THE CIVIL WAR: As Examined by the Title Industry

A Judgment Debtor by Any Other Name
The Future Of Title Examination
Title Tips & Trivia
Foreclosures — Part Deux
With SoftPro—Winning is Easy.

The Closing and Title game is challenging. As the industry leader in technology and functionality, LPS SoftPro develops award-winning software that will allow you to outsmart your opponent and increase your volume and revenue by reducing the time it takes to perform closings. Take a look at all of SoftPro’s offerings that will help you **WIN THE GAME**:

<table>
<thead>
<tr>
<th>Award-Winning Software and Support</th>
<th>Custom Data Entry Screens</th>
<th>Lowest System Requirements</th>
<th>25 Years Experience</th>
<th>Scalable</th>
</tr>
</thead>
<tbody>
<tr>
<td>Latest Technology</td>
<td>Largest Document Library with Access to Thousands of Free Forms</td>
<td>Concurrent Licensing Integration with Closing Vendors</td>
<td>Top-Rated by Auditors</td>
<td>Fraud Monitoring</td>
</tr>
<tr>
<td>User-Friendly</td>
<td></td>
<td></td>
<td>Customizable Flexible Networking</td>
<td>Commercial Functionality</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Unlimited Buyers, Sellers, Properties and HUDs Per Order</td>
</tr>
</tbody>
</table>

Call today for a **FREE 30 Day Trial**
Dial **800-848-0143** or visit us online at [www.softprocorp.com](http://www.softprocorp.com)

Neither LPS SoftPro nor its products are affiliated with, sponsored by or endorsed by Hasbro.
ON THE COVER

Harper’s Weekly – View of Richmond, Virginia 1862

We solicit and appreciate your contribution to the first article. If you are interested in contributing to the first article – a local story, a local contact, an image – or another down the road, please contact me at brownfirm@lawyer.com or 703.924.0223.

SUBSCRIBE to the EXAMINER
Subscriptions are available to interested individuals or groups at $150.00 per year.
800.929.8730
www.vlta.org

FEATURES

Expert Positioning: Be Your Own Marketing Message ............ 7
History of the Title Examiner ........................................... 9
A Judgment Debtor by Any Other Name ......................... 10
In a recent trustee’s sale, the defaulting borrower had an unusual name, “Slaughenhaupt.” In addition to the unusual name, the borrower had some difficulty paying the IRS, and the pre-foreclosure title search did NOT reveal a large ($26,000) IRS lien filed under a slightly different spelling of the name: “Slaughenhaudt.”
The Future Of Title Examination ...................................... 11
The majority of claims result from title examiner error. That is the nature of our industry, and it is unlikely that it will change. The most we can do is to try to educate our professionals as to how to avoid errors and thereby minimize risks.
Mentoring ................................................................. 15
Title Tips & Trivia .......................................................... 16
The Civil War: As Examined By The Title Industry ............. 18
The United States and Virginia have entered into the five year Sesquicentennial of the Civil War. While the North or Union states seem to have only a passing interest in the event, those in the South, the Confederacy, have planned extensive reenactments, have revisited theories on the causes of the Civil War, and have held some events that have been challenged as not politically correct (e.g., the Secession Ball in South Carolina). In what is hoped to be a series of feature articles, the VLTA Examiner Committee is beginning a study of the Civil War from the perspective of our industry.
Foreclosures — Part Deux ............................................... 21

DEPARTMENTS

from the President ................................................. 5
from the Editor ..................................................... 6
from the Executive Director ........................................ 6
Beaufort’s Bucket ...................................................... 27
Title Tips by Tute ..................................................... 28
Agent Resources ...................................................... 31
The mission of the Virginia Land Title Association (VLTA) is to promote communication and to provide education throughout the real estate and title industries. The mission includes promoting standards and regulations that increase the effectiveness of the industries. Legislative initiatives and educational programs are primary aspects of the VLTA’s work. Leadership in ethical practices and standards is an integral part of its members’ business, within and outside of the VLTA.

The VLTA EXAMINER is the official publication of the Virginia Land Title Association. It is published for VLTA members. Requests for address changes must be received 30 days prior to the date of the issue with which it is to take effect. Although advertising is screened, acceptance of an advertisement does not imply VLTA endorsement of the product, the services, or the views expressed. The views and opinions expressed in this publication are not necessarily those of the association. Articles may not be reprinted without the consent of the VLTA. Subscriptions are available to interested individuals or groups at $150.00 per year. Address all VLTA and magazine inquiries to: VLTA EXAMINER, 13800 Highway 9 North, Suite D-144, Alpharetta, GA 30004; 800.929.8730; 770.754.6142 (fax); kloree@vlta.org. Submit all articles for publication in the magazine to: Fidelity National Title Insurance Company, 310 First Street, 12th Floor, Roanoke VA 24011, 540.853.4039, 540.982.5436 FAX; ckennett@fnf.com.
I was discussing the trials and tribulations of the title industry recently with a good friend and business acquaintance. He told me that he believes that ‘our business model has failed’ not from fundamental flaws in what we do and how we do it, but more from a drop in basic standards and from our failure to continue to require fundamental safeguards throughout the process of issuing title insurance. “Just look at the claims,” he said, “they mostly involve title search errors and settlement miscues, areas where good closers and good title examiners once prevented mistakes and protected the industry from excessive claims.” He went on to say that “those searchers and closers were our gatekeepers, we let anyone and everyone take their place, no matter what qualifications or lack of qualifications they had,” and “we’ve got to get back to the way we did things before, we’ve got to get back to the fundamentals.”

While many strayed from the core principles of how and what must be done in order to insure title, this association has not deviated from its vision of our industry. Moving our industry to a more professional set of standards which includes training, education, licensing and certifications has been the guiding force of this association for many, many years (much longer than I have been associated with the VLTA). Licensing, testing, CRESPA certifications, pre-licensing, and certification programs have been the result of hard work by numerous past and present VLTA boards, officers and committee chairs. We have been marching forward, with an ever-changing and dedicated leadership, continuing to enhance and strengthen the basic standards of how we do business.

Pre-licensing education has helped us make sure that licensed title agents have the basic knowledge to work in this industry. Mandatory continuing education classes on focused and relevant topics have helped us to bring important issues to the forefront of our membership. While we have accomplished a lot, there is still much more that need to be done. Our Agency Standards need to be incorporated into basic certification course material that should be actively promoted by our underwriters. Our planned certification programs for title examination and settlement officers need to move forward as mandatory course material, eventually leading to additional licensing requirements for title examiners and escrow officers. Required training and industry standards, coupled with legislative initiatives to require minimum search requirements before the issuance of title insurance policies, will help eliminate the search related errors that have shaken our industry. New escrow and settlement focused training, coupled with the use of software reconciliation tools and electronic reporting, must become the standards for closings in the future if we are to avoid the mistakes of the past. These goals and initiatives will take time to bear fruit. We need to be patient and remember that this race to the future is truly a marathon and not a sprint.

The efforts and hard work of our volunteers are the backbone of this association. We need everyone who believes that we can build a better industry to participate in the VLTA. Our committees, events, seminars, and advocacy cannot happen without you. At the risk of alienating my many GOP friends, Hillary Clinton was right, “it does take a village” to get things done!

Norman Rockwell once said, “I’ll never have enough time to paint all the pictures that I want to.” It seems that a year comes and goes very quickly. It has truly been my honor and privilege to serve as your President this past year. I credit the wonderful group of directors, officers, committee chairs and committee members for the accomplishments of this association in a very challenging year for our industry. I look forward to seeing the many VLTA goals and initiatives bear fruit in the months and years to come.
All Hands on Deck….

Success in any association depends on the coordinated teamwork of motivated, visionary volunteer leaders and committees working with a motivated and efficient staff. In most cases, volunteer leaders are involved because of their firm belief in the mission of the association and a desire to contribute their expertise, talent and effort toward fulfilling that mission.

Volunteers of VLTA should know that their voices count and that they’re not wasting time. In fact, every committee meeting is valuable and the committee goals are important to VLTA’s success.

At the VLTA, like many other groups, securing volunteers has become a challenge. Volunteers have less time to commit due to increased business duties/workload, family activities, and other time constraints.

Why Volunteer?

- **Leadership**
  VLTA provides opportunity for members to lead, mentor, educate and spearhead change. To hone those skills that are most valuable in today’s business environment — collaboration.

- **Networking, Marketing and Friendships**
  The most valuable benefit is the opportunity to meet other people in the industry. Volunteers get direct access to other perspectives and insight. Quite often, support and motivation is provided for each other’s professional endeavors.

- **Opportunities**
  Volunteers often find new jobs, new staff and new answers to the old challenges… all from their fellow volunteers.

- **Give Back**
  Give back to the profession that has served you well and provide mentoring to those newly licensed agents. Sharing best practices and lessons learned will make the industry as a whole stronger.

If you have the will and desire to make a difference or the need to feel inspired — Virginia Land Title Association has a place for you! VLTA needs “all hands on deck” to further enhance the value of membership and to strengthen our standing in the industry.

Often, people are willing to serve on a committee if asked. We just forget to ask. So let’s starting ASKING. Ask everyone and anyone who are members of VLTA. For some, they just aren’t sure where they would “fit” best. Contact VLTA at 800.929.8730 and we’ll help you find the committee that fits best with your industry interest.

You know I always have a bottom line… Volunteers bring GIFTS. Important GIFTS. Gifts that are the most valuable commodities held by any individual: time, energy, and talent.

VLTA is so very thankful for those gifts.

---

From the Editor

Thanks to our hard working Editorial Board in producing another great issue of the Examiner! Earth Day was April 22. In our busy lives we often forget how important it is to take care of our planet. Our industry generates a significant amount of paper even as we move toward paperless systems. With a minimum amount of time and effort at home and in the office, we can recycle our paper (yes, even the Examiner!), glass, cans and plastic products to keep this trash out of our landfills and waterways. Kroger, Food Lion and Walmart accept used grocery bags. This is truly an area where each one of us can make a difference!
Do it Yourself Marketing

Expert Positioning: Be Your Own Marketing Message

Marketing communications can take many forms beyond a simple advertisement or sponsorship. Even better, several of the most effective channels require only time and effort, with little expenditure. That’s why many small businesses are fond of public relations, which includes media relations, conference speaking and a number of other opportunities to see and be seen by their target markets.

However, just as with any form of marketing communications, there’s much more to it than simply getting yourself or your key spokesperson some coverage. Like anything worth doing for your business, it starts with some planning. Here are a few basic questions you’ll need to answer before you head out on the conference circuit:

Am I or my designated spokesperson an expert at something of interest to potential clients?

Be as objective as you can here, but chances are, you do know quite a bit about something of interest to your clients (and for media relations, this should go beyond knowledge of your product!). You wouldn’t be in business in the first place if you didn’t. If you are going to take the path to becoming a trusted advisor for current and future clients, you’ll need to deliver value long before they make a purchase.

What is the key message? What do prospects want to hear about at conferences and in target publications? How do I tie them together?

This is where most title and settlement service firms pursuing “trusted advisor” status via public relations tend to fall off the wagon. You probably have a good idea of what interests your target market. You are aware of the hot topics. Perhaps there’s a new state regulation that will considerably slow the title production process. Maybe the market for home equity products has fallen off a cliff. Talking about those topics is likely to get you into a publication or on stage. Simply talking about your product and all of the ways it helps your lucky customers will not. It’s formulating that magical link between your value proposition and key message, and a hot topic that’s tricky, and reason people like me make a living!

If an expert falls in the forest…

So you now have a top expert (or are a top expert), a topic that will turn heads and naturally steer the conversation to your product or service. So, where will all those targeted prospects now be seeing and hearing you? Bear in mind that public relations, be it conference speaking or media relations, is not a one-shot deal. Do you remember the name and firm of each person you saw quoted in the Examiner over the winter? This is a strategy that requires consistency of message and exposure. The conferences and publications you target need to be the places your prospects and customers go for relevant information. Of course, the better the publication or conference, the more competition from the dozens to hundreds of experts/competitors seeking to be quoted in the same places that you are! The best practitioners of the positioned expert approach build strong relationships with a number of conference directors, publishers, executive directors and editors. They know that pitching what amounts to a self-promotional piece with little objective relevance to the audience will close the door on future opportunities very quickly.

If at first you don’t succeed…adjust your pitch.

Be persistent, but be ready to adapt and adjust your proposals and pitches to the needs of your target editors and conference directors. Oh, and LISTEN. Most will tell you what they need, and why they don’t like your pitch if it comes to that. So be ready to adjust. Simply pushing the same angle over and over after an editor shoots you down will simply lead to a lot of quality time with that editor’s voice mail.

Don’t do it if you don’t have time. Or, find someone who does.

As I said, this is a time intensive approach to winning exposure for your brand. As such, if you or your spokesperson can’t find time to actually conduct the interviews you are seeking, draft the contributed articles you are pitching or speak at the conference to which you’ve proposed a topic, then don’t do it. In the alternative, find someone who can. Now, while I am partial to using a consultant or marketing agency, there are many good marketing communications and
PR professionals who do a great job “in-house” as well. Whichever route you take, just realize that a winning “trusted advisor” message strategy is not a three hour a week position. It’s more than a few phone calls—especially if you don’t have an existing relationship with the person you are pitching. There are media databases to be built and updated, and proposal deadlines to be tracked. There are background and supporting materials and copy to be produced. If you’re going the conference route, there are logistics. And, if you aren’t frequently and carefully reading the publications in which you’d like to be quoted, be forewarned: the first time you propose content that has no correlation to the content generally put forth by that publication will very likely be your last. Don’t seek to be quoted on a hot title story in the local realty publication unless you are ready to make a strong case as to why Realtors will want to read about it. In short, be familiar with the publications you pitch.

As with any marketing strategy, or even general business strategy, there is no silver bullet or ready-made blueprint for setting a public relations strategy. It needs to be customized to your business, your target prospects, your market and the things that change their preferences. Just remember, though, that if you cannot make a reasonable segue from the topic or message you will be touting and the need for your product, then you probably don’t have a winning PR strategy. Don’t make the mistake of assuming one conference panel and a news release or two will double sales. You need to be out there in a number of places, with a consistent message to share. If you are willing to put the time in, do some listening and learn from your mistakes, you are likely to find that the “trusted advisor” approach can yield an incredible return for your business.

ABOUT THE AUTHOR

BRIAN RIEGER is a former litigator with ten years of public relations and marketing communications experience. He has served the title and settlement services industry for seven years, providing marketing and PR counsel for national underwriters, technology developers, title agencies and vendor management companies of all sizes. He is the principal of True Impact Communications, a national, full service marketing and public relations consultancy serving clients of all sizes across the mortgage, title and settlement services industry. He has been published in ALTA’s Title News, TAVMA’s quarterly newsletter and Scotsman Guide, and has ghost-written articles published in Mortgage Banking, Origination News, Title News, Secondary Marketing Executive and more. He also co-publishes Real Estate and Mortgage Executive, a free, industry-focused newsletter. Brian has presented on marketing and public relations topics at the TAVMA annual conference, ALTA Business Strategies Conference, The National Settlement Services Summit, the Ohio Land Title Association Annual Convention and several local seminars.

NETWORKING FRENZY
...and a bit of education too!

CONNECT ■ INFLUENCE ■ LEVERAGE

2011 Annual Convention • The Jefferson Hotel, Richmond, Virginia

Key Note Sponsor .............................. M&T Bank
Welcome Reception Host ...................... Fidelity National Title Group, Inc.
Happy Hour Reception Host ............... Mid-Atlantic Title Consultants, LLC

EXHIBITOR EXCHANGE SPONSORS

Alliance Bank
Bank of Georgetown
First American SMS
Habitat for Humanity Virginia
Hess, Egan, Hagerty & L’Hommedieu, a division of M&T Insurance Agency Inc
Landtech Data Corporation
McClamns Insurance Associates
PageStream Mid-Atlantic
Quill.com
reQuire Release Tracking
RynohLive
Simplifile
SoftPro
Southern Title Insurance Corporation
TitlePac Inc.
TSS Software Corporation
WFG National Title Insurance Company

DIRECT CONNECT SPONSORS

Kaufman & Canoles, P.C
Precision Reconciliation Services, LLC
History of the Title Examiner

The process of title examination and learning the trade has historically been in the form of an informal apprentice program. There were very limited written materials available; most of the materials were provided by the title insurance underwriter or title research company for use by the title examiner trainee.

The original manual (soft cover) used by title companies was *Title Examination in Virginia* by Sidney F. Parham, Jr. (1965); which was then revised and published in hard cover the title being *A Virginia Title Examiner’s Manual* 2nd edition (1992) by Douglas W. Dewing; the 3rd edition, hard cover book is now available with a 2011 Supplement insert.

Many of the title insurance underwriters employed their own title examiners and/or owned their own title research companies who employed examiners. With the downturn in the market of the early 90s, by necessity, many of the examiners employed by the title insurance underwriters and or title research companies were laid-off. So, they then set up their own title research company or they conducted title research for other underwriters/companies as an independent title examiner, therein, creating the ‘Independent Title Examiner.’ Seeing the opportunity to make more money and work for themselves, other title examiners went out on their own and became Independent Examiners.

In today’s entrepreneurial environment, with the ease of company formation, many ‘independents’ have formed a company. Some, hoping to make a profit in a previously closed field, are now conducting title searches with little or no actual training or knowledge, which includes outsourcing to other states or countries.

Definitions:
- **Abstract:** The finished title report product—a completed title examination—i.e. a title report.

**NOTE:** For some in the profession, an Abstractor is synonymous with a Title Examiner.

- **Title Abstractor:** an entry-level position—a title examiner trainee—one who abstracts—the take-off of information from documents in written or copied form.
- **Title Examiner:** an educated and trained title researcher. A title researcher who has been through a mentorship/apprentice program with a mentor; or trained by a title research company; or trained by a title insurance underwriter; or one who is also has a paralegal degree with emphasis in the area real estate title research; or a real estate attorney. Many title examiners seek out continuing education through the underwriters or the VLTA.

There is a very big difference between a residential title examiner and a commercial title examiner, the difference being the degree, type and length of training and knowledge.

---

**SAVE the DATES!**

  
  Charleston Place, Charleston, SC

- **2012 Day on the Hill** . . . . . . February 2012
  
  Richmond, Virginia

- **2012 VLTA Annual Convention** . . . . June 6-10, 2012
  
  Colonial Williamsburg, Virginia

- **2012 ALTA Annual Convention** . October 17-20, 2012
  
  The Broadmoor, Colorado Springs, CO

- **2012 VLTA Fall Seminar** . . . . October 11-12, 2012
  
  Norfolk Waterside Marriott, Norfolk, Virginia

- **2013 Day on the Hill** . . . . . . February 2013
  
  Richmond, Virginia

- **2013 VLTA Annual Convention** . . . . June 6-8, 2013
  
  Wyndham Oceanfront, Virginia Beach, Virginia

- **2014 VLTA Annual Convention** . . . . June 2014
  
  The Hotel Roanoke and Conference Center, Roanoke, Virginia

- **2014 VLTA Fall Seminar** . . . . . . October 2014
  
  Richmond, Virginia

**REGIONAL NETWORKING MEETINGS**

- August 24, 2011 . . . BridgeTrust Title Group, Va Beach
- Sept. 14, 2011 . . . . . . The Escrow Store, Richmond
- Sept. 21, 2011 . . . . . . Dominion Title Corp., Great Falls
- Sept. 14, 2011 . . . . . . Court Square Title, Charlottesville
A Judgment Debtor by Any Other Name

In a recent trustee’s sale, the defaulting borrower had an unusual name, “Slaughenhaupt.” In addition to the unusual name, the borrower had some difficulty paying the IRS, and the pre-foreclosure title search did NOT reveal a large ($26,000) IRS lien filed under a slightly different spelling of the name: “SlaughenhauDt” (definitely our “guy” — same address). Consequently, the IRS was not given notice of the trustee’s sale and therefore, the sale did not extinguish the lien. The title examiner’s company was sufficiently “iquid” to wire $40,000 to be held in escrow pending resolution of the issue (the Seller’s attorney has requested a waiver or release from the IRS; if that fails, we will pay the lien in full). This would NOT have been a problem had the title examiner keyed in “slau” and seen the results of that search.

How would a Court rule (NOT that we want to get to the courts, of course)? Virginia follows the rule of “idem sonans,” the term applied to names which are substantially the same, though slightly varied in spelling, as in “Any” and “Annie.” See Gauss v. Commonwealth, 141 Va. 440, 444, 126 S.E. 1 (1925). Under the rule of “idem sonans,” a variation between the indexed name and proof of given (or ACTUAL) name is not material if the names sound the same or the attentive ear finds difficulty in distinguishing them when pronounced. With respect to the land records, an entry will be deemed to have given constructive notice if it is substantially the same as the intended entry, and A TITLE EXAMINER MUST SEARCH EVERY REASONABLE SPELLING OF A NAME TO FIND ENTRIES IN THE COMPUTER INDEX. (See also A Virginia Title Examiners’ Manual, Third Edition, Douglas W. Dewing of the Virginia Bar, Section 26-4[d]).

SO: here are some Tips:

- Spell “Zero” rather than 0
- Try phonetic spelling
- Hyphenated names: GO BOTH WAYS — always an annoyance because they double the time needed, but DO IT.
- Be CAREFUL: The date shown as the effective date of the judgment index can be incorrect; for example, Norfolk shows that its index starts in 1990, which is incorrect: it starts in 1993.
- Don’t forget nicknames, such Beth for Elizabeth
- And if “Beth” or “Betty” takes title in that name, be on the safe side and check for judgments under the “proper” name of “Elizabeth.”
- Misspellings, such as Abarham rather that Abraham.
- Also, when searching any of those jurisdictions using the Supreme Court systems, put in only a portion of the last name and see what comes up; for example, if you are searching John Smith, III, the Clerk may index it under: Smith III, John. if you had searched under, “Smith, J,” you never would have seen it. (There are some very good sleep aids out there, by the way. Thinking of all the variations might just keep you awake at night!)

So you find a Judgment, WHAT NEXT??

DUE DILIGENCE RESEARCH — and that does NOT mean “just get an affidavit.” One claim of which I am aware involved the owner’s name which was not too common. Say, for example, Floyd Forrest (who was a wonderful barber in
Remember the game Jenga, where you build a tower of wooden blocks and the object is to remove one block at a time, placing it on top of the tower without causing the tower to fall? The majority of claims result from title examiner and title agent error. That is the nature of our industry, and it is unlikely that it will change. The most we can do is to try to educate our professionals as to how to avoid errors and thereby minimize risks. A bit like title work, the land records are our tower and each time an examiner or abstractor misses an important document, indexes a document incorrectly, or misses an integral piece, they pull one more block from the tower. When a faulty document is recorded, one more block is added to the top of a Swiss cheese tower. Pretty soon, our tower is full of gaps and is precariously close to collapsing.

Everyone in this industry knows the value of solid, accurate land records. After the Fall VLTA Symposium, we are acutely aware of the need for reliable, experienced abstractors and conscientious title underwriters. The query remains, “HOW DO WE GET THERE FROM HERE?” An increasing number of abstractors have spent time in the record room at the local courthouse, most courthouse land records are available on-line, many “abstractors” are located outside of Virginia and even outside the United States.

Are title examinations something we can truly outsource? If not, how do we stop this trend? How many blocks being removed will it take before we scream “JENGA” and our tower crashes to the ground? Being of the single minded opinion that the land records are to be guarded like gold in Fort Knox, I went to the streets.

What does it take to be a title examiner? Here is an excerpt from Google Jobs:

**Title Examiner Job Description, Career as a Title Examiner, Salary, Employment — Definition and Nature of the Work, Education and Training Requirements, Getting the Job:**

- **Education and Training** High school mandatory, along with training; college preferred
- **Salary** Average — $39,420 per year
- **Employment Outlook** Fair
- **Definition and Nature of the Work** Title examiners search, analyze, and evaluate records on titles to land, homes, and other buildings. They make sure that the title to a property is free of restrictions that may affect its sale or use. The findings of a title search and examination are needed to issue title insurance, grant mortgage loans, buy and sell property, acquire rights of way, and obtain and protect mineral rights.

Titles are documents that show evidence of ownership to a piece of property. Local government agencies and other organizations keep these records. Title examiners search for copies of these records and other documents, including vital statistics and street and land map books, to determine the legal status of a title. Entry-level employees known as title searchers often assist title examiners in their investigation.

Title examiners verify ownership and the legal description of a property and check for zoning ordinances that may restrict the use of the property. They copy or abstract required information from documents such as mortgages and trust deeds. Sometimes they rely on title abstractors to do this work.

At least now we know what Google thinks qualifies a title examiner for such a lucrative position. The elephant in the room — there were no job specific educational requirements, licensing, or professional trade organization membership required. In fact, in Virginia there are currently no legislative mandates for the position of title examiner, abstractor or searcher. VLTA has committed to support change in this regard but, as an organization of primarily title insurance agents, we need the support of the abstractor community.

Julie Ann Rutledge of Land Title Research wrote an article for the VLTA Examiner in the 1997-1998 Winter edition calling for much the same reform as we are faced with today. In her article, Ms. Rutledge wrote “None of us can escape the basic fact that...”

---

**The Future Of Title Examination**

A collaboration of abstractors, title examiners, underwriters and attorneys.
the title exam is the essential element in the entire process. If the information is incorrect from the start, we have lost before we have begun.” Ms. Rutledge went on further to posit that it was time to self-regulate and create a set of standards before they are mandated. Her call for training, education and licensing remains the cry of our industry.

Defining the difference between an abstractor and the title examiner begins the first phase of promoting consistent, uniform and regulated terms for the industry. The Google ad referred to abstractors as entry level title searchers. According to Ms. Rutledge, the process of title examination and learning the trade has historically been in the form of an informal apprentice program. There were very limited written materials available; most of the materials were provided by the title insurance underwriter or title research company for use by the title examiner trainee. Ms. Rutledge went on to define the differences: Title Abstractor: an entry-level position — a title examiner trainee — one who abstracts — the take-off of information from documents in written or copied form. Title Examiner: an educated and trained Title Researcher. A Title Researcher who has been through a mentorship/apprentice program with a Mentor; or trained by a Title Research Company; or trained by a Title Insurance Underwriter; or one who also has a Paralegal Degree with emphasis in the area Real Estate Title Research; or a Real Estate Attorney. There is a very big difference between a Residential Title Examiner and a Commercial Title Examiner. The difference being the degree, type and length of training and knowledge.

Ms. Rutledge opined that today’s economic environment has led to many underwriters or title research companies laying off their examiners and abstractors leading to more independent examiners who are conducting title searches with little or no actual training or knowledge, including outsourcing to other states and countries.

Several local area abstractors and title examiners have graciously provided their time, opinions and insight into this growing trend. Many of the title examiners interviewed got into this business out of necessity (needed a job) and stayed in this business because it is fascinating and the schedule is flexible. Of the individuals interviewed, some were trained by staff attorneys, title insurance underwriters or the company owner. One individual took a college course in the subject but most learned by reading the documents, calling a trusted colleague and searching the web. The individuals interviewed had either a college degree or a paralegal degree in real estate. They averaged over ten years of experience in the industry and very few outsource their work to other individuals. Most felt that if they could not handle the job, they would rather decline the work than outsource the search to another individual.

All those interviewed included the following in their list of common virtues of a premier examiner: integrity; organized with an exacerbated sense of attention to detail, competence and professionalism. One title examiner included a knowledge/expertise in data base queries! Each county in Virginia has their records, or a portion thereof, available online but using different programs.

Everyone makes mistakes and best practices from the abstrac-
tors interviewed showed a need for double (if not triple) checking work, tracking work through internal checkpoints, and continuing education and/or training provided in-house. Most, if not all of the examiners interviewed possess great passion for their industry and a desire to move forward in an ever changing landscape. How we get there from here created the most controversy. One respondent felt that, although unpopular, it would be interesting to require title searchers who sell their services to be licensed or have some sort of professional certification. This would reduce errors and increase the probability of thorough training and preparation.

Another respondent also suggested licensing, stating that there are no barriers to title abstracting, no knowledge standards and this leads to poor abstracting at cutthroat rates. A major concern is that quality abstractors do not get paid what they should, thus causing attrition in the industry. Another suggestion was a creation of a list of approved abstractors that underwriters have agreed upon, and requiring their agents to purchase abstracts only from this list of approved abstractors.

Some respondents to the query clearly did not want change in the industry either mandated or legislated. One response felt that an efficient market place creates a self-regulating industry. Licensing of title examiners/abstractors would not do much to change the industry. Passing a “test” would not result in a competent practitioner. Regulating the industry would create jobs for the educators and the regulators but would do little to impact the industry.

Taking it one step further, the economic impact of regulating title examiners/abstractors could force licensed examiners to be too expensive. In an effort to save costs, customers would go with cheaper (less experienced) searchers who could do searches for $8 a search with a 4 hour turn around time. These searches would be done by a computer designed model or outsourced overseas. With increased costs for insurance, licensing, membership, classes, etc. examiners would be forced to charge more and risk losing business. With the advent of all courthouses being on-line and e-recordings, this interviewee feared that the industry would eventually disappear.

Legislative initiatives, rules, licensing requirements and board certifications exist in other states, but are they in store for the future of title examinations in Virginia? Going through the standards adopted in several jurisdictions, the similarities are remarkable. In other words Virginia, you don’t have to reinvent the wheel. The Real Estate Section of the VA Bar can formally adopt or approve such standards. The Bar Association needs to develop their own set of standards before we can require the General Assembly to pass concurrent legislation mandating either licensing, certification or mandatory continuing education. The issue isn’t new, the discussion is ongoing and the solution is yet to be determined.

1 In reviewing several jurisdictions, I found most interesting that both Oklahoma and New Hampshire recommend that if a title examiner finds a title defective, and knows the examiner or attorney responsible, they should communicate with each other to resolve the title defect. Is it me or that just a little Polly Anna-ish?

Jenga is played with 54 wooden blocks. Each block is three times as long as it is wide, and its height is approximately half its width. To set up the game, the included loading tray is used to stack the initial tower which has 18 levels of three blocks placed adjacent to each other along their long side and perpendicular to the previous level (so, for example, if the blocks in the first level lie lengthwise north-south, the second level blocks will lie east-west).

Once the tower is built, the person who built the tower moves first. Moving in Jenga consists of taking one and only one block from any level (except the one below the incomplete top level) of the tower, and placing it on the topmost level in order to complete it. Only one hand at a time may be used to remove a block; either hand can be used, but only one hand may be in contact with the tower at a time. Blocks may be bumped to find a loose block that will not disturb the rest of the tower. Any block that is moved out of place may be left out of place if it is determined that it will knock the tower over if it is removed.

The turn ends when the next person to move touches the tower or after ten seconds, whichever occurs first.

The game ends when the tower falls in even a minor way—in other words, any piece falls from the tower, other than the piece being knocked out to move to the top. The loser is the person who made the tower fall (i.e., whose turn it was when the tower fell). However, if one or more blocks fall but all players agree that they can be put back on the tower for play to resume, that is in keeping with the cooperative aspect of the game.
The Membership Advantage

Standing together, our members are a powerful force keeping the land title industry an integral part of protecting interests in real property.

ALTA members get the very best information, advocacy, education and networking opportunities.

Membership increases professional contacts, improves industry knowledge and business success.

Our Expertise. Your Advantage.

TITLE AGENCY START-UP & MANAGEMENT
ACCOUNTING • HUMAN RESOURCES • IT • MARKETING • OPERATIONS

www.elmstreetmanagement.com

Elm Street Management offers integrated consulting and outsourcing options to start-ups and small to mid-sized title agencies in the disciplines of Accounting/Finance, Human Resources, Information Technology, Marketing and Operations. With proven expertise in the title industry, we provide innovative, cost-effective, and "best practice" solutions to your corporate operations, giving you a competitive advantage and an array of back-office resources, thus allowing you to focus on growing your business. We welcome the opportunity to work with you and make your daily "To Do" list even shorter!

TO DO:
- Start Title Agency
- Manage Title Agency
- Check out Elm Street Management

www.vlta.org
Mentoring

At the beginning of my career in the title insurance business, and throughout almost 40 years in the business, I was and have been blessed with several mentors. These men and women, some attorneys, some closers, some lay examiners and some just good business people, all provided valuable insight into the workings of the business as I progressed through various stages of the business. I was retired when I was approached about writing down my thoughts on mentoring, but since then (I have been procrastinating), I have re-entered the business with renewed gusto and a determination to share what I have learned with others still working their way through title careers. I sometimes fear that the title business has become so intense and furious that valuable lessons for experience and observation are being lost.

I remember emerging from Texas University Law School and the bar exam as a typical newbie attorney who “knew all there was to know about the law.” It only took one session with one of my early mentors, Roland Flick, a lawyer at the second company I worked for, to set me straight on that. He asked that I prepare a simple general warranty deed and I set to the task confident that my draft deed would receive immediate approval. What I got back was my deed covered with red ink underscoring all the mistakes I had made. I was mortified! That was my first important lesson in one of the fundamentals of the title business. Another early mentor was Eleanor Harrell, who I consider the best lay examiner that I ever knew. Just sitting next to her and watching her examine documents and point out certain lessons to be learned from how the documents read and how they formed the chain of title was invaluable to my examination and underwriting growth. Later in my career when I was Texas Agency Manager, I was fortunate to travel the State of Texas with one of the CEOs of the company, watching how he interacted with agents and people in general - very important lessons on how to develop the people skills so necessary in agency work.

The only way to learn it is to do it! And the best way to do it is under the supervision of someone who is taking the time and effort to share with you the experiences that have shaped the manner in which they perform their job duties. While the VLTA, the ALTA, your underwriter(s) and other professional associations provide invaluable seminars and lectures, doing the job and watching others do the job will enhance your abilities and skills.

I hope that in the years that remain for me to be active in the business, I will be able to share some insight and knowledge with others just now growing into the industry. If you are an old-timer, seek out the younger and brighter and offer them the opportunity to learn from your many experiences. If you are younger and brighter, seek out those who you think will be able to provide you with that extra insight and revelation that will enhance your job. Even though technology has made this industry both fast and furious, there are still great lessons to be learned from the past and from those who have lived it.

About the Author

JIM KLETKE is “of Counsel” to Westcor Land Title Insurance Company, a national underwriter. He provides underwriting assistance in Maryland, Texas, and on a national basis, support of multi-state agents.

Judgment Debtor, Cont’d.

the town of Mayberry). When he sold, did Mr. Forrest sign an affidavit that he never lived at the address shown on the judgment? Sure thing — no problem. Was that a lie? ABSOLUTELY! The agent professed “NOT my fault — HE lied in an AFFIDAVIT!” Yep, he did. And he was a person who also did not pay his bills. Imagine THAT!

(Sorry, Floyd; I would have thought better of you.)

Be creative and research all you can. AND if those judgments sneak past you, that is the reason for title insurance AND E&O insurance.
Title Tips & Trivia

By the way: One of the most important lessons for a Title Examiner to learn is to Read the Deed, read it word for word. Being meticulous with attention to detail is one of the most important qualities for a Title Examiner.

By the way: An important lesson learned is to always look before and after all Deeds in the chain of title to see if there are related documents that pertain to your Title Search. Many missing or incorrectly indexed documents are found this way.

By the way: A Title Examiner’s job is to report what is found during the search. The Title Report is to contain all the facts of record. Don’t make assumptions or determinations. Report the facts and let your Client/Title Agent make the determinations.

By the way: Did you know that not all Circuit Court Clerk’s Office land records are alike? For instance: some do not allow cell phones; not all are online; not all have the land records on computer to cover a 60 year period; not all have the same type of search features available; and not all have all documents or indices scanned for 60 years. It is best to have an Examiner who is experienced in and familiar with each County Courthouse and their practices.

By the way: A Full Title Search ordered by a client can have many different meanings. It could mean: a search back to the deed into or out of the Developer; a 40 year search; a 60 year search; a 60 year search back to a general warranty deed for consideration. Make sure to have the client clarify exactly what type of search is needed.

By the way: An acreage parcel may be in the Land Use program and therefore subject to Roll Back Taxes. The Commissioner of the Revenue and/or Treasurer records may not show this information in the Land Records. Roll back taxes are collectible back for a period of 5 years from the current date. Roll Back taxes can be triggered by a change in ownership and/or a change in the use of the property and a supplemental roll back tax bill is issued. Each locality is different and so the title examiner should be familiar with the procedures in their areas.

By the way: Did you know that when a trailer that is located on property and has the wheels and hitch removed, it does not automatically become a part of the Real Estate. Trailers are considered and taxed separately under Personal Property and the Commissioner of the Revenue and Treasurer in conjunction with DMV track the ownership and titles to the trailers. A double wide trailer located on property may not be considered a house, and still a trailer and taxable separately under Personal Property. Check with the Commissioner of the Revenue for the tax status.

By the way: If a Deed of Trust is recorded and the document states a property address that does not match the legal description, what actual property does the Trust attach to? Does it attach to both the property of the address and the legal description? Can it be insured? Can it be foreclosed? What do you think? It should definitely be corrected to reflect the correct address and corresponding legal description.

By the way: Did you know that there can be a difference between the terms title examiner and title abstractor? What is your definition? Do you think there is a difference? Do the definitions change with locality?

REMEMBER:
- Not all Circuit Court Land Records are the same.
- Not all Title Examiners are the same.
- Not all Title Abstractors are the same.
- Not all Title Agents are the same.
- Not all Title Insurance Underwriters are the same.
Earth Day

You Can Make A Difference

For over 40 years, Earth Day has inspired and mobilized individuals and organizations worldwide to demonstrate their commitment to environmental protection and sustainability.

In recognition of the power of millions of individual actions, Earth Day 2011 was organized around “A Billion Acts of Green”, the largest environmental service campaign in the world in building personal, organizational and corporate pledges to live and act sustainably. “A Billion Acts of Green” has inspired millions of individuals to “Pledge An Act of Green” to reduce their impact on our planet.

Areas in which each of us could “Pledge An Act of Green” include the following:

**Advocacy**
- Teach others to reduce, re-use and recycle
- Promote environmental awareness

**Conservation**
- Use organic fertilizers
- Plant a tree or become part of a reforestation effort
- Landscape with native plants or create a wildlife habitat in your yard
- Assist in a beach or waterway cleanup effort

**Energy**
- Buy local
- Use energy efficient light bulbs and motion detectors for interior and exterior lighting
- Use rechargeable batteries
- Turn down your thermostat

**Recycling and Waste Reduction**
- Implement re-usable shopping bags, food containers and eating utensils
- Eliminate or reduce bottled water
- Recycle paper, plastic, aluminum and electronics
- Pay bills on-line
- Start a compost to reduce food waste

**Sustainable Development**
- Organic gardening
- Purchase a share in a Community Supported Agriculture (CSA) co-op
- Start or participate in a local community garden
- Use “green” building practices and materials

**Transportation**
- Walk or bike whenever possible
- Car pool or use public transportation
- Buy energy efficient vehicles

**Water**
- Fix leaking faucets and running toilets — install low flow toilets
- Take shorter showers and use water saving shower heads
- Use rain barrels and front load washers (with cold water cycle)
- Turn off the tap while brushing teeth
- Use “green” cleaning products to protect our waterways

You need only choose one or more of the above, then to register your “act of green” go to Earth Day Network’s website at www.earthday.org. Their goal is to register one billion actions before the United Nations Conference on Sustainable Development in Rio de Janeiro, Brazil in 2012.

Many localities support “going green” initiatives and offer points toward certificates in recognition of sustainable business practices. Check out your local websites for information. One example is the joint project of the Roanoke Valley Cool Cities Coalition and the Roanoke Regional Chamber of Commerce. The program is based on an evaluation of a Chamber member’s implementation of “green” practices that reduce waste, promote clean air and water, conserve natural resources, enhance the quality of life for employees, customers, and neighbors, and reduce greenhouse gas emissions. Applicants complete a 100 point checklist covering diverse aspects of environmental actions and can achieve three levels of certification.

Our own VLTA has "gone green" by providing seminar materials on disc instead of paper. Some VLTA members already implement eco-friendly practices. Stewart Title’s “Stewart Green Initiative Fact Sheet” details procedures that offices and employees can implement to achieve several levels of “green” compliance, including paperless closings, electronic ordering, energy efficiency, recycling, etc., and electives which include LEED (Leadership in Energy and Environmental Design) certified offices and WebEx for meetings instead of travel. Each of us has the ability to make changes that will benefit our planet and future generations. All it takes is one, small decision at a time.

Yes — you can make a difference! Several facts for this article were reprinted by permission from the Earth Day Network. Go to www.earthday.org for additional information on how you can help.

www.vlta.org
The Civil War:  
As Examined By The Title Industry

The United States and Virginia have entered into the five year Sesquicentennial of the Civil War. While the North or Union states seem to have only a passing interest in the event, those in the South, the Confederacy, have planned extensive reenactments, have revisited theories on the causes of the Civil War, and have held some events that have been challenged as not politically correct (e.g., the Secession Ball in South Carolina). In what is hoped to be a series of feature articles, the VLTA Examiner Committee is beginning a study of the Civil War from the perspective of our industry.

Sterling Moore’s eyes would light up when he described himself as a true title geek. His personal title examination of the Monticello property was a milestone achievement in his ‘geekness,’ but I found it representative of what a title examination really is: a historical research project. The Examiner would like to do a title examination on the Civil War using the talents of all the historical researchers in the VLTA’s membership. The research will look at numerous issues concerning real property and the war and reconstruction. Specific topics might seem irrelevant to today’s title business, but they will still have historic relevance. In the end, though, the articles will be presented for the sheer pleasure of the reading.

The first article, planned for the last issue of this year, will have many contributors and be anecdotal. How were the Land Records in the various county courthouses preserved during the Civil War and, since they often were not, how was continuity of title restored? I will be contacting you and soliciting you as a volunteer to do a little local research and interview your Circuit Court Clerk. The Examiner Committee will edit all the local tales into one article for publication. Images of the courthouses in the 1860s will be welcome. The stories are sure to be interesting. Here is a brief sample: The Old Court House (Civil War Museum) in Winchester was used as a hospital and prison, while the City of Winchester itself changed hands between North and South seventy (70) times! This from The Fairfax County Courthouse: A History: “During the war, the building was occupied by both Union and Confederate troops. In the spring of 1862, however, the Union Army took possession of the courthouse and the surrounding area for the rest of the war. The building was used as a military headquarters and a lookout station. It was reported that the building was gutted by the soldiers and that many records were lost or destroyed.” And, would you not like to know more about the story of the “level-headed” Portsmouth (Lower Norfolk County) clerk who gathered up the records of the courthouse and hid them in the Dismal Swamp until the conflict ended? Also, the Virginia Supreme Court case of Corbett v. Nutt, 59 Va. (18 Gratt.) 624, 1868 WL 48 (1868) discusses how trial judges dealt with cases in which records destroyed in the Great Fire of April 1865 in Richmond were unavailable.

2 I choose to use the most common historical identifier for the conflict between 1861 and 1865. In Virginia, and probably throughout the South, the “War Between the States” is deemed politically correct and preferable. Other, less favorable names have been assigned, and may be reflective of the speaker’s personal position: “War of Northern Aggression,” “War of Southern Secession,” “The Recent Inconvenience.”
3 How we all wish Sterling were still with us. He would have a passion for this series that would be unmatched.

R. Michael Smith
Brown, Brown & Brown, P.C.
welcome your input. Some that are being considered include:
What happened to various well-known (then or now) Virginia buildings and homes during the Civil War — e.g., Robert E. Lee’s home (Arlington House), Berkeley Plantation (first hot-air balloons used by Union troops for reconnaissance in 1862), Fort Monroe (The Virginia State Bar’s magazine has an article this month on Monticello which covers the litigation in the 1860s over ownership of the estate after the death of Uriah Levy’); Secession (Virginia from the United States and West Virginia from Virginia) and Emancipation with statutes and cases on the effect of severance and reunification of Virginia and the Union on real property; Railroads — ownership, rights-of-way, confiscation, and use of the rails as a military tool; Reconstruction — cases and statutes that were written to correct, restore, or prohibit real property rights impaired by the Civil War (e.g., some of the ‘Married Women’ Acts and the former feme sole laws are attributable to prohibiting Virginia lands from passing into the name of carpetbaggers, state laws that restricted or authorized ownership or use of land based on race).
Are you a ‘Civil War buff’ and a ‘title geek?’ If you ever had a latent (or not so latent) desire to combine your vocation and avocation, this may be your chance. If you know something about the Battle of Spotsylvania Courthouse or the surrender at Appomattox Courthouse, you should contribute that to this first article. If you are an agent in both Virginia and West Virginia, you know how you examine and insure property that straddles the state line and the top of a mountain. Can you tell us why? If you know somebody who knows something, please let us know, because the Committee is always looking for contributors from other disciplines which impact our industry. For instance, if you have a friend who works in a management position with CSX or Norfolk Southern, that friend could be an entry point to the railroad’s history. We are past the Oldest Living Confederate Widow Tells All: A Novel, but, if you heard your family’s oral history of the great aunt who married a carpet-bagger (a scalawag was worse), the passage of her property through intestacy or probate may be interesting.

We solicit and appreciate your contribution to the first article. If you are interested in contributing to the first article — a local story, a local contact, an image -- or another down the road, please contact me at brownfirm@lawyer.com or 703.924.0223.

ABOUT THE AUTHOR

R. MICHAEL SMITH, a graduate of the University of Virginia School of Law, is an Associate with the firm of Brown, Brown & Brown, P.C., which firm specializes in foreclosure defense for consumers. He is a former underwriting counsel with LandAmerica, Stewart Title, and Chicago Title. He is a former Chairman of the VLTa’s Education Committee and frequent speaker at VLTa and other title industry seminars, and often contributes to the Examiner. He coordinated the Jamestown 400th Anniversary Program in 2007.


www.vlta.org
**Did you know** that 17% of all paid off mortgages are never released or recorded?

**Did you know** that 36% of all real estate transactions have some type of lien release clean up that must be done prior to closing?

**Did you know** that everything that is done to a file after closing and disbursement costs you money?

---

**THE OLD WAY**

- Delayed closing, claims and poor client perception
- 4 out of 10 payoffs need to be cleaned up before closing
- Unreleased liens cause stress for all involved

**THE reQuire WAY**

- Drive profits, efficiency, and compliance up, up, up!
- We search and obtain your release 100% of the time, guaranteed
- Enables improved client service

---

reQuire’s patent pending Release Tracking Service provides a revolutionary, no-cost, web-based tracking, reporting, and release solution to settlement agents, attorneys, title companies and lenders. Our goal is to facilitate payoff and release communication between the payoff lender and settlement agent, attorney or escrow company.

---

**NO COST. NO RISK.**

5029 Corporate Woods Drive, Suite 225 • Virginia Beach, VA 23462 • P: 877.505.5400 • F: 757.552.0304

REGISTER TODAY - FAST, FREE, and EASY! Visit [www.gorequire.com](http://www.gorequire.com)
Foreclosures — Part Deux¹

I know that some of you who read Foreclosures—Part One last spring have been awaiting this installment with bated breath.² My apologies for the delay, but because of a number of changes in my life, I was unable to get this written until now. Perhaps the most drastic change was my employer; I am presently with the firm of Steptoe & Johnson, PLLC, in their Charleston office. The benefit for me is that I was able to stay here in my adopted home, Almost Heaven.³

On with the show:

§ 55-59.1. Notices required before sale by trustee to owners, lienors, etc.; if note lost.⁴

A. In addition to the advertisement required by § 55-59.2 the trustee or the party secured shall give written notice of the time, date and place of any proposed sale in execution of a deed of trust, which notice shall include either (i) the instrument number or deed book and page numbers of the instrument of appointment filed pursuant to § 55-59, or (ii) said notice shall include a copy of the executed and notarized appointment of substitute trustee by personal delivery or by mail to (i) the present owner of the property to be sold at his last known address as such owner and address appear in the records of the party secured, (ii) any subordinate lienholder who holds a note against the property secured by a deed of trust recorded at least 30 days prior to the proposed sale and whose address is recorded with the deed of trust, (iii) any assignee of such a note secured by a deed of trust provided the assignment and address of assignee are likewise recorded at least 30 days prior to the proposed sale, (iv) any condominium unit owners’ association which has filed a lien pursuant to § 55-79.84, (v) any property owners’ association which has filed a lien pursuant to § 55-516, and (vi) any proprietary lessees’ association which has filed a lien pursuant to § 55-472. Written notice shall be given pursuant to clauses (iv), (v) and (vi), only if the lien is recorded at least 30 days prior to the proposed sale. Mailing of a copy of the advertisement or a notice containing the same information to the owner by certified or registered mail no less than 14 days prior to such sale and to lienholders, the property owners’ association or proprietary lessees’ association, their assigns and the condominium unit owners’ association, at the address noted in the memorandum of lien, by ordinary mail no less than 14 days prior to such sale shall be a sufficient compliance with the requirement of notice. The written notice of proposed sale when given as provided herein shall be deemed an effective exercise of any right of acceleration⁶ contained in such deed of trust or otherwise possessed by the party secured relative to the indebtedness secured. The inadvertent failure to give notice as required by this subsection shall not impose liability on either the trustee or the secured party.

Let’s begin by revisiting the intro to part one, which is the overriding concept behind foreclosure procedures: The law abhors a forfeiture.⁷ For this reason, courts frequently are requested to scrutinize the notice given to property owners and to set aside foreclosures in which the notice is found to be lacking.⁸

---

¹ French makes me sound suave and debonair. (That Latin that we lawyers have to use every day just makes us sound—well—dead.) Voulez-vous couche avec moi? (Those of you who might think this a bit risqué I would commend you to e.e. cummings 1922 poem known by its first line, “little ladies more.”) (righteous indignation stance)
² Unlike the cat who ate cheese, and awaited mice with bated breath, [rim shot]
³ Yes, I do still have all my teeth. Well, most of them, anyway. So many phone books, so few last names...
⁴ Because this treatise concerns the statutory (and contractual) aspects of foreclosure, the subject of notice of default and right to cure is left for another day (and perhaps another author). See, however, §§55-59.1(C), discussed infra.
⁵ My friend and colleague Doug Dewing has queried regarding search requirements for assignments, considering that (a) there is no requirement that assignments be recorded at all, and (b) when they are, the parties often omit the name of the borrower from the instrument.
⁶ But see Boyview Loan Servicing v. Simmons, 275 Va. 114 (2008), holding that the language regarding acceleration does not obviate the necessity for giving notice of default, and that no right of acceleration arises until the notice of default is given.
The Code requires that any notice of sale shall include a copy of the executed substitution of trustee or the information where the substitution of trustee is recorded. Section 55-59(9) allows the substitution to be recorded contemporaneously with the trustee’s deed, which is a common practice in the Commonwealth, suggesting that the notices sent pursuant to §55-59.1 would necessarily include a copy of the instrument rather than the recordation information. The author is unable to find any cases which address the validity of a sale in which the notice failed to comply with this part of the notice, but prudence would dictate following the statute precisely.

The remaining notice requirements in §§55-59.1 likely are fatal if not followed, if not to the validity of the sale then to the foreclosure of the subordinate liens. The owner of the property is the only party entitled to notice by certified mail; all others entitled to written notice may be given it by regular mail. All notices under subsection A of the section must be given at least 14 days prior to the sale date.

Within the notice section are a few interesting provisions. For example, the noteholder is not required to track down the heirs of a deceased borrower; the obligation for notice is only to the owner as the owner appears in the records of the lender. Thus, for heirs to have rights under the Code, they would have to have informed the lender of their interest in the property and their addresses.

Note too that subordinate lien holders (or their assignees) are only entitled to written notice if the address of the lien holder or the assignee is recorded with the instrument. The author has encountered numerous—numerous—property owner associations which have determined that if they only wait to record their lien until after the foreclosure, they can collect the past due fees. These associations thumb their collective noses at the statute, apparently on the theory that the amount due is too small to spend the $5000 or so in counsel fees to take the association to court.

The last sentence of subsection A (“The inadvertent failure to give notice as required by this subsection shall not impose liability on either the trustee or the secured party.”) should not be interpreted to validate a sale that otherwise has defective notices. However, §55-59.1(C) provides:

C. When the written notice of proposed sale is given as provided herein, there shall be a rebuttable presumption that the lienholder has complied with any requirement to provide notice of default contained in a deed of trust. Failure to comply with the requirements of notice contained in this section shall not affect the validity of the sale, and a purchaser for value at such sale shall be under no duty to ascertain whether such notice was validly given.

It’s difficult to imagine that a court would refuse to invalidate a sale in which no or improper notice was given to the owner of the property, and most title insurers would refuse to insure a sale with such defective notice. However, for a discussion of the effect of improper actions by the Trustee and/or defective notices on the validity of the sale itself, see MacDonald v. Lawyers Title Insurance Corporation, 79 F.3d 1141 (1996) (unpublished).

Subsection B is likely the most obscure section or subsection, and mostly unknown (in the author’s experience) to noteholders and trustees:

B. If a note or other evidence of indebtedness secured by a deed of trust is lost or for any reason cannot be produced and the beneficiary submits to the trustee an affidavit to that effect, the trustee may nonetheless proceed to sale, provided the beneficiary has given written notice to the person required to pay the instrument that the instrument is unavailable and a request for sale will be made of the trustee upon expiration of 14 days from the date of mailing of the notice. The notice shall be sent by certified mail, return receipt requested, to the last known address of the person required to pay the instrument as reflected in the records of the beneficiary and shall include the name and mailing address of the trustee. The notice shall further advise the person required to pay the instrument that if he believes he may be subject to a claim by a person other than the beneficiary to enforce the instrument, he may petition the circuit court of the county or city where the property or some part thereof lies for an order requiring the beneficiary to provide adequate protection against any such claim. If deemed appropriate by the court, the court may condition the sale on a finding that the person required to pay the instrument is adequately protected against loss that might occur by reason of a claim by another person to enforce the instrument. Adequate protection may be provided by any reasonable means. If the trustee proceeds to sale, the fact that the instrument is lost or cannot be produced shall not affect the authority of the trustee to sell or the validity of the sale.

Again, there appear to be no cases deciding the validity of the sale in the absence of the statutory procedure being followed. It seems likely, though, that based upon the decision in MacDonald, supra, the Fourth Circuit would not consider it to be fatal.
prudence\textsuperscript{11} dictates that the noteholder would be well advised to take this additional step. States such as Ohio in which foreclosure is judicial have required lenders to produce the original note before ordering the sale;\textsuperscript{12} if the note truly is lost, the lender is required to prove such to the satisfaction of the court.

The final subsection of 55-59.1 is: “D. In the event of postponement of sale, which may be done in the discretion of the trustee, no new or additional notice need be given pursuant to this section.” It should be stressed that the notice referred to applies only to the notices required by subsection A; advertisement in the event of postponement is governed by §55-59.2(D), infra.

[Note: §55-59.1.1, pertaining to procedures for “high-risk” mortgages in default, had a 1 July 2010 sunset, so will not be discussed here.]

**ADVERTISEMENT**

Even though §55-59.1 and 55-59.2 were adopted as part of a single enactment, there is a significant difference between them.\textsuperscript{13}

§ 55-59.2. Advertisement required before sale by trustee.

A. Advertisement of sale by a trustee or trustees in execution of a deed of trust shall be in a newspaper having a general circulation in the city or county wherein the property to be sold, or any portion thereof, lies pursuant to the following provisions:

1. If the deed of trust itself provides for the number of publications of such newspaper advertisement, which may be done by using the words “advertisement required” or words of like purport followed by the number agreed upon, then no other or different advertisement shall be necessary, provided that, if such advertisement be inserted on a weekly basis it shall be published not less than once a week for two weeks and if such advertisement be inserted on a daily basis it shall be published not less than once a day for three days, which may be consecutive days, and in either case shall be subject to the provisions of § 55-63\textsuperscript{14} in the same manner as if the method were set forth in the deed of trust. Should the deed of trust provide for advertising on other than a weekly or daily basis either of the foregoing provisions shall be complied with in addition to those provided in such deed of trust. Notwithstanding the provisions of the deed of trust, the sale shall be held on any day following the day of the last advertisement which is no earlier than eight days following the first advertisement nor more than thirty days following the last advertisement.

2. If the deed of trust does not provide for the number of publications of such newspaper advertisement, the trustee shall advertise once a week for four successive weeks; provided, however, that if the property or some portion thereof is located in a city or in a county immediately contiguous to a city, publication of the advertisement five different days, which may be consecutive days, shall be deemed adequate. The sale shall be held on any day following the day of the last advertisement which is no earlier than eight days following the first advertisement nor more than thirty days following the last advertisement.

Subsection A sets forth the minimum standards for advertising the sale. If the deed of trust requires fewer advertisements than the statute, the statute must be followed. Note that if the deed of trust were to require advertising once a month for two consecutive months, the trustee must still advertise either daily or weekly.

There are a couple of provisions that should attract scrutiny, however. One is: “Advertisement of sale…shall be in a newspaper having a general circulation in the city or county wherein the property to be sold, or any portion thereof, lies.” The Code of Virginia establishes the standards for newspaper publication:

§ 8.01-324. Newspapers which may be used for legal notices and publications.\textsuperscript{15}

A. Whenever any ordinance, resolution, notice, or advertisement is required by law to be published in a newspaper, such newspaper, in addition to any qualifications otherwise required by law, shall:

Have a bona fide list of paying subscribers;

Have been published and circulated at least once a week for twenty-four consecutive weeks without interruption for the dissemination of news of a general or legal character;

Have a general circulation in the area in which the notice is required to be published;

Be printed in the English language; and

Have a second-class mailing permit issued by the United States Postal Service.

B. However, a newspaper which does not have a second-class mailing permit may petition the circuit court for the jurisdiction in which the newspaper is located for authority to publish ordinances, resolutions, notices or advertisements. Prior to filing the

\textsuperscript{11} Prudence used to take dictation until she went to law school.

\textsuperscript{12} See In re Foreclosure Cases, 2007 WL 4589765 (S.D. Ohio) (not reported in F. Supp.).


\textsuperscript{14} Section 55-63 provides:

§ 55-63. Construction of deeds requiring notice by advertisement in newspaper.

(a) Whenever any deed of trust to secure debts or indemnify sureties contains a provision requiring the giving of notice of sale thereunder for a specified number of days by advertisement in one or more newspapers and such advertisement be published in a newspaper published daily or in a newspaper published daily except Sunday, it shall be deemed a sufficient compliance with such provision if such notice be published in consecutive issues of such newspaper for the number of days specified, counting both the day of the first publication and the day of the last publication and intervening Sundays, whether or not such newspaper be published on Sunday. Both the first publication and the last publication may be on Sunday. The publication shall in all other respects comply with the provisions of §§ 55-59.2 and 55-59.3.

(b) Whenever such deed of trust requires advertisement once a week for a specified number of weeks, sale may be had on the day after the last advertisement appears or any day thereafter and all sales made in conformity herewith prior to January 1, 1922, and otherwise valid, are hereby validated.

\textsuperscript{15} It should be interesting, over the next few years, to see how this section is affected by the trend of newspapers to be available online, in some cases exclusively. As more and more people get their news online and the cost of publication continues to rise, newspapers are folding, reducing circulation except online, or becoming available online only. Some communities are no longer served by print newspapers at all, with local news disseminated by television and the web.

**ABOUT THE AUTHOR**

STEPHEN C. GREGORY is Of Counsel in the Real Estate division of the Business section of Steptoe & Johnson, a multistate law firm with offices in Pennsylvania, Ohio, Kentucky, and West Virginia. He had previously been with Stewart Title as West Virginia District Manager, Virginia and West Virginia State Counsel, Associate Senior Underwriter and Claims counsel. He is an area representative of the Real Property Section of the Virginia State Bar and co-editor of The Fee Simple, the publication of the Real Estate Section.
petition, the newspaper shall publish a notice of intention to file a petition pursuant to this section in a newspaper published or having general circulation in the jurisdiction in which the petition will be filed. The court shall grant the authority for a period of one year upon finding that the newspaper (i) meets the requirements of subdivisions A 2, A 3, and A 4; (ii) has been continually published for at least one year, employs a full-time news staff, reports local current events and governmental meetings, has an editorial page, accepts letters to the editor and is, in general, a news forum for the community in which it is circulated; (iii) has a circulation within the community to which the publication is directed and maintains permanent records of the fact and substance of the publication; and (iv) has an audit of circulation certified by an independent auditing firm or a business recognized in the newspaper industry as a circulation auditor. The authority shall be continued for successive one-year periods upon the filing of an affidavit certifying that the newspaper continues to meet the requirements of this subsection.

C. If a county with a population of less than 15,000 had regularly advertised its ordinances, resolutions, notices in a newspaper published in the county which had a general circulation in the county, a bona fide list of paying subscribers, a second class mailing permit and the newspaper continued to be published in the county and continued to have a general circulation in the county but failed to maintain its bona fide list of paying subscribers and its second class mailing permit, any advertisement of ordinances, resolutions, notices in the newspaper by the county shall be deemed to have been in compliance with this section.

Agents should not assume that the advertisement was placed in a complying newspaper, but should verify that the publication satisfies the statutory requirements. Finally as to subsection A, the sale date relative to the publication is critical. Any sale that is held sooner than the eighth day after the first publication or later than the thirtieth day after the last publication should be considered invalid. For these reasons, agents should not accept a generic statement from the trustee that “the sale was advertised as provided by law.” Although obtaining the certificate of publication may not be necessary, at a minimum prudence demands that the agent confirm the newspaper and the dates of publication.

Subsections B and C of § 55-59.2 are not germane to this discussion; however, Subs D and E are critical:

D. In the event of postponement of sale, which postponement shall be at the discretion of the trustee, advertisement of such postponed sale shall be in the same manner as the original advertisement of sale.

E. Failure to comply with the requirements for advertisement contained in this section shall, upon petition, render a sale of the property voidable by the court.

Unlike § 55-59.1, the publication provisions are mandatory, and the sale may be set aside if they are not followed. In the interest of fairness to the defaulting property owner, the public must be informed of the sale and given the opportunity to appear and bid on the property if any choose to do so. For this reason, the sale must be readvertised in the event of a postponement, even though the owner and subordinate lien holders are not entitled to further notice.

Code § 55-59.2 evidences a strong legislative concern with the sufficiency of advertisements preceding foreclosure sales, with a purpose to ensure a degree of publication that will generate sufficient interest to obtain the highest price available as well as to offer the debtor a reasonable time to redeem the debt. That legislative concern has increased with the passage of time.

Section 55-59.3 mandates the information required to be included in any publication:

§ 55-59.3. Contents of advertisements of sale.

The advertisement of sale under any deed of trust, in addition to such other matters as may be required by such deed of trust or by the trustee, in his discretion, shall set forth a description of the property to be sold, which description need not be as extensive as that contained in the deed of trust, and shall identify the property by street address, if any, or, if none, shall give the general location of the property with reference to streets, routes, or known landmarks. Where available, tax map identification may be used but is not required. The advertisement shall also include the time, place and terms of sale and shall give the name or names of the trustee or trustees. It shall set forth the name, address and telephone number of such person (either a trustee or the party secured or his agent or attorney) as may be able to respond to inquiries concerning the sale.

And:


Notice of sale under any deed of trust whether the same be in conformity with § 55-59 or not, in the absence of provision therein requiring other or additional matter, may be substantially in the form following:

Trustee’s Sale of (brief description or identification of property)

Terms: (Cash) (. . .

Trustee(s) . . .

FOR INFORMATION CONTACT

(A trustee or the secured party or his agent)

Address

Telephone number

Again, the purpose of the publication is to inform the public and attempt to obtain the highest price possible for the property to be sold. For that reason, the Code uses “shall” for the terms that are important to ensure fairness and reasonableness of the opportunity for the public to appear. 21

---

16 Most Clerks of Court maintain a list of newspapers which may be used for legal notices. This procedure should be followed for “unfamiliar” newspapers; it would be folly, for instance to insist on proof that the Richmond Times-Dispatch is proper for Henrico County notices.
17 The author has seen a notice of sale published in one of those “free” newspapers that are found in boxes on street corners. Um … no
18 She certainly is an insistent person, isn’t she?
19 Nor are they Tito, Jackie, or Janet.
If a trust deed requires the trustee to advertise the time, terms
and place of sale before making sale, and he advertises the time
and place of sale, but says nothing as to the terms, the sale made
by him will be set aside as invalid at the instance of the grantor, or
a prior grantee from him, who was ignorant of the time and place
of sale.22

And:
The advertisement failed to state whether the terms of sale
would be cash or credit, or part cash and part credit, or, if the
latter, what part would be cash and what part credit and what
time would be given as to the deferred payments, if any, permitted
by the credit. When analyzed, the language of the advertisement
in question plainly conveyed no other meaning, which the public
could rely and act upon in attending or not attending the sale,
than that they would not know the terms of the sale until the day
of sale, when the announcement at the sale would determine
whether the terms of sale would be cash, or part cash and part
credit, and, if the latter, what part cash and what part credit, and
the time given on the deferred payments, if any. That is to say, it
is plain that the advertisement failed to contain any terms of sale
fixed and determined upon by the trustees prior to or at the time of
the commencement of the advertising, notice of which, after so de-
determined upon, was to be given in the manner and for the period
mentioned in the trust deed, as required by such deed; and merely
contained the statement, in substance, that the terms of sale would
be announced at the sale. This, in effect, left the terms of sale
wholly undetermined and unadvertised prior to the day of sale.

Under the rule on the subject applicable in a suit in equity, such
as that before us, as established by the great weight of authority,
and by the unbroken line of decisions in Virginia, such advertise-
ment was not a substantial compliance with the requirements
of the deed of trust with respect thereto, but was such a material
departure therefrom as vitiated the sale, and because of which the
conveyance to the purchaser and the trust deed executed by the
latter, mentioned in the bill, must be canceled and adjudged null
and void.23

As Karen and Richard Carpenter once sang, “we’ve only just be-
gun.” Issues on foreclosures are far too numerous to cover here,24 and
the practitioner is well-advised to research any perceived irregularity
in the sale, whether the irregularity may have occurred before or
after the auction.

I am indebted to my friend and colleague, Doug Dewing, the
preeminent authority on real estate law in this state, for taking the
time to review my material and make comments and suggestions on
the content.

And so, to borrow the Toastmaster General George Jessel’s25
famous exit line, “My plane is on the runway…”26

---

22 Preston v. Johnson, 105 Va. 238 (1906)
24 For example, the Trustee is bound to sell only so much of the property as is necessary to satisfy
the debt, but may advertise the whole of the property because the Trustee will not know how
much may be necessary to sell.
25 If you have to ask, well...
26 This doesn’t translate well without the high-pitched, somewhat nasally voice.
VLTA is Coming to YOU!
Regional Networking Meetings

Join us for a conversation about our industry!
Be a part of the dialogue.

**Calling ALL Title Industry Professionals!**

*Who should attend?* Title agents, title examiners, abstractors, and anyone doing business in the title insurance industry.

*Don’t miss the opportunity to network and become knowledgeable of what’s happening in the industry.*

**FREE for ALL to Attend!**

**FREE Goodies for ALL!**

Bring an industry friend (non-member) and get a SPECIAL GIFT!

[Beer, Wine, Soft Drinks and Snacks will be provided]

(RSVP Required: To vlta@vlta.org, include name, company, email, (same for guest) and location of attendance)

---

**LEARN ABOUT...**

- What VLTA has done for you?
- Title Examiners – Change is in the AIR ...Certification/Licensure?
- Why is VLTA important to your success?

*The bottom line...the Value of VLTA and the Partnership with its Members.*

---

**SAVE THE DATES!**

Hosted by our member agencies. All locations - 4:30PM – 7PM

<table>
<thead>
<tr>
<th>Date</th>
<th>Location</th>
<th>City</th>
</tr>
</thead>
<tbody>
<tr>
<td>August 24, 2011</td>
<td>BridgeTrust Title Group</td>
<td>Virginia Beach, VA</td>
</tr>
<tr>
<td>September 14, 2011</td>
<td>The Escrow Store</td>
<td>Richmond, VA</td>
</tr>
<tr>
<td>September 21, 2011</td>
<td>Dominion Title Corp</td>
<td>Great Falls, VA</td>
</tr>
<tr>
<td>October 5, 2011</td>
<td>Court Square Title of Charlottesville</td>
<td>Charlottesville, VA</td>
</tr>
</tbody>
</table>
Howdy! My name iz Beaufort Hambucket. Welcum to my buket.

This iz where yoo git to ask me kwestions bout title and settlement, and I anser dem.

Dis time around, im gonna aswer 1 big kwestion—whut did and did not happin in da General Assemblee dis yeer?

Whut did not happin iz all doze bills ‘bout fourclozur. 5 of doze billz r now bein’ studied by a “Foreclosure Taskforce”, and 1 of doze billz iz bein’ studied by the Virginia Bar Association. Anudder bill dat did not pass is duh bill ‘bout “transfer on death” deeds, wich is also bein’ studied by the Virginia Bar Association. Stay tooned as doz storees unfold. So whut did pass? Hear it iz:

**Va Code §55-58.3 (Priority of refinance mortgage over subordinate mortgage)**

Dis is also nown as duh “Automatic Subordeenation” statute. The maxemum amount ov da subordinate mortgage wuz inkreesed from $50,000 to $150,000.

**Va Code §55-70.2 (Effect of certain transfer fee covenants)**

Dis is new and gooood! Dis makes any new “transfer fee covenant” rekorded *afta* July 1, 2011 void. A “transfer fee covenant” means “a covenant or declaration that purports to affect real property and that requires or purports to require, upon a subsequent transfer of such property, the payment of a transfer fee to the declarant or other nongovernmental person or entity specified in the covenant or declaration or to the assigns or successors of such declarant or nongovernmental person or entity.” But wach out! Any old “transfer fee covenant” rekorded *befour* July 1, 2011 is still like a snake in da grass that can affekt yur titul.

**Va Code §55-525.13 (Disclosure of affiliated business by settlement service providers)**

Dis sekshun wuz changed so dat if yoo own more dan 1% of an “affiliated settlement service provider”, yoo hav to disclowz the % of interest yoo hav in dat biz when yoo refur sumbody to dat biz. And if yoo own more than 50%, yoo hav to disclowz dat biz as yur “subsidiary”.

**Va Code §§55-79.97:1 and 55-509.6**

Dekreeses from 90 to 45k dayz, when settle-ment duz not happen, the time when a sellur of a condo or lot will be responsubl four the payhment of feez related to the prep of the disklosur paket.

**Va Code §55-48 (Form of a Deed)**

Reqwires da name of duh trustee to be inklood-ed on a deed when grantor or grantee iz a trust.

All deez new lawz becum effektive July 1, 2011!

Got mo kwestions? Email dem to vlta@vlta.org.
My Dear Readers,

Tute does not often regret an ability to fill in anywhere in the office, but a recent experience suggests that there may be times when such versatility has its drawbacks. If I may be so bold as to relate my tale of woe, it may provide multiple benefits: you will learn that your humble correspondent is only human; and your humble correspondent will not have to pay a therapist to work through the emotional damage wrought.

It was an otherwise unremarkable day; there was a promise (not then fulfilled) of Spring in the air, and for once there was more underwriting than examining to be done. “Can you underwrite this file?” asks the boss. “Your wish is my command, oh exalted one,” was my less than respectful response (you had to be there – print is sometimes such a non-communicative medium).

The source deed was unremarkable – a description by reference to lot and section in the local industrial park. The report contained the usual assortment of utility easements that one finds when reviewing 60-odd years of title history and the local development authority’s idea of restrictive covenants (when will these guys quit reserving a right of reverter if the building is not completed within a few years? And not bother to record a release when the building is complete?). Then, there was the mysterious question appended to the report by the examiner: “Was this property resubdivided? The deed of trust has a metes and bounds description.”

“And why are you asking the office,” was my first less than charitable response. “You have full access to the land records; did you find a resubdivision in one of the indices? Where does this jurisdiction index resubdivision plats? Are they always in the deed index? Is there a separate plat index? Was there an off-conveyance with plat attached? Where are those notes?” Later, having answered all those questions in the negative, Tute turns to the (potentially) offending deed of trust. Then, to the plant index; then to the phone.

“Record room.” “Hi, this is Tute back in the office. Can you send me a copy of the plat in Map Book 10, page 10. I’m trying to work through this ‘was there a resubdivision’ question you asked in your report, and I don’t have a copy of the subdivision plat to compare to the metes and bounds.” “I’ll have it here this afternoon.” “Thanks. Did you compare the two while you were working on the exam?” “No, I just didn’t know of any other reason to change the description.”

“Lucky you,” was my second less than charitable thought of the day. As my, oh so erudite and experienced readers know, there are any number of reasons to change property descriptions around. Some are self-evident; such as when there is a resubdivision or boundary adjustment and a new plat is recorded, or the use of the phrase “less and except” to reflect an off-conveyance. Some are obvious from context: replacing the phrase “recorded simultaneously herewith” with the actual recording reference in the next transaction. Did I ever tell you the story of the eight separate transactions that referred to the same plat to be recorded
“simultaneously herewith” that never was? Oh, sorry, where was I? Oh, yes, why we might change a description. Patent errors in a prior description would qualify, such as where the platted course of North 15º East on the plat was transposed in the deed to North 51º East (one would verify with a compass or plotting software that the error was in the deed and not the plat . . . wouldn’t one?). The annexation of land by a city from a county begs for amendment in the current transaction; as would a reorganization of government units replacing, say, for historical purposes, shires, with counties. Even attorneys are sometimes bitten with the urge to “modernize” deed language to make it more comprehensible.

There is nothing sacrosanct, well, maybe I should say there is little that is sacred, about one particular form of property description. The object of a description is not in and of itself to identify the land, but to furnish the means of identification. When that is done, it is sufficient. Harper v. Wallerstein, 122 Va. 274 (1918). A description of land is adequate when it is such that any person of reasonable intelligence (and we examiners do meet that standard!), whether surveyor or not, would have no difficulty in definitively locating all its boundaries. Carter v. Hook, 116 Va. 812 (1914). A reference to a plat, a recitation of courses and distances, a reference to street address (this one can get tricky – see the Harper case and the more modern Polyzos v. Cotrupi, 264 Va. 116 (2002) for two particular problems), even a reference to an earlier conveyance which described the property: each can be an equally effective description. But, I digress.

While waiting for delivery from the record room, I dutifully added and subtracted exceptions and requirements to my budding commitment. About lunchtime, they dropped a package on my desk. “Great turnaround time” I thought to myself, but no, I was wrong — this was a preliminary ALTA/ACSM Survey from the attorney. Less than charitable thought number 3 for the morning bumbled up in my subconscious. “How can you send me what purports to be an ALTA Survey – even a preliminary one – when I have not delivered the commitment to you?” Do you (does your surveyor) even know what the ALTA Survey Standards say?

I know readers of the Examiner know what the standards are because Doug Dewing gave us a heads up in the last issue... although, speaking of whom, where is he anyway? Did the Examiner have the inside scoop on some lateral movement in the title industry legal community? Were they taking a cheap shot at his political beliefs? I knew he moved, but I didn’t think he had moved THAT much. Alas, I digress again. With the link provided in the last issue (oh, all right, I’ll give it to you again: http://www.alta.org/forms/download.cfm?formID=338&type=word is the link at the ALTA site; http://acsm.net/_data/global/images/PDF%20Documents/ACSM/20110223ALTAACSMLandTitleSurveyStandard2011.pdf at the surveyors website), any person of reasonable intelligence would know that delivery of the title commitment (or some form of title evidence) is a pre-requisite for preparing an ALTA/ACSM Land Title Survey.

This was quickly followed by lender’s counsel’s comments on the survey (along with a semi-pointed inquiry regarding an ETA for the commitment), one of which triggered a fourth less than charitable response (and all this before lunch – maybe I should have gone to lunch). “Surveyor is to prepare metes and bounds description” ... followed elsewhere by “Description in survey, title commitment and loan documents are to be identical” and a list of endorsements which included the ALTA 25-06 (survey same as for those who really don’t remember concepts by number (does anyone remember the old TV show “The Prisoner”? — “I am Number Two. Who is Number One? You are Number Six” (with a very ambiguous pause in the middle of the latter response). Alas, I digress yet again. Maybe we should all go to lunch.

So what set me off about this typical request? Think about it. The ALTA 25 states (and I quote) “The Company insures against loss or damage sustained by the Insured by reason of the failure of the Land as described in Schedule A to be the same as that identified on the survey made by ________________ dated ________________ and designated Job No. ______.” While it should be literally impossible to suffer a loss if the description of the land in Schedule A was a verbatim copy of the courses and distances shown on the ALTA Survey, I find it extremely difficult to believe ALTA intended that result (and all the lender reps on the forms committee went along with it). Schedule A has to be different for the ALTA 25 to have any utility whatsoever. But what do I know, I’m an unknown title examiner, not a member of the forms committee. But that is the rationale behind my fourth less than charitable thought of the morning.

After lunch, the plat came in from the record room; it was similar to, but slightly different from the courses and distances description in the deed of trust, and a quick call to a paralegal at the firm that drew the deed provided the additional information that there had been an ALTA Survey prepared in connection with that transaction as well, and, without actually pulling the file, it was hypothesized that lender’s counsel required a verbatim copy of the surveyor’s description in the deed of trust. Why don’t people record these plats!Oops, another uncharitable thought.

This round robin (or chicken and egg, if you prefer poultry to avian analogies) is, Tute hypothesizes, the basis for the strong instruction to surveyors contained in Standard 6.B.i: “Preparation of a new description should be avoided unless deemed necessary or appropriate by the surveyor and insurer. Preparation of a new description should also generally be avoided when the record description is a lot or block in a platted, recorded subdivision.” That instruction is consistent with a ruling of the Virginia Supreme Court, which stated that incorporating a recorded plat by reference also incorporates the courses and distances shown on the plat. Dillon v. Davis, 201 Va. 514, 112 S.E.2d 137 (1960). But alas, your humble correspondent is still but an unknown title examiner, and not a national standards writer. However, when your boss comes raging into the office and says the surveyor won’t rewrite the description, you, oh best beloved, can tell him (or her, rage is not gender limited) why it really shouldn’t be necessary. That is a situation where, as much or more than in the record room, we all need to be careful out there.

Tute
TIAC, the only E&O company owned and governed by title professionals is going stronger than ever after 20 years! TIAC is also the only E&O program endorsed by ALTA and ALL the national title insurers. We’re 20 years young and moving forward!

Join us for cutting edge coverage, stable rates, unparalleled claims and underwriting services, and the only E&O insurer paying policyholder dividends! Call us today.

Your company. Your choice.

Title Industry Assurance Company, A Risk Retention Group.
7501 Wisconsin Avenue, Suite 1500 • Bethesda, MD 20814-6522
phone: (800) 628-5136 • fax: (800) TIAC FAX (842-2329)
www.cpim.com/tiac

Celebrating 20 Years of Great Service

perseverance has its rewards

TitleExpress fully integrates the title and settlement processes. Information flows seamlessly through data entry, HUD-1 preparation, document preparation, check writing, escrow account reconciliation, and management reporting.

TitleSphere is a 100% Web-based HUD-1 solution, which boasts real-time updates, high-level data security, comprehensive technical support, along with flexible and affordable pricing options. All you need is a reliable Internet connection to work from anywhere at any time.
Underwriter Contacts:

Chicago Title Insurance Company .......... Alaine Donovan & Don Wells
TEL: 703.815.6886

Commonwealth Land Title Insurance Company .......... Patricia Shaner
TEL: 703.219.3701

Entitle Direct Group, Inc. ......................... Aaron Jacobstein
TEL: 203.724.1131

Fidelity National Title Insurance Company .......... Lisa K. Tully, Esq.
TEL: 888.600.5166

First American Title Insurance Company .......... Leslie Kostelecky
TEL: 800.733.3284

North American Title Insurance Company .......... Stephanie Marcell
TEL: 410.730.8484

Old Republic National Title Insurance Co. ............ Kevin Pogoda, Esq.
TEL: 703.365.2300

Southern Title Insurance Corporation ............ Eugene McCullough
TEL: 804.648.6000

Stewart Title Guaranty Company ............... Steven Blizzard
TEL: 703.636.3221

WFG National Title Insurance Company .......... Thomas Klein
TEL: 804.467.1648

Abstractor Contacts:

Accutitle Services ........................................ Mai Wayne
TEL: 757.717.5140 FAX: 757.204.2048 EMAIL: accutitlesearch@aol.com Serving: Southwest Virginia

Amarisearch, Inc. ........................................... Marian Littleton
TEL: 703.267.6827 FAX: 703.267.6825 EMAIL: marian@amarisearch.com Serving: Northern Virginia, Central Virginia

Amy C. Talbot ........................................ Amy Talbot
TEL: 804.467.8866 FAX: 804.360.7049 EMAIL: amyhankins@comcast.net

Capital Title Services, LLC ............................... Timothy O’Donohue
TEL: 703.691.0688 EMAIL: capitaltitle@juno.com WEB SITE: www.capitaltitleservices.com

Covenant Title Services, LLC ............................ Melissa Cooke
TEL: 804.347.1956 FAX: 804.795.2208 EMAIL: cooke.melissa@gmail.com Serving: Mid-Atlantic, Central, and Southwest Virginia

Dalton Land & Title LLC ................................. Ann Dalton
TEL: 434.665.2099 FAX: 434.821.2097 EMAIL: dalontitle@yahoo.com Serving: Southwest Virginia

Direct Title Solutions, Inc. ............................. Bryan L. Marion
TEL: 540.450.0740 FAX: 540.450.0744 EMAIL: info@dtsadvantage.com Serving: All of Virginia

eTitle Agency, Inc. ......................................... Karen Jennelle
TEL: 703.777.4261 FAX: 703.940.9111 EMAIL: karenj@tuscaroratitle.com WEB SITE: www.tuscaroratitle.com Serving: Mid-Atlantic Virginia

Greater Richmond Abstract & Title, Inc. ............ Larry Shiner
TEL: 804.266.2101 FAX: 804.266.2810 EMAIL: johnr@comgl.net Abstractor Services, Serving: Central VA

Elizabeth H. Jamerson .................................... Elizabeth Jamerson
TEL: 804.897.8260 FAX: 804.897.8261 EMAIL: elizabethjamerson@verizon.net Serving: Mid-Atlantic and Central Virginia

Jefferson Title, Inc. ....................................... Christopher Mabie
TEL: 703.368.3770 FAX: 703.368.6164 EMAIL: cmabie@jeffersontitleva.com WEB SITE: www.jeffersontitleva.com Abstractor & Recording, Serving: Northern VA

KDR Real Estate Services, Inc. ......................... Allen Dorin
TEL: 804.672.1368 FAX: 804.672.1373 EMAIL: adorin@kdrrealestate.com Serving: Southern Virginia

Land Title Research, Inc. ................................ Julie Ann Rutledge
TEL: 540.659.0107 FAX: 540.659.4951 EMAIL: ltrinc@verizon.net Abstracting, Serving: Stafford & Spotsylvania County, and City of Fredericksburg

Mohr Information Services, LLC ........................ James Mohrmann
TEL: 540.678.8775 FAX: 540.678.1696 EMAIL: jmohrmann@mohrinformation.com WEB SITE: www.mohrinformation.com Serving: Northern Virginia

Mohr Information Services, LLC .......................... Lisa K. Tully, Esq.
TEL: 888.600.5166

Northumberland Title Company, Inc. .................. Anita McQuary

Potomac Title Corporation .............................. David Henken
TEL: 540.948.6630 EMAIL: dhken@potomactitle.com WEB SITE: www.potomactitle.com

Renner Title, LLC ......................................... Sarah Renner
TEL: 540.748.4313 FAX: 804.752.7813 EMAIL: rennetitle@gmail.com Serving: Central Virginia

Research & Retrieval Services, Inc. ................. David Beloff
TEL: 757.463.0030 FAX: 757.463.0040 EMAIL: dbeloff@cox.net WEB SITE: www.researchandretrievals.com Serving: Mid-Atlantic Virginia

Seaside Title, Inc. ....................................... David Sacks
TEL: 757.630.2075 FAX: 757.427.1636 EMAIL: info@seasidetitleinc.com Serving: Mid-Atlantic Virginia

Security American Title, LLC. ......................... Rene Blevins
TEL: 703.766.1745 FAX: 703.766.1748 EMAIL: info@securityamerican.com WEB SITE: www.securityamerican.com

Summit Title Group, Inc. ............................... Jennifer Fish
TEL: 703.624.7116 EMAIL: summittitlegroup@cox.net

Terry's Title & Abstract, L.C. ......................... Terry L. Wilson
TEL: 540.891.8268 FAX: 540.891.8267 EMAIL: terrytitleandabstract@yahoo.com Serving: Central Virginia

The Roberts Group Title & Abstract, LLC .......... Debby Roberts
TEL: 757.717.4664 FAX: 757.313.9577 EMAIL: therobertsgrouptitle@yahoo.com Serving: Mid-Atlantic Virginia

Title Abstractors, LLC .................................. Jack Page
TEL: 276.676.0434 FAX: 276.628.1989 EMAIL: titleabstractors@comcast.net Serving: Southwest Virginia

Tri-County Title, Inc. .................................. Robert W. Coleman, Jr.
TEL: 703.624.2281 FAX: 703.293.9528 EMAIL: tctinc@aol.com Serving: Northern VA

Trinity Title, LLC ....................................... Martha Campbell
TEL: 434.665.1956 FAX: 888.737.0726 EMAIL: mwscmtt@aol.com Serving: Central Virginia
“THE NO COST SOLUTION TO PAPERLESS SETTLEMENT TRANSACTIONS”

Statistics indicate that managing the office Paper Wave costs:
MONEY – TIME – CLIENTS!

“GA organization reduces their processing time documents from 46 days to 3hrs. by going digital”
“8% of all paper documents are eventually lost”!
“The right electronic management solution can save you $1000’s per year or more”!
“The largest component of solid waste is paper @ 38% of all materials”.
(Statistics from www.environmental.org)

“Nearly 10 Trees are cut down for every 120 New Title Settlement Transactions”

Zero Trees are impacted Going Digital Green with PageStream Live!

PSLive – HUD-Based fee solution with secure, browser-based, 24-7 access of your paperless transaction file. Key Distinct features are: Plug-in integration with your Title Software - Global document distribution by employees or transaction partners with controlled access code – Emailing, printing and e-faxing – scan documents directly to your system – automatic import of related faxes & emails – dashboard overview of your business, status of closings, total closings, productivity & access reports with Audit & Communication Logs - Integrated un-editable Digital Archive for permanent digital storage & future retrieval - Easy to use – Easy to implement. The most powerful & effective solution for going paperless for Title companies today!