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TITLE EXAMINATION IN VIRGINIA

*W. Wade Berryhill**

I. INTRODUCTION

The purpose of this article is to provide an understanding of the basic procedures of title examination. The emphasis is on the mechanics and practical considerations involved in a search of title. Although the focus of any legal work is "the law," this article is not meant to be a legal treatise. It is rather a practical "how to" guide. The author hopes, however, that this writing will not only acquaint the reader with the basic techniques of title examination but will also assist the title examiner in solving the related problems which arise when some of the more common title objections are discovered.

This article treats the basic situations which the title examiner is most likely to encounter. Particular attention will be given to the role of the closing attorney (and/or purchaser's attorney or lender's attorney) in ordering or preparing a title examination; in recognizing and resolving common title problems revealed by the examination; in preparing a title opinion and certificate based upon the examination; and in obtaining title insurance. Cosmetic or minor

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defects frequently pose a problem for the inexperienced or overzealous title examiner. From the discussion of the more routine title objections, the novice examiner should gain confidence and understanding. A thorough understanding of the basic procedures and more routine problems encountered in title examination should also enable the reader to recognize situations which warrant additional research and enhance the experienced reader's ability to deal with the more complex and esoteric situations.¹

II. THE TITLE EXAMINATION

A. *Ordering the Examination*

The primary purpose of a title examination is to ensure that the prospective seller has (or will have)² the ability to convey record title³ to the purchaser at the time of the closing. Because the examination is for the protection of the purchaser's, as well as the lender's, interests, it is the responsibility of the purchaser's attorney to see that the examination is performed.

Generally, it is best to have the examination performed as early as possible, to allow time for dealing with unexpected complications. In addition, there should always be a title "rundown" immediately prior to the recording of the documents executed at closing. The rundown ensures that no adverse interests have been recorded against the caption property between the dates of the preliminary title examination and the recordation of the purchaser's title.⁴

1. For a more comprehensive treatment of title examination in Virginia, see L. COX, A MANUAL FOR TITLE EXAMINERS IN VIRGINIA (2d ed. 1947); JOINT COMM. ON CONTINUING LEGAL EDUC. OF VA. STATE BAR AND VA. BAR ASS'N, VIRGINIA LAWYERS PRACTICE HANDBOOK, RESIDENTIAL REAL ESTATE TRANSACTIONS (1981) [hereinafter cited as JOINT COMM.]; S. PARHAM, TITLE EXAMINATION IN VIRGINIA (1965); S. PARHAM, A VIRGINIA TITLE EXAMINERS' MANUAL (1973); Mazel, *How to Examine a Title in Virginia*, 11 U. RICH. L. REV. 471 (1977); Note, *Comments Concerning Examination and Evaluation of Titles to Real Property in Virginia*, 1 WM. & MARY L. REV. 139 (1957).

2. The seller is not required to have marketable title until the time of closing. The examiner must be aware of the nature and significance of any defects of title: curable defects (those capable of being corrected before closing), as well as those considered incurable. See *infra* note 18.

3. See *infra*, Part IV(A)(1) for a discussion of record title.

4. The Virginia Wet Settlement Act, VA. CODE ANN. §§ 6.1-2.10 to -2.15 (Cum. Supp. 1982), requires that the deed of trust and any other documents which are required to be recorded must be recorded within two business days of the date of settlement, and that all settlement proceeds must be disbursed by the settlement agent within this period. *Id.* § 6.1-2.13. The Act applies only to transactions involving "lender-made" purchase money loans which are secured by a first deed of trust or mortgage on real property containing four or fewer "residential dwelling units." *Id.* § 6.1-2.11.

The title examiner, whether the closing attorney or an associate, must have as much accurate information as possible in order to perform the examination. The attorney should obtain from the purchaser a copy of the contract of sale, any unreleased deeds of trust (whether they are to be satisfied prior to closing or not), any existing title insurance policies, and any known unrecorded deeds, liens, or other encumbrances on the property.⁵ It is useful to rely on a standard "Title Order" form on which all pertinent information may be recorded.⁶

B. *Period of the Examination*

In a title examination, the prospective seller's "chain of title"⁷ is developed by searching through the grantee index backwards in time to some predetermined point,⁸ in order to establish the source of title for each owner in the chain. Then, for each grantor in the chain of title, the examiner searches the grantor's index from the date the grantor acquired title to the date he transferred it to the next grantor in the chain. This process, which is called "adversing" the title, is to determine whether any person not in the seller's direct chain of title might have some adverse claim or interest recorded against the caption property. Finally, the examiner will

As used in this chapter, "caption" property is defined as the property which is the subject of the title examination or closing. The term is used to distinguish that property from all other real estate that may be discussed.

5. The records should be examined in light of any unrecorded deeds which the seller might have in his possession. If all is proper, the deed may simply be recorded. If a document in the chain of title refers to an unrecorded deed or other instrument which is not in the possession of the seller, a title insurance company should be consulted about the possibility of "insuring over" the defect, *see infra* Part III; or the purchaser may waive the defect himself and accept the risk. If neither party is willing to accept the risk of a potential unrecorded instrument, the closing will fail; and the parties will be left to their contractual remedies.

6. A model "Title Order" form is provided *infra* at Appendix A.

7. The "chain of title" is discussed more fully at Part IV(A)(2), *infra*. Some attorneys establish the initial chain of title by relying on the "being" clause which is contained in each deed and which shows the source of the grantor's title. However, this method is not recommended since the title examiner is on constructive notice of all documents contained in the indices. For example, there could be a prior deed not in the chain established by the being clause which would reflect a defect in the title.

8. As a rule of thumb, chain of title is established for 60 years. Miscellaneous lien records and deed books are searched in each grantor's name for 20 years back from the date of the examination. *See infra* note 11 and VA. CODE ANN. § 43-4.1 (Repl. Vol. 1981). The judgment lien docket is searched in each grantor's name for the 20 years prior to the date of the examination. *See infra* Part V (A). Current tax records are searched in each grantor's name for the four years prior to the date of the examination, but the delinquent tax records are searched for the 20 year limitation period. *See infra* notes 75-78 and accompanying text.

search other indices⁹ to determine if there are any other recorded claims against the property, such as judgment liens, mechanics' liens, or tax liens.¹⁰

Title examinations may be classified as "full" or "limited" searches. A full search requires that the seller's chain of title be established for a minimum of sixty years. The adversing process should begin with the grantor of a general warranty deed to the caption property which is at least sixty years old. Many potential defects in the title, both recorded and unrecorded, will be cured by the lapse of time.¹¹ However, if necessary, the examiner should not

9. In addition to the grantee's and grantor's indices, the clerk of court in each jurisdiction maintains the following records:

- chancery order books;
- current tax index (may be maintained at the city or county administrative offices rather than by the clerk of court);
- daily indices of deeds and judgments;
- deed books;
- delinquent tax index (may be maintained at the city or county administrative offices rather than by the clerk of court);
- general index to ended chancery causes;
- general index to judgment lien docket;
- judgment lien docket;
- land book for previous years;
- map/plat book (including surveyor's book, if any);
- settlement of accounts book;
- supervisor's order books;
- U.C.C. index book;
- will book general index;
- will books-list of heirs.

10. Model worksheet forms for recording pertinent information during the title examinations are contained in Appendices A to H.

11. General provisions as to statutes of limitations on actions may be found in VA. CODE ANN. §§ 8.01-228 to -256 (Rep. Vol. 1977 & Cum. Supp. 1982).

Commonly applicable limitation provisions include:

- § 8.01-236: 15-year limitation on right of entry for adverse possession;
- § 8.01-239: 10-year limitation on action for ground rent;
- § 8.01-240: water, sewer, sidewalk assessments (actions limited to 10 years from date of recordation, 20 years from date of docketing);
- § 8.01-241: 20-year limitation on enforcement of deeds of trust, mortgages, unpaid purchase money;
- § 8.01-246: personal actions on contract (written, 5 years; oral, 5 years);
- § 8.01-250: 5-year limitation on actions for damages for unsafe improvements to real property;
- § 8.01-251: 20-year limitation on actions to enforce judgments;
- § 8.01-252: 10-year limitation on actions to enforce judgments from foreign jurisdictions;
- § 8.01-253: 5-year limitation on action to avoid a voluntary conveyance for lack of consideration;
- § 8.01-254: 20-year limitation on action to enforce a bequest;
- § 8.01-255.1: action for breach of condition subsequent or termination of determinable es-

hesitate to search further back than this to find evidence of the existence of utility or other easements, subdivision regulations, or other possible limitations on the use of the property.¹² A full search is generally required for cash sales, sales secured by a first deed of trust or mortgage, and situations in which title insurance may be required.

A limited search is any title examination for a period of less than sixty years. Limited searches are sometimes performed for loan assumptions and second mortgage closings, unless the second mortgage requires lender's title insurance, as is often the case. Where a full search was performed for the first security deedholder, and all defects and objections were cured or waived at that time, a title examination beginning on the date of recordation of the first security deed may be sufficient to protect the interests of the parties. A limited search may also be possible where the caption property is covered by a title insurance policy for which a full search was performed, or where the examiner can obtain from a previous title insurer a back title letter which the present insurer is willing to accept in lieu of a full search. Of course, the client must always be informed of the extent of the title examination in the examiner's title opinion letter;¹³ some purchasers and lenders require a full search for all closings.

It should be explained to the purchaser that an "insurable" title is not the same as "marketable" title.¹⁴ A defect of record which would make the caption property unmarketable and hence unacceptable to the purchaser, might be excepted from coverage under the provisions of the title insurance policy. If, despite the defect, the purchaser accepts the title and completes the contract, a subsequent claim based upon such a recorded defect would result in

tate limited to 10 years from date of breach or termination; possession becomes adverse from that date.

12. For example, it is not unusual in certain areas of Virginia for the mineral rights to property to have been severed from the estate, or for a railroad right-of-way to have been granted, much further back than 60 years.

13. The title opinion letter is discussed more fully *infra* at Part II(C).

14. Most title insurance policies contain a number of exceptions, such as material defects uncovered during the search of the particular title and certain risks that are excluded in most standard printed clauses. Standard exclusions are rights or claims of parties in possession not shown by public records, easements not shown by public records, encroachments, overlaps, boundary line disputes, or other matters which would be disclosed by an accurate survey or inspection and mechanics' liens. A. AXELROD, C. BERGER & Q. JOHNSTONE, *LAND TRANSFER AND FINANCE* 674 (2d ed. 1978). See also J. CRIBBET, *PRINCIPLES OF THE LAW OF PROPERTY* 297 (2d ed. 1975). See *infra* Part III.

liability of the purchaser rather than the title insurer. The closing attorney must also remember that he or she impliedly represents to the purchaser upon closing that the title is marketable.¹⁵

C. *Preliminary Title Report*

Once the title examination is complete, the attorney reports in writing to his client the status of the seller's title as disclosed by the records.¹⁶ If title insurance is being obtained, the attorney will certify title to the insurance company in time to have an insurance binder issued prior to the closing.¹⁷ Finally, if there are any objections to the seller's title which must be corrected before closing, the seller (or his attorney) must be notified in writing of the objections in order to protect the purchaser's rights under the sales contract.¹⁸

If someone other than the closing attorney performed the title examination, the closing attorney should review the report as soon as he receives it. Defects which may take time to cure should be addressed promptly in order to avoid a possible delay in closing. At a minimum, the title report should reveal the following:

- a) Record title holder;
- b) Legal description of caption property;
- c) Existing lenders;
- d) Other lienholders;
- e) Status of taxes;
- f) Easements, covenants, or other restrictions;
- g) Objections to marketability;
- h) Other matters affecting title; and
- i) Requirements for vesting marketable title in the purchaser.

15. See *JOINT COMM.*, *supra* note 1, §§ 1.7(A), 1.10(F).

16. An example of both a Preliminary and a Final Title Opinion letter to the prospective purchaser may be found in Appendix I.

17. An example of a "Preliminary Certificate of Title" may be found in Appendix J; a model "Final Certificate" to be submitted after the final "rundown" of title when the buyer's deed is recorded is located in Appendix L.

18. The purchaser's attorney must not misconstrue any curable defects in title as a breach of the contract by the seller. The seller is given a reasonable time to cure defects before settlement. See *supra* note 2. If the purchaser's attorney does mistakenly write a letter to the seller demanding rescission, the seller could construe the letter as anticipatory breach of contract by the purchaser, thereby opening the door for a suit by the seller seeking damages for the breach. In his letter to the seller, the purchaser's attorney should point out all of the objections to and defects in the seller's title. If the settlement date is important, as it usually is, the letter should also specify a settlement date and state that "time is of the essence." The date set for settlement must allow the seller reasonable time to cure those defects which are in fact curable. See *infra* Part IV(A)(1).

III. TITLE INSURANCE

Title insurance, like an attorney's title opinion letter,¹⁹ is based upon a careful search of the records. Title insurance protects the insured against actual losses suffered because of defects in the title of record, hidden defects not disclosed by the record, and the costs of defending title against adverse claims.²⁰ Title insurance comes in two forms: (1) owner's title policy, which insures the interest of the purchaser; and (2) mortgagee (lender's or loan) policy, which insures the interest of the lender.²¹

Title insurance, however, does not protect the owner from all claims against the property, but only from those defects covered by the terms of the policy.²² The purchaser's attorney or closing attorney must carefully read the binder and policy to ascertain what coverage is actually provided to the insured. On new loans, institutional lenders normally require a mortgagee policy, with the premium paid by the borrower/purchaser. The purchaser may or may not want an owner's title policy. The purchaser's attorney or closing attorney should advise the purchaser of its availability and benefits.²³

Title insurance is normally obtained by the closing attorney, who will request a mortgagee or an owner's policy, or both, giving pertinent data as to the lender, purchaser, loan amount and sales price. Each insurer has its own forms for requesting a policy. The closing attorney (or the title examiner, if they are not the same) certifies the status of title to the insurer, disclosing the owner, the source of the owner's title, tax information, existing loans and other liens, any restrictive covenants or conditions, easements, objections to title, and any other matters which might affect title, using the in-

19. See Appendix I.

20. Hidden defects which would not be discovered by a title examiner's search of the records may include the following: forgery or other fraud; legal or mental incapacity of the grantor; void or expired power of attorney; insufficient delivery of the deed; undisclosed, pretermitted, or afterborn heirs; a revoked or subsequently discovered will; or a void or voidable judgment upon which the grantor's title is dependent. Most title insurance companies can provide a brochure which outlines protections against these defects and other benefits provided by title insurance.

21. The coverage under the two policies is almost always different. The closing attorney must be familiar with the differences in the coverage provided by them. The mortgagee or loan policy normally provides more comprehensive coverage than does the owner's policy.

22. See *supra* notes 20-21.

23. See *supra* note 20 and accompanying text. An additional consideration is that title insurance is normally less expensive when both the mortgagee and the owner's policies are obtained at the same time.

surer's preliminary certificate of title form.²⁴ The insurer will then issue a binder prior to closing.²⁵ Using the insurer's form for the final certificate of title, the closing attorney will again certify title to the insurer after closing (after rundown of the title), certifying that all documents and actions required by the binder were executed at closing and have been recorded if necessary.²⁶ The policy will then be issued by the insurer. The closing attorney or purchaser's attorney should examine the policy when it is issued to be certain that the coverage provided by the policy parallels that shown by the binder.

A title examination often will reveal objections to title that cannot or should not be waived by the closing attorney and cannot otherwise be cleared by the closing attorney or the title examiner. Title insurance companies will sometimes waive such objections and "insure over" the objection. When the closing attorney requires title insurance to clear an objection, an additional and unanticipated premium may be involved.²⁷ Theoretically, the seller should pay any additional costs since he is responsible for conveying marketable title. However, when a third-party lender is involved, as is most often the case, the borrower will normally pay for the mortgage title insurance policy which in fact protects the lender. The closing attorney should also advise the purchaser of the risks involved in accepting title subject to the objections.

If the closing attorney cannot find an insurer willing to waive particular objections, and the objections cannot otherwise be cleared by the seller, the closing attorney must normally refuse to close until the defects are cured. A lender will rarely, if ever, accept uninsurable risks; and a purchaser should not do so either. As always, if a closing is cancelled, the parties are left to their contractual remedies.

IV. TITLE DEFECTS

Space does not permit more than a short summary of the title

24. An example of a preliminary certificate of title is contained in Appendix J. The person (i.e., the closing attorney, his/her firm, or the title examiner) certifying title to a title insurance company must be on that insurer's list of approved title attorneys. Each company has its own requirements and procedures for becoming an approved attorney.

25. For an example of an insurance company binder, see Appendix K.

26. For an example of a final certificate of title, see Appendix L.

27. In most instances, if the insurance company is willing to "insure over" a defect, there will not be an additional premium involved.

objections which commonly arise. The exact procedure to be followed by the closing attorney in addressing these objections depends not only upon the nature and severity of the defect, but also upon the purpose for which the property is being purchased and the time frame which the parties have set to complete closing. Often the bargain which the purchaser has struck may affect his willingness to waive objections.²⁸

Nevertheless, the closing attorney must be familiar with the common title objections and the basic procedures for curing them. The basic rule is that the closing attorney must not close until he or she is certain that marketable title (or title which the purchaser, upon being fully advised, is willing to accept) can be transferred. Cosmetic or minor defects, such as a judgment more than fifty years old, frequently pose a problem for the inexperienced or overzealous title examiner. If in doubt, the closing attorney should seek the advice of more experienced counsel.

A. *Interests and Defects of Record*

1. Record Title Holder

The owner of the caption property as shown in the deed records is known as the record title holder. In most cases the seller named in the sales contract is the holder of record title. If the title examination reveals that someone else is the record title holder, there is a problem. Sometimes the problem is simple, as where the husband signs the sales contract but record title is in the wife's name. The closing attorney can easily verify with the agent that the wife is the real seller. At other times the problem is not so simple, as where an heir signs the sales contract, and the record title holder is deceased. In this case, an estate proceeding may be necessary.

In the situation where the record title holder is deceased and the heirs cannot all be located, or it cannot be determined if any heirs still survive, the closing cannot take place until the problem is resolved. An analogous situation arises where the seller is not the record title holder, but has been in possession of the caption property for more than the statutory adverse possession period.²⁹ Closing should not take place until a judicial proceeding, such as a suit

28. See *supra* Part III. The purchaser should not waive major or serious defects. Lenders are not likely to waive any uninsurable defects.

29. The statutory period for adverse possession in Virginia is 15 years. VA. CODE ANN. § 8.01-236 (Repl. Vol. 1977).

to quiet title, has established the seller as the record title holder; or quitclaim deeds have been acquired from all persons with a possible interest in the property.

In any event, the closing attorney must be certain that all persons with an interest in the property have transferred their interests to the purchaser at closing. In Virginia, the spouse of the seller should be required to release either her dower or his curtesy rights upon the transfer from the seller.³⁰

The purchaser is entitled to a deed from the person who signed the sales contract, even if that person is not the record title holder, so that the grantee/purchaser may rely upon any warranties given in the deed from the grantor. A quitclaim deed from the seller under the contract should be obtained at the time the deed is obtained from the record title holder, so as to release any possible claim by the seller under the contract. The quitclaim deed need not be recorded unless the sales contract was recorded.

2. Breaks in the Chain of Title

A chain of title is comprised of consecutive links of the grantors and grantees of the caption property: *A* to *B*, *B* to *C*, *C* to *D*, with *D* holding record title. Occasionally, there may be a missing link: *A* to *B*, *D* to *E*. In such a case, the record does not reveal how *B* was divested of title or how *D* acquired title. Such a break in the chain of title could be caused by an unrecorded deed, a name change, an unadministered estate, a foreign divorce decree, or by some other factor. Unless this missing link can be reconstructed by verifiable sources outside the record, the defect will be fatal to the closing.

The link must be established before the closing attorney can determine what is necessary to protect the record. A closing attorney can do little more than advise the parties of the problem and require them to establish the missing link. If the present owner and his predecessors in title have satisfied the statutory requirements for adverse possession, a quiet title action making *B* and his heirs defendants would resolve the problem.³¹ However, this approach

30. VA. CODE ANN. § 55-41 (Repl. Vol. 1981). The wife may release her dower interest in property at any time after the husband has disposed of his interest by execution of a separate instrument, or they may jointly dispose of their interests in a single instrument. This rule applies even where the woman holds title as her separate equitable estate. *Id.* § 55.40.

31. *See* VA. CODE ANN. §§ 55-153, -155 (Repl. Vol. 1981).

assumes that *B* or his heirs do not have a valid defense.³² The purchaser would not take title until a valid decree vesting title in the seller is obtained—the purchaser should not buy a lawsuit. The same situation is present where record title cannot be established to the land within the described boundaries. A judicial proceeding may be necessary to vest title in the seller to all of the described lands.

The purchaser, however, cannot force the seller to prosecute a suit to quiet title. Legally, he can only reject title until the defect is corrected. Of course, he may also seek damages in a suit for breach of contract.

3. Errors in Prior Recorded Deeds

Errors in a prior recorded deed in the seller's chain of title, such as an erroneous legal description, a misspelled name, or improper execution, must be cured before the closing can proceed. Where possible, such errors may be cured by a correction deed from the same grantor to the same grantee. The correction deed will have the same format as the original deed, with the error corrected, and a clause inserted such as:

This is given to correct [*describe error*] contained in a prior deed between the same parties dated _____, 19 __, and recorded _____ 19 __, in the Clerk's Office, Circuit Court of _____ County, Virginia, in Deed Book _____, page _____.

The correction deed must be recorded.³³ Such a deed may not be used to change a greater estate to a lesser estate (i.e., fee simple to life estate), nor can it be used to change the identity of a grantor altogether (though it may correct misspellings). It is the responsibility of the seller to locate the parties and correct the deed.

An error in a prior recorded deed of trust or other lien is of no consequence so long as: (1) the closer is certain that the lien affects the caption property, and (2) the lien is satisfied prior to closing. Where the error is of a type which renders the subject of the lien doubtful, such as an erroneous description, there are two options.

32. See VA. CODE ANN. § 8.01-237 (Repl. Vol. 1977) (requirements for tacking on the adverse possession of a predecessor in title).

33. See VA. CODE ANN. § 58-61 (Cum. Supp. 1982). Certain fees and taxes are either exempt or reduced for recordation of a correction deed. *Id.*

If the seller admits the lien, he must satisfy it prior to the closing and provide proof of such satisfaction. If the seller does not admit the lien, he must either obtain a quitclaim deed from the lienholder for the caption property, obtain an affidavit from the lienholder that the caption property is not the subject of the lien,³⁴ or satisfy the lien and pursue his separate remedy against the lienholder. If a quitclaim deed is used to clear a lien of record, it also should be recorded.

4. Name Variances

A name variance, as distinguished from a simple misspelling, is a variation between the name by which a record title holder acquired title to the caption property and the name by which he conveyed the title or some lesser interest. If the variance is in the name of a previous record title holder, the seller should provide an affidavit from the prior owner that the persons named in the two documents are one and the same. If the variance is in the name of the seller, a clause in the deed explaining the variance will be sufficient:

Grantor named herein is one and the same person as John D. Adams, the grantee named in a prior deed dated _____, 19____, and recorded _____, 19____, in the Clerk's Office Circuit Court of _____ County, Virginia, in Deed Book _____, page _____; and grantor named herein is one and the same person as J. David Adams, the grantor named in a prior deed dated _____, 19____, and recorded _____, 19____, in the Clerk's Office, Circuit Court of _____ County, Virginia, in Deed Book _____, page _____.

Corporations and partnerships can present a similar problem. In the case of a corporation, a certified copy of the amendment changing the corporate name should be obtained from the clerk of the State Corporation Commission. In the case of a general partnership, affidavits from each partner may be required to verify a name change, merger, or death of a partner. Where one general partner has power of attorney to act on behalf of the others, a single affidavit may be sufficient. Similarly, in the case of a limited partnership, a single affidavit from the general partner will nor-

34. An affidavit similar in format to that contained in Part V(A), *infra*, is sufficient.

mally be sufficient.³⁵

5. Improper or Missing Power of Attorney

Where a deed in the seller's chain of title was signed for the grantor or grantee by his attorney, a properly executed power of attorney should have been recorded along with the deed. If it was not, the effect is the same as if the deed itself was not signed. The defect may be cured by having the seller obtain and record a correction deed or quitclaim deed signed by the prior owner.³⁶

6. Sales Contracts, Options, and Leases

If the caption property is subject to a contract or an option to sell or lease, the seller should provide proof by affidavit or other means that the contract or option has expired. If the contract or option has not expired, the seller should be required to obtain a quitclaim deed from the purchaser or optionee named in the contract. The quitclaim deed should be recorded if the contract or option was recorded.³⁷

If the property is known to be subject to a lease, or if a lease is discovered during the title examination, the closing attorney should advise the parties and make inquiry as to possession. Depending upon the purchaser's purpose in acquiring the property, the lease may or may not constitute a defect. The lender should also be advised of the outstanding possessory rights of any person other than the purchaser/borrower.

35. VA. CODE ANN. § 50-8 (Repl. Vol. 1980) concerns the acquisition and conveyance of partnership property. Subsection (3) provides that real property may be acquired in the partnership name; i.e., "To A and B, partners trading as A and B Sales, as specific partnership property." Property acquired in this manner must be also be conveyed in the partnership name. *Id.* § 50-8(3).

Any partner may convey title to property held in the name of the partnership. *Id.* § 50-10(1). However, the partnership may recover property so conveyed where the partner had no actual authority to act for the partnership if the grantee knew of this lack of authority. *Id.* § 50-9(1). Where the grantee either has already conveyed the property or is a bona fide purchaser for value without knowledge of the partner's lack of authority, the partnership cannot recover the property. *Id.* § 50-10(1).

Partners' rights in partnership property are not subject to dower or curtesy, so the spouse of a partner need not join in the deed to release these rights. *Id.* § 50-25(2)(e). See *supra* note 30 and accompanying text.

36. A correction deed with a format similar to that described in text accompanying notes 33-34, *supra*, is generally sufficient. If a proper power of attorney was executed, but simply not recorded, recording the document will generally cure the defect.

37. The affidavit of expiration is usually not recorded, but is kept on file in the closing attorney's office. The same is generally true for all such affidavits.

Because leases are often unrecorded or are not in writing,³⁸ the purchaser should always be advised to physically inspect the caption property well in advance of closing.³⁹ A discovery that the premises are occupied by someone other than or in addition to the seller indicates a possible possessory interest in a third party.

7. Unsatisfied or Unreleased Deeds of Trust

When an existing deed of trust is to be assumed by the purchaser, his attorney must obtain an assumption package from the lender. If the debt is to be satisfied by the seller at closing, the buyer's attorney should obtain the payoff amount from the lender and oversee the seller's satisfaction of the debt. Sometimes a deed of trust in the seller's chain of title will have been satisfied, but never released of record. In this situation, the seller should obtain a release deed from the lender or an affidavit of repayment from the debtor.⁴⁰

Deeds of trust commonly are released of record in Virginia by one of two forms of a "deed of release":⁴¹ (1) a "marginal release" entered in the margin of the deed book where the deed of trust is recorded,⁴² or (2) a "certificate of satisfaction" from the trustee to

38. In Virginia, a contract to lease real property for a term of less than one year need not be in writing to be enforceable. VA. CODE ANN. § 11-2(6) (Repl. Vol. 1978). A contract to lease property for a term of one to five years must be in writing, but need not be recorded so long as the lessee takes possession of the demised premises. VA. CODE ANN. §§ 11-1 (Repl. Vol. 1978) and 55-96(A)(1) (Cum. Supp. 1982). See *Great Atlantic & Pacific Tea Co. v. Cofer*, 129 Va. 640, 106 S.E. 695 (1921) (possession by the tenant puts prospective purchasers on constructive notice of the possessory rights of the tenant). However, VA. CODE ANN. § 55-96(A)(1) (Cum. Supp. 1982) provides that "mere possession" is *not* notice to a purchaser for value of any interest of the person in possession. Note also that the recordation of a contract which is not required to be recorded does not serve as notice to a bona fide purchaser for value. *Braxton v. Bell*, 92 Va. 229, 23 S.E. 289 (1895).

VA. CODE ANN. § 11-2.3 (Repl. Vol. 1978) provides that a contract for the sale of improved residential real estate which does not require completed performance within two years of the date of execution is voidable at the option of the buyer unless the contract is *recordable*, i.e., "in such form as to be capable of being admitted to record."

39. Only a physical inspection of the caption property will protect the buyer and the lender against these superior possessory rights. See *infra* Part IV(B)(1).

40. Note that actions to enforce an unsatisfied deed of trust are limited to 20 years from the time the original obligation became due and payable. VA. CODE ANN. § 8.01-241 (Cum. Supp. 1982).

41. The "deed of release" is executed by the trustee of the deed of trust upon the grantor's request when all debts, duties, and obligations imposed by the deed are discharged. VA. CODE ANN. § 55-59.4(B) (Repl. Vol. 1981).

42. VA. CODE ANN. § 55-66.3 (Repl. Vol. 1981) permits the marginal entry of payment or satisfaction of a deed of trust or other lien.

the record title holder, recorded in the office where the deed of trust is recorded.⁴³ While the former method is more common, the latter is used exclusively where records are kept in microfilm form. The Virginia Code provides for the recording of a "partial release," in the form of either a marginal release or a certificate of satisfaction, where more than one parcel of property is secured by a single deed of trust.⁴⁴ When dealing with a series of partial releases, regardless of the method of recordation, it is important to make sure that they constitute a complete release of record. Often, but not always, the trustee will execute a full deed of release simultaneously with the final payment for release of a lien.

8. Notices of Lis Pendens or Attachment

A notice of lis pendens or attachment is a recorded notice that there is a pending suit or lien of attachment which may affect the title to real property.⁴⁵ Such a notice must be released of record before the purchaser can proceed to closing. While a suit pending against the seller technically does not affect the title to property unless a lis pendens notice has been recorded,⁴⁶ the purchaser's attorney should act to protect the purchaser's interests. If it is not certain that the seller is the defendant in the pending suit, and he denies that he is the defendant, an affidavit to this effect from the seller should be obtained to protect the buyer.

If it is certain that the pending suit is against the seller, the at-

43. VA. CODE ANN. § 55-66.3 (Repl. Vol. 1981). The lien creditor, unless he has delivered a deed of release to the debtor, must record a certificate of satisfaction when payment or satisfaction is made. Failure to do so upon five days notice shall result in a fine.

44. VA. CODE ANN. § 55-66.3 (Repl. Vol. 1981) permits the recordation of a certificate of partial satisfaction, or the marginal entry of partial satisfaction, when at least 25% of the obligation secured by the deed of trust or other lien (but less than the whole amount) has been paid or satisfied.

45. For statutory provisions on the notice of lis pendens or attachment, see VA. CODE ANN. §§ 8.01-268.01 to -269 (Repl. Vol. 1977). For general provisions concerning the lien of attachment, see VA. CODE ANN. § 8.01-557 (Repl. Vol. 1977).

46. A notice of lis pendens or attachment, when properly filed, operates to give constructive notice of the defect to any prospective purchasers. *Breeden v. Peale*, 106 Va. 39, 55 S.E. 2 (1906). Such a purchaser takes the property subject to the lien of attachment or to the outcome of the pending suit. A purchaser with *actual* notice of the defect also takes subject to the lien of attachment or to the outcome of the suit, regardless of whether a notice was properly filed. *Hurn v. Keller*, 79 Va. 415 (1884). However, a purchaser for value without notice of the defect takes good title when a notice of lis pendens or attachment has not been properly filed. *Easley v. Barksdale*, 75 Va. 274 (1881); *Cammack v. Soran*, 71 Va. (30 Gratt.) 292 (1878). Mere inquiry notice is not sufficient to affect the buyer's title in the absence of record notice; sufficient notice to impute bad faith to him in making the purchase is required. *Vicars v. Saylor*, 111 Va. 307, 68 S.E. 988 (1910).

torney's actions depend on the nature of the suit: (1) if the suit is for a money judgment only, the seller should provide an affidavit to the effect that no judgment has been rendered or entered on the records of the case;⁴⁷ (2) if the suit is for divorce or separation, a quitclaim deed from the plaintiff spouse should be required, along with an affidavit to the effect that the defendant spouse is not in arrears on any child support or alimony payments; and (3) if the suit seeks any relief against the seller's property, a quitclaim deed should be required from the plaintiff.

9. Easements

An easement may be created in property by grant, prescription, implication, necessity, or several other methods.⁴⁸ Many title examiners routinely object to all recorded easements as defects in the title. However, as a practical matter, only those easements which in some way restrict the use of the owner are of any consequence to the prospective purchaser. It is important to note that not all easements which may restrict the owner's use are recorded. Examples of these easements which are not recorded include prescriptive easements, which arise by open and continuous use over a period of years;⁴⁹ easements of necessity, such as a right of access to a landlocked parcel;⁵⁰ and riparian rights of downstream landowners to the continued uninterrupted flow of natural streams.⁵¹ It is common practice for the title examiner or the attorney certifying title to exempt all easements not of record and to recommend or require a physical inspection or survey of the caption property to detect such easements.⁵²

Non-restricting easements, such as those routinely granted to utility companies to allow reasonable ingress and egress for the purpose of maintaining utility service, need only be reported in the title certificate without further action or notice to the buyer. Where a utility easement has been granted using only a general description, it is wise to ascertain the manner in which the ease-

47. See *infra* Part V(A).

48. See Berryhill & Parcell, *Guaranteeing Solar Access in Virginia*, 13 U. RICH L. REV. 423, 431 (1979).

49. The prescriptive easement is essentially a type of adverse possession, resulting in the right to use the property of another. See, e.g., *Blue Ridge Poultry v. Clark*, 211 Va. 139, 176 S.E.2d 323 (1970).

50. See *infra* Part IV(B)(2).

51. 1 R. MINOR, *THE LAW OF REAL PROPERTY* § 55 (F. Ribble 2d ed. 1928).

52. See *infra* Part IV(B)(1).

ment has been exercised in the past to make sure that the exercise will not interfere with the owner's use. In some extreme cases, it may be necessary for the seller to obtain from the utility company a quitclaim deed restricting the easement to more definite and reasonable limits. Where an easement will restrict the owner's use in some non-fatal way, such as where it would prevent certain additions or improvements from being made or would restrict the possible locations of these improvements, or where the easement provides for extensive rights of ingress to and egress from the caption property, it should be specially reported to the purchaser prior to closing.

10. Restrictive Covenants and Conditions

All unexpired restrictive covenants and conditions should be reported to the parties. Normally, these will be of little significance to the purchaser unless the restrictions will interfere with the owner's use of the property, or unless the covenant contains a reversion or forfeiture clause. These clauses provide that upon violation of the conditions, title reverts to the grantor or is otherwise forfeited by the violator. If such a clause is found, the seller should provide proof by affidavit or other means that there has been no violation.⁵³ Minor violations of covenants or conditions not subject to reversion or forfeiture may be released or waived by the owners of property benefited by the restrictions.

Recorded restrictions may be found in the individual deeds of conveyance, or they may simply be noted on the recorded subdivision plat, or both. Subdivision restrictions or regulations may not be recorded on every deed; however, restrictions may attach by implication to each parcel conveyed from a common developer if there is evidence of a general plan or scheme of development. This general plan or scheme operates as constructive notice of the possible existence of restrictions on use.⁵⁴ In many cases, where there is evidence of such a scheme but no restrictions are recorded in the chain of title to the caption property or in the subdivision plat, it will be necessary for the title examiner to search the deeds of surrounding parcels for restrictions which may be imposed by implication against the caption property.

53. VA. CODE ANN. § 8.01-255.1 (Repl. Vol. 1977) provides a 10 year statute of limitations on actions to enforce reversion or forfeiture clauses.

54. See, e.g., *Minner v. City of Lynchburg*, 204 Va. 180, 129 S.E.2d 673 (1963).

Restrictive covenants and conditions are often limited in duration by their terms. Subdivision regulations also are often limited in duration, but may be renewable by the action or lack of action of a majority of the affected landowners. Where restrictions are not limited in duration, changing conditions over the years may make them unreasonable and therefore unenforceable. It is also possible in many cases to have restrictions on use waived by the owners of the benefited property prior to any violation, thereby removing an objection which might otherwise be fatal to the closing.

11. Mechanics' or Materialmen's Liens

Recorded mechanics' or materialmen's liens⁵⁵ must be treated as adverse claims against the caption property. The purchaser should require that these liens be paid and satisfied of record or discharged by the filing of a proper bond at or prior to closing.⁵⁶ If the lien is to be satisfied at closing, the purchaser's attorney should contact the lienor so that the amount of the lien can be ascertained and the lienor can arrange to be present at the closing, if necessary. If the seller objects to paying the lien, the closing attorney should require that he post bond so that the purchaser can take the property free of the lien.⁵⁷

Unperfected liens are also of concern to the purchaser, since he will take the property subject to all mechanics' and materialmen's liens for work or material furnished within the last ninety days.⁵⁸

55. See generally, VA. CODE ANN. §§ 43-1 to -23.2 (Repl. Vol. 1981 & Cum. Supp. 1982).

56. Once a suit has been brought for enforcement of a perfected mechanic's lien, VA. CODE ANN. § 43-70 (Repl. Vol. 1981) provides for the release of the lien, on five days' notice to the lienor, when the property owner has satisfied the lien by full payment of the amount of the lien into the court where suit has been brought, or by filing with the court a bond of double the amount of the lien plus costs. VA. CODE ANN. § 43-71 (Repl. Vol. 1981) makes similar provisions for the release of a perfected mechanic's lien before a suit for enforcement has been brought.

VA. CODE ANN. § 43-67 (Repl. Vol. 1981) authorizes the marginal release of liens satisfied by payment or by the filing of a bond. The clerk's fee for the filing of a marginal release is currently \$0.50. VA. CODE ANN. § 43-69 (Repl. Vol. 1981).

57. Failure of the seller to file the proper bond may or may not be fatal to the closing. If the amount of the lien is insignificant, the purchaser might choose to waive his objection to the defect. He will, however, take title subject to all perfected liens regardless of actual knowledge, and to all unperfected liens of which he has actual knowledge.

The purchaser should be instructed to make a physical inspection of the caption property for evidence of recent construction or improvements which might give rise to a mechanic's or materialman's line against the property. See *infra* Part IV(B)(1).

58. In order to be perfected, mechanics' and materialmen's liens must be filed in the city or county where the subject property is located, not later than ninety days from the last day of the month in which the lien claimant last performed labor or furnished materials. VA.

For this reason, the purchaser should require the seller to provide an affidavit that there have been no improvements performed or materials supplied within the ninety days prior to the date of closing. This affidavit, commonly known as a "ninety-day letter," is required by all lenders and title insurance companies.

12. U.C.C. Financing Statements

Although financing statements normally cover only personal property, they may also apply to crops, minerals, or fixtures.⁵⁹ Therefore, a careful search of the financing statement index must be conducted.⁶⁰ Furthermore, certain items of personal property or fixtures may be included in the sales contract as part of the property to be transferred with the real estate. Carpeting, major appliances, and heating and cooling systems are commonly transferred with the realty and are often subject to outstanding security interests. If an examination of the U.C.C. index reveals a financing statement describing personalty or fixtures which may be considered part of the realty being transferred, the closing attorney should require the termination of the security interest or an affidavit or other proof that the items described in the filed financing statement are not in fact the same as those being transferred at closing.

13. Title Through Estates

Occasionally, the title examination will reveal that the caption property has been conveyed by the heirs or representatives of a deceased record title holder. In this situation, the fee title may now be unified in a single record title holder, or it may be fragmented into separate shares owned by the grantees of the various heirs or representatives. To be certain that the present purchaser receives from the seller title in fee to the caption property, it is necessary to account for all possible fragments of interest. In most cases, the "List of Heirs" recorded in the county clerk's office will allow the title examiner to follow and document these conveyances.⁶¹ If for some reason no list of heirs has been filed, it may be necessary to

CODE ANN. § 43-4 (Repl. Vol. 1981).

59. See generally, VA. CODE ANN. § 8.9-402 (Cum. Supp. 1982).

60. The forms of the U.C.C. financing statement indices may vary among jurisdictions. For example, in some localities the index is the form of a hardbound book, while in others the index is kept in a vertical file drawer.

61. See VA. CODE ANN. § 64.1-134 (Repl. Vol. 1980).

obtain an "Affidavit of Descent" from a person with personal knowledge of the decedent and his or her family. It is the seller's responsibility to clarify any questions raised by the title examiner as to the course of descent of the caption property.

B. *Unrecorded Defects*

1. Generally

It should be evident from the preceding discussion that many potential adverse interests and defects in the seller's title may not be revealed by the title examination. For this reason, the purchaser's attorney should always recommend or require that the purchaser physically inspect the caption property for evidence of adverse possession, easements, leasehold or other possessory interests, or recent construction. It is also a good practice to recommend a survey of the caption property to determine the location of property lines and improvements, compliance with setback lines, and possible encroachments or other defects which are not readily apparent. Certain other factors which are not disclosed by either a title examination or physical inspection may affect the seller's title to the caption property, or the purchaser's intended use thereof, and should be called to the purchaser's attention. These include zoning statutes, conditions attached to the zoning of the parcel, annexation by a municipality, or the recent divorce of the seller.

The work of discovering and curing these potential defects is above and beyond the work normally performed for a closing, and the closing attorney is entitled to a fee for the additional effort. The same is true of the job of curing any other defects which are discovered during the closing process. Generally, it is the purchaser's responsibility to pay for any additional work involved in searching for unrecorded defects such as those discussed above. Once a defect is discovered, however, it is the seller's responsibility to have the defect cured, including the payment of all additional fees and expenses, since the seller has contracted to convey marketable title.⁶² Where the title insurance company is willing to "insure over" an incurable defect, there is no problem. However, where the insurance company refuses to insure over the defect, the purchaser must decide whether he is willing to waive the defect and accept the risk himself.⁶³ The purchaser's attorney must fully

62. See *supra* note 18.

63. See *supra* Part III.

inform his client of the potential consequences of accepting such risks.

2. Access

The term "access" refers to the right of a property owner to enter upon and depart from his property. Unless otherwise provided in the sales contract, the purchaser is entitled to free and unrestricted access to the caption property.⁶⁴ No lender will make a loan which is to be secured by property without access. If a lack of access is revealed by the title examination, physical inspection, or survey, the problem must be cleared prior to closing. The lender must also be advised of the lack of access, so that it may review its loan commitment.

Access to property is usually provided by means of a public road. If the caption property is not bounded by such a road, a private easement may be necessary to allow access from the property to a public road.⁶⁵ Some sales contracts will initially provide for a private easement for access to a landlocked parcel.

As a rule, a private easement is treated as a separate tract of property.⁶⁶ A separate and complete title examination must be performed for the easement property. The legal description for the easement property must meet the same requirements as any legal description. If necessary, the closing attorney should require a physical inspection or survey of this property.

The purchaser is also entitled to free and unrestricted access to water, sewer, and other utility connections. This access to utilities is usually provided by means of a utility easement. This is generally not a concern in older residential areas, but in new developments and rural areas the physical inspection and survey should include a check to insure that the caption property has access to necessary utilities.⁶⁷

64. If the sales contract is silent as to access, it is generally assumed that the purchaser will have free and unrestricted access.

65. 1 R. MINOR, *supra* note 51, § 98.

66. Although an easement is treated as separate property, easements appurtenant are also often considered part of the benefited tract. For example, if the benefited tract is conveyed to a third party, the general rule is that the easement, even though not mentioned in the deed, is also transferred to the grantee. *See supra*, Part IV(A)(9) for a further discussion of easements.

67. The closing attorney should require evidence that water and sewer hookup fees and assessments have been paid when the caption property includes new construction or has recently been improved.

3. Adverse Possession

Where some link in the seller's chain of title to the caption property is based in part on adverse possession,⁶⁸ the purchaser should require, at the very least, an affidavit of possession as further evidence of the seller's title, to support and complete the record.⁶⁹ If there is any question regarding the validity of the seller's claim to title, the purchaser should not go through with the closing until the seller has successfully brought a suit to quiet title which establishes him as the true owner of the caption property.⁷⁰

Conversely, if a physical inspection or survey reveals any evidence that the caption property may be subject to adverse possession by a third party, the purchaser should require an affidavit from the seller that no one has been in adverse possession of the caption property; or the purchaser should refuse to close until a suit to quiet title establishes the seller as the true owner over any potential adverse claimants.

V. LIENS

A. Judgment Liens

Final judgments for money damages constitute liens against all real property which the defendant owns or subsequently acquires.⁷¹ The title examiner will report such judgments as objections when there is a possibility that the named defendant is the seller (or, in the case of a loan closing, the borrower).

Where the judgment is known to be or is admitted to be against

68. See VA. CODE ANN. § 55-153 to -155 (Repl. Vol. 1981). See also *supra* Part IV(A)(2).

69. The affidavit must be executed by a person with knowledge of the caption property for the entire statutory period.

70. See *supra* Part IV(A)(2).

71. VA. CODE ANN. § 8.01-458 (Repl. Vol. 1977). See, e.g., *Miller v. Kemp*, 157 Va. 178, 160 S.E. 203 (1931).

There is a 20-year limitation on actions to enforce a judgment, VA. CODE ANN. § 8.01-251(A) (Repl. Vol. 1977), which may be extended for an additional 20-year period upon the motion of the judgment creditor and upon a showing of good cause. VA. CODE ANN. § 8.01-251(B) (Repl. Vol. 1977).

Judgments from both state and federal courts are recorded in the judgment docket book in the clerk's office in the city or county where the defendant's property is located. VA. CODE ANN. §§ 8.01-446 to -447 (Repl. Vol. 1977). See also VA. CODE ANN. §§ 55-138 to -140 (Repl. Vol. 1981). Judgments are considered as a lien on all of the defendant's real estate from the time the judgment is recorded on the judgment lien docket of the clerk's office where the land is located. VA. CODE ANN. § 8.01-458 (Repl. Vol. 1977). Judgments are not considered docketed or recorded until they have been properly indexed in the judgment docket book index. VA. CODE ANN. §§ 8.01-450, 17-76 to -79 (Repl. Vol. 1977).

the seller, the purchaser must require that it be satisfied prior to or at closing. The closing attorney should obtain the balance due from the judgment lienholder and oversee the seller's satisfaction of the lien. The attorney should also verify prior to closing that the lien has in fact been released of record.⁷² If the judgment is to be satisfied at closing, the seller should tender an amount sufficient to pay the principal plus all interest and costs, so that the closing attorney can oversee the satisfaction of the lien at the time the closing documents are recorded.⁷³

If it is not certain that the judgment is against the seller, and he denies that he is the defendant named in the judgment, an affidavit to this effect may be sufficient to protect the purchaser:

Affiant does state under oath that he is not one and the same person as John D. Adams, named as defendant in a judgment dated _____, 19__, and recorded _____, 19__, in the Clerk's office, Circuit Court of _____ County, Virginia, in Judgment Docket _____, page _____, for _____ principal, in favor of Rich Loan Company, plaintiff.

Judgments against prior owners of the caption property may remain as valid liens against the property despite the fact that the property has been subsequently conveyed.⁷⁴ The title examiner should therefore search the judgment docket index for the ten year period preceding the closing date to determine if there are any unsatisfied judgments against the seller's predecessors in title which were docketed prior to or during their time as record title holders of the caption property. The purchaser has no choice but to re-

72. See VA. CODE ANN. § 8.01-455 (Repl. Vol. 1977) (permits the judgment debtor to move the court which rendered the judgment to order the judgment marked satisfied, upon 10-days notice to the lienholder, and upon proof that the judgment has been paid off or discharged). See also VA. CODE ANN. § 8.01-454 (Repl. Vol. 1977) (requires the lienholder to have the satisfaction of the judgment entered within 30 days after the judgment debtor has tendered payment).

73. VA. CODE ANN. § 8.01-456 (Repl. Vol. 1977) permits any person liable for judgments to satisfy the debt by paying into the court which rendered the judgment an amount sufficient to pay the principal, interest, and all costs. The clerk's fee for recording satisfaction of a judgment is currently \$1.00. VA. CODE ANN. § 14.1-112(9) (Cum. Supp. 1982).

74. There is a 10-year limitation on actions to enforce a judgment against land which has been conveyed to a grantee for value. For the action to survive, it must be brought within 10 years of the recordation of the deed from the judgment debtor to the grantee, and a notice of lis pendens must be filed pursuant to section 8.01-268 during the 10-year period. VA. CODE ANN. § 8.01-251 (C) (Repl. Vol. 1977). See *supra* Part IV(A)(8) for a discussion of the notice of lis pendens.

quire that the current seller satisfy these judgments of record, for they remain as liens until the limitation period expires, and are therefore still subject to execution.

B. *Tax Liens*

Unpaid county or city property taxes must be paid at or prior to closing, except for current year taxes which are not yet due and payable. The closing attorney should obtain the payoff figures from the appropriate tax officials,⁷⁵ and should supervise the seller's payment of the debt.

Federal tax liens, when recorded, are liens against all of the real property owned or subsequently acquired by the delinquent taxpayer.⁷⁶ Reported tax liens should be handled in the same manner as judgments,⁷⁷ except that the payoff figures are obtained from the Internal Revenue Service. The IRS will provide a certificate of release or discharge when the lien has been satisfied and it may in certain circumstances provide partial certificates which release only certain parcels of the taxpayer's property from the lien. The certificate is presented to the clerk of the State Corporation Commission, who will then release the lien of record.⁷⁸

VI. CONCLUSION

A practical guide is necessarily limited in scope. The exact action required of a title examiner can only be determined by the actual facts present—the nature and severity of the title defect, the purpose for which the property is being purchased or the loan is being made, and the time frame in which the parties contemplate closing the transaction. However, if the basic procedures discussed in this article are followed, the practitioner should feel assured that any

75. Tax records may be located in the office of the clerk of court or may be maintained in the city or county administrative offices. The "Current Tax Index" contains the records of taxes assessed for the most recent four-year period, while the "Delinquent Tax Index" contains the records of unpaid taxes which are delinquent for more than four years. Both indices should be examined carefully. *See supra* note 8.

76. *See generally* the Virginia version of the Uniform Federal Tax Lien Registration Act at VA. CODE ANN. §§ 55-142.1 to -142.9 (Repl. Vol. 1981).

Upon request of any person, the clerk of the State Corporation Commission will, for a fee of \$1.00, issue a certificate showing whether there is on file any notice of a federal tax lien naming a particular person. The certificate will show the date and hour that the files were searched and will also show the date and hour of filing for any notice of lien on file. VA. CODE ANN. § 55-142.3(d) (Repl. Vol. 1981).

77. *See supra* Part V(A).

78. VA. CODE ANN. § 55-142.3(b) (Repl. Vol. 1981).

defects which would affect the marketability of the title will be discovered during the title examination.

APPENDIX⁷⁹

APPENDIX A

Title Order Form

Client: _____ File No.: _____
 Date Ordered: _____ Date Needed: _____
 Date of Closing: _____
 Legal Description:
 County _____ Town _____ District _____
 Lot _____ Block _____ Section _____ Subdivision _____
 Deed Recorded in: DB _____ Pg. _____
 Street Address _____
 Acres _____
 Metes & bounds description or survey attached? _____ yes
 _____ no
 Plat recorded in: PB _____ Pg. _____
 Seller(s) full name: _____
 Purchaser(s) full name: _____
 Period of Examination:
 Full Search _____
 Limited Search to _____ (Note source of title prior to
 this date or document)
 Type of Financing:
 1st Mort. _____
 2nd Mort. _____
 Assumption _____
 Other _____
 Current loans: _____
 Other liens: _____
 New lender: _____
 Title Insurance: _____
 Mortgage Policy _____
 Owner's Policy _____
 Remarks:

79. Appendices B-H, *infra*, are used with the permission of the Office of the Attorney General of the Commonwealth of Virginia.

APPENDIX B
Conveyance Sheet

COUNTY: _____ TOWN: _____ DISTRICT: _____ LINK NO. _____

Date of Deed _____
Date of Acknowledgment _____

Date of Recordation _____
Deed Book _____, p. _____

Grantors
to

Grantees

SOURCE Book _____ p. _____
PRIOR GRANTOR _____

TENANCY: TENANTS BY THE ENTIRETY () JOINT TENANTS ()
SURVIVORSHIP Yes () No () TENANTS IN COMMON ()
OTHER _____

COVENANTS: (Check applicable items)
GENERAL WARRANTY () MODERN ENGLISH () SPECIAL WAR-
RANTY ()
NONE ()

CONSIDERATION: (TOTAL) \$ _____
CASH \$ _____
DEFERRED \$ _____

CONVEYS: (Short description - full description on separate sheet)

(Note estate, if it is less than entire fee) _____

Is deed properly signed: Yes () No ()

NOTES

- (1) Any reservations and restrictions in deed? Yes () No ()
(Note them below.)
(2) Any defects in form of deed, execution, acknowledgment or recordation? Yes () No ()
(List defects)
(3) Any substantial errors in description? Yes () No ()
(Explain below.)
(4) If this is a commissioner's deed, note below style of chancery suit and name of
court and attach to this Link your abstract of the chancery suit.
(5) If this is a conveyance foreclosing a deed of trust, so state below, and indicate that
you are satisfied that the provisions of the deed of trust were followed in the
foreclosure.
(6) Note below other objections such as non-joinder of spouses, etc.

(Use space below for new description and explanation of notes. Refer to notes by appropri-
ate numbers. If sufficient space, use Continuation Sheet.)

APPENDIX D

Easements

COUNTY: _____ PARCEL NO. _____

OBJECTION NO. _____

Deed Book _____, p. _____

Dated: _____

Recorded: _____

Grantors
to

Plat in _____ Book _____, p. _____

Grantees

CONSIDERATION (if more than \$1.00) \$_____

FOR: () electric power; () telephone; () water; () gas transmission;

() other, specify _____

Is this a general easement over, upon and across the lands owned by the grantor or in which he may have an interest? () Yes. () No.

Is there a specific width or length? () No. Width _____ Length _____

Is the proposed right of way likely to affect this easement? () Yes. () No.

NOTES

COUNTY: _____ PARCEL NO. _____

OBJECTION NO. _____

Deed Book _____, p. _____

Dated: _____

Recorded: _____

Grantors
to

Plat in _____ Book _____, p. _____

Grantees

CONSIDERATION (if more than \$1.00) \$_____

FOR: () electric power; () telephone; () water; () gas transmission;

() other, specify _____

Is this a general easement over, upon and across the lands owned by the grantor or in which he may have an interest? () Yes. () No.

Is there a specific width or length? () No. Width _____ Length _____

Is the proposed right of way likely to affect this easement? () Yes. () No.

NOTES

APPENDIX E

Unreleased Deed Of Trust

CITY _____
COUNTY _____

LINK NO. _____ PARCEL NO. _____

DATE OR DEED _____

DATE OF ACKNOWLEDGMENT _____

Grantors
to

DATE OF RECORDATION _____

Trustees
for the benefit of

Secured by _____ note (s) of
\$ _____

Payable in _____ installments of
\$ _____, to be paid in
full by _____

CONVEYS:

COMMENTS:

CITY _____
COUNTY _____

LINK NO. _____ PARCEL NO. _____

DATE OR DEED _____

DATE OF ACKNOWLEDGMENT _____

Grantors
to

DATE OF RECORDATION _____

Trustees
for the benefit of

Secured by _____ note (s) of
\$ _____

Payable in _____ installments of
\$ _____, to be paid in
full by _____

CONVEYS:

COMMENTS:

APPENDIX F

Title Through Estate

COUNTY: _____ LINK NO. _____
FILL OUT IN ALL CASES

NAME OF DECEDENT _____

DATE OF DEATH _____

Is there evidence State inheritance tax has been paid? Limitation by Statute is 20 years. (§ 58-180)

Yes () No () (If answer is in affirmative, give reference.) _____
Book _____ p. _____

Was decedent's estate of such size as probably to be subject to federal taxes? Limitation by Statute is 10 years. Yes () No () If subsequent to January 1, 1974, is there final settlement of accounts showing that debts have been paid? (See § 64.1-183) Yes () No () (If answer is in affirmative give reference.)
Book _____ p. _____

If estate is not fully settled, was suit commenced for the administration of assets or reports filled of debts and demands? Yes () No () If answer is in the affirmative, give date suit was commenced _____ or report filed _____ in Book _____ p. _____

WAS DECEDENT RESIDENT OF VIRGINIA? Yes () No ()

FILL OUT IF DECEDENT DIED TESTATE

DATE OF WILL _____
WHERE AND WHEN ADMITTED TO PROBATE: _____ COURT _____

DATE OF PROBATE _____
WILL BOOK _____, p. _____

DEVISEES AND NATURE OF ESTATE (here note any peculiarities of devise.)

If any question about meaning of devise, check here and copy language on Continuation Sheet. ()

If spouse not provided for or renounced will, check here and explain on Continuation Sheet. ()

If pretermitted heir appears from record, check here and explain on Continuation Sheet.()

FILL OUT IF DECEDENT DIED INTESTATE

NAME OF SURVIVING SPOUSE (If non, so state) _____

NAMES OF HEIRS AT LAW AND AGES OF ANY SHOWN TO BE MINORS:

LIST OF HEIRS FILED ON _____ IN _____ BOOK _____, p. _____

IF NO LIST OF HEIRS FILED, STATE HOW HEIRS DETERMINED (i.e. recitals in Link No. _____ etc. or settlement of accounts etc.)

FILL OUT IF APPLICABLE

STATE HERE ANY OTHER DEFECTS OR IRREGULARITIES THAT SHOULD BE NOTED.

APPENDIX G
Chancery Suit

COUNTY: _____
STYLE OF SUIT: _____

COURT: _____
DATE COMMENCED: _____
DATE TAKEN FROM DOCKET _____ ENDED CHANCERY FILE NO. _____
(If none, give Chancery Order Book and Page Number of significant decrees.) _____

PURPOSES OF SUIT: _____

WERE ALL NECESSARY PARTIES BEFORE THE COURT? Yes () No ()
WERE INFANTS OR INCOMPETENT DEFENDANTS REPRESENTED BY
GUARDIAN AD LITEM?

Yes () No ()

WAS RELIEF GRANTED ASKED FOR IN THE BILL AND JUSTIFIED BY
THE EVIDENCE?

Yes () No ()

WAS THE PROPERTY SOLD IN ACCORDANCE WITH THE DECREE OF
THE COURT?

Yes () No () WAS SPECIAL COMMISSIONER'S BOND EXECUTED?

DATE OF DECREE OF SALE _____

DATE OF DECREE CONFIRMING SALE _____

IS THIS SUIT REGULAR IN ALL RESPECTS? Yes () No ()

(If any of the foregoing questions is answered in the negative, explain below. Also
note any other objections.)

APPENDIX H

Other Objections To Title

JUDGMENT

(List judgments for 20 years from date of examination) (See § 8-396 & 8-393)

A Judgment against _____ for _____
(name) (name)
in the amount of _____ with interest from _____
(date)
until paid plus _____, costs. Judgment rendered _____
(date)
docketed _____, judgment lien docket book _____, page _____
(date)

Comments: _____

CURRENT TAXES:
(List all unpaid taxes not covered above, showing years and amounts and the names in which assessed)
(Last three taxable years)
(including current year)

DELINQUENT TAXES:
(List below all taxes delinquent for past 20 years giving the year and the amount required to discharge good for 60 days.)
(§ 58-767)

ASSESSMENT:
Land + Building = Total Tax
Current Year _____
Next Current Year _____
Next Current Year _____

UNEXPIRED LEASES:
Lessor _____
Lessee _____
Date of Lease _____
Recorded in Deed _____
Book _____, p. _____
Expiration Date _____
Renewal Options _____

OTHER OBJECTIONS TO TITLE NOT SHOWN SEPARATELY:

(Here list such matters as financing statements (Since January 1, 1966) mechanic's liens, lis pendens, rights of tenants in possession known to you, etc.)

OBJECTION NO. _____

APPENDIX I

1. *Preliminary Title Opinion Letter*

July 15, 1983

Ms. Mae I. Byeit
119 W. Central Ave.
Forest, Va. 22779

Re: Property — Gary T. and
Bonnie A. Vendor, Lot 8,
Block D. Woods Terrace,
Amelia County, Va.

Dear Ms. Byeit:

At your request, I have examined title to the following described property, as disclosed by the general indices to the records in the Clerk's Office of the Circuit Court of Amelia County, Virginia, from January 12, 1922, to July 14, 1983, at 4:00 o'clock p.m.:

Lands located in Giles Magisterial District, Amelia County, Virginia, designated Lot 8, Block D, as shown on "Plan of Woods Terrace, Section F" made by John E. Roberts, Civil Engineer, dated April 12, 1958, and recorded June 10, 1958, in the Clerk's Office, Circuit Court of Amelia County, Virginia, in Plat Book 4, page 31. Being the same conveyed by deed from Afton G. Harris and Joan G. Harris, his wife, to Gary T. Vendor and Bonnie A. Vendor, his wife, date January 4, 1981, recorded January 8, 1981, in the Clerk's Office, Circuit Court, Amelia County, Virginia, in Deed Book 168, page 747.

From such examination, it is my opinion that good and marketable title to said land is vested in Gary T. Vendor and Bonnie A. Vendor, husband and wife, in fee simple, as tenants by the entirety with rights of survivorship as at common law, subject only to the following objections, restrictions and requirements:

- (1) Taxes: 1983 real estate taxes are not yet due and payable.
- (2) Any unrecorded leases or mechanics' and materialmen's liens: We require that you ascertain by inspection whether any labor has been performed or materials furnished which could be asserted as a lien against the property.
- (3) Easements: (a) easements in favor of public utilities for power and water;
(b) an easement in favor of Amelia Courthouse Sanitary District of Amelia County, Virginia, dated July 15, 1958, recorded August 13, 1958,

in Clerk's Office, Circuit Court, Amelia County, Virginia, in Deed Book 111, page 371. An easement of 10 feet in width which runs along northern boundary line, including right to ingress and egress.

(4) Deeds of Trust:

Gary T. Vendor and Bonnie A. Vendor, husband and wife, to John H. Lawsen and Jenson A. Campbell, Trustees, dated and recorded January 8, 1981, in the Clerk's Office, Circuit Court, Amelia County, Virginia, Deed Book 168, page 749; in the amount of \$45,000.00. Noteholder: VNB Mortgage Corporation.

(5) Restrictive Covenants:

Recorded in Deed Book 111, pages 605 to 607 recorded July 13, 1958, which restricts the property to residential use.

(6) Recorded liens: None of record.

(7) Leases: None of record.

(8) Any matter which would be revealed only upon an accurate survey and examination of the lands, including the location of any improvements. I advise that you inspect the property for boundaries and improvements, with a new survey if necessary, as I do not certify to these.

(9) Local zoning ordinances, if any, which should be investigated to determine their effect upon the property.

(10) Other rights not revealed by the records, including rights of adverse possessors, easements by implication or prescription, leases for less than 5 years, contracts to lease. This opinion does not certify to or indemnify you for errors or omissions in public records, nor for any defects in the title not shown by the public records such as forgeries, conveyance by mentally incompetent persons or minors, undisclosed marriages or re-marriages.

(11) (Insert any requirements for affidavits, releases, correction deeds, etc.) Should you have any questions please do not hesitate to contact me.

Yours very truly,

Attorney at Law

2. Final Title Opinion Letter

August 5, 1983

Perpetuity Savings & Loan
Association
200 W. Stephenson Ave.
Roanoke, Virginia 28446

Re: Final opinion of title
J.T. Isenberger loan
(see schedule "A"
attached)

Dear _____:

Since my preliminary title opinion of *July 10, 1983*, referred to in Schedule "A" attached, I have examined title to the lands described in Schedule "A" from date of last examination shown in Schedule "A" through *August 5, 1983 at 11:30 o'clock a.m.* In my opinion title is now vested in Joseph T. Isenberger and Elaine C. Isenberger, his wife, subject to a valid deed of trust executed by them to Thomas A. Smith, trustee, dated and recorded August 5, 1983, in Deed Book 259, page 26, Clerk's Office, Circuit Court of Boone County, Virginia, in the sum of \$46,800. This deed of trust constitutes a first lien against the described lands.

This opinion is for the use and benefit of Perpetuity Savings and Loan Association only, and is for loan purposes only.

Yours very truly,

Attorney at Law

APPENDIX J

LAWYERS TITLE

No. _____

INSURANCE CORPORATION

Preliminary Certificate of Title

SCHEDULE "A"

Description of Real Estate:

TAX ASSESSMENT FOR _____

Tax Bill No. _____

Land _____

Improvements _____

Total _____

Total Tax: _____

INDICATE TYPE OF ORDER BEING MADE: (Check one block only)

LTIC To Examine	Title Examined in Name of Current Record Owner by Approved Attorney From _____ 19____, at _____m.	Title Examined by Approved Attorney with reliance on LTIC Case No. _____	60 Year Title Examination by Approved Attorney (NO PLANT FEE REQUIRED)
-----------------	---	---	---

SCHEDULE "B"

1. The record title to the real estate described in Schedule "A" has been examined to the date hereof for the protection of the following Lender: _____ in the consummation of a loan in the amount of \$ _____ to: Type of Loan: Construction: ; Permanent ; Construction/Permanent ;

and for the protection of the following purchaser/borrower:

in the consummation of a purchase in the amount of \$ _____ .

- 2. and found to be vested in
- 3. whose estate or interest is: Fee Simple ; Leasehold ; Other _____ and found to be free from material recorded objections except as noted below.

OBJECTIONS

- 1. Taxes for the year(s) _____ and any unpaid pipe connection or pavement charges.
- 2. Encroachments, overlaps, deficiency in quantity of ground, boundary line disputes, roadways, unrecorded easements, or any matters not of record which would be disclosed by an accurate survey and inspection of the premises.
- 3. Restrictive covenants. No. _____; Yes _____; DB _____; P _____; LTIC No. _____
- 4. Possible unfiled mechanics and materialmen's liens.
- 5. Rights of parties in possession.
- 6. Incorporate by reference the following objections from Schedule B of LTIC Case No. _____.

Dated this _____ day of _____, 19__ at _____ o'clock, __.m.

Title Examined By

APPENDIX K

Combined Form: Binder, Counsel's Preliminary Certificate of Title, and Counsel's Final Certificate of Title

Special Counsel's Certification of Title

THE UNDERSIGNED HEREBY CERTIFIES TO CHICAGO TITLE INSURANCE COMPANY THAT: Based on a personal examination of all public records covering a period of not less than 60 years last past, the fee simple title to the real estate described in Schedule A hereof, is as of..... 19....., at o'clock.....M., vested in , subject only to the liens and encumbrances on, objections to, or requirements of title as are noted under Schedules B and C hereof, (Attach riders if necessary.)

SCHEDULE A: (Legal description of real estate) Lying and being in the County of State of

SCHEDULE B: (Note all matters found to be inimical to the fee simple marketable character of the title examined, other than the instruments described under Schedule C. below.) **IF NONE, SO STATE.** (Attach copies of all restrictions, easements, etc.) (NOTE: If title is based on tax deed, or is otherwise questionable, please advise fully.)

- 1. **MORTGAGES:** (Identify by date, amount, parties and full record date.) (Indicate disposition to be made of each item.)
- 2. **MECHANICS' AND MATERIALMEN'S LIENS NOT OF RECORD.** (If filing period expired, so state—otherwise submit executed waiver.)
- 3. **SUCH FACTS AS WOULD BE DISCLOSED BY AN ACCURATE SURVEY.**
- 4. **RESTRICTIVE COVENANTS—omitting any covenant based on race, color, religion, or national origin:** (Submit full recording data.)
- 5. **BUILDING SET BACK LINES SHOWN ON RECORDED PLAT:**
- 6. **TAXES (INCLUDING TOWN):** (Indicate date through which paid and amount.)
- 7. **SPECIAL ASSESSMENTS:** (Give total amount, amount paid, and balance payable.)
- 8. **RIGHTS OF PARTIES IN POSSESSION OTHER THAN OWNERS:** (Give full recording data for all leases.)
- 9. **OTHER LIENS, OBJECTIONS AND DEFECTS FOUND BUT NOT REPORTED ABOVE INCLUDING JUDGMENTS, ATTACHMENTS, SUITS PENDING, BANKRUPTCY PROCEEDINGS, EASEMENTS, AND SUCH OTHER MATTERS OF RECORD OR KNOWN TO COUNSEL.**

SCHEDULE C: (Instruments to be insured) (Consideration, only if owner's insurance is required.) \$

1. Deed from.....
to.....
2. Deed of Trust (Mtg.) from.....
to (Trustees).....
securing (Insured).....
and/or in amount of \$.....
(Recording data):.....F.H.A..... G.I..... Conv..... Temp. Const..... Perm.
Const.....
Settlement to be at the office of (Special Counsel);.....
Address By

COMMITMENT TO INSURE—PART II: To: (Insured)
.....
..... in amount of \$.....

Countersigned on, 19.... By**Validating Signatory**

CHICAGO TITLE INSURANCE COMPANY, by this Commitment to Insure, hereby insures against loss or damage, not exceeding the amount specified in PART II hereof, which may be sustained on account of the failure of the Certification of Title by duly approved Special Counsel of the Company to show the true status of the title to the property therein described as of the date and hour thereof: such insurance to be null and void unless title policy in usual form is requested, and the premium therefor paid, within one (1) year from the date thereof. This Commitment inures to the benefit of the insured named in PART II hereof, and to each successor in interest in ownership of the note described by the deed of trust (mortgage) referred to in Schedule C of the Certification of Title.

Unless otherwise indicated in PART II, the policy or policies to be issued pursuant to this Commitment shall be the American Land Title Association Standard Loan Policy and/or the American Land Title Association Owner's Policy, Standard Form B. Such policy or policies are to be issued in the form customarily used by the Company in accordance with the applicable insurance laws and regulations on the effective date of such policy or policies.

This commitment shall not be binding until signed and validated in PART II hereof by a duly authorized agent of the company whose identity is shown below.

**SPECIAL COUNSEL'S FINAL CERTIFICATION OF TITLE
(For exclusive use by Agency in preparation of Policy)**

To CHICAGO TITLE INSURANCE COMPANY

1. The undersigned hereby certifies that the examination of title to the premises described in the Commitment to Insure has been continued from the date of preliminary examination to, 19...., at o'clock.....M., which date shall be deemed to be the date of this certificate, and that the fee simple marketable title thereto is now vested in.....
.....
.....

under and by virtue of a dated, 19..... made by.....

 and filed for record on, 19....., at o'clock.....M., and recorded in
 Book Page of the deed records of County,
 (Instrument No.....) (If deed contains restrictions, easements
 or reservations, attach a verbatim copy.)

IF MORE THAN ONE DEED ATTACH RIDER

CONSIDERATION \$..... (IF OWNER'S POLICY REQUIRED)

-
2. Further that the instrument evidencing the lien, title to secure which is to be insured, is a
 dated, 19....., executed by.....

 to (trustees).....

 securing (beneficiaries to be insured)
 and/or
 and/or
 and filed for record on, 19....., at o'clockM., and re-
 corded in Book Page of records aforesaid (Instrument
 No.....); and is a valid first lien; secures notes—bonds all of
equal rank and lien in the aggregate principal sum of \$.....; and signed
 by the same parties for a present valid consideration, or in renewal or extension of a
 former lien—**except as noted below.**
 3. Except as hereunder noted the title here and previously reported has been properly
 closed, full consideration has been paid, items under Schedule B have been properly dis-
 posed of; nothing has been filed of record or come to the attention of the undersigned
 which would adversely affect the marketability of title; and no prior lien has been subor-
 dinated to the lien of the need of trust (mortgage) at No. 2 next above except: (Note: If
 any item set forth under Item 1, Schedule B has been **satisfied but not yet released**
of record, so indicate, and furnish notification when release has been placed of record.)
 4. Taxes (including town) paid through, 19.....
 5. Special assessments outstanding, in any.....

THEREFORE: IT IS THE OPINION OF THE UNDERSIGNED that, subject only to
 exceptions and references shown and in the Commitment to Insure, the title hereby certified
 is insurable as fee simple and marketable.

..... By
 Special Counsel

APPENDIX L

Final Certificate of Title

**CHICAGO TITLE INSURANCE COMPANY
SPECIAL COUNSEL'S CERTIFICATION OF TITLE
(For use by Company in preparation of Policy after Closing)**

THE UNDERSIGNED hereby certifies unto CHICAGO TITLE INSURANCE COMPANY that:

1. The examination of the title to the premises described in Commitment to Insure No. _____ has been continued from the effective date and time thereof to _____, 19____ at _____ o'clock _____.M., which shall be deemed to be the date and time of this Certification; and the marketable fee simple title thereto is now vested in _____ by virtue of a DEED, from _____ dated _____, 19____, and duly recorded on _____, 19____, at _____ o'clock _____.M., in BOOK _____, PAGE _____ (or as Instrument No. _____) among the Land Records of _____ County, Virginia.
CONSIDERATION \$_____ (IF OWNER'S POLICY IS REQUIRED)
(If more than one Deed, attach rider) (If Deed creates restrictions, easements or reservations, attach copy thereof)

2. The title to the aforesaid premises is now encumbered by the following instrument evidencing a **valid first lien**, title to secure which is to be insured: DEED OF TRUST (Mortgage), from _____ to _____, Trustees, dated _____, 19____, and duly recorded on _____, 19____, at _____ o'clock _____.M., in BOOK _____, PAGE _____ (or as Instrument No. _____) among the aforesaid Land Records, securing _____ and/or _____ in the aggregate principal sum of \$_____, as evidenced by _____ Notes (or Bonds), all of equal rank and lien, and signed by the same parties for a present valid consideration, or in renewal or extension of a former valid lien, EXCEPT AS NOTED HEREINAFTER.

3. The transfer of title and the loan represented by the above-referenced instruments have been properly closed, in accordance with the instructions of the parties thereto or thereby secured; full consideration has been paid and has been properly disbursed; all of the requirements set forth under Section 1, Schedule B, of the aforesaid Commitment, have been properly satisfied and disposed of; nothing has been filed of record subsequent to the effective date and time of said Commitment or come to the attention of the undersigned which would adversely affect the marketability of title; and no prior lien has been subordinated to the lien of the above referenced Deed of Trust (Mortgage), nor has any junior lien been filed of record simultaneously therewith—**EXCEPT AS FOLLOWS:** (Note: If any item set forth at Section 1, Schedule B, of said Commitment, has been **satisfied, but not yet released of record**, so indicate, and furnish subsequent notifi-

cation when release has been placed of record.)

- 4. Taxes (including town) paid through _____, 19_____
- 5. Special assessments outstanding, if any _____

THEREFORE: In reliance upon the information set forth in your Commitment to Insure, **IT IS THE OPINION OF THE UNDERSIGNED** that, subject only to exceptions and references shown above and in the Commitment to Insure, the title hereby is insurable as fee simple and marketable.

_____ By _____
Special Counsel