

REAL ESTATE TRANSACTIONS

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I. INTRODUCTION.

This is the fourth rendition of this chapter. In the introduction to the third rendition it was observed that there had been little change of significance noted between the second and third renditions. **THIS IS NOT THE CASE FOR THE FOURTH RENDITION.** Two significant developments have occurred as headnoted and discussed in Paragraphs A. and B. below:

- A. **Repeal and Reenactment of Certain Statutes Related to Dissent and Distribution, Dower, Curtesy and Spousal Interests** - The passage of House Bill 4112 on March 7, 1992, with an effective date 90 days from passage resulted in the repeal, amendment and reenactment of certain sections of the Code which relate to: (1) intestate succession and distribution of spousal and surviving heirs shares, (2) representation, (3) abolition of dower and curtesy, (4) effect of premarital will on spouse's share, (5) requirement of spousal notice where certain property is conveyed.

This complicates the title examiner's role considerably. Any events in the chain of title, after June 5, 1992, which involve any of the five matters set forth above must be evaluated under the new law. This requires the examiner to consider and be knowledgeable in the pre-June 6, 1992 statutory provisions and the post-June 6, 1992 repeals, amendments and reenactments.

- B. **The Repeal of Section III, Article XIV of the West Virginia Constitution** - The repeal of Section III, Article XIV of the West Virginia Constitution was "billed" as the "Landowner's Protection Amendment." The result is contrary to this objective. The repeal of this Section was effective July 1, 1993. Prior to July 1, 1993, in examining titles, if the examiner determined that (1) the present owner had "continuous possession," (2) under color or claim of title, (3) for ten years, (4) and had paid the state taxes due thereon for any five years during such possession, then any prior title that had forfeited for delinquent taxes and transferred to the state automatically, "ipso facto," transferred to the present owner. This was a beautiful device to settle "stale" claims and gave the examiner some comfort in reaching a conclusion of good marketable title in the name of the apparent present owner. This repeal is discussed further in Section VI hereafter.

Except for these changes, little statutory change of significance was noted relative to real estate transactions. Case law has not impacted the mechanical function of title examination. Recent decisions, however, have placed a

greater responsibility on the vendor to advise purchasers of defects in the property transferred.

Real property transactions, title examinations, abstracts of title and related considerations are time honored aspects of the practice of law which, together with the recording statutes provide a fairly "fail safe" manner of securing property interests in real property. The land records in West Virginia, in some instances, as the western lands of the colony of Virginia, sometimes pre-date the formation of our country. These records are "hard copies" providing a registry for land titles which have undergone little significant change in form. With the advent of the computer and the "Information Highway" most certainly significant changes in the manner and method by which title examinations are conducted will occur. Example, through the use of the "Asset" library in Nexus an examiner can obtain the current land book records for approximately 50 counties in West Virginia. Outside of West Virginia, in many states, the most recent sales have been computerized and information on these may be available on the "Information Highway." The next ten to twenty years will undoubtedly witness a dramatic change in how some lawyers practice real estate law insofar as real estate transactions, examinations of title, etc. are concerned.

This chapter is intended to provide a digest of the procedure to be followed for title examinations, the rendering of opinions as to marketability of title, the role of the attorney in participating in closings that involve transfer of title with guidance provided and problems noted as the records exist today. Detailed consideration will be given to the typical real estate purchase transaction. General consideration will be given to those aspects of title law peculiar to West Virginia. It is hoped that this will provide a ready reference for the newly admitted attorney and to more experienced attorneys who do not undertake title problems with enough frequency to feel fully oriented in this area.

II. GENERAL CONSIDERATIONS.

Unfortunately, the first association an attorney will have with most real estate purchase transactions will be after the parties have entered into an agreement to purchase and sell. This is especially true in an area where there is a rapid turnover of real estate and a high percentage of the transactions are handled by realty companies. Assuming that the attorney does not participate in preparation of the sales agreement, option to purchase, etc., then his first objective will be to carefully examine these preliminary documents and gather any additional information required to complete his search. At this point, he must anticipate

preparation of the required transfer documents, including deed descriptions, easements, etc. If any legal questions are raised in his mind, most answers can be found under the key words of "Vendor and Purchaser."

A. Forms of Agreement. The form of agreement under which a real estate transaction is initiated may be:

1. Real Estate Purchase Agreements or Contracts of Sale. These agreements are standardized and are designed to cover all situations. This detracts from their use in specific situations and may create controversies over the interpretation of the language used to fill in the blanks. Since these types of agreements are most frequently used, they are given primary treatment in this chapter.
2. Offer to Purchase - Offer to Buy. Such agreements are particularly useful to the real estate broker in that he can solicit an offer from a prospective purchaser and leave the signed offer to purchase with the vendor or purchaser for his signature during a weak moment. These may incorporate many of the features of a standard contract and vary mainly in the method of execution.
3. Option to Purchase. This approach is most frequently used for commercial property or by commercial organizations. After an option is exercised by the optionee, the requirements of offer and acceptance are met and the option then evolves into a contract of sale or purchase agreement.

B. Role of Real Estate Broker. In recent years, there has been a proliferation of real estate brokers. As a result, a great percentage of current real estate transactions will be attributable to a broker's efforts. The contracts used by the brokers frequently require that they be officially recognized and that their commission be assured under certain circumstances. Their participation in a transaction will vary according to their expertise and method of operation. In any event, since their commission may depend upon a consummation of the sale, they have a direct interest in the closing and will frequently insist on attending the closing. Real estate brokers and salesmen are licensed and regulated in accord with § 47-12-1. et seq., and are required to report certain information to the Real Estate Commission concerning closings under their brokerage or resulting from their sales. The brokers can be helpful in this regard, and it is worth the lawyer's efforts to coordinate with them. Familiarity with the techniques used by the different brokers, together with the contracts used by them, is of some benefit to the attorney handling real estate


transactions. Effective January 1, 1987, real estate brokers or other individuals who customarily act as middlemen for real estate transactions are required to file a Form 1099 with the details of the transaction with the Internal Revenue Service. A written statement shall be furnished to the customer on or before January 31 in the calendar year following the closing of the transaction. See Section 6045 of the Internal Revenue Code. For his own protection, an attorney participating in a closing should assure himself as to who will take the responsibility for this return.

- C. First Steps. Upon receiving a copy of the executed agreement and a request (usually from the purchaser) to handle the matter to a conclusion, the attorney should examine the agreement and have a conference with his client to determine what the parties had in mind when they made the agreement. Perhaps unfavorable provisions can be renegotiated. Should this prove fruitless, which is likely the case, the client should be advised of the steps necessary to protect his interests. This may be a good opportunity to try to clear up ambiguities in the terms of the agreement by renegotiation or by use of a supplemental letter between the parties.
- D. Sale by Owner. If the realty is being sold by the owner rather than through a real estate broker, the attorney's first contact with the transaction will be a request to draft a contract of sale. The attorney will be responsible for ascertaining what the parties have agreed to and setting it forth in clear, unambiguous language.


If you represent the owner in a transaction, it is important that you counsel with him concerning the obligations of owners to make disclosures to purchasers. In this regard, reference is made to the case of Gamble v. Main, 171 W. Va. 469 300 S.E.2d 110 (W. Va. 1983), and Thacker v. Tyree 171 W. Va. 110 297 S.E.2d 885 (W. Va. 1982), which greatly modify the "caveat emptor" principle for the sale and purchase of real property in the State of West Virginia.

- E. Conflict of Interest. This problem may arise where the parties look to the same attorney for advice and counsel before entering into the agreement. It is advisable for both parties to be represented by counsel before the agreement is executed. This is not a critical problem where the parties have already entered into a contract. Many real estate transactions are closed with the use of only one attorney in such situations. Attention is called to Canon 5 of the Code of Professional Responsibility concerning interests of multiple clients. A full disclosure to the parties should be made, and once the attorney recognizes a

potential conflict of interest in advising both parties, he should inform the parties and withdraw from representing one.

F. Preliminary Title Examination. Prior to closing, a preliminary title examination should be made to ascertain whether the vendor can convey the agreed title to the purchaser. At this point, a preliminary certificate of title should be provided to the party requesting the title examination. This certificate is often a letter certifying that the attorney has examined the records and calling attention to any liens, encumbrances, exceptions, reservations, etc. which might affect the marketability of the title or affect the title which the parties contemplated transferring by their purchase agreement. Some lending agencies have their own certificate forms. The real estate purchase agreement will almost universally provide for a general warranty deed and that the title to be conveyed is marketable title. A title examination is essential from the purchaser's standpoint. It is also desirable from the vendor's standpoint where he is conveying a general warranty deed but has not had occasion to determine the marketability of his title or his ability to convey with general warranty. In 1980, West Virginia adopted the Uniform Condominium Act., now the Uniform Common Interest Act. (See W. Va. Code Chapters 36A and 36B). If the property conveyed is condominium property, care should be taken to note this in the preliminary title certificate. See comments under Examination of Records for Adverse Matters. 

G. Arranging Closing. After the initial title examination, the next step is to arrange for the closing. This generally brings all the interested parties together, with the purchaser tendering the purchase price (whether this be cash, partial cash and assumption of loan, exchange deed for other realty, or execution of appropriate loan papers) and the vendor executing and delivering a deed of conveyance transferring title to the purchaser. Usually, both parties approve this deed of conveyance in advance, and an adjustment of the purchase price for outstanding liens and encumbrances is made in advance by use of a prepared closing statement. See Form E. Minor adjustments can be agreed to and made contemporaneously with the closing. See closing check list, Form A.

H. Place of Closing, Recordation and Transfer. The classic technique for closing is in the Office of the Clerk of The County Commission (formerly the County Court), hereinafter referred to as the Clerk's Office, where the attorney representing the purchaser may update his title search to the exact moment of recordation of the deed transferring title to his client. Contemporaneous with the recording of the deed, the purchaser will render to the vendor the agreed purchase price. As a practical course, however, closing at the courthouse is 

infrequently done, and the closing takes place in either the real estate broker's office, a lending agency office or the office of one of the attorneys. The purchaser's attorney can arrange for the purchase price to be withheld until he is able to make his final title search and record the deed of conveyance and other necessary papers. Care should be taken by the attorney when he records a conveyance that he also assure that a proper transfer is made on the tax records. That is to say, there must be a transfer on the assessor's real property books. There is now a standard form distributed by the States Tax commissioner's Office that the Clerk will require you to complete when you record a deed that will provide the appropriate transfer information, including the name of the grantor, grantee and tax record description of the property, including the tax map and parcel number. It is helpful to have this completed beforehand. A timesaving device is for the real estate attorney to have extra copies of these in his office to be completed there in anticipation of closings. W. Va. Code 11-4-8. Upon recording, a state and county transfer tax is collected by the Clerk at the rate of \$1.65 per \$500.00 of value. W. Va. Code 11-22-1, et seq. (Now \$2.20 in Kanawha.) By statute, this transfer tax is paid by the grantor unless the grantee accepts the deed without documentary stamps affixed to it.

- I. Final Certificate of Title. The purchaser's attorney, after recordation of the appropriate papers, should provide the purchaser with a final certificate of title, which is simply a letter certifying that a proper deed transferring title to the purchaser has been recorded on a certain date; that he has made an examination of the records; and that, based on that examination, he is of the opinion that the purchaser has good, marketable, fee simple title, subject to appropriate (or acceptable) exceptions found during the examination. (See Form D).
- J. Lending Agency Procedure. It is common practice today for lending agencies to have a list of approved attorneys whom they use in the handling of real estate loan transactions. In such cases, the attorney is primarily charged with the responsibility of securing the loan by an appropriate security agreement, usually a deed of trust. In these instances, the attorney's fees are included in the "closing costs" and, as such, are charged against the borrower. The attorney's client, however, is the lending agency, and his certificate of title is addressed to the lending agency. As a matter of courtesy, he will oftentimes send a copy of this certificate to the borrower. In the last few years there has been much criticism of what is termed "sweetheart deals" wherein lending agencies have been accused of favoring certain attorneys. As a practical matter, however, there are a limited number of attorneys interested in real property work, and this criticism has resulted in little change.

K. Borrower's Reliance on Lending Agency's Title Search. The amount of most real estate loans exceeds the cash outlay which the borrower will provide to complete the purchase price. It is, therefore, of little practical value to the borrower to have a separate title search conducted for the benefit of his equity, and he almost universally relies upon the one made as part of the real estate loan transaction. A great percentage of the contact work is done by the lending agency, and the actual closing is frequently in their office and handled by one of their employees. The newly admitted lawyer need not be too concerned with this, since such lending agency accounts are usually handled by lawyers with a fair amount of experience in this field.

L. Final Steps. Upon completion of the closing, the necessary papers (among which are the deed of conveyance, trust deed, releases, etc.) are immediately forwarded to the attorney, who then proceeds to make his final title search and record the appropriate papers. See comments made in Paragraph H., supra. Prior to this, the attorney will have arranged for release of liens and other corrective action necessary to get the title ready for closing. A number of lending institutions require title insurance. This is a part of the closing costs and is charged against the borrower. Again, this is a problem with which the young attorney will not be too concerned, since the title insurance companies use their approved attorneys who are established title experts. As noted above in the discussion of the role of real estate broker, an attorney participating in a closing should be aware of or determine who is taking the responsibility for the return of a Form 1099 to the Internal Revenue Service pursuant to Section 6045 of the Internal Revenue code. Where the attorney is solely responsible for the closing, he may be charged with the responsibility of making this return.


III. PURCHASE AGREEMENT OR CONTRACT OF SALE.

A. Form of contract.

1. Statute of Frauds. West Virginia Code § 36-1-3 requires that contracts to sell land be in writing and signed by the party to be charged. It is possible to have a written offer to sell real estate and a verbal acceptance on the part of the purchaser. Crowley v. Vaughan, 88 W. Va. 223, 106 S.E. 539. As a rule, both parties to a real estate transaction execute the agreement.
2. Designation of Parties. While "Vendor" and "Purchaser" are preferable, it is just as correct to use "Seller" and "Buyer."

3. Identity of Parties. Parties should be identified with a reasonable degree of certainty in purchase agreements. The drafter can avoid confusion by using the same name and identification of the parties in the purchase agreement that is to be used in the final instruments transferring title. The vendor's name as found in the record chain of title should be used.
4. Who May Be a Party. The parties entering into the agreement must be competent in all respects, including age and mentality. In Prichard v. Prichard, 135 W.Va. 767, 775, 65 S.E. 2d 65 (1951), the court confirmed. "It takes more mental capacity to make a deed or contract than it does a will." It is the person's mental capacity at the time of execution that is determinative.
5. Agents. The Statute of Frauds allows an agent to make a contract for the sale of realty for his principal. W. Va. Code § 36-1-2. In such situations, however, the safer course is to require a properly executed power of attorney empowering the agent to enter real estate purchase agreements on behalf of his principal. W. Va. Code § 55-1-1. Such a power of attorney should be recorded. W. Va. Code § 39-1-1.
6. Corporations. In order to intercept any ultra vires acts, an attorney should inquire into the express or implied powers of a corporation to purchase, hold or sell real estate where it is a party to a real estate transaction. Generally, a corporation has the power to own real estate where it is in the furtherance of the objectives stated in its charter. W. Va. Code § 31-1-8. It is well to determine that authorized officers are acting on the corporation's behalf. The general rule is that formal acts by a corporation require either a resolution by its board of directors or the adoption of a course of action by a vote of the stockholders.
7. Minors. Prior to 1973, persons under 21 years of age were under a disability and did not have capacity to enter into a contract for the sale or purchase of realty; however, by amendment to W.Va. Code 2-2-10 and the enactment of Enabling Statute 2-3-1 in 1973, persons 18 years or older were given the capacity to convey, encumber, etc. their interest in realty. The requirements for the disposition of infants' and incompetents' interests in realty are set forth in W.Va. Code 37-1-1 to 17. The problems created by an infant party in a real estate transaction are too complicated for consideration in this chapter. Suffice it to say that the statutory procedure must be followed carefully where the infant is the vendor. There is no question that an infant may participate in such a transaction as a purchaser. However, complications may arise in relation to

enforceability of the real estate purchase agreement against the infant, validity of deeds of trust executed by the infant as part of the transaction, and enforceability of the promise to pay any indebtedness incurred by the infant for the purpose of purchasing realty. The fact that the minor is an emancipated adolescent does not eliminate these problems or increase the infant's ability to convey marketable title.



B. Component Parts and Special Provisions of Purchase Agreement.

1. Heading, Caption or Premises. This section should provide:
 - a. The date of the agreement;
 - b. Identification of the parties;
 - c. The designation of these parties as vendor and purchaser.
2. Purpose of the Agreement. This section should set forth the objectives, which may be:
 - a. The vendor agrees to sell and the purchaser agrees to buy;
 - b. The vendor agrees to sell;
 - c. The purchaser offers to buy;
 - d. An exchange of realty.
3. Description of Property. The agreement should contain a legally sufficient description of the subject real estate so that it is identifiable with a reasonable degree of certainty. While it may be desirable to have a description sufficient to place in the deed of conveyance, convenience and expediency more often dictate an abbreviated description.
4. Interest to Be Conveyed. The title to be conveyed and the warranties to be made should be spelled out in the agreement. If a limited estate is involved, such as a life estate, it should be set forth. Where nothing to the contrary is contained in the purchase agreement, the purchaser is entitled to have clear title, reasonably free from doubt or defects. The well-drafted purchase agreement will not leave this open to question.

C. Terms and Conditions.

1. Purchase Price. Care must be taken in setting forth the purchase price. If the total amount is clearly defined in this section of the agreement, little question can be raised as to what the parties contemplated. Special provisions of the purchase price sometimes lead to confusion.
 - a. Downpayment or Earnest Money. Generally, the first item set forth in describing the purchase price is the downpayment, or earnest money. This is an agreed amount. (Five percent of the total purchase price is a customary amount.)
 - b. Method of Payment. Next will be the method of payment of the balance, whether in cash, periodic payments, or the assumption of a loan.
 - c. Exchange of Realty. Where there is an exchange of realty, the contract may well refer to the mutual promises of the parties as consideration. Under the Statute of Frauds, a lack of recitation of consideration will not invalidate the agreement.
2. Closing Date. In West Virginia, unless stipulated in the contract, time is not of the essence in real estate purchase agreements. The parties have a reasonable time to discharge their responsibilities under the terms of the agreement. The safer course is to complete such transactions within the time specified in the agreement rather than relying on this rule.
3. Right to Possession. Most agreements provide that possession shall be given to the purchaser on the date of closing. When the parties agree otherwise, there may be complications. Who will be responsible for maintenance, damage or loss? Who is entitled to rent? Who is liable for injuries to third parties? What is the liability between the parties because of unsafe conditions? Among the complications created by granting possession before consummation of the sale is insurance requirements. Most insurance companies recognize a contract of sale as sufficient equity in the grantee to allow underwriting of a homeowners policy or other types of coverage. This procurement of coverage should coincide with the transfer of possession to the grantee or the transfer of title to the grantee, whichever is earliest. It is best to have an overlap of coverages between the grantor and the grantee rather than a void.

4. Possession Before Closing. When possession is given before closing and, without the fault of either party, they are unable to complete the transaction, adjustments must be made for any improvements added by the purchaser, unless there was an agreement that such improvements were to be made at the purchaser's risk. See comment in Paragraph 3. immediately above concerning insurance requirements.

5. Apportionment of Charges.

a. Taxes. In 1961, the assessment date for the taxation of real estate was changed from January 1 to July 1. As a result, a potential six months' overlap or a six months' void of taxation was created. Two schools of thought developed in regard to the prorating of taxes in closing of real estate purchases. Initially, real estate dealers and others handling closings treated the taxes as if there were no change in assessment date and prorated them on a calendar year basis. Shortly thereafter, changes were made in the standard real estate agreements spelling out that the taxes should be prorated on a calendar year basis. In the absence of such specification, FHA and VA authorities reached the conclusion that taxes should be prorated on a fiscal year basis. This has the result of the vendor paying six months' additional taxes. When W. Va. Code § 11-3-1 is examined in conjunction with § 11A-1-2 and 11-3-30, it seems clear that we have an "overlapped" period of taxation. However, an Attorney General's opinion, rendered on June 4, 1962, reached the conclusion that there was no "double taxation" but that the assessment date merely antedated the tax period by six months. (Biennial Report and Opinions, Bol. 49, Page 425) Another interesting tax-assessment period differential is found in regard to transfer of property from a public service corporation to an individual and vice versa. Public service corporations are assessed pursuant to W. Va. Code § 11-6-1, et seq. Their property is assessed as of December 31, two years preceding the tax year (12 months and one day before the tax year commences), whereas individuals are assessed as of July 1 preceding the tax year or six months prior. Depending on when the sale is consummated, you can have either a six-month overlap or a six-month void in the tax period and the amount of taxes paid.

b. Rents. An adjustment or apportionment of any rental income earned by the subject property should be made, and the contract of sale should recite that such rents will be prorated.

6. Charges to be Made Against the Vendor.

- a. Public Improvements. Most agreements provide that the vendor is to convey with general warranty, free of liens and encumbrances. Some liens for public improvements, such as paving, may not be levied or of record as of the date of the agreement. To deal with this contingency, the contract should recite that the vendor is responsible for these payments.
- b. State Real Estate Transfer Tax. This shall be paid by the grantor. W. Va. Code § 11-22-1 to -10.
- c. County Real Estate Transfer Tax. This also shall be paid by the grantor. W. Va. Code § 11-22-2.
- d. Preparation of Deed.
- e. Securing Removal of Outstanding Liens and Encumbrances.

7. Costs to Be Charged Against Purchaser.

- a. Title Examination.
- b. Recordation Fees.
- c. Costs for Securing Loan.

8. Damages. When the contract does not set forth provisions for liquidated damages, and where there has been an unjustifiable breach, the general principles of damages for breach of contract apply. In the event the vendor breaches, the purchaser is entitled to a return of any earnest money deposited. The purchaser may also recover any provable damages resulting from the breach. In lieu of this, the contract may spell out an agreed amount of liquidated damages.

9. Loan Contingencies. Frequently, a purchaser desires to enter the agreement conditioned upon his ability to procure a loan of a certain amount at a certain rate of interest. It may be a conventional loan or an FHA/VA insured loan or West Virginia Housing Development Fund money. Should the purchaser fail to qualify for the loan, it is usually provided that the agreement may be canceled at the option of either party. Such a provision

should require the purchaser to make every reasonable effort to secure the loan. It should also provide for a refund of any earnest money paid.

10. Special Provisions. Most form real estate transaction contracts contain a space for spelling out any special agreements between the parties concerning fixtures, repair work, or arrangements for transfer of personal property remaining with the realty.
11. Definitions. In some instances, it is advisable to define the various terms used throughout the agreement, especially where a given word has special meaning between the parties. This section may also be used in preparation of a standard form agreement. Example: "Purchaser" means the purchaser or purchasers, whether singular or plural, whether individuals, corporations, or partnerships.
12. Acceptance. In some instances, it is desirable to provide an acceptance or execution paragraph in the contract which allows one of the parties to sign the agreement and offer it for acceptance to the other party. This should contain a time limitation, and the offer to enter the agreement should terminate automatically, unless accepted within that time.
13. Execution. The agreement should be customized to provide for proper execution. Use the names of the parties as they appear in the records. Special attention should be paid to execution by the appropriate authorized officers where a corporation is involved. Where a corporation is involved, a resolution by the Board of Directors authorizing the appropriate officer or officers to execute and deliver an apt deed of conveyance is highly desirable and may be required by others who subsequently review a transaction.
14. Acknowledgment. Real estate purchase agreements are frequently not recorded since the desire to sell by the vendor and the earnest money deposit by the purchaser encourages consummation of the contemplated transaction. If recordation is desired, the contract must be acknowledged or proven to the Clerk. (W.Va. Code 39-1-2) Some county records have provisions for unacknowledged writings; however, an unacknowledged or unproven writing admitted to record may not be notice to a bona fide purchaser. West Virginia has adopted the Uniform Recognition of Acknowledgments Act. (W.Va. Code 39-1A-1)

IV. TITLE EXAMINATION


A. General consideration. A sixty-year title search is the generally acceptable standard for residential property in West Virginia. In addition, the title should be followed back to a general warranty deed or to a point where it is connected to a title recognized as being free from liens and encumbrances. A title search need not be as extensive as an abstract of title, since the latter includes copies of the pertinent instruments of record or at least excerpts from the records which provide a complete picture of the title. In conducting a title search, the attorney may do no more than make extensive notes and copy enough from the records as is needed to support the conclusion in his certificate of title. However, it is advisable for the attorney to prepare an elaborate abstract of the title where he expects additional work in a particular area. He can then use the abstract as a base and eliminate future duplication of this work. In examining a title for mineral purposes, a sixty-year search is not adequate. Inasmuch as there were numerous severance of minerals in West Virginia in the 1850's, it is frequently necessary to trace mineral title back to a grant from the Commonwealth of Virginia *or the Crown*.

B. Mechanics of a Title Examination.

1. Introduction. In a sense, a title search is an elaborate and exacting research paper directed toward ascertaining the history of the title to a given tract of land. Remember, your client is relying on you for the security of his property, and lending institutions will rely on you for the security of the loan collateral. You must completely familiarize yourself with the records of the clerk's office where you conduct the search, with particular emphasis on the location of the indices concerning liens and encumbrances. You should also have knowledge of the method of indexing all instruments relating to realty. Each clerk's office is different, and familiarity with one may be of little value in working with the records of another county. A list of the records with which you must be familiar follows. The method of indexing and contents of some of these records will vary from county to county.

a. General Indices.

- (1) Grantor-Grantee Index. These contain alphabetical listings in chronological order of the names of all grantors and grantees. W. Va. Code § 39-2-2.

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- (2) Deed of Trust Index. Many clerks' offices have a separate index for deeds of trust which is similar to that prepared for deeds, with a grantor-grantee index.
 - (3) Index to Wills and Fiduciary and Estate Records. These contain references to wills, fiduciary records, lists of heirs, or other books used in recording information relating to the settlement of estates. W. Va. Code § 41-5-17, 44-5-2. Some counties have only a wills index, so that it is necessary to check the fiduciary record books separately in cases of intestacy.
 - (4) General Lien Index. This contains an index to deeds of trust, mortgages, judgments, vendors' and mechanics' liens, etc. Caveat: It will not contain last minute, unindexed items. With the advent of computer printout capabilities, it was inevitable that the more sophisticated counties would have indices prepared by this technique. Unless you are familiar with the "update" procedure utilized by a given county clerk's office, inquiries should be made to assure that current transfers are identified. Example: Some counties have their most current indices on a monthly printout basis.

b. Other Records.

- (1) Deed Books. Deeds, easements, rights-of-way--also leases and deeds of trust in some counties--are recorded herein.
- (2) Lease Books. Counties having extensive mineral operations have separate lease books. In some counties you will find separate indices, while in others leases are indexed in the regular grantor-grantee index.
- (3) Lien Dockets. Materials recorded in the following books are discussed under the appropriate heading below: Judgement Lien Docket, Execution Docket, Mechanic's Lien Docket, Lis Pendens, Federal Tax Lien Docket, State Tax Lien Docket (smaller counties may not have a separate docket), Miscellaneous Lien Docket, and Land Books.

- (4) Delinquent Land Books. Lists real estate returned delinquent and certified to the State Auditor by July 1 of each year. W. Va. Code § 11A-2-14.
- (5) Land Sales Books or Tax Sales and Redemptions. (Counties have various names for the same books.) This lists real estate returned delinquent for nonpayment of taxes, sold for taxes, and redeemed.
- (6) Plat or Map Books. Contains subdivision plats and other plats recorded with deeds which are not in the deed books.
- (7) Miscellaneous Records. Each of the clerks' offices have their unique records. In some offices there are miscellaneous records that may include unverified documents. Also included in miscellaneous may be affidavits of descent and distribution, although some counties do have a separate book called "Affidavits". It behooves the title attorney to be completely familiar with all the records maintained in the clerk's office.

2. General Comments on Preparatory Work.

- a. You must first obtain a description of the property involved. Often, the client will submit a copy of the proposed deed or deed of trust. If not, obtain a description from the last deed in the chain of title. Inquire of your client whether he is purchasing all of the described property. Be alert for outsales that may change the description or require exceptions in the description. If convenient, a visit to the property may be in order. For orientation purposes, a plat or sketch of some nature is useful. Make sure the description closes, that is, when all the calls in the description are plotted, the last call ends at your starting point. If the description refers to a recorded plat, verify the same on the plat, especially with regard to lot number and metes and bounds. If the property is not on a recorded plat, plot it yourself.
- b. Consider the Advisability of a Survey. This cost might save future embarrassment. A survey will disclose property corners by monuments, disclose overlaps and gaps, assure that all described property is there, and establish that buildings, etc. are properly located on the premises. Encroachments by neighbors may also be revealed by a survey.

After satisfying yourself that the description is correct and that the property is actually there, you are ready to begin the title examination.

- c. First Establish a Chain of Title. This is established by identifying the instruments of conveyance essential to determine prior owners in chronological order from the present back to the earliest point covered by the title search or abstract. Ordinarily, there are two ways to transfer title to property in West Virginia: (1) deeds; and (2) death--intestacy or by will.

The chain may be traced by using the back references in each deed.

Example: "Being a portion of that certain lot conveyed by X to Y by deed bearing date _____, recorded in the office of the County Clerk of Monongalia County at Deed Book Nol 10, Page 1." With luck you will be able to establish a complete chain by the use of back title or source of title references. If such references are absent, then look to the following:

- (1) Grantee Indices. The first step is to examine the grantee index. Start at the date of the deed which fails to indicate the source clause. Check the name of the grantor of that deed back until you find where the subject property was conveyed to him. If this does not disclose the grantor's title, he may have obtained it by devise or inheritance.
- (2) Will Book and Fiduciary Records. When you find, or suspect, that the grantor of a particular deed was devised or inherited the subject property, you will have to resort to the will book indices to locate the will. If title passed by intestacy, you will look to the fiduciary records for the list of heirs. Wills, like deeds, should always be read in full.

Effective June 6, 1992, the Statute of Descent and Distribution was significantly changed. The title examiner will have to keep this date in mind in making decisions and rendering opinions as to whom title descended. Compare former Code Section 42-1-1, et seq which was last amended in 1957 with the new 1992 amendment.

- (3) Vital Statistics. It is frequently necessary to check the vital statistics records where property was taken by a female grantee who subsequently marries. The names of heirs may also be

established by use of the vital statistics records where there has been no probate of an estate. Finally, it may be necessary to procure affidavits of descent to complete the chain.

- (4) Land Books. If neither the grantee indices or will indices disclose a grantor's source, you should examine the land books in the grantor's name back to the first year the property appears in his name. There will often be a notation of the property's source, either in the clerk's office copy or, if not, in the assessor's copy. In some instances, this will be a quicker method of finding the source than an examination of the grantee and will indices. The computerized land book forms provide the immediate back title reference and also identify the tract by tax map and parcel number. If we were fortunate enough to have 60 years of computerized land books, it is conceivable a chain of title could be developed strictly from examination of the land books.

These sources will allow the examiner, in most situations, to complete the chain of title. If you cannot, you should not hesitate to seek the aid of someone more familiar with the property, such as a lawyer who has had prior occasion to work the same title. The most experienced of title examiners are sometimes stymied.

In some instances, field information, Affidavits of Descent and Distribution, or other extraneous sources are needed to provide the missing links.

- d. Abstracting Chain of Title. While there is no single method of abstracting a chain of title, the following method is suggested:

- (1) Keep a separate paper for each step (deed, estate, etc.).
- (2) For deeds, note and preserve:
 - (a) Deed book and page number.
 - (b) Names of grantors and grantees.
 - (c) Date of deed.

- (d) Consideration.
- (e) Deed reference.
- (f) Warranty.
- (g) Granting clause (words of grant and estate conveyed--joint tenancy, tenants in common).
- (h) Description:
 - (i) Compare it with one to be used in present deed. (Beware of mistakes in description.)
 - (ii) If part of a larger tract, make sure it fits.
- (i) Exceptions and reservations (rights-of-way; minerals):
- (j) Reservation of vendor's lien. W. Va. Code § 38-1-1. Must be reserved in deed.
- (k) Did all grantors sign?
- (l) Date of acknowledgment and that all grantors' signatures were acknowledged.
- (m) Validity of acknowledgment. (See W. Va. Code § 37-11-2 for curative provisions).
- (n) Validity of vendor's lien release.
- (o) If spouse has not joined in deed, satisfy yourself as to unmarried status of grantor. Divorce or annulment bars former spouse's right to dower. W. Va. Code § 48-2-19, 48-2-20. It is always well to read divorce decrees for property settlement. Note: Effective June 6, 1992, Dower and Curtesy were abolished by Code Section 43-1-1.

(3) For estates, note and preserve:

- (a) Name of decedent owner and interest owned.
- (b) Date of death.
- (c) Name of takers either under will or law of descent. Takers under will will be named in will; possibly, property is devised by residuary clause. Watch for testamentary trusts and check affidavit of heirs for persons dying intestate. This is required by W. Va. Code § 44-1-13. It may be necessary to get an affidavit at time of examination on this. It is risky to rely on recitals of heirs in subsequent deeds.
- (d) Description of property in appraisal. If the property is not appraised, this is a defect that must be corrected and referred to in opinion. The description need not be in legal terms, but you must be satisfied that it includes entire property.
- (e) Inheritance tax release. If there is no release, and property is appraised, and estate is not large enough for inheritance tax, this is usually alright, especially in older estates. If there is no release on large estates, the tax is a lien, and unless removed, the title is defective. Effective July 1, 1985, the West Virginia inheritance tax provisions were replaced by an estate tax very similar to the federal estate tax, which substantially increased the exemptions. Examination of the current federal law and comparison of it to the state law is necessary to determine the exact amount of exemption. (See W. Va. Code § 11-11-3) A similar ten-year statute of limitations was placed on the lien provisions of this estate tax. (See W. Va. Code § 11-11-18).
- (f) Final accounting. If debts are not paid, they are a lien. If accounting is not filed, these debts may have been proved and are valid liens, even though the estate is several years old.
- (g) Sale under will. If a sale was made by personal representatives under power of sale in will, check the power of sale carefully.

NOTE: The operation of checking the chain of title serves two purposes: (1) it establishes the chain of title and puts your

papers in chronological order, which allows you to leaf through them and discover gaps in the chain; and (2) it also ascertains the effect and legality of all links in the chain.

- e. Examination of Records for Adverse Matters. After the chain of title has been established, you should next check the records for adverse instruments, judgments, liens, encumbrances, etc. in the names of all persons in the chain. Occasionally, the chain of title will be modified during the adverse check by the discovery of additional parties who have an interest in the subject realty.

- (1) Checklist. Prepare a checklist (see form I). This should include name and owner's dates held (put spouses' names in).
- (2) Adverse Conveyances. Check the grantor index for each owner during time he owned property and for short time thereafter. Put book and page number of all such deeds in space provided on checklist. If you find a deed and cannot tell from description in indices whether it was your property, note the deed and read it. Read all agreements, leases and right-of-way agreements shown in indices and note them in detail if they affect your property. If examination discloses that they do not affect, check them off.
- (3) Deeds of Trust. Many clerks' offices have a separate index for deeds of trust similar to that prepared for deeds. However, some early deeds of trust will be found in the deed book. Note the book and page number of all deeds of trust and their releases. check releases against the original deed of trust--do not rely on statements stamped on the deed or in the index that the deed has been released. Beware of partial releases; they only release the lien as to the part noted therein.

There is a 20-year statute of limitations on the enforcement of liens reserved on the face of real estate conveyances or created by trust deeds or mortgages. These liens may be extended for successive 20-year periods by affidavits. W. Va. code § 55-2-5. Such liens, prior to the passage of this statute (1921), are perpetual liens; however, there is a refutable presumption that the debt secured by such prior liens was paid after the expiration of 20 years (Lesage v. Switzer, 116 W. Va. 657, 182 S.E. 797). Interests created by deeds of trust may be assigned. Check assignments to be sure that appropriate

releases have been executed by the current owner of the debt secured. West Virginia Code § 38-1-6 places legal liability on the assignor of a lien where he releases the same after assignment. West Virginia Code § 38-12-9 requires the marginal notation by the clerk of releases and assignments. Under certain conditions, trustees may release the liens secured by a trust deed. W. Va. Code § 38-12-2.

- (4) Judgments. A money judgment becomes a lien on all real estate (W. Va. Code § 38-3-6) from the beginning of term of court, if the cause was in such condition that the judgment might have been rendered on the first day of the term. Judgment is a lien on after-acquired real estate, so it is necessary to check all the way back on judgments. The lien is for ten years from date but may be kept alive by issuance of executions during the ten-year period. § 38-3-7.
- (5) Executions. Execution upon a judgment extends the lien created thereby for ten years from the date of issuance. W. Va. Code § 38-3-7. Upon the presentation of an abstract of execution, the clerk is required to record the same. The clerk is also required to note any executions issued, in regard to a given judgment, in a column provided in the index for judgments or in the margin of the record of such judgment. § 38-3-8. Executions are docketed in a special book and noted in judgment indices.
- (6) Lis pendens. A suit involving land is not notice to bona fide purchasers until notice of such suit is filed with the clerk. The notice must state the title of the case, the court in which pending, the parties, a description of the real estate and nature of the lien, right or interest to be enforced. W. Va. Code 55-11-2. The statute further provides that liens acquired under other statutory provisions and properly recorded elsewhere shall not be defeated by failure to file a notice of Lis Pendens ~~are returned in~~ *Lis Pendens are released* in the same manner as other liens. *

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V. ASSESSMENTS, TAXATION AND TAX TITLES.

- A. Land Books. Section 11-4-1 requires the assessor to prepare land books. In most counties the land books are a computer printout coordinated with the tax maps, including district, map number and parcel number, and also the back title reference. As amended in 1972, such land books shall contain separate lists for

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* ~~§ 38-12-1~~ §§ 38-12-1, 38-12-4. If it is not released, check the file of the suit in the circuit clerk's office. If possible, obtain a release to clear record. In 1979, a limitation of ten years was placed on the constructive notice provided by the lis pendens statute. Extension for similar ten-year periods is provided (§ 55-11-3).

West Virginia Code § 55-11-2 is also applicable to ejectment proceedings and is cited in § 55-4-26 "Effect of Judgment" in an ejectment proceeding. Thus, at the start of an ejectment proceeding it is incumbent upon the plaintiff to file a notice of lis pendens in order to avoid frustration of his suit by alienation of the defendant's title to a pendente lite purchaser for valuable consideration without notice. Prior to 1931, West Virginia followed the common-law principle of lis pendens in regard to ejectment proceedings and suits to remove cloud from title. Perkins v. Southern Coal Corporation, 190 F.2d 692; Central Trust Company v. Harless, 108 W. Va. 618, 152 S.E. 209. In 1931, the section dealing with the "Effect of Judgment" in the ejectment statute was modified and made subject to the statutory provisions for notice of lis pendens found in §§ 55-11-1 and 55-11-2. Caveat as to whether suits to remove cloud from title are still controlled by the common-law principle of lis pendens or by §§ 55-11-1 and 55-11-2. Since 1963, by virtue of § 54-2-4a, an applicant in an eminent domain proceeding may file a notice of pendency of such proceedings.

- (7) Mechanics' Liens. Elaborate statutory provisions for mechanics' liens are found in W. Va. Code §§ 38-2-21 through 38-2-39. Priority is given mechanics' liens, except as provided by § 38-2-31. All perfected mechanics' liens are of equal dignity and without priority among themselves, except that laborers' and material men's liens are given priority

over those of contractors and subcontractors. § 38-2-18. Total amount of subcontractor's lien cannot exceed amount of primary contract.

The time within which the lien must be filed and perfected is 60 or 90 days from the date of completing the work or furnishing the material, depending on the type of lien. W. Va. Code § 38-2-7. The clerk is required to keep a "Mechanic's Lien Record" and index it. § 38-2-27. In order to enforce such liens, suit must be instituted within six months after filing of notice, or the lien will be discharged. § 38-2-34.

Since 90 days can elapse from the date of the work or delivery of the material before the filing of such a lien, some attorneys require a seller to sign an affidavit to the effect that no person has the right to file a mechanic's lien against the property for material furnished or work performed regarding it. Waiver of liens is frequently required from contractors and suppliers.

- (8) State Tax Liens. To establish priority, they must be recorded in accordance with W. Va. Code § 38-10C-1. Sections 11-21-1 to 11-21-94 create a lien upon all property owned by a person failing to pay his personal income tax after he has been sent written notice of the assessment. A lien also was created for unpaid state inheritance and transfer taxes. § 11-11-9 (since repealed). To afford notice, such liens must be recorded in accordance with § 38-10C-1. There is also a ten-year limitation on the enforceability of these inheritance tax liens. Reference is made to W. Va. Code §§ 11-11-1, et seq., for the current "estate taxes" provisions.
- (9) Federal Tax Liens. The Internal Revenue Code, 26 U.S.C. § 6321, creates a lien in favor of the United States for unpaid federal taxes. Such liens must be docketed to be valid against any mortgagee, purchaser, or judgment creditor.

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26 U.S.C. § 6324 makes specific provisions for liens for federal estate and gift taxes. The lien is for ten years from the date of decedent's death. The lien must be recorded in accordance with W. Va. Code § 38-10-1 to make it a lien of record.

- (10) Uniform Commercial Code. Properly recorded (filed) financing statements for fixtures, under certain circumstances, may constitute valid liens on real estate. For priorities of these liens, see W. Va. Code § 46-9-313. These should be recorded in the office where a "mortgage" on the subject real estate would be filed or in West Virginia in the clerk's office, § 46-9-401. Conservative title work requires that the examiner search for security agreements covering fixtures attached to the subject realty. Unless a continuation statement is filed, the effective duration of these statements is five (5) years. § 46-9-403. In this regard, see West Virginia Law Review, pages 406, et seq., wherein mobile homes as fixtures and priorities under the UCC are discussed. If a mobile home is involved, care must be taken to expressly include it in the description, and the obvious possibility of a lien under the UCC must be considered. Meet local bar standards in searching for these liens. Little need is apparent to check beyond the ten-year limitation on contract actions.
- (11) Miscellaneous Liens. Paving liens accruing in favor of municipalities must be docketed in the clerk's office and indexed in accordance with W. Va. Code § 38-10C-2. Garbage disposal or incinerator liens are recorded in the same manner as paving liens, as are liens for sanitary or sewage fees. Upon recordation in the same manner as other judgments, an order for support, maintenance or alimony will give rise to a lien on real estate. § 48-2-17. A 1984 amendment to the statute provides that unless a proceeding for the enforcement

of an order for support, maintenance or alimony, or the collection thereof, is commenced within 60 days of the recordation of the abstract of affidavit, the lien created by such recordation shall be discharged and extinguished.

- (12) Delinquent Taxes. These will be found in a special docket in the clerk's office and are a lien on real property after the 1st day of July for the year in which due. Such taxes are payable after July 15 of the following year. Current taxes may not be paid until all delinquent taxes are paid. W. Va. Code § 11A-1-7. The first half taxes are delinquent on October 1 of the following year, and the second half are delinquent on April 1 of the second year following the assessment date. § 11A-1-3. If delinquent taxes are noted, you should check the redemption. This is rather complicated. (See V.F., below, and Chapter 11A of the Code.) Delinquent county taxes prior to 1936 are forgiven. § 11A-4-39. Thus, it is well to check your property back to 1936 for delinquencies. Although municipal taxes are usually assessed with county taxes by the county assessor and paid to the sheriff, these are not forgiven by the 1936 moratorium.
- (13) Current Taxes. Check the sheriff's office to see if current taxes have been paid.
- (14) Land Books. Land must be entered for taxation by the owner. If it is off the books for five years, it is forfeited to the State by operation of law. (W. Va. Const. art. XIII, § 6; W. Va. Code § 11A-4-2) The West Virginia Constitution (art. XIII, § 3) operates to grant forfeited property to certain persons in possession who have paid taxes for a certain period. The land books reflect ownership as of July 1 each year. You should check land books every year for the last 20 years, paying attention to the description of the property. Make sure it includes your property and all of

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your property. If the property is not on the books, check with the assessor as to why not; it may have been forfeited to the State. It is also helpful, and sometimes mandatory, to check the assessor's office for an explanation of land book entry.

- (15) Current Index. This is the last step in the examination. Check for items not in the permanent records. Some clerks have a Daily Register in which instruments are noted as soon as they appear. As noted above, several of the counties have computerized grantor/grantee general type of indices, and you may be confronted with a monthly printout that has to be checked for a certain period of time. As a last minute check, the examining attorney should go through the documents that have been lodged for recordation for that particular day and satisfy himself that no adverse items have been recorded immediately preceding the recordation of his transfer documents.

- (16) Other Matters to Be Considered. Most of the information necessary to certify a title can be gathered in the clerk's office. However, there are certain questions raised during a title examination that can only be resolved by records of the circuit court, the federal district court, a municipality, or other outside source of information. Some other matters you should look out for are:

- (a) Reimbursement Agreements. Prior to 1963, a lien on all property was required as a condition of receiving public assistance. This is no longer the case, and such liens are forgiven. W. Va. Code § 9-5-26. See 1963 Acts of Legislature, Chap. 147.
- (b) Escrow Agreements. Occasionally, parties to a real estate transaction desire to transfer ownership before all defects are cleared. To do

this, an escrow agreement is used. Normally, the executed deed and part or all of the purchase price are deposited with a neutral party pending clearance of title. Terms of their respective liabilities under the escrow agreement must be clearly defined.

- (c) Conveyances by Fiduciary. West Virginia Code §§ 38-1-8 and 38-1-9 require trustees, under a deed of trust, to file an inventory and account of all transactions. These should be filed and recorded. However, failure to do so does not invalidate the transaction. Make certain the grantor has authority to convey by the will, trust instrument, or by proper court proceedings.
- (d) Sale of Real Estate to Pay Debts of Decedent. West Virginia Code §§ 44-8-1 to 44-8-10. Real estate may be an asset of decedent for payment of his debts if personalty is sufficient. § 44-8-3. These provisions show why examiner must inspect final accounting to determine if debts were paid. Remember, an alienation by an heir or devisee within one year of death is not valid against creditors of deceased. § 44-8-5.
- (e) Sales by Religious Bodies. West Virginia Code § 35-1-9. Technical requirements are set out in the Code. Often, canon law of the church imposes additional limitations. The limitations on quantity of real estate permitted to be held is four acres within corporate limits, 60 acres outside. § 35-1-8.
- (f) Partition Suits. West Virginia Code §§ 37-4-1 to 37-4-8. This is a technical proceeding outlined in the Code. Make certain all parties are served and partition suit is in order. The final decree is also usually recorded in the deed book in the county clerk's office.

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- (g) Persons Presumed to Be Dead. West Virginia Code §§ 44-9-1 to 44-9-16. It is necessary to have a suit in the circuit court and publication of notice in a paper in the county in which the suit is brought.
- (h) Special Commissioners' Deeds. Where an essential link in the title is a special commissioner's deed of relatively current vintage, it behooves the attorney to examine the proceedings in the circuit court by which such deed is authorized. You should determine if all the necessary parties were properly joined and served in the suit and that it was conducted in a regular fashion.
- (i) Affidavits of Descent and Distribution. Where title passes by intestacy and there is no probate of a will or administration of an estate, the certifying attorney must satisfy himself as to whom the ownership has descended. This will preclude the possibility of unknown heirs and outstanding undivided interests. It is frequently desirable to procure affidavits of descent and distribution. In order to make an affidavit of descent and distribution as valuable as possible and make it admissible, if the affiant should die or be beyond the process of the court, the affiant must have some means of knowing, and an interest in making himself acquainted with, the facts which he states. His information must have originally come from members of the family. It is desirable that the affiant himself be related by blood to the family.
- (j) Corporations. Resolution by Board of Directors. Where there is sale of property by a corporation not generally engaged in the sale or exchange of real estate, it may be

desirable to procure a resolution by the board of directors of such corporation, or possibly an approval by a majority of the stockholders, authorizing the appropriate officer to convey the subject realty in the name of the corporation. The need for this should be carefully considered where the corporation is the grantor in the transaction being concluded. The more remote the corporation is in the chain of title, the less necessity for the resolution.

- (k) **Municipal Records.** It is desirable to check the municipal records in regard to unpaid incinerator fees, sewage bills, paving charges, etc. in order to preclude possible efforts by the municipality to enforce a lien subsequent to transfer of title. This also provides information for adjustment of amounts to be paid by the respective parties at the date of closing.
- (l) **Bankruptcy Proceedings.** Infrequently, a bankruptcy proceeding will be the basis for one of the links in the chain of title. In such case, it is desirable, if not necessary, to check this proceeding to determine if prior judgments or executions have been considered and properly resolved. This will require a visit to the office of the clerk of the federal district court.
- (m) **Inspection of Premises.** The grantee is charged with knowledge of matters of record and takes the property subject to such matters. In addition, the law in West Virginia is fairly clear that the grantee is charged with knowledge of facts which can be reasonably ascertained by a visual inspection of the subject property. United Fuel Gas Company v. Morley Oil and Gas Company, 101 W. Va. 83, 131 S.E.

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716. Facts ascertainable on this ground, which would alert the grantee to adverse claims, might well preclude the grantee from being a bona fide purchaser without notice. The examining attorney should either inspect the subject property or else qualify his certificate of title to allow for such possibility.

- (n) Uniform Condominium Act. West Virginia adopted the Uniform Condominium Act in 1980, with amendments in 1984. See W. Va. Code §§ 36B-1-101, et seq. When representing the purchaser in regard to condominium property, there are obviously many more covenants and restrictions that a purchaser should be advised on. In this regard, the attorney should encourage the purchaser to contact the association that manages the condominium and obtain copies of the association's articles and by-laws, with amendments, to assure that the purchaser is fully advised.
- (o) Circuit Clerk's Office; Ejectment Proceedings. Finally, there is the remote possibility that the grantor could institute a suit in ejectment, or similar class of suit, and a determination be rendered in such suit that the grantor did not have good title. Our present lis pendens statute applies only to the defendants in such suits, and, therefore, the common-law lis pendens would be applicable and might bar a grantee from being a bona fide purchaser. To preclude this possibility, the circuit clerk's records should be examined in the grantor's name.

TAXATION AND ITS EFFECTS ON TITLE TO REALTY. Because of several unique features found in West Virginia's Constitution, taxation of realty and title problems are intertwined to such a degree as to present an area which needs separate and special consideration. W. Va. Const.

(1) the different tax districts and (2) the municipalities of the county. Formerly, three lists were provided for (1) magisterial districts, (2) municipalities, and (3) independent school districts. These lists must be in alphabetical order. The land books shall include a designation of the class of property: (1) Exclusively residential--occupied by owner; (2) farm property occupied by owner or a bona fide tenant; and (3) all other realty. The value of the land, the value of buildings, and aggregate value shall be shown. The character of the estate, the number of acres or lots, and a local description shall be entered. The levy of the taxes shall be extended, showing the amount thereof. § 11-4-2. The land books are kept current by a system of transfers provided for by § 11-4-8, wherein the clerk of the county commission is required to deliver a certified list of transfers recorded in his office for any given month to the assessor on or before the 10th day of the next month. Section 11-4-14 provided that tracts of less than 1,000 acres lying in more than one county should be entered and taxed where the greater part thereof in value lies; however, entry and payment of taxes in any county where a portion is located shall suffice. Tracts of more than 1,000 acres shall be taxed in the different magisterial districts in which they lie. Consolidation of contiguous tracts for taxing purposes is allowed by § 11-4-17. Where one large tract or consolidated acreage is used in such a way as to make two classifications applicable, the owner may divide to get the benefit of the lower tax rate classification. § 11-4-18.

- B. Levies. Sections 11-8-1 through 11-8-33 set forth the method by which the different levying bodies levy the amount of taxes to be collected. This presents no significant areas of interest in regard to title law.
- C. Collection. Section 11A-1-2 provides that a lien shall attach on all real property for taxes assessed thereon on the 1st day of July for the ensuing fiscal year. The second half taxes are delinquent on April 1 of the second year following the assessment date. § 11A-1-3. The sheriff is charged with the responsibility for the collecting all taxes levied in his county. § 11A-1-4. Collection starts on July 15 of the following year. § 11A-1-6. Current taxes may not be collected until all delinquent taxes are paid. § 11A-1-7. The sheriff is charged with responsibility of enforcing the payment of delinquent taxes. § 11A-2-1. There are several methods available to him, namely, collection by suit (§ 11A-2-2); sale of personal property (§ 11A-2-3); summary procedure for collection of taxes due from property or money held by others (§ 11A-2-7); and, finally, sale of "real estate" by the former statute is now sale of the "tax lien" under the 1994 amendment. (Section 11A-2-10).

- D. Delinquencies. After collection of taxes, the sheriff prepares a list of delinquent taxes and publishes it in accordance with § 11A-2-11. The publication and posting of the delinquency list are provided for by § 11A-2-13. (Note the 1994 Amendment of this section.) The statute further provides for a presumption of payment where the owner's name is omitted from the delinquency list. § 11A-2-17. The owner of any real estate returned delinquent may redeem it at any time before sale by the sheriff by payment of the taxes, interest, and charges due. § 11A-2-18.
- E. Sale by Sheriff. a second publication and posting of the list of delinquent real estate is provided for by § 11A-3-2. By 1983 and 1985 amendments, this notice provision was expanded to include a mailing by certified mail no less than 30 days prior to the sale of a notice to the last known address of each person whose taxes were delinquent. The whole scheme has been changed somewhat by the 1994/1995 amendment of Sections 11A-3-1 thru 74. The delinquency may be redeemed any time prior to sale, as provided by Section 11A-2-18 and 11A-3-4. (Form 11A-3-3). Each unredeemed tract of lot, or undivided interest, is sold by the sheriff at public auction on any Monday after October 14 or before November 23 in the year of the delinquency, which is the second year after the assessment date. § 11A-3-5. For appropriate reasons, formerly, the sheriff could suspend the sale as to certain real estate included in the delinquent list. § 11A-3-7. (Formerly 11A-3-5). If the amount bid at the sheriff's sale does not equal the amount of taxes, interest, and charges due on any real estate offered for sale, or if there are no bidders, the sheriff certifies the unsold property to the auditor. § 11A-3-8. Former owners may redeem any real estate purchased by the State from the auditor at any time within 18 months after the date of such certification § 11A-3-38/42. If redemption does not occur within such period then this right no longer exists, because absolute title has vested in the State. See Pearson v. Dodd, et al., 221 S.E. 2d 171 (W.Va. 1975), appeal dismissed for want of a properly presented federal question, 97 S. Ct. 581, 50 L. Ed. 2d 574 (1977). Section 11A-3-23 provides for redemption, the purchaser, his heirs or assigns, any time after October 31 of the year following the sale, and on or before December 31 of the same year, must (1) prepare a list of those to be served with notice to redeem as provided for by §§ 11A-3-21 and 11A-3-22; (2) deposit or offer to deposit with the clerk a sum sufficient to cover the cost of preparing and serving the notice; and (3) present the purchaser's certificate of sale. The purchaser may assign his rights by assignment executed, acknowledged, and certified in a manner required to make a valid deed. § 11A-3-15. Refund is allowed for purchase price paid where the purchaser can establish that he has purchased an erroneous or improper entry. § 11A-3-20. The clerk of the county commission prepares deeds of

conveyance in regard to the sheriff's sales. Upon receipt of such a deed, the individual purchaser acquires substantially the same title as the person in whose name the subject real estate became delinquent. § 11A-3-30. Where the person who has the right to redeem is under a disability, the redemption may be allowed within one year of the removal of the disability, but in no event more than 20 years after the deed is received by the individual purchaser. § 11A-4-6. Where improvements are made by the individual purchaser prior to redemption, the redeeming party must pay the purchaser their value. If the redeeming party is unwilling or unable to do this, the purchaser may procure under various circumstances a quitclaim deed to the land from the redeeming party or a commissioner appointed by the circuit court so to do. § 11A-4-6.

- F. Sale of Lands for School Fund by Deputy Commissioner of Forfeited and Delinquent Lands. Sections 11A-3-45 to 11A-3-69 establish a judicial proceeding for the sale of land for the school fund.

VI. TRANSFER OF TITLE UNDER ARTICLE XIII, SECTION 3, OF THE WEST VIRGINIA CONSTITUTION.

Prior to 1800, the Commonwealth of Virginia granted numerous patents west of the Alleghenies. These patents or grants were large blocks measuring in the tens of thousands and hundreds of thousands of acres. Most of these "senior grants" were forfeited for nonpayment of taxes, for failure to enter on the ground, or for other reasons, and it was generally considered by about 1830 that none of the "senior grants" west of the Alleghenies were valid. As a result, about this date the Virginia started issuing "junior grants" which fell inside these senior grants. There were also numerous interlocks between the junior grants created by poor surveying techniques and the lack of an orderly system of allocating the land. In order to resolve these conflicts of title and remove the possible cloud on titles created by the existence of the senior grants, Virginia passed certain statutory provisions. These were adopted by West Virginia when it separated and were incorporated into Article XIII of the Constitution of 1872. Among these provisions was section 3 which provided for the transfer of any title to land which had forfeited and had become irredeemable or which had been purchased by the State for nonpayment of taxes. This transfer inures to the benefit of three classes of property owners, namely: (1) Any person who has had continuous possession of land for ten years under a claim or color of title and has paid taxes on the same for any five years during such possession; (2) if no person qualifies under the first class, then transfer goes to any person who shall have title or claim regularly derived, mediately or immediately, under a grant from the Commonwealth, not forfeited, which, but for the forfeited title, would be valid and who shall have paid taxes charged or

chargeable thereon for five successive years after the year 1865; or (3) if there be no persons qualifying under the first two classes, then any person (excluding those who default has caused the forfeiture) who has had actual, continuous possession under color of title for five successive years and has paid all the taxes charged or chargeable thereon for that period.

An excellent article on transfers under Article XIII, Section 3 of the West Virginia Constitution is found in 65 West Virginia Law Review, page 263, entitled "Taxation and Land Titles Under Article XIII of the West Virginia Constitution". This article may give you the impression that transfers took place in favor of the junior grants; however, the transfers could move either direction. That is to say, if a senior grant was still viable, it would get the benefit of the transfer.

Article XIII, Section 3 thru 6 of the Constitution were repealed, effective July 1, 1993 as Amendment No.3 at the general election of 1992, entitled the "Landowners Protection Amendment." A great percentage of the controlling statutes that were in effect in 1984, the date of the last rendition of the manual, remain in place notwithstanding this repeal. By amendments to the statutes, in 1994, superseded somewhat by 1995 amendments, the procedure for the sale of lands for delinquent taxes by the sheriff was modified and greater details provided. Early tax sales must be examined in the light of the former statutes and case law such as Pearson v. Dodd, cited above. The effect of the "Landowner's Protection Amendment" and the subsequent amendment of the statutory provisions by the 1994/1995 amendment totally changed and obsoleted the procedures described in the third rendition of the Lawyer's Manual. Since the repeal was effective July 1, 1993, I do not think it can be argued that it abrogates the benefit that enured under the Constitution to landowners prior to its effective date. The benefit of the curative provisions in the Constitution is not totally lost but will be diluted by the passage of time.

VII. ENVIRONMENTAL LAW CONCERNS:

While Environmental Law is technically not a necessary concern of the attorney whose function is to examine a title, render an title opinion and close a real estate transaction, if industrial property is involved or the subject property is located in or near industrially developed property, the purchaser should be protected or made aware of possible environmental law problems. If the property is historically residential or new residential property carved out of farm lands, wood lands or relatively benign land, then there is nothing of concern.

If the lawyer is acting more in an advisory capacity as distinguished from his role in a routine bank loan closing then the fast changing developments in environmental law should be mentioned. If industrial property or other similar property is involved there is usually a host of other experts on environmental law already involved.

Some methods of addressing environmental law concerns include:

- (1) Testing and physical examination of the property by a qualified expert.
- (2) Assurances from a responsible Seller.
- (3) Indemnification agreement from a responsible Seller.
- (4) Agreement to rescind the transaction if unmanageable contamination or environmental law problems are encountered.

APPENDIX

Form A

CLOSING CHECK LIST

Seller:

1. Deliver deed.
2. Pay:
 - a. Prorata share of taxes.
 - b. State transfer stamps.
 - c. Release of prior liens.
 - d. Record releases.
 - e. Real estate commission.
 - f. Preparation of deed.
3. Are there any improvements that have been made to the property which are not paid?
4. Are there any paving assessments that have not been recorded?
5. Are there any agreements as to time of possession or any items to be left in the house?
6. Deliver keys.
7. Pay utilities.
8. Cancel out old insurance policy.

Buyer:

1. If insurance has not been effected, obtain same.
2. Explain papers to extent required by buyers.
3. Execute all papers. (Attorney should not acknowledge signatures to deed of trust if he is a party to it.)
4. Obtain releases.
5. Record papers. Make last-minute check.
6. Get recording receipt.
7. Discuss land transfer with tax office and have tax tickets sent to proper place. Instruct buyer to go to tax office and check for tax ticket.
8. Write your checks immediately and forward same.
9. Have buyer come back to your office to pick up deed.

Form B

REAL ESTATE PURCHASE CONTRACT

THIS AGREEMENT, Made this _____ day of _____, 19____, between _____
(Name of Grantor as found in his title papers) _____, hereinafter called "Seller," and _____
(Name of Grantee as it is to be used in the deed) _____ hereinafter called "Purchaser,"

WITNESSETH, That under the following terms and conditions Seller hereby agrees to sell and the Purchaser hereby agrees to purchase the following real estate, together with the improvements thereon, situate in _____
_____ and State of West Virginia, and described as follows to wit: (Sufficient description of property to identify with reasonable degree of certainty) and also being designated as (Street address, City and State).

1. Seller, upon receiving payment of said purchase price at the time and in the manner herein provided, agrees to execute and deliver to the Purchaser a good and sufficient deed conveying (Quality of title, e.g., marketable, good, fee simple, mineral, etc.) title to said property with covenants of (Covenants to be made by Grantor, such as general warranty, special warranty, further assurances, or possibly "none"), subject to liens, encumbrances, exceptions and reservations provided for by Paragraph 11(c) below.
2. The Seller and the Purchaser agree that the total consideration for the purchase of said property is \$_____, to be paid in the following manner, to wit: \$_____ cash in hand paid upon the execution of this instrument, the receipt of which is hereby acknowledged, and the remainder to be paid as follows: _____

_____.
3. Possession of said property shall be transferred to the Purchaser _____
_____.
4. Seller and Purchaser agree that the following charges shall be prorated between them as of the date of closing:
 - (a) Real property taxes shall be prorated on a calendar year basis. If the amount of taxes is not determinable at the date of closing, then they shall be estimated and prorated on the basis of the amount due for the preceding year. For purposes of prorating the taxes, "calendar year" shall mean the

year January 1 to December 31 immediately following the current July assessment date.

- (b) All fire service fees, incinerator fees, garbage disposal fees, sanitary fees and sewer service charges shall be prorated as of the date of closing. If these amounts are not ascertainable at the date of closing, then they shall be estimated on the basis of the amount due during the billing period immediately preceding the date of closing and prorated accordingly.

- (c) Any rents collected by the Seller in advance, or due and payable, shall be prorated between the parties as of the date of closing.

5. Seller agrees to pay for the following items, to wit:

- (a) Preparation of the deed of conveyance.
- (b) State and County excise tax on the privilege of transferring realty (documentary stamps).

6. Purchaser agrees to pay for the following:

- (a) Examination of title, survey and any other costs in connection with the procurement of purchase money, including the preparation of necessary instruments such as deeds of trust.

- (b) All recording fees incurred pursuant to the transfer of title.

7. Purchaser has carefully inspected the above-described property and the improvements thereon and accepts the same in their present physical condition. Seller shall not be liable for any representations or warranties respecting the physical condition, size or characteristics of the above-described property, and unless provided for in this agreement, Seller is not bound to make any changes, add any improvements or repair any defects in said property. Unless otherwise provided for in this agreement, no fixtures shall be removed from the subject property by the Seller.

8. Said property shall be delivered to the Purchaser in as good a condition as it was upon the date of entering this agreement, including all buildings, improvements, fixtures, trees and shrubbery, except for fair wear and tear. In event any of the buildings and improvements are destroyed or substantially damaged by fire, or sustain other casualty loss, the Purchaser may, at his

option, elect to accept the damaged property and any proceeds from payment of insurance thereon or settlement of claim therefor in lieu of the property in its present condition, in which event the parties shall complete the transaction as herein provided; or the Purchaser may cancel the contract, as which time all sums paid by him to the Seller shall be promptly returned, and the respective rights of the parties hereunder shall cease and terminate.

9. The sale hereby provided for shall be completed and all necessary papers executed and delivered within ____ days from the date this agreement is entered into.
10. This agreement may not be assigned by either party without written consent of the other.
11. The parties further agree to the special provisions set forth below:
 - (a) The following additional items of personalty are included as the subject matter of this sale and are to be transferred with the subject realty: _____

_____.
 - (b) The Purchaser hereby reserves title to, and the right to remove, the following fixtures and appurtenances presently located on the subject real estate: _____

_____.
 - (c) It is acknowledged by the parties to this agreement that the title to be conveyed is subject to the following limitations, exceptions, reservations, liens and encumbrances, and the Purchaser agrees to accept title subject to these limitations, exceptions and reservations, and further agrees to assume payment and the responsibility for discharging such liens and encumbrances: _____

_____.

- (d) It is further provided that: (Additional agreements between the parties such as rental of property by Grantor from Grantee for short period of occupancy, etc., can be spelled out here.)

12. This agreement is subject to, and contingent upon, the Purchaser being able to obtain a _____ loan for an amount of not less than \$ _____, with an interest rate not to exceed _____%, payable over a period of not less than _____ years, (with installment payments of \$ _____ on a _____ basis.) Purchaser agrees to immediately make application for such loan. after making such efforts to secure a loan, if the Purchaser is unable to obtain a firm loan commitment for the amount set forth above and upon the terms provided for above, then this agreement may be canceled in writing at the option of the Seller or Purchaser, and all sums paid hereunder by the Purchaser shall be refunded.

IN WITNESS WHEREOF, the parties hereby execute this Agreement in triplicate* the date and date first mentioned above.

Seller

Purchaser

*NOTE: Most Real Estate Purchase Contracts are executed in triplicate, one for each of the parties, and third for purposes of processing loan applications.

Form C

PRELIMINARY CERTIFICATE OF TITLE

To: (Name of Client or to whomever your
Client requests that your Certificate
be furnished.)

This is to certify that I have examined the records of the Office of the Clerk of the
County Court of _____ County, West Virginia, in
regard to the ownership of the following described property:

(Legal Description of Property)

Said examination covers the period from _____ to _____
_____ . My examination
of the records reveals the following:

1. (Comment on outsales and adverse matters related to deeds in the chain of title,
including vendors' liens and grantors' liens.)
2. (Comment on deeds of trust.)
3. (Comment on judgments.)
4. (Comment on executions.)
5. (Comment on mechanics' liens.)
6. (Comment on West Virginia tax liens.)
7. (Comment on Federal tax liens.)
8. (Comment on leases.)
9. (Comment on incinerator fees, paving liens, sanitary service fees and fire
service fees.)
10. (Comment on tax delinquencies.)

Subject to the comments above, I am of the opinion that at the date of the conclusion of my examination of the records, good marketable fee simple title to the above-described property was vested in _____

This opinion is further qualified by the following exceptions and reservations:

(Then list any matters of record disclosed during the title examination which might materially affect the use of the property, but not necessarily affect its marketability. Careful consideration should be given to rights-of-way and easements which might detract from the desirability of the ownership of the property.)

Attorney at Law

Form D

FINAL CERTIFICATE OF TITLE

_____, 1969

TO: (The name of your client or to
whomever your client requests
your Certificate be furnished.)

I hereby certify that a deed, dated _____, 1969,
properly conveying the property described in my Certificate of Title dated _____
_____, 1969, from (grantor) to (grantee), was duly admitted
to record on _____, 1969, at _____ P.M. in
the Office of the Clerk of the County Court of the Monongalia County, West Virginia,
in Deed Book _____, at page _____.

I further certify that I have made a careful examination of the records in said
Clerk's Office from _____, 1969, to _____ P.M. _____
_____, 1969, pertaining to the title to said property, and based
upon that examination it is my opinion that subject to the exceptions hereinafter noted,
a good and marketable fee simple title to the same is vested in (the buyer).

Exceptions:

(These exceptions may be the same listed in the original Certificate of Title.
However, if between the time of the original Certificate and the Supplemental
Certificate defects have been cleared up, no exceptions to such matters are noted.)

Attorney at Law

Form E

CLOSING STATEMENT

VENDOR: Vendor Company RE: Lot No. 2, Parcel "C" of
Woodland Hills Subdivision,
PURCHASER: Theodore P. Purchaser Charleston, West Virginia
and Caroline R., his
wife

PURCHASE PRICE \$ 26,500.00

Credits to Vendor

(1) Prepaid Incinerator Fee	\$ 7.50
(2) Prepaid Fire Service Fee	.90
(3) Escrow Account	<u>125.40</u>
Total Credits to Vendor	\$ 133.80

PURCHASE PRICE PLUS CREDITS TO VENDOR \$ 26,633.80

Credits to Purchaser

(1) Earnest Money Deposit	\$ 1,000.00
(2) Vendor's Prorated Share of Taxes	95.85
(3) State and County Excise Tax	<u>87.45</u>
Total Credits to Purchaser	\$ 1,183.30

Payments by Purchaser at Closing

(1) Assumption of Loan First Federal Savings and Loan	\$ 20,726.14
(2) Check No. 16	<u>4,724.36</u>
Total Payments by Purchaser at Closing	\$ 25,450.50

TOTAL CREDITS AND PAYMENTS OF PURCHASER \$ 26,633.80

Approved for Vendor:

By _____ Date _____

Approved for Purchaser:

By _____ Date _____

Form F

ANNOTATED DEED

THIS DEED, Made this _____ day of _____, 196____,
by and between _____, as
Grantors, and _____ as Grantees.

Consideration
36-3-6

Granting Words
36-3-4
Freudenberger
Oil Co. vs.
Simmons, 75
W. Va 337

WITNESSETH: That for and in consideration of the
sum of _____ Dollars (\$_____),
cash in hand paid, the receipt of all of which is hereby
acknowledged, the said Grantors, _____,
_____, do hereby grant and convey, with cove-
nants of _____, jointly and
equally with the right of survivorship as herein-
after set forth all the certain lot or parcel of real
estate together with the buildings and improvements
thereon, situate in (DISTRICT OR WARD OF CITY),
(COUNTY AND STATE), more particularly bounded
and described as follows, to-wit:

Covenants
36-4-1 to 8

(DESCRIPTION INCLUDING REFERENCE TO
SOURCE OF TITLE-BEING THE SAME LOT, ETC.)

Improvements
36-3-10

(EXCEPTIONS, RESERVATIONS, ETC.)

Survivorship
36-1-20

It is the intention of this conveyance to vest title to
said property in the Grantees jointly and equally and to the
to the survivor of either of them so that upon the death
of either the entire interest in said property will immedi-
ately vest in the survivor.

The above described property is assessed for taxa-
tion purposes upon the Land Books of _____
_____ County, _____ (District) _____, for the
year 19____, in the name(s) of _____ as fol-
lows:

(TAX LISTING)

Declaration of
Consideration
11-26-6
form 11-22-6

DECLARATION OF CONSIDERATION OF VALUE

We hereby declare:

The total consideration paid for the property con-
veyed by the document to which this declaration is

Necessity of
Seal 36-3-1
36-3-3

Acknowledgement
39-1-2
39-1-3

Form of Acknow-
ledgement 39-1-4
39-1-5 (Husband
and Wife)
39-1-9 (Cor-
poration)

Notarial Seal
39-1-10

Who Prepared
Instrument

Definitions
11-22-1

Rate of Tax
11-22-2

appended is _____ Dollars (\$_____) and our
address is _____.

WITNESS the following signatures(s):

STATE OF _____,

COUNTY OF _____, ss:

I, _____, a Notary Public
in and for the County and State aforesaid, do hereby
certify that _____ and _____
_____ (husband and wife, his wife, her husband,
etc.), whose names are signed to the foregoing writing
bearing date the _____ day of __, 19__, have this
day acknowledged the same before me in my said County
and State.

Given under my hand (and notarial seal) this _____
day of _____, 19__.

My commission expires _____.

Notary Public in and for

County,

(State)

This document prepared by _____ (Name)
Attorney at Law, _____ (Address).

(EXCISE TAX)

REAL ESTATE TRANSACTIONS

Form G
DEED OF TRUST

To } Deed of Trust

This Deed of Trust, made this

day of

, 19

by and between

grantor, party of the first part, and

grantee and trustee, party of the second part, whose address is:

(In any case herein in which any word appears in the singular number, the plural shall be meant and intended if required by the context).

WITNESSETH, that the said grantor does hereby assign, transfer, set over, grant and convey unto the said grantee and trustee, with covenants of general warranty, all and singular, that certain real estate, together with the buildings and improvements thereon, if any, and/or personal property, (as hereinafter described) located, situated, lying and being in

District, Monongalia County, West Virginia, more particularly described as follows, to-wit:

REAL ESTATE TRANSACTIONS

IN TRUST, NEVERTHELESS, TO SECURE

(hereinafter called the beneficiary) whose place of residence is

, the principal sum of

Dollars

(\$), which sum is to be paid to the beneficiary, as follows:

IT IS EXPRESSLY COVENANTED AND AGREED between the parties hereto, (including the beneficiary) that:

(1) If default be made in the payment of any or more installments of the principal indebtedness, or in the payment of any interest secured hereby, and such default shall continue for a period of ten (10) days then the beneficiary may, at his option, declare the entire balance of principal and interest secured hereby to be immediately due and payable.

(2) In the event that the debt secured hereby is now or hereafter evidenced by two or more promissory notes, or other evidences of indebtedness, there shall be no priority or preference in the right to participate in the security of this deed of trust as among the respective owners and holders of such notes, or other evidences of indebtedness, irrespective of the order of their assignment.

(3) This deed of trust secures any and all renewals of the original note until the whole of the sum secured hereby is fully paid and satisfied, together with any interest due or to become due thereon, and also secures any and all notes and/or other evidences of debt hereafter given in lieu, place or payment of said note, or any part thereof until the whole of the principal sum and interest thereon shall have been re-paid to the beneficiary.

(4) The grantor shall keep the property hereinbefore described constantly insured against loss or damage by fire, or by wind-storm, in some one or more insurance companies doing business in the State of West Virginia, in an amount not less than \$ with standard mortgagee rider attached to the policy, or policies; the proceeds of such insurance to be paid to the beneficiary in case of loss or damage as the latter's interest may appear; and that the grantor will deliver the policy or policies for such insurance to the beneficiary. If the grantor shall fail to perform this covenant, then the beneficiary may, without notice to the grantor, effect such insurance, and the premiums and any other costs paid in effecting and continuing the same shall constitute so much additional indebtedness secured hereby and shall bear interest from the date of payment thereof.

(5) The grantor will pay all taxes, governmental assessments or charges levied, assessed or charged upon the property hereinbefore described, within sixty (60) days after the same become due and payable. If the grantor shall fail to perform this covenant, then the beneficiary may pay such taxes, governmental assessments or charges, and the same, when paid by the latter, shall constitute so much additional indebtedness secured by this deed of trust and shall bear interest from the date of payment, and the beneficiary shall be subrogated to the lien of the taxing or governmental authority.

(6) Until default shall be declared as hereinafter provided, the Trustee shall permit the grantor to retain possession of the property hereinbefore described. But if the grantor shall at any time vacate or abandon said property, the Trustee shall have the right, without notice, to take possession of the same and every part thereof, and to take such measures as shall, in his judgment and discretion, be necessary to preserve and protect the same, until sale of the property hereunder is made. Any expense incurred by the Trustee by reason of such measures shall constitute so much additional indebtedness secured hereby and shall bear interest from the date of payment.

(7) The grantor shall keep the property hereinbefore described and conveyed in as good order and condition as it now is, ordinary wear and tear excepted, and shall not commit any waste upon or injury to the same to such an extent as in the opinion and judgment of the Trustee, shall materially impair the value of the same as security for this loan. If, in the opinion and judgment of the Trustee, the performance of this covenant has been breached, then the beneficiary may, at his option, declare the entire balance of principal and interest secured hereby to be immediately due and payable.

(8) The owner and holder of any one or more evidences of indebtedness secured hereby may, by notice in writing, or by registered letter addressed to the grantor at his last known Post Office address, declare default hereunder upon the occurrence of any one or more of the following events or contingencies:

(a) If the grantor shall fail to pay the principal or the interest upon, the sum secured hereby, or any part thereof, according to the tenor and effect of the note, or notes, or other evidence of such indebtedness, and such default shall continue for a period of ten (10) days.

(b) If the grantor shall fail to pay all taxes, governmental charges or assessments levied, assessed or charged upon said property within sixty (60) days after the same become due and payable.

(c) If the grantor shall fail to effect the insurance upon the property in the manner and form hereinbefore provided.

(d) If the grantor shall vacate or abandon the property, or commit any waste upon or injury to the same to such an extent as, in the opinion and judgment of the Trustee, materially impairs the value thereof as security for the indebtedness secured hereby.

(e) If the grantor shall become insolvent, or shall be adjudicated a bankrupt, or shall make an assignment for the benefit of creditors; or, if a corporation shall begin to wind up its affairs, or proceedings be taken voluntarily or involuntarily for its dissolution, or if a receiver be appointed therefor.

REAL ESTATE TRANSACTIONS

(9) Any notice of default given hereunder may be revoked by the party giving the same, but only by notice in writing or by registered letter addressed as hereinabove provided for the declaration of such default. If any such default be declared as aforesaid, then upon written notice by the party declaring the same to the Trustee, the latter shall forthwith proceed to sell the property hereinbefore described, at public auction at the front door of the court house of Monongalia County, West Virginia, to the highest and best bidder for cash in hand on the day of sale, or upon such other terms and conditions as the beneficiary shall direct. Before being required to advertise for sale hereunder, the Trustee may, in his discretion, require the beneficiary to deposit a sum which, in the opinion of the Trustee, is adequate to cover the estimated cost of publishing the Notice of Sale plus the sum of \$50.00 to compensate the Trustee for his services in the event that the sale is cancelled by direction of the beneficiary. Before making such sale, the Trustee shall publish a notice of the time, terms and place of sale, with a suitable description of the property hereby conveyed (which shall be sufficient by describing the property in general terms as the same conveyed by this deed of trust, stating the date thereof and the volume and page number of the Trust Deed Book or of the Miscellaneous Book in the Office of the Clerk of the County Court of Monongalia County, West Virginia, in which the same is recorded); and such publication shall appear once a week for four weeks preceding the date of sale in a newspaper of general circulation published in Monongalia County, West Virginia. The grantor hereby waives personal service of such notice of sale as required by law. In the event that two or more items or parcels of said property are hereinbefore described, then the Trustee may offer said properties for sale either separately or as a whole. Sale of the property described herein may be made either free of taxes, liens or assessments or subject thereto, as in the judgment and discretion of the Trustee he shall deem best; and he shall sell said property in whichever manner shall bring the highest and best price therefor. At any sale made hereunder, the grantor, as well as any beneficiary, may bid upon and purchase the property offered for sale. In making such sale, and conducting the same, the Trustee may act in person or by any one or more agents or attorneys. Upon making such sale, the Trustee shall apply the proceeds thereof as follows:

- (a) To the proper costs, expenses and fees in connection with such sale, including as a part thereof a commission to the Trustee of five percent upon the gross sale price of the property;
- (b) To the payment of all liens, taxes, governmental charges or assessments (if sale is made free of same) having priority over the lien of this deed of trust. In the event that any beneficiary hereunder has paid any such lien, taxes, governmental charges or assessments he shall be subrogated to the right of the lienor and/or the governmental body and shall be reimbursed therefor by the Trustee, with interest thereon at the rate of six per cent per annum from the date of payment;
- (c) To the payment of any sums which may have been paid or advanced by the beneficiary or the Trustee under any other provisions of this deed of trust;
- (d) To the payment of the entire balance of principal and interest secured hereby, with interest computed to the date of such sale; and
- (e) The surplus, if any, to the grantor, or to such other person, firm or corporation as may be lawfully entitled thereto.

(10) After default has been declared hereunder and notice has been given to the Trustee to advertise the property hereby conveyed, the grantor shall thereupon, without the necessity of further notice, demand or any legal proceedings, forthwith surrender possession and control to the Trustee of the property hereby conveyed, and every part thereof, and the rents, issues and profits thereof.

(11) No remedy conferred herein or by law upon, or reserved to, the beneficiary is intended to be exclusive of any other remedy or remedies; but each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder, or now or hereafter existing at law or in equity, or otherwise. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power, or shall be construed to be a waiver of any such default or an acquiescence therein; and every such right or power may be exercised from time to time and as often as may be deemed expedient.

(12) The terms and conditions of this deed of trust, and each and every covenant therein contained, shall extend to and be binding upon the respective heirs, devisees, personal representatives and assigns of the parties hereto, including the beneficiary.

WITNESS the following signatures and seals the day and year first above written:

_____(SEAL)

_____(SEAL)

_____(SEAL)

_____(SEAL)

REAL ESTATE TRANSACTIONS

This instrument was prepared by: _____

State of West Virginia, County of Monongalia, to-wit:

I, _____, a Notary Public in and for the
County of Monongalia, in the State of West Virginia, do hereby certify that
name _____ signed to the writing above, bearing date on the _____ day of _____, 19 _____, whose
ha _____ this day acknowledged the same before me in my said county.
Given under my hand, this _____ day of _____, 19 _____.
My commission expires the _____ day of _____, 19 _____.

Notary Public in and for Monongalia
County, West Virginia

State of West Virginia, County of Monongalia, to-wit:

I, _____, a Notary Public of said County,
do certify that _____ who signed the writing above, bearing date the
_____ day of _____, 19 _____, for
a corporation, has this day in my said County before me, acknowledged the said writing to be the act and deed
of said corporation.
Given under my hand, this _____ day of _____, 19 _____.
My commission expires the _____ day of _____, 19 _____.

Notary Public in and for Monongalia
County, West Virginia

Form H

ANNOTATED DEED OF TRUST NOTE

Dated 46-3-114

\$ _____ Morgantown, West Virginia

_____, 19____

Unconditional
promise to pay
certain sum of
money 46-3-104(1)
(b)

For value received in the manner hereinafter set
forth (we) _____ (Name of Individuals or Corp.),
hereby promise to pay to the order of _____ (Name),
_____ (Address) the sum of _____
Dollars (\$ _____) with interest thereon at
_____ percent (%) per annum.

Payable to order
of bearer 46-3-104
(1) (d)
Payable at definite
time or on demand
46-3-104 (1) (c)

This note is payable as to principal and interest
in monthly payments of _____ Dollars
(\$ _____) each, beginning
19____, and continuing on the _____ day of
each month thereafter until all principal and interest
are fully paid ultimately due and payable as to all
interest and principal on or before _____
years () from the date hereof.

Definite time
46-3-109

The makers reserve the right to anticipate any
and all payments hereon. Should there at any time
be due, owing and unpaid two (2) or more of the
monthly payments herein provided for, at the option
of the holder hereof the entire unpaid balance of
principal and interest owing thereon may be de-
clared to be due and payable and collected in any
legal manner.

Statement of
collateral
46-3-112

This note is secured by a deed of trust bearing
even date herewith, executed by the undersigned,
conveying to _____ (Names) and _____ (Names),
Trustees for the _____ Bank, _____
_____ (Address), _____, all of Lot
No. _____, of the _____ Addition,
_____ Ward of the City of _____,
_____ County, _____.

Signed by makers
46-3-104 (1)(a)

Form I

Re: H. H. Jones 42 152/160 AcresDate: Oct. 11, 1975Adverse Check Sheet

Source of Title & Date of Deed & Recordation	Name	Outsales Grantor Indices	Deeds of Trust	Judgments Executions	Leases	Mechanic Liens	Lis Pendens	Bonds, Contracts Etc.	Uniform Commer- cial Code	Unacknowl- edged Writings
394/585	H.H. (Howard) &									
31 Mar. 1970										
25 Apr. 1970	Jane M. JONES	X	X	X	X	X	X	X	X	X
161/288	Ajax Land									
13 May 1929										
16 May 1929	Company	X	X	X	X	X	X	X	X	X
114/115	L.C. HARPER	X	X	X	X	X	X	X	X	X
5 July 1920										
17 July 1920	Single									
117	William Howard &									
1919										
1 Mar. 1920	Mary CARTER	X	X	X	X	X	X	X	X	X
112/122	J.W. & Elizabeth									
29 Aug. 1919										
12 Dec. 1919	JONES									
	James M. & Helen									
	SMITH									
09/65	Elisha & Sue									
5 May 1914										
5 May 1914	BARTLETT									
Vill Book	James A.									
3/165										
1910	ANDREWS									
	Estate									

NOTE: This Check Sheet is used to control the adverse. It is important that all indices to be checked be listed on this and all possible names used by the Grantors be checked. This particular form covers an adverse for Wayne County, West Virginia. Economy of effort indicates that each name be checked while you are in that given Index.

