

The Examiner's Note

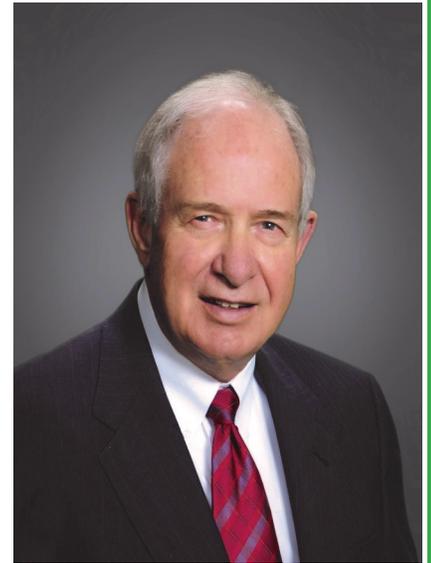
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BUZBEE CELEBRATES FIRST YEAR OF RETIREMENT; CONTINUES *OF COUNSEL* ON COMPLEX LEGAL ISSUES

JOHN PAUL BUZBEE, attorney for Buzbee, Upchurch, Squires & Eastwood retired from full-time practice in 2011. Mr. Buzbee continues as an advisor to the Firm. However, Mr. Buzbee is not taking on new legal work. Mr. Buzbee remains *of counsel* to the Firm to assist with complex title and litigation issues. Mr. Buzbee began his legal career in 1960 following his graduation from the University of Oklahoma College of Law. John Paul worked in the Field Solicitor's Office of the United States Department of the Interior from 1961-1963 when he entered pri-

vate practice. Mr. Buzbee served as Assistant District Attorney for Caddo County from 1967-1970. In 1971, Mr. Buzbee became Associate District Judge for Caddo County until he moved back to private practice in 1973. In 1978, Mr. Buzbee was joined by Virgil Upchurch to form the law firm of Buzbee & Upchurch. In 2010, Mr. Buzbee & Mr. Upchurch sold their law firm to Barry Squires and Kyle Eastwood. The firm of Buzbee, Upchurch, Squires & Eastwood has its main office in Anadarko, a satellite office in Carnegie, and an office in Hinton.



John Paul Buzbee

Of Counsel to Buzbee, Upchurch, Squires & Eastwood

FORECLOSURE PROCEEDINGS SHOULD ALWAYS BEGIN WITH A TITLE OPINION

In difficult economic times, a natural occurrence of such hardship is mortgage foreclosures. No matter what type of property may be foreclosed upon, a title opinion is an absolute must before beginning the proceeding.

Why? The goal of any foreclosure is to recover as much of the loan proceeds from the collateral as possible. This is usually not accomplished at the Sheriff's Sale, but rather when the creditor sells the foreclosed property privately.

In order to obtain marketable title to the foreclosed property, all liens and defects must be extinguished. All liens on the property can be extinguished in a foreclosure proceeding. The key is knowing they exist. That is why a title opinion is absolutely critical for success.

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MORTGAGES SECURING FUTURE ADVANCES ARE OPEN-ENDED AND CONTINUE UNTIL RELEASED

“A mortgage which provides that it secures future advances or debts of any kind is considered legal and valid in Oklahoma.”

The Oklahoma Court of Civil Appeals recently decided the case of *RCB Bank v. Villas Development, LLC*. In that case RCB Bank and Bank of Commerce (BOC) each filed foreclosure actions involving the same property. The issue was over which bank's mortgage had superior priority. BOC's mortgage secured a \$4,000,000 promissory note and was recorded in October, 2004. RCB had two mortgages securing two promissory notes totaling \$2,000,000 recorded in May 2008. RCB argued that BOC's note was paid off in 2005 and therefore BOC's mortgage expired before a new promissory note was signed in June 2007 which was secured by a second mortgage in favor of BOC. RCB contended that the Second Modification of BOC's mortgage was executed over two years after BOC's mortgage expired and that the modification was therefore ineffective to renew or extend the note

or the mortgage. RCB further asserted that BOC was not entitled to priority under the future advances clause which provided that the mortgage secured all future debts owed to BOC. The appellate court held that a mortgage which provides that it secures future advances or debts of any kind is considered legal and valid in Oklahoma. A mortgage securing future advances is “open-ended” and as such, until a release is recorded, it continues even after the original debt has been paid. BOC amended the note and modified the mortgage after the date that RCB claimed it was paid and should have been released. BOC's mortgage did not expire and served as security for later advances or loans BOC made. “The future advances clause in BOC's mortgage is almost without limit and expressly provides that the mortgage secures

debts of every kind and character.” The future advances clause was written broadly enough to include a debt which mortgagor was obligated to pay as a guarantor. The plain language of the future advances clause of the mortgage embraced amounts which the debtor owed to BOC under the guaranty. Accordingly, BOC was entitled to judgment foreclosing its mortgage to satisfy the default.

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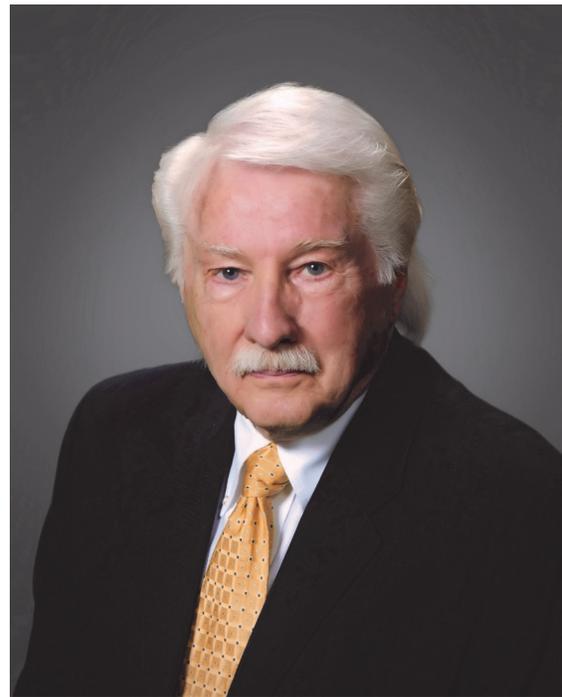
VIRGIL L. UPCHURCH

1930—2011

Virgil L. Upchurch, 81, passed away on Sunday, October 23, 2011. Upchurch was born on February 14, 1930, in Anadarko, to Arbulee Upchurch and Rebecca Jane Dabney Upchurch. He attended Anadarko public schools where he was a member of coach Smitty Williams' conference championship team that made the AHS football program's first-ever state playoff appearance in 1945. Upon graduating from AHS in 1948, Upchurch attended Cameron Junior College in Lawton, Oklahoma, for one year before transferring to Central State College in Edmond in 1950. After one semester there, the Korean War broke out and he joined the U.S. Air Force, proudly serving three years with the 59th Fighter Interceptor Squadron and reaching the rank of staff sergeant. During his final year of service, he developed an interest in law and decided to pursue a law degree upon his return to civilian life. In January 1955, he enrolled at the University of Oklahoma and set out on a course that would last more than five decades and include countless courtroom victories.

He earned his bachelor's degree in history in 1957 and two years later, his law degree. In 1959, he returned to his hometown of Anadarko where he landed his first job as an attorney for W.H. Cooper's firm. A year later, he ran for Caddo County Attorney and was elected by an overwhelming majority, eventually serving three terms. As County Attorney, he lost just two trial cases, forging a reputation as an effective prosecutor. Although politically active over the course of his career, Upchurch, a self-professed Yellow Dog Democrat, never sought office again after serving as county attorney. He did, however, remain active in the cause of fighting for social justice issues. While his law practice often involved extended hours, he always made time for his sons, coaching their Little League teams and attending games faithfully. The trio—later to become a foursome with his stepson Mark—made countless trips together to watch professional and University of Oklahoma-related sporting events and built a lifetime of memories

that included a deep-seeded passion for the Sooners. He returned to private practice in 1965 with veteran attorney Haskell Pugh, during which time he developed a strong reputation as a successful defense attorney. He and Pugh remained associates for 13 years until Pugh's retirement in 1978, which opened the door for a partnership with Upchurch's longtime friend John Paul Buzbee. The firm of Buzbee & Upchurch enjoyed a successful 30-year run and is still located at 203 W. Broadway in Anadarko, despite the recent retirement of the two principals. In 2009, Upchurch celebrated 50 years of practicing law in Anadarko. He was a member of the Anadarko Rotary Club and previously served as a Trustee of the Oklahoma Bar Foundation. He also served as president for Oklahomans for Indian Opportunity. Upchurch is survived by his wife, Sallie, sons Jay Upchurch, Gary Upchurch, Mark Stack and Rodney Stack.



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Serving Caddo County and Western Oklahoma for More Than 80 Years

Buzbee, Upchurch, Squires & Eastwood is an Oklahoma professional limited liability company providing legal services in almost all types of situations. Our primary areas of practice are title examination, foreclosure, collections, personal injury and estate planning. Whether you visit us in our Anadarko, Carnegie or Hinton offices, our firm is ready to delivery quality legal services at a competitive rate.

***PRACTICAL ADVICE REGARDING MORTGAGES
WITH FUTURE ADVANCE CLAUSES***

Taking a second mortgage on any real estate is a challenging endeavor. What equity you think exists can be quickly diminished by future advance clauses, accrual of interest, late fees, attorney fees and costs. In many cases, the only thing a second mortgagee has a claim to is having a superior position to a third mortgage. If the first mortgage is properly vested, you may consider obtaining a letter from the holder of the first mortgage limiting the pitfalls stated above. However, in most cases, you are better off as a lender to pay off the first mortgage and take a new first mortgage on the real estate.