state, provided that the investment advisor is registered under the securities act of that state; and other clients exempt under the Oklahoma Securities Act; (2) the person has no place of business located within this state and during the twelve (12) preceding months, has no more than five clients, other than those clients specified as investment advisers, broker-dealers, or investors, who are residents of this state; or (3) the person is registered under the Investment Advisers Act of 1940 as an investment adviser. OKLA. STAT. Tit. 71, § 1-403(B).

5. Anti-Fraud Provisions

The Oklahoma Securities Act makes it unlawful for any person, in the connection with the offer, sale, or purchase of any security, directly or indirectly, to (1) employ any device, scheme, or artifice to defraud; (2) make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or (3) engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person. OKLA. STAT. Tit. 71, § 1-501.

**X. REAL ESTATE**

**A. Ownership**

As a general rule, real property may be owned and transferred by non-alien individuals and other recognized legal entities, including corporations, governmental subdivisions or agencies, estates, trusts, partnerships, limited liability companies, joint ventures, and unincorporated associations. OKLA. STAT. Tit. 16, § 1 *et seq.* OKLA. STAT. Tit. 60, § 121.

1. United States Citizens

Individuals at least 18 years of age, having rights of the majority, or otherwise qualified may own real estate provided they are citizens of the United States OKLA. STAT. Tit. 16, § 1. OKLA. STAT. Tit. 60 § 121.

2. Non-Citizen Aliens

Individuals who are non-citizen aliens may not acquire title or own land, subject to certain exemptions. In particular, this prohibition does not apply to a non-citizen alien that is or becomes a bona fide resident of Oklahoma and the acquisition of title by a non-citizen alien through devise, descent, or purchase, where such purchase is made under a legal foreclosure of a lien in favor of the non-citizen, is valid for five (5) years from the date of acquisition. OKLA. CONST. Art. 22, § 1. OKLA. STAT. Tit. 60, §§ 121 *et seq.*

3. Corporations

Foreign and domestic corporations qualified to do business in Oklahoma may own real estate, subject to limitations on the purpose of the ownership of land outside of

incorporated cities and towns and provisions on corporate farming and ranching. OKLA. STAT. Tit. 18, §§ 955, 955 and 1020.

4. Partnerships

Foreign and domestic partnerships may own real estate. OKLA. STAT. Tit. 16, § 13.1. OKLA. STAT. Tit. 54, §§ 1-203, 1-204, 1-1104..

5. Limited Liability Companies

Foreign and domestic limited liability companies may own real estate. OKLA. STAT. Tit. 16, §14.1. OKLA. STAT. Tit. 18, § 2003.

6. Trusts

The trustee of either an express trust or an express private trust may own real estate. OKLA. STAT. Tit. 16, §§ 15.1, 15.2. OKLA. STAT. Tit. 60, § 175.6a.

**B. Concurrent Ownership**

1. Tenancy in Common

Tenancy in common is recognized in Oklahoma and is, unless otherwise specifically stated at creation of the interest, the default form of concurrent ownership. There is not a specific statutory description, as with joint tenancy and tenancy by the entirety. Rather, tenancy in common is governed by the common law.

2. Joint Tenancy

Joint tenancy is recognized in Oklahoma, but its creation must be expressly declared in the instrument granting it. OKLA. STAT. Tit. 60, § 74.

3. Tenancy by the Entireties

Oklahoma recognizes tenancy by the entirety only as between husband and wife. OKLA. STAT. Tit. 60, § 74.

**C. Purchase and Sale Transactions**

Contracts for real estate purchases must be in writing to be enforceable, and must be signed by the person to be charged. OKLA. STAT. Tit. 15, § 136. Title 16 contains specific requirements for corporations, partnerships, limited liability companies, and trusts.

**D. Purchase Agreements**

There is no standard form of purchase agreement. Many real estate brokers prepare and furnish semi-standardized, real estate commission approved, pre-printed forms for use in residential transactions. Copies of these forms can be found on the Oklahoma Real Estate

Commission's website, [www.ok.gov/orec](http://www.ok.gov/orec). Purchasers should review these agreements with counsel prior to execution.

## **E. Financing Statements**

Oklahoma has adopted revised Article 9 of the Uniform Commercial Code. A mortgage may constitute a financing statement covering fixtures if expressly provided for therein. OKLA. STAT. Tit. 12A, §§ 1-9-501 *et seq.*

## **F. Closing Costs of Real Estate Transfer**

### 1. Escrow Account

Escrow agreements are not required for real estate transfers in Oklahoma.

### 2. Assessments

All property, unless exempted, is subject to ad valorem taxation. OKLA. STAT. Tit. 68, § 2804. All taxable real property is assessed annually as of January 1, at its fair cash value, estimated at the price it would bring at a fair voluntary sale for either the highest and best use for which the property was actually used during the preceding calendar year or for the highest and best use for which the property was last classified for use if not actually used during the preceding calendar year. OKLA. STAT. Tit. 68, § 2817(B).

### 3. Payment of Taxes

With certain exceptions, every deed, instrument, or writing that conveys real estate, the consideration or value of which, exclusive of liens or encumbrances, is greater than one hundred dollars (\$100), is subject to a documentary stamp tax. The tax rate is seventy-five cents (75¢) per five hundred dollars (\$500). These taxes are to be paid, before the deed is accepted for recording, by anyone who creates, signs, issues, or sells documents subject to the tax or for whomever the documents were made, signed, issued or sold. The tax may only be paid with documentary stamps purchased from the county clerk. OKLA. STAT. Tit. 68 § 3201 *et seq.*

### 4. Title Companies

Agents of title companies in Oklahoma are not required to be attorneys.

### 5. Conveyance of Real Estate

Conveyances of real estate must be in writing, contain a legal description and be subscribed by the grantor or his authorized agent. OKLA. Stat. Tit. 16, §§ 4, 5. OKLA. STAT. Tit. 19, § 298. Corporate deeds must be signed in the name of the corporation by the president, vice-president, chair, or vice-chair of the board of directors, or by the attorney in fact, and acknowledged. OKLA. STAT. Tit. 16, §§ 91 *et seq.*

## **G. Mechanics' Liens**

Any person who performs labor or renders service in the improvement upon land is entitled to claim a mechanic's lien in an amount including all sums owed to the person at the time of the filing of the lien, including all applicable profit and overhead costs. The priority date for both general contractor liens and all subcontractor liens which are the subject of subcontracts directly with such general contractor is the date upon which material or equipment were first supplied or work was first performed on the subject property, by such general contractor or any subcontractor. OKLA. STAT. Tit. 42, §§ 141 *et seq.*

## **H. Foreclosure**

### 1. Deeds of Trust

Deeds of trust on real property, intended as security, are subject to Oklahoma's mortgage laws. OKLA. STAT. Tit. 46, §§ 1.1 *et seq.*

### 2. Judicial Foreclosure; Power of Sale

Mortgages on real estate can be judicially foreclosed in the district court of the county in which the real property is located. OKLA. STAT. Tit. 12 § 131 and § 686. Oklahoma also has a power of sale procedure, which permits, subject to compliance with certain requirements, a non-judicial foreclosure. OKLA. STAT. Tit. 46 §§ 41 *et seq.*

### 3. Notice of Right to Redeem

Prior to foreclosure by power of sale, the mortgagee must give mortgagor, via certified mail, notice of intent to foreclose. Such notice must be sent to the mortgagor's last known address and must state the name and address of the mortgagee, the nature of the breach or default, that the mortgagor has a right for thirty-five (35) days from the date the notice is sent to cure a breach or default and to that extent reinstate the mortgage, the amount of money or action necessary to effect cure, that if the breach or default is not cured the mortgagee may accelerate the debt or otherwise foreclose the mortgage, information concerning legal rights under the mortgage and Oklahoma law, and that if the mortgagor has any questions an attorney should be consulted. OKLA. STAT. Tit. 46, § 44.

### 4. Limitations

The general rule is that no suit, action or proceeding to foreclose or otherwise enforce the remedies in any mortgage, contract for deed or deed of trust may be had or maintained after the expiration of seven (7) years from the date the last maturing obligation secured by such mortgage, contract for deed or deed of trust becomes due as set out therein. If the date of the last maturing obligation secured cannot be ascertained from the written terms, no such action or proceeding may be had or maintained after the expiration of thirty (30) years from the date of recording of the mortgage, contract for deed or deed of

trust. Notices of Extension and Maturity Date may be filed under certain circumstances. OKLA. STAT. Tit. 46, § 301.

## **I. Landlord and Tenant**

### 1. Types of Tenancy

Oklahoma recognizes tenancies at will, for a certain term, periodic, or at sufferance. Unless otherwise stated, tenancies are generally presumed to be at will. OKLA. STAT. Tit. 41, §§ 1 *et seq.*

### 2. Leases

Leases for a period longer than one (1) year must be written and subscribed by the lessor and the lessees in order to be valid. OKLA. STAT. Tit. 15, § 136 . When a lessee retains possession of leased property and the lessor continues to accept rent beyond the term of the lease, the lease is presumed to have been renewed according to its original terms, for the same period of time, not to exceed one (1) year. OKLA. STAT. Tit. 41, § 35.

### 3. Forcible Entry and Detention

Actions for forcible entry and detention of real property are recognized in Oklahoma. OKLA. STAT. Tit. 12, §§ 1148.1 *et seq.*

## **J. Surface and Mineral Rights**

The general rule in Oklahoma is that an owner of land in fee simple owns all that is permanently situated above and below that land. However, Oklahoma recognizes separate ownership of the surface, mineral, and water interests in land. Oklahoma law provides that owners of mineral and water easements may sue to enforce their rights under the easements. OKLA. STAT. Tit. 60, §§ 1, 50 and 57.

## **XI. OIL AND GAS**

According to the American Petroleum Institute, in the United States, Oklahoma ranks fifth for natural gas production, producing 5.15 billion cubic feet per day in 2012, and sixth for crude oil production, producing 351,000 barrels of oil per day in 2014. Oklahoma also has major pipelines in the state transporting crude oil, petroleum products, and liquefied petroleum gas. In 2012, the OCC, that state agency charged with regulation and oversight of the oil and gas industry in Oklahoma, reported that there were over 65,000 active natural gas wells, 117,000 oil wells, and 11,000 injection/disposal wells operated by more than 3,000 active operators. The OCC estimated there were 500,000 wells drilled in Oklahoma's history, and approximately 350,000 wells have been plugged and abandoned. Nearly all 77 counties in Oklahoma have had a well drilled and 68 counties have had at least one well completion in the last 10 years.

## **A. Nature of Oil and Gas Interests**

“Oil and gas in place are minerals and so long as they remain unsevered from the soil they are a part of the realty.” *Peppers Refining Co. v. Barkett*, 1953 OK 124, 256 P.2d 443. “As part of the realty minerals pass by conveyance of the fee title owner.” *Gesell v. Martin*, 1969 OK CIV APP 9, 463 P.2d 697. Oklahoma operates under the “Rule of Capture” theory of ownership. Thus, the mineral owner does not own the oil and gas (migratory substances) until those substances are extracted to the surface and reduced to possession. Instead, the mineral owner has the exclusive right to drill for, produce or otherwise gain possession of those substances. *Frost v. Ponca City*, 1975 OK 141, 541 P.2d 1321. Wells are subject to OCC approval and compliance with applicable rules regarding location, spacing, and density in order to protect correlative rights to prevent waste.

In addition to the exclusive right to develop the minerals, the mineral owner also has: (1) the executive right (i.e., the power to execute a lease conveying the development right); (2) the right to receive bonus (i.e., a cash payment made for execution of a lease); (3) the right to receive delay rental payments; (4) the right to receive royalty; and (5) the right to receive shut-in royalty. The owner of the mineral estate may, in theory, sever any or all of these interests to different persons. *Anderson v. Mayberry*, 1983 OK CIV APP 10, 661 P.2d 535.

## **B. Oil and Gas Lease**

An oil and gas lease is a central document in oil and gas development. The lease is a contract that conveys a property right to explore for and produce oil and gas that binds the oil company to express and implied obligations or covenants. The lease embodies two fundamental goals:

The lessee seeks the right to develop the leased land for an agreed term without any obligation to develop;

If production is obtained, the lessee obtains the right to maintain the lease for as long as a well continues to produce profitably.

Oklahoma is an exclusive right-to-take state and the lessee’s interest is characterized as an irrevocable license or a profit a prendre determinable. Thus, the lessee is obtaining the mineral owners right-to-capture, but does not own the minerals until they are brought to the surface.

In the primary term of a lease, “before hydrocarbons are discovered, the lessee has the right to explore for a fixed period of time. If he fails to discover hydrocarbons within the enumerated period, he must either buy more time (through payment of something like a delay rental) or lose the lease when the term has expired. When the time runs out on the primary term, the estate is not forfeited, it simply ceases to exist by its own terms, a simple terminable estate. Automatic termination of the lease at this stage of exploration does not divest the lessee of valuable assets, since no assets have yet been proved.” *Danne v. Texaco Exploration & Prod. Inc.*, 1994 OK CIV APP 138, 883 P.2d 210.



However, after production is achieved, the Oklahoma Supreme Court has held that the lessee's rights in the lease can only be lost through an action for forfeiture of the estate. *Id.* at 213. The language of the lease may specify that it will continue "so long as" it is capable of producing in paying quantities. The "so long as" language does not give rise to automatic termination and the lessor bears the burden that under the circumstances, termination or cancellation of the lease is appropriate. This also obligates the lessee to maintain the well so long as it is capable of producing in paying quantities however small the profit. *Okmulgee Supply Corp. v. Anthis*, 1940 OK 428, 114 P.2d 451. *Gard v. Kaiser*, 582 P.2d 1311 (Okla. 1978).

In Oklahoma, "[t]he term 'produced,' when used in a 'thereafter' provision of the habendum clause, by law denotes production in paying quantities." *Danne v. Texaco Exploration & Prod. Inc.*, 1994 OK CIV APP 138, 883 P.2d 210 (quoting *Stewart v. Amerada Hess Corp.*, 604 P.2d 854, 857 (Okla. 1979)). "Production in paying quantities" is a term defined by Oklahoma case law to mean "production of quantities of oil and gas sufficient to yield a profit to the lessee over operating expenses, even though the drilling costs or equipping costs are never recovered, and even if the undertaking as a whole may result in a loss to the lessee." *Smith v. Marshall Oil Corp.*, 2004 OK 10, ¶ 9, 85 P.3d 830 (citing *Hininger v. Kaiser*, 1987 OK 26, ¶ 6, 738 P.2d 137, 140). "The phrase denotes a return in excess of "lifting expenses," costs associated with lifting the oil from the ground after the well has been drilled." *Id.* (citing *Stewart v. Amerada Hess Corp.*, 1979 OK 145, ¶ 6, 604 P.2d 854, 857).

### **C. Oklahoma Corporation Commission**

The OCC was established in 1907 by Article 9 of the Oklahoma Constitution. The OCC regulates oil and gas drilling, production, transport and environmental protection. Two divisions of the OCC are important to the oil and gas industry – the Oil and Gas Conservation Division and the Petroleum Storage Tank Division.

### **D. Oil and Gas Conservation Division**

The Oil and Gas Conservation Division has three primary regulatory missions:

- Prevent waste of the state's oil and gas resources;
- Protect correlative rights of all entities entitled to share in the proceeds generated from the production and sale of oil and gas; and,
- Prevent and abate any pollution that may result from oil and gas exploration and production activities.

The Technical Services Section of the Division is responsible for ensuring that the different applications and orders meet criteria for approval under Commission rules. This includes conducting geologic reviews, reviews of surface casing requirements, spacing applications, increased density applications, and other forms of technical relief, and reviewing applications to drill, recomplete and re-enter wells.

The Pollution Abatement Department regulates underground injection control (UIC) and waste management services. This includes administering UIC Class II wells under the Safe Drinking Water Act and monitoring over 11,000 active injection wells, monitoring disposal activities, responding to pollution complaints, and overseeing necessary cleanup and restoration efforts, including efforts in the Brownfields program.

The Field Operations Department is responsible for overseeing all oil and gas drilling activities in Oklahoma, with the main objective of preventing pollution. This Department also ensures proper plugging of wells, running initial production tests on newly drilled wells, conducting UIC inspections, and ensuring that good housekeeping practices are followed.

The forms necessary for activities governed by the OCC are available on the agency's website, or at <http://www.occeweb.com/og/ogforms.html>. These forms range from application to drill, to new spill discharge form, to an application for authority to inject/dispose of saltwater in an UIC well. Entities planning to withdraw groundwater for use in oil and gas production should also be familiar with the Oklahoma Water Resources Board permitting requirements. See Environmental Section.

#### **E. Petroleum Storage Tank Division**

The OCC has jurisdiction over almost all underground and aboveground storage tanks in Oklahoma. The Department of Environmental Quality has jurisdiction over underground and aboveground storage tanks containing hazardous substances and other substances or facilities not within the jurisdiction of the Corporation Commission. OKLA. STAT. tit. 17, § 305. All underground storage tanks 110 gallons or greater that store regulated substances must be registered with the OCC unless they are listed in the exclusions section of the UST requirements. OKLA. ADMIN. CODE 165:25-1-24. All aboveground storage tanks with a storage capacity of 110 gallons or greater at retail, public airports, marinas, and emergency generators and aboveground storage tanks with a storage capacity of 2100 gallons or greater used at Fleet and Commercial facilities that store regulated substances must be registered with the OCC unless they are listed in the exclusions section of the AST requirements. OKLA. ADMIN. CODE 165:26-1-22.

#### **F. Forced Pooling**

The OCC protects against waste by creating drilling and spacing units to control how many wells are drilled in each common source of supply (i.e. reservoir). By regulating the density and location of wells, the OCC aims to prevent waste and protect the correlative rights of neighboring landowners. The OCC also apportions production to each owner within the unit on a net acreage basis regardless of the location of the well within the unit. Oklahoma's forced pooling statute works in conjunction with the drilling and spacing unit orders.

Under Oklahoma's forced pooling statute, any party with a present right to drill can apply to force pool any interests that refuse to cooperate in the drilling of a proposed well. OKLA. STAT. tit. 52, § 87.1(e). The proposed operator must search the records to

determine all persons with the right to drill and provide each owner notice of the forced pooling hearing before an Administrative Law Judge (“ALJ”) at the OCC. The ALJ will inquire whether there was a good faith effort to negotiate with the owners. The ALJ will also inquire as to fair market value of the mineral interests and whether the owners received proper notice. The proposed operator must prepare a pooling order for review and give owners an opportunity to participate in the well or to take the fair market value alternative. Owners who object to the pooling can present their case at the hearing and appeal the ALJ’s pooling order. The Oklahoma Supreme Court has upheld the forced pooling as a valid exercise of the state’s police power. *Palmer Oil Corp. v. Phillips Petroleum Co.*, 1951 OK 78, ¶ 0, 231 P.2d 997.

## **G. Surface Damages Act**

In 1982, the Oklahoma Legislature passed the Surface Damages Act, OKLA. STAT. tit. 52, §§ 318.2-318.9. This act requires oil and gas well operators, prior to entering the site with heavy equipment, to enter into good-faith negotiations with the surface owner to determine the amount of damage that will be done to the surface, measured in terms of the difference in the fair market value of the property immediately before the drilling operations and its value immediately after those operations. If the operator and owner cannot reach agreement, the operator must file a lawsuit to determine the amount of damages. Initially the damages are determined by a panel of three appraisers. If the appraisal by the panel is unacceptable to either party, a jury trial can be demanded.

Since its codification, there has been considerable litigation over the interpretation of the various provisions and terms of the Act. This includes:

Definition of “operator” - *Anschutz Corp. v. Sanders*, 1987 OK 11, 734 P. 2d 1290, 1291.

Factors considered in determining “amount of damages” - *Davis Oil Co. v. Cloud*, 1986 OK 73, 766 P.2d 1347.

What damages are covered – *Vastar Resources, Inc. v. Howard*, 2002 OK CIV APP 13, 38 P.3d 236.

Award of Attorney’s Fees – *Tower Oil & Gas Co., Inc. v. Paulk*, 1989 OK 105, 776 P.2d 1279.

Statutory tort claim permitted in addition to Surface Damages Act claim – *Ward Petroleum Corp. v. Stewart*, 2003 OK 11, 64 P.3d 1113.

### Royalty Payments

#### The Royalty Obligation and Deductibility of Post-Production Costs

The royalty provisions of the lease and the implied covenant to market the gas (if applicable) determine the lessee’s royalty obligation to the lessor. Oklahoma follows the “First Marketable Product Doctrine” or, production ends when you get first marketable product. Where a lease is silent as to the allocation of costs, the implied covenant to

market obligates the lessee to bear costs necessary to put the gas into marketable condition. Once the gas is in marketable condition, reasonable costs that enhance the value of the already marketable product may be shared proportionately with royalty owners. *Mittelstaedt v. Santa Fe Minerals, Inc.*, 1998 OK 7, 954 P.2d 1203. Whether gas is considered to be in marketable condition is a question that depends on the particular facts and circumstances involved.

There has been extensive litigation in both state and federal courts in Oklahoma over these issues. Lease language matters in determining whether the implied covenant to market applies or has been negated. Terms such as “at the well” or “raw gas”, etc. in the royalty clause may negate the implied covenant to market and permit deduction of downstream costs in calculating the royalty. Other factors such as how and where the gas is sold and the condition of the gas also affect this determination.

Whether the lease provides for calculation of the royalty with reference to “proceeds” or “market value” or some hybrid of these bases affect the royalty obligation. For example, “market value is the price negotiated by a willing buyer, not obligated to buy, and a willing seller, not obligated to sell, in a free and open market. *Howell v. Texaco Inc.*, 2004 OK 92, ¶ 17, 112 P.3d 1154, 1159 (citing *Johnson v. Jernigan*, 1970 OK 180, ¶ 5, 475 P.2d 396, 398). “The term market value has been construed as synonymous with actual value.” *Id.* (citing *Katschor v. Eason Oil Co.*, 1936 OK 705, ¶ 0, 63 P.2d 977 (syllabus 3 by the court)).

The Oklahoma Supreme Court has identified three basic methods of establishing the market value at the wellhead. The first method, also the preferred method, is an actual sale reached through an arms-length negotiation. *Tara Petroleum Corp. v. Hughey*, 1981 OK 65, 630 P.2d 1269. Thus, if a “producer enters into an arms-length, good faith gas purchase contract with the best price and terms available to the producer at the time, that price is the ‘market price’ and will discharge the producer's gas royalty obligation.” *Id.* at ¶ 14, 630 P.2d at 1273. If an arm’s length transaction is not available, then market value may be determined by evidence of the prevailing market price in the field. *Cimarron Utils. Co. v. Safranko*, 1940 OK 181, ¶ 0, 101 P.2d 258, 259 (syllabus 1 by the court). Evidence can include other arms-length sales from the same well near the same time as the sale at issue or proof of arms-length sales from other nearby wells. See *Johnson*, 1970 OK 180 at ¶ 5, 475 P.2d at 398. “The more similar in quality, quantity, delivery pressure, and geographical location of gas produced from other wells, the more probative and compelling are their sales in determining the prevailing market price.” *Howell*, 2004 OK 92, ¶ 18.

Finally, the third method of establishing market value is the work-back method:

Under the work-back method, the market value at the wellhead is calculated by subtracting allowable costs and expenses from the first downstream, arm's-length sale. *Katschor*, 1936 OK 705 at ¶¶ 0, 32, 63 P.2d at 977, 981 (syllabus 4 by the court). When the gas is marketable at the wellhead, the reasonable post-production costs may be charged against the royalty payments. *Mittelstaedt v. Santa Fe Minerals, Inc.*, 1998 OK 7, ¶ 2, 954 P.2d 1203, 1204. This is so because the referenced starting point in the

calculations is the value of the gas after processing and the royalty owners are entitled only to the value of the gas that is marketable at the wellhead. The burden is on the producer to justify the costs and expenses. *Id.* Because it is in the producer's best interest to maximize the costs and expenses, the courts must carefully scrutinize the figures to determine the correct amount. See *Tara*, 1981 OK 65 at ¶ 20, 630 P.2d at 1275.

*Howell*, 2004 OK 92, ¶ 19, 112 P.3d at 1159-60. “In order to burden the royalty interest with a proportionate share of the costs, the producer must show: ‘(1) that the costs enhanced the value of an already marketable product, (2) that such costs are reasonable, and (3) that actual royalty revenues increased in proportion with the costs assessed against the nonworking interest.’” *Id.* ¶ 20 (quoting *Mittelstaedt*, 1998 OK 7, ¶ 2, 954 P.2d at 1205).

### The Energy Litigation Reform Act & Production Revenue Standards Act

In 2012, the Oklahoma legislature passed Oklahoma’s Energy Litigation Reform Act (the “ELRA”), codified at Okla. Stat. tit. 52, §§ 901-903. The ELRA states that the exclusive remedy for any action brought for underpayment of royalty is set forth in Oklahoma’s Production Revenue Standards Act (“PRSA”), found at OKLA STAT. tit. 52, §§ 570.1-570.15. *Id.* § 903. In enacting the ELRA, Oklahoma’s legislature determined that the remedies provided for in the PRSA are “adequate remedies for failure to pay proceeds” and, absent special circumstances, the recovery of any other remedies, including, without limitation, punitive or exemplary damages are expressly prohibited. *Id.*

The “adequate remedies” referenced in the ELRA are enumerated in two sections of the PRSA: subsection D of PRSA section 570.10 and subsection C of PRSA section 570.14. Subsection D of PRSA section 570.10 reads, in relevant part:

[W]here proceeds from the sale of oil or gas production or some portion of such proceeds are not paid prior to the end of the applicable time periods provided in this section, that portion not timely paid shall earn interest at the rate of twelve percent (12%) per annum to be compounded annually.

OKLA STAT. tit. 52, § 570.10(D)(1). Subsection C of PRSA section 570.14 reads:

Any owner injured in business or property by reason of any action in violation of the provisions of the Production Revenue Standards Act shall have the right to:

1. Recover actual damages so sustained; and
2. Obtain specific performance where equitable. The prevailing party in any court proceeding brought pursuant to the Production Revenue Standards Act shall be entitled to recover the costs of the suit, including but not limited to reasonable attorney and expert witness fees.

*Id.* § 570.14(C). The term “actual damages” in subsection C, is “limited to the proceeds due and the interest as provided in subsection D of Section 570.10.” OKLA. STAT. tit., 52 § 903.

## H. Class Actions

There has been a great deal of litigation in state and federal courts in Oklahoma over whether royalty underpayment claims may be certified for class action treatment. The Courts were initially divided on the certification question. Since the U.S. Supreme Court's decision in *WalMart v. Dukes*, 131 S. Ct. 2541, 564 U.S. 277 (2011) the trend appears to be against certification of large, state-wide class actions. In *Wal-Mart*, the Court stated that commonality requires that the "common contention . . . must be of such a nature that it is capable of classwide resolution – which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Id.* at 2551. In other words, the class proceedings must "generate common answers apt to drive the resolution of the litigation." *Id.*; See also *Wallace B. Roderick Revocable Living Trust v. XTO Energy, Inc.*, 725 F.3d 1213 (10th Cir. 2013); *Chieftan Royalty Co. v. XTO Energy, Inc.*, 528 F. App'x 938 (10th Cir. 2013) (unpublished) ("the common contention must be of such a nature that it is capable of classwide resolution"). *Fitzgerald v. Chesapeake Operating, Inc.*, Case No. 111,566 (Okla. App. Feb. 14, 2014).

## XII. WIND POWER

Oklahoma is an energy exporting state with a solid oil and gas industry and a burgeoning wind (and now solar) industry. "Oklahoma's wind energy resources are an important asset for the continued economic growth of the state and for the provision of clean and renewable power to both the people of the state and the nation as a whole." 17 OKLA STAT. 1§ 60.12(1).

Oklahoma enacted a wind energy statute, codified at 17 OKLA STAT. §§ 160.11 *et seq.*, (the "Wind Energy Act"), as well as an exploration rights statute, codified at 52 OKLA STAT. §§ 801 *et. seq.*, (the "Exploration Rights Act" (collectively the "Oklahoma Acts")). The OCC is the agency with authority to promulgate rules as necessary to implement the provisions of the Oklahoma Wind Energy Development Act and to set fees pursuant to the act. 17 OKLA STAT. § 160.22 (effective August 21, 2015).

The Oklahoma Acts provide for, among other things:

On any surface estate where a wind or solar energy developer intends to construct a wind or solar energy facility, the developer is required to provide before construction at least a thirty (30) days written notice to any oil and gas operator who is conducting operations on the intended surface estate, any oil and gas operator of an unspaced unit or unit created by order of the OCC, and all lessees of oil and gas leases covering the mineral estate underlying the tracts recorded with the county clerk in the county where such tracts are located and the primary term has yet to expire. 52 OKLA STAT. § 803(C). The notice must contain a map or plat of the proposed location for the complete renewable energy facility. *Id.* If after performing a diligent search for parties entitled to notice, the renewable energy developer cannot ascertain all the entitled parties, the developer must file an affidavit attesting to its diligent search in the property records of the county where the surface estate is located. *Id.*

The energy developer must also publish notice in one issue of the county newspaper where construction will commence of its intent to begin construction on the wind energy facility. 52 OKLA STAT. § 803(D). This notice has to comply with 25 OKLA STAT. § 106, by being published thirty (30) days prior to entering the surface estate. Id. The notice must include a legal description of the surface estate. Id.

**THE PROVISIONS OF THE EXPLORATION ACT DO NOT APPLY TO A WIND ENERGY FACILITY CONSTRUCTED OR UNDER CONSTRUCTION BEFORE NOVEMBER 1, 2011.**

The Wind Energy Act requires that prior to commencing construction of any wind energy facility, the owner or operator shall obtain and keep in effect either a commercial general liability insurance policy with a limit consistent to prevailing industry standards or a combination of self-insurance and an excess liability insurance policy. 17 OKLA STAT. 160.19. The surface owner where the facility or turbine is located must be named as an additional insured in the policy. Id. The owner or operator is required to deliver a certificate of insurance to the landowner and give at least thirty (30) days' notice of any material changes to the policy. Id.

The owner or operator of any wind energy facility or wind turbine annually reports (no later than March 1 of each year) to the OCC. 17 OKLA STAT. 160.18. The report includes the amount of power generated from the wind energy facility, the nameplate capacity of the wind energy facility and the location of such facility. Id.

Landowners paid for the use of their land based on the amount of electrical energy produced receive statements from the owner of the wind energy facility within ten (10) days of payment providing sufficient information to show the landowner the basis and accuracy of payment. 17 OKLA STAT. § 160.16. These same landowners have the right to inspect the wind energy facility's records to confirm the accuracy of payments to the landowner for the past twenty-four (24) months. 17 OKLA STAT. § 160.17.

Wind energy facilities must be properly decommissioned. 17 OKLA STAT. § 160.14. Decommissioning must include removal all components, foundations and facilities to a depth of thirty (30) inches below grade and the restoration of land and earth to its original physical condition. Id. Evidence of financial security sufficient to decommission a facility must be submitted to the Corporation Commission after the fifteenth year of operation for a wind energy facility which reaches the commercial generation date prior to December 31, 2016. 17 OKLA STAT. § 160.15 (effective August 21, 2015). If the facility reaches the commercial generation date on or after December 31, 2016, the evidence of financial security must be submitted by the fifth year of operation. Id.

Recent additions to the Wind Energy Act call for submission of a notice of intent to build, publication of the notice in a newspaper of general circulation in the county or counties, and a public meeting. 17 OKLA STAT. § 160.21 (effective August 21, 2015). Fines may be imposed if these conditions are not met. Id. Other additions provide for setbacks from runways of public or private use airports, public schools, and hospitals. 17 OKLA STAT. § 160.20 (effective August 21, 2015).

Oklahoma Senate Bills 498 and 502 were approved and signed into law on May 20, 2015. Senate Bill 498 allows wind development projects currently in production or put into production by January 1, 2017 to complete their five-year ad valorem exemption under current law. After the five-year exemption, projects will pay the property tax for the remainder of the project's life. Senate Bill 502 continues the zero emission tax credit for wind projects until the tax credit's full phase out in 2020.