



Title Examination Fundamentals 101

Presented by:
LEGAL EDUCATION DEPARTMENT
of
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Title Examination Fundamentals 101

Annotated Outline¹

1. Introduction²

- A. **Title Examination** consists of the critical review of the history of a parcel of real property as that history appears on the public records of the county in which the property lies. This critical review contemplates consideration and evaluation of all documents affecting the title to the property, based on the legal description of the property and the names of the parties involved in the property's history. The examiner's work product generated as a result of the title examination is sometimes referred to as a **Chain of Title** or **Title Chain**, with each muniment of title in the property's history referred to as a **link** in that chain.
- B. We distinguish title search from title examination. In contrast, **Title Search** constitutes the identification and compiling of all public record documents pertinent to a parcel of real property in preparation for a title examination of those documents. Nowadays, title search results often include images of the identified documents in addition to their identifying information (e.g., dates of execution and filing, names of parties, legal description, and recording information).
- C. Title examination is one of the "core title services" under Section 8 of RESPA³, and one of the "primary title services" under F.S. § 627.7711.⁴
- D. An attorney conducting a title examination may be liable to the underwriter for negligent performance of title examination.⁵ Customary or habitual practices followed by title examiners in a given area are not dispositive of what constitutes reasonable care.

¹ All references herein to title insurance policy forms and endorsements are intended to refer to the policy forms and endorsements issued by Fund Members as duly appointed title agents of Old Republic National Title Insurance Company.

² See CLE Publications Staff (2010). **Searching for and examining title. In *Florida Real Property Title Examination and Insurance* (6th ed.). Gratitude is extended and acknowledgment is made to the authors and The Florida Bar for the permission to liberally draw from this chapter, as well as two others in that volume (Pat Jones' chapter, Marketable Record Title Act & Uniform Title Standards, and Ted Connor's chapter, Liens and Encumbrances).**

³ See, for example, HUD Statement of Policy 1996-4.

⁴ For a discussion of implications, see *Required Charges and Services of Title Agents under RESPA and Florida Law*, 39 The Fund Concept 103 (Sept. 2007).

- E. Neither the issues raised in these materials nor the references and authorities cited are intended to be all encompassing. A title examiner will likely face other issues and need to consult other references and authorities.

2. Outline Assumptions

- A. An adequate title search has been conducted, the results of which have been provided to the title examiner for examination purposes.⁶
- B. The criterion quality of title pertinent to the examination is a “marketable title of record” a/k/a “good and marketable title of record” a/k/a “good and merchantable title of record.”⁷

“The distinction between “a good and merchantable title” and “a good and merchantable title of record” has been repeatedly recognized in our cases. As pointed out in *Allen v. Bowman*, 152 Fla. 325, 10 So.2d 905, when a seller agrees to furnish the buyer an abstract showing good and marketable title, he agrees to show by that abstract a good and marketable record title as distinguished from one that might be good in point of fact but dependent in material respects upon matters *in pais* to support its validity. *DeHuy v. Osborne*, 96 Fla. 435, 118 So. 161. See also *Adams v. Whittle*, 101 Fla. 705, 135 So. 152; *Barclay v. Bank of Osceola County*, 82 Fla. 72, 89 So. 357. From this it must be plain that the established test for determining whether or not an abstract reflects a good and marketable title of record, is whether the abstract shows affirmatively that the vendor has a marketable title of record “free from reasonable

⁵ *Gleason v. Title Guarantee Co.*, 300 F.2d 813 (5th Cir. 1962). For an overview of this area of the law, see Bockrath, J. T. (1974), *Liability of Attorney for Negligence in Connection With Investigation or Certification of Title to Real Estate*, 59 A.L.R.3d 1176.

⁶ The Fund provides free title search training upon the purchase of The Fund’s Automated Title Information Data System (ATIDS®). For information contact EducationRegistrar@thefund.com or phone the Education Registrar at 888-407-7775. Alternatively, The Fund prepares and delivers a variety of title search products to its Members for examination. A Title Search Report (Branch Product Code #07) provides a Member with a title search, including copies of all instruments, ready for examination.

⁷ In a transaction for purchase and sale, the contract will typically specify the quality of title the seller is obligated to convey. In addition to the provision specifying the quality of title to be conveyed, contracts frequently contain a “boiler plate” provision that permits the seller to convey title subject to certain matters such as restrictions, easements, and covenants of record. The boiler plate provision does not operate to negate the other contractual requirement to convey a marketable title of record. *Sonido, LLC v. Arcadia Enterprises LLC*, 3 So.3d 1273 (Fla. 1st DCA 2009).

doubt in law and fact as to its validity." *Shriner v. Fountain*, 157 Fla. 698, 26 So.2d 809, 811.”⁸

- C. Marketable title includes at least two elements: ultimate validity as well as probability of challenge. A likelihood of court challenge may render title unmarketable even though the ultimate outcome upholding the title is likely.

“The ultimate validity ... is not the only concern regarding merchantability of title, as good and merchantable title must be sufficiently certain so that it will not be called into question in the future, and not subject the holder to the risk of litigation so as to create doubt or affect the value of the property. See e.g. *Henley v. MacDonald*, 971 So.2d 998 (Fla. 4th DCA 2008); *Adams v. Whittle*, 101 Fla. 705, 135 So. 152 (1931).”⁹

- D. Non-record matters that are customarily part of the attorney’s responsibility as part of the title examination or closing process (e.g., survey, parties in possession, unrecorded liens and easements) are not covered in this seminar.
- E. This outline is intended as a basic overview of fundamental principles of title examination. As such, it does not purport to cover the entire subject matter. A title examiner’s skills are developed and honed as a process that requires many years of practice and hundreds of title examinations presenting a broad array of issues. Mastery of this outline and supporting materials is but one small step in acquiring the tools needed to become a proficient title examiner.

3. **Overarching Title Examination Maxims & Principles**

- A. **When in doubt, speak with one of The Fund’s Underwriting attorneys.**
- B. **Title examination is like swimming; you may not know you are in trouble until it is too late. Sooner or later, every examiner decides to forego an examination in favor of someone more experienced or knowledgeable. Play it safe by “swimming” within your skill set. Know your**

⁸ *Alexander v. Cleveland*, 79 So.2d 852 (Fla. 1955), at 853. Title insurance policies contain a different definition of title unmarketability. Query whether the willingness of a title insurer to issue an owner’s policy without exception for a contested matter constitutes evidence of the marketability of title. *Aouate v. Hotel Europe, Inc.*, 792 So.2d 596 (Fla. 3^d DCA 2001).

⁹ *Sonido, LLC v. Arcadia Enterprises LLC*, 3 So.3d 1273 (Fla. 1st DCA 2009), at 1274.

limits and respect them. An inexperienced examiner may not even recognize that a problem exists and therefore not even realize that a solution needs to be sought. If you feel uncomfortable examining a title, contact your Fund Branch for assistance and alternatives available to you.

- C. **Unless the facts are clear and incontrovertible that property is not homestead, the title examiner must presume that every attempted alienation is of homestead property.**¹⁰ Beware of “probate avoidance” techniques involving homestead real property, such as revocable inter vivos trusts. Constitutional limitations on testamentary transfers of homestead property may not be effectively circumvented in this manner.¹¹
- D. **No presumption of validity is accorded a document simply because it is of record.** Clerks of Court do not determine the legal sufficiency or validity of the instruments recorded in the public record. In fact, instruments may appear in the public record even though they were not legally entitled to be placed of record. The title examiner must approach the process of title examination with the “healthy skepticism” scientists employ.
- E. **No presumption of validity is accorded a court judgment or order.** Depending upon the nature of the matter, at the very least, steps must be taken to confirm the court’s jurisdiction over the subject matter and parties and that the matter adjudicated was properly framed by the pleadings. Because furnished title information often does not contain anything beyond a judgment, the examiner must be prepared to check the original court file in order to reach conclusions as to the validity and effect of the court proceeding. If a court file is examined, it must be reviewed in light of the law in effect at the time of the proceedings. The examiner must determine that the court acquired jurisdiction of the defendants by proper service of process¹², that the judgment of the court was within the issues raised by the pleadings, and that all the necessary defendants were named properly so as to be bound by the judgment. *Title Notes* chapters or sections are devoted to special

¹⁰ See *Title Notes*, Chapter 16 – Homestead, Kelley’s Homestead Paradigm.

¹¹ TN 31.06.10. *In re Estate of Johnson*, 397 So.2d 970 (Fla. 4th DCA 1981).

¹² Defective service of process in a mortgage foreclosure may result in an appellate court setting aside a foreclosure proceeding. *Bennett v. Christiana Bank & Trust Company*, 50 So.3d 43 (Fla. 3d DCA 2010).

types of court proceedings which may impact real property: dissolution of marriage,¹³ probate,¹⁴ mortgage foreclosures,¹⁵ bankruptcy,¹⁶ and other court actions.¹⁷

- F. **No presumption of validity is accorded to governmental deeds.** For example, a title examiner must confirm that a tax deed or sheriff's deed was issued in strict compliance with all requisite legal procedures. Tax deeds have been known to be mistakenly issued¹⁸ or set aside in judicial proceedings.¹⁹ The examiner must be prepared to check the administrative file.
- G. **Not all titles are insurable according to sound underwriting principles.** Certain titles may not be currently insured by a given underwriter because of the business risks associated with their challenge (even if the challenge might ultimately fail). Examples include, title derived from "windfall" foreclosures,²⁰ and title derived by non-charitable inter-vivos gift.²¹ The passage of time may convert an uninsurable title into an insurable one.
- H. **A title examiner is often charged to inquire about matters "outside of the record."** These items do not appear in the courthouse records or in the title information furnished to the title examiner. These matters include questions of survey and possession,²² unrecorded liens, unrecorded easements, and matters concerning existence and status of artificial persons in title. Unless resolved, they must be listed as a requirement or exception in the title insurance commitment and policy.
- I. **When examining an instrument, examine the entire instrument, pay attention to attached exhibits,²³ notations in the margins²⁴ and any alterations to the instrument.²⁵** Recitals and

¹³ Chapter 14 – Dissolution of Marriage.

¹⁴ Chapter 2 – Administration of Estates.

¹⁵ SC 22.02 Foreclosures of Mortgages.

¹⁶ Chapter 5 – Bankruptcy.

¹⁷ Chapter 12 – Courts.

¹⁸ See, for example, *Nourachi v. First American Title Insurance Company*, 44 So.3d 602 (Fla. 5th DCA 2010).

¹⁹ *Surna Construction, Inc. v. Morrill*, 50 So.3d 47 (Fla. 5th DCA 2010), *Village of Doral Place Association, Inc. v. RU4Real, Inc.*, 22 So.3d 627 (Fla. 3d DCA 2009).

²⁰ TN 22.02.12.

²¹ TN 10.03.08.

²² A person dealing with real property is charged with constructive notice of the rights of any occupant of the property. *Blackburn v. Venice Inlet Co.*, 38 So.2d 43 (Fla. 1949).

²³ *Fiore v. Hilliker*, 993 So.2d 1050 (Fla. 2d DCA 2008).

²⁴ TN 22.05.07.

references in recorded instruments in the chain of title place the examiner on notice to inquire into possible unrecorded matters, too. For example, a recital in a recorded instrument to an unrecorded instrument constitutes constructive notice of the rights of the holders of that unrecorded instrument²⁶ which may need to be cleared of record.

- J. **Marital status change can occur at any time, and may also be caused by death of one spouse and not just by divorce.** Even when title is held as a tenancy by the entireties, judgments, or other liens against one spouse should not be ignored, because they may attach immediately upon the termination of the estate by the entireties.²⁷ Federal liens filed against one spouse should be treated as attaching to property owned by both spouses as tenants by the entireties and must be treated as surviving the death of the indebted spouse.²⁸
- K. **Priority under F.S. § 695.11²⁹ is determined by the official registration numbers, and is not affected by misindexing by the clerk of court.**³⁰ This means that a title examiner is charged with knowledge of the existence of an instrument even though the examiner fails to find it, regardless of whether it was impossible to find because of an error of the clerk in indexing or failing to index the instrument.

²⁵ TN 10.03.02.

²⁶ *Kemp v. Skivesen*, 154 So. 688 (Fla. 1934).

²⁷ See *Title Notes*, Chapter 14 – Dissolution of Marriage.

²⁸ *United States v. Craft*, 535 U.S. 274 (2002), *Paternoster v. United States*, 640 F. Supp. 2d 983 (S.D. Ohio 2009). Federal criminal fines or restitution liens against one spouse should be treated as attaching to that spouse's interest in entirety property for issuing a title insurance policy, because they are enforced in the same manner as federal tax liens (TN 18.06.13). CERCLA liens against one spouse should be treated as attaching to that spouse's interest in entirety property for issuing a title insurance policy, because they are enforced in the same manner as federal tax liens (TN 18.06.14).

²⁹ In the United States, recording statutes are classified into three categories: race, notice, and race-notice. Florida's recording statute (F.S. § 695.01) is considered to be one of the "notice" category, and the argument that F.S. § 695.11 has converted Florida into a "race-notice" state has been rejected. *Argent Mortgage Company, LLC v. Wachovia Bank, N.A.*, 52 So.3d 796 (Fla. 5th DCA 2010).

³⁰ *Orix Financial Services v. MacLeod*, 977 So.2d 658 (Fla. 1st DCA 2008), *Anderson v. North Florida Production Credit Ass'n*, 642 So.2d 88 (Fla. 1st DCA 1994). This maxim has important ramifications for title examiners' potential liability relying upon non-ATIDS title information. See *Skelton v. Martin*, 673 So.2d 877 (Fla. 2d DCA 1996) which underscores the perils of relying upon publicly available computerized title information even when it is provided by governmental agencies.

- L. **A title examiner doubts the efficacy of the re-recording of an instrument.** Re-recording is sometimes a red flag that an instrument has been altered after its execution and delivery. Sometimes re-recording can make matters worse. Re-recording requires an examiner to carefully investigate the issues raised and reach a determination as to the legal effect.³¹ When in doubt, an examiner should contact a Fund Underwriting attorney.
- M. **A title examiner should always read and understand the certificate of the person or entity providing the title search.** Pay particular attention to the extent of the search, the records and periods of time covered, and the scope of the warranty provided. Be alert to records that may not have been included in the search which are necessary for a proper title examination. The certificate should state that the title information contains all of the instruments affecting title to the property that appear of record in all of the various public offices searched.

“The complete search should include records from the offices of the clerk of the circuit court, county tax collector, and, if the property is located within the boundaries of a municipality or other taxing district, the office of its tax collector, and any other office where records of tax and improvement liens may be kept. The certificate should also show whether the title information includes records of the federal district court in whose jurisdiction the land is situated, together with the period of time covered by the search of those records. This is necessary so that the examiner may determine whether to search or have a search made of the records of that office. ... Unless the records of a particular office are mentioned in the certificate, the examiner must assume that the title information does not disclose instruments of record in that office. The effect of any omissions or exclusions should be considered. ... If certain offices or records are not searched, the examiner must make a personal inquiry at those offices for records of liens or other instruments that might affect the title to the property. The certificates often recite that the title information

³¹ See, *Correcting Mistakes in Prior Real Property Documents*, 32 The Fund Concept 43 (Apr. 2000), *Amendment to Certificate of Acknowledgment*, 6 The Fund Concept 67 (Nov. 1974), *Corrective Deed to Add Legal Description*, 29 The Fund Concept 16 (Feb. 1997), *Simple Cures for Certain Legal Description Errors*, 27 The Fund Concept 146 (Sept. 1995), TN 10.03.02 Alteration of Deeds, TN 10.03.03 Corrective Deeds, SC 13.02 Erroneous Descriptions.

does not cover, or specifically excludes, records of tax and improvement liens, especially those of municipalities.”³²

- N. **The protections afforded by Florida’s recording act (F.S. § 695.01) extend only to creditors and bona fide purchasers without “notice.”**³³ The record is constructive notice to creditors and subsequent purchasers not only of its own existence and contents, but of such other facts as those concerned with it would have learned from the record, if it had been examined, and inquiries suggested by it, duly prosecuted, would have disclosed.³⁴ Notice may be actual or constructive. Actual notice is an inference of fact and may be express (e.g., direct knowledge) or implied (including a person’s failure to use a means of knowledge when they had a duty to use it).³⁵
- Constructive notice is a legal inference imputed to persons without actual notice and arises from matters of record, possession, or facts imposing a duty to make inquiry. The same facts may sometimes be such to prove both constructive and actual notice. Florida’s recording statute (F.S. § 695.01) makes Florida a “notice” state, **not** a “race-notice” one.³⁶
- O. **A description of property by reference to a recorded plat or a declaration of condominium incorporates by reference all restrictions, easements, and reserved rights shown on the plat or declaration of condominium.**³⁷ Examiners obtain legible copies of plats and declarations of condominium, review their contents carefully and draft requirements and exceptions for matters revealed by that examination.
- P. **Examiners do not ignore wild or interloping instruments appearing in the title search because they may cloud the title.**³⁸ A wild or interloping instrument is a recorded instrument which

³² *Florida Real Property Title Examination and Insurance* (6th ed.), 3-13.

³³ *Sapp v. Warner*, 141 So. 124 (Fla. 1932), *Broche v. Cohn*, 987 So.2d 124 (Fla. 4th DCA 2008).

³⁴ *DGG Development Corp. v. Estate of Capponi*, 983 So.2d 1232 (Fla. 5th DCA 2008).

³⁵ This is one of the reasons why court files must be examined when the title chain reveals their existence and a muniment of title dependent thereon.

³⁶ *Argent Mortgage Company, LLC v. Wachovia Bank, N.A.*, 52 So.3d 796 (Fla. 5th DCA 2010). Because Florida is a “notice” state, examiners should be aware that a subsequent vendee/mortgagee for value and without notice of a prior sale/mortgage of the said real property will prevail against the prior vendee/mortgagee even if the prior vendee/mortgagee records first! *Van Eepoel Real Estate Co. v. Sarasota Milk Co.*, 129 So. 892 (Fla. 1930). See also TN 10.05.04.

³⁷ *Wahrendorff v. Moore*, 93 So.2d 720 (Fla. 1957).

³⁸ SC 7.03 Interloping or Wild Instruments.

identifies a parcel of property where none of the parties ever held a record interest and are, therefore, outside the chain of title. Consultation with a Fund Underwriting attorney is often required to determine whether the instruments may be ignored, or the steps which must be taken. The Florida Statutes provide for awards of costs and attorney's fees against preparers of instruments containing inaccurate or improper legal descriptions which impair title to real property.³⁹

- Q. Examiners do not ignore a Lis Pendens.**⁴⁰ Even an expired or improperly filed Lis Pendens may constitute notice of the litigation and adverse claims.⁴¹ Consultation with a Fund Underwriting attorney is often required to determine the steps which must be taken.
- R. Examiners do not ignore a notice or suggestion of bankruptcy involving a party while in title.**⁴² Sometimes the public records will not reflect the notice, but the records of the local taxing authority do. The examiner should treat the local taxing authority records as the equivalent of a notice in the public records. Consultation with a Fund Underwriting attorney is often required to determine the steps which must be taken.
- S. Examiners do not ignore Notices of Commencement or Claims of Lien filed under the Construction Lien Law.**⁴³ A Notice of Commencement may be valid for more than 1 year. A recorded Notice of Termination may not be sufficient to kill a Notice of Commencement. Although the Construction Lien Law sets forth numerous technical requirements for potential lienors to fulfill in order to establish a legally enforceable lien (such as notice to owner, lien service and recording time limitations), Members should treat any recorded lien as if it were valid and enforceable unless judicially determined to be otherwise. Consultation with a Fund Underwriting attorney is often required to determine the steps which must be taken.

³⁹ See F.S. § 697.10

⁴⁰ *Florida's Revised Lis Pendens Statute – "It's Not Your Father's Lis Pendens Any More!",* 42 The Fund Concept 25 (Apr. 2010), *The Lis Pendens: Significant Principles*, 32 The Fund Concept 29 (Mar. 2000), SC 12.05 Lis Pendens.

⁴¹ The Lis Pendens statute, F.S. § 48.23 was amended effective July 1, 2009. The effectiveness of the amendments on limiting the "notice" afforded by expired or improperly filed Lis Pendens has not yet been judicially determined. For provisional guidance, see *Florida's Revised Lis Pendens Statute – "It's Not Your Father's Lis Pendens Any More!",* 42 The Fund Concept 25 (Apr. 2010).

⁴² *Title Notes*, Ch. 5 – Bankruptcy.

⁴³ *Title Notes*, Ch. 21 – Construction Liens.

- T. Not every recorded judgment has to be a certified copy in order to constitute a lien on real property, and some judgment liens can be valid for longer than 20 years.** Examples of judgments that do not need to be certified are court orders creating public defender liens⁴⁴ or restitution liens,⁴⁵ and welfare liens filed by the Department of Health or the Department of Children and Family Services (formerly, the Department of Health and Rehabilitative Services).⁴⁶ Judgment liens may be extended for an additional period by rerecording a certified copy of the judgment and the rerecording does not need to occur prior to the initial expiration of the lien.⁴⁷ It is possible to renew a judgment (which is different from extending a judgment lien) by bringing an action upon that judgment before the statute of limitations has run and obtaining a new judgment!⁴⁸
- U. A judgment against a person with the same name as an owner in the chain of title should be presumed to be against that owner unless and until proven otherwise.** Judgments are dangerous to a title and cannot be ignored merely on the claim that the judgment was paid in full and the creditor cannot be located to give a satisfaction.⁴⁹ Individuals are known to give false non-identity affidavits. In a current transaction, a non-identity affidavit should contain not only a statement that they are not the same person, but the affidavit should also recite sufficient facts to show that the affiant is a different person from the judgment debtor. In addition, the court file should be examined to determine the residence of the judgment debtor, details of the transaction which caused the judgment to be granted, and other factual matters relating to the identity of the debtor and his relationship with the creditor. When the judgment is against an owner in the back chain of title, the recorded affidavit by that owner stating that he is not the same person as the judgment debtor is sufficient for issuing a title insurance policy without an exception for the lien of the judgment. Also, a title insurance policy can be issued without an exception for the lien of a judgment if an

⁴⁴ TN 18.06.07.

⁴⁵ TN 18.06.08.

⁴⁶ TN 18.06.11.

⁴⁷ *Sun Glow Construction, Inc. v. Cypress Recovery Corporation*, 47 So.3d 371 (Fla. 5th DCA 2010), *Franklin Financial, Inc. v. White*, 932 So.2d 434 (Fla. 4th DCA 2006).

⁴⁸ *Petersen v. Whitson*, 14 So.3d 300 (Fla. 2d DCA 2009), *Adams v. Adams*, 691 So.2d 10 (Fla. 4th DCA 1997).

⁴⁹ TN 18.02.04.

examination of the court file shows sufficient facts from which it can be determined that the debtor was a different person than the former property owner.⁵⁰

- V. **Planned communities of any type, including condominiums, cooperatives, PUDS, and other regimes involving governing associations alert the examiner to the potential existence of rights of prior approval, rights of first refusal, and assessment rights.** The examiner reviews all regime documents carefully and sets forth the necessary requirements and exceptions in the title insurance products.
- W. **An after-acquired title acquired by a grantor subsequent to grantor's conveyance will inure by operation of law to the benefit of the grantee without the payment of further consideration, provided the grantor's conveyance was not by quit-claim deed.**⁵¹
- X. **Nature can convey title.** The natural forces of accretion (natural, gradual and imperceptible addition of land passing to the riparian owner of the adjacent upland), reliction (natural, gradual and imperceptible recession of waters passing the exposed lands to the riparian owner of the abutting land), erosion (the opposite of accretion, resulting in loss of land by the riparian owner of the adjacent upland) can operate to create and change ownership. In contrast, avulsion (a sudden (often violent) and perceptible action of the elements (for example, a hurricane or storm) that rearranges submerged and upland areas) does not result in a change of title.
- Y. **Examiners develop and maintain good examining habits.** They are methodical, and follow consistent practices across examination files. Examiners keep accurate and complete examination notes, and store them separately from the transaction file so that they can refer to them when needed, and garner efficiencies through time when future transactions involve properties with which the examiner is familiar. Notes are prepared with the understanding that many years can go by before they need to be consulted, long after any memory of the transaction or the examination are gone. An examiner must be able to refresh their recollection about how or why decisions were made or actions taken and be prepared to justify those decisions if challenged.

⁵⁰ TN 18.02.01.

⁵¹ *Daniell v. Sherrill*, 48 So.2d 736 (Fla. 1950), TN 10.03.01.

4. **The Six Steps of Title Examination**⁵²

1. Confirm the sufficiency and thoroughness of the title search results to be examined and eliminate extraneous matters.
 - (1) Verify the correct and complete legal description(s) have been searched over all relevant time periods. If different legal descriptions for the property have been used through time, verify that the differing legal descriptions are equivalent. When property has been platted or submitted to a condominium regime, confirm the legal description as shown on the plat or declaration of condominium matches the legal description for the property used in instruments which do not make reference to that recorded plat or declaration.
 - (2) Verify all the correct names have been searched over all relevant time periods.
 - (3) Verify there are no gaps in the time periods searched from the inception date of the search down to the present, with clear identification of the date and time through which search has been made and certified.
 - (4) Verify that all entries identified by the search results are present among the instruments available to the examiner to review.
 - (5) Eliminate extraneous matters which have been included in the search results but which do not actually affect the property or parties-in-interest.
2. Construct the title chain by graphically depicting through time the interconnecting title transactions from the source of ownership down to the present owner, identifying and setting forth the liens, encumbrances, and restrictions in that title, and noting any potential defects.
 - (1) General Comments
 - a. The examiner traces the ownership of title from the source to the present owner.⁵³
 - i. Original sources of title include conveyances from the sovereign. In Florida, these are most often conveyances from the United States of America, the State of Florida, and the Crown of Spain (for Spanish Land Grants).⁵⁴

⁵² Experienced title examiners generally go through 6 steps in their title examination and do not mix the various steps in an effort to cut corners.

⁵³ See Kriss, R. A. & Christenbury, S. (2010). Sources of Title. In *Florida Real Property Title Examination and Insurance* (Fla. Bar CLE 6th ed.).

- ii. Title chains linked to original sources may come to an end, and an entirely “new” or independent source of title begin from sources other than deeds of conveyance. If this occurs, certain matters in the original chain may survive and carry over. Important examples of these “new” sources include:
 - [1] Passage of title on death of an owner
 - [2] Tax titles
 - [3] Judicial sales, orders, & decrees
 - [4] Adverse possession
 - [5] Eminent domain
 - [6] Accretion, reliction, and erosion (but not avulsion)
 - [7] Boundaries by acquiescence and agreement
 - [8] Dedication
 - [9] Marketable Record Title Act.
 - b. Determine what happened to the title during the time each of the owners was in title, and identify matters created by the owner (e.g., conveyances, easements, mortgages, liens) or matters which attached to the property during the time an owner was vested with title (e.g., judgments, liens, bankruptcies).
 - c. Determine what happened to the matters identified in the preceding step to ascertain their continuing status. For example, a mortgagee may have transferred its interest, or a lien holder may have died, become incapacitated, or bankrupt. Thus it is necessary to examine the name searches conducted on the holders of all of the matters, as well as their assignees, too.
- (2) Mechanics of Title Chain Construction
- a. **A sample title examination chain sheet is included as an exhibit to this outline.** The chain sheet lists categories of information generally extracted from the title information about each instrument. The chain sheet is the repository of an examiner’s notes about the examined title. When an examiner has completed the examination process, the compiled

⁵⁴ There are a very few based on British grants from 1763-1783. See, Glenn Boggs, *Florida Land Titles and British, Not Just Spanish, Origins*, 81-AUG Fla. Bar Journal 23 (2007).

notes (referred to in the industry as “takeoffs”) usually include: (1) a chain of title showing the chronological history of conveyances through time from the earliest conveyance from the sovereign⁵⁵ down to the transaction by which the current owner took title; (2) a list of all liens, encumbrances, and other matters sufficiently affecting the title to the property that they will be noted as either a title insurance commitment requirement for closing, or an exception from the coverage that will be provided. The notes typically also include the examiner’s notes or observations of any irregularities, as reminders to the examiner to resolve them, along with notes about their ultimate resolution in terms of how they were resolved and why the examiner could eliminate them from constituting title defects and listed as requirements or exceptions in the title insurance products.

- b. Examiners do not generally investigate or resolve the observed irregularities while creating the title chain for several reasons. One important reason is to avoid unnecessary work. There is a reasonable chance that an observed irregularity was caught as part of a previous title examination. Further in the examination, the curative instruments may be revealed, thereby obviating the need for the examiner’s attention and effort on the matter.
- c. In the absence of permission to construct an abbreviated chain of title, the gold standard is to conduct a complete examination and to track the chain of title from “EPR” or “Earliest Public Records.”⁵⁶ In practice, this means tracing successive ownership of title commencing with its original source, the initial conveyance out by the sovereign. In most of Florida, this most often means title deriving from the United States of America. The examination and chaining continues down to the present owner.⁵⁷

⁵⁵ Unless an acceptable later in time source of title is available.

⁵⁶ See Whitfield’s Notes, Legal Background to the Government of Florida. These notes develop the history of the various sources of original title. Justice James B. Whitfield of the Florida Supreme Court compiled his Notes in the early days of the 20th century. The Notes are on pages 99–121 of the first volume of West’s Florida Statutes Annotated (1961).

⁵⁷ This is a mechanical process, and examiners usually focus on the mechanical aspects of creating the chain at this stage, and save the analysis of the instruments comprising the chain for the next step.

- i. Except for an approximately twenty year period between 1763 to 1783,⁵⁸ Spain claimed sovereignty over “La Florida” from 1513 to its cession to the United States in 1821.⁵⁹ A Treaty of Cession, the Adams-Onís Treaty, was entered into between the United States and Spain in 1819 by which all of the lands in “La Florida” became the property of the United States, except for those lands which had been transferred into private ownership prior to the cutoff date of January 24, 1818.⁶⁰ In 1821, the lands were officially received by future President Andrew Jackson on behalf of the United States (in Jackson’s then capacity as Governor). Article 8 of that treaty provided that grants lawfully made before January 24, 1818 would be ratified and confirmed by United States to the holders; those made after that date would be null and void. The United States under special acts of Congress required all land grant claimants to present their claims for examination and adjudication. Those that were sustained are the so-called Spanish Grants, and constitute an original source.⁶¹
- ii. Between 1821 and 1845 when Florida was admitted to the Union a territorial form of government was used throughout Florida.⁶² When Florida was admitted into the Union by act of Congress in 1845, the act reserved ownership of the public lands therein to the United States. Thus, title to most of the land in Florida was vested in the United States at or before Florida’s statehood, and constitutes another original source.

⁵⁸ During this twenty year period, Great Britain exercised dominion over “La Florida,” known then as East and West Florida. During this time period, Great Britain made some land grants which were recognized as valid when “La Florida” was returned to Spanish sovereignty and then later was ceded to the United States.

⁵⁹ Glenn Boggs, *Florida Land Titles and British, Not Just Spanish, Origins*, 81-AUG Fla. Bar Journal 23 (2007).

⁶⁰ Glenn Boggs, *The Case of Florida’s Missing Real Estate Records*, 77-OCT Fla. Bar Journal 10 (2003). Glenn Boggs, *Florida Land Titles and British, Not Just Spanish, Origins*, 81-AUG Fla. Bar Journal 23 (2007).

⁶¹ A few of these land grants are of British origin, emanating from grants originally made by Great Britain during the twenty year interval (1763 to 1783) during which it, not Spain was the sovereign. Glenn Boggs, *Florida Land Titles and British, Not Just Spanish, Origins*, 81-AUG Fla. Bar Journal 23 (2007).

⁶² Glenn Boggs, *The Case of Florida’s Missing Real Estate Records*, 77-OCT Fla. Bar Journal 10 (2003). Glenn Boggs, *Florida Land Titles and British, Not Just Spanish, Origins*, 81-AUG Fla. Bar Journal 23 (2007).

As a result, the most commonly encountered conveyance out by the sovereign is a patent issued by the United States as grantor to a grantee. Valid patents do not need to have been acknowledged or witnessed. Federal statutes govern the form and manner of execution of these patents. There is no provision of law requiring that federal patents be recorded in the counties in which the patented lands lie. “In order to make titles acceptable for issuing Fund policies, when the title originates with patents from the United States, the first links in the chain of title should be recorded patents or certificates of patents.”⁶³

- iii. The State of Florida was/is also a landowner as an original source of title. So called *sovereignty lands* (all lands under navigable⁶⁴ waters and tidelands within the territorial limits of Florida) became owned by Florida upon its admission to statehood in 1845 under the Equal Footing Doctrine. Additional acreage was granted to Florida by the United States. For example, Florida received ownership of lands pursuant to the 1850 “Swamp Act” (more than 20 million acres of land, nearly 2/3 of all the land in Florida). The State Board of Trustees of the Internal Improvement Trust Fund is empowered to convey lands owned by the State of Florida.⁶⁵
- iv. In 1785 a *rectangular survey method* a/k/a *government survey method* was established and used throughout much of the United States, including Florida.⁶⁶ This survey method was deployed in Florida in 1824, and set a proverbial “ground zero” for Florida at the intersection of the Tallahassee Principal Meridian with the Base

⁶³ TN 26.03.01.

⁶⁴ All salt water bodies of water lying within the boundaries of the state are navigable waters. Not all freshwater bodies of water lying within the boundaries of the state are navigable waters. To constitute navigable waters, a body of water had to be able to support navigation and commerce in 1845. In regard to salt waters, the mean high tide is the boundary line between the navigable waters and the uplands. In regard to freshwater bodies, the ordinary high water mark is the boundary line between the navigable waters and the uplands. Lands beneath waters that are influenced by the ebb and flow of the tide constitute one form of sovereignty submerged lands. The State’s ownership of the lands beneath these waters generally ends at the mean high water line.

⁶⁵ A conveyance from the trustees must be authorized by a vote of at least three of the four trustees. F.S. § 253.02(2). F.S. § 253.031(8) provides that deeds conveying lands sold by the trustees must be personally signed by the trustees and impressed with the seal of the office of the trustees.

⁶⁶ For more information, visit: http://www.nationalatlas.gov/articles/boundaries/a_plss.html.

Parallel Line. Several useful pages associated with the governmental survey and demarcation of sections, townships, and ranges are appended as exhibits to this outline.

- v. For more information concerning conveyances involving public lands, see *Fund Title Notes*, Ch. 26 – Public Lands.
- vi. **In all⁶⁷ conveyances by the sovereign the examiner must carefully determine whether or not the sovereign reserved any rights. Unless those reserved rights were subsequently released, exceptions must be made for those reserved rights.**

3. Analyze the documents and matters (e.g., court proceedings) shown on the title chain in order to reach conclusions as to their legal validity, sufficiency and effect.
 - (1) Depending upon the way the search results were assembled and delivered to the examiner, it is possible that the examiner has not yet looked at copies of any instruments prior to arriving at this step in the examination process. For example, if the title information is computerized, it is possible that the examiner has constructed the chain from printouts or screens of information extracted from the instruments, and not the instruments themselves. So, at this stage of the examination process, the examiner's attention is now focused on a careful review of all of the instruments identified on the title examination chain sheet. Each instrument now gets critically examined for content, to determine its validity and sufficiency.
 - (2) All deeds and other documents purporting to convey title must be analyzed to confirm that they are legally valid and sufficient. This includes their correct execution by all the proper parties, and the accuracy of the legal description.
 - (3) All judgments, liens, satisfactions, and the like must be analyzed to determine their effect on the property.
 - (4) Examiners have learned to look for very common red flags, examples being:
 - a. Common fee limitations⁶⁸

⁶⁷ "All" includes not only conveyances out as an original source of title, but subsequent conveyances out (e.g., Murphy Act titles).

⁶⁸ See *Florida Real Property Sales Transactions*, Chapter 10 (Fla. Bar CLE 4th ed. 2004).

- i. Qualified or defeasible fees (fee simple determinable, fee conditional, fee tail, fee simple on condition subsequent, and fee simple on conditional limitation)
 - [1] Cotenancies (tenancies in common, joint tenancies with rights of survivorship, and tenancies by the entireties)
 - [2] Trust estates
 - [3] Leaseholds
 - [4] Life estates (including enhanced life estates)
 - [5] Reversions and remainders
- b. Common encumbrances on the fee title
 - [1] Mortgages (including collateral mortgages, chattel mortgages, and purchase money mortgages)
 - [2] Agreements for deed
 - [3] Construction liens
 - [4] Vendors' liens
 - [5] Judgment liens
 - [6] Taxes (real property)
 - [7] Tax liens (federal income; federal and state estate and inheritance; and state sales, intangible, and corporate)
 - [8] Restrictions
 - [9] Easements
 - [10] Reservations
 - [11] Agreements
- c. Defects common to fee titles or encumbrances
 - [1] Exemption, conditions, and issues pertaining to homesteads
 - [2] Transactions between husband and wife
 - [3] Bankruptcy proceedings
 - [4] Matters *in pais* (actual notice of encumbrances not disclosed by public records — including facts disclosed by inquiry; rights of parties in possession; visible, unrecorded easements; and encroachments)

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- [5] Matters arising out of court proceedings
- [6] Improper execution, delivery, and recording
- [7] Incompetencies

4. Research the validity and importance of the title deficiencies or defects discovered, and arrive at a conclusion as to the overall quality of title.

(1) The examiner must engage in the process of legal research to resolve questions of law to the satisfaction of the examiner and consistent with the sound underwriting practices and guidelines issued by The Fund. Members are encouraged to contact a Fund Underwriting attorney to assist them in resolving legal issues. A wealth of Fund resources are available to assist in the research and resolution of legal issues.

(2) Affidavits & Corrective Instruments

a. Corrective instruments trump affidavits as the ideal manner to correct a possible defect in an otherwise marketable title. However, it is not always practical or possible to obtain a corrective instrument. Fortunately, a subset of possible defects may be resolved through the use of recorded affidavits.

b. Standard 3.3 of the Florida Uniform Title Standards provides: “Whenever possible and in conformity with standards promulgated here, the examiner should accept and rely on an affidavit which states sufficient facts to negate a possible defect in an otherwise marketable title.”⁶⁹

c. Affidavits are best thought of as instruments recorded to remove doubts about factual matters that are not resolved by the public records. The recorded affidavit provides some assurance as to the probable facts. An examiner must determine on a case by case basis whether the possible defect encountered is one which can be resolved by affidavit.⁷⁰

When in doubt, consultation with a Fund Underwriting attorney is encouraged.

⁶⁹ The Uniform Title Standards are published by the Real Property Probate & Trust Law Section of The Florida Bar, and are available online at <http://www.rpptl.org>.

⁷⁰ See, Ch. 1 – Affidavits: The Efficient Closing Tool, *Fund Affidavit Practice Manual* (2009), *Correcting Mistakes in Prior Real Property Documents*, 32 The Fund Concept 43 (Apr. 2000), *Cure for Common Title Defect: Continuous Marriage Affidavit*, 24 The Fund Concept 47 (May 1992), *Cure for Common Title Defect: Nonidentity Affidavits*, 24 The Fund Concept 64 (June 1992), *Amendment to Certificate of*

(3) Deeds

a. Important Deed Elements

- i. Date of Execution: Ideally, a deed's date of execution should match the date of the acknowledgment, and the date should be after the date when the grantor acquired title to the property being conveyed. However, the fact that a deed is undated, bears a date different from the date of the acknowledgment, or bears an impossible date, does not affect the validity of the deed as a muniment of title.⁷¹
- ii. Parties: A valid deed needs both a grantor capable of conveying title and a grantee capable of accepting title. Legal existence of both the grantor and grantee at the time(s) of execution and delivery of the deed is needed.⁷² The grantor must be the same person who acquired title in a previous link in the title chain. A legal presumption exists when the recited names are identical that the grantor is the same person who acquired title. To the extent the names are not identical, the presumption may not apply, and the examiner may need to require proof of the identity.⁷³ The names of the grantors should be stated in the body of the deed, signature alone may not suffice.⁷⁴ A deed which does not contain the name of any grantee is void and inoperative as a conveyance.⁷⁵ In the absence of record evidence to the contrary, the examiner is entitled to assume that the grantors in an instrument are of age, competent, and not under other disability.

[1] Marital Status of Grantor:⁷⁶ Because of the question of homestead status, all deeds should show the marital status of the grantor. The marital status of the

Acknowledgment, 6 The Fund Concept 67 (Nov. 1974), *Corrective Deed to Add Legal Description*, 29 The Fund Concept 16 (Feb. 1997), *Simple Cures for Certain Legal Description Errors*, 27 The Fund Concept 146 (Sept. 1995), *Explanatory Language in Instruments of Conveyance*, 20 The Fund Concept 57 (June 1988), *Names and the Identity of Parties*, 4 The Fund Concept 1 (Jan. 1972), TN 10.03.02, TN 10.03.03, SC 13.02.

⁷¹ TN 1.02.02, Uniform Title Standard 3.6 – Erroneous, Inconsistent or Omitted Date.

⁷² TN 10.04.05.

⁷³ TN 10.04.07, Uniform Title Standards – Ch. 10 Names.

⁷⁴ TN 10.04.03, *Heath v. First National Bank in Milton*, 213 So.2d 883 (Fla. 1st DCA 1968).

⁷⁵ TN 10.04.03, *Simpson v. Hirshberg*, 30 So.2d 912 (Fla. 1947).

⁷⁶ TN 20.02.03.

grantor should appear somewhere in the deed or in the acknowledgment. The examiner should never assume the marital status of the grantor. If the property could have been homestead, joinder of both spouses in the operative document⁷⁷ is necessary on any conveyance or mortgage of it (Art. X, Sec. 4 (c)).⁷⁸ Proof of a grantor's marital status must be determined in connection with homestead and the required joinder of the husband in conveyances of a wife's separate property prior to January 7, 1969. If the grantor is a single person and the deed recites such marital status, the question of homestead is of little importance. The Fund's position is to rely on deeds by married persons on or after October 1, 1973, without joinder of their spouses if the property does not have homestead status. It would be advisable in such a deed to have the grantor recite in the deed itself or by separate affidavit that his or her residence is at a certain place, giving the street address, so that it can be determined that as of that time the grantor was residing somewhere other than on the property itself. If the grantor resides on the property, or the property could possibly have homestead status, the spouse should join in the deed.⁷⁹

- [2] Trusts & Trustees: When the title chain includes conveyances involving trusts and trustees, the examiner should not assume the vesting conveyance to have been valid, nor the requirements in a current transaction. A variety of scenarios are possible, the resolution of which vary.⁸⁰
- [3] Partnerships: When the title chain includes conveyances involving partnerships (general, limited, or limited liability), the examiner should not assume the vesting

⁷⁷ For example, an in title married woman may not successfully convey her homestead real property by tendering two separate deeds to the grantee, one executed by herself and the other executed by her husband. The two of them must execute the same deed. *Heath v. First National Bank in Milton*, 213 So.2d 883 (Fla. 1st DCA 1968).

⁷⁸ Except a conveyance for purposes of creating a tenancy by the entireties between the grantor and the grantor's spouse.

⁷⁹ TN 20.02.03, TN 20.02.05.

⁸⁰ See *Fund Title Notes*, Ch. 31 Trusts & Trustees, Uniform Title Standards – Ch. 13 Trusts.

conveyance to have been valid, nor the requirements in a current transaction. A variety of scenarios are possible, the resolution of which vary.⁸¹

[4] Corporations or Limited Liability Companies: When the title chain includes conveyances involving corporations or limited liability companies, the examiner should not assume the vesting conveyance to have been valid, nor the requirements in a current transaction. A variety of scenarios are possible, the resolution of which vary.⁸²

[5] Estates & Decedents: When the title chain includes the death of one or more record owners, the examiner should not assume the validity or sufficiency of subsequent conveyances or the requirements in a current transaction. A variety of scenarios are possible, the resolution of which vary.⁸³ A useful title examination tool is Kelley's Homestead Paradigm.⁸⁴

[6] Representative Capacities, Generally: Whenever a conveyance is made to or from a person acting in a representative capacity, the word "as" should appear between the name of the person and the designation of the representative capacity. Sometimes the safest course of action may be to require conveyance by a grantee in both their individual and representative capacity, joined by their spouse (if there is any chance of homestead status for the property).

iii. Consideration: Unless a deed contains a specific recital that it is *without* consideration, an examiner is justified in assuming that the grantor could not attack the title successfully in the hands of a third party without knowledge.⁸⁵ Stated in other terms, a recitation of the consideration, or a statement of adequacy of consideration is

⁸¹ See *Fund Title Notes*, Ch. 23 Partnerships.

⁸² See *Fund Title Notes*, Chapter 11 – Corporations and Limited Liability Companies, Uniform Title Standards, Ch. 4 Corporations.

⁸³ See *Fund Title Notes*, Ch. 2 Administration of Estates, Uniform Title Standards 5.2– 5.4.

⁸⁴ Available online at <https://www.thefund.com>.

⁸⁵ TN 10.03.08(C).

not an essential element of a deed. Title derived by non-charitable inter-vivos gift is not insurable.⁸⁶

- iv. Granting Clause: An instrument cannot be construed as a deed unless it contains operative words which are sufficient to manifest an intention to transfer title to an estate in the property. No particular words are necessary. Words may be in either the past or present tense, but not in the future tense. One apt word is sufficient, although most deeds contain several.⁸⁷ The statutory warranty deed form uses the words “has granted, bargained and sold.” Words such as “remise,” “release,” “quitclaim,” and “transfer” are generally considered sufficient to pass title.⁸⁸
- v. Legal Description: A deed must contain a valid legal description and should show in what county of Florida the lands lie. The test is “if the description of the land conveyed is such that a surveyor, by applying the rules of surveying, can locate the same, such description is sufficient, and the deed will be sustained if it is possible from the whole description to ascertain and identify the land intended to be conveyed.”⁸⁹ There are many technical rules for determining the sufficiency of a description, and they are beyond the scope of this outline. A chapter of the *Title Notes* is devoted to this topic.⁹⁰ An examiner should err on the side of caution and consult with a Fund Underwriting attorney whenever a question of validity or sufficiency of a legal description is involved, particularly because of the risks of a title failure. Generally speaking invalid legal descriptions require corrective instruments and/or litigation; they may not be cured by affidavit, alteration, or re-recordings. Because of the importance of a correct legal description, an examiner should be especially careful in reviewing the legal description in every deed and ensure that it covers all of the

⁸⁶ TN 10.03.08.

⁸⁷ TN 10.03.04.

⁸⁸ F.S. § 689.02.

⁸⁹ *Maynard v. Miller*, 182 So. 220 (Fla. 1938).

⁹⁰ *Title Notes* Chapter 13 – Descriptions. When property is described by metes and bounds, it is essential that the description close. This means that all of the segments of the calls within the metes and bounds description connect back to the point of beginning.

property under examination. All metes and bounds descriptions should be double-checked.

- vi. Recitals: Sometimes referred to as the “subject to” provisions, recitals frequently constitute exceptions to covenants (warranties). An examiner must read each deed carefully, including all recitals.⁹¹ The recitals may reference other interests or rights, such as mortgages, contracts, or other instruments. When a deed contains such recitals, the recital constitutes record notice not only of the instrument but also of its terms and conditions as ascertained by reasonable inquiry suggested by the record. This places the duty on an examiner to review all instruments referred to in the recitals and consider them as a part of the chain of title.
- vii. Signatures: A deed or mortgage should contain the signature of each grantor or the grantor’s duly authorized agent.⁹² A signature may be printed, stamped, typewritten, engraved or photographed. All that is required is that the instrument be signed to show that the grantor intended it as his act and deed. It is not necessary that the grantor actually sign his name to the instrument, provided his name is shown and he makes an X mark to indicate his execution of the instrument. The formalities of execution by business entities are varied, arcane, and change through time. Examiners should become familiar with the appropriate Fund *Title Notes* to evaluate such instruments and should make a judgment each time an instrument is examined without automatically assuming it was validly executed simply because it is of record or another examiner has approved it in a previous transaction.⁹³

⁹¹ Proper placement of the recitals within a statutory warranty deed is important for the deed and its recitals to accomplish their intended purpose. *Morton v. Attorneys’ Title Insurance Fund, Inc.*, 32 So.3d 68 (Fla. 2^d DCA 2009).

⁹² F.S. § 689.01, See SC 10.06 Signature.

⁹³ For **corporations**, see SC 11.05 Execution of Instruments, TN 11.06.02; for **limited liability companies**, see SC 11.10 Limited Liability Companies; for **general partnerships**, see SC 23.01 Deeds and Mortgages From General Partnerships; for **limited partnerships**, see SC 23.02 Deeds and Mortgages From Limited Partnerships, for **limited liability partnerships**, see SC 23.04 Deeds and Mortgages From Limited Liability Partnerships.

- viii. Witnesses: Deeds (but not mortgages) executed by natural persons must be signed in the presence of two subscribing witnesses.⁹⁴ There must be two subscribing witnesses to each grantor's signature. The same witnesses may suffice for two or more grantors who signed at the same place. The witnesses may not be disqualified by interest. Neither a grantor nor a grantee is qualified to act as a witness. If there are two or more grantors and all parties execute the instrument in one county, it is presumed that the witnesses are attesting the signatures of all the grantors, in the absence of contrary statements in or facts appearing on the instrument. If the deed was executed in different counties, however, it should appear clearly that the signature of each grantor is witnessed by two subscribing witnesses. In the case of business entities, not all manner of execution requires attesting witnesses.⁹⁵
- ix. Acknowledgment & Proof: For a real estate document to be entitled to recordation in Florida its execution must have been proven by one of the four methods sanctioned by F.S. § 695.03. Of the four sanctioned methods, proof by acknowledgment is the most common route to record. Acknowledgment is a certification that the person identified in the certificate and described in the instrument to which the certificate is attached did admit or "acknowledge" that the person did execute that instrument.⁹⁶ There are five suggested "statutory short forms of acknowledgment" specified in F. S. § 695.25, but other forms may be used. In addition, there are statutory provisions for acknowledgment and proof outside Florida, outside the United States, and for members of the armed forces and their spouses.⁹⁷ The examiner should confirm that: (1) the venue of acknowledgment was consistent with the officer's territorial jurisdiction; (2) the officer taking the acknowledgment was authorized by F.S. §

⁹⁴ F.S. § 689.01.

⁹⁵ For **corporations**, see SC 11.05 Execution of Instruments, TN 11.06.02; for **limited liability companies**, see SC 11.10 Limited Liability Companies; for **general partnerships**, see SC 23.01 Deeds and Mortgages From General Partnerships; for **limited partnerships**, see SC 23.02 Deeds and Mortgages From Limited Partnerships, for **limited liability partnerships**, see SC 23.04 Deeds and Mortgages From Limited Liability Partnerships.

⁹⁶ *What is an Acknowledgment*, 41 The Fund Concept 19 (Mar. 2009).

⁹⁷ F.S. § 695.03 & 695.031.

695.03 to have done so; (3) the officer taking the acknowledgement affixed their official seal, if any, to the instrument; and (4) the officer's commission was not expired at the time the acknowledgment was taken. Acknowledgment and proof is not a trivial matter, because although an instrument that has not been acknowledged properly would be valid as between the parties to it, that instrument would not legally be entitled to record. Instruments physically recorded despite a defective acknowledgment, do not constitute constructive notice to third parties, including subsequent purchasers or mortgagees.⁹⁸ A chapter of The Fund *Title Notes* is devoted to this topic.⁹⁹

- x. Delivery & Acceptance: A conveyance is ineffective until the instrument of conveyance is delivered. The time of delivery of a deed is the time when its validity must be determined. Except when a deed is recorded after the death of the grantor or grantee, an examiner may usually assume that the recordation of the instrument proves its delivery by the grantor and acceptance by the grantee.¹⁰⁰
- b. **Tax Deeds**: When the chain of title is dependent upon a muniment involving a tax deed (administrative or judicial), the examiner should **never** assume the tax deed to have been valid.¹⁰¹ The reason is that courts generally disfavor tax titles.¹⁰² Because of this proclivity, title examiners must rigorously review the tax deed and the proceeding culminating in its issuance to make sure that every procedural requirement was met and that no deviations occurred from the statutory requirements.¹⁰³ Note that examination

⁹⁸ TN 1.05.01.

⁹⁹ Chapter 1 — Acknowledgments.

¹⁰⁰ SC 10.02 Delivery.

¹⁰¹ *Village of Doral Place Association, Inc. v. RU4Real, Inc.*, 22 So.3d 627 (Fla. 3d DCA 2009).

¹⁰² *Surna Construction, Inc. v. Morrill*, 50 So.3d 47 (Fla. 5th DCA 2010).

¹⁰³ See TN 30.01.02, Uniform Title Standards – Ch. 15 Tax Titles. As a point of information, The Murphy Act operated to vest in the State of Florida as of June 9, 1939, title to certain lands against which there were outstanding tax certificates held by the state. It is estimated that more than 800,000 Murphy Deeds have been issued and recorded. Murphy Act deeds can constitute an acceptable root of title under the Marketable Record Title Act (MRTA) but MRTA excepts from extinguishment the reservations in the Murphy Deed itself. Depending upon when the Murphy Deed was issued, it contained either a road right-of-way reservation or both a road right-of-way reservation in combination with a petroleum and mineral

must occur in the context of the applicable laws in effect at the time the tax deed was issued. Generally speaking, without a conveyance from the record title owner at the time the tax deed was issued or a judgment quieting the title, tax deeds must be sufficiently “seasoned” in accordance with Fund underwriting guidelines in order for title based thereon to be insurable. Sometimes there are no bidders at tax sales, and land ownership reverts to the county in which the land is located. In those instances, the clerk of the circuit court executes a deed to vest title in the board of county commissioners. F.S. § 270.11 provides that all deeds executed by state agencies and local governments on or after October 1, 1986, must reserve an undivided 3/4 interest in all phosphate, minerals, and metals, and an undivided 1/2 interest in all petroleum. This reservation is automatic and applies even if the deed fails to reference them. Accordingly, an exception is required unless a release of the reservations has been obtained.¹⁰⁴

(4) Mortgages¹⁰⁵

- a. Mortgages: A mortgage is not a link in the chain of title until it is foreclosed. If a mortgage is foreclosed, as part of the court proceeding, the court adjudicates the validity of the mortgage lien. However, because mortgages are encumbrances to the title, an examiner must review them, and related documents, if they appear as part of the record. A chapter of the *Title Notes* is devoted to mortgages.¹⁰⁶ Mortgages should be checked with as much care as deeds, with special emphasis on the names of the parties, legal description of property encumbered, execution, and acknowledgment. Witnesses are not required for a mortgage to be valid.¹⁰⁷ From a title examiner’s perspective, there are several important points to consider.

reservation. See, Henry M. Brown & Rebecca E. Brown, *Murphy Deed Right-of-Way Reservations: A 1930s Taxpayer Bailout Yields Right-of-Way Cost Savings*, 83-AUG Fla. Bar Journal 20 (2009).

¹⁰⁴ F.S. § 270.11(2)(b) provides that the right of entry with respect to the foregoing interests is released as to any parcel of property that is, or ever has been, a contiguous tract of less than 20 acres in the aggregate under the same ownership.

¹⁰⁵ See Conner, T. (2010), Liens and Encumbrances. In *Florida Real Property Title Examination and Insurance* (Fla. Bar CLE 6th ed.).

¹⁰⁶ *Title Notes*, Chapter 22 – Mortgages.

¹⁰⁷ TN 22.05.14.

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- i. A mortgage should be checked for recitals of other instruments, and if other instruments are recited, they should be examined too, because of the notice principles discussed elsewhere.
- ii. Sometimes the mortgagee is not the payee or only payee in the promissory note(s) which the mortgage secures. In such instances satisfactions should be obtained not only from the mortgagee, but also from the named payees of the promissory note(s).
- iii. Examiners will now frequently encounter mortgages involving Mortgage Electronic Registration Systems, Inc. (MERS). MERS acts as mortgagee of record for any loan registered on its computer system and as nominee for the beneficial owner of the mortgage loan. MERS may become the mortgagee of record either by an Assignment to MERS, or by MERS being named the original mortgagee of record. When satisfying a mortgage held by MERS, the satisfaction must be executed by a duly authorized representative of MERS.¹⁰⁸ Unless an assignment from MERS is recorded, once a mortgage is registered with MERS, The Fund will rely on recorded satisfactions from MERS Systems to extinguish the liens of MERS-registered mortgages.
- iv. Revolving credit mortgages, also known as home equity lines of credit (HELOC), are a subtype of mortgage in which the amount owed may fluctuate through time as the borrower draws, pays down, and redraws available credit. Special precautions are required to properly satisfy these types of mortgages.¹⁰⁹ As a result it is important for an examiner to correctly identify this type of mortgage, and require compliance with these precautions.
- v. Some mortgages contain provisions that allow the mortgage to secure future loans made by the mortgagee provided those additional funds are loaned within 20 years of the original loan. These so-called “future advance” clauses are governed by F.S. § 697.04. An examiner must be alert to the presence of these future advance provisions,

¹⁰⁸ See TN 22.05.17.

¹⁰⁹ TN 22.05.16.

and may need to include special requirements depending upon the nature of the transaction.¹¹⁰

- vi. A purchase money mortgage is subject to special legal principles that do not apply to other types of mortgages.¹¹¹ Traditionally a purchase money mortgage is a mortgage given by the contract vendee to the contract vendor to secure a portion of the purchase price. Florida courts have extended these purchase money legal principles to mortgages in favor of third parties to the extent that the third party's funds were used for purchase of the property.¹¹² The purchase money mortgage is entitled to preference over all prior claims or liens given by or obtained against the mortgagor.
- vii. Assignments of mortgages should be checked by an examiner with care, especially for the names of the parties, description of the mortgage assigned, execution and acknowledgment. Witnesses are not necessary to the validity of the assignment.¹¹³ Examiners are reminded that in Florida, the lien of a mortgage follows the assignment of the promissory note which it secures.¹¹⁴
- viii. Satisfactions or releases of mortgage require examination, especially in terms of the names of the parties, description of the underlying mortgage, execution, and acknowledgment in much the same way a deed is examined.¹¹⁵ Witnesses are not necessary to the validity of a satisfaction or release of mortgage.¹¹⁶ In a current transaction, particularly those not involving institutional mortgages, the examiner should require the production of the cancelled note in addition to a satisfaction or release of the mortgage. It is not unusual for additional loan documents to be placed of record, such as an assignment of rents and profits, corrective mortgages, mortgage modification agreements, and the like. An examiner must determine if a satisfaction of the mortgage which does not specifically refer to these additional documents is

¹¹⁰ TN 22.04.06.

¹¹¹ TN 18.04.01.

¹¹² *BancFlorida v. Hayward*, 689 So.2d 1052 (Fla. 1997).

¹¹³ TN 22.05.14.

¹¹⁴ TN 22.01.02.

¹¹⁵ See SC 22.05 Satisfactions and Releases of Mortgages.

¹¹⁶ TN 22.05.14.

legally sufficient to discharge the obligations arising under those documents or simply discharges the mortgage itself.¹¹⁷ In a current transaction, the safest practice is to recite in the body of the satisfaction a reference to all of these additional documents as also being included within the scope of the satisfaction or release.

(5) Other Encumbrances¹¹⁸

- a. Florida real property taxes are due and payable on November 1 of each year. These taxes, if not discharged, become a first lien on the real property beginning on the January 1 of that year. Taxes become delinquent if they are not paid by the later of: (1) April 1 of the year following the year they were assessed or (2) 60 days after the mailing of the original tax notice. The tax collector has the authority to collect delinquent real property taxes by issuing tax certificates. A title examiner must determine that there are no delinquent real property taxes in every title transaction, and provide an appropriate exception for the current year's real property taxes.¹¹⁹
- b. Federal and Florida estate tax liens, if any, attach to all property of the decedent and continue until paid in full, released, or barred by statute. Examiners need to consider the impact of estate taxes when dealing with titles involving decedents.¹²⁰
- c. Federal tax liens attach to property owned by the debtor from the time the lien is filed of record, and can be enforced even against homestead property.¹²¹ A federal tax lien filed against one spouse attaches to property owned by both spouses as tenants by the entireties and must be treated as surviving the death of the indebted spouse.¹²²

¹¹⁷ See, TN 22.05.11, TN 22.05.08, TN 22.05.13.

¹¹⁸ See Conner, T. (2010). Liens and Encumbrances. In *Florida Real Property Title Examination and Insurance* (Fla. Bar CLE 6th ed.).

¹¹⁹ See TN 30.01.02.

¹²⁰ See SC 2.10 Tax — Estate.

¹²¹ TN 30.02.01. See SC 30.02 Federal Tax Liens.

¹²² *United States v. Craft*, 535 U.S. 274 (2002), *Paternoster v. United States*, 640 F. Supp. 2d 983 (S.D. Ohio, 2009). Federal criminal fines or restitution liens against one spouse should be treated as attaching to that spouse's interest in entirety property for issuing a title insurance policy, because they are enforced in the same manner as federal tax liens (TN 18.06.13). CERCLA liens against one spouse should be treated as attaching to that spouse's interest in entirety property for issuing a title insurance policy, because they are enforced in the same manner as federal tax liens (TN 18.06.14).

- d. Restrictions and reverters¹²³ and reservations¹²⁴ are covered in their own chapters of the *Title Notes*. Restrictive covenants usually are found in one of the deeds in the chain of title, in a subdivision plat, or in a separate recorded instrument imposing them upon several parcels of property. However, it is possible for restrictions *not* to appear in a muniment of title yet bind a property so long as they appeared in an antecedent deed from a common grantor and are common to the neighborhood.¹²⁵ Discriminatory restrictions based on race, color, religion, age, gender, sexual orientation, or national origin are unenforceable under the United States Constitution and federal law and should not be included in Fund title insurance commitments and policies.¹²⁶ Whether restrictive covenants have become unenforceable for any reason including lapse of time or change of circumstances is a complex issue, requiring research. An examiner is encouraged to consult a Fund Underwriting attorney to explore the continued enforceability of restrictions, and the default position should be that they remain enforceable. Conditions, reservations, restrictions and the like contained on a plat bind grantees whenever a conveyance is made that refers to the plat, even when there is no specific reference beyond the plat name and its recording information.¹²⁷ When reviewing deeds, an examiner must be vigilant for reservations of various rights in the property in favor of the grantor.¹²⁸ Some of the most common reservations include those for canals and drainage, for roads, or for mineral, gas, and oil. If reservations have not been fully released exceptions for them must be included in title insurance products, and the examiner must reach a conclusion as to whether their continued existence renders the title unmarketable under the standards applicable to a transaction.
- e. Special assessment and municipal liens are challenging for even the most experienced examiners because an indeterminate and geographically varying number of governmental

¹²³ Chapter 28 – Restrictions and Reverters.

¹²⁴ Chapter 27– Reservations.

¹²⁵ TN 28.02.01.

¹²⁶ TN 28.01.05.

¹²⁷ *Sunshine Vistas Homeowners Ass’n v. Caruana*, 623 So.2d 490 (Fla. 1993), *Wahrendorff v. Moore*, 93 So.2d 720 (Fla. 1957).

¹²⁸ Chapter 27– Reservations.

authorities and statutorily authorized entities have the power to impose assessments and levy taxes for a variety of capital projects or services. An examiner must determine whether the title information relied upon purports to include all of these matters. If not, an examiner must research them in some alternate and reliable manner. They should not be ignored.

- f. Judgments present time consuming and vexing problems for title examiners, especially when the names of persons in the chain of title are very common, producing many “hits” that require an examiner’s attention. Examiners ignore judgments at their peril. A chapter of the *Title Notes* is devoted to this topic.¹²⁹ When in doubt about whether a judgment may be ignored, an examiner is advised to confer with a Fund Underwriting attorney. Knox’s Judgment Lien Paradigm is a useful tool for the title examiner.¹³⁰ The examiner should require proper satisfactions or releases of all judgments that are liens on the property under examination. Several basic principles merit mention.
 - i. A Florida civil court money judgment becomes a lien on all real property of the defendant in any county when a certified copy of the judgment is recorded in the county’s official records. Effective October 1, 1993, the address of the judgment creditor must be contained in the judgment or in an affidavit simultaneously recorded with the judgment.¹³¹ The duration of a Florida civil court money judgment lien first recorded on or after July 1, 1994, is an initial period of ten years from the date of recording. The duration of such a lien may be extended for an additional ten-year period by rerecording, prior to expiration of the lien, a certified copy of the judgment along with an affidavit containing the current address of the judgment creditor. If recorded after expiration, a new lien is created and priority is lost. There is no limit on the number of times a certified copy and accompanying affidavit may be recorded, but in no event can a lien exceed 20 years from the date of entry of the judgment.¹³²

¹²⁹ Chapter 18 – Judgments and Liens.

¹³⁰ Available online at <https://www.thefund.com>.

¹³¹ TN 18.03.02.

¹³² TN 18.03.03.

- ii. It is possible to renew a judgment by bringing an action upon that judgment before the statute of limitations period has run and obtaining a new judgment!¹³³
- iii. A civil money judgment entered by a federal district court within Florida should be considered a lien on the judgment debtor's Florida real property in the same manner, to the same extent, under the same conditions, and for the same duration as a judgment entered by a Florida state court.¹³⁴
- iv. The duration of certain judgment liens in favor of the United States extends beyond twenty years.¹³⁵
- v. Except for federal liens (including tax liens), a civil money judgment against one spouse is not enforceable against property owned as tenants by the entirety.¹³⁶ That situation must be distinguished from one involving a civil money judgment entered against both husband and wife. Such a judgment is enforceable against nonhomestead property held by the entirety.¹³⁷ In current transactions in which the husband and wife are conveying the property, The Fund's opinion is that they should execute a continuous marriage affidavit to be recorded along with their deed. The reason for the affidavit is that if the marriage has been interrupted by a dissolution of marriage, the estate would have been converted into a tenancy in common and the subsequent remarriage of the parties would not have changed the estate back to an estate by the entirety or eliminated the judgment lien from the husband's interest in the property. As an alternative to the affidavit, the deed from the husband and wife could contain a statement of continuous marriage.
- vi. A perfected code enforcement board lien is a lien against *all* real and personal property of the violator in the county where the lien is recorded, and *not* just the

¹³³ *Petersen v Whitson*, 14 So.3d 300 (Fla 2d DCA 2009), *Adams v. Adams*, 691 So.2d 10 (Fla 4th DCA 1997).

¹³⁴ TN 18.03.01.

¹³⁵ TN 18.03.04.

¹³⁶ TN 18.03.05.

¹³⁷ See TN 16.04.08.

property which is in violation of the code¹³⁸ and should generally be treated as having a duration of 20 years from recording.¹³⁹

- vii. The expiration of a judgment lien may be tolled by the judgment debtor's bankruptcy filing.¹⁴⁰ Bankruptcy discharge does not necessarily discharge a judgment lien.¹⁴¹
- viii. Certain interests insurable as real property interests under title insurance policies are classified as personal property under Florida law (e.g., leaseholds, mortgages on leaseholds, interests in cooperative associations, a vendee's interest under an agreement for deed, and options). Judgment liens on personal property are subject to an altogether different perfection scheme, and may need to be examined in a transaction involving personal property.¹⁴²
- ix. Satisfactions and releases of judgments should be examined to confirm that they were executed by the proper party. A satisfaction executed by the attorney-of-record for the judgment creditor is acceptable, provided full payment has been made.¹⁴³ Exercise caution because the caption of the case does not always reveal the identity of the person in whose favor the judgment is entered.
- g. Contracts for sale and purchase of real property that remain executory and outstanding constitute a cloud on the title to property unless the contract vendee executes and delivers either a release of their contract rights or a quit claim deed to the contract vendor or a subsequent title owner.¹⁴⁴
- h. Easements present special concerns to title examiners.¹⁴⁵ If an easement is involved in a transaction, the property being examined is either the dominant estate (benefited by the easement) or the servient estate (burdened by the easement). When involved in a transaction involving the dominant estate, the examiner must also examine title to the

¹³⁸ For this reason, practitioners often refer to these as "bleeding" liens.

¹³⁹ TN 18.06.02.

¹⁴⁰ TN 5.06.05.

¹⁴¹ TN 5.03.01.

¹⁴² TN 18.03.13.

¹⁴³ TN 18.05.01.

¹⁴⁴ TN 9.02.01, TN 7.01.01.

¹⁴⁵ See TN 3.02.03.

easement and not just the title to the dominant estate; an additional title search may need to be ordered. The examiner must apply *all* the principles and procedures of title examination to the easement parcel, including evaluating the validity and sufficiency of the instrument creating the easement and determination that all necessary parties joined in its creation (e.g., mortgagees of record). Easements are commonly created in either a deed of conveyance of a fee to the dominant estate or by separate agreement. The examiner should consider the width and use limitations of the easement.¹⁴⁶ If there is a tax deed in the chain of title for the easement estate, the examiner must determine whether the easement survived the tax deed.¹⁴⁷ Not all easements are appurtenant and run with the land. If an easement is not appurtenant then it must have been described in every link in the chain of title in order for there not to be a defect in title. When involved in a transaction involving the servient estate, the examiner is not presented with as many challenges, because the easement is one of the encumbrances in title to which the property is “subject to.”

- i. Water rights are beyond the scope of this outline, but require brief mention. An examiner must determine whether lands under examination are subject to limitations in title arising from the status of lands as abutting water, or having been filled. Every title commitment or policy dealing with a parcel of property that abuts water or a watercourse must reflect an exception for riparian rights¹⁴⁸ and littoral rights.¹⁴⁹ These rights may include the rights to use the water adjacent to the property (e.g., boating, bathing, and fishing), wharf out to navigability, have access to navigable water, have an unobstructed view of the

¹⁴⁶ TN 3.02.05.

¹⁴⁷ TN 15.01.01.

¹⁴⁸ Riparian refers to land abutting non-tidal or navigable river or stream waters.

¹⁴⁹ Littoral refers to land abutting navigable ocean, sea or lake waters. See, *Walton County v.*

Stop Beach Renourishment, Inc., 998 So.2d 1102 (Fla. 2008), holding that littoral rights do not include an independent right of actual contact with the water. This decision also includes a discussion of the common law rights of the public and upland owners to Florida’s beaches. The United States Supreme Court rendered an opinion in this case on June 17, 2010 at 130 S.Ct. 2592 (U.S. 2010), affirming Florida’s Supreme Court’s decision, and provided an excellent overview of water rights law. Although riparian and littoral rights are excepted from title insurance coverage, in Florida they constitute private property rights that cannot be taken from upland owners without just compensation.

water, ingress, egress, and accretion and reliction. Rights held, if any, may be exclusive or shared in common with others, including the public, and may be subject to regulation. The nature of upland owners' littoral and riparian rights as well as the public's rights to access beach is considered a matter of state law, and they do vary.¹⁵⁰ Additional exceptions may need to be reflected depending on the factual situations (for example, beach rights or filled-in lands). A chapter of the *Title Notes* is devoted to this topic.¹⁵¹

(6) Marketable Record Title Act – F.S. Chapter 712¹⁵²

- a. The Marketable Record Title Act (MRTA) is a valuable title examination tool. However, it is not a panacea and mastery of its use requires patience, practice, and perseverance. MRTA is both a curative statute as well as a statutory basis on which to assert a source of title.

“In view of decisions construing the Florida Act, it appears that most lawyers and title insurance companies rely on the Act, examining title only from the root of title without making exception for defects behind the root of title (after determining that the land properly came out of the sovereign and that there were no reservations of interest).”¹⁵³

- b. An examiner must decide whether to use MRTA to shorten the time period of (and hence abbreviate) their examination (assuming it is available in a current transaction), or to conduct EPR searches, and then rely upon MRTA primarily for its title curing functions.
- c. MRTA provides that **if** an owner of an estate in land has a clear, unchallenged, recorded chain of title going back to an instrument or court proceeding (the “root of title,” that has been properly recorded in the local county public records for at least 30 years, **then** that record title is free and clear of all claims and interests that depend on any title transaction, act, event, or omission that occurred before the recording of the root of title, **subject to certain exceptions.**

¹⁵⁰ Erika Kranz, *Sand for the People*, 83-JUN Fla. Bar Journal 10 (2009).

¹⁵¹ Ch. 32 – Waters and Watercourses.

¹⁵² See Jones, P. (2010). Marketable Record Title Act and Uniform Title Standards. In *Florida Real Property Title Examination and Insurance* (Fla. Bar CLE 6th ed.), TN 10.01.02.

¹⁵³ Jones, P. (2010). Marketable Record Title Act and Uniform Title Standards. In *Florida Real Property Title Examination and Insurance* (Fla. Bar CLE 6th ed.), p. 2-8.

- d. An examiner's first step is to identify the "root of title," defined as "any title transaction purporting to create or transfer the estate claimed by any person and which is the last title transaction to have been recorded at least 30 years prior to the time when marketability is being determined."¹⁵⁴ F.S. § 712.01(3) defines "title transaction" as "any recorded instrument or court proceeding which affects title to any estate or interest in land and which describes the land sufficiently to identify its location and boundaries." The effective date of a "root of title" is its date of recordation.
 - i. Most often this is a deed, but most quit claim deeds are usually not sufficient to constitute a root of title.¹⁵⁵ Consultation with a Fund Underwriting attorney to determine if a quit claim deed may be relied upon as a root of title is encouraged.
 - ii. A wild or interloping deed may be a root of title.¹⁵⁶
 - iii. A court proceeding may serve as a title transaction and be a root of title.¹⁵⁷
 - iv. The title transaction must describe the land sufficiently and have been of record for at least 30 years.
- e. The examiner's next step is to consider those matters that the Act will **not** eliminate, and decide if they are applicable to the current transaction.¹⁵⁸ This will necessarily involve some title examination predating the root of title. Exceptions include:
 - i. Any right or interest reserved in the land patent or the deed of a sovereign;¹⁵⁹
 - ii. State title to lands beneath navigable waters acquired by virtue of sovereignty;¹⁶⁰
 - iii. Defects inherent in the root of title or arising after the root of title;
 - iv. Any conditions, restrictions or reservations contained in the root of title or referred to by book and page number or by name of recorded plat in any instrument recorded

¹⁵⁴ F.S. § 712.01(2).

¹⁵⁵ See TN 10.01.02.

¹⁵⁶ *Wilson v. Kelley*, 226 So.2d 123 (Fla. 2d DCA 1969).

¹⁵⁷ TN 10.01.02.

¹⁵⁸ *Id.*

¹⁵⁹ In fact, an examiner should always determine that the United States, the state of Florida, or other sovereign has actually been divested of title by appropriate land patent, deed, or grant.

¹⁶⁰ See *Coastal Petroleum v. American Cyanamid*, 492 So.2d 339 (Fla. 1986).

subsequent to the effective date of the root of title even though the referenced instrument was recorded prior to the root of title;

- v. Estates, interests, claims, or charges, or any covenant or restriction, preserved by the filing of a proper notice under MRTA;
- vi. Rights of any person in whose name the land is assessed on the county tax rolls whose rights are preserved for three years after the land is last assessed in that person's name;
- vii. Rights of any person in possession of the lands;
- viii. Estates or interests arising out of a title transaction recorded subsequent to the effective date of the root of title;
- ix. Recorded or unrecorded easements, including those of a public utility or governmental agency, as long as they are used, even in part;
- x. A restriction or covenant recorded under F.S. Chapter 376 or F.S. Chapter 403, enforceable by the Florida Department of Environmental Protection; and any right, title or interest held by the Board of Trustees of the Internal Improvement Trust Fund, any water management district created under F.S. Chapter 373, or the United States.
- xi. Mineral rights.

(7) Fund Approved Shortcuts for establishing Base Title¹⁶¹

- a. The "Member Judgment Rule" applies to all title insurance policies eligible for use as a base title. "The primary responsibility rests with The Fund Member for determining whether a particular policy is acceptable. Reliability of a policy is affected by the examining reputation and integrity of the title agent who issued it. Additional factors include whether there are known title problems underlying the insured property or in the general area and the type of the prior policy. For questions regarding the financial

¹⁶¹ Use of these short cuts is not risk free in terms of the duties title examiners may owe to their clients. For example, see *Goldberg, Semet, Lickstein, Morgenstern & Berger, P.A. v. Chicago Title Insurance Co.*, 517 So.2d 43 (Fla. 3d DCA 1988) in which a law firm used a prior policy as base title evidence of title for purposes of determining necessary parties to a mortgage foreclosure case instead of obtaining and then examining a complete search.

stability of an underwriter, call The Fund. Where there is an unfavorable Fund Member evaluation, the prior policy may not be used as a base.”¹⁶²

- b. Prior policies may establish a Base Title for commitments and policies under \$1 million¹⁶³
 - i. When using a prior Fund policy as the Base Title, always order a copy from The Fund; do not rely on an original policy or a photocopy furnished by someone else.
 - ii. Policies written on any underwriter signatory of the Revised Mutual Indemnification Treaty¹⁶⁴ may be used as Base Title.
 - iii. Commitments and Short Form Residential Loan Policies may never be used as a base.
 - iv. When a mortgagee policy is used as Base Title, the title examination of the property’s legal description should begin as of the date the mortgagor of the previously insured mortgage acquired title to the property.
 - v. When an owner policy is used as Base Title, the title examination of the property’s legal description should begin as of the effective date of the owner policy.
 - vi. All names occurring as a party within the examined chain of title require a complete 20-year name search and examination of resulting documents. Special circumstances including bankruptcy, death or guardianship of a party in the chain of title will require a name search for a more extensive period of time. Refer to The Fund Procedures Handbook for guidance as to potential situations requiring further examination.
 - vii. Transaction Amount Rules
 - [1] Current Transaction ≤ \$100,000.00: The prior policy may be used without regard to its amount.
 - [2] Current Transaction > \$100,000.00: If the amount of the proposed policy does not exceed by more than double the amount of the prior policy and will be issued for less than \$1 million, the prior policy may be used. If the proposed policy

¹⁶² Fund Procedures Handbook (Dec. 2013, Ch. 6).

¹⁶³ Fund Procedures Handbook (Dec. 2013, Ch. 6). When the amount of insurance will exceed \$1 million, specific authorization from The Fund is required for the insuring transaction and the approved base title procedures may be modified on a transaction specific basis.

¹⁶⁴ See Appendix C of The Fund Title Notes for a list of the Treaty’s signatories.

exceeds by more than double the amount of the prior policy or will be issued for \$1 million or more, then permission from The Fund is required before the prior policy may be used.

viii. Insured Property rules

[1] Prior policies used as a Title Base must insure all of the real property being insured in the current transaction, with the following exception:

[2] When no prior policy (on any underwriter signatory to the Revised Mutual Indemnification Treaty) can be located insuring a particular parcel or unit in a platted subdivision or condominium, a minimum of two Fund policies, each written by separate Fund Members, on parcels or condo units which are in the proximity of the subject parcel or condo unit, may be relied upon for establishing a Base Title. Common exceptions from these base policies must be included in the new policy. Examination of title on the property to be insured shall begin with the plat or declaration of condominium and come forward from that point.¹⁶⁵ (NOTE: ONLY FUND PRIOR POLICIES MAY BE USED TO ESTABLISH A BASE TITLE UNDER THIS EXCEPTION.)

c. No prior policies but subdivision or declaration of condominium of record for more than seven years.

i. Even if there is no prior policy issued on the subject property by any underwriter signatory to the Revised Mutual Indemnification Treaty, and no Fund policy issued on other lots/parcels within the same subdivision/condominium, it may be possible to establish a Base Title for the current transaction provided the plat/declaration has been of record for at least seven years. The following rules apply.

[1] The commitment and policies to be issued in the current transaction are for less than \$1 million.

¹⁶⁵ For further instruction on use and evaluation of prior policies on different parcels as base title see *Base Title – Using Prior Policies Covering Other Parcels Within the Same Development*, 34 The Fund Concept 135 (Sept. 2002).

- [2] The plat or declaration of condominium, as applicable, has been of record for 7 or more years. If a plat, the plat must dedicate all roads to the public; otherwise this shortcut may not be used.
 - [3] Use the plat or declaration of condominium, as applicable, as the Base Title.
 - [4] Begin the title examination with the vesting deed into the developer of the lands comprising the subdivision or condominium properties and continue through the current date.¹⁶⁶ This means that the plat or declaration of condominium, as applicable, must be included within the examination.
 - [5] The lot or unit to be insured must be examined from the plat or declaration date. In addition, one other lot or unit conveyed by the developer must be examined from the plat or declaration date to locate any liens or encumbrances not revealed in the examination of the underlying property or in the examination of the plat or declaration.
- d. Title Assumption Certificates¹⁶⁷
- i. A Title Assumption Certificate (TAC) shows the status of title to a platted lot or condominium unit usually as of the recording date of the subdivision plat or declaration of condominium. If a TAC is available, it is provided without charge.
 - ii. Title information must be obtained and the title must be examined from the date authorized for assumption of title through the effective date of the commitment and policy. Restrictions, easements, reservations, encumbrances, etc., shown on the Title Assumption Certificate must be shown as exceptions in Schedule B of the commitment or policy unless they have been cleared of record.
- (8) Fund Approved Shortcuts For Examining Title Information Derived Through ATIDS
- a. It is not necessary to examine mortgages and other types of property liens that appear satisfied of record or are unenforceable by statute.¹⁶⁸

¹⁶⁶ For further instruction on using this method of establishing a Title Base, see *Base Title – Using Prior Policies Covering Other Parcels Within the Same Development*, 34 The Fund Concept 135 (Sept. 2002).

¹⁶⁷ See Chapter 6 of The Fund Procedures Handbook.

¹⁶⁸ *New Search and Examination Guidelines*, 28 The Fund Concept 1 (Jan. 1996).

- b. It is not necessary to examine judgments, tax liens, and other types of general liens that appear satisfied of record or are enforceable by statute.¹⁶⁹
- c. Where the amount of insurance is \$1 million or less, the title examiner may ignore:
 - i. Uncertified money judgments recorded more than one year prior to the date of search;
 - ii. Money judgment liens that have been of record for 10 years prior to the date of search and have expired by law;
 - iii. Judgments that do not have the creditor's address or a simultaneously recorded address affidavit may be ignored if the judgment was recorded more than one year prior to the date of the search, provided the creditor's address affidavit is not recorded within 10 instruments before or after the recorded judgment.¹⁷⁰
- d. It is possible to avoid mapping lengthy metes and bounds descriptions on parcels adjacent to or within the same section code as the parcel under examination and to rely on names or parties to form a chain of title and determine which instruments require examination.¹⁷¹

(9) Fund Approved Shortcut for Determining Access

- a. An examiner is responsible for determining that a right of access exists as to the land being insured. If the examiner is using a prior **Fund** OPM policy as a base, the examiner must determine whether the prior policy insured access. If so, the examiner may rely on that policy for the existence of legal access as of the effective date of that policy, but not as of the current date. An examiner may rely only on a prior **Fund** OP, OG or MP to establish legal access as of that policy's effective date by examining that policy jacket and confirming that access was insured in that prior policy.¹⁷²

¹⁶⁹ *Id.*

¹⁷⁰ TN 18.03.02, *New Guidelines for Handling Uncertified, Expired and Otherwise Unperfected Judgment Liens*, 40 The Fund Concept 33 (Apr. 2008). Refer to the article and TN 18.03.02 for procedures to follow when the title examination involves a transaction for more than \$1 million.

¹⁷¹ For further instructions on using this method, see *New Search and Examination Guidelines*, 28 The Fund Concept 1 (Jan. 1996).

¹⁷² TN 3.01.02

5. Address the non-record matters appropriate to the transaction and which bear upon the insurability of title. The most common examples are: survey and access matters, rights of parties in possession, unrecorded liens, and unrecorded easements.

- (1) **Access.** Examiners are charged with the responsibility of ascertaining that there is a legal means of access to and from the property under examination.¹⁷³ Unless an exception for access appears in a title insurance commitment and policy, those instruments insure against loss or damage caused by lack of right of access to and from the land. The right of access insured is the right of access to a public road, but the right may be via a valid easement across private lands to the public road. An access checklist is provided in TN 3.01.03 to assist an examiner in determining the existence of legal access. When streets and alleys and other public ways are shown on a recorded plat and lots or tracts are conveyed by reference to the recorded plats, the purchaser acquires a private easement over the streets, alleys, and public ways shown on it. The purchaser acquires also the public easement dedicated or offered by the record of the plat. If the insured access to the public road is via an easement, the title to the easement parcel must be examined to determine that the easement was in fact granted by the party owning the adjoining servient parcel. In addition, the commitment and policy must reflect an exception that the right of access to the property is limited to the specific easement of record.
- (2) **Standard Exceptions.** The fruit of the examination of record title is the emergence of necessary special exceptions in title insurance products that will be issued. However, title insurance products contain standard exceptions that must be included, unless the requirements are met to justify their deletion. Examiners plan ahead based on the requirements of a transaction with foresight to these requirements and take the steps necessary to obtain and review those requirements so that the issued products do not contain the standard exceptions that are to be deleted or omitted. Examples of these standard exceptions are: taxes for the year of the effective date of the policy; taxes or special assessments that are not shown as existing liens by the public records; rights or claims of parties in possession not shown by the public records; encroachments, overlaps, boundary

¹⁷³ See *Title Notes*, Chapter 3 – Access.

line disputes, and any other matters that would be disclosed by an accurate survey and inspection of the premises; easements or claims of easements not shown by the public records; any lien or right to lien for services, labor, or material furnished, imposed by law and not shown by the public records; and the sovereignty lands exception. Examiners must become familiar with the requirements for the removal of these standard exceptions.¹⁷⁴

6. Issue a title insurance commitment and/or policy.

- (1) Members and their staff should become familiar with and use the Standard Commitment Clauses (SCC) Handbook to assist them in preparation of title insurance products. The Standard Commitment Clauses (SCC) Handbook is geared to assist in the preparation of Schedule B of the commitment, from which Schedule B of the policy is derived. Matters not cleared under Schedule B, Part I, of the commitment (requirements) or which already are shown on Schedule B, Part II (exceptions), are then inserted as exceptions under Schedule B of the policy. Much of the verbiage included in commitments and policies is standard. Certain transactions require specific documents to be executed to create the interest being insured. Defects in recorded documents or defects caused by missing documents in the chain of title are curable. Requirement clauses must be succinct and clear. Certain common situations result in standard requirement clauses that can be molded to fit similar fact patterns. Many common exceptions can be shown under Schedule B, Part II. A Member will be faced with unique situations in which none of the standardized requirements or exceptions seems to fit. If a Member is uncertain about how to phrase a particular exception or requirement, contact a Fund Underwriting attorney for assistance.
- (2) If there are matters which the examiner is unable to resolve satisfactorily, then the examiner must raise the defect as a requirement or an exception to the title of the property by including the matter in the prepared title insurance products.

“In the jargon of title examiners, an “exception to” the title is a limitation of the fee simple title, whether by a claim of a title interest in the property, a claim of a lien or encumbrance on

¹⁷⁴ See *Affidavit Practice Manual*, Chapter 2 – General Closing Affidavits; TN 21.03.01, TN 25.02.07, TN 25.03.06, TN 25.03.07, and TN 32.01.02. See F.S. § 627.7842.

the property, a restriction or limitation in the use of the property, or a defect in legal requirements pertaining to or in effecting the previous transfers of title to the property.”¹⁷⁵

- (3) Review the title insurance commitment for accuracy and sufficiency.
 - a. Note effective date and make certain it is proximate to closing date.
 - b. Verify names and spellings of proposed insureds and title holders.
 - c. Verify legal description of property and match it to survey and contract.
 - d. Carefully review copies of all exceptions and defects capable of documentation, confirming that they do, in fact, apply to the subject property.
 - e. Examine all exceptions to determine the extent to which they render title not good and marketable and whether they are compatible with client’s purposes for the property.
 - f. Examine all requirements to confirm that they can be met in the instant transaction.
- (4) Analyze the title insurance commitment in the context of the client’s intended use of the property and the contractual requirements of the transaction.

5. Suggested References

A. Florida Bar CLE Publications

- (1) *Florida Real Property Title Examination and Insurance*
- (2) *Florida Condominium and Community Association Law*
- (3) *Florida Construction Law and Practice*
- (4) *Florida Eminent Domain Practice and Procedure*
- (5) *Florida Real Property Complex Transactions*
- (6) *Florida Real Property Litigation*
- (7) *Florida Real Property Sales Transactions*
- (8) *Foreclosures in Florida*
- (9) *Florida Practitioners Guide: Mortgage Foreclosure and Alternatives*

B. Attorneys’ Title Insurance Fund, Inc. & Attorneys’ Title Fund Services LLC Publications

- (1) *Title Notes*

¹⁷⁵ *Florida Real Property Title Examination and Insurance* (5th Ed.), The Florida Bar (2006), 3-39.

- (2) *Concept*
- (3) *Standard Commitment Clauses Handbook*
- (4) *Affidavit Practice Manual*
- (5) *Procedures Handbook*

C. Other Publications

- (1) *Uniform Title Standards*, The Florida Bar, Real Property Probate Trust Law Section
- (2) *Friedman on Contracts and Conveyances of Real Property*
- (3) *Patton and Palomar on Land Titles*
- (4) *Palomar on Title Insurance Law*
- (5) *Boyer on Real Estate Transactions*
- (6) *Thompson on Real Property*
- (7) *Bayse on Clearing Land Titles*

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These materials are for educational use in Fund seminars only. They are subject to omission, exceptions, and differences of opinion. Legal documents for others can only be prepared by an attorney after consultation with the client, and consideration of the latest applicable law and specific facts of a case.

SEARCH DOCUMENTS FOR EXAMINATION



OR Bk 6560 Pg 9077
Orange Co FL 2002-0330569
07/08/2002 04:08:33pm
Rec 42.00

Prepared by and Return to:
JOHN KINGMAN KEATING, ESQUIRE
KEATING & SCHLITT, P.A.
TELEPHONE: 407.425.2907 ♦ FACSIMILE: 407.843.8964
749 NORTH GARLAND AVENUE, SUITE 101
ORLANDO, FLORIDA 32801
E MAIL: jkk@keatlaw.com

RECORDING INFORMATION ABOVE THIS LINE

**DEVELOPMENT AGREEMENT
WINTERMERE HARBOR - PHASE III**

THIS DEVELOPMENT AGREEMENT FOR WINTERMERE HARBOR - PHASE III (the "Agreement") is made, executed and entered into this 27th day of June, 2002 by and between the **City of Winter Garden, a Florida municipality** (the "City") and **John Kingman Keating, as Trustee** (the "Developer").

WITNESSETH:

WHEREAS, Developer, as purchaser, and Lawrence James Keene (the "Seller"), as seller, have previously entered into that certain Contract for Sale and Purchase dated the 14th day of May, 2001, as amended (the "Contract") for the sale and purchase of a parcel of real property in Orange County, Florida more particularly described as follows (the "Subject Property"):

All that certain land, situate in Orange County, Florida, more particularly described as:

Beginning at the Northwest Corner of the Northeast one-quarter (1/4) of the Southeast one-quarter (1/4) of Section 2, Township 23 South, Range 27 East; thence East 414.8 feet to an iron axle tree; thence South nine (9) degrees West 1318 feet more or less to the South line of the aforesaid Northeast one-quarter (1/4); thence West along said South line 217.1 feet more or less to the Southwest corner of the said Northeast one-quarter (1/4); thence North along the West line of the said Northeast one-quarter (1/4), 1292 feet more or less to the point of beginning. Containing 10 acres, more or less, of land and water;

which Subject Property is adjacent and immediately east of the existing Wintermere Harbor residential subdivision and development ("Wintermere Harbor");

WHEREAS, the Developer has submitted an application to the City requesting that the Subject Property be annexed into the City and re-zoned to R-1, Single-Family Residential and the

other number as receiving party may have designated in writing), in which case the delivery shall be deemed to have occurred on the day of the transmission, provided that the day of transmission is a normal business day or the first normal business day after the transmission. In the event dispute arises concerning whether a telecopier transmission was made or on what date, said telecopier transmission must be verified by a printout generated by the transmitting machine. Notices or communications to or from parties' attorneys will be deemed to be to or from that party.

Section 6. **Amendment**. This Development Agreement may be amended, modified or cancelled by mutual consent of the parties hereto as represented by a written document executed by the City and the Developer. Amendments shall be only entered into by the original Developer or by a successor developer, if any, specifically designated by Developer in writing.

Section 7. **Severability**. In the event that any word, clause, phrase, sentence, paragraph or provision of this Development Agreement is found by a court of competent jurisdiction to be void, illegal, invalid or unenforceable, the deletion of which from this Development Agreement would not adversely affect the parties' enjoyment of any other material benefits intended by this Development Agreement and would not substantially increase the burden of either party under this Development Agreement, said word, clause, phrase, sentence, paragraph or provision will be severed from this Development Agreement and the remainder of this Development Agreement will continue to be binding, enforceable, and in full force and effect. On the other hand, if the deletion of such word, clause, phrase, sentence, paragraph or provision will adversely affect the parties' enjoyment of any material benefit intended under this Development Agreement, or substantially increase the burden of either party, then this Development Agreement shall be equitably modified by said court, to the maximum extent practicable, in order to fulfill the intent and purpose of this Development Agreement.

Section 8. **Governing Law**. This Development Development Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Exclusive venue in any action to construe or enforce the provisions of this Development Agreement shall be in the circuit court of and for Orange County, Florida.

Section 9. **Effective Date**. The effective date of this Development Agreement, for purposes of the performance of obligations by the parties under this Development Agreement, shall be the date the last of the parties hereto executes the Development Agreement. Thereafter, to the extent allowed by law, development of the Project shall be subject to the zoning code and land development regulations applicable and in force on the Effective Date.

Section 10. **City Review**. The City shall review the Subject Property at least once every twelve (12) months to determine if there has been demonstrated good faith compliance with the terms of the Development Agreement. If the City finds, on the basis of substantial competent evidence, that there has been a failure to comply with the terms of the Development Agreement, the Development Agreement may be revoked or modified by the City.

Section 11. **Termination Date**. The duration of this Development Development Agreement will be ten (10) years from the effective date of the Development Agreement and shall automatically

renew for a period of ten (10) years unless terminated in writing by mutual consent of the City and the Developer.

Section 12. **Conditions Precedent to Development.** The Developer accepts the requirements set forth and as specified in Section 2 of this Development Agreement and shall comply with such requirements as a prerequisite to development of the Subject Property. This Development Agreement shall run with the Subject Property and shall be binding upon the heirs, successors and assigns of the parties hereto.

Section 13. **Binding Effect and Successors.** This Development Agreement shall run with the Subject Property and the rights and the obligations under this Development Agreement shall benefit, burden, and bind the successors, heirs and assigns of all parties to this Development Agreement. Notwithstanding the assignment of this Development Agreement, or the conveyance or transfer of the Subject Property, the Developer shall be and/or remain liable for performance of the obligations under this Development Agreement.

Section 14. **Time is of the Essence.** Time is hereby declared to be of the essence in the performance of the duties and obligations of the respective parties to this Development Agreement.

Section 15. **Captions.** The captions or paragraph headings of this Development Agreement are provided for convenience only and shall not be deemed to explain, modify, amplify or aid in the interpretation, or meaning of this Development Agreement.

Section 16. **Counterparts.** This Development Agreement may be executed in any number of counterparts, each of which when executed and delivered, shall be an original, but all counterparts shall together constitute one and the same Development Agreement.

Section 17. **Indemnity.** The Developer hereby indemnifies and holds the City harmless from and against any and all claims, disputes, lawsuits, injuries, damages, attorney's fees, (including appellate fees), cost and experts' fees, interest and all adverse matters in any way arising out of or relating to their default under this Development Agreement, or arising from the exercise of the rights or obligations of the Developer hereunder.

Section 18. **Independent Parties.** City and Developer are not partners and this Development Agreement is not a joint venture and nothing in this Development Agreement shall be construed to authorize either the City or Developer to represent or bind the other to matters not expressly authorized or provided in this Development Agreement.

Section 19. **Informed Execution.** This Development Agreement is entered into voluntarily by the Developer without duress and after full review, evaluation and consideration by the Developer. Developer is represented by counsel, or alternatively, has been afforded an opportunity to retain counsel for review of this Development Agreement.

Section 20. **Recording.** Within fourteen (14) days after the City enters into this Development Agreement, the Developer shall record this Development Agreement with the cost

USE AGREEMENT

THIS AGREEMENT, entered into by and between CENTERLINE HOMES AT
BRONSON'S LANDING, LLC, a Florida limited liability corporation (hereinafter the
"Developer"), BRONSON'S LANDING HOMEOWNER'S ASSOCIATION a not-for-profit
Florida corporation (hereinafter the "Association"), and Orange
County, Florida, a political subdivision of the State of Florida (hereinafter the "County").

RECITALS

WHEREAS, Developer is constructing a single-family residential project on a certain parcel
of real property (hereinafter the "Property") located in the unincorporated area of Orange County, as
more particularly described in Exhibit "A" attached hereto and by this reference made a part hereof;
and

WHEREAS, Association, whose members are or will be the owners of the Property, has
been formed to assure the perpetual and continuous maintenance of certain common property and
entrance way areas located on and adjacent to the Property; and

WHEREAS, Developer and Association desire to obtain a Right-of-Way Utilization Permit
(hereinafter the "Permit") from the County, whereby Developer and Association will be allowed to
install, construct, and maintain the following improvements: landscaping, irrigation,
pavement markings

period and any extensions thereto, Developer and Association shall obtain and possess Commercial General Liability coverage for all operations under this Agreement, including but not limited to Contractual, Products and Completed Operations, and Personal Injury. The limits shall be not less than \$100,000 Combined Single Limit (CSL) or its equivalent. Prior to commencing operations under this Agreement, Developer and Association shall provide Certificates of Insurance to the County to verify coverage. The name of the development, subdivision or project in which the Improvement(s) are to be installed and the type and amount of coverage provided, shall be clearly stated on the face of the Certificates of Insurance. The insurance coverage shall name Orange County as an additional insured, and shall contain a provision which forbids any cancellation, changes or material alterations, or renewal of coverage without providing thirty (30) days prior written notice to the County.

7. **RECORDING.** It is intended that this Agreement shall be recorded in the Public Records of Orange County, Florida. Upon execution of this Agreement, Developer agrees to pay to County an amount equal to the applicable cost of recording this Agreement in the Public Records of Orange County, Florida.
8. **COVENANTS RUNNING WITH THE LAND.** It is intended that the provisions of this Agreement shall constitute covenants running with the land or an equitable servitude upon the land, as the case may be, applicable to all of the Property described herein or any portion thereof. It is further intended that this Agreement shall be binding on all parties having any right, title or interest in the Property described herein or any portion thereof, their heirs, personal representatives,

successors and assigns. Developer and Association declare that the Property described in this Agreement and any portion thereof shall be held, sold and conveyed subject to the provisions of this Agreement. This Agreement shall inure to the benefit of and be enforceable by the County, its respective legal representatives, successors and assigns.

9. **DURATION.** The provisions, restrictions and covenants of this Agreement shall run with and bind the land for a period of twenty-five (25) years from the date this Agreement is recorded in the Public Records of Orange County, Florida. Thereafter, this Agreement shall be automatically extended for successive periods of ten (10) years each, unless a written instrument agreeing to revoke said provisions, restrictions and covenants is approved by a majority of the Orange County Board of County Commissioners and either (1) the Developer and Association, or (2) by the then owners of not less than three-fourths of the lots on the Property described herein.

No such agreement to revoke shall be effective until said written instrument has been signed, acknowledged and recorded in the Public Records of Orange County, Florida. Notwithstanding any of the above provisions, the County shall have the right to cancel this Agreement upon thirty (30) days prior written notice to Developer and Association or to all of the owners of said lots. No such cancellation shall be effective until a written instrument has been executed and acknowledged by the Board of County Commissioners and recorded in the Public Records of Orange County, Florida.
10. **AMENDMENT.** The provisions, restrictions and covenants of this Agreement shall not be modified or amended except in a written instrument approved by a majority of



RETURN TO: Kim
 Winderweede, Haines, Ward & Woodman, P.A.
 P.O. Box 880
 Winter Park FL 32790-0880

RECORD AND RETURN TO:

Name: **LEOPOLD, KORN & LEOPOLD, P.A.**
 Address: 20801 Biscayne Blvd., #501
 Aventura, FL 33180

THIS INSTRUMENT PREPARED BY:

Name: Karen S. Leopold, Esquire
LEOPOLD, KORN & LEOPOLD, P.A.
 Address: 20801 Biscayne Blvd., #501
 Aventura, FL 33180



INSTR 20060613920
 OR BK 08865 PG 1636 PGS=79
 MARTHA O. HAYNIE, COMPTROLLER
 ORANGE COUNTY, FL
 09/18/2006 08:50:09 AM
 REC FEE 673.00

[Space above line reserved for recording office use]

**DECLARATION OF COVENANTS AND RESTRICTIONS
 FOR
 BRONSON'S LANDING**

THIS DECLARATION OF COVENANTS AND RESTRICTIONS FOR **BRONSON'S LANDING** ("DECLARATION") is made this 21st day of August, 2006, by **CENTERLINE HOMES AT BRONSON'S LANDING, LLC**, a Florida limited liability company ("DECLARANT").

WHEREAS, DECLARANT is the owner of the SUBJECT PROPERTY as described in this DECLARATION and desires to create a residential community on such property with open spaces and other common facilities for the benefit of such community, to be known as "**BRONSON'S LANDING**" (the "COMMUNITY"); and

WHEREAS, DECLARANT desires to provide for the preservation of the values and amenities in the COMMUNITY and for the maintenance of its common properties; and

WHEREAS, DECLARANT has deemed it desirable for the efficient preservation of the values and amenities in the COMMUNITY, to delegate and assign to a nonprofit corporation the powers of maintaining and administering the COMMUNITY properties and facilities and administering and enforcing these covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, DECLARANT has incorporated or will incorporate under the laws of the State of Florida, as a nonprofit corporation, **BRONSON'S LANDING HOMEOWNERS ASSOCIATION, INC.**, for the purposes of exercising the functions stated above, which Association is not intended to be a "Condominium Association" as such term is defined and described in the Florida Condominium Act (Chapter 718 of the Florida Statutes).

NOW, THEREFORE, DECLARANT hereby declares that the SUBJECT PROPERTY, as herein defined, shall be held, sold, conveyed, leased, mortgaged, and otherwise dealt with subject to the easements, covenants, conditions, restrictions, reservations, liens, and charges set forth herein, all of which are created in the best interest of the owners and residents of the SUBJECT PROPERTY, and which shall run with the SUBJECT PROPERTY and shall be binding upon all persons having and/or acquiring any right, title or interest in the SUBJECT PROPERTY or any portion thereof, and shall inure to the benefit of each and every person, from time to time, owning or holding an interest in the SUBJECT PROPERTY, or any portion

LEOPOLD, KORN & LEOPOLD, P.A.
 20801 Biscayne Boulevard, Suite 501, Aventura, FL 33180 Telephone: 305-935-3500

**Document recorded as presented.
 Orange County, FL Comptroller**

\\clhfp\users\UeffK\Bronson Landing\Declaration.v.16.wpd

This Instrument Prepared by & return to:

Name: LARRY A. ROTHENBERG, ESQUIRE
Address: RELIANCE TITLE COMPANY
815 Coral Ridge Drive
Coral Springs, FL 33071

Parcel Identification Number(s): 02-23-27-0805-00-860

WARRANTY DEED

INSTR 20070239198
OR BK 09209 PG 1395 PGS=4
MARTHA O. HAYNIE, COMPTROLLER
ORANGE COUNTY, FL
04/12/2007 02:05:09 PM
DEED DOC TAX 4,043.90
REC FEE 35.50

SPACE ABOVE THIS LINE FOR PROCESSING DATA

SPACE ABOVE THIS LINE FOR RECORDING DATA

(Wherever used herein the terms "first party" and "second party" shall include singular and plural, heirs, legal representatives, and assigns of individuals, and the successors and assigns of corporations, wherever the context so admits or requires.)

THIS INDENTURE, Made the 2nd day of April, A.D. 2007, Between **CENTERLINE HOMES AT BRONSON'S LANDING, LLC**, a Florida limited liability company, of the County of Broward, in the State of Florida, party of the first part, and **SONIA CHOPRA and RAHUL CHOPRA, wife and husband**, of the County of ORANGE, in the State of Florida, whose post office address is **2059 TILLMAN AVENUE, WINTER GARDEN, FL 34787**, party of the second part:

WITNESSETH, That the said party of the first part, for and in consideration of the sum Ten and 00/100 Dollars (\$10.00), and other valuable considerations, receipt whereof is hereby acknowledged, has granted, bargained, and sold to the said party of the second part, his/her/their heirs and assigns forever, the following described land, situate, and being in the County of ORANGE, State of Florida, to-wit:

Lot 86, BRONSON'S LANDINGS, according to the map or plat thereof as recorded in Plat Book 66, Page(s) 139-149, Public Records of Orange County, Florida.

SUBJECT TO: Restrictions, reservations, conditions, declarations, limitations, easements, right-of-way and zoning ordinances, if any, and real estate taxes for the year 2007 and subsequent years. Further subject to that Deed Restriction contained in Exhibit "A" to Warranty Deed attached hereto and made a part hereof.

And the said party of the first part does hereby fully warrant the title to said land, and will defend the same against the lawful claims of all persons whomsoever.

In Witness Whereof, The said party of the first part has hereunto set its hand and seal the day and year first above written.

Signed, sealed and delivered in the presence of:

Witness Signature
LORRAINE FALCONE JONES
Printed Name

CENTERLINE HOMES AT BRONSON'S LANDING
LLC, a Florida limited liability company
BY: CENTERLINE HOMES, INC, a Florida
corporation, Manager

Witness Signature
LARRY A. ROTHENBERG
Printed Name

BY: CRAIG S. PERRY, President
825 CORAL RIDGE DRIVE
CORAL SPRINGS, FL 33071

STATE OF FLORIDA
COUNTY OF BROWARD

I hereby Certify that on this day, before me, an officer duly authorized to administer oaths and take acknowledgments, personally appeared **CRAIG S. PERRY, as President of CENTERLINE HOMES, INC., the Manager of CENTERLINE HOMES AT BRONSON'S LANDING, LLC, a Florida limited liability company**, known to me to be the person described in and who executed the foregoing instrument on behalf of said limited liability company, who acknowledged before me that he executed the same, and that he is **personally known** to me OR that I relied upon the following form of identification of the above-named person: N/A and that an oath was not taken.

NOTARY SEAL



Lorraine Falcone Jones
Commission # DD442945
Expires August 23, 2009
Bonded Title Farm - Insurance, Inc. 800-385-7019

Witness my hand and official seal in the County and State last aforesaid this 2nd day of April, A.D. 2007.

Notary Signature
LORRAINE FALCONE JONES
Printed Notary Signature

My Commission Expires:

EXHIBIT "A" TO DEED**DEED RESTRICTION
MINIMUM HOLDING PERIOD AND RESTRICTION AGAINST LEASING**

As a material consideration inducing the grantor ("Seller") under the attached deed ("Deed") to sell to the grantee under such Deed ("Buyer") that certain real property described in this Deed (the "Property"), Buyer has represented to Seller that Buyer intends to and will occupy the Property as Buyer's principal or secondary residence for a minimum of one (1) year from the closing of title to the Property or upon the sale of the last property owned by Seller located within the Association (as defined below), whichever is later (for purposes of this restriction sale shall mean the execution of a Purchase and Sale Agreement between Seller and a purchaser); however, in no event shall an owner be restricted under this provision for a period greater than two (2) years from the closing of title to the Property ("Minimum Holding Period"). Seller and Buyer have entered into a separate unrecorded No Investor Rider (the "Agreement") pursuant to which Buyer has agreed to occupy the Property as provided herein, and Buyer has agreed not to sell or lease the Property for the duration of the Minimum Holding Period. This Deed Restriction is to put third parties on notice of such commitments by Buyer, and Seller's rights upon a breach of such commitments by Buyer, as provided in the Agreement, and nothing contained in this Deed Restriction shall, or shall be deemed to, modify or amend the Agreement in any respect. In the event of any conflict between the provisions of the Agreement and the provisions of this Deed Restriction, the provisions of the Agreement shall prevail. Notwithstanding the foregoing, this Deed Restriction includes certain mortgagee protections which shall be in addition to, and shall not be superseded by, the mortgagee protections in the Agreement.

Buyer acknowledges that Seller, as a developer and builder of single family and multi-family residences, has an interest in ensuring that such residences, and the residences in the communities in which they are built, including the Property and the homeowner's association of which the Property is a part (such homeowner's association being referred to herein as the "Association") are purchased and occupied only by persons who will actually occupy them as a principal or secondary residence and to mitigate shortage of available residences for permanent residents.

1. Occupancy Covenants. Buyer on behalf of itself and its successors and assigns, hereby covenants to and for the benefit of Seller that during the Minimum Holding Period: (a) Buyer will occupy the Property as Buyer's principal or secondary residence after closing; (b) Buyer shall not lease or rent the residence during the Minimum Holding Period; and (c) Buyer shall not enter into any agreement for the sale or other transfer of the Property which would result in Buyer's failure to hold title thereto in fee simple for the duration of the Minimum Holding Period.
2. Hardship Situations. Seller recognizes that a transfer of the Property in certain circumstances would not be inconsistent with the intent of the Agreement. Seller may, in its sole and absolute discretion decided on a case by case basis, consent to the transfer of the Property during the Minimum Holding Period. Furthermore, Seller shall not unreasonably withhold consent to a transfer in the following instances (each a "Hardship Situation"):
 - a. A documented job transfer of the original Purchaser to a location which would make commuting from the Residence an undue hardship; or
 - b. Death of the original Purchaser or the Purchaser's spouse; or
 - c. Transfer by gift, devise or inheritance to a spouse or child; or
 - d. Transfer by operation of law to a surviving joint tenant; or
 - e. Transfer to a spouse pursuant to the terms of a final judgment of dissolution of marriage or court-approved property settlement agreement; or
 - f. Transfer pursuant to a distributive deed by a grantor into a revocable trust, in which the grantor has not less than the right to reside in the Property during the grantor's lifetime; or
 - g. Transfer by an Purchaser to the Purchaser and the Purchaser's spouse, as tenants by the entirety, or transfer by operation of law to a surviving tenant by the entirety; or
 - h. Other documented reason acceptable by Seller in Seller's sole and unbridled judgment.
3. Automatic Termination of Deed Restriction. The covenants set forth above, and the restrictions on the transfer or lease of the Property set forth herein and in the Agreement, shall automatically terminate and be of no further force or effect on the date which is two (2) years from the date of recordation of this Deed.
4. Remedies for Breach. If Buyer or Buyer's successors or assigns, breaches, violates or fails to perform or satisfy any of the covenants set forth in the Agreement, Seller, and Seller's successors and assigns, may enforce the remedies set forth in the Agreement including, without limitation, the right and option to recover damages (as defined in the Agreement) upon a sale or upon the lease of the Property, and Buyer's obligation to pay such damages shall constitute a lien on the Property which shall run with the land and shall be binding on successors and assigns and may be foreclosed in the same manner as a mortgage or deed of trust.

5. No Duty to Enforce. Seller makes no representation or warranty to Buyer that Seller will impose these requirements on other buyers of residences in the Association and/or that, if Seller has imposed or in the future imposes these requirements on another buyer, that Seller will enforce the requirements set forth in this Deed Restriction or in the Agreement against other owners in the Association. Buyer specifically acknowledges and agrees that Seller is not guaranteeing Buyer or assuring Buyer in any way that the Association will now or in the future be occupied only or primarily by owner occupants and/or that there will not be buyers in the Association who are purchasing residences for rentals or as an investment with no intention of living in the residence.
6. Survival of Covenant on Transfer. Except as provided in Paragraph 8 below, Buyer's obligations, and Seller's rights hereunder and under the Agreement shall survive transfer of the Property by Buyer.
7. No Unreasonable Restraint. Buyer acknowledges that the purpose of this Deed Restriction is (i) to comply with Seller's intention to sell residences only to persons who will actually occupy them as a principal or secondary residence; (ii) to obtain a stabilized Association of owner-occupied residences; and (iii) to prevent a shortage of available residences in the Association for permanent residents. Buyer agrees that the provisions and restrictions set forth in this Deed Restriction do not constitute an unreasonable restraint upon alienation of the Property.
8. Survival: Severability. All of the covenants contained herein shall survive the delivery of and recordation of the Deed conveying the Property from Seller to Buyer. The provisions of this Deed Restriction shall be independent and severable, and a determination of invalidity or partial invalidity or enforceability of any one provision or portion hereof shall not affect the validity or enforceability of any other provision of this Deed Restriction or the Agreement.
9. Mortgagee Protection Provisions.

9.1 Permitted Financing. Notwithstanding anything to the contrary in this Deed Restriction or in the Agreement, Buyer may encumber the Property as security for a loan made by an institutional lender.

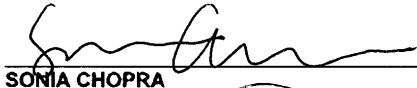
9.2 Subordination. Seller hereby acknowledges and agrees that a violation of this Deed Restriction by Buyer shall not defeat or render invalid the lien of any first or second mortgage or deed of trust in favor of an institutional lender or investor and made in good faith and for value by Buyer, and that the covenants and provisions of this Deed Restriction shall be inferior and subordinate to the lien of any such first or second mortgage or deed of trust made by an institutional lender or investor, whether recorded concurrently with or subsequent to the deed conveying the Property to Buyer.

9.3 Termination on Foreclosure. This Deed Restriction and the Agreement are subject and subordinate to any first or second priority deed or trust or mortgage on the Property made by or held by an institutional lender or investor. Any party and its successors and assigns, receiving title to the Property pursuant to a judicial or non-judicial foreclosure, or by a conveyance in lieu of such foreclosure, under a power of sale contained in such a first or second priority mortgage or deed of trust recorded against the Property in the Public Records of the County in which the Property is located shall take title free and clear of the provisions of this Deed Restriction and the Agreement.

9.4 HUD or VA Insured or Guaranteed Mortgages. If Buyer has acquired the Property by a mortgage insured by the Secretary of the United States Department of Housing and Urban Development, or guaranteed by the United States Department of Veteran's Affairs, then this Deed Restriction and the Agreement shall automatically terminate if title to the Property is transferred by foreclosure or deed-in-lieu of foreclosure, or if the insured or guaranteed mortgage is assigned to the Secretary of the VA.

9.5 Insurance Proceeds and Condemnation Award. In the event the Property is damaged or destroyed, or in the event of condemnation, Seller shall have no claim or right to any proceeds relating to the Property and such proceeds shall be held and distributed in accordance with the terms of any lien on the Property, in their order of priority.

Dated this 2nd day of April, 2007.

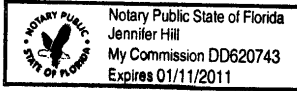

SONIA CHOPRA


RAHUL CHOPRA

STATE OF FLORIDA)

COUNTY OF Orange)

Sworn to and subscribed before me this 2nd day of April, 2007 by **SONIA CHOPRA and RAHUL CHOPRA, wife and husband**, who is/are personally known to me or who has/have produced FL Drivers licenses as identification, and who executed the foregoing instrument and acknowledged to and before me that they executed same for the purposes therein expressed.

Jennifer Hill
NOTARY PUBLICPrint Name: Jennifer Hill

My Commission Expires:



Return To: LOAN # 6597018909

Reliance Title Company
815 Coral Ridge Drive
Coral Springs, FL 33071



This document was prepared by:
MARGIE RAMSEY
BANK OF AMERICA, N.A.
9000 SOUTHSIDE BLVD., #600
JACKSONVILLE, FL 322560000

INSTR 20070239199
OR BK 09209 PG 1399 PGS=19
MARHA D. HAYNIE, COMPTROLLER
ORANGE COUNTY, FL
04/12/2007 02:05:09 PM
MIG DOC TAX 1,617.70
INTANG TAX 924.27
REC FEE 163.00

[Space Above This Line For Recording Data]

LOAN # 6597018909

MORTGAGE

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated APRIL 02, 2007, together with all Riders to this document.

(B) "Borrower" is ~~RAUL~~ CHOPRA AND SONIA CHOPRA, HUSBAND AND WIFE

gmc
RAHUL
gmc
LAL

Borrower is the mortgagor under this Security Instrument.
(C) "Lender" is BANK OF AMERICA, N.A.

Lender is a NATIONAL BANKING ASSOCIATION
organized and existing under the laws of THE UNITED STATES OF AMERICA

FLORIDA - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

Form 3010 1/01

VMP - 6(FI) (0005)

Page 1 of 18

VMP MORTGAGE FORMS - (800)521-7291

Initials *gmc* / *lcl*



CVFL 03/30/07 1:14 PM 6597018909

Lender's address is 9000 SOUTHSIDE BLVD., #600, JACKSONVILLE, FL 322560000

Lender is the mortgagee under this Security Instrument.

(D) "Note" means the promissory note signed by Borrower and dated APRIL 02, 2007
The Note states that Borrower owes Lender FOUR HUNDRED SIXTY TWO THOUSAND ONE
HUNDRED THIRTY SIX AND 00/100 Dollars

(U.S. \$ 462,136.00) plus interest. Borrower has promised to pay this debt in regular
Periodic Payments and to pay the debt in full not later than MAY 01, 2037

(E) "Property" means the property that is described below under the heading "Transfer of Rights
in the Property."

(F) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late
charges due under the Note, and all sums due under this Security Instrument, plus interest.

(G) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The
following Riders are to be executed by Borrower [check box as applicable]:

<input type="checkbox"/> Adjustable Rate Rider	<input type="checkbox"/> Condominium Rider	<input type="checkbox"/> Second Home Rider
<input type="checkbox"/> Balloon Rider	<input checked="" type="checkbox"/> Planned Unit Development Rider	<input type="checkbox"/> 1-4 Family Rider
<input type="checkbox"/> VA Rider	<input type="checkbox"/> Biweekly Payment Rider	<input type="checkbox"/> Other(s) [specify]

(H) "Applicable Law" means all controlling applicable federal, state and local statutes,
regulations, ordinances and administrative rules and orders (that have the effect of law) as well as
all applicable final, non-appealable judicial opinions.

(I) "Community Association Dues, Fees, and Assessments" means all dues, fees,
assessments and other charges that are imposed on Borrower or the Property by a condominium
association, homeowners association or similar organization.

(J) "Electronic Funds Transfer" means any transfer of funds, other than a transaction
originated by check, draft, or similar paper instrument, which is initiated through an electronic
terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize
a financial institution to debit or credit an account. Such term includes, but is not limited to,
point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire
transfers, and automated clearinghouse transfers.

(K) "Escrow Items" means those items that are described in Section 3.

(L) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or
proceeds paid by any third party (other than insurance proceeds paid under the coverages
described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or
other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv)
misrepresentations of, or omissions as to, the value and/or condition of the Property.

(M) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or
default on, the Loan.

(N) "Periodic Payment" means the regularly scheduled amount due for (i) principal and
interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

CVFL-6(FI) (0005)

CVFL 03/30/07 1:14 PM 6597018909

Page 2 of 16

Initials: *GWC*
RBC

Form 3010 1/01

(O) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(P) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to Lender, the following described property located in the COUNTY of ORANGE :

[Type of Recording Jurisdiction]

[Name of Recording Jurisdiction]

LOT 86, BRONSONS LANDINGS, ACCORDING TO THE MAP OR PLAT THEREOF AS RECORDED IN PLAT BOOK 66, PAGE(S), 139-149, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA.

Parcel ID Number: 02-23-27-0805-008
2059 TILLMAN AVENUE
WINTER GARDEN
("Property Address"):

which currently has the address of
[Street]
[City], Florida 34787 [Zip Code]

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

6042-6(FL) (0005)

CVFL 03/30/07 1:14 PM 6597018909

Page 3 of 16

Initials: *gwe*
RLC

Form 3010 1/01

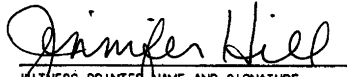
BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

Signed, sealed and delivered in the presence of:


WITNESS PRINTED NAME AND SIGNATURE

 (Seal)
SONJA CHOPRA -Borrower

2059 TILLMAN AVENUE , WINTER GARDEN , FL , 34787
(Address)


WITNESS PRINTED NAME AND SIGNATURE
Jennifer Hill

(Seal)
-Borrower

(Address)

(Seal)
-Borrower

(Seal)
-Borrower

(Address)

(Seal)
-Borrower

 (Address)
(Seal)
RAHUL CHOPRA -Borrower

(Address)

(Address)

(Seal)
-Borrower

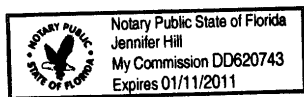
(Seal)
-Borrower

(Address)

(Address)

STATE OF FLORIDA, Orange County ss:
The foregoing instrument was acknowledged before me this 2nd day of April, 2007
by Sonia Chopra and Rahul Chopra

who is personally known to me or who has produced FL Drivers' Licenses as identification.



Jennifer Hill
Notary Public

IMP-6(FL) (0005)

Page 16 of 16

Initials SHC
RHC Form 3010 1/01
CVFL 03/30/07 1:14 PM 6597018909

LOAN # 6597018909

PLANNED UNIT DEVELOPMENT RIDER

THIS PLANNED UNIT DEVELOPMENT RIDER is made this 2ND day of APRIL, 2007, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date, given by the undersigned (the "Borrower") to secure Borrower's Note to

BANK OF AMERICA, N.A.

(the "Lender")

of the same date and covering the Property described in the Security Instrument and located at:

2059 TILLMAN AVENUE, WINTER GARDEN, FL 34787

(Property Address)

The Property includes, but is not limited to, a parcel of land improved with a dwelling, together with other such parcels and certain common areas and facilities, as described in *** COVENANTS, CONDITIONS, AND RESTRICTIONS ***

(the "Declaration"). The Property is a part of a planned unit development known as

BRONSON.S LANDING

(Name of Planned Unit Development)

(the "PUD"). The Property also includes Borrower's interest in the homeowners association or equivalent entity owning or managing the common areas and facilities of the PUD (the "Owners Association") and the uses, benefits and proceeds of Borrower's interest.

PUD COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

A. PUD Obligations. Borrower shall perform all of Borrower's obligations under the PUD's Constituent Documents. The "Constituent Documents" are the: (i) Declaration; (ii) articles of incorporation, trust instrument or any equivalent document which creates the Owners Association; and (iii) any by-laws or other rules or regulations of the Owners Association. Borrower shall promptly pay, when due, all dues and assessments imposed pursuant to the Constituent Documents.

MULTISTATE PUD RIDER - Single Family

Page 1 of 3

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BS7R (0411)

VMP Mortgage Solutions, Inc. (800)521-7291

B. Property Insurance. So long as the Owners Association maintains, with a generally accepted insurance carrier, a "master" or "blanket" policy insuring the Property which is satisfactory to Lender and which provides insurance coverage in the amounts (including deductible levels), for the periods, and against loss by fire, hazards included within the term "extended coverage," and any other hazards, including, but not limited to, earthquakes and floods, for which Lender requires insurance, then: (i) Lender waives the provision in Section 3 for the Periodic Payment to Lender of the yearly premium installments for property insurance on the Property; and (ii) Borrower's obligation under Section 5 to maintain property insurance coverage on the Property is deemed satisfied to the extent that the required coverage is provided by the Owners Association policy.

What Lender requires as a condition of this waiver can change during the term of the loan.

Borrower shall give Lender prompt notice of any lapse in required property insurance coverage provided by the master or blanket policy.

In the event of a distribution of property insurance proceeds in lieu of restoration or repair following a loss to the Property, or to common areas and facilities of the PUD, any proceeds payable to Borrower are hereby assigned and shall be paid to Lender. Lender shall apply the proceeds to the sums secured by the Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

C. Public Liability Insurance. Borrower shall take such actions as may be reasonable to insure that the Owners Association maintains a public liability insurance policy acceptable in form, amount, and extent of coverage to Lender.

D. Condemnation. The proceeds of any award or claim for damages, direct or consequential, payable to Borrower in connection with any condemnation or other taking of all or any part of the Property or the common areas and facilities of the PUD, or for any conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender. Such proceeds shall be applied by Lender to the sums secured by the Security Instrument as provided in Section 11.

E. Lender's Prior Consent. Borrower shall not, except after notice to Lender and with Lender's prior written consent, either partition or subdivide the Property or consent to: (i) the abandonment or termination of the PUD, except for abandonment or termination required by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain; (ii) any amendment to any provision of the "Constituent Documents" if the provision is for the express benefit of Lender; (iii) termination of professional management and assumption of self-management of the Owners Association; or (iv) any action which would have the effect of rendering the public liability insurance coverage maintained by the Owners Association unacceptable to Lender.


F. Remedies. If Borrower does not pay PUD dues and assessments when due, then Lender may pay them. Any amounts disbursed by Lender under this paragraph F shall become additional debt of Borrower secured by the Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this PUD Rider.


SONIA CHOPRA (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower


____ (Seal)
-Borrower

RAHUL CHOPRA (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

BS7R (0411)

Page 3 of 3

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INSTR 20070321228
OR BK 09263 PG 3540 PGS=1
MARTHA O. HAYNIE, COMPTROLLER
ORANGE COUNTY, FL
05/17/2007 11:41:10 AM
DEED DOC TAX 0.70
REC FEE 10.00
LAST PAGE

This Instrument Prepared by & return to:

Name: **Larry A. Rothenberg**
Reliance Title Company
Address: **815 Coral Ridge Drive**
Coral Springs, FL 33071
05-1227

Parcel I.D. #: 02-23-27-0805-00-860

SPACE ABOVE THIS LINE FOR PROCESSING DATA

SPACE ABOVE THIS LINE FOR RECORDING DATA

This Quit-Claim Deed executed this 10th day of May, A.D. 2007, by **SONIA CHOPRA and RAHUL CHOPRA, wife and husband**, whose post office address is 2059 TILLMAN AVENUE, WINTER GARDEN, FL 34787 (Grantors), to **SONIA CHOPRA and RAHUL B. CHOPRA, wife and husband** (Grantee), whose post office address is 2059 TILLMAN AVENUE, WINTER GARDEN, FL 34787.

WITNESSETH,

Grantors, for and in consideration of the sum of \$10.00 and other valuable consideration, receipt whereof is hereby acknowledged by Grantors, do hereby remise, release, and quit-claim unto Grantee forever, all the right, title, interest, claim and demand which Grantors have in and to the following described lot, piece or parcel of land, situate, lying and being in the **County of Orange, State of Florida**, to wit:

Lot 86, BRONSON'S LANDINGS, according to the map or plat thereof as recorded in Plat Book 66, Page(s) 139-149, Public Records of Orange County, Florida.

To Have and to Hold the same, together with all and singular the appurtenances thereunto belonging or in anywise appertaining, and all the estate, right, title, interest, lien, equity and claim whatsoever of Grantors, either in law or equity, to the only proper use, benefit and behoof of Grantee forever.

SUBJECT TO TAXES FOR THE YEAR 2007 AND SUBSEQUENT YEARS, RESTRICTIONS, RESERVATIONS, COVENANTS AND EASEMENTS OF RECORD, IF ANY.

In Witness Whereof, Grantors have signed and sealed this Quit-Claim Deed or caused this Quit-Claim Deed to be executed in their respective names and their respective corporate seals to be hereunto affixed by their proper officers thereunto duly authorized the day and year first above written.


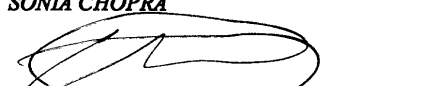
Signed, sealed and delivered in the presence of:

Witness Signature

Printed Name

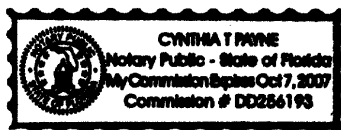
Witness Signature

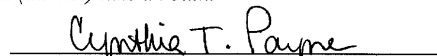
Printed Name


SONIA CHOPRA

RAHUL CHOPRA

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this 10th day of May, 2007, by **SONIA CHOPRA and RAHUL CHOPRA, wife and husband**. He/she is personally known to me or has produced _____ as identification and did (did not) take an oath.




Signature of Acknowledger
My commission expires Oct. 7, 2007



Prepared By: Earnestine Darden
Bank of America, N.A.
Commercial Real Estate Banking
715 Peachtree Street NE, 5th Floor
Atlanta, GA 30308
GA2-002-05-12

INSTR 20070307591
OR BK 09254 PG 3053 PGS=1
MARTHA O. HAYNIE, COMPTROLLER
ORANGE COUNTY, FL
05/11/2007 11:35:22 AM
REC FEE 10.00
LAST PAGE

Return To: **Reliance Title Company**
815 Coral Ridge Road
Coral Springs Florida 33071-4180
07-1085 / 07-1052

Acct #1477



Partial Release of Mortgage

Know All Men By These Presents:

Whereas, **CENTERLINE HOMES AT BRONSON'S LANDING, LLC, a Florida limited liability company, CENTERLINE ENTERPRISES, LLC, a Florida limited liability company, CENTERLINE HOMES ENTERPRISES ONE, LLC, a Florida limited liability company, CENTERLINE HOMES ENTERPRISES TWO, LLC, a Florida limited liability company, CENTERLINE HOMES ENTERPRISES THREE, LLC, a Florida limited liability company, CENTERLINE HOMES ENTERPRISES FOUR, LLC, a Florida limited liability company, CENTERLINE ENTERPRISES FIVE, LLC, a Florida limited liability company, CENTERLINE HOMES AT BALDWIN PARK I, LLC, a Florida limited liability company, CENTERLINE HOMES AT BALDWIN PARK II, LLC, a Florida limited liability company, CENTERLINE HOMES AT BALDWIN PARK III, LLC, a Florida limited liability company, CENTERLINE HOMES AT BALDWIN PARK IV, LLC, a Florida limited liability company, CENTERLINE HOMES AT BALDWIN PARK V, LLC, a Florida limited liability company, CENTERLINE AT BALDWIN and CENTERLINE PORT ST. LUCIE LTD, a Florida limited partnership,**

Borrower: collectively, jointly and severally, by Indenture of Mortgage bearing date the 12th day of October, 2004, recorded in the office of the Clerk of the Circuit Court in and for the County of **Orange**, State of Florida in **Official Records Book 7665, Page 3886, together with that certain UCC-1 Financing Statement recorded in Official Records Book 7665, Page 3952, Modifications, Future Advance and Spreader Agreements recorded in Official Records Book 7783, Page 2719; O.R. Book 8050, Page 3144; O.R. Book 8028, Page 270; O.R. Book 8367, Page 3681; O.R. Book 8384, Page 1983; O. R. Book 8845, Page 3243,** mortgaged unto **BANK OF AMERICA, N.A.,** mortgagee, assigns, and successors, the premises therein particularly described, to secure the payment of the original sum of **Twelve Million Three Hundred Thousand and No/100 Dollars (\$12,300,000.00),** with interest as therein mentioned:

And Whereas, the said mortgagor has requested the said mortgagee to release the premises hereinafter described, being part of said mortgaged premises, from the lien and operation of said Mortgage:

Now Therefore, Know Ye, that the said mortgagee as well in consideration of the premises as of the sum of **Ten (\$10.00)** Dollars, to it paid by the said mortgagor at the time of the execution hereof, the receipt whereof is hereby acknowledged, does remise, release, quit-claim, exonerate and discharge from the lien and operation of said mortgage unto the said mortgagor, heirs and assigns, all that piece, parcel or tract of land, being a part of the premises conveyed by said mortgage, to wit:

Lots 62 & 86, BRONSON'S LANDING SUBDIVISION, according to the plat thereof as Recorded In Plat Book 66, Page 139, of the Public Records of Orange County, Florida.

To Have and to Hold the same, with the appurtenances, unto the said mortgagor heirs and assigns forever, freed, exonerated and discharged of and from the lien of said mortgage, and every part thereof; provided always, nevertheless, that nothing herein contained shall in anywise impair, alter or diminish the effect, lien or encumbrance of the aforesaid Mortgage on the remaining part of said mortgaged premises, not hereby released therefrom, or any of the rights and remedies of the holder thereof.

In Witness Whereof, the said Mortgagee has caused these presents to be executed in its name, and its corporate seal to be hereunto affixed, by its proper officers thereunto duly authorized this 17 April, 2007.
Signed, sealed and delivered in the presence of:

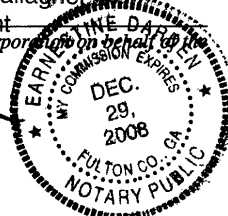
Bank of America, N.A.

By:
Kathleen C. Gallagher
Vice President
Kathleen C. Gallagher
Vice President

Margaret Roberts
STATE OF GEORGIA / COUNTY OF FULTON

The foregoing instrument was acknowledged before me this 17 April, 2007, by _____ of Bank of America, N. A., a national banking association corporation, as _____ as identification.

corporation. He/she is personally known to me or has produced _____





INSTR 20070326699
OR BK 09266 PG 4797 PGS=9
MARTHA O. HAYNIE, COMPTROLLER
ORANGE COUNTY, FL
05/21/2007 08:33:07 AM
MTG DOC TAX 303.45
INTANG TAX 173.30
REC FEE 70.00

WHEN RECORDED MAIL TO:



Record and Return To:
Fiserv Lending Solutions
27 Inwood Road
ROCKY HILL, CT 06067

Acct. # 1520

This Mortgage prepared by:

Name: CINDY WAHLSTROM
Company: Bank of America, N.A.
Address: FL9-600-02-73 9000 SOUTHSIDE BLVD., JACKSONVILLE, FL 32256-0000

MORTGAGE
FOR USE WITH SECURED REVOLVING CREDIT AGREEMENT

MAXIMUM LIEN. The total amount of indebtedness secured by this Mortgage may decrease or increase from time to time, but the maximum amount of principal indebtedness which may be outstanding at any one time shall not exceed \$173,300.00, plus interest, and amounts expended or advanced by Lender for the payment of taxes, levies or insurance on the Property, and interest on such amounts.

THIS MORTGAGE dated April 2, 2007, is made and executed between SONIA CHOPRA AND RAHUL CHOPRA, MARRIED TO EACH OTHER. (referred to below as "Grantor") and Bank of America, N.A., whose address is 100 North Tryon Street, Charlotte, NC 28255 (referred to below as "Lender").

GRANT OF MORTGAGE. For valuable consideration, Grantor mortgages to Lender all of Grantor's right, title, and interest in and to the following described real property, together with all existing or subsequently erected or affixed buildings, improvements and fixtures; all easements, rights of way, and appurtenances; all water, water rights, watercourses and ditch rights (including stock in utilities with ditch or irrigation rights); and all other rights, royalties, and profits relating to the real property, including without limitation all minerals, oil, gas, geothermal and similar matters, (the "Real Property") located in ORANGE County, State of Florida:

See Exhibit A, which is attached to this Mortgage and made a part of this Mortgage as if fully set forth herein.

The Real Property or its address is commonly known as 2059 TILLMAN AVE, WINTER GARDEN, FL 34787-5489.


REVOLVING LINE OF CREDIT. This Mortgage secures the indebtedness including, without limitation, a revolving line of credit under which, upon request by Grantor, Lender, within twenty (20) years from the date of this Mortgage, may make future advances to Grantor. Such future advances, together with interest thereon, are secured by this Mortgage. Such advances may be made, repaid, and remade from time to time, subject to the limitation that the total outstanding balance owing at any one time, not including finance charges on such balance at a fixed or variable rate or sum as provided in the Credit Agreement, any temporary overages, other charges, and any amounts expended or advanced as provided in either the Indebtedness paragraph or this paragraph, shall not exceed the Credit Limit as provided in the Credit Agreement. It is the intention of Grantor and Lender that this Mortgage secures the balance outstanding under the Credit Agreement from time to time from zero up to the Credit Limit as provided in the Credit Agreement and any intermediate balance.

Grantor presently assigns to Lender all of Grantor's right, title, and interest in and to all present and future leases of the Property and all Rents from the Property. In addition, Grantor grants to Lender a Uniform Commercial Code security interest in the Personal Property and Rents.

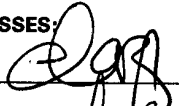

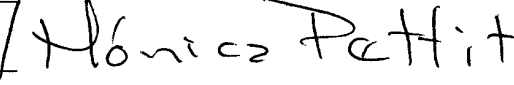
THIS MORTGAGE, INCLUDING THE ASSIGNMENT OF RENTS AND THE SECURITY INTEREST IN THE RENTS AND PERSONAL PROPERTY, IS GIVEN TO SECURE (A) PAYMENT OF THE INDEBTEDNESS AND (B) PERFORMANCE OF EACH OF GRANTOR'S AGREEMENTS AND OBLIGATIONS UNDER THE CREDIT AGREEMENT WITH THE CREDIT LIMIT OF \$86,650.00, THE RELATED DOCUMENTS, AND THIS MORTGAGE. THIS MORTGAGE IS GIVEN AND ACCEPTED ON THE FOLLOWING TERMS:

GRANTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS MORTGAGE, AND GRANTOR AGREES TO ITS TERMS.

GRANTOR:

x  2059 Tillman Ave
SONIA CHOPRA Winter Garden, FL 34787-5489

WITNESSES:

x  Naziran Dooker
x  Jeffrey Pettit /  Monica Pettit

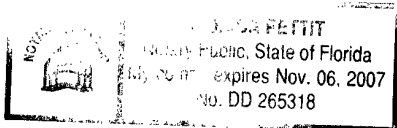
INDIVIDUAL ACKNOWLEDGMENT

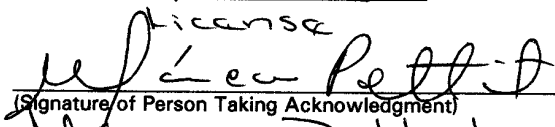
STATE OF FL

COUNTY OF Orange

)
) SS
)

The foregoing instrument was acknowledged before me this 1st day of May, 2007
by SONIA CHOPRA, who is personally known to me or who has produced Florida Driver as identification and did /
did not take an oath.




(Signature of Person Taking Acknowledgment)
Monica Pettit
(Name of Acknowledger Typed, Printed or Stamped)
Senior Personal Banker
(Title or Rank)

(Serial Number, if any)

H131F573

SCHEDULE A

KNOWN AS: 2059 TILLMAN AVE

ALL THAT CERTAIN LAND IN ORANGE COUNTY, FLORIDA, TO-WIT:

LOT(S) 86, OF 86 BRONSON'S LNDGS F & M 66 139 AS RECORDED IN PLAT BOOK 66, PAGE 139, ET SEQ., OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA.

SUBJECT TO RESTRICTIONS, RESERVATIONS, EASEMENTS, COVENANTS, OIL, GAS OR MINERAL RIGHTS OF RECORD, IF ANY.

•
•
•
•



This instrument prepared by:
 Ralph Thomas Snow
 Miller Legg
 631 S. Orlando Ave.
 Winter Park, FL 32789

INSTR 20070482640
 OR BK 09361 PG 4281 PGS=1
 MARTHA O. HAYNIE, COMPTROLLER
 ORANGE COUNTY, FL
 07/20/2007 11:28:42 AM
 REC FEE 10.00
 LAST PAGE



SURVEYOR'S AFFIDAVIT

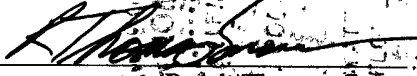
STATE OF FLORIDA
 COUNTY OF ORANGE

Before me, the undersigned authority, personally appeared licensed as a Professional Land Surveyor in the State of Florida, his license number being #5561, and has prepared and executed the plat known as Bronson's Landings, recorded in Plat Book 66, Pages 139 through 149, in the Public Records of Orange County, Florida.

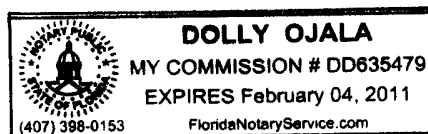
The property lines along the southwest portion of the property contain apparent scrivener's errors as follows:

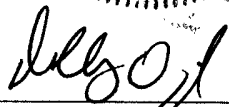
The bearing and distance of the south property line along the north boundary of Wintermere Harbor that reads S89°43'30"W, 1337.83' should read S89°45'48"W, 1337.82'.
 The distance along the south line of Tract G that reads 893.82' should read 893.81'.
 The bearing of the west property line along State Road 535 that reads N17°30'06"W should read N17°27'48"W.
 The bearing of the north property line adjacent to State Road 535 that reads S53°53'18"E should read S53°51'00"E.
 The bearing of the north property line along the west access road that reads N89°43'30"E should read N89°45'48"E.
 The bearing and distance of the north property line adjacent to Lot 1 that reads N89°54'45"E, 175.30' should read N89°57'03"E, 175.12'.
 The distance on the west property line that reads 1030.55' should read 1030.54'.
 The distance on Lot 1 that reads 53.45' should read 53.44'.
 The distance on Lot 1 that reads 31.68' should read 31.69'.
 The bearing and distance of the north line of Tract J Conservation/Open Area that reads N89°43'30"E, 194.07' should read N89°45'48"E, 193.97'.
 The bearing and distance on the north line of Tract L Permanent Utility Easement that reads S89°43'30"W, 138.93' should read S89°45'48"W, 138.98'.
 The bearing on the west line of Tract L Permanent Utility Easement that reads N00°00'54"W should read N00°04'40"W.
 The delta of the curve along the west line of Tract J Conservation/Open Area that reads 63°29'07" should read 63°29'06".

Affiant further sayeth not.


 Ralph Thomas Snow
 Professional Surveyor and Mapper

Sworn to and subscribed before me the 18th day of July, 2007.




 Dolly Ojala
 Notary Public

IN THE COUNTY COURT IN AND FOR ORANGE COUNTY
STATE OF FLORIDA, CIVIL DIVISION

ASSET ACCEPTANCE LLC

Plaintiff,

vs.

Case No: 08SC1409 72

RAHUL CHOPRA

Defendant(s).

FINAL JUDGMENT AFTER STIPULATED AGREEMENT

THIS CAUSE having come before the court, and the court having considered the court file and the affidavit of non-payment/non-compliance

IT IS ORDERED AND ADJUDGED that final judgment is hereby entered in favor of the Plaintiff, ASSET ACCEPTANCE LLC, P.O. Box 2036, Warren, MI, 48090, and against Defendant, RAHUL CHOPRA, 3026 LANDTREE PL ORLANDO, FL 32812-5953, in the sum of \$2819.72 on principal \$426.02 as prejudgment interest, \$0.00 for attorneys fees with costs of \$280.00 less \$0.00 in payments, plus re-open fee cost of \$50.00, for a total sum of of \$3575.74 which shall bear interest at the rate of 11% per year for all of which let execution issue.

ORDERED AND ADJUDGED that defendant shall complete Florida Small Claims Rules Form 7.343 (Fact Information Sheet) and return it to the plaintiff's attorney within forty five (45) days from the date of this Final Judgment, unless the Final Judgment is satisfied or a motion for a new trial or notice of appeal is filed.

Jurisdiction in this case is retained to enter further orders that are proper to compel the defendant to complete form 7.343 and return it to the plaintiff's attorney.

DONE AND ORDERED in chambers at ORANGE County, Florida on this
9 day of Sept, 2014.

COUNTY COURT JUDGE

cc: ASSET ACCEPTANCE LLC, c/o Rodolfo J. Miro, P.O. Box 9065, Brandon, FL 33509, Bar - 0103799

RAHUL CHOPRA, 3026 LANDTREE PL, ORLANDO, FL 32812-5953

Form 668 (Y)(c)

(Rev. February 2004)

16999

Department of the Treasury - Internal Revenue Service

Notice of Federal Tax Lien

Area:

SMALL BUSINESS/SELF EMPLOYED AREA #3

Lien Unit Phone: (800) 913-6050

Serial Number

376386219

For Optional Use by Recording Office

As provided by section 6321, 6322, and 6323 of the Internal Revenue Code, we are giving a notice that taxes (including interest and penalties) have been assessed against the following-named taxpayer. We have made a demand for payment of this liability, but it remains unpaid. Therefore, there is a lien in favor of the United States on all property and rights to property belonging to this taxpayer for the amount of these taxes, and additional penalties, interest, and costs that may accrue.

Name of Taxpayer

SONJA CHOPRA

Residence

7125 HIAWASSEE OVERLOOK DR.
ORLANDO, FL 32835

IMPORTANT RELEASE INFORMATION: For each assessment listed below, unless notice of the lien is refiled by the date given in column (e), this notice shall, on the day following such date, operate as a certificate of release as defined in IRC 6325(a).

DOCH 20190543912
09/05/2019 08:32:04 AM Page 1 of 1
Rec Fee: \$10.00
Phil Diamond, Comptroller
Orange County, FL
SA - Ret To: INTERNAL REVENUE SERVICE

Kind of Tax (a)	Tax Period Ending (b)	Identifying Number (c)	Date of Assessment (d)	Last Day for Refiling (e)	Unpaid Balance of Assessment (f)
6701	12/31/2013		07/01/2019	07/31/2029	25000.00

Place of Filing

ORANGE COUNTY COMPTROLLER
ORANGE COUNTY
ORLANDO, FL 32801

Total \$ 25000.00

This notice was prepared and signed at BALTIMORE, MD, on this,

the 19th day of August, 2019.

Signature



for JOHN W. SHATRAW

Title

REVENUE OFFICER
(813) 302-5549

23-08-3731

(NOTE: Certificate of officer authorized by law to take acknowledgment is not essential to the validity of Notice of Federal Tax lien
Rev. Rul. 71-466, 1971 - 2 C.B. 409)

Part 1 - Kept By Recording Office

Form 668(Y)(c) (Rev. 2-2004)
CAT. NO 60025X

Area:

SMALL BUSINESS/SELF EMPLOYED AREA #3

Serial Number

398279819

For Optional Use by Recording Office

Lien Unit Phone: (800) 829-3903

As provided by section 6321, 6322, and 6323 of the Internal Revenue Code, we are giving a notice that taxes (including interest and penalties) have been assessed against the following-named taxpayer. We have made a demand for payment of this liability, but it remains unpaid. Therefore, there is a lien in favor of the United States on all property and rights to property belonging to this taxpayer for the amount of these taxes, and additional penalties, interest, and costs that may accrue.

Name of Taxpayer

SONJA CHOPRA

Residence

7125 HIAWASSEE OVERLOOK DR.
ORLANDO, FL 32835

IMPORTANT RELEASE INFORMATION:

For each assessment listed below, unless notice of the lien is refiled by the date given in column (e), this notice shall, on the day following such date, operate as a certificate of release as defined in IRC 6325(a).

DOC# 20200000741

01/02/2020 01:27:27 PM Page 1 of 1

Rec Fee: \$10.00

Phil Diamond, Comptroller

Orange County, FL

SA - Ret To: INTERNAL REVENUE SERVICE

Kind of Tax (a)	Tax Period Ending (b)	Identifying Number (c)	Date of Assessment (d)	Last Day for Refiling (e)	Unpaid Balance of Assessment (f)
1040	12/31/2015	██████████	11/06/2017	12/06/2027	15628.52
1040	12/31/2016	██████████	10/15/2018	11/14/2028	17593.85
1040	12/31/2017	██████████	11/12/2018	12/12/2028	18322.75
<div>Place of Filing</div> <div>ORANGE COUNTY COMPTROLLER</div> <div>ORANGE COUNTY</div> <div>ORLANDO, FL 32801</div> <div>Total</div>					\$ 51545.12

This notice was prepared and signed at

BALTIMORE, MD

, on this,

the

18th

day of

December

, 2019.

Signature

Title

ACS SBSE

for S. MCGUIGAN

(800) 829-3903

23-00-0008



RETURN TO: Kim
 Winderweede, Haines, Ward & Woodman, P.A.
 P.O. Box 880
 Winter Park FL. 32790-0880
 RECORD AND RETURN TO:

Name: LEOPOLD, KORN & LEOPOLD, P.A.
 Address: 20801 Biscayne Blvd., #501
Aventura, FL 33180

THIS INSTRUMENT PREPARED BY:

Name: Karen S. Leopold, Esquire
LEOPOLD, KORN & LEOPOLD, P.A.
 Address: 20801 Biscayne Blvd., #501
Aventura, FL 33180



INSTR 20060613920
 OR BK 08865 PG 1636 PGS=79
 MARTHA O. HAYNIE, COMPTROLLER
 ORANGE COUNTY, FL
 09/18/2006 08:50:09 AM
 REC FEE 673.00

[Space above line reserved for recording office use]

**DECLARATION OF COVENANTS AND RESTRICTIONS
 FOR
 BRONSON'S LANDING**

THIS DECLARATION OF COVENANTS AND RESTRICTIONS FOR **BRONSON'S LANDING** ("DECLARATION") is made this 21st day of August, 2006, by **CENTERLINE HOMES AT BRONSON'S LANDING, LLC**, a Florida limited liability company ("DECLARANT").

WHEREAS, DECLARANT is the owner of the SUBJECT PROPERTY as described in this DECLARATION and desires to create a residential community on such property with open spaces and other common facilities for the benefit of such community, to be known as "**BRONSON'S LANDING**" (the "COMMUNITY"); and

WHEREAS, DECLARANT desires to provide for the preservation of the values and amenities in the COMMUNITY and for the maintenance of its common properties; and

WHEREAS, DECLARANT has deemed it desirable for the efficient preservation of the values and amenities in the COMMUNITY, to delegate and assign to a nonprofit corporation the powers of maintaining and administering the COMMUNITY properties and facilities and administering and enforcing these covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, DECLARANT has incorporated or will incorporate under the laws of the State of Florida, as a nonprofit corporation, **BRONSON'S LANDING HOMEOWNERS ASSOCIATION, INC.**, for the purposes of exercising the functions stated above, which Association is not intended to be a "Condominium Association" as such term is defined and described in the Florida Condominium Act (Chapter 718 of the Florida Statutes).

NOW, THEREFORE, DECLARANT hereby declares that the SUBJECT PROPERTY, as herein defined, shall be held, sold, conveyed, leased, mortgaged, and otherwise dealt with subject to the easements, covenants, conditions, restrictions, reservations, liens, and charges set forth herein, all of which are created in the best interest of the owners and residents of the SUBJECT PROPERTY, and which shall run with the SUBJECT PROPERTY and shall be binding upon all persons having and/or acquiring any right, title or interest in the SUBJECT PROPERTY or any portion thereof, and shall inure to the benefit of each and every person, from time to time, owning or holding an interest in the SUBJECT PROPERTY, or any portion

LEOPOLD, KORN & LEOPOLD, P.A.
 20801 Biscayne Boulevard, Suite 501, Aventura, FL 33180 Telephone: 305-935-3500

**Document recorded as presented.
 Orange County, FL Comptroller**

\\c:\p\users\UeffK\Bronson Landing\Declaration.v.16.wpd

PREPARED BY
MIKE MALAGIAN
2318 HARBORWOOD DR ORL 32804

WHERE TO FILE A NOTICE OF COMMENCEMENT:
ORANGE COUNTY RECORDING DEPARTMENT
109 E. CHURCH ST. #300 ORLANDO, FL
(407) 836-5116 HOURS 7:30AM - 4:30PM

DOC# 20200634497 B: 9953 P: 7393
10/27/2020 01:20:07 PM Page 1 of 1
Rec Fee: \$10.00 Doc Type: NC
Martha O. Haynie, Comptroller
Orange County, FL
MB - Ret To: SIGNATURE POOLS INC



STATE OF FLORIDA
COUNTY OF ORANGE

NOTICE OF COMMENCEMENT

THE UNDERSIGNED HEREBY GIVES NOTICE THAT IMPROVEMENT(S) WILL BE MADE TO CERTAIN REAL PROPERTY, AND IN ACCORDANCE WITH CHAPTER 713, FLORIDA STATUTES, THE FOLLOWING INFORMATION IS PROVIDED IN THIS NOTICE OF COMMENCEMENT.

1. DESCRIPTION OF PROPERTY: (LEGAL DESCRIPTION OF PROPERTY, AND STREET ADDRESS, IF AVAILABLE) LOT 86 BRONSON'S LANDING, PB 42 PGS 23-27 ORANGE CO. 2059 TILMAN AV.
2. GENERAL DESCRIPTION OF IMPROVEMENT: POOL
3. OWNER INFORMATION RAHUL B. CHOPRA 2059 TILMAN AV. WINTER GARDEN, FL. 34787
 - A. NAME AND ADDRESS:
 - B. INTEREST IN PROPERTY: FEE SIMPLE
 - C. NAME AND ADDRESS OF FEE SIMPLE TITLEHOLDER (IF OTHER THAN OWNER):

4. CONTRACTOR (R)
 - A. NAME AND ADDRESS: SIGNATURE POOLS INC. 8818 COMMODITY CIR. SUITE 43 ORLANDO FL. 32819
 - B. PHONE NUMBERS: 0-407-851-9086 FAX 407-351-5998

5. SURETY
 - A. NAME AND ADDRESS: N/A
 - B. AMOUNT OF BOND \$
 - C. PHONE NUMBER

6. LENDER
 - A. NAME AND ADDRESS: N/A
 - B. PHONE NUMBER:

7. PERSONS WITHIN THE STATE OF FLORIDA DESIGNATED BY OWNER UPON WHOM NOTICES OR OTHER DOCUMENTS MAY BE SERVED AS PROVIDED BY SECTION 713.13(1)(A)7, FLORIDA STATUTES:
 - A. NAME AND ADDRESS: NONE
 - B. PHONE NUMBER:

8. IN ADDITION TO HIMSELF, OWNER DESIGNATES THE FOLLOWING PERSON(S) TO RECEIVE A COPY OF THE LENDER'S NOTICE AS PROVIDED IN SECTION 713.13(1)(B), FLORIDA STATUTES:
 - A. NAME AND ADDRESS: NONE
 - B. PHONE NUMBER:

9. EXPIRATION DATE OF NOTICE OF COMMENCEMENT (THE EXPIRATION DATE IS 1 YEAR FROM THE DATE OF RECORDING UNLESS A DIFFERENT DATE IS SPECIFIED) 1 YR.

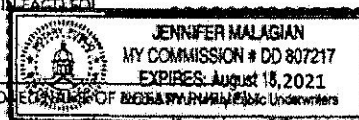
WARNING TO OWNER: ANY PAYMENTS MADE BY THE OWNER AFTER THE EXPIRATION OF THE NOTICE OF COMMENCEMENT ARE CONSIDERED IMPROPER PAYMENTS UNDER CHAPTER 713, PART 1, SECTION 713.13, FLORIDA STATUTES, AND CAN RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS TO YOUR PROPERTY. A NOTICE OF COMMENCEMENT MUST BE RECORDED AND POSTED ON THE JOB SITE BEFORE THE FIRST INSPECTION. IF YOU INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR AN ATTORNEY BEFORE COMMENCING WORK OR RECORDING YOUR NOTICE OF COMMENCEMENT.

Rahul B. Chopra
SIGNATURE OF OWNER OR OWNER'S AUTHORIZED OFFICE/DIRECTOR

SIGNATORY'S TITLE/OFFICE Property Owner

THE FOREGOING INSTRUMENT WAS ACKNOWLEDGED BEFORE ME THIS 19th DAY OF OCTOBER 2020 BY RAHUL B. CHOPRA (NAME OF PERSON) AS OWNER (TYPE OF AUTHORITY, E.G. OFFICER, TRUSTEE, ATTORNEY IN FACT, ETC.) (NAME OF PARTY ON BEHALF OF WHOM INSTRUMENT WAS EXECUTED).

Jennifer Malagian
SIGNATURE OF NOTARY PUBLIC STATE OF FLORIDA (PRINT, TYPE, OR STAMP COMMISSION)



PERSONALLY KNOWN ☒ OR PRODUCED ID
TYPE OF ID PRODUCED

VERIFICATION PURSUANT TO SECTION 92.525, FLORIDA STATUTES: UNDER PENALTIES OF PERJURY, I DECLARE THAT I HAVE READ THE FOREGOING AND THAT THE FACTS STATED IN IT ARE TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF.

Rahul B. Chopra
SIGNATURE OF NATURAL PERSON SIGNING ABOVE

THIS INSTRUMENT PREPARED BY:

Name: DAVID CALDWELL
Address: 4802 DISTRIBUTION COURT SUITE 9
ORLANDO FL 32822
State of Florida

DOC# 20210046144 B: 9992 P: 1165
01/25/2021 10:20:42 AM Page 1 of 1
Rec Fee: \$10.00
Martha O. Haynie, Comptroller
Orange County, FL
MB - Ret To: CALDWELL ALUMINIUM & SCR



NOTICE OF COMMENCEMENT

Permit Number _____ Parcel ID Number (PID) OZ-2327-0805-00-860

The undersigned hereby gives notice that improvement will be made to certain real property, and in accordance with Chapter 713, Florida Statutes, the following information is provided in this Notice of Commencement.

DESCRIPTION OF PROPERTY (Legal description of the property and street address if available) _____

2059 TILLMAN AVE WINTER GARDEN
BRONSON'S LAWN

GENERAL DESCRIPTION OF IMPROVEMENT SCREEN POOL ENCLOSURE
BRONSON'S

OWNER INFORMATION

Name and address: RAHUL B + SONIA CHOPRA
2059 TILLMAN AVE WINTER GARDEN FL 34087
Fee Simple Title Holder name and address (if other than owner): _____

CONTRACTOR

Name and address: CALDWELL'S ALUMINUM + SCREEN WORKS INC.
4802 DISTRIBUTION COURT SUITE 9 ORLANDO FL 32822
PH 407-668-5923 FX 407-668-8471

Persons within the State of Florida Designated by Owner upon whom notice or other documents may be served as provided by Section 713.13(1)(b), Florida Statutes.

Name and address: _____

In addition to himself, Owner Designates _____

Section 713.13(1)(b), Florida Statutes. To receive a copy of the Lienor's Notice as Provided in _____

Expiration Date of Notice of Commencement:

The expiration date is 1 year from date of recording unless a different date is specified.

WARNING TO OWNER: ANY PAYMENTS MADE BY THE OWNER AFTER THE EXPIRATION OF THE NOTICE OF COMMENCEMENT ARE CONSIDERED IMPROPER PAYMENTS UNDER CHAPTER 713, PART I, SECTION 713.13, FLORIDA STATUTES, AND CAN RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS TO YOUR PROPERTY. A NOTICE OF COMMENCEMENT MUST BE RECORDED AND POSTED ON THE JOB SITE BEFORE THE FIRST INSPECTION. IF YOU INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR AN ATTORNEY BEFORE COMMENCING WORK OR RECORDING YOUR NOTICE OF COMMENCEMENT.

STATE OF FLORIDA

OWNERS SIGNATURE

(NOTE: Per Florida Statute 713.13(1)(g), owner must sign, and no one else may be permitted to sign in his or her stead

The foregoing instrument was acknowledged before me this 20th day of January, 2021

by Sonia Chopra, Who is personally known to me ☐

OR who has produced identification ☒ type of identification produced Florida Driver License

VERIFICATION PURSUANT TO SECTION 92.525, FLORIDA STATUTES

UNDER PENALTIES OF PERJURY, I DECLARE THAT I HAVE READ THE FOREGOING AND THAT THE FACTS STATED IN IT ARE TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF.

[Signature]
SIGNATURE OF NATURAL PERSON SIGNING ABOVE



[Signature]
Notary Signature

Permit Number:

Folio/Parcel Identification Number: 02-23-27-0805-00-860

Prepared by: Superior Solar

Return to: 275 Hunt Park Circle
Longwood, FL 32750

NOTICE OF COMMENCEMENT

State of Florida, Orange County

The undersigned hereby gives notice that improvement(s) will be made to certain real property, and in accordance with Chapter 713, Florida Statutes, the following information is provided in this Notice of Commencement.

1. Description of property (legal description of the property, and street address if available) 2059 Tillman Ave
Benson's Landings 106/139 Lot 86 Winter Garden FL

2. General description of improvement(s) 5 4x12 Pool Solar Panels

3. Owner Information

Name: Bob Chopra Telephone Number: 407-973-4228
Address: 2059 Tillman Ave Interest in Property: Owner

4. Fee Simple Title Holder (if other than owner shown above)

Name: Telephone Number:

5. Contractor

Name: Superior Solar Telephone Number: 407-331-9077
Address: 275 Hunt Park Circle, Longwood FL 32750

6. Surety (if any)

Name: Telephone Number:

Address: Amount of bond \$:

7. Lender (if any)

Name: Telephone Number:

8. Persons within the State of Florida designated by Owner upon whom notices or other documents may be served as provided by §713.13(1)(a)7, Florida Statutes.

Name: Telephone Number:

9. In addition to himself or herself, Owner designates the following to receive a copy of the Lienor's Notice as provided in §713.13(1)(b), Florida Statutes.

Name: Telephone Number:

10. Expiration date of notice of commencement (the expiration date is one year from the date of recording unless a different date is specified)

WARNING TO OWNER: ANY PAYMENTS MADE BY THE OWNER AFTER THE EXPIRATION OF THE NOTICE OF COMMENCEMENT ARE CONSIDERED IMPROPER PAYMENTS UNDER CHAPTER 713, PART I, SECTION 713.13, FLORIDA STATUTES, AND CAN RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS TO YOUR PROPERTY. A NOTICE OF COMMENCEMENT MUST BE RECORDED AND POSTED ON THE JOB SITE BEFORE THE FIRST INSPECTION. IF YOU INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR AN ATTORNEY BEFORE COMMENCING WORK OR RECORDING YOUR NOTICE OF COMMENCEMENT.

11. Signature of Owner: Bob Chopra
(or Owner's Authorized Officer/Director/Partner/Manager §713.13(1)(d)) Signatory's Printed Name/Title/Office

The foregoing instrument was acknowledged before me this 12 day of March 2023 by Bob Chopra as Owner for Homestead (year) (name of person)

(Type of authority, e.g., officer, trustee, attorney in fact) (Name of party or, behalf of whom instrument was executed)

Signature of Notary Public - State of Florida

(Print, type, or stamp commissioned name of Notary Public)
KRISTINA ADAMS
Notary Public - State of Florida
My Comm. Expires Nov 18, 2024
Commission # DD 941479

Personally Known X OR Produced D
Type of ID Produced

Verification pursuant to Section 92.525, Florida Statutes: Under penalties of perjury, I declare that I have read the foregoing and that the facts stated in it are true to the best of my knowledge and belief.

Signature of Natural Person Signing on Line 11 Above

Form Revised: 11/20/07

DOC# 20230152273
03/22/2023 01:15:09 PM Page 1 of 1
Rec Fee: \$10.00 Doc Type: NC
Martha O. Haynie, Comptroller
Orange County, FL
MB - Ret To: SUPERIOR SOLAR



BRONSON'S LANDINGS

SECTION 02, TOWNSHIP 23 SOUTH, RANGE 27 EAST
CITY OF WINTER GARDEN, ORANGE COUNTY, FLORIDA

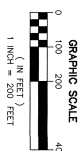
SHEET 2 OF 11

PLAT
BOOK

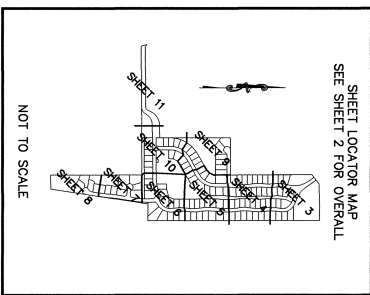
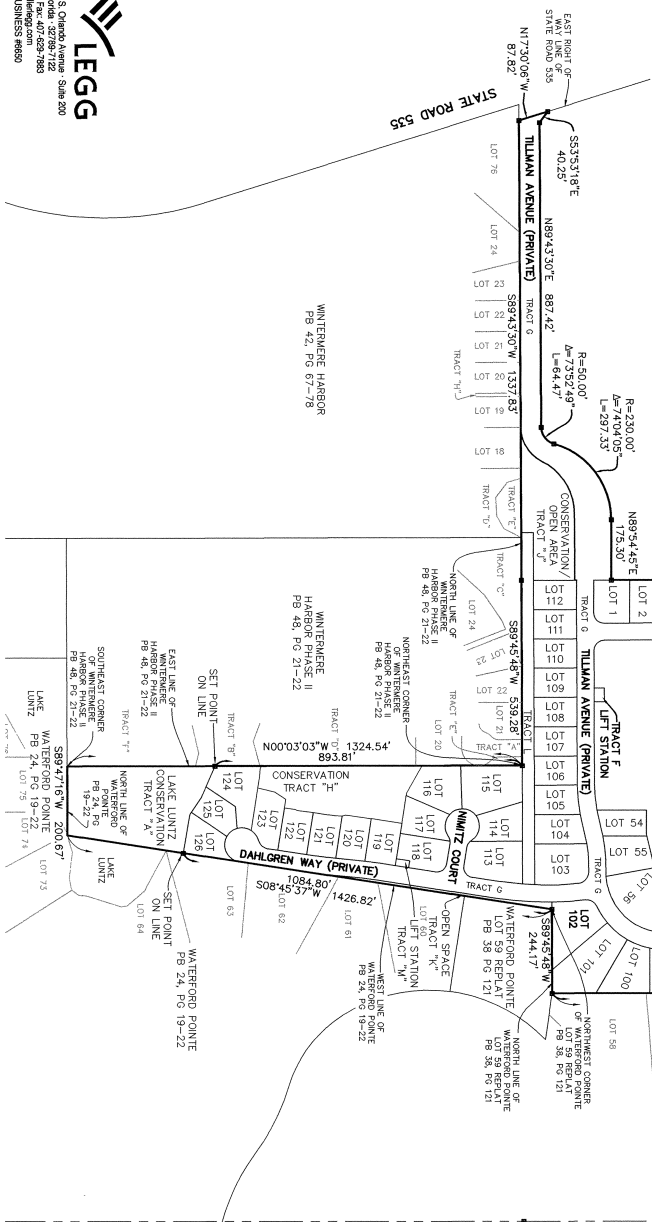
66

PAGE
140

SEE SHEETS 3-11 FOR DETAILS



MILLER LEGG
General Florida Office: 651 S. Orange Avenue, Suite 200
Orlando, FL 32814
407-263-8860 Fax: 407-263-7883
www.millerlegg.com
LICENSED BUSINESS #66869



LEGEND

- = SET 4"x4" CONCRETE PERMANENT REFERENCE MONUMENT LBB680
- = SET 1/2" IRON ROD LBB680
- = SET 1/2" IRON ROD LBB680
- = DELTA
- L = LENGTH
- RB = RADIAL BEARING
- DE = DRAINAGE EASEMENT
- UE = UTILITY EASEMENT
- OR = ORIGIN RECORD BOOK
- PG = PAGE(S)
- RLS = REGISTERED LAND SURVEYOR
- COR = CERTIFIED CORNER REFERENCE

NOTE: ALL LOTS ARE SUBJECT TO THE FOLLOWING EASEMENTS, EXCEPT WHERE NOTED OTHERWISE:
- 12.00' UTILITY EASEMENT ADJACENT TO ALL RIGHT OF WAYS
- 10.00' DRAINAGE EASEMENT ADJACENT TO ALL REAR LOT LINES
- 5.00' DRAINAGE & UTILITY EASEMENT ADJACENT TO ALL SIDE LOT LINES

BRONSON'S LANDINGS

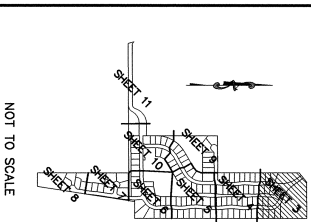
SECTION 02, TOWNSHIP 23 SOUTH, RANGE 27 EAST CITY OF WINTER GARDEN, ORANGE COUNTY, FLORIDA

SHEET 3 OF 11

PLAT
BOOK
66

PAGE
141

SHEET LOCATOR MAP
SEE SHEET 2 FOR OVERALL



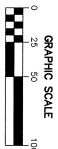
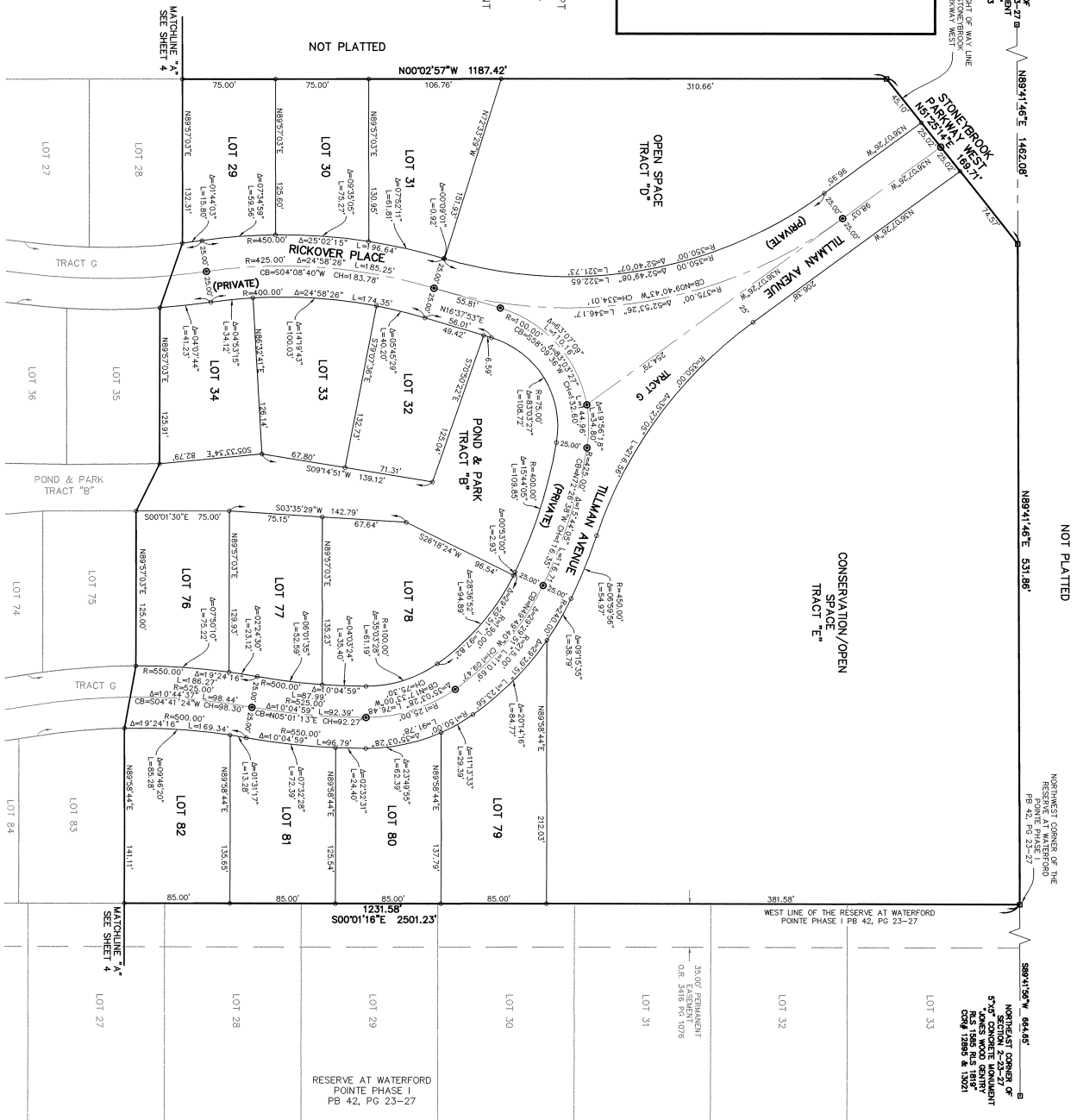
NOT TO SCALE

NOTE: ALL LOTS ARE SUBJECT
TO THE FOLLOWING EASEMENTS, EXCEPT
WHERE NOTED OTHERWISE:
- 12.00' UTILITY EASEMENT ADJACENT
TO ALL RIGHT OF WAYS
- 10.00' DRAINAGE EASEMENT
ADJACENT TO ALL REAR LOT LINES
- 5.00' DRAINAGE & UTILITY EASEMENT
ADJACENT TO ALL SIDE LOT LINES

LEGEND

- = SET 4"x4" CONCRETE PERMANENT REFERENCE
- = SET 1/2" IRON ROD LB6680
- = SET 1/2" IRON ROD LB6680
- △ = DELTA
- L = LENGTH
- CB = CHORD BEARING
- CH = CHORD BEARING
- RE = RADIAL BEARING
- DE = DELTA BEARING
- OR = OFFICIAL RECORD BOOK
- PG = PLAT BOOK
- PGS = REGISTERED LAND SURVEYOR
- COR = CERTIFIED CORNER REFERENCE

NOT PLATTED



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Winter Park, Florida 32789-7122
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www.millerlegg.com
LICENSED BUSINESS 96660

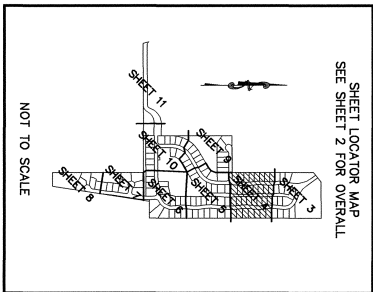
BRONSON'S LANDINGS

SECTION 02, TOWNSHIP 23 SOUTH, RANGE 27 EAST CITY OF WINTER GARDEN, ORANGE COUNTY, FLORIDA

SHEET 4 OF 11

PLAT
BOOK
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142

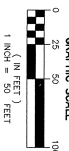
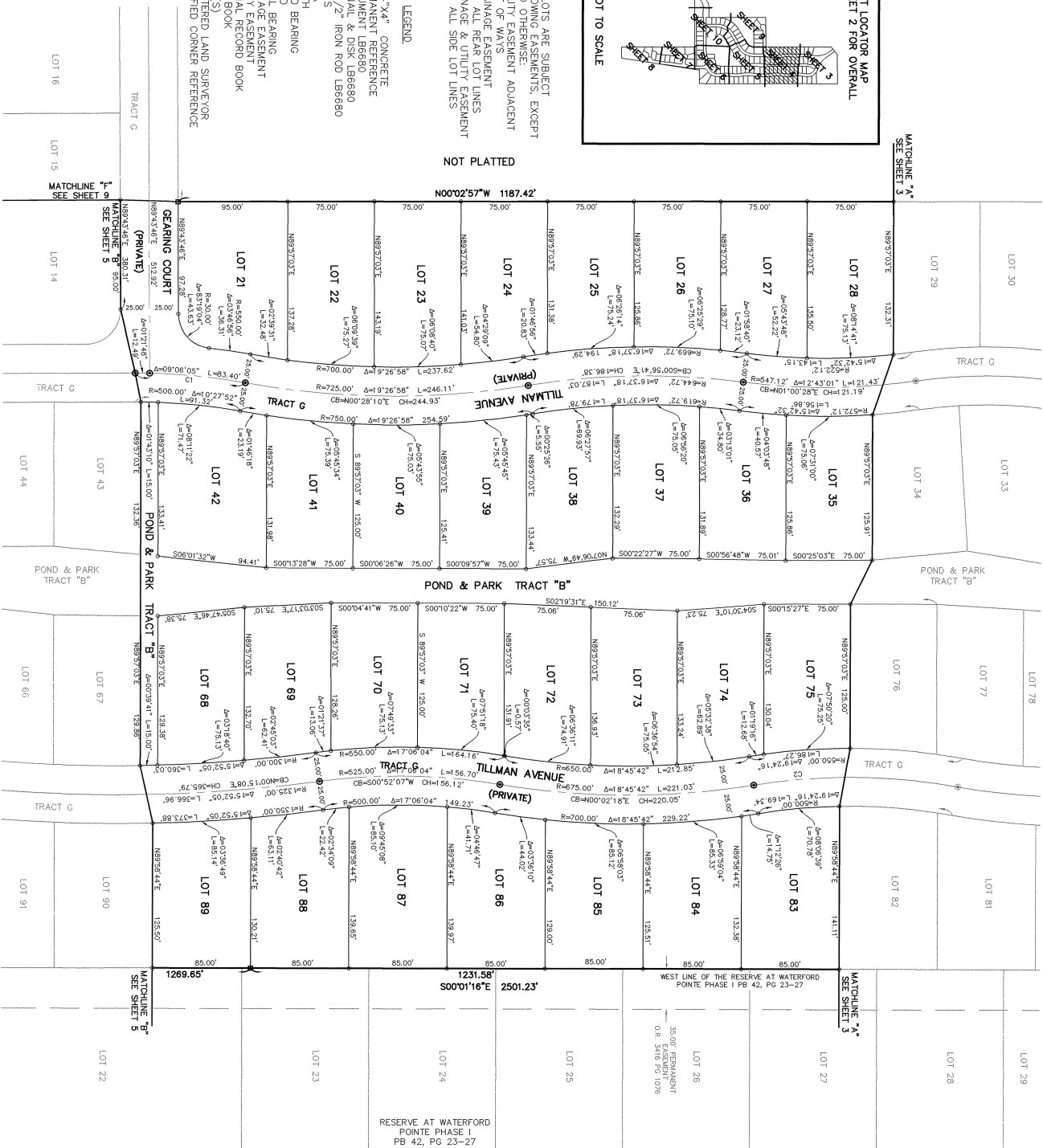


NOTE: ALL LOTS ARE SUBJECT TO THE FOLLOWING EASEMENTS, EXCEPT WHERE NOTED OTHERWISE:
- 12.00' UTILITY EASEMENT ADJACENT TO ALL RIGHT-OF-WAYS
- 10.00' DRAINAGE EASEMENT ADJACENT TO ALL DRAINAGE EASEMENT LINES
- 5.00' DRAINAGE & UTILITY EASEMENT ADJACENT TO ALL SIDE LOT LINES

LEGEND

- = SET 4"x4" CONCRETE PERMANENT REFERENCE MONUMENT LB685
- = SET 1/2" IRON ROD LB6680
- R = RADIUS
- Δ = DELTA
- L = LENGTH
- CB = CHORD BEARING
- CH = CHORD
- DB = DRAINAGE EASEMENT
- UE = UTILITY EASEMENT
- OR = OFFICIAL RECORD BOOK
- PB = PLAT BOOK
- PG = PAGE(S)
- RLS = REGISTERED LAND SURVEYOR
- COR = CERTIFIED CORNER REFERENCE

NOT PLATTED

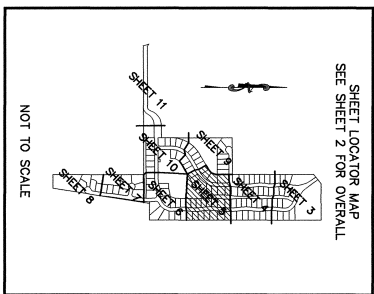
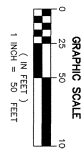


BRONSON'S LANDINGS
SECTION 02, TOWNSHIP 23 SOUTH, RANGE 27 EAST
CITY OF WINTER GARDEN, ORANGE COUNTY, FLORIDA

SHEET 5 OF 11

PLAT
BOOK
66

PAGE
143



NOTE: ALL LOTS ARE SUBJECT TO THE FOLLOWING EASEMENTS, EXCEPT WHERE NOTED OTHERWISE:
- 12.00' UTILITY EASEMENT ADJACENT TO ALL RIGHT OF WAYS
- 10.00' DRAINAGE EASEMENT ADJACENT TO ALL REAR LOT LINES
- 5.00' DRAINAGE EASEMENT ADJACENT TO ALL SIDE LOT LINES

LEGEND

- = SET 4"x4" CONCRETE PERMANENT REFERENCE MARK
- = SET 1/2" IRON ROD LB6680
- = SET 1/2" IRON ROD LB6680
- △ = DELTA
- L = LENGTH
- CB = CHORD BEARING
- CH = CHORD BEARING
- RB = RADIAL BEARING
- UE = UTILITY EASEMENT
- OR = OFFICIAL RECORD BOOK
- PB = PLAT BOOK
- PG = PAGE(S)
- RS = REGISTERED LAND SURVEYOR
- CR = CERTIFIED CORNER REFERENCE

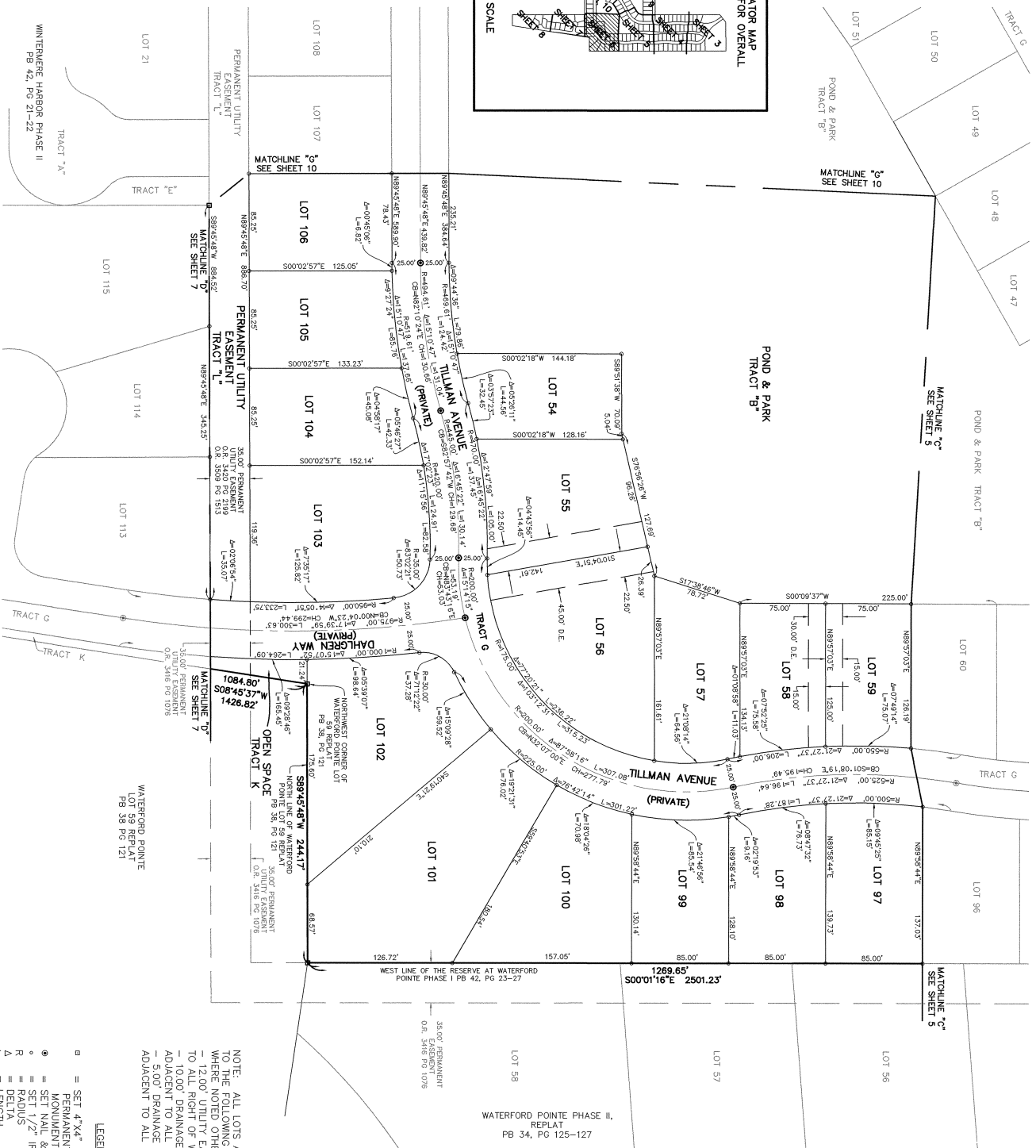
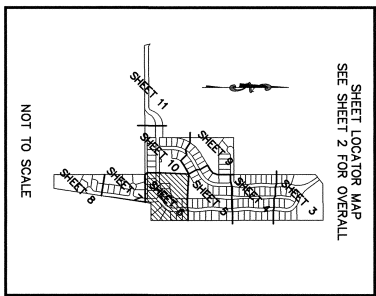


MILLER LEGG
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407-838-3333
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LICENSED BUSINESS 96690

BRONSON'S LANDINGS
SECTION 02, TOWNSHIP 23 SOUTH, RANGE 27 EAST
CITY OF WINTER GARDEN, ORANGE COUNTY, FLORIDA

SHEET 6 OF 11

PLAT BOOK **66** PAGE **144**

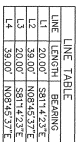


NOTE: ALL LOTS ARE SUBJECT TO THE FOLLOWING EASEMENTS, EXCEPT WHERE NOTED OTHERWISE:
- 12.00' UTILITY EASEMENT ADJACENT TO ALL RIGHT OF WAYS
- 10.00' DRAINAGE EASEMENT ADJACENT TO ALL REAR LOT LINES
- 30.00' DRAINAGE & UTILITY EASEMENT ADJACENT TO ALL SIDE LOT LINES

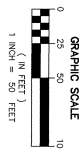
LEGEND

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- = SET 1/2" IRON ROD L86680
- = SET 1/2" IRON ROD L86680
- Δ = DELTA
- L = LENGTH
- CB = CHORD BEARING
- DB = DRAINAGE EASEMENT
- UE = UTILITY EASEMENT
- OR = OFFICIAL RECORD BOOK
- PG = PAGE(S)
- RLS = REGISTERED LAND SURVEYOR
- COR = CERTIFIED CORNER REFERENCE

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Winter Park, Florida 32789-7122
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LICENSED BUSINESS #6650



E	= SET 4 "X4" CONCRETE
F	= PLANT REFERENCE
G	= SET NAIL & DISK LB6680
H	= RADIUS 2 IRON ROD LB6680
I	= DELTA
J	= LENGTH
K	= CHORD BEARING
L	= CHORD
M	= RADIAL BEARING
N	= UTILITY ELEMENT
O	= OFFICIAL RECORD BOOK
P	= PLAT BOOK
Q	= PAGE(S)
R	= REGISTERED LAND SURVEYOR
S	= CERTIFIED CORNER REFERENCE



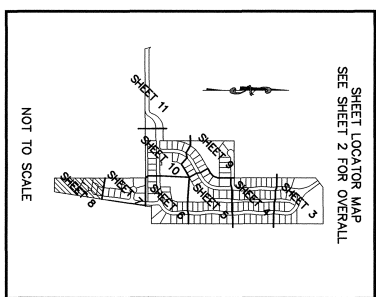
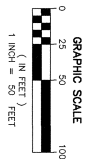
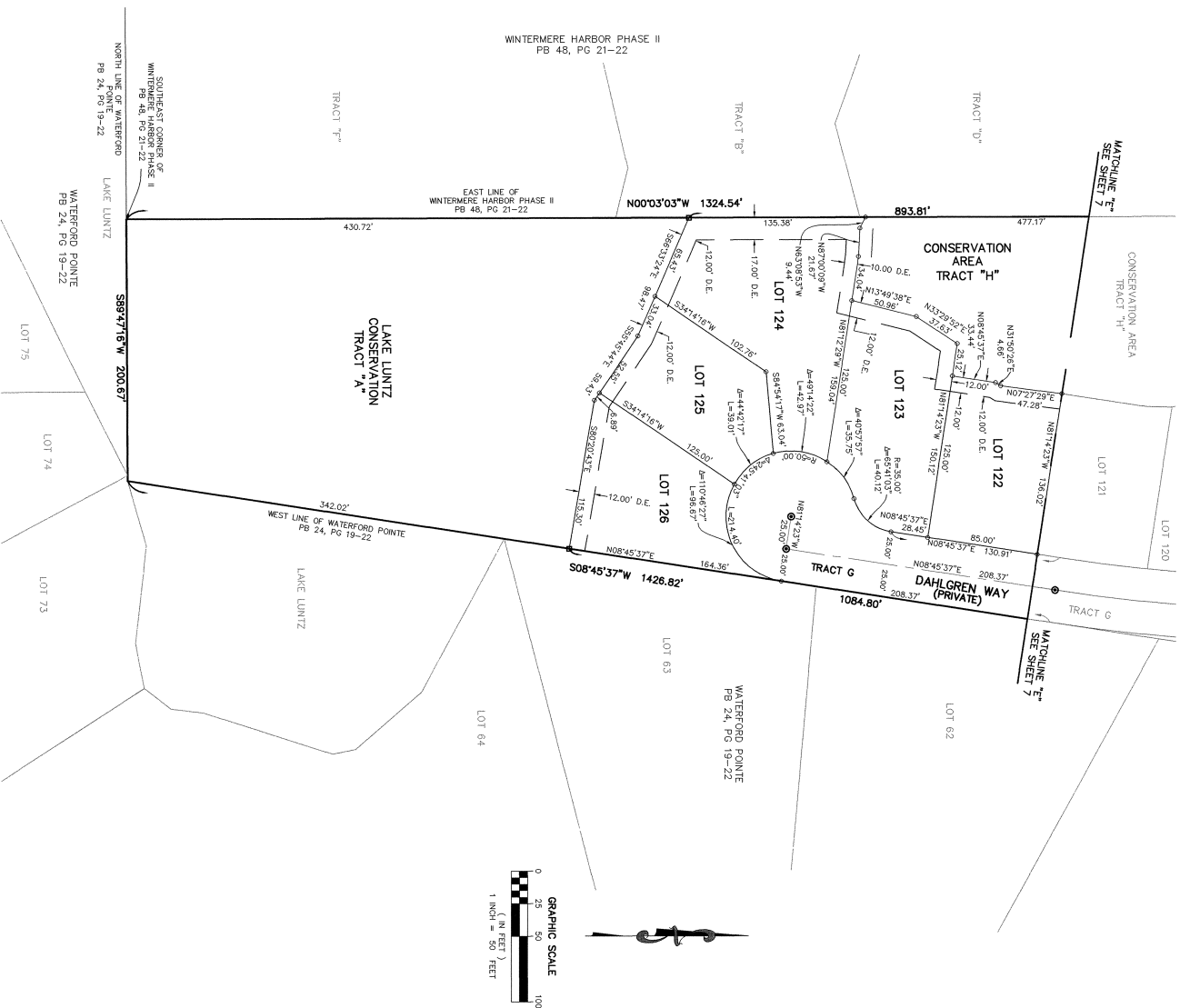
NOT TO SCALE

BRONSON'S LANDINGS

SECTION 02, TOWNSHIP 23 SOUTH, RANGE 27 EAST CITY OF WINTER GARDEN, ORANGE COUNTY, FLORIDA

SHEET 8 OF 11

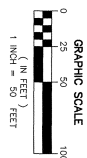
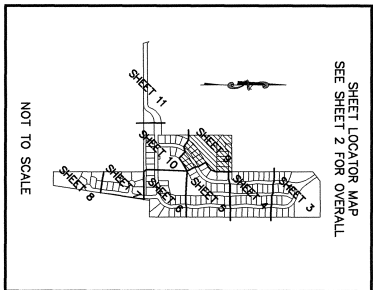
PLAT BOOK **66** PAGE **146**



NOTE: ALL LOTS ARE SUBJECT TO THE FOLLOWING EASEMENTS, EXCEPT WHERE NOTED OTHERWISE:
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 - 10.00' DRAINAGE EASEMENT ADJACENT TO ALL REAR LOT LINES
 - 5.00' DRAINAGE & UTILITY EASEMENT ADJACENT TO ALL SIDE LOT LINES

- LEGEND
- = SET 4"x4" CONCRETE PERMANENT REFERENCE MONUMENT LB6680
 - = SET NAIL & DISK LB6680
 - ⊙ = SET 1/2" IRON ROD LB6680
 - R = RADIUS
 - Δ = DELTA
 - L = LENGTH
 - CB = CHORD BEARING
 - CH = CHORD
 - RB = RADIAL BEARING
 - DE = DRAINAGE EASEMENT
 - UE = UTILITY EASEMENT
 - OR = OFFICIAL RECORD BOOK
 - PB = PLAT BOOK
 - PG = PAGE(S)
 - RS = REGISTERED LAND SURVEYOR
 - COR = CERTIFIED CORNER REFERENCE

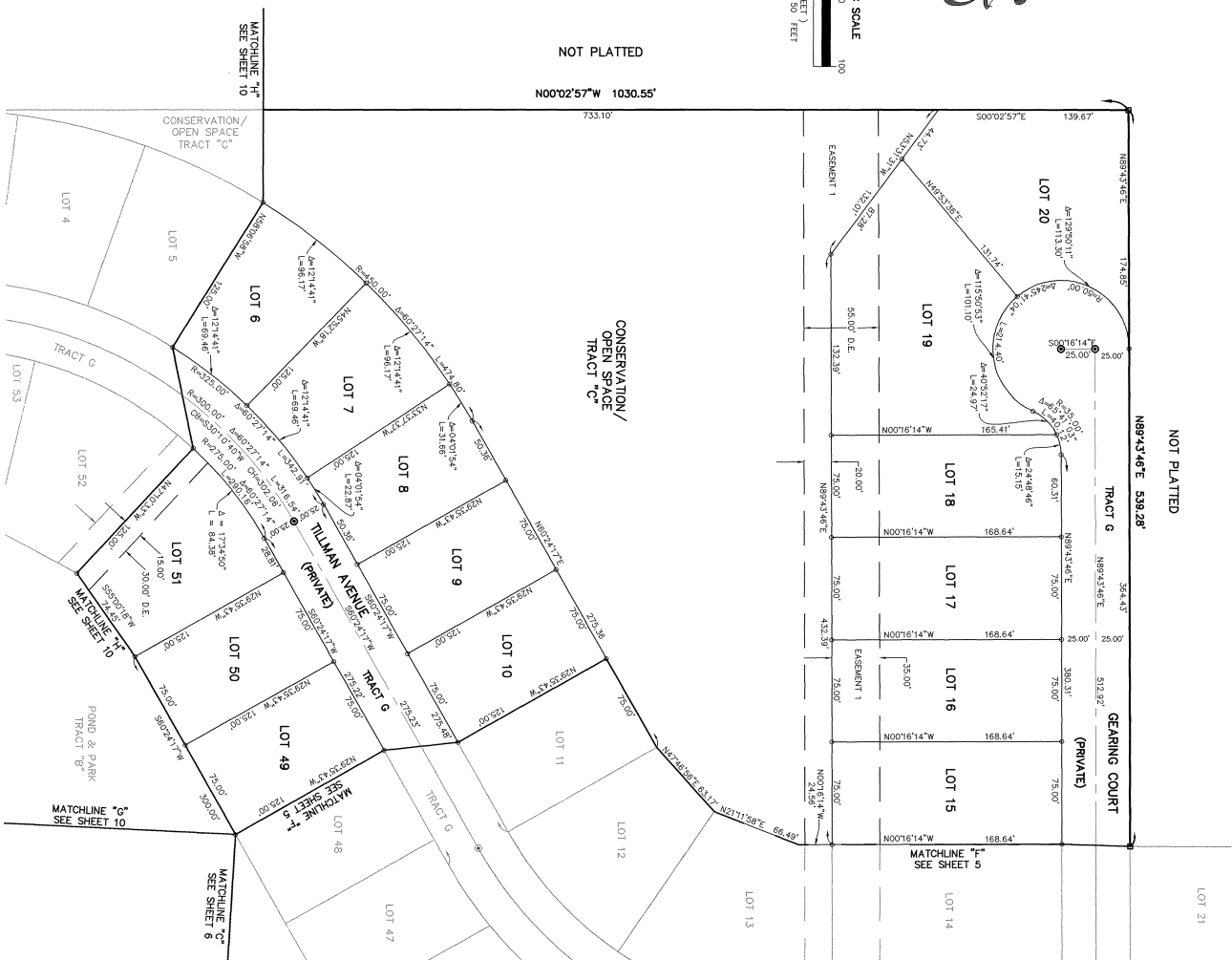
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 Winter Park, Florida 32789-7122
 407.836.0800
 www.millerlegg.com
 LICENSED BUSINESS 96690



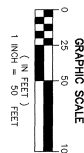
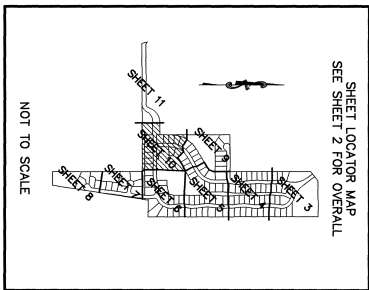
NOTE: ALL LOTS ARE SUBJECT TO THE FOLLOWING EASEMENTS, EXCEPT WHERE NOTED OTHERWISE:
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- 5.00' DRAINAGE & UTILITY EASEMENT ADJACENT TO ALL SIDE LOT LINES

LEGEND

- = SET 4"x4" CONCRETE SETBACK REFERENCE MONUMENT LB6680
- = SET NAIL & DISK LB6680
- = SET 1/2" IRON ROD LB6680
- R = RADIUS
- Δ = DELTA
- L = LENGTH
- CB = CHORD BEARING
- CH = CHORD
- SB = RADIAL BEARING
- DE = DRAINAGE EASEMENT
- U.E. = UTILITY EASEMENT
- O.R. = OFFICIAL RECORD BOOK
- PB = PLAT BOOK
- PG = PAGE(S)
- RLS = REGISTERED LAND SURVEYOR
- COR = CERTIFIED CORNER REFERENCE

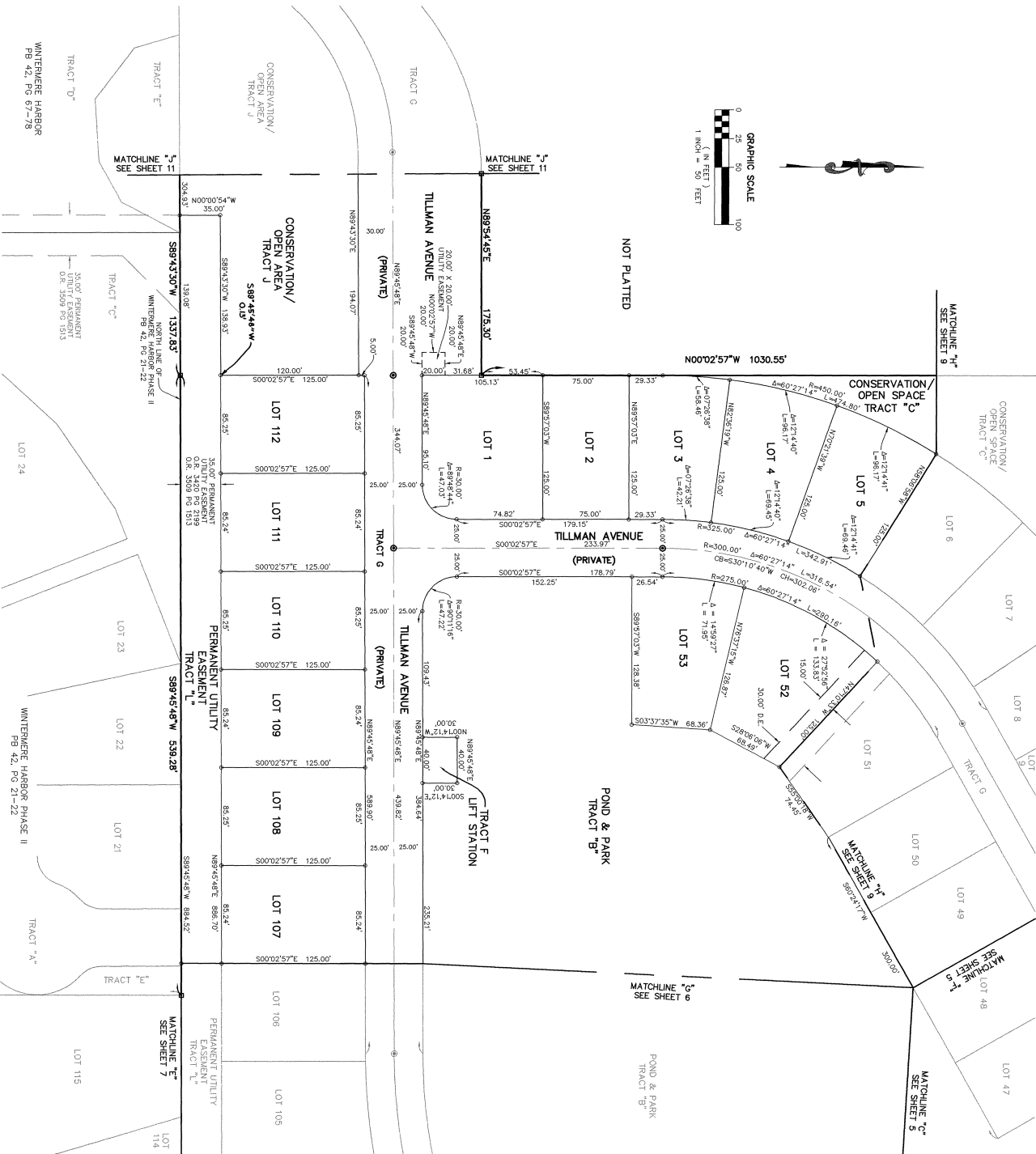


BRONSON'S LANDINGS
SECTION 02, TOWNSHIP 23 SOUTH, RANGE 27 EAST
CITY OF WINTER GARDEN, ORANGE COUNTY, FLORIDA



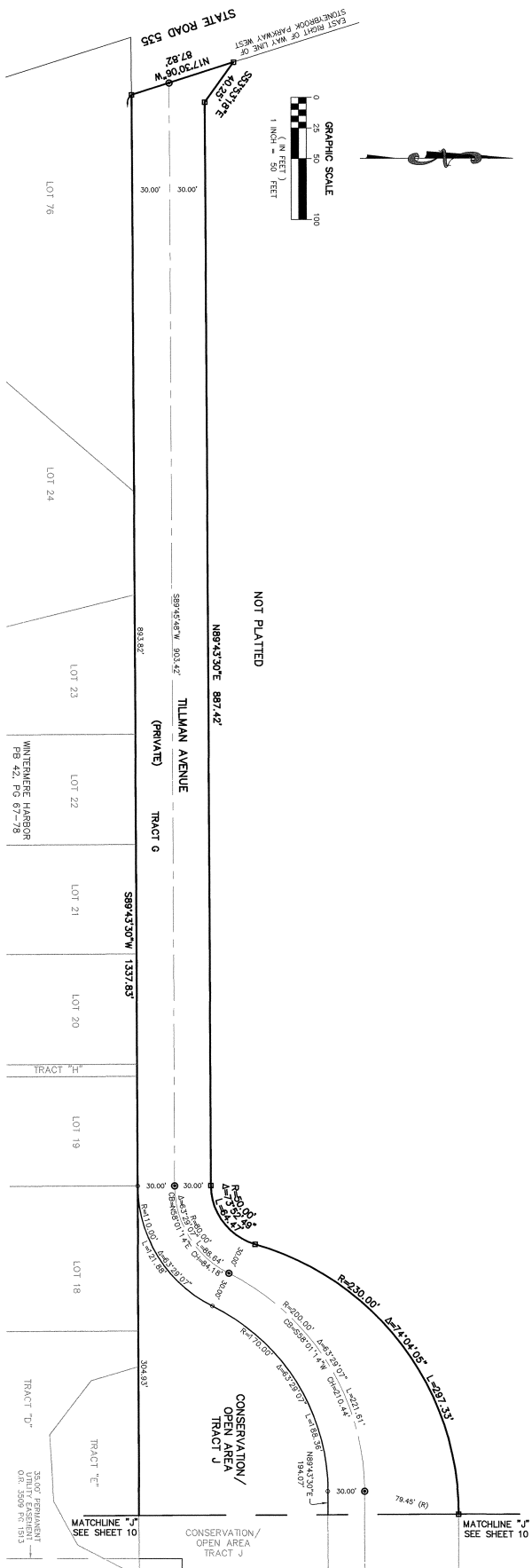
NOTE: ALL LOTS ARE SUBJECT TO THE FOLLOWING EASEMENTS, EXCEPT WHERE NOTED OTHERWISE:
- 10.00' DRAINAGE EASEMENT ADJACENT TO ALL RIGHT OF WAYS
- 10.00' DRAINAGE EASEMENT ADJACENT TO ALL REAR LOT LINES
- 5.00' DRAINAGE & UTILITY EASEMENT ADJACENT TO ALL SIDE LOT LINES

LEGEND:
□ = SET 4"x4" CONCRETE PERMANENT REFERENCE MONUMENT LB6680
● = SET 1/2" IRON ROD LB6680
R = RADIUS
L = LENGTH
CB = CHORD BEARING
CH = CHORD
RB = RADIAL BEARING
D.E. = DRAINAGE EASEMENT
U.E. = UTILITY EASEMENT
P.B. = PLAT BOOK
PG = PAGE(S)
R.L.S. = REGISTERED LAND SURVEYOR
C.C.R. = CERTIFIED CORNER REFERENCE



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COURT REPORTERS & VIDEO
407-629-8890 Fax: 407-629-7122
Winter Park, Florida 32789-1722
LICENSED BUSINESS #650

BRONSON'S LANDINGS



94

SHEET 1 LOCATOR MAP
SEE SHEET 2 FOR OVERALL

NOT TO SCALE

NOTE: ALL LOTS ARE SUBJECT TO THE FOLLOWING EASEMENTS, EXCEPT WHERE NOTED OTHERWISE:

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- 5.00' DRAINAGE & UTILITY EASEMENT ADJACENT TO ALL SIDE LOT LINES

LEGEND

- | | |
|------|-------------------------------|
| Q | = SET 4 "X4" CONCRETE |
| ● | = MONUMENT REFERENCE |
| ● | = SET NAIL & DISK LB6650 |
| ● | = SET 1/2" IRON ROD LB6650 |
| ● | = RODS |
| Δ | = DELTA |
| L | = LENGTH |
| CB | = CHORD BEARING |
| CHD | = CHORD |
| RB | = RADIAL BEARING |
| D.E. | = DRAINAGE ELEMENT |
| O.C. | = OFFICIAL RECORD |
| PB | = PLANT BOOK |
| PG | = PAGE(S) |
| RS | = REGISTERED LAND SURVEYOR |
| RCR | = REGISTERED CORNER REFERENCE |

TITLE INSURANCE COMMITMENT

AMERICAN LAND TITLE ASSOCIATION
COMMITMENT FOR TITLE INSURANCE

ISSUED BY OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

NOTICE

IMPORTANT-READ CAREFULLY: THIS COMMITMENT IS AN OFFER TO ISSUE ONE OR MORE TITLE INSURANCE POLICIES. ALL CLAIMS OR REMEDIES SOUGHT AGAINST THE COMPANY INVOLVING THE CONTENT OF THIS COMMITMENT OR THE POLICY MUST BE BASED SOLELY IN CONTRACT.

THIS COMMITMENT IS NOT AN ABSTRACT OF TITLE, REPORT OF THE CONDITION OF TITLE, LEGAL OPINION, OPINION OF TITLE, OR OTHER REPRESENTATION OF THE STATUS OF TITLE. THE PROCEDURES USED BY THE COMPANY TO DETERMINE INSURABILITY OF THE TITLE, INCLUDING ANY SEARCH AND EXAMINATION, ARE PROPRIETARY TO THE COMPANY, WERE PERFORMED SOLELY FOR THE BENEFIT OF THE COMPANY, AND CREATE NO EXTRACONTRACTUAL LIABILITY TO ANY PERSON, INCLUDING A PROPOSED INSURED.

THE COMPANY'S OBLIGATION UNDER THIS COMMITMENT IS TO ISSUE A POLICY TO A PROPOSED INSURED IDENTIFIED IN SCHEDULE A IN ACCORDANCE WITH THE TERMS AND PROVISIONS OF THIS COMMITMENT. THE COMPANY HAS NO LIABILITY OR OBLIGATION INVOLVING THE CONTENT OF THIS COMMITMENT TO ANY OTHER PERSON.

**COMMITMENT TO ISSUE
POLICY**

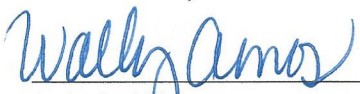
Subject to the Notice; Schedule B, Part I-Requirements; Schedule B, Part II-Exceptions; and the Commitment Conditions, Old Republic National Title Insurance Company, a Florida Corporation (the "Company"), commits to issue the Policy according to the terms and provisions of this Commitment. This Commitment is effective as of the Commitment Date shown in Schedule A for each Policy described in Schedule A, only when the Company has entered in Schedule A both the specified dollar amount as the Proposed Policy Amount and the name of the Proposed Insured.

If all of the Schedule B, Part I-Requirements have not been met within 6 months after the Commitment Date, this Commitment terminates and the Company's liability and obligation end.

This page is only a part of a 2016 ALTA Commitment for Title Insurance. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I - Requirements; and Schedule B, Part II - Exceptions.

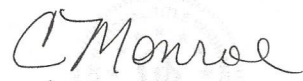
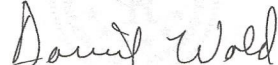
Issued through the Office of

Keebler, Nabisco & Amos, P.A. - 5555
123 Milano Way
Orlando, FL 32822


Authorized Signatory



OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY
A Stock Company
400 Second Avenue South, Minneapolis, Minnesota 55401
(612) 371-1111

By  President
Attest  Secretary

Commitment Conditions

1. DEFINITIONS

- (a) "Knowledge" or "Known": Actual or imputed knowledge, but not constructive notice imparted by the Public Records.
 - (b) "Land": The land described in Schedule A and affixed improvements that by law constitute real property. The term "Land" does not include any property beyond the lines of the area described in Schedule A, nor any right, title, interest, estate, or easement in abutting streets, roads, avenues, alleys, lanes, ways, or waterways, but this does not modify or limit the extent that a right of access to and from the Land is to be insured by the Policy.
 - (c) "Mortgage": A mortgage, deed of trust, or other security instrument, including one evidenced by electronic means authorized by law.
 - (d) "Policy": Each contract of title insurance, in a form adopted by the American Land Title Association, issued or to be issued by the Company pursuant to this Commitment.
 - (e) "Proposed Insured": Each person identified in Schedule A as the Proposed Insured of each Policy to be issued pursuant to this Commitment.
 - (f) "Proposed Policy Amount": Each dollar amount specified in Schedule A as the Proposed Policy Amount of each Policy to be issued pursuant to this Commitment.
 - (g) "Public Records": Records established under state statutes at the Commitment Date for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge.
 - (h) "Title": The estate or interest described in Schedule A.
2. If all of the Schedule B, Part I-Requirements have not been met within the time period specified in the Commitment to Issue Policy, this Commitment terminates and the Company's liability and obligation end.
3. The Company's liability and obligation is limited by and this Commitment is not valid without:
- (a) the Notice;
 - (b) the Commitment to Issue Policy;
 - (c) the Commitment Conditions;
 - (d) Schedule A;
 - (e) Schedule B, Part I-Requirements;
 - (f) Schedule B, Part II-Exceptions; and
 - (g) a counter-signature by the Company or its issuing agent that may be in electronic form.

4. COMPANY'S RIGHT TO AMEND

The Company may amend this Commitment at any time. If the Company amends this Commitment to add a defect, lien, encumbrance, adverse claim, or other matter recorded in the Public Records prior to the Commitment Date, any liability of the Company is limited by Commitment Condition 5. The Company shall not be liable for any other amendment to this Commitment.

5. LIMITATIONS OF LIABILITY

- (a) The Company's liability under Commitment Condition 4 is limited to the Proposed Insured's actual expense incurred in the interval between the Company's delivery to the Proposed Insured of the Commitment and the delivery of the amended Commitment, resulting from the Proposed Insured's good faith reliance to:
 - (i) comply with the Schedule B, Part I-Requirements;
 - (ii) eliminate, with the Company's written consent, any Schedule B, Part II-Exceptions; or
 - (iii) acquire the Title or create the Mortgage covered by this Commitment.
- (b) The Company shall not be liable under Commitment Condition 5(a) if the Proposed Insured requested the amendment or had Knowledge of the matter and did not notify the Company about it in writing.
- (c) The Company will only have liability under Commitment Condition 4 if the Proposed Insured would not have incurred the expense had the Commitment included the added matter when the Commitment was first delivered to the Proposed Insured.
- (d) The Company's liability shall not exceed the lesser of the Proposed Insured's actual expense incurred in good faith and described in Commitment Conditions 5(a)(i) through 5(a)(iii) or the Proposed Policy Amount.
- (e) The Company shall not be liable for the content of the Transaction Identification Data, if any.
- (f) In no event shall the Company be obligated to issue the Policy referred to in this Commitment unless all of the Schedule B, Part I – Requirements have been met to the satisfaction of the Company.
- (g) In any event, the Company's liability is limited by the terms and provisions of the Policy.

6. LIABILITY OF THE COMPANY MUST BE BASED ON THIS COMMITMENT

- (a) Only a Proposed Insured identified in Schedule A, and no other person, may make a claim under this Commitment.
- (b) Any claim must be based in contract and must be restricted solely to the terms and provisions of this Commitment.
- (c) Until the Policy is issued, this Commitment, as last revised, is the exclusive and entire agreement between the parties with respect to the subject matter of this Commitment and supersedes all prior commitment negotiations, representations, and proposals of any kind, whether written or oral, express or implied, relating to the subject matter of this Commitment.
- (d) The deletion or modification of any Schedule B, Part II-Exception does not constitute an agreement or obligation to provide coverage beyond the terms and provisions of this Commitment or the Policy.
- (e) Any amendment or endorsement to this Commitment must be in writing and authenticated by a person authorized by the Company.
- (f) When the Policy is issued, all liability and obligation under this Commitment will end and the Company's only liability will be under the Policy.

7. IF THIS COMMITMENT HAS BEEN ISSUED BY AN ISSUING AGENT

The issuing agent is the Company's agent only for the limited purpose of issuing title insurance commitments and policies. The issuing agent is not the Company's agent for the purpose of providing closing or settlement services.

8. PRO-FORMA POLICY

The Company may provide, at the request of a Proposed Insured, a pro-forma policy illustrating the coverage that the Company may provide. A pro-forma policy neither reflects the status of Title at the time that the pro-forma policy is delivered to a Proposed Insured, nor is it a commitment to insure.

Old Republic National Title Insurance Company

AMERICAN LAND TITLE ASSOCIATION COMMITMENT

Schedule A

Transaction Identification Data for reference only:

Commitment Number: Chopra to Black	Revision Number: 1	Issuing Office File Number: Chopra to Black	Issuing Office: 5555
Property Address: 2059 Tillman Avenue, Winter Garden, FL 34787	Loan ID Number: 61638695	ALTA Universal ID: 0112233	Issuing Agent: Keebler, Nabisco & Amos, P.A.

1. Commitment Date: May 13, 2023 @ 11:00 PM

2. Policy to be issued: Proposed Policy Amount:

OWNER'S: ALTA Owner's Policy (6/17/06) (With Florida Modifications) \$550,000.00

Proposed Insured: Edward F. Black and Pamela M. Black

MORTGAGEE: ALTA Loan Policy (6/17/06) (With Florida Modifications) \$410,000.00

Proposed Insured: Nutter Butter Bank, its successors and/or assigns as their interests may appear

3. The estate or interest in the Land described or referred to in this Commitment is Fee Simple. (Identify estate covered, i.e., fee, leasehold, etc.)

4. Title to the estate or interest in the Land is at the Commitment Date vested in:

Sonia Chopra and Rahul B. Chopra, wife and husband

5. The Land is described as follows:

Lot 86, BRONSON'S LANDINGS, according to the Plat thereof, recorded in Plat Book 66, Page 139, of the Public Records of Orange County, Florida.

OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

400 Second Avenue South, Minneapolis, Minnesota 55401, (612) 371-1111



AUTHORIZED SIGNATORY

Wally Amos
Attorney at Law

This page is only a part of a 2016 ALTA Commitment for Title Insurance. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I – Requirements; and Schedule B, Part II – Exceptions.

Old Republic National Title Insurance Company

AMERICAN LAND TITLE ASSOCIATION COMMITMENT Schedule B-I

Issuing Office File Number: Chopra to Black

Requirements

All of the following requirements must be met:

1. The Proposed Insured must notify the Company in writing of the name of any party not referred to in this Commitment who will obtain an interest in the Land or who will make a loan on the Land. The Company may then make additional Requirements or Exceptions.
2. Pay the agreed amount for the estate or interest to be insured.
3. Pay the premiums, fees, and charges for the Policy to the Company.
4. Documents satisfactory to the Company that convey the Title or create the Mortgage to be insured, or both, must be properly authorized, executed, delivered, and recorded in the Public Records.
 - A. Warranty Deed from Sonia Chopra and Rahul B. Chopra, wife and husband, to Edward F. Black and Pamela M. Black, husband and wife.
 - B. Mortgage from Edward F. Black and Pamela M. Black, husband and wife, to Nutter Butter Bank in the amount of \$410,000.00.
5. An update of the title search must be completed just prior to the closing and the commitment must be endorsed to require clearance of, or take exception for, any additional title defects or adverse matters found.
6. Record satisfaction of the mortgage from Sonia Chopra and Rahul Chopra to Bank of America, N.A., dated April 2, 2007, and recorded in O.R. Book 9209, Page 1399, Public Records of Orange County, Florida.
7. Satisfaction of the revolving credit mortgage in favor of Bank of America, N.A., recorded May 21, 2007, in O.R. Book 9266, Page 4797, Public Records of Orange County, Florida. Said mortgage must be closed to future draws prior to closing, the payoff amount must be verified the day of closing, and owner must give an affidavit that owner has no checks or credit or debit cards facilitating draws from the account. Confirm that the Satisfaction of Mortgage is recorded post-closing.
8. Record satisfaction or affidavit of non-identity containing the legal description of the real property to be insured and sufficiently establishing that the affiant is not the same person named in the federal tax lien recorded under the following Official Records: Instrument No. 2019-0543912 and Instrument No. 2020-0000741, Public Records of Orange County, Florida.
9. The official records show one or more certified judgments or state tax liens against Rahul Chopra, individually, or a similarly named person. Since it appears title was taken and may have been continuously held as tenants by the entirety, these judgments or tax liens have not been listed. It is necessary for you to evaluate how title was taken and has been held to date. If you determine that such liens may have attached to the property covered herein, this product will be modified, at your request to list and provide copies of these instruments. See T.N. 18.03.05 and 30.06.
10. Execution of closing affidavit by appropriate parties representing possession and no adverse matters, including actions taken by owner or others that would give rise to litigation or lien.
11. Closing funds are to be disbursed by or at the direction of the Title Agent issuing this policy.
12. Homeowner's Association estoppel letter must be furnished showing that all assessments are current and that there are no unpaid special assessments.

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Old Republic National Title Insurance Company
AMERICAN LAND TITLE ASSOCIATION
COMMITMENT
Schedule B-I (Continued)

Issuing Office File Number: Chopra to Black

13. That certain Notice of Commencement recorded in Document #20230152273, Public Records of Orange County, Florida, shall be deleted, when the following requirements are met:

(1) Obtain an owner's affidavit which contains the following:

- (a) names and addresses of all persons serving notice to owner pursuant to Sec. 713.06(2), F.S., (or if none received, the affidavit should so state),
- (b) a statement that a personal inspection of the property was made to determine whether persons posted a notice to owner on the property,
- (c) the names and addresses of all persons having privity of contract with the owner under Sec. 713.05, F.S.,
- (d) a statement that the improvement described in the notice of commencement has been completed, (identifying the notice by book and page where recorded),
- (e) a statement that the owner has obtained the affidavit required by Sec. 713.06(3)(d)(1), F.S., from all parties having privity of contract with the owner under Sec. 713.05, F.S., and
- (f) a statement that all persons serving notice to owner, and all persons having privity of contract with the owner under Sec. 713.05, F.S., have been paid in full.

(2) A Waiver and Release upon Final Payment under Sec. 713.20(5), F.S., must be obtained from all persons serving notice to owner and from all persons having privity of contract with the owner under Sec. 713.05, F.S.

This page is only a part of a 2016 ALTA Commitment for Title Insurance. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I – Requirements; and Schedule B, Part II – Exceptions.

Old Republic National Title Insurance Company

AMERICAN LAND TITLE ASSOCIATION COMMITMENT Schedule B-II

Issuing Office File Number: Chopra to Black

Exceptions

THIS COMMITMENT DOES NOT REPUBLISH ANY COVENANT, CONDITION, RESTRICTION, OR LIMITATION CONTAINED IN ANY DOCUMENT REFERRED TO IN THIS COMMITMENT TO THE EXTENT THAT THE SPECIFIC COVENANT, CONDITION, RESTRICTION, OR LIMITATION VIOLATES STATE OR FEDERAL LAW BASED ON RACE, COLOR, RELIGION, SEX, SEXUAL ORIENTATION, GENDER IDENTITY, HANDICAP, FAMILIAL STATUS, OR NATIONAL ORIGIN.

The Policy will not insure against loss or damage resulting from the terms and provisions of any lease or easement identified in Schedule A, and will include the following Exceptions unless cleared to the satisfaction of the Company:

1. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the Public Records or attaching subsequent to the Commitment Date hereof but prior to the date the Proposed Insured acquires for value of record the estate or interest or Mortgage thereon covered by this Commitment.
2.
 - a. General or special taxes and assessments required to be paid in the year 2023 and subsequent years.
 - b. Rights or claims of parties in possession not recorded in the Public Records.
 - c. INTENTIONALLY DELETED.
 - d. Easements or claims of easements not recorded in the Public Records.
 - e. Any lien or right to a lien, for services, labor or material furnished, imposed by law and not recorded in the Public Records.
3. Any Owner's Policy issued pursuant hereto will contain under Schedule B the following exception: *Any adverse ownership claim by the State of Florida by right of sovereignty to any portion of the Land insured hereunder, including submerged, filled and artificially exposed lands, and lands accreted to such lands.*
4. INTENTIONALLY DELETED.
5. All matters contained on the Plat of Bronson's Landings, as recorded in Plat Book 66, Page 139, Public Records of Orange County, Florida.
6. Surveyor's Affidavit recorded in Official Records Book 9361, Page 4281, Public Records of Orange County, Florida.
7. Development Agreement recorded July 8, 2002, in Official Records Book 6560, Page 9077, Public Records of Orange County, Florida (hereinafter "Development Agreement"). Such Development Agreement may establish and provide without limitation for restrictions regarding land use and development.
8. Use Agreement recorded March 21, 2006, in Official Records Book 8539, Page 4387, Public Records of Orange County, Florida (hereinafter "Use Agreement"). Such Use Agreement may establish and provide without limitation for obligations pertaining to landscaping, irrigation, and maintenance of paved roads and pavement markings.
9. Covenants, conditions, rights, assessments, easements and restrictions recorded September 18, 2006, in Official Records Book 8865, Page 1636, Public Records of Orange County, Florida (hereinafter "Declaration"). Such Declaration may establish and provide without limitation for easements, liens, charges, assessments, or option to purchase, a right of first refusal and/or the prior approval of a future purchaser or occupant.
10. Any lien provided by County Ordinance or by Ch. 159, F.S., in favor of any city, town, village or port authority, for unpaid service charges for services by any water systems, sewer systems or gas systems serving the land described herein; and any lien for waste fees in favor of any county or municipality.

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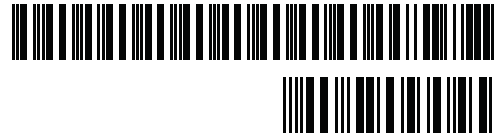
Old Republic National Title Insurance Company
AMERICAN LAND TITLE ASSOCIATION
COMMITMENT
Schedule B-II (Continued)

Issuing Office File Number: Chopra to Black

11. Encroachments, encumbrances, violations, variations, or adverse circumstances, if any, actually shown on the survey prepared by Patrick M. Kelley, P.L.S., Florida Licensed Surveyor and Mapper of Blackburn Surveying, Inc., dated June 16, 2023, bearing Job #Teach-86ZIP12:
- (a) 5' drainage and utility easements along the northerly and southerly boundary lines of the subject property;
 - (b) 10' drainage easement along the easterly boundary line of the property and 12' utility easement along the westerly boundary line of the property;
 - (c) Encroachment of concrete drive upon 12' utility easement;
 - (d) Encroachments of high vinyl fences across property line to the east running to the brick wall on lots 24 and 25 of the Reserve at Waterford Pointe, Phase 1;
 - (e) Encroachment of screened pool and patio area upon 10' drainage easement;
 - (f) Encroachment of a/c pads from lot 85 of Bronson's Landings across the northerly boundary;
 - (g) Encroachment of vinyl fence from lot 85 of Bronson's Landings across the northerly boundary; and
 - (h) Encroachment of fences upon northerly and southerly drainage and utility easements and upon the easterly drainage easement.

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ACCOUNT NUMBER	ESCROW CODE	MILLAGE CODE
0025881-4	296	65 WG



T A X A M O U N T	Nov/2022	Feb/2023	02-23-27-0805-00860
	Dec/2022	MARCH GROSS TAX	BRONSON'S LANDINGS 66/139 LOT 86
	Jan/2023	INTEREST/ADV	
SITUS ADDRESS	2059 TILLMAN AVE WINTER GARDEN 34787		

BAC TAX SERVICE CORPORATION

PAID 0040-00612965 \$8,826.17 11/24/2022

**PO Box 545100
Orlando FL 32854-5100**To pay by credit card, call 1-855-414-9014 or visit www.octaxcol.com. A fee will be charged by Point and Pay for this service.

Or to mail in your payment, return the top portion of your bill with your check.

Make checks payable to Scott Randolph, Tax Collector • PO Box 545100 • Orlando FL 32854-5100

Scott Randolph, Tax Collector

RETAIN FOR YOUR RECORDS

2022 REAL ESTATE

CHOPRA SONIA

CHOPRA RAHUL B

2059 TILLMAN AVE

WINTER GARDEN, FL 34787-5489

02-23-27-0805-00860

BRONSON'S LANDINGS 66/139 LOT 86

LOAN NO. 871977927

SITUS ADDRESS 2059 TILLMAN AVE WINTER GARDEN 34787

Receipt will be mailed upon request.**AD VALOREM TAXES**

TAX AUTHORITY	ASSESSED VALUE	EXEMPT VALUE	TAXABLE VALUE	MILLAGE*	TAX LEVIED
WINTER GDN	542,234	50,000	492,234	4.5582	\$2,243.70
GEN COUNTY	542,234	50,000	492,234	4.4347	\$2,182.91
STATE SCHOOL	542,234	25,000	517,234	5.2970	\$2,739.79
LOCAL SCHOOL	542,234	25,000	517,234	3.2480	\$1,679.98
LIBRARY	542,234	50,000	492,234	.3748	\$184.49
SJWM	542,234	50,000	492,234	.3313	\$163.08

TOTAL MILLAGE*:

18.244

*DOLLARS PER \$1,000 OF
TAXABLE VALUE**AD VALOREM TOTAL:**

\$9,193.93

NON-AD VALOREM ASSESSMENTS

LEVYING AUTHORITY

AMOUNT

NON-AD VALOREM TOTAL:

\$0.00

**TOTAL TAXES AND
ASSESSMENTS:**

\$9,193.93

ORANGE COUNTY NOTICE OF AD VALOREM TAXES AND NON-AD VALOREM ASSESSMENTS

ACCOUNT NUMBER	MILLAGE CODE	ASSESSED VALUE	EXEMPTIONS	L.I.S. EXEMPTION	TAXABLE VALUE
0025881-4	65 WG	542,234	25,000		517,234
Nov/2022	Dec/2022	Jan/2023	Feb/2023	MARCH GROSS TAX	INTEREST/ADV
					ESCROW CODE 296

Attorneys' Title Fund Services, LLC
ATIDS XE
Subdivision Property Search for Orange County
Created for: Keebler, Nabisco, & Amos, P.A.
Customer No.: 899916

Certification Information

File Reference: Chopra to Black	From Date: 1/1/1970
State: Florida	Through Date/Time: 6/13/2023 11:00 PM
County: Orange	Through Instrument: CN 2023-310578
Account Number: 10041	
File Open Date: 5/22/2023	
File Description: 2059 TILLMAN AVENUE	

Search From: 5/13/2023	Instrument Count: 0
Search Through: 6/13/2023	Search Date/Time: 6/26/2023 10:26:07 AM
Instrument Filter:	Search Status: Complete

Sort Criteria: Date of File (Ascending)

Plat Reference: PB 66/139	
Plat Name: Bronsons Landings (Contains Lots 1-126 & Tracts A-H J-M)	
Date Of Plat: 9/18/2006	Retro Certified: No
Interval Ownership: No	Retro Certified Date:
Postings Conform: Yes	Authorized Levels: L / T /

Lot / Unit	Block / Bldg	Section / Township / Range	Lot / Unit	Block / Bldg	Section / Township / Range	Lot / Unit	Block / Bldg	Section / Township / Range
86								

No Instruments Found
Search Complete

Attorneys' Title Fund Services, LLC
ATIDS XE

Name Search for Orange County

Created for: Keebler, Nabisco, & Amos, P.A.

Customer No.: 899916

Certification Information

File Reference: Chopra to Black

State: Florida

County: Orange

From Date: 1/1/1970

Through Date / Time: 6/13/2023 11:00 PM

Through Instrument: CN 2023-310578

Account Number: 10041

File Open Date: 5/22/2023

File Description: 2059 TILLMAN AVENUE

Search From: 5/13/2023

Instrument Count: 1

Search Through: 6/13/2023

Search Date/Time: 6/26/2023 10:32:07 AM

Search Status: Complete

Type: Personal

Name: Chopra, Rahul

Percent Likeness

Last Name: 80

First Name: 65

Nicknames: Yes

Similar Sounding: Yes

Flip Names: No

Relationship: Seller

Name: Chopra, Rahul

Primary Reference	Prev. Clrd	Secondary Reference	Date of File	Type of Instrument	All Related References	Description/Comments
CN 2023-0304116		CN 2023-0304116	5/29/2023	Judgment	CR 2008-1409	

Search Complete

Attorneys' Title Fund Services, LLC
ATIDS XE

Name Search for Orange County

Created for: Keebler, Nabisco, & Amos, P.A.

Customer No.: 899916

Certification Information

File Reference: Chopra to Black

State: Florida

County: Orange

From Date: 1/1/1970

Through Date / Time: 6/13/2023 11:00 PM

Through Instrument: CN 2023-310578

Account Number: 10041

File Open Date: 5/22/2023

File Description: 2059 TILLMAN AVENUE

Search From: 5/13/2023

Instrument Count: 0

Search Through: 6/13/2023

Search Date/Time: 6/26/2023 10:30:48 AM

Search Status: Complete

Type: Personal

Name: Chopra, Sonia

Percent Likeness

Nicknames: Yes

Relationship: Seller

Last Name: 80

Similar Sounding: Yes

First Name: 65

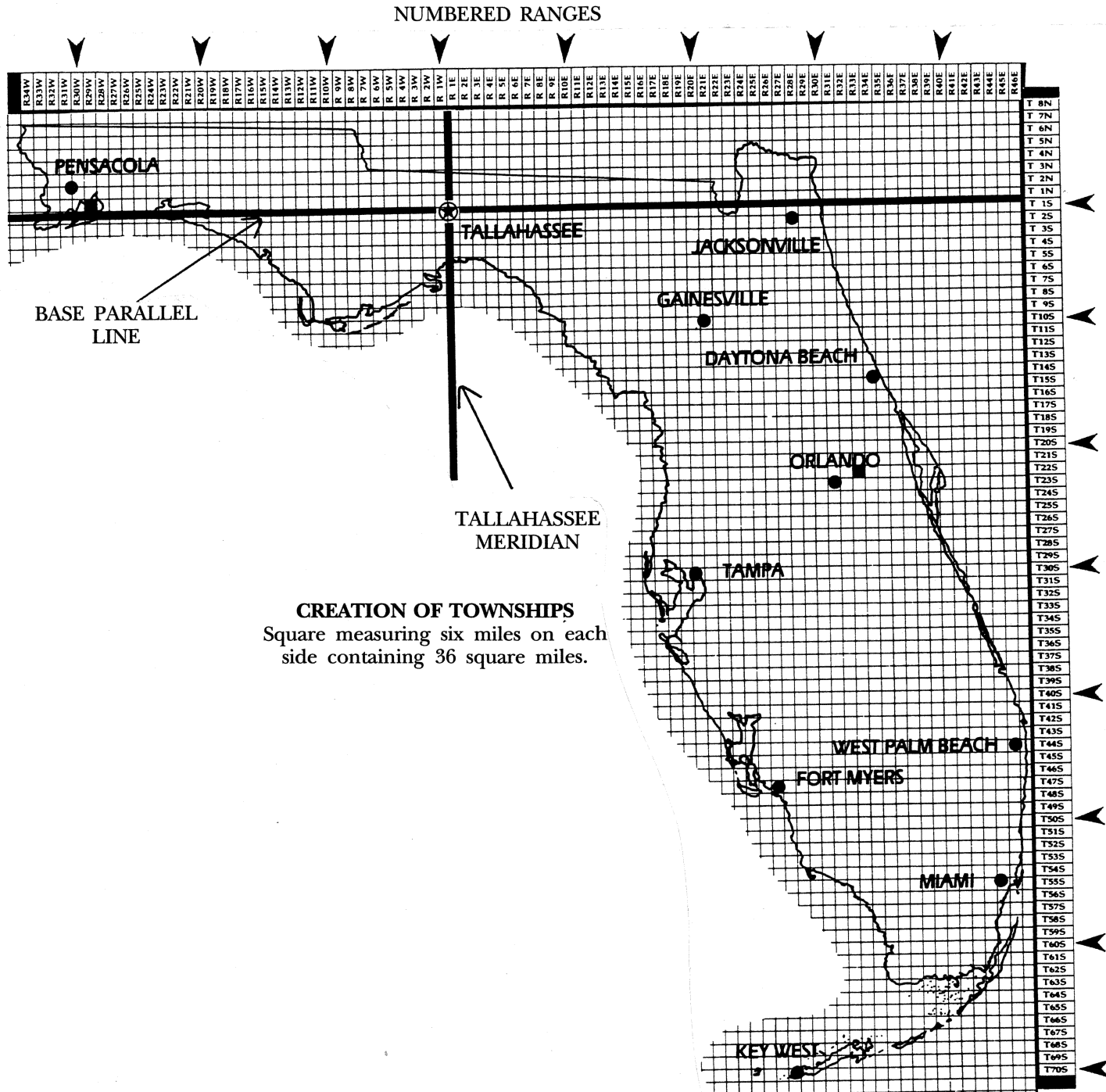
Flip Names: No

No Instruments Found

Search Complete

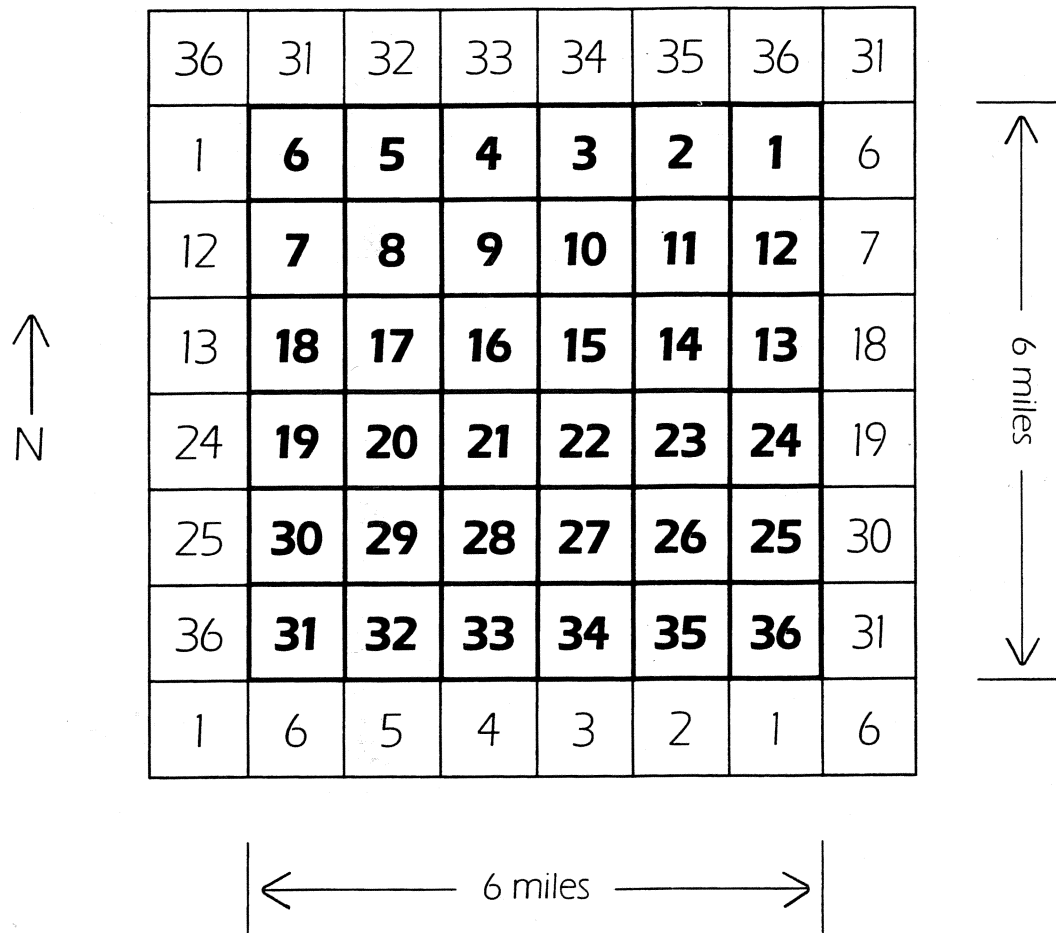
Legal Descriptions

Each small box created by the intersecting lines is a township and can be identified by the **range** number and direction and **township** number and direction. In a legal description the location of the township is given first followed by the range, i.e., Township 21 South, Range 34 East, Township 2 North, Range 28 West.



Section Location Diagram

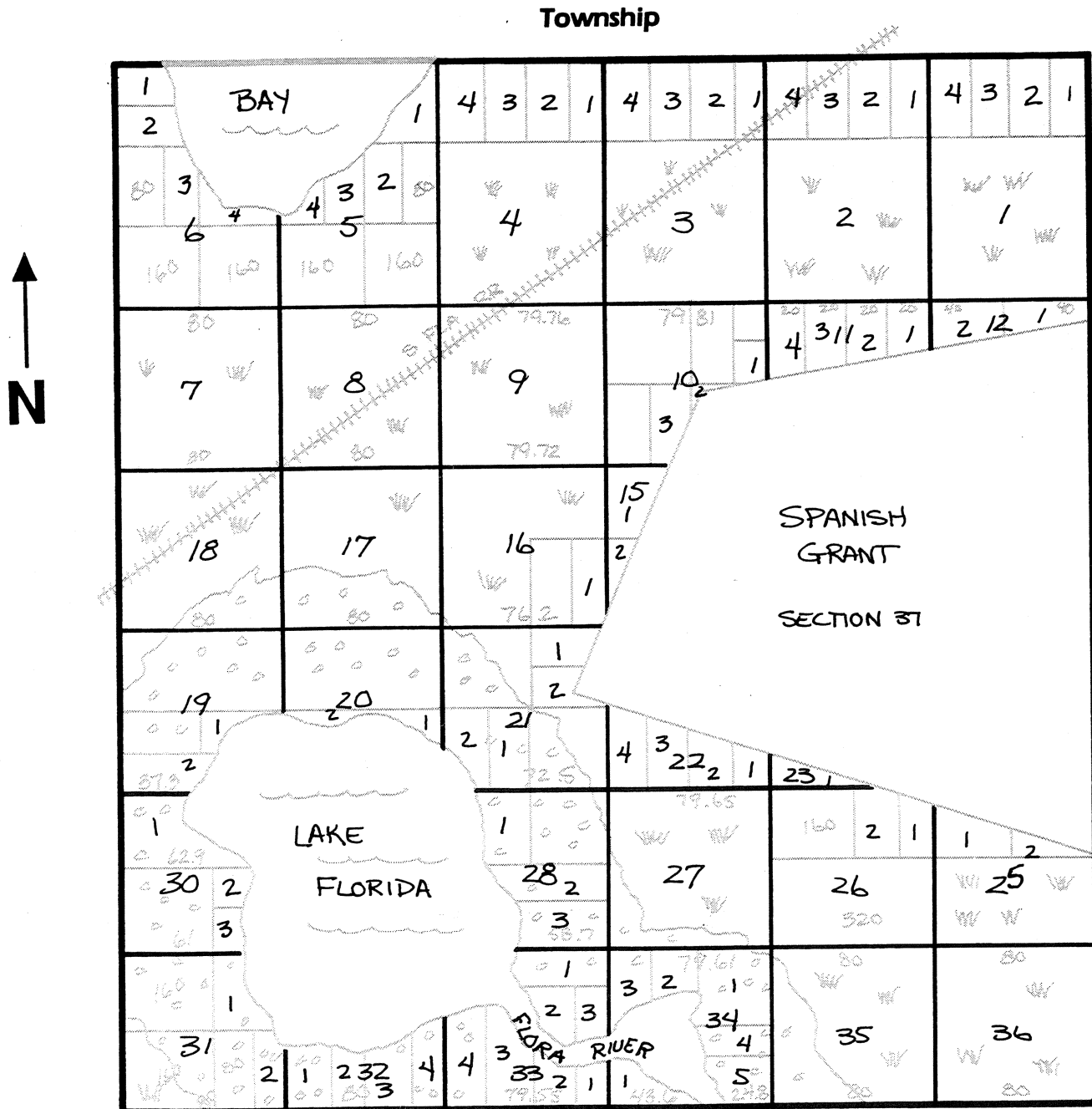
Each box or square formed by intersecting township and range lines is further divided into 36 squares, each having sides measuring one mile. Each square is called a **section**. Each section is given a number with Section 1 always in the northeast corner of the township. Section 6 is in the northwest corner, Section 31 is in the southwest corner and Section 36 is in the southeast corner. In a legal description the section number precedes the township and range numbers.



Because there may be variations from the regular section, Sections 1, 2, 3, 4, 5, 6, 7, 18, 19, 30 and 31 are called fractional or correction sections. When there is more or less than the regular number of acres in a township, it is reflected along the north side of Sections 1, 2, 3, 4, 5 and 6 and along the west side of Sections 6, 7, 18, 19, 30 and 31. In some instances the intersection of the township and range lines may create a square larger than six miles on each side so that the sections may be oversized. The overage may be divided equally throughout all 36 sections. There are a few areas in the state where the township is larger than six miles square and hiatus sections have been created between other sections.

Each regular section, in theory a square with all sides measuring one mile, contains 640 acres and can easily be divided into halves, then quarters and so on down into smaller divisions until the specific property being described is located. Each division is identified using a **direction** of North (N), South (S), East (E) or West (W) and Northeast (NE), Northwest (NW), Southeast (SE) or Southwest (SW) **and a fraction**. Any fraction may be used with N, S, E, or W but only $\frac{1}{4}$ should be used in combination with NE, NW, SE or SW since we use a quartering system to divide a section. The lines establishing the divisions are drawn horizontally and vertically, not diagonally.

In many areas of the state there are irregular tracts created by bays, oceans, navigable lakes, oversized sections, Spanish grants, rivers, etc., which cannot be divided using a regular quartering system. In these situations the government surveyor divided the land into irregular parcels called **government lots**, giving each lot a number within a section. When property is described using a government lot it is done in accordance with the original government survey or in accordance with a resurvey done to correct the original. Copies of the government surveys should be a part of the reference materials in every title plant. In examining the surveys be sure you look at the original and any resurveys. They are the official source for the size of every section, the location of government lots and are a basis for determining what bodies of water **may** be navigable.

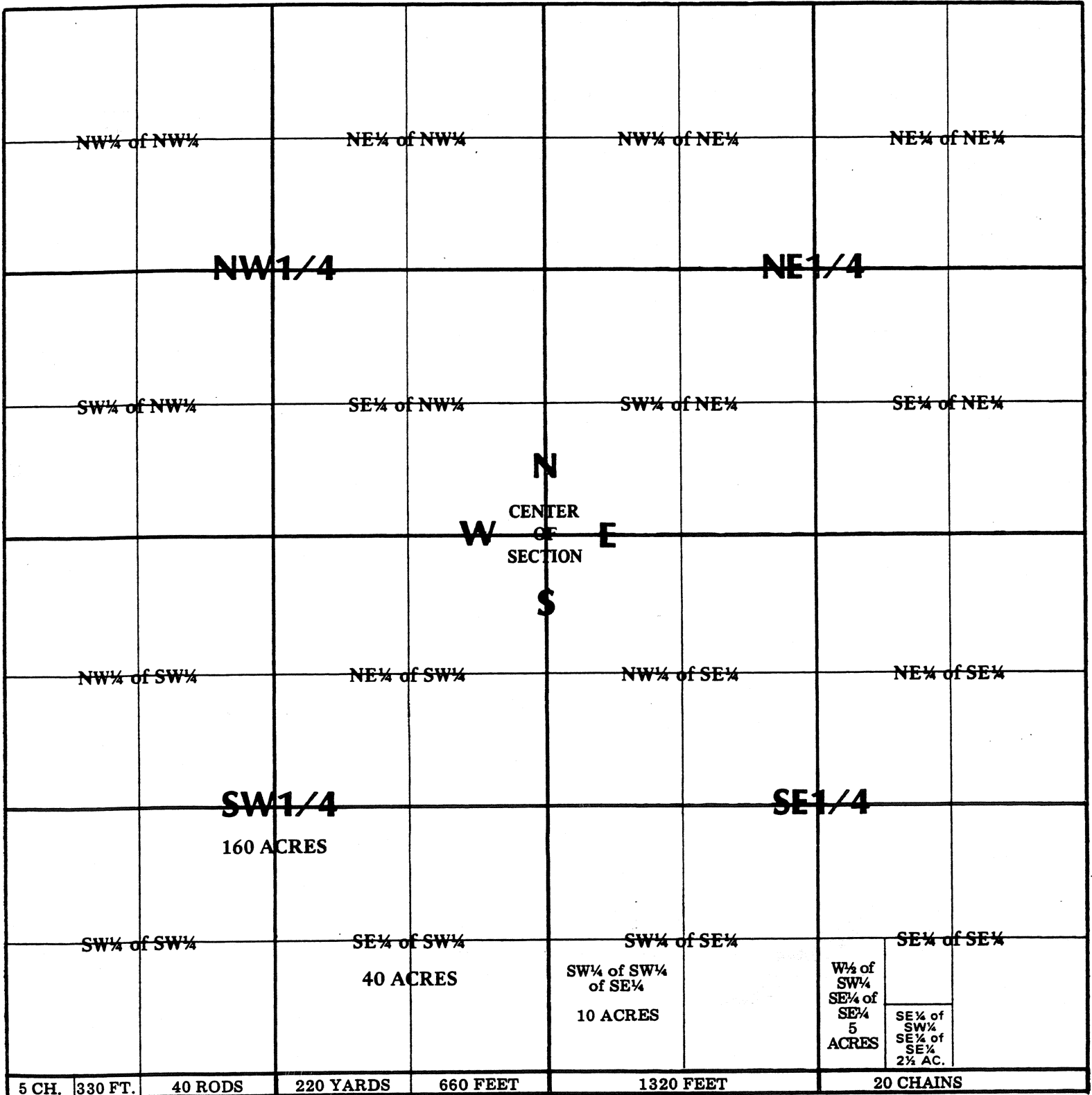


SECTION CHART

Section _____

Township _____ South

Range _____ East



(over)

SCALE — 8 Inches Equals 1 Mile

1 Inch Equals 10 Chains, 660 Feet, 40 Rods or 220 Yards

One Link = 7.92 Inches.

One Rod = 16½ Feet, ¼ Chain or 25 Links.

All Measurements in Government Surveys are Indicated by Links and Chains.

One Chain = 66 Feet, 4 Rods or 100 Links.

One Mile = 5,280 Feet, 320 Rods or 80 Chains.

One Square Rod Contains 272¼ Square Feet.

One Acre is about 208¼ Feet Square.

One Acre Contains 43,560 Square Feet or 160 Square Rods.

½ Acre (Homestead within City Limits) Contains 21,780 Sq. Ft.

Ten Square Chains = One Acre.

A Section of Land is One Square Mile and Contains 640 Acres.

¼ Section Contains 160 Acres.

A Township Area is 36 Square Miles and Contains 23,040 Acres.

Sectional Map of a Township
With Adjoining Sections

36	31	32	33	34	35	36	31
1	6	5	4	3	2	1	6
12	7	8	9	10	11	12	7
13	18	17	16	15	14	13	18
24	19	20	21	22	23	24	19
25	30	29	28	27	26	25	30
36	31	32	33	34	35	36	31
1	6	5	4	3	2	1	6

EQUIVALENTS	FEET	66	132	198	264	330	396	462	528	594	660	726	792	858	924	990	1056	1122	1188	1254	1320
	YARDS	22	44	66	88	110	132	154	176	198	220	242	264	286	308	330	352	374	396	418	440
	RODS	4	8	12	16	20	24	28	32	36	40	44	48	52	56	60	64	68	72	76	80
	CHAINS	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
	CHAINS	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20

Title Examination Chain Sheet

File Reference: _____ Buyer: _____
 Searched By: _____ Seller: _____
 Examined By: _____ Lender1: _____
 Tax Folio: _____ Lender2: _____
 County: _____ Policies to Issue & Amounts: _____
 Endorsements Needed: _____
 Property Description: _____

Lies Within: Section _____ Township _____ Range _____ (Fractional _____)

Replats: _Y / _N If Yes, original plat(s) to examine: _____

Base Title Information

Underwriter: _Fund/ _Other: _____

Type of Policy: OP MP Other: _____

Identical Legal: Y/N, If No, rationale for use: _____

Policy Effective Date: _____

Policy Amount: _____

Current Transaction > 2X prior amount? _Y/ _N
 (If yes, Underwriting approval obtained? _Y/ _N)

Note: If prior Fund policy, do not rely on original or
 unofficial copies, obtain copy from Fund.

Date Current Exam Begins: _____

Exam Begins With Title Vested In: _____

Unsatisfied Encumbrances: _____

Legal Access Confirmed?

Y: Source is _____

N: Exception required in Commitment & Policies

Current Title Information

Provider: _ATIDS/ _ Other: _____

Number of Entries: _____ Hard Copies _____

Dates: Start ____/____/____ End ____/____/____

Location Sketch of Property

<u>Conveyances</u>	<u>Encumbrances</u>	<u>Notes</u>
<input type="radio"/> Inst. Type: _____	<input type="radio"/> _____	<input type="radio"/> _____
Grantor(s): _____		
Grantee(s): _____		
Date of Inst.: ____ / ____ / ____		
Date of Rec.: ____ / ____ / ____		
Clerk Ref: _____		
OR _____ Page(s) _____		
Legal: _____		
<input type="radio"/> Inst. Type: _____	<input type="radio"/> _____	<input type="radio"/> _____
Grantor(s): _____		
Grantee(s): _____		
Date of Inst.: ____ / ____ / ____		
Date of Rec.: ____ / ____ / ____		
Clerk Ref: _____		
OR _____ Page(s) _____		
Legal: _____		
<input type="radio"/> Inst. Type: _____	<input type="radio"/> _____	<input type="radio"/> _____
Grantor(s): _____		
Grantee(s): _____		
Date of Inst.: ____ / ____ / ____		
Date of Rec.: ____ / ____ / ____		
Clerk Ref: _____		
OR _____ Page(s) _____		
Legal: _____		
<input type="radio"/> Inst. Type: _____	<input type="radio"/> _____	<input type="radio"/> _____
Grantor(s): _____		
Grantee(s): _____		
Date of Inst.: ____ / ____ / ____		
Date of Rec.: ____ / ____ / ____		
Clerk Ref: _____		
OR _____ Page(s) _____		
Legal: _____		

<u>Conveyances</u>	<u>Encumbrances</u>	<u>Notes</u>
<input type="radio"/> Inst. Type: _____	<input type="radio"/> _____	<input type="radio"/> _____
Grantor(s): _____	_____	_____
Grantee(s): _____	_____	_____
Date of Inst.: ____/____/____	_____	_____
Date of Rec.: ____/____/____	_____	_____
Clerk Ref: _____	_____	_____
OR _____ Page(s) _____	_____	_____
Legal: _____	_____	_____
<input type="radio"/> Inst. Type: _____	<input type="radio"/> _____	<input type="radio"/> _____
Grantor(s): _____	_____	_____
Grantee(s): _____	_____	_____
Date of Inst.: ____/____/____	_____	_____
Date of Rec.: ____/____/____	_____	_____
Clerk Ref: _____	_____	_____
OR _____ Page(s) _____	_____	_____
Legal: _____	_____	_____
<input type="radio"/> Inst. Type: _____	<input type="radio"/> _____	<input type="radio"/> _____
Grantor(s): _____	_____	_____
Grantee(s): _____	_____	_____
Date of Inst.: ____/____/____	_____	_____
Date of Rec.: ____/____/____	_____	_____
Clerk Ref: _____	_____	_____
OR _____ Page(s) _____	_____	_____
Legal: _____	_____	_____
<input type="radio"/> Inst. Type: _____	<input type="radio"/> _____	<input type="radio"/> _____
Grantor(s): _____	_____	_____
Grantee(s): _____	_____	_____
Date of Inst.: ____/____/____	_____	_____
Date of Rec.: ____/____/____	_____	_____
Clerk Ref: _____	_____	_____
OR _____ Page(s) _____	_____	_____
Legal: _____	_____	_____

FUND CONCEPT



January 1972

P. O. Box 2671 ORLANDO, FLORIDA 32802

Volume 4, Page 1

NAMES AND THE IDENTITY OF PARTIES

In order to use the public records as a system of proving titles, the examining attorney must rely on the identity of name of each grantor with a preceeding grantee or owner in a chain of title as creating a presumption of identity of persons. Most times it would be impossible otherwise to establish identity of persons all the way back in the chain of title even though there were exact correspondence of names throughout the chain of title. This presumption is recognized in Sec. 689.19 (2), F.S.

Exact correspondence of names, however, is not always encountered in actual experience. Where there is a discrepancy in the chain of title as to the correspondence of the grantee in one deed with the grantor in a succeeding deed due to a variation in spelling of the name, in initials or in the use of the full Christian name in one case and the initials or an abbreviation only in another, a question of identity immediately arises.

If there is any material variation in the names, there is no presumption of identity. The difficulty arises in determining what names, varying but slightly in form, the law will consider to be materially different, and to what ones will be extended the presumption of identity.

Several rules have arisen either by statute, case law or Title Standards to help in making judgments on whether the presumption of identity applies to given facts. Examples of name variations and the application of these rules will be discussed in the remaining part of this article.

A. Adams and Arthur Adams. The identity of persons may not be presumed from the two names. There is no presumption that a person named by a full Christian name is the same as one named only with the initial letter of that Christian name. 1 Patton on Titles (2d ed.), Sec. 73. However, Sec. 689.19,

F.S., modifies this rule to the extent that persons named in one instrument with the full Christian name and in the next with only the initial letter of that Christian name appearing are presumed to be the same person where such instruments have been of record for more than 10 years, but such presumption continues only as long as nothing contrary appears.

Brett Brown and Brett B. Brown. The identity of persons may be presumed from the two names. The use in one instrument and nonuse in another of a middle name or initial ordinarily does not create a question of identity. Title Standard 10.4. Examples given in the Title Standard are Lawrence Emery and Lawrence J. Emery, Lawrence Emery and Lawrence Joseph Emery, and Lawrence J. Emery and Lawrence Joseph Emery. An exception to this presumption is where the first names in both instruments are initials only. 1 Patton on Titles (2d ed.), Sec. 76. An example of the exception is B. Boyd Bond and B. B. Bond.

After the second instrument has been of record for 10 years with nothing appearing to the contrary, a statutory presumption is created by Sec. 689.19 (2), F.S. along the lines of Title Standard 10.4. The statute creates a statutory presumption of identity of persons from a full middle name appearing in one instrument and only the initial letter of that middle name appearing in the next and from the initial letter of a middle name appearing in one and not appearing in the other.

Carl Clarke and Carl Clark. The identity of persons may be presumed from the two names. The doctrine of idem sonans provides that names spelled differently but pronounced alike or nearly alike are presumed to be the same. Title Standard 10.2 and Title Notes 49-57 and 78-57. This rule has been applied in countless cases and there are lists in 1 Patton on Titles (2d ed.), Sec. 77, n. 1; 45 C.J. 384, n. 14; 65 C.J.S., Names, Sec. 14, n. 10. An examining attorney is abundantly justified in requiring identification in

any doubtful case.

Daniel Dyer and Dan. Dyer. The identity of persons may be presumed from the two names. All customary and generally accepted abbreviations of first names and middle names should be recognized as the equivalent thereof. Title Standard 10.1. In not so common abbreviations, reference should be made to the decisions to determine in each particular case the expressed or probable attitude of the courts. Lists are found in 1 Patton on Titles (2d ed.), Sec. 74, n. 89; and 65 C.J.S., Names, Sec. 7, n. 7, Sec. 8, n. 9. In any doubtful case the examining attorney should require identification.

Edward E. Eller and Edward E. Eller, Jr. The identity of persons should not be presumed from the two names. The addition of a suffix such as "Jr." or "II" to the name of a subsequent grantor may rebut the presumption of identity with the prior grantee. Title Standard 10.5. Since the suffixes "Jr." and "II" ordinarily are considered descriptio personae and not part of a person's legal name, no presumption is created by the use and subsequent nonuse of a suffix that two persons are involved, but the examining attorney is justified in requiring clarification of the identification. The identity of Edward E. Eller, Sr., and Edward E. Eller, Jr., should not be presumed and in fact this creates a prima facie evidence of different persons. State v. Williams, 120 So. 310 (Fla. 1929). An affidavit of identification as the same person should not be relied upon in that situation.

Fran Foster and Fran Williams, formerly Fran Foster. The identity of persons may be presumed from the two names and the recital. A recital of identity, contained in a deed executed by the person whose identity is recited, may be relied upon unless there is some genuine reason to doubt the truth of the recital. Title Standard 10.3. Without the recital there is no presumption that a grantor, Fran Williams, even when a husband of that surname joins in the deed, is the same person as the
(continued on page 2)

(continued from page 1)

preceding grantee, Fran Foster. 1 Patton on Titles (2d ed.), Sec. 72.

Sec. 92.08, F.S., provides that the recitals in any deeds or powers of attorney under certain circumstances may be offered in evidence as prima facie proof of the truth of the facts therein recited provided the instruments have been of record for more than 20 years.

Fred Freeman and F. Frank Freeman a/k/a Fred Freeman. The identity of persons may be presumed from the two names and the recital. The previous rule would also be applicable to these names. Title Standard 10.3.

In conclusion, if the examining attorney comes across variations in names which do not come within one of the above discussed rules or some other generally accepted rule, he should require corrective measures either in the form of corrective instruments, quiet title suits or affidavits. What corrective measures may be required will depend on the given factual situation and each one will of necessity need to be determined separately.

CASE REVIEWS

TRUST BENEFICIARIES AND MORTGAGE FORECLOSURES

Cowen v. Knott,
252 So. 2d 400
(2d D.C.A. Fla. 1971)

A mortgage foreclosure was brought against the trustee and beneficiaries of a land trust. The trustee requested the beneficiaries to provide their own counsel in defense of the mortgage foreclosure. The beneficiaries filed pleadings in their own names. The judge entered a default judgment against the trustee and denied the beneficiaries' motion to vacate the default and refused to permit them to adduce evidence in support of a defense.

On appeal to the District Court of Appeal the case was reversed and remanded. Fla. R.C.P. 1.210(c) provides that it is not necessary to make the beneficiaries parties, but that the court may order them to be made parties. The court held that while the beneficiaries were not necessary parties, they were made parties in the suit and were entitled to appear and defend the action brought against the trustee when the trustee failed to do so.

COVENANT AGAINST ENCUMBRANCES

McCrae v. Giteles,
253 So. 2d 260
(3d D.C.A. Fla. 1971)

The Metropolitan Dade County Department of Housing and Urban Development, Neighborhood Rehabilitation Branch cited certain premises for about 80 violations of the Minimum Housing Code of Dade County. Notice of the violations was served on the owners of the property. Shortly thereafter they conveyed the property by warranty deed.

The purchasers brought an action against the sellers for breach of the covenant against encumbrances in the warranty deed and asked for the estimated costs of repairs as damages. They contended that a housing code violation was an encumbrance within the meaning of a covenant against encumbrances.

The trial court held that neither the housing code violation of which the sellers had notice nor the condition of the premises constituting the violation was an "encumbrance" within the meaning of the covenant against encumbrances in the warranty deed. The holding was affirmed on appeal.

COUNTY TAX DEED ELIMINATES PRIOR TIF MINERAL RESERVATION

Kirk v. Smith,
253 So. 2d 492
(1st D.C.A. Fla. 1971)

Pursuant to the sale of a tax certificate, title to the property in 1933 vested in the State. In 1946, the TIF conveyed the property by a deed which reserved certain mineral rights. The grantee in that deed defaulted in payment of ad valorem taxes, and the land was purchased by the county. In 1952, the county conveyed the property without any reservation of mineral rights.

The TIF brought an action to enforce an alleged right to a subsurface interest in the property. The question on appeal was if the State conveys property and retains a mineral reservation, and the fee simple or surface owner fails to pay county ad valorem taxes, will a subsequent county tax deed without reservation extinguish and cancel the mineral rights of the State?

Sec. 211.14, F.S., originally enacted

in 1945, vests in a tax deed grantee all subsurface oil, gas and mineral rights. Sec. 193.481, F.S., first enacted in 1957, requires respective interests of surface owner and subsurface owner to be taxed separately.

The court found that the two statutes are in direct conflict. The court held that inasmuch as the county tax deed was issued prior to the enactment of the latter statute, the former statute was applicable, and the county tax deed operated to extinguish and cancel previously reserved mineral rights of the State in the property. The court further held that the county tax deed vested in the grantee a new and independent title, notwithstanding claim that once subsurface rights were vested in State, the same could not be divested by county tax deed.



WIFE'S JOINDER IN POWER OF ATTORNEY

A matter that may easily be overlooked in the examination of title is the acceptance of a deed from A who is agent for B under a properly recorded power of attorney. For example, B gives to A power of attorney to sell Blackacre. Record title to Blackacre is in B. If B is married, his spouse must join in the execution of the deed along with the attorney-in-fact to release her dower. This would be so even if she joined in the execution of the power of attorney unless in that instrument she specifically joined for the purpose of giving to A the power to release dower. In that event, A would have to sign the deed to Blackacre as attorney-in-fact for both B and his wife.

NEW MEMBERS

Juan E. Acosta - Miami
W. Lee Baynard, Jr. - St. Petersburg
H. L. Clark, III - Melbourne
Palmer W. Collins - Melbourne
Alfredo G. Duran - Miami
Guy S. Emerich - Punta Gorda
Denis L. Fontaine - Lakeland
Edward J. Geoghegan - Clearwater
Gary P. Gormin - Clearwater
J. Hardin Peterson, Jr. - Lakeland
Ronald R. Richmond - New Port Richey
James B. Thomas - Pompano Beach
Frank M. Townsend - Kissimmee
Lawrence Weiner - Miami Beach
Joseph J. Weisenfeld - Miami Beach
Jerome E. Wollinka - Holiday
Michael E. Zealy - Ft. Lauderdale

FUND CONCEPT



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INTERPOUSAL DEED OF HOMESTEAD -TITLE NOTE 63-57 SUSPENDED

A decision important to Florida real property attorneys was recently handed down by the First District Court of Appeal. The case is Foerster v. Foerster, 300 So. 2d 33 (1st D.C.A. Fla-1974). It concerns a title question frequently asked of The Fund and affects the well known Title Note 63-57. The facts in the case are as follows:

Title to homestead property was vested as a tenancy by the entirety. Prior to a marital separation, the husband deeded the property to the wife. The wife did not join in the execution of the deed and only one witness attested the deed. Thereafter, the parties were reconciled and lived together in the house for a time before again separating. Subsequently, an action for dissolution of marriage was commenced.

The trial court dissolved the marriage and held that the deed was ineffective to convey title. On appeal the wife contended the deed was valid without her joinder in the execution based upon Sec. 689.11, F.S. The statute provides that a conveyance of homestead real property by one spouse to the other conveys the title without joinder of the grantee spouse.

The District Court of Appeal affirmed. It held that the statute was in direct conflict with Art. X, Sec. 4 (c), Fla. Const. 1968. The constitution states that the owner of homestead real property, joined by the spouse if married, may alienate the homestead by sale or gift. The court noted Art. X, Sec. 4, Fla. Const. 1885, in effect at the time the deed was executed, also required joinder of both spouses for the alienation of homestead.

This is an appellate decision of first impression in Florida. The court stated the deed in question violated the principle of several analogous cases. However, each of the cited cases involved a conveyance of homestead property owned solely by one spouse to the other or to the grantor and his spouse.

Title Note 63-57 concludes contrary

to the holding in this case. While counsel has advised the decision has been appealed to the Supreme Court of Florida, Fund members are alerted not to rely on this Title Note when issuing future Fund policies unless and until the instant opinion is reversed.

AMENDMENT TO CERTIFICATE OF ACKNOWLEDGMENT

The following title problem relating to the sufficiency of an acknowledgment was recently presented to Fund Headquarters.

A deed was recorded in 1972 but failed to reflect the notary's seal on the certificate of acknowledgment. The next instrument in the abstract is a re-recording of the same deed showing the notary's seal. In checking this situation out, the examining attorney was advised that the notary had failed to place his seal on the original deed and after being recorded the deed was returned to the notary who placed a seal on the deed and it was then re-recorded.

Of course, without the notary's seal, the original certificate of acknowledgment was defective. If the deed had been of record for a sufficient period of time, the lack of the seal would have been cured by Secs. 95.26 and 694.08, F.S. Sec. 95.26, F.S., validates a deed of record for ten years even though the notary failed to place his seal on the certificate of acknowledgment. Under Sec. 694.08, F.S., after seven years of record, a deed without the notary's seal is cured when there have been one or more subsequent conveyances.

The Florida courts have held that when an officer has taken an acknowledgment and made the certificate thereof which has been delivered to and accepted by the grantee as the evidence of such acknowledgment, his power over the subject matter ceases and he cannot subsequently amend his certificate, or make a new one, unless the parties actually appear before him again and acknowledge the execution of the instrument. *Robinson v. Bruner*, 114

So. 556 (Fla. 1927); *Durham v. Stephenson*, 25 So. 284 (Fla. 1899); Sec. 9.88 FLORIDA REAL PROPERTY PRACTICE I (2d Ed. 1971).

Accordingly, the Fund member was advised that in order to make the title acceptable for the purpose of issuing a Fund policy on it, a new deed reflecting a proper acknowledgment on it by the original grantor or the original deed reflecting a re-acknowledgment on it or having attached to it an affidavit of the witnesses as provided for in Sec. 695.03, F.S., is necessary.

GROWTH OF LAWYERS' TITLE SERVICES, INC.

Since Lawyers' Title Services, Inc. became operational on March 1, 1974, after merging with Lawyers' Title Services, Inc. of Broward County, Fort Lauderdale, in February, 1974, four more branches have been added to the statewide electronic data processing title information system.

At the end of May, 1974, the Fund-affiliated abstract facility in Clearwater became the Pinellas County Branch of LTS, Inc.

Records for a Charlotte County plant were built at Headquarters in Orlando and the plant was opened for business in Punta Gorda the first week of June, 1974.

In October, 1974, the Company merged with the Fund-affiliated plant in Tampa to add a Hillsborough County Branch.

An anticipated merger agreement with Attorneys' Title Services, Inc. of Polk County will bring the number of branch facilities of LTS, Inc. to five in the next few months.

Future growth of the Company will be aided by proceeds from the stock sale which is currently being conducted. Any member of The Florida Bar who is a bona fide resident of Florida who has not obtained a copy of the Prospectus is encouraged to request one by writing to Paul B. Comstock, President, Lawyers' Title Services, Inc., P. O. Box 3588, Orlando, Florida 32802.

Explanatory Language in Instruments of Conveyance

In examining titles it is not unusual to find a quitclaim deed between apparent strangers to the title or perhaps with one of the parties being a stranger to the title. Such quitclaim deeds are often devoid of any explanation for why they are being given, leaving the examiner wondering what the parties to the instrument were attempting to accomplish.

Another common item found in title examinations is corrective deeds with no explanation for what is purportedly being corrected. Quitclaim deeds and other instruments between parties outside the chain of title are considered "wild," requiring further inquiry in most cases. See TNs 3.02.02, 7.01.04, 7.02.02, 7.02.03, 7.03.02 and 7.03.03; "Dealing with 'Wild' Mortgages," 19 *Fund Concept* 79 (Aug., 1987), and Title Standard 16.5. See generally 2 BOYER, FLORIDA REAL ESTATE TRANSACTIONS, Sec. 14.06 and REAL PROPERTY TITLE EXAMINATION AND INSURANCE IN FLORIDA (CLE 1979), Sec. 3.95.

When drafting corrective instruments, including an explanation about the purpose of the instrument is helpful. This assists the next examiner in resolving title objections arising in connection with the instrument. Some examples of explanatory language are:

1. This corrective warranty deed is being given by grantor to grantee to correct the legal description contained in the warranty deed recorded March 1, 1973, in Official Records Book 1579, Page 509, public records of Polk County, Florida.

2. The purpose of this quitclaim deed is to release unto grantee all right, title and interest which grantor has in and to the above-described property by virtue of an unrecorded contract for sale and purchase between

grantor and grantee dated November 20, 1985.

3. This quitclaim deed is being given by grantor to grantee in order to transfer to grantee all right, title and interest which grantor may have in and to the above-described property by virtue of grantor being an heir-at-law of John Doe, deceased.

4. This corrective warranty deed is being given in order to clear any title question arising on account of the failure of Jane Doe, the spouse of John Doe, to join in the execution of the warranty deed from John Doe to Richard Roe, recorded November 5, 1987, in Official Records Book

3936, Page 123, public records of Orange County, Florida.

In drafting such explanatory language the attorney should be careful not to create additional title problems. In certain situations, reference to unrecorded documents might require the examiner to review those documents and they might not be readily available. Also, additional problems may be created when a quitclaim deed runs in favor of a person not currently in title and where such person does not thereafter convey to the titleholder or to the purchaser from the titleholder in a current transaction.

Revenue Act Modifies Installment Sales Rules

The Revenue Act of 1987 modifies installment sales rules applying to the sale of nonfarm real property used in a taxpayer's trade or business, or held for the production of rental income, and having a sale price in excess of \$150,000.

The proportionate disallowance rule for installment obligations arising out of the disposition of such real property is repealed, provided that interest is imposed on the deferred tax to the extent the amount of deferred payments

from all dispositions of such property during the year exceeds \$5 million.

If any indebtedness is secured directly by an installment obligation arising out of the disposition of such property, the net proceeds of the secured indebtedness are treated as a "payment" on such installment obligation.

Finally, the installment method may be used with respect to determining alternative minimum taxable income under the Act.

The publishers of the MARTINDALE-HUBBELL LAW DIRECTORY have announced that September 22, 1988, is the deadline for submitting changes in listings to be included in their 1989 edition. Agents who are not listed as "Approved Attorney for Attorneys' Title Insurance Fund, Inc." may wish to notify the publishers accordingly by calling (201) 464-6800.

Cure for Common Title Defect: Continuous Marriage Affidavit

by Silvia B. Rojas, Fund Senior Underwriting Counsel

Affidavits provide a source of clarification to the public of questions that may arise in reviewing a chain of title. Uniform Title Standard 3.3 states that whenever possible and in conformity with the Title Standards, the title examiner should accept and rely on an affidavit which states sufficient facts to negate a possible defect in an otherwise marketable title. Where an affirmative defect is not involved, affidavits give assurances and overcome doubts on specific facts which may be relied on for purposes of issuing Fund policies. See TN 12.07.04. One of the most common types of affidavit is a continuous marriage affidavit (CMA). This article will examine the use and misuse of the CMA.

Basics

The credibility and value of any curative affidavit is diminished by failure to follow two basic rules:

Rule 1 Personal knowledge and linkage

All affidavits should be based on personal knowledge. A corporation or entity other than a living, breathing individual cannot appear before the notary and give an oath. Also, an employee, officer, director or other agent signing for a principal cannot attest to a fact on behalf of the principal. The affiant should be sworn individually and then state his connection to the entity or individual owning the real property for which clarification of the title is being sought. A further statement should then be given declaring that the entity or individual is the owner of the real property in question in order to link the affiant to the real property.

Rule 2 Describe real property

All affidavits should describe the real property for which clarification is sought. For example, a nonidentity affidavit given by a Joe Hernandez, where no legal description is shown, gives no notice to the public as to whether the affiant is the same Joe

Hernandez that owned the real property presently under examination.

Basis for and purpose of the CMA

Under English common law and to date in Florida the estate by the entirety has been based on the legal fiction that the husband and wife are one indivisible entity seized of the real property as a whole so that a creditor of one spouse alone would not be able to sever the tenancy to collect on the debt. See *U.S. v. One Single Family Residence With Out Building Located at 15621 S.W. 209th Avenue, Miami, Florida*, 894 F.2d 1511 (11th Cir. 1990). Also this type of estate carries with it rights of survivorship so that the death of one spouse automatically vests title in the other spouse without a probate.

A purpose of the CMA is to show that the real property to be insured was held as a tenancy by the entirety throughout the period in question, *(continued on page 51)*

Cure for Common ... *(continued from page 47)*

thereby giving both spouses or the survivor the protection afforded the status under the law against creditors. Before using a CMA to protect against a creditor of one of the spouses, determine whether the lien in question could attach to the real property despite their continuous marriage and whether there are other issues raised by the lien that must also be addressed. Another purpose for using the CMA is to verify survivorship when the survivor is conveying.

General Requirements

A CMA is generally signed by both the husband and wife or by the survivor. A continuous marriage affidavit can also be signed by another knowledgeable third party.

The CMA should state that the married couple was continuously married from a date prior to the date they took title without interruption through the date of the death of one or both of them or through the date of the affidavit.

Uses

General lien protection

When a husband and wife purchase or take a mortgage (if a tenancy by the entirety is recognized at the domicile of the deceased mortgagee) on real property, they automatically become tenants by the entirety unless another intent is evident from the record, whether or not they state their

marital status on the deed or mortgage. See TNs 20.01.15 and 20.01.09. The spouses' continuous marriage during their period of ownership affords them protection against the creditors of only one of the spouses. A divorce during the period of ownership breaks the entirety and the spouses become tenants in common. Even if they remarry they must reconvey to each other to resume their tenancy by the entirety. A judgment against one of the spouses predating the break in the tenancy by the entirety cannot be eliminated by a CMA, because the lien of the judgment cannot detach itself from the real property as a result of the remarriage and reconveyance. Also a CMA may be an inadequate remedy when the proceedings leading up to the judgment against the debtor predate the transfer by the sole owner/debtor to himself and his spouse to form a tenancy by the entirety, thereby attempting to defraud the creditor. See TN 18.03.05.

Specific applications

A. General money judgments

Under Sec. 55.10, F.S., state court judgments, orders and decrees become liens on real estate upon recording of a certified copy thereof in the public records. Federal district court judgments become a lien in the same manner. See 28 U.S.C., Sec. 1962. A lien against one spouse of a ten-

ancy by the entirety cannot, however, attach to the property of the tenant by the entirety. See TN 18.03.05.

B. Criminal penalty judgments

The nature of any criminal judgment should be ascertained. If any of the counts fall under the definition of racketeering activities, then, though the CMA may cure the question of the lien for penalties solely against one spouse, it would not cure the main concern of forfeiture under federal or state laws. The allowance of the innocent spouse defense to prevent forfeiture would be a determination to be made by a court of law. See "Liens for Florida, Federal Criminal Fines," 17 *Fund Concept* 41 (Jul., 1985).

C. Florida Department of Revenue Sales Tax Warrants

Sec. 212.15 (4), F.S., states that the sales tax warrant upon recording becomes a lien on any real and personal property of the taxpayer in the same manner as a recorded judgment. A CMA being a sufficient basis to ignore a judgment solely against one spouse is also sufficient basis to ignore a sales tax warrant solely against one spouse. If the sales tax warrant shows an exorbitant tax due and especially if Sec. 212.0505, F.S., (taxation of controlled substances) is

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quoted, the red flag of government forfeiture would be raised and the CMA alone would be an inadequate remedy.

D. Federal tax liens

A CMA is sufficient as a basis to ignore a federal tax lien against one of the spouses of a tenancy by the entirety. See "Federal Tax Liens and Property Held by Entirety," 24 *Fund Concept* 33 (Apr., 1992). However, beware of the spectre of government forfeiture lurking behind an exorbitant tax amount. Under IRC, Sec. 61, gains from illegal sales of narcotics is income. The CMA would then be the wrong cure for the ailment.

E. County and municipal code enforcement liens (if real property not specifically named on order)

A certified copy of an order imposing a fine for code enforcement violations pursuant to Sec. 162.09, F.S., constitutes a general lien on any land of the violator. The lien may be enforced in the same manner as a court judgment. If the violator owns the real property set forth on the order as a tenancy by the entirety with his spouse, the order cannot be ignored through the use of a CMA as it is specific to the real property and the "violation" could also be deemed to be the unidentified spouse. However, for purposes of issuing a Fund policy, the CMA would

be a sufficient cure when dealing with other real property owned by the named violator and his spouse as a tenancy by the entirety.

F. Bankruptcy

The bankruptcy of one of the spouses of a tenancy by the entirety does not subject the debtor's interest in the tenancy by the entirety to claims of creditors to the extent that the judgment is just against the bankrupt debtor/spouse when the tenancy by the entirety exemption has been exercised under 11 U.S.C., 522 (b) (2) (B). A CMA is sufficient to obviate the judgment solely against the bankrupt debtor. The bankrupt debtor's interest does, however, become property of the bankruptcy estate. See *Matter of Anderson*, 132 B.R. 657 (Bkrty. M.D. Fla. 1991). A judgment against both spouses would be dischargeable through the bankruptcy proceedings unless another exemption applied, such as homestead. Therefore, in addition to the CMA and the deed from the spouses, a requirement should be made for a deed out of the bankruptcy trustee.

G. Other Florida statutory liens

The following statutory liens which are general in nature can be ignored by the use of a CMA:

1. Lien of the Division of Employment Security of

the Department of Labor and Employment. Sec. 443.141 (3), F.S.

2. Public defender liens under Sec. 27.56, F.S.
3. Unpaid gas taxes under Sec. 206.15, F.S.
4. Unpaid fees to the Department of Health and Rehabilitative Services under Sec. 402.33 (8) (a) and (b), F.S.
5. Cigarette taxes under Sec. 210.02, F.S.

Assumptions if husband and wife not current owners

In other than current transactions, a CMA, though desirable, is not necessary to prove the continuous marriage of parties who took as tenants by the entirety and conveyed as tenants by the entirety where there is no indication in the public records of a divorce. See TN 20.01.01.

General liens

Continuous marriage being assumed eliminates the need to require proof thereof as a basis for ignoring a general lien against only one of the spouses when the spouses took title together and conveyed title together or were foreclosed against with personal service of process being had on them. Where the foreclosure was done through publication, the presumption of continuity fails, however, and creditors against only one of the spouses must be joined in the foreclosure. See
(continued on page 55)

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"Judgment Creditors and Foreclosure Against Entirety Property," 23 *Fund Concept* 35 (Apr., 1991).

Death of a spouse

Presumption of continuity exists when a spouse dies who originally took with the surviving spouse and the surviving spouse conveys out as a "widow," "widower" or "single person." The death certificate should be examined as well as other documents in the public records for contradictory information. See TN 20.02.08.

New Policy Forms

(continued from page 53)

insolvency or similar creditors' rights laws." The creditors' rights exclusion in the mortgagee policy is similar, but refers to "the transaction creating the interest of the mortgagee." Title insurers, it is generally thought, are not in a position to underwrite risks relating to solvency which are not traditionally related to title insurance.

The Department of Insurance has approved endorsements deleting the creditors' rights exclusion from both the owner's and mortgagee forms. The underwriting requirements for the use of such endorsements will be discussed in the June, 1992, issue of *The Fund Concept*.

MORTGAGE CLOSING TIP

Disclosure of Fees Paid to Mortgage Brokers

On February 4, 1992, Frank Keating, General Counsel of the United States Department of Housing and Urban Development, issued an "Opinion Letter" regarding mortgage broker compensation. That letter reinforces the requirement that mortgage broker fees must be separately itemized and disclosed on the Good Faith Estimate (GFE) and the HUD-1 Settlement Statement (HUD-1).

While The Fund has heard of isolated requests by mortgage brokers that their fees not be "broken out" on the HUD-1, Rules of Florida's Department of Banking and Finance require that such fees be distinctly itemized on both the GFE and HUD-1. So failure to do so would be in conflict with both federal and state law.

The Internal Revenue Service recently issued guidance on when "points" can be reported as interest paid in connection with a debt incurred for the purchase or improvement of the debtor's principal residence. Revenue Procedures 92-11 and 92-12 establish the following criteria for these items to be "reportable" for tax purposes:

1. The fee must be clearly

designated on the HUD-1,

2. The fee must be computed as a percentage of the stated principal amount of the loan,
3. The charging of the fee must conform with an established local practice of charging points, and
4. The fee must be paid by the borrower (either directly or by the lender with money that came from the borrower).

Revenue Ruling 92-2 clarifies that points paid to a mortgage broker are also reportable.

Such compensation may be described using terms such as "mortgage broker fee," "points paid to mortgage broker," "discount fees paid to mortgage broker," or similar language. As this compensation is a direct loan cost, it should be disclosed in the 800 series of Section L (second page) of the HUD-1. As with all other payments reflected on the HUD-1, the name of the payee must be provided as well as the amount of payment - regardless of whether paid at or outside of closing (P.O.C.).

Cure for Common Title Defect: Nonidentity Affidavits

by Silvia B. Rojas, Fund Senior Underwriting Counsel

This is a companion article to "Cure for Common Title Defect: Continuous Marriage Affidavit," 24 *Fund Concept* 47 (May, 1992).

When a CMA is not feasible, then the next method used to clear title of a general lien against a debtor with the same name as the owner of the real property, a federal tax lien against a mortgagee who is assigning the mortgage, or an incompetency or bankruptcy proceeding, is a nonidentity affidavit.

As with any curative affidavit, the nonidentity affidavit should comport with the two basic rules:

1. Personal knowledge and linkage, and
2. Describe real property.

Informed statement

The nonidentity affidavit should indicate sufficient descriptive data about the matters in question to convince future title examiners that the affiant did make a fully informed statement of nonidentity. For example, a printout attached to the affidavit without a statement that the affiant has examined the actual copies of each document therein mentioned would not be indicative of an informed statement. An affidavit detailing the style of each judgment would be indicative of an informed statement.

Contra-indicating statements

Information on the face of

a lien, such as the tax identification number or the address of the debtor, should be specifically addressed as not being the same as the affiant's. The place of residence should be specifically addressed when dealing with a bankruptcy or incompetency proceeding. If the affiant, whose name as shown on the deed reflects no middle name or initial, has a middle name or initial different from the lien or no middle name or initial, this fact should be stated in the affidavit. This latter statement would eliminate the need to specify or examine liens against a debtor with a middle name or initial different than the affiant.

Previously recorded nonidentity affidavits

An examination of title may reveal a poorly drafted nonidentity affidavit which may be on the margin of credibility. Most of these marginal affidavits are acceptable if back in the chain of title. However, if in the Fund Agent's opinion the affidavit is questionable to adequately assure the public of the facts it attempts to clarify, then a Fund underwriting counsel should be contacted for further review.

Additional proof

Special attention in obtaining additional proof should be given when the name of the affiant is unusual or when the names of the spouses on the lien are the affiants' names.

Written confirmation from a creditor may be advisable to verify ages and other characteristics of the debtors as opposed to the affiants. Above all, never accept an affidavit when common sense indicates that fraud may be involved. The title agent is the insurer's front-line defense against future claims.

Practical approach

The Fund acknowledges that there may be situations in which the affiant has a very common name, such as John Smith, and a review of every document filed against the same name would be extremely impractical. If the affiant has no middle initial, the name search would pick up all debtors with the name of "John Smith," "J. Smith," "Smith" and "J. [middle initial] Smith" and "John [middle initial] Smith." For purposes of issuing a Fund policy, a general but all-encompassing nonidentity affidavit may be used for judgment liens only. The affidavit should specify contra-indicating data as to other liens, bankruptcies and incompetency proceedings. Note: Affidavits of nonidentity in incompetency proceedings should be given by a knowledgeable third party other than the landowner. The affidavit should state the affiant's full name and any names that the affiant may otherwise be known by. The affidavit should state that the affiant "has never been served with process on

any action, has no pending claims, liens or demands against him of any type whatsoever, and has no judgments, orders, decrees, liens, claims or demands presently filed against him of any type whatsoever." The affidavit should further state that the affiant has examined actual copies of all of the noted certified and unsatisfied judgments as set forth on an attached exhibit. The exhibit may be a typed list describing the judgments by recording data or a copy of the certified computer printout.

Federal tax liens and judgments - Special Notes

A federal tax lien is a lien on all property whatsoever owned by the taxpayer. See 26 U.S.C., Sec. 6321. A judgment lien is not as all encompassing, as it attaches only to real property owned by the debtor. For purposes of issuing a Fund policy, the following list sets forth the basis for requiring a nonidentity affidavit:

1. **Partnership.** A federal tax lien, as well as a judgment, against a partnership is not a lien on a partner's personally owned real property. As pertains to a federal tax lien, the tax identification number should be checked to ascertain that it is of the partnership and not the partner.
2. **Partner.** A federal tax lien against a partner of a partnership in his individual capacity could be a lien on the real property owned by the partnership

to the extent of the partner's interest therein. Do obtain a nonidentity affidavit. However, a judgment against a partner is not a judgment on the real property owned by the partnership except under certain circumstances noted under TN 18.03.08. A nonidentity affidavit is unnecessary except under the noted circumstances.

3. **Dissolved corporation.** A federal tax lien or judgment lien against a dissolved corporation or its trustee would not be a lien on the shareholder's personally owned real property.
4. **Shareholder.** A federal tax lien, but not a judgment lien, against a shareholder of a dissolved corporation could be a lien on the corporation's interest in real property after reinstatement of the corporation on pre July 1, 1990, dissolutions. See TN 11.04.09. Do obtain a nonidentity affidavit.
5. **Nominee.** A federal tax lien against a nominee for a third party may be deemed to be a lien on the nominee's personally owned real property.
6. **Mortgage.** A federal tax lien against an assignor must be cleared prior to insuring an assignment of the mortgage because a mortgagee title policy insures that the mortgage is free and clear of all liens. See 26 U.S.C., Sec. 6323. Do obtain a nonidentity affidavit when

insuring the assignment. The lien need not be cleared prior to payoff of the mortgage to the mortgagee, as the lien would then transfer to the consideration paid. Unlike a federal tax lien, a judgment against a mortgagee is not a lien on the mortgage proceeds. Mortgages are not subject to levy and sale. See TN 12.03.04. A nonidentity affidavit would be unnecessary.

7. **Purchase Money Mortgage.** A federal tax lien, as well as a state or federal court judgment lien not in favor of the United States or any of its agencies, corporations or instrumentalities, against a purchaser/borrower, is inferior to a purchase money mortgage so a nonidentity affidavit is not required. See TN 18.04.01 as to state court judgment liens and see TN 30.02.06 as to federal tax liens. However, a federal court judgment in favor of the United States or any of its agencies, corporations or instrumentalities would be superior to a purchase money mortgage, so a nonidentity affidavit would be necessary. See 28 U.S.C., Sec. 3201 which pre-empts state law relating to priority of these types of judgments.
 8. **Trustee.** A federal tax lien or judgment lien against a trustee in his individual capacity is not a lien on the real property owned by the trustee in his
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Cure for Common . . . (continued from page 65)

capacity as a trustee unless the trustee is also a beneficial interest holder. The liens also cannot attach to any fiduciary holding bare legal title, e.g., guardians and personal representatives. If the affiant/trustee is the debtor, a review of the trust to determine nonbeneficiary status is a possible cure. The findings should be set forth in an affidavit.

9. **Lessee.** A judgment lien or federal tax lien against a lessee may be a lien on the leasehold interest of the lessee. See TN 12.03.01. **Do obtain** a nonidentity affidavit.
10. **Vendor.** A judgment lien or federal tax lien against a vendor under an agreement for deed attaching after the recordation of the agreement for deed is eliminated only upon the final payoff to the vendor by the vendee. See TN 9.03.02. A nonidentity affidavit would not be required after the vendor

deeds the property over to the vendee upon full payment under the agreement for deed.

11. **Vendee.** A judgment lien or federal tax lien against a vendee cannot attach to the real property but an execution lien would

attach to the contract vendee's interest in the agreement for deed. See TN 9.03.01. A nonidentity affidavit would be advisable when obtaining an assignment of the vendee's interest.



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Simple Cures for Certain Legal Description Errors

by Bill Tompkins, Fund Underwriting Counsel

When examining title, Fund Agents often encounter deeds and other instruments which have errors in their legal descriptions. Although many legal description errors must be cured by obtaining and recording corrective instruments, several common legal description errors may either be ignored or cured through an affidavit. This article describes these errors, discusses relevant judicial precedent, and (when some corrective action is necessary) sets forth the requirements which must be satisfied before a Fund policy is issued.

Errors in Courses or Distances in Calls That Run to a Fixed Point

Metes and bounds descriptions sometimes contain inaccuracies in either the direction or number of feet in a call to a fixed point. A simple example of such an inaccuracy is as follows: A call in the description runs 300 feet to the southern boundary of a state road when the actual distance to this point is 200 feet. Because of a surveying rule of construction which indicates that natural or artificial landmarks control over distances, this error may be ignored. See "Interpretation of Conflicting Terms in Descriptions," 17 *Fund Concept* 9 (Feb., 1985); and 1 BOYER, REAL ESTATE TRANSACTIONS, Sec. 13.06.

This rule of construction was applied by the Second District Court in *Bridges v. Thomas*, 118 So.2d 549 (Fla. 2d DCA 1960). In this case, Mae Bridges conveyed the subject parcel to Edith and Emma Thomas through a warranty deed which indicated that the north boundary of the subject parcel would be the center of a creek 148 feet north of the subject parcel's south boundary. The center of the creek was actually 193 feet north of the southern boundary. After executing this conveyance, Mae Bridges discovered this discrepancy and filed suit to reform the deed, contending that she had conveyed more property than was intended. The court held that she was not

entitled to reformation of this deed because of a rule of construction which indicates that natural landmarks (in this case the center of a creek) control over distances.

The *Bridges* case may be used as a basis for ignoring errors in courses and distances in calls to a fixed point. This rule is easy to state but its application becomes difficult when there is uncertainty as to whether a fixed point is present. For issuing a Fund policy, the following monuments may be considered fixed points:

1. Natural monuments such as trees, or the ordinary high water mark of bodies of water; and
2. Artificial monuments such as the center line of a road, a building, a fence or an iron stake.

Obvious Errors

According to another surveying rule of construction, some errors in descriptions are so obvious that they may be ignored, see 1 BOYER, REAL ESTATE TRANSACTIONS, Sec. 13.06.

In *McCormick-Hannah, Inc. v. Magruder*, 163 So. 407 (1935), the Supreme Court of Florida held that this rule validated a legal description in which the word "east" was clearly intended to be "west." In this case the plaintiff filed an action in ejectment claiming title to a strip of land pursuant to a deed which contained the phrase, "along the east side of the land of L.C. Hazel." The appellate court concluded that the parties to this deed had intended that the word "west" be included in the above-described description instead of "east." As support for its decision the court cited several cases which had held that minor errors in descriptions could be ignored when doing so would effectuate the intention of the parties.

Fund Agents should use this rule only in situations in which the error is very obvious.

Two of these kinds of situations are set forth in the following examples:

1. The final call in a metes and bounds description is meant to run 100 feet east to the point of beginning, but because of a clerical error, runs 100 feet west.
2. An acreage description intends to describe the northwest quarter of the southwest quarter of the southeast quarter of Section 1. The actual description on the instrument references the northwest quarter of the southwest quarter of the southeast half of Section 1.

Harmless Omissions

When the intention of the parties would be served by ignoring an obvious omission in a recorded instrument, Florida courts have tended to do so. In *Miller v. Griffin*, 128 So. 416 (Fla. 1930), the Supreme Court of Florida held that a legal description which correctly identified the parcel by section, township and range and was otherwise proper, was not invalidated by the failure to designate the county.

The Supreme Court of Florida came to a similar conclusion in *Campbell v. Carruth*, 13 So. 432 (Fla. 1893). The deed in question in this case contained the following legal description: "The northwest quarter of the northwest, Section 8, Township 29 South, of Range 16 East, containing forty acres." In reaching its decision, the court reasoned that the words "quarter of" could be supplied by construction because inclusion of these words would create a parcel of 40 acres., and because "so familiar had people generally become with these descriptive terms applied to government lands that, in describing them, it has become quite common to abbreviate, and to omit the use of such words as 'quarter' and 'of' and to leave them to be inferred and understood."

In *Ansley v. Graham*, 74 So. 505 (Fla. 1917) the Supreme Court of Florida concluded that

the failure to include both the appropriate state and county in the legal description did not make the description defective. The court indicated that

the grantor and grantees are described as being of the county of Duval and the state of Florida, and the deed is recorded in that county, and in the absence of anything to the contrary, the presumption is that the land is situated in the county and state where all of the parties reside, and where the deed was executed, acknowledged and recorded.

... omission of the words "quarter" and "of" in an otherwise proper acreage description will not make title uninsurable.

The Fund has adopted the holding in the *Miller and Campbell* cases in TNs 13.03.03 and 3.03.06. Therefore, Fund Agents may ignore the omission of the county in an instrument which correctly designates the section, township and range. Also, omission of the words "quarter" and "of" in an otherwise proper acreage description will not make title uninsurable. For issuing a Fund policy, omission of both the state and county in an otherwise valid legal description will not invalidate the description if, as in the *Ansley* case, the grantor and grantee reside in the county in which the deed is executed, acknowledged and recorded.

Defects That May Be Cured By an Affidavit

For issuing a Fund policy, certain ambiguities in legal descriptions may be corrected without obtaining and recording a corrective deed.

If the surveyor could locate the subject parcel by applying the general rules of surveying, the legal description may be

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Legal Description Errors . . . (continued from page 147)

considered insurable. See *Maynard v. Miller*, 182 So. 220 (Fla. 1938), and *State v. Contemporary Land Sales, Inc.*, 400 So.2d 488 (Fla. 5th DCA 1981). In the latter case the court upheld the validity of a quarter-quarter section description even though the original survey did not show quarter-quarter lines.

Because a deed with a truly defective legal description causes a break in the chain of title, a surveyor's affidavit should be used only in certain factual circumstances. The following hypotheticals are examples of descriptions that contain errors that may be cured by an affidavit:

1. The legal description in a deed refers to "Lot 26, Block 1, Blackacre Subdivision, Orange County." Blackacre subdivision is not divided into blocks; it consists only of consecutively numbered lots. A surveyor or title examiner examining the plat could easily determine the location of the subject parcel.
2. A deed in the chain of title has the following legal: The northeast quarter of the northwest quarter of Section 1, Township 5 South, Range 6 East, Orange County, Florida, containing 100 acres. The subject parcel actually contains only 40 acres but because of a surveying rule of construction which indicates that a recital of area is given the least weight when construing an uncertain legal description, a surveyor could locate this parcel. See "Interpretation of Conflicting Terms in Descriptions," 17 *Fund Concept* 9 (Feb., 1985).
3. The legal description in the deed is as follows: Begin at the northeast corner of Section 3, Township 5 South, Range 6 East, Orange County, Florida, thence run south 45°0'0" west 500 feet to the western boundary of State Road 84, thence south 200 feet, thence east to the eastern section line of Section 3, thence

north to the point of beginning. The first call in this description should run southwest 300 feet to the western boundary of State Road 84. By applying the rule of construction which states that monuments control over distances, a surveyor could easily locate the subject parcel despite the error in the first call.

Conclusion

The above-described cases and rules clearly indicate that not all legal description errors prevent recorded instruments from imparting construction notice. The above-described underwriting requirements are useful to Fund Agents who are faced with minor legal description errors, but they are not a panacea. When a Fund Agent is uncertain as to whether a corrective deed is required, he or she should contact the Fund's Underwriting Department.

RESPA Update (continued from page 144)

"for the purpose of finalizing the Department's proposed rule dated July 21, 1994, regarding amendments to Regulation X, the Real Estate Settlement Procedures Regulation, or for the purpose of developing or issuing any interpretive rule with respect to any of the four issues denominated in the preamble to the proposed rule." Passage by the Senate is expected in September. Assuming Senate concurrence, the 1994 proposed amendments would be buried by this legislation until October, 1996, and perhaps permanently. Similarly, the American Land Title Association's requested interpretive letter from HUD on core title agent services has such a low priority that the Department won't even speculate' on when it might be forthcoming.



CONCEPT

January, 1996, Volume 28

New Search and Examination Guidelines

Here is good news for our Agents, especially those who are ATIDS customers. We have updated our underwriting guidelines on how to use ATIDS to reduce the time it takes you to complete a title examination. We have done it by cutting down on the number of documents you need to order, and wait for, before you can close the deal. You should notice right away that your turnaround time is improved, that there are fewer documents to process, file away, or throw away and that consequently you are saving time and money. We are also introducing new ways of examining the title information found in ATIDS and enhancing the guidelines for examining in subdivisions and condominiums.

Of course, this does not mean that THE FUND is in any way compromising its reputation for quality. While we are introducing new and improved methods for examining title using ATIDS, you are still expected to order and examine the necessary documents in the chain of title and pay the same close attention when determining their validity and how they affect title.

THE FUND's branch offices and affiliates began using these updated guidelines in October, 1994. As we announced to you then, we no longer show mortgages and other types of property liens in our abstract products that are satisfied of record or are unenforceable by statute. This has resulted in better service to you, and in some cases, reduction in costs.

You may start using the updated underwriting guidelines immediately.

Property Search. It is no longer necessary to order copies of mortgages and other

types of property liens that appear satisfied of record or are unenforceable by statute.

Example: You are examining title and shown on your ATIDS property printout is a mortgage executed by A. B. Dalton and Edith Dalton, his wife, in favor of First Fidelity. In addition, there is a modification of mortgage between the same parties, an assignment from First Fidelity to Union Central and a satisfaction from Union Central, all of which correctly refer to the original mortgage. You do not need to order copies of the mortgage, the modification agreement, the assignment, and the satisfaction.

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Department of Insurance during the first quarter of 1996. In the meantime, Fund Agents who are asked to issue a mortgagee policy on a reverse mortgage loan will need to issue both the ALTA 6.2 and Revolving Credit Endorsements, following the underwriting guidelines for each. See related articles, "New Truth-in-Lending Disclosures Required for Reverse Mortgages," 27 *Fund Concept* 111 (Jul., 1995); and "Insuring Reverse Annuity Mortgages," in this issue.

New Search and Examination Guidelines

(continued from page 1)

- **Name Search.** It is no longer necessary to order copies of judgments, tax liens and other types of general liens that appear satisfied of record or unenforceable by statute.

Example: You have completed your property search and are examining an ATIDS name file printout on the current record owner. The printout reveals a federal tax lien and a release of federal tax lien recorded during the time period covered by the search. The recording reference for the federal tax lien shown in the "COMMENTS" field of the release is the same as the book and page of the recorded lien. Because both documents are posted to the same name, and the recording reference on the release is the same as that of the lien, you do not need to order copies of the documents.

- **Lengthy Metes And Bounds Descriptions.** When examining an ATIDS property printout that contains lengthy metes and bounds descriptions on parcels adjacent to or within the same section code as the parcel you are examining, you do not need to map legal descriptions on some document types. You may rely on names

of parties to form a chain of title.

Example: You are examining property in which is part of a section code in a Section, Township and Range beginning with the effective date of a prior Fund policy. The insureds are John Adams and Eve Adams. A mortgage from John and Eve to Gladstone Federal, an easement to Florida Power and Light Company, and a special assessment lien for road paving are shown as exceptions on the policy. After determining that John and Eve are currently in title and locating their deed on the property printout, you may ignore deeds and mortgages that do not mention either of them as parties. You no longer have to map the metes and bounds descriptions to determine whether the deeds and mortgages affect the property to be insured. Order only the ones that apply to the property you are examining. If there are documents on the printout that refer to the Adams/Gladstone Federal mortgage, they should be ordered unless the mortgage appears satisfied. If there are documents that refer to any new mortgage executed by John or Eve, they should be ordered unless the mortgage appears satisfied. Documents referring to other mortgages may be ignored. If there are documents that refer to the special assessment lien, they should be ordered unless the lien appears satisfied. The legal descriptions on all other documents should be examined. Only those documents containing legal descriptions for all or any portion of the property to be insured need to be ordered. NOTE: Caution should be used when applying these guidelines. There are times when the chain of title is more complex than the above example. If you are uncertain whether the documents affect the property to be insured, copies should be ordered and examined.

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New Search and Examination Guidelines

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- **No Prior Policy On Subdivision Or Condominium Property To Be Insured.**

If no base title can be found on property to be examined in a subdivision or condominium, a Fund Agent has the option of examining the property to be insured from the date of plat or recording of the Declaration of Condominium, and ordering prior policies on other property in the same subdivision or condominium. A minimum of two prior Fund policies within the same subdivision or condominium issued by different Agents must be ordered. The prior policies for subdivisions should be on lots in close proximity to the property to be insured. The Agent must compare exceptions on Schedule B of the prior policies and include all exceptions in the new policy which affect the property being insured.

Example: You have not been able to locate base title on subdivision property to be insured. THE FUND's prior policy system reveals three policies issued by different Agents that are in close proximity to the lot to be insured. You should examine the property to be insured from the date of the plat and order two of the prior policies. When comparing the exceptions on Schedule B, you determine that a Florida Power Easement recorded prior to the date of the plat should be shown as an exception on the commitment, in addition to other outstanding encumbrances identified while examining title on the lot to be insured.

- **Plats/Condominiums Of Record Seven Years Or More.** When no prior title evidence is available, THE FUND permits the examination to begin with the deed into the developer of subdivision and condominium properties that have been

of record for seven years or more.

Example: You are unable to locate base title information on subdivision property to be insured. The plat has been of record for more than seven years. All of the streets and common areas are dedicated to the public. One mortgagee joins on the plat. You examine the underlying property and find that the deed into the developer was recorded three years prior to the plat. Your examination of the lot to be insured should begin on the date the underlying property is deeded to the developer and should continue through the platting of the subdivision up to a current date. In addition, you should examine a lot in close proximity to the lot to be insured and review the printout looking for any documents which would put you on notice that there are liens and encumbrances not revealed in the search of the underlying property or in your examination of the plat.

We would also like to remind you again about our "X" Marks the Spot program. For the past five years we have been marking documents in the General Index (Name) File with an "X" when they no longer affect title to real property. Examples of this are satisfied judgments, released tax liens, and judgments and tax liens that are no longer enforceable. When an "X" appears to the right of the primary reference (usually an Official Records Book and Page) of any document listed on the Name File printout, you should not order a copy. This time saver is one more example of THE FUND's commitment to service without compromising quality.

We hope these new and improved underwriting guidelines on how to use ATIDS will make your life less complicated, and your practice more profitable. If you have any questions about these changes, please call THE FUND's Underwriting staff in Orlando at 1-800-432-9594 or the Underwriting attorney at your local branch.



Title Q & A's

5. Deed to Trust/Trustee

Q. Title to Blackacre was vested in Louis May. In 1992, he deeded Blackacre to "Louis May Trust, Louis May, as Trustee," and the deed contains the usual land trust powers. Louis May, as Trustee of the Louis May Trust, deeded Blackacre to Bill Buyer. May the title be insured without a deed from Louis May, individually?

A. Yes. The designation of the grantee in the 1992 deed, while not perfectly clear, should be considered as conveying title and placing it in the trustee, not in the trust itself. Reference: TN 31.06.07.

6. Conveyance of Homestead Property Held by Land Trust Trustee

Q. Title to Blackacre is vested in Charles Brown, as Trustee under Trust Agreement dated May 12, 1973. The deed contains the usual land trust powers referred to in Sec. 689.071, F.S. Charles Brown resided on Blackacre. In 1985, Charles Brown, as Trustee, joined by his wife Mary Brown, conveyed Blackacre. For insuring the title, may the title be passed even though Charles Brown did not convey out individually?

A. Yes. Both TN 31.02.03 B and Florida Real Property Sales Transactions (CLE 2d ed.), Sec. 6.28 recommend that if the property is the homestead of the land trust trustee, the trustee should convey in both an individual capacity and as trustee, and the spouse of the trustee, if any, should join in the conveyance. However, being back in the chain of title, the lack of conveyance out by the trustee in his individual capacity may be waived.

7. Corrective Deed to Add Legal Description

Q In 1994, a deed was recorded for which a legal description stated: "See Exhibit 'A' Attached. " The recorded deed did not have an Exhibit A attached. In 1995, the original deed was re-recorded setting forth the following on its face. "CORRECTIVE DEED - THIS DEED IS BEING RE-RECORDED TO INCLUDE EXHIBIT A' WHICH WAS OMITTED IN ORIGINAL RECORDING." May the title be insured without a new re-executed and re-acknowledged deed?

A. Yes - provided an affidavit is obtained and recorded from a knowledgeable person, preferably from the person who handled the closing, stating that the original deed as executed and delivered did have Exhibit A attached but the legal description got detached before the deed was recorded. Extreme caution should be exercised when dealing with this situation, as it could easily be a vehicle for fraud. For that reason, if a re-executed and re-acknowledged deed is readily available, it should be obtained and recorded. Any intervening interests between the recording of the original and corrective deed would have to appear as exceptions in the policy. Reference: Air Flow Heating and Air Conditioning, Inc. v. Banker, 326 So.2d 449 (Fla. 4th DCA 1976).

8. Notary Must Sign Twice to Be Deed Witness

Q. A deed to Blackacre was attested by two subscribing witnesses. One of the witnesses was also the notary public who also signed the acknowledgment. For insuring title, does this create a title problem?

A. No. A notary may also be a subscribing witness to a deed. However, to count as a subscribing witness, the notary must sign in the usual space for witnesses on the deed in addition to signing the acknowledgment. Merely signing the acknowledgment is not sufficient to be counted as a witness. Reference: Walker v. City of Jacksonville, 360 So.2d 52 (Fla. 1st DCA 1978); TN 10.07.04.



CONCEPT

March 2000, Volume 32

The Lis Pendens: Significant Principles

by Beth Kaler, Fund Senior Underwriting Counsel

The lis pendens statute, Sec. 48.23, F.S., is a useful tool for real estate litigation and is itself the subject of much litigation. Throughout the years, numerous court cases have had to interpret the lis pendens statute. This article focuses on some of the more significant principles relating to the lis pendens as addressed by Florida court decisions.

Definition and Purpose of Lis Pendens

While the term "lis pendens" literally implies a pending suit, it is defined as the jurisdiction, power or control which courts acquire over property involved in a pending suit. *De Pass v. Chitty*, 105 So. 148 (Fla. 1925); *Med. Facilities Dev. v. Little Arch Creek*, 675 So.2d 915 (Fla. 1996). The notice of lis pendens protects both the proponent of the lis pendens and third parties. The lis pendens protects the proponent's interest from extinguishment and from impairment from intervening liens. The lis pendens protects future purchasers or encumbrancers of the property by informing them that there is a current suit involving the property. *Chiusolo v. Kennedy*, 614 So.2d 491 (Fla. 1993); *Med. Facilities Dev. v. Little Arch Creek*, 675 So.2d 915 (Fla. 1996).

Posting of Bond

The protection afforded to third parties distinguishes a lis pendens from a typical injunction, but this protection is counterbalanced by the constraining effects the lis pendens has on the property-holder/defendant. *Chiusolo v. Kennedy*, 614 So.2d 491 (Fla. 1993); *Med. Facilities Dev. v. Little Arch Creek*, 675 So.2d

915 (Fla. 1996). Since the lis pendens could prevent the mortgaging or selling of the property, the wrongful filing of a lis pendens can be damaging. Thus courts have interpreted the statutory reference to injunctions in Sec. 48.23(3), F.S., to mean that a bond may be required. The decision of whether the posting of a bond is required rests within the discretion of the trial judge. The trial court's discretion to require a bond is not limited to cases in which the property-owner/defendant

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can show irreparable harm. The court may also consider the likelihood of other damages that do not meet the irreparable harm standard. For instance, in the *Med. Facilities Dev.* case, the Supreme Court of Florida held that the trial court has broad discretion to require the proponent of the lis pendens to post a bond when the notice of lis pendens is not based on a duly recorded instrument or construction lien in cases in which the property-owner/defendant can show damage or injury will likely be suffered by that defendant in the event that the filing of a notice of lis pendens was unjustified. Many cases have held that the filing of a lis pendens is unjustified where there is not a sufficient nexus between the matters in dispute between the parties to the litigation and the property described in the lis pendens. See *Space Development, Inc. v. Florida One Construction, Inc.*, 657 So.2d 24 (Fla. 4th DCA 1995); *Lennar Florida Holdings, Inc. v. First Family Bank*, 660 So.2d 1122 (Fla. 5th DCA 1995); *Sailfish Point v. Sailfish Point Owners*, 679 So.2d 1283 (Fla. 4th DCA 1996); *De Pass v. Chitty*, 105 So. 148 (Fla. 1925); *Tortu v. Tortu*, 430 So.2d 531 (Fla. 4th DCA 1983).

Duration of Lis Pendens

In *American Legion Community Club v. Diamond*, 561 So.2d 268 (Fla. 1990), the Supreme Court of Florida dealt with the interpretation of Sec. 48.23 (2) and (3), F.S., and the circumstances under which a lis pendens is allowed to remain in effect as of right beyond one year. The Supreme Court answered in the negative the certified question as to whether a suit to set aside a conveyance of real property is an action "founded on a duly recorded instrument" as set forth in Sec. 48.23, F.S., authorizing the maintenance of a notice of lis pendens as of right. The litigation sought to void a warranty deed on the ground that the officers did not comply with American Legion Community Club's constitution, rules, regulations, and bylaws. The Supreme Court acknowledged that the courts in Florida are not in harmony over what falls within the phrase "founded on a duly

recorded instrument," as stated in Sec. 48.23(2), F.S. To clarify the phrase, "founded on a duly recorded instrument," the court cited *Berkley Multi-Units Inc. v. Linder*, 464 So.2d 1356 (Fla. 4th DCA 1985), for the proposition that unlike a mortgage foreclosure suit, a suit to rescind a conveyance in which it is alleged that the grantee fraudulently or otherwise wrongfully acquired title is not an action founded on the terms and provisions of the deed but on circumstances surrounding the execution of the deed. Consequently, in the *American Legion* case, the Florida Supreme Court held that the exception to the one-year duration of the lis pendens, which exception allows a longer duration if the action is founded on a duly recorded instrument, applies to those cases in which the suit is based on the terms and provisions contained in the recorded document.

In the *American Legion* case, the Supreme Court's discussion of mortgage foreclosure actions versus actions for rescission of a deed is instructive for understanding when an action is founded on a duly recorded instrument. For instance, in a mortgage foreclosure suit, the recorded mortgage is notice that if the mortgagor fails to perform, make payments or otherwise defaults under the terms of the mortgage and the underlying promissory note, the mortgagee may bring a foreclosure action. Because the mortgagee is the plaintiff and the mortgagee's interest is already a matter of public record, the mortgagee is entitled as of right to file a notice of lis pendens. Therefore, a mortgage foreclosure suit is an action founded on a duly recorded instrument.

In contrast, actions to rescind a deed may not be actions founded on a duly recorded instrument because the recording of the deed serves as notice that the grantor has relinquished all right, title and interest in the property. Thus, the recorded deed is notice of the grantee's property ownership. Therefore, if an action is brought to rescind the deed, the plaintiff is not entitled as of right to file a notice of lis pendens since the action is not founded on the deed but

instead is founded on circumstances preceding and surrounding the execution of the deed. The notice of lis pendens warns of the possibility of rescission, a cloud on title not evident from the public records, and thus the lis pendens statute requires that the court control and discharge the lis pendens pursuant to Sec. 48.23(3), F.S. See the *American Legion* case at pages 271–272 for this instructive discussion. See *Moss v. Arca Development, Inc.*, 687 So.2d 70 (Fla. 3d DCA 1997), citing the *American Legion* case, where the court reversed an order discharging a lis pendens because the action was founded on a duly recorded instrument, a quitclaim deed to the deceased parent of the petitioner. In other words, the recorded deed was notice of grantee's interest and the decedent's child was entitled to maintain a lis pendens as of right.

Consequently, if it is not clear that the action is founded on a duly recorded instrument and the one-year duration of the lis pendens is about to expire, a prudent proponent of the lis pendens may wish to consider making a request to extend the duration of the lis pendens. In the *American Legion* case at page 272, the Supreme Court of Florida stated that if American Legion Department wanted the lis pendens to remain in effect beyond one year, it could have made this request to the trial court.

Other cases are instructive as to the meaning of "founded on a duly recorded instrument." In *Stinnett v. Dodson*, 575 So.2d 1350 (Fla. 2d DCA 1991), the Second District Court quashed an order discharging the lis pendens. The court determined that a recorded easement through its recorded terms provides notice of the easement owner's interest without an investigation of factual matters outside the record and held that a claim to enjoin interference with the recorded easement of ingress and egress is one founded on a duly recorded instrument. In *Sailfish Point v. Sailfish Point Owners*, 679 So.2d 1283 (Fla. 4th DCA 1996), the court concluded that a recorded declaration of covenants and restrictions, which in part restricted alienation of certain parcels to only certain vendees, was sufficient to form the statutory predicate for a lis pendens as of right and affirmed the trial court's denial of a motion to

dissolve the lis pendens founded on the declaration

Title Considerations

For issuing a Fund policy, Fund Agents should be aware that regardless of whether a lis pendens is recorded or whether the one-year duration of a lis pendens may have expired or whether the filing of a lis pendens was unjustified in the first place, actual knowledge of litigation involving adverse claims requires that the adverse claims be cleared or excepted in Fund policies. Actual knowledge of the litigation does not cease just because a lis pendens expires or is dissolved. For additional information regarding Fund policies and lis pendens matters, see TNs 12.05.01–12.05.07. ■

Florida Fund Agents May Issue Policies on Alabama Properties

THE FUND is licensed as a title insurer in Alabama. Fund Agents are not required to be licensed in Alabama in order to issue Fund policies on Alabama titles. Florida Fund Agents who may be interested in issuing policies on Alabama properties may contact THE FUND's Sue Ellen Foreman at 1-877-655-9313 for information on becoming an Alabama Fund Agent.

Forms Audits Are Coming

The annual policy forms audit will be mailed in March. Florida Statutes require every title agent to account to its underwriter for every commitment, serialized endorsement and policy jacket every calendar year. Agents must complete the audit in accordance with the instructions contained in the mailing within 30 days of receipt. Audit responses received by THE FUND within 30 days of the date of the audit will be eligible to be entered in a drawing for lunches to be hosted by Fund Risk Auditors.



CONCEPT

April 2000, Volume 32

Correcting Mistakes in Prior Real Property Documents

by G. Robert Arnold, Fund Vice President

With the volume of real estate documents now being recorded, it is inevitable that occasional errors are made in the documents that require some correction. These errors are commonly called "scrivener's errors." If the error is a material or substantive error, corrective action is required before the title may be insured. These errors are usually found in the names of the parties or in the legal description. A common example would be a deed that conveys "Lot 21" but that was supposed to convey "Lot 12." See TN 13.02.01.

The recommended correction takes the form of a completely new document that is often designated as a "corrective" document for documentary stamp tax purposes and that contains a recital referring to the prior document and to what is being corrected. However, other ways to correct such an error are often found — changing and rerecording the original document, obtaining a scrivener's affidavit explaining the error, or having a court judicial reform or other court action eliminate the error. Each of these methods will be discussed below.

Corrective Documents

When readily available, a properly executed and acknowledged "corrective" document is usually the best means of correcting or changing a prior document. However, it should be noted that this does not necessarily undo the effect of the original document. For instance, as set in

Uniform Title Standard 3.2, a grantor who has conveyed land by an effective and unambiguous deed cannot avoid the effect of such conveyance by executing a new deed making a change in the conveyance, even though the later deed purports to correct or modify the former.

Changes Made to Recorded Document

Once a document has been executed, delivered and recorded, it may not as a rule

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Correcting Mistakes in Prior Real Property Documents *(continued from page 43)*

be amended other than by action of all of the parties undertaken with the formalities requisite for execution and acknowledgment in the first instance. As discussed in TN 10.03.02, alterations apparent on the face of a recorded document require special consideration. Of course, if the changes were made on the original document before it was delivered, this would not be a changed document in the legal sense and is binding on the parties in its final form at delivery. However, the difficulty is that future title examiners cannot determine when obvious alterations occurred and may be put on notice that the change was possibly not made or authorized by the signatory. This is clear-cut when the original document is rerecorded with changes made and initialed by the signatory.

Although it is a widespread practice, as a rule a change or strike-through that is initialed or signed by the signatory seldom succeeds in correcting the error. As discussed in TN 10.03.03, unless the corrective document has been re-executed and reacknowledged by the original signatory, it should not be relied on to correct the errors. This is illustrated by *Connelly v. Smith*, 97 So.2d 865 (Fla. 3d DCA 1957), *cert. den.*, 101 So.2d 811 (Fla. 1958), dealing with a deed containing an incomplete legal description. After execution and delivery of the deed, the grantee inserted the complete legal description and rerecorded the deed. The court held that the description in the original deed was insufficient and that the grantee's voluntary addition to the description after execution and delivery of the deed was of no effect.

There are two major exceptions to this rule with respect to acknowledgment of a document to be rerecorded. The first is discussed in TNs 10.07.01 and 10.07.02, where a person who in fact witnessed execution of the document subscribes his signature at a later date. In this instance the document may simply be rerecorded

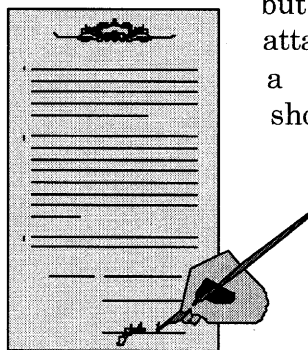
after the witness signs. This has been approved by the Florida courts. See *Medina v. Orange County*, 147 So.2d 556 (Fla. 2d DCA 1962), and *Sweat v. Yates*, 463 So.2d 306 (Fla. 1st DCA 1985). The second is where the complete document is not recorded and the document is rerecorded with the missing parts. This was approved in *Air Flow Heating and Air Conditioning, Inc. v. Baker*, 326 So.2d 449 (Fla. 4th DCA 1976), where the document as originally recorded did not have attached an

exhibit containing the legal description but was later rerecorded with the attached description. However, for issuing a Fund policy, this later exception should only be followed with approval of a Fund underwriting counsel since it is a situation wide open to fraud. This particular exception would not cover the rerecording of a document, where the original document contained incomplete information and the missing information was supplied in the rerecorded document.

In passing, having a party initial any apparent modification of an important document is advised in all cases but may not always be sufficient to overcome the objection that it is an altered document of questionable authenticity. It should be noted, however, that many lenders' closing instructions expressly prohibit the use of changed, marked up or otherwise irregular documents, and the closing attorney should be aware of these requirements.

Scrivener's Affidavit Explaining Error

Another method of attempting to correct an error in a recorded document is the recording of a scrivener's affidavit. It is sometimes recorded in conjunction with a rerecorded "corrective deed." The affidavit states that the document was changed or added after the original was recorded in order to correct a scrivener's error and carry out the original intent of the parties. While information such



as contained in the affidavit may be the basis for a suit to reform the document, the affidavit or a similar recital in the rerecorded document does not "correct" the original document and will not render the title acceptable for issuing a Fund policy without approval of a Fund underwriting counsel. Only minor, not substantive errors, should be "changed" or explained in this fashion. See TN 13.02.02.

Court Reformation of Document

As a last resort, documents may be reformed or changed in a court action with all affected parties before the court. However, the party bringing the reformation must prove by clear and convincing evidence that the document did not express the intent of the parties. The plaintiff must overcome the strong presumption that the document expresses the intent of the parties. *RIS v. Indian Spring Country Club, Inc.*, 747 So.2d 974 (Fla. 4th DCA 1999). Reformation will not be granted if the interests of bona fide purchasers without notice would be prejudiced. See *Florida Masters Packing, Inc. v. Craig*, 739 So.2d 1288 (Fla. 4th DCA 1999). Sometimes document errors are overcome in other types of judicial action such as quiet title suits.

Conclusion

The old saying "An ounce of prevention is worth a pound of cure" applies to these situations. To encourage scriveners to be more careful in preparing documents, the Florida Legislature enacted Sec. 697.10, F.S. Under the statute, a drafter of a document is responsible for any inaccurate or improper legal description that impairs another person's title to the real property. In an action relating to the property, the court may award the prevailing party all costs incurred by that party in the action, including reasonable attorneys' fees. In addition, the court may award the prevailing party all actual damages that he or she may have sustained as a result of the impairment of title. ■



Web Sites of Note

Web Sites of County Grantee/Grantor Indexes (by County)

Alachua*: <http://www.clerk-alachua-fl.org/isol/opr/oprDefault.asp?cur=opr>

Brevard —

(through 9/30/95): <http://www.clerk.co.brevard.fl.us/pages/disclaim2.htm>

(after 9/30/95): <http://www.clerk.co.brevard.fl.us/pages/getsearchtype.htm>

Broward*: http://205.166.161.22/wb_or2/or_sch_1.asp

Citrus: <http://www.clerk.citrus.fl.us/>

Clay*: http://clerk.co.clay.fl.us/ASP/clerk_search_test1.asp

Highlands: http://www.clerk.co.highlands.fl.us/index_new.html

Leon*: <http://www.clerk.leon.fl.us/>

Manatee*: <http://www.clerkofcourts.com/offrec/ormain.htm>

Okaloosa: <http://www.co.okaloosa.fl.us/PublicRecords/SearchList.html>

Orange: <http://comptroller.co.orange.fl.us/records/or.htm>

Pinellas: <http://clerk.co.pinellas.fl.us/recsonl.htm>

Polk: <http://www.polk-county.net/clerk/clerk.html>

Sarasota*: <http://www.clerk.co.sarasota.fl.us/isol/oprSearch.asp>

(*These indexes are accompanied with images of the documents.)

THE FUND's main Web site can be accessed at <http://www.thefund.com> and the site about its real estate closing software, DoubleTime, can be found at <http://www.doubletime.com>.



CONCEPT

April 2002, Volume 34

Title Information in the Information Age

by Duane Bergstrom, Fund Senior Claims Counsel, and Ted Conner, Fund Senior Underwriting Counsel

Title agents often have a choice of providers when obtaining title information. The increasing number of court clerks making official records available online provides a new source of title information. This article will discuss THE FUND's requirements in the selection of title information for issuing a Fund policy.

Sec. 627.7845, F.S., requires a title agent to conduct a "reasonable search and examination" of the title prior to issuing a policy. The statute does not prescribe the source of title information to be examined. A title agent's options today include computerized information from abstracters, including THE FUND's ATIDS, examined and non-examined products from abstracters, including THE FUND's branch products, and county public records. County public records may include both paper or microfilm records available at county offices and records available electronically over the Internet.

For issuing a Fund policy, a reasonable search would include information from a reliable and responsible source. A Fund Agent may utilize their discretion in selecting a reliable source. A responsible source is one that has the financial resources to stand behind its products or carries appropriate errors and omissions insurance.

THE FUND encourages agents to utilize title information produced by ATIDS and Fund branches when issuing Fund policies. In the unlikely event of an error or omission in the title information resulting in a claim on THE FUND, the loss may be handled without involving the agent or third parties. If title

information obtained from a source outside THE FUND results in a claim on a Fund policy, THE FUND may seek recovery from the source of the information and may require the agent to assist in securing recovery.

Abstracter Liability. The Florida Supreme Court considered the issue of abstracter liability in *First American Title Ins. v. First Title Serv.*, 457 So.2d 467 (Fla. 1984). An abstracter prepared abstracts for the sellers of two lots. The abstracts missed a recorded judgment against a former owner. First American insured

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Title Information ...

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the sale of the lots relying on the abstracts delivered by the sellers. After paying approximately \$75,000 to satisfy the judgment, First American brought suit against the abstracter. The court noted that the law in Florida at that time limited abstracter liability to those in direct privity with the abstracter. See *Sickler v. Indian River Abstract & Guaranty Co.*, 195 So. 195 (Fla. 1940). The court then expressly changed the law of abstracter's liability holding that "... when an abstract is prepared in the knowledge or under conditions in which an abstracter should reasonably expect that the employer is to provide it to third persons for purposes of inducing those persons to rely on the abstract as evidence of title, the abstracter's contractual duty to perform the service skillfully and diligently runs to the benefit of such known third parties."

The court in the *First American* case stopped short of a tort concept of foreseeability. It specifically declined to "... expose abstracters to liability to any person who foreseeably relies on a negligently prepared abstract to his detriment" limiting exposure to third party beneficiaries of the original contract.

A Fund Agent should confirm that a provider of title information has the financial means to be responsible for errors and omissions in the title information product. If the abstracter is not a title insurance underwriter, a Fund Agent should regularly obtain information regarding the abstracter's errors and omissions policy. Most policies are effective for only one year.

For issuing a Fund policy, a Fund Agent should not accept title information that purports to limit the exposure of the abstracter or the use of the product to purposes other than issuing a Fund policy. If the title information indicates that the liability of the abstracter is limited to a certain amount or that it is delivered for uses other than the issuance of a title insurance policy, such contractual restrictions may affect THE FUND's ability to recover from the abstracter for their failure to

perform "... the abstracter's contractual duty to perform the service skillfully and diligently..." in preparing their product.

Public Information. Circuit court clerks have always provided public access to official records relating to real property. See Sec. 28.222, F.S. Such access is being made more convenient by access over the Internet. Search functions for the electronic records are no more reliable than the indexes historically used by circuit court clerks. Unless an agent has extensive experience examining local public records, personal examination may carry unforeseen perils. For example, a party may be held liable for failing to discover a document misindexed in the direct and indirect alphabetical indexes when it could have been found in the parcel identification index. See *Erskine Florida Prop. v. First Am. Title Ins.*, 557 So.2d 859 (Fla. 1989).

Recognizing the special hazards of researching public records directly, without the quality control incorporated into a system such as ATIDS or the experience of full-time abstracters such as those employed by THE FUND, procedures relating to reviewing public records were incorporated into the Fund Regulations. Section 6 of Fund Regulation 7 provides, in part: "Each Member Agent will be obligated to indemnify THE FUND against any and all loss, cost or damages which THE FUND may sustain or become liable for ... on account of any error or omission in any abstract of title or other record information furnished by the Member Agent in such agent's capacity as an abstracter of title."

Fund Agents doing their own searches should have experience in examining titles and knowledge of the technical legal requirements of conveyancing, probate procedures, estate taxes, ad valorem taxation searches, judgments and an unlimited number of potential problems only an experienced examiner will recognize. Hard copies of recorded documents should be examined for legal sufficiency as to legal descriptions, acknowledgments, witnesses and legal authority for execution by officers,

partners or members of artificial entities, validity of judgment liens and much more. Of course, the *Fund Title Notes* are the best overall source of help to examiners, but an inexperienced examiner may not recognize a problem so will not seek a solution in the *Fund Title Notes*. Before undertaking a search, a Fund Agent should ask, "Do I have the same or higher level of skill as an examiner in THE FUND's local branch title plant?" If the answer is "No," the Fund Agent is putting THE FUND and the agent at risk by going forward with the personal search.

An exception to THE FUND's caution to agents in relying on information personally obtained from the clerk's records may be found in updating information. In some counties, the clerk of court is posting information to their database, accessible either in their office or over the Internet, prior to releasing the information to abstracting companies. In those counties, the public information will be more current than property information obtained from any other source. THE FUND authorizes its agents to utilize information directly from the official records for any period of time more recent than is available from other sources.

Conclusion. Fund Agents are authorized to use any reliable and responsible source for title information. A responsible source will have the financial resources, either internally or by insurance, to resolve claims created by omissions or errors in its products. THE FUND encourages the use of ATIDS and Fund branch products to minimize the risk of such errors and reduce the burden on agents in the event of such an event. Use of public information to bring an examination more current is permitted when the information is not available from the abstracter. □



Web Sites of Note

Florida Bar's Business Law Section.

The new-and-improved Web site of The Florida Bar's Business Law Section contains breaking business news, a host of legal links, and 10 message boards for business law attorneys to exchange info.

<http://flabuslaw.org>

Indian Lands. This site provides an overview of development of the law affecting Indian lands. It is prepared by Attorney Doug Nash of Holland & Hart, LLP, of Denver.

<http://profs.lp.findlaw.com/ilands/index.html>

Barry University School of Law. This is the Web site for Barry University School of Law which is located in Orlando. It contains info about the law school.

<http://www.uo.edu/lawsch/main.htm>

Breaking Legal News. From this site sponsored by lexisONE, one can check for breaking legal news.

<http://www.lexisone.com/news/>

Section 8 Rentals. This site describes the Section 8 program which gives rental vouchers and certificates to eligible renters.

http://library.lp.findlaw.com/scripts/getfile.pl?FILE=federal/hud/hud000009&TITLE=Subject&TOPIC=property%20%26%20real%20estate_rentals_1

THE FUND's main Web site can be accessed at <http://www.thefund.com> and the site about its real estate closing software, DoubleTime, can be found at <http://www.doubletime.com>. THE FUND's Web site for consumers can be found at: <http://www.FundHomeInfo.com>.

Base Title ■ Using ■ Prior Policies Covering Other Parcels Within the Same Development

by J. Edward Weber, Fund Claims Counsel

In "New Search and Examination Guidelines," 28 *Fund Concept* 1 (Jan. 1996), THE FUND announced that member agents may establish base title to a platted subdivision by relying upon prior Fund policies covering parcels other than the parcel which the agent wishes to insure. The procedure applies to parcels within condominiums of record as well as platted subdivisions, and TN 8.05.01 addresses the use of prior policies on different units in the condominium context. Calls to Fund underwriting counsels, however, reveal substantial confusion concerning the manner and extent to which the prior policies may be relied upon when they do not cover the specific parcel at issue, whether the context is a condominium or a platted subdivision.

The key concept is that there must be an adequate and reliable base title *for the property which the member agent wishes to insure*. If the prior policies cover other parcels within the same development, they are reliable evidence of title only as of the time when the title status of the parcels described therein was identical to title to the parcel which the member agent wishes to insure. Differently expressed, if there are multiple Fund policies covering parcels lots or units within the same plat or condominium, but not including the specific lot or unit which the agent is dealing with, such prior policies constitute evidence acceptable to THE FUND that title to the entire subdivision or condominium was evaluated and known as of the time the plat or the declaration of condominium was recorded. The plat or declaration converted a larger tract into all of the individual lots or units which now exist, including but not limited to the parcel which the agent wishes to insure. Thus, if multiple

Fund policies exist for various units in Coconut Condominium, according to the declaration recorded on June 1, 1995, the agent may rely upon THE FUND's standing behind title to that tract of land which became Coconut Condominium on June 1, 1995, by virtue of the declaration having been recorded.

The recording of the plat or declaration establishes the individual lots or units as separate entities capable of being owned, conveyed and encumbered by reference to their lot or unit numbers. As soon as the developer conveys a lot or unit to the first buyer, a new chain of title begins for that particular lot or unit which will thereafter be different from the chain of title for every other lot or unit. It follows that policies issued in 1998 for Units 1, 2 and 3 of Coconut Condominium establish reliable evidence that title to Unit 5 was also "good" in the developer on June 1, 1995, but those policies tell nothing at all about what has happened with title to Unit 5 since 1995. Each unit has gone its separate way, and the title examiner needs to examine the title for Unit 5 beginning with the 1995 recording of the declaration.

In a case like the foregoing hypothetical, policies covering Units 1, 2 and 3 may be relied upon to establish the "common" Schedule B exceptions such as the declaration and amendments thereto, subject however to the following caveat. There may not be total uniformity of title policy exceptions. For example, with a subdivision, some lots may be waterfront, requiring appropriate waterfront property Schedule B exceptions, even though the policies used as the title base do not contain such exceptions because they pertain to non-waterfront lots. Some lots may have additional or larger easements than other lots within the same plat. Even in the case of condominiums, some units may be designated for business use and others for residential use. Member agents should always request a copy of the plat, note the location of the parcel which they are insuring, and determine whether the plat discloses variations in the not-necessarily "common" restrictions and easements.

These are the guidelines which must be followed when relying upon prior Fund policies as a title base in a platted subdivision or condominium when the prior policies cover parcels other than the parcel to be insured.

1. Obtain at least two policies issued by different agents, three is better.

2. Rely upon policies covering parcels located in the closest proximity possible to the parcel to be insured. In a subdivision, use policies on lots within the same block, if possible; in a condominium, the same building.

3. Begin the title examination with the date of the plat or declaration recording and come forward. Among other things, make certain that any mortgage on the entire development (the mortgage holder will have signed the plat or the declaration) has been released as to the individual parcel being searched.

4. If the recording of the plat or declaration has been done recently, the title examination could be quite brief. However, if the plat or declaration has been recorded for many years, the agent may shorten the period of the title examination to the minimum required by the Marketable Record Title Act. If the member agent has access to the Fund's ATIDS data base in the county where the parcel is located and it is sufficiently large, the member agent should do a complete printout from the online date and locate the root of title for that specific parcel which the agent wishes to insure. If the ATIDS data base is insufficient to locate the root of title under MRTA, the member agent should obtain and examine a pre-computer chain which will supplement the ATIDS search and, together with it, will permit the member agent's examination to comply with MRTA. ATIDS users can order the precomputer chain by going to the ATOE function and requesting a product 14. They will have to enter a "search from" date, which date will be the date of recording the plat or the declaration, and add in the "additional remarks" field a notation that they require a

MRTA search. Alternatively, the member agent may wish to order a Title Search Report (product 07) which will place upon THE FUND the obligation of locating the root of title.

5. Rely upon the exceptions disclosed in the prior policies as establishing the "common" Schedule B exceptions to appear in the new policy, modified, however, as necessary by events disclosed by the title examination made by the agent. For example, the declaration may have been amended, or the subdivision restrictions may have expired or been canceled.

6. Review the plat to see whether it discloses that additional or fewer exceptions than what appear to be "common" exceptions are appropriate because of the location or other features of the lot.

7. Review the declaration, including exhibits, and the articles and recorded bylaws or rules of the homeowners' association to ensure compliance with any restrictions upon the sale or conveyance of the parcel.

No Prior Policies Available. The preceding title examination guidelines will apply even if the plat or declaration has been recorded very recently. Sometimes, however, there may be no prior Fund policy within the plat or condominium. In those cases, as set forth in the January 1996 *Concept* article, if the plat or the declaration has been recorded for a minimum of seven years, the agent may insure title to a lot or unit therein if the agent begins the title examination with the deed into the developer who recorded the plat or the declaration. Note that reliance upon this technique requires the title examination to begin prior to the plat or declaration recording. Steps 6 and 7 above should be followed. Any easement, covenant or restrictions referenced in the deed into the developer must be considered and an exception made, if appropriate. If the plat or declaration involves property which was previously platted, the chances of prior covenants, restrictions or easements pertaining

to the property are increased. Such matters may well be viable unless specifically canceled. A vacation or partial vacation of the underlying plat does not, generally speaking, cancel restrictions or easements. See TN 24.03.02. If there has been no release of covenants and restrictions of following the developer's acquisition of previously platted property, obtain prior policies on lots in the underlying plat and check for references to recorded covenants and restrictions. If they exist and have not expired or been released, they must be excepted in the policy to be issued. Similarly, if either the underlying plat or recorded covenants referenced in the policies covering the underlying plat include easements that have not been canceled or released, exception will need to be made for such easements.

Conclusion. The examination of title to a parcel within a platted subdivision or a condominium of record can frequently be shortened, even if the examiner does not have a reliable prior policy covering the parcel involved. However, examiners need to remember that the base established by prior Fund policies covering other parcels within the same development is only effective as of the recording date of the plat or declaration "creating" the individual parcels as entities capable of being alienated and encumbered by reference to the plat or declaration and also likely to have entirely separate chains of title following initial conveyance out by the developers. For "mature" (recorded for more than seven years") plats and condominiums examiners may assume that title was "good" when the developer acquired the tract which was developed, subject however to whatever matters were set forth in the deed into the developer. Examiners must check for prior covenants, restrictions and easements affecting land which was previously platted when acquired by the developer and make exception for any matters which are unexpired and unreleased. If the land was already platted when the developer acquired it, this fact increases the likelihood that there may have been covenants and restrictions. It also obligates the examiner to review the underlying plat. ■



Recent Title Insurance Case

Policy Coverage Not Based on Insured's Expectations

Panciocco v. Lawyers Title Ins. Corp.,
794 A.2d 810
(N.H. 2002)

Patricia Panciocco purchased land on which she intended to build a house. After site preparation for the house construction had begun, abutting property owners sued to quiet title against her, asserting that she was trespassing on their property and that they had obtained title to 30 feet of her land by adverse possession. She requested a defense and coverage under her title insurance policy. The title insurer perceived the litigation as involving claims for adverse possession and disputed boundary lines, which it claimed are excepted from coverage by policy exceptions for "right or claims of person in possession" and "matters not of record which would be disclosed by an accurate survey and inspection of the premises."

The insured sued the title insurer for a declaratory judgment as to coverage. The superior court agreed with the title insurer that the claims were for adverse possession and were therefore excepted from coverage.

On appeal, the Supreme Court of New Hampshire affirmed the trial court's judgment, holding that the coverage was barred by the policy exceptions. The insured argued that the exceptions were ambiguous and the trial court should have taken evidence about her expectations of the policy's coverage. The court disagreed, holding that in construing undefined policy terms an objective standard based upon what a reasonable person in the position of the insured would understand should be applied, not the insured's subjective expectations of policy coverage.

Required Charges and Services of Title Insurance Agents Under RESPA and Florida Law

By: R. Norwood Gay III, Fund Senior Vice President and General Counsel

Since the adoption of revised RESPA regulations, effective Dec. 2, 1992, there has been much discussion about what core title agent services must be performed and what charges must be made in order for the Florida title insurance agent to be in compliance with the separate federal and state laws and regulations. What follows is a brief outline of those required services and charges. Although it is not our intent here to give a detailed review of HUD-1 preparation, that topic will be mentioned when it adds clarity to the discussion.

1. RESPA

- a. Applies only to real estate transactions in which there is a *federally related mortgage loan on residential property*.
- b. Requires the performance of *core title agent services* in order to receive compensation as a title agent.
- c. Core title services, for which the agent must be liable to the insurance company for the agent's negligence, include, *at a minimum*:
 - (1) in jurisdictions where it is customary to do so, the compilation of the title search or title evidence;
 - (2) the evaluation of the title search to determine the insurability of title;
 - (3) in jurisdictions where it is customary to do so, the preparation of the title commitment;

- (4) the clearance of underwriting objections;
- (5) in jurisdictions where it is customary to do so, the handling of the closing or settlement; and
- (6) the preparation and issuance of the policy or policies of title insurance on behalf of the title insurance company.
- d. Does not set any rates for premiums or prescribe any premium split percentages between agent and insurer.
- e. Persons can be fined up to \$10,000 or imprisoned for not more than one year, or both for each violation of Section 8 of RESPA.

2. State Law (the Insurance Code) and Regulation.

- a. Applies to *all insured real estate transactions*, not just those involving a

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Bankruptcy Code Cap Does Not Apply to Entirety Exemption

In re Buonopane,
359 B.R. 346
(Bkrtcy. M.D. Fla. 2007)

A Chapter 7 bankruptcy debtor owned his homestead property with his nondebtor wife as an estate by the entirety. He claimed the recently acquired property as exempt. The bankruptcy trustee objected base on the Bankruptcy Abuse Prevention and Consumer Protection Act that imposes a \$125,000 cap on state law homestead exemption which a debtor can claim in residential property acquired within 1,215 days of the petition date.

The bankruptcy court overruled the trustee's objection, holding that the cap imposed by BAPCPA applies only to the Florida homestead exemption that the debtor could claim and not to the separate entirety exemption available to the debtor for residential property that he owned as an estate by the entirety with his nondebtor wife.

Lien Transfer Bond Signed by Owner's Attorney

Carmona v. McKinley, Ittersagen, Gunderson & Berntsson, P.A.,
952 So.2d 1273
(Fla. 2d DCA 2007)

Three subcontractors in this consolidated case performed work on the property owned by Saxony Holdings. When the contractor failed to pay, they individually filed claims of lien against the property. Subsequently, McKinley, as Saxony's attorney, posted a bond transferring each of the liens to security.

When the subcontractors brought suit against McKinley, McKinley moved to dismiss because it was not the true owner. The trial court dismissed the suit, holding that McKinley was not a proper party because it merely represented the owner.

On appeal, because the transfer bonds only contained McKinley's name, the Second District Court held that the trial court improperly looked beyond the four corners of the complaint in granting the motion to dismiss based on the ownership argument.

Exercise of Right of First Refusal

7-Eleven, Inc. v. Stin, L.L.C.,
32 Fla. L. Weekly D1515
(Fla. 4th DCA 2007)

7-Eleven's property lease contained a right of first refusal. Flanigan offered to purchase the property from the owners for \$2,270,000 with a deposit of \$120,000 immediately available to the seller, a \$10,000 monthly rent for three years not applied to the final closing cost, and the risk of condemnation on Flanigan until closing. 7-Eleven sent a letter to the owner purporting to exercise its right of first refusal. The owners rejected 7-Eleven's subsequent contract, claiming it did not exactly match the terms in Flanigan's contract. The owners sought and obtained a declaratory judgment that 7-Eleven failed to properly exercise its right of first refusal.

On appeal the Fourth District Court reversed the trial court's judgment, explicitly limiting its holding to the facts on the basis that Flanigan's contemplated use of the property as a restaurant involved additional parking and other terms that 7-Eleven did not have to match. The court concluded that under the circumstances 7-Eleven's letter stating that it would match Flanigan's offer impliedly meant it would match all material terms.

Charges...continued from page 103

federally related mortgage loan on residential property.

- b. Sec. 627.7711, F.S. 2007, defines "premium" and "closing services." Only the rates for the premium component are set by Financial Services Commission (FSC) rule and statute; the FSC does not set rates for the closing services component.
- c. The Insurance Code provides that a person "may not knowingly quote, charge, accept, collect or receive a premium for title insurance other than

the premium adopted” by the FSC. Sec. 627.780, F.S. “**Premium**” is defined to mean “the charge, as specified by rule of the commission, that is made by a title insurer for a title insurance policy, including the charge for performance of primary title services by a title insurer or title insurance agent or agency, and incurring the risks incident to such policy. . . .” Sec. 627.7711(2), F.S.

- d. “**Primary title services**” as used in the above definition, “means determining insurability in accordance with sound underwriting practices based upon evaluation of a reasonable title search” and “determination and clearance of underwriting objections and requirements to eliminate risk, preparation and issuance of a title insurance commitment setting forth the requirements to insure, and preparation of the policy.” Sec. 627.7711(1)(b), F.S. 2007. “Primary title services” do not include “closing services” or “title searches,” for which a separate charge or charges may be made.
- e. The Insurance Code defines “**closing services**” to mean “services performed by a licensed title insurer, title insurance agent or agency, or attorney agent, in the agent’s or agency’s capacity as such, including, but not limited to, preparing documents necessary to close the transaction, conducting the closing, or handling the disbursing of funds related to the closing in a real estate transaction in which a title insurance commitment or policy is to be issued.” Sec. 627.7711(1)(a), F.S. 2007.
- f. The Insurance Code prohibits an insurer or agent from giving an unlawful rebate or abatement of the “premium or any other charge or fee, or provide any special favor or advantage, or any monetary consideration or inducement whatever.” Sec. 626.9541(1)(h)3.a., F.S. 2007. This shall not be construed as

“...prohibiting a rebate or abatement of an attorney’s fee charged for professional services, or that portion of the premium that is not required to be retained by the insurer...” Sec. 626.9541(1)(h)3.b., F.S. 2007.

3. HUD-1 Preparation.

- a. **RESPA Requirements.** Appendix A of the RESPA regulations contains instructions for completing the HUD-1 settlement statement. While the instructions for completing lines 1100–1113 (“title charges”) allow a single overall charge to be shown for all services in lieu of itemizing each separate charge, attorney-agents should consider itemizing charges in light of the Florida requirements, discussed in paragraph 3b below. Attorneys who choose the option of charging an overall fee should enter that fee on line 1107 (attorney’s fees) and enter on that line the item numbers of the services listed which are covered in the overall fee. An attorney representing a buyer, seller or lender and also acting as a title agent should indicate on line 1107 which services are covered by the attorney fee and on line 1113 which services are covered by the closing services.

In its instructions for the 1100 series, HUD is seeking to ensure that an attorney (or other multiple services provider) discloses the services actually performed and not charge twice for the same service.

- b. **Florida Considerations.** Following HUD’s instructions can be less than satisfactory under Florida law and practice where: (1) many attorney-agents do not charge a separate attorney fee in residential closing transactions and (2) many of the 1100 series services (1101 — closing fee, 1102 — title search, 1105 — document preparation) are closing services not paid by the agent’s share of the premium.

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Charges...continued from page 107

We suggest that a Florida attorney-agent who is closing a transaction and is not charging a separate attorney fee can properly enter the promulgated rate at line 1108 (title insurance). If a separate attorney fee is charged, it should be entered at line 1107. We suggest the attorney-agent itemize title charges by inserting each of the separate charges on the appropriate lines (1101, 1102, 1105, 1106), but not 1103 – title examination, as that is included in the premium. ATIDS searches, title searches and branch products may be itemized on line 1102 – as title search.

4. Summary of Requirements.

- a. **All Florida closings.** Whether RESPA-related or not, agents must charge the premium set by statute and rule; in addition, agents may charge for title information and closing charges (or such of those services as are provided by the agent).
- b. **RESPA-related closings.** In addition to making all the charges mentioned in paragraph 4a above, the agent must perform the core title agent services in order to share in the **premium** with the underwriter. ☐



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Michael Billalobos	Ft. Myers
Vanessa Sara Blanco	Miami
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New Guidelines for Handling Uncertified, Expired, and Otherwise Unperfected Judgment Liens

By Patricia P. Jones, Fund Vice President - Underwriting

THE FUND has approved for issuing commitments and policies new enhancements for handling money judgments that are *potential* liens. These include uncertified judgments, expired judgments, and judgments lacking the creditor's address.

The guidelines set out below were developed with due consideration given to underwriting risk, changes in the law, claims experience, and marketplace realities. They are used by Fund examiners in the preparation of commitments and other examined products and may be utilized by Fund Member Agents who are preparing their own commitments based on ATIDS searches or other search information.

Judgment Liens That Never Have Been Certified. Previously, uncertified money judgments were considered a gap risk for up to 20 years from the date the judgments were recorded. Under these new guidelines, uncertified money judgments that were recorded *more than one year prior to the date of the search* may be ignored for commitments and other examined products where the amount of insurance is \$3 million or less. For approving commitments for policies over \$3 million, Fund underwriting counsel will review with the preparer the status of all uncertified judgments.

THE FUND will require that only those judgments which are recorded within the one-year period behind the date of the search be handled as a gap risk. That is, a requirement

must be made for the amount of the judgment to be escrowed prior to closing pending a determination that a certified copy of the judgment did not get recorded prior to the deed or mortgage being insured. Member agent requests for waiver of this requirement should be discussed with underwriting counsel.

Judgment Liens That Have Expired After the Initial 10-year Period. Previously, judgment liens that had expired for an initial ten-year period were considered a gap risk for 30 days following the expiration date of the judgment. Under these revised guidelines, money judgment liens that have been of record for 10 years prior to the date of search and have expired by law may be ignored for issuing policies of \$3 million or less. For approving commitments for policies over \$3 million, Fund underwriting counsel may review with the preparer the status of all expired judgments.

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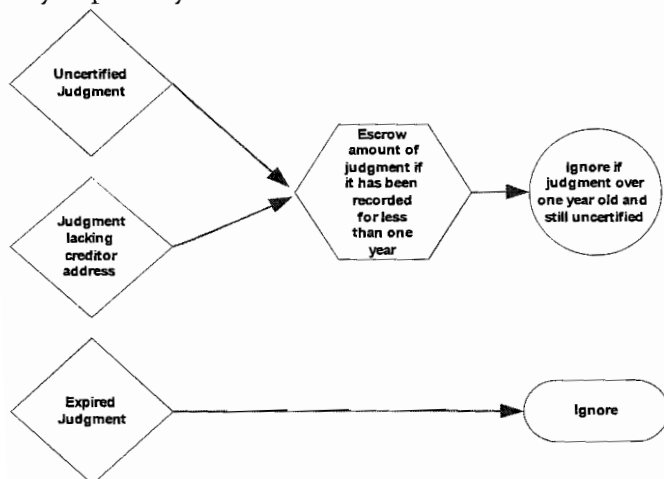
Judgment Liens... *continued from page 33*

Judgment Liens That Omit the Creditor's Address (Applies to Certified and Uncertified Judgments). These judgments carry the same risk as uncertified judgments, because the possibility exists that a new certified copy of the judgment, together with the creditor's address affidavit, could be recorded in the gap.

For policies of \$3 million or less, judgments that do not have the creditor's address or a simultaneously recorded address affidavit may be ignored if the judgment was recorded more than one year prior to the date of the search. For approving commitments for policies over \$3 million, Fund underwriting counsel will review with the preparer the status of all money judgments which appear to omit the creditor's address.

Judgments lacking a creditor's address or creditor's address affidavit entered within the one-year period behind the date of the search must be handled as a gap risk. That is, a requirement must be made for the amount of the judgment to be escrowed prior to closing, pending a determination that a judgment lien was not perfected prior to the deed or mortgage being insured.

The procedure of searching for a creditor's address affidavit recorded 10 instruments before and after a recorded judgment will still be necessary to establish that a judgment recorded one year prior to the date of search was not perfected for failure to provide a creditor's address by separately recorded affidavit.



*Note: any subsequent recording of a judgment must be run through paradigm

A+ BEST PRACTICES

Disaster Recovery and Business Continuity Planning

By John Simmons, Fund Enterprise Product Manager

(It is not just about backing up your data!)

The phone rings at 3:00 a.m., and you learn that a fire has destroyed your office. Does your firm have a well-formulated contingency plan ready to implement?

A disaster can have a significant negative impact on your law practice. Common examples include fires, hurricanes, tornadoes, floods, plumbing leaks, burglaries, power outages, virus attacks, and computer system crashes. It can result in a partial loss (such as theft of your computer system and data) or complete devastation (including loss of all your client matter files).

In order to minimize the impact, you need a plan tailored to your firm. It should address recovery from the disaster as well as continuing to do business during the recovery period. Here are a few items to consider:

1. Where can you temporarily set up shop?
2. Is it viable for staff to telecommute?

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Patricia P. Jones

Non-Fund Prior Policies as Base Title

By Melissa S. Scaletta, Fund Senior Underwriting Counsel

Fund underwriting policy permits simplification of title examination for insuring title by supplementing title examination with a prior title insurance policy insuring the same property, referred to as a base title. Although several million Fund policies may be accessed with Attorneys' Title Information Data System (ATIDS), Fund Member Agents are not limited to using Fund policies as base title. A base title may be a policy issued by any underwriter authorized to insure title in Florida. The specifications for which a prior policy may be used as a base title and the corresponding limited required title search are discussed in depth in Chapter 6 of *The Fund Procedures Handbook* and in TNs 25.01.2 and 25.01.03.

Defects are sometimes found in a title that has been insured by a prior policy, without exception for those defects. Discovery of such a defect will typically not disqualify the prior policy as a title base or delay the closing of the transaction. Underwriters operating in Florida regularly provide each other with indemnifications over title defects on titles that have been previously insured. The receipt of an indemnification from the prior policy's issuing underwriter for certain defects, allows THE FUND to authorize insuring with exception for that defect but providing affirmative coverage for actual loss of damages resulting from the defect. Florida law permits providing affirmative coverage for a title risk in reliance upon security commensurate with that risk. Rule 690-186.005 (16)(g), F.A.C. If the defect has been previously insured by THE FUND, the member agent should contact a Fund underwriting counsel or risk management paralegal for authority to insure again on THE FUND.

Some title defects are discovered with such frequency that most of the underwriters doing business in Florida have entered a Revised Mutual Indemnification Agreement ("indemnification treaty" or "the Treaty"), the terms of which provide for automatic indemnification from the prior policy underwriter to the current issuing underwriter for matters specifically covered by the Treaty, subject to its own limitations, without need for a specific

indemnification letter. A detailed summary of the Revised Mutual Indemnification Agreement and a list of its signatories are provided in the *Fund Title Notes*, Appendix C. Matters covered by the Treaty include lack of homestead status, marital status or spousal joinder on a deed; certain unsatisfied mortgages, judgments and tax liens; lack of guardian ad litem or diligent search in certain judicial proceedings; insufficient record authority of a trustee or attorney in fact; and lack of witnesses, acknowledgment, or corporate seal on a deed. The Treaty has numerous limitations. For matters that do not fall within the parameters of the Treaty, a specific indemnification letter may be obtained from the prior policy's underwriter. Approval to insure in reliance upon the Treaty or letter of indemnification should be obtained from a Fund underwriting counsel or Fund risk management paralegal prior to insuring in reliance upon the Treaty or an indemnification letter.

Infrequently, a title defect will be of such a significant nature that an indemnification letter will not be acceptable for insuring. In these circumstances, the member agent may need to request an indemnification letter with an undertaking to cure the title defect, or the defect may have to be cured before insuring without exception for the defect. Member agents are advised to contact a Fund underwriting counsel before requesting an indemnification letter from another underwriter for issuing a Fund policy to determine which variety of indemnification will be acceptable for insuring.

Benefits of Discovery of a Defect in a Prior Policy. In many instances, discovery of a title defect may be beneficial to the insured and the insured's counsel. The insured and the insured's counsel will now have knowledge of the defect. Many title defects may be remedied earlier at substantially lower expense and effort. Additionally, the insured may ultimately have the protection of the indemnitors' policy through warranties of title and the new policy based upon the affirmative coverage.

THE FUND's main website can be accessed at <http://www.thefund.com>. THE FUND's website for consumers can be found at <http://www.fundhomeinfo.com>.

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CONCEPT

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What Is an Acknowledgment?

By Tiffany Riggs, Fund Claims Counsel

There are two distinct notarial acts: A "jurat" and an "acknowledgment." A jurat relates to an oath and is indicated by the word "sworn." On the other hand, a certificate of acknowledgment is evidenced by the word "acknowledged." The purpose of a jurat is to enable the person signing the document to swear under oath to the truth of the information contained in an affidavit or other statement and to subject the person to penalties if the statement is false. An acknowledgment, however, is a means of authenticating an instrument by showing that the instrument was the act of the person executing it. See *Florida Real Property Title Examination and Insurance* (CLE 5th ed. 2006), Sec. 3.67.

A condition precedent for the recording of any instrument concerning real property is that the execution must be acknowledged by the party executing it before the officer and in the form and manner provided in Sec. 695.03, FS. The principle function of an acknowledgment is to entitle an instrument to be recorded. *Harris v. Zeuch*, 137 So. 135, 139 (Fla. 1931). The acknowledgment furnishes proof of the authenticity of the execution of the acknowledged instrument when it is presented for recording.

A question arises as to what happens when the notarial certificate contains an incorrect or incomplete acknowledgment. Chapter 1 of the *Fund Title Notes* discusses the case of *Edenfield v. Wingard*, 89 So.2d 776 (Fla. 1956). In the *Edenfield* case, the Florida Supreme Court held that an acknowledgment in substantial compliance with the recording statute may be sufficient to constitute constructive notice. C.B. Edenfield mortgaged the property to E.B. Edenfield, but the certificate of acknowledgment in the mortgage

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Helping Us Help You

In these difficult economic times for all of us, now more than ever you rely on us to assist you in maintaining your real property practice in your service to the public, and we rely on you, our loyal member agents, to support your Fund. In this spirit and to address a Florida Office of Insurance Regulation comment in our recent Market Conduct Review regarding timely remittance of premium, we are encouraging each of you who are not already doing so, to immediately adopt the following practice in your office:

Immediately upon closing a real estate transaction, place THE FUND's premium check in the mail to us, along with either a copy of the commitment or rating worksheet for the transaction that contains your firm's specific file number for the transaction. With this documentation, we will be able to tie the premium check to the policy (with the same specific file reference) you will later submit.

By adopting this new procedure in your office, you will immeasurably assist us in assisting you to maintain your real property practice.

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referred to E.B. Edenfield as the person who had executed the mortgage. While noting the general rule in Florida is that a defect in an acknowledgment which would prohibit recordation prevents the primary document from acting as constructive notice, even though the document is actually recorded, the court reasoned that the whole of the instrument acknowledged may be resorted to for support of the acknowledgment and the policy of the law is to uphold certificates of acknowledgment whenever possible. The court further reasoned that clerical errors should not defeat acknowledgments when, considered alone or in connection with the instrument acknowledged, and viewed in light of the recording statute, fairly show a substantial compliance with the statute.

However, contrast the *Edenfield* case to *First Nat. Bank of Quincy v. American Sumatra Tobacco Co.*, 72 So. 416 (Fla. 1916). In the *First Nat. Bank* case, which appears to still be good law, the Florida Supreme Court held that the omission of the word “acknowledged” from the notarial certificate rendered the recording a nullity as constructive notice. The certificate at issue stated that the mortgagors personally appeared before the officer “and severally the same to be their free act and deed.” There was “no word showing that mortgagors, other than the wife of H.F. Sharon in her separate acknowledgment, *acknowledged* before the officer the execution of the mortgage” (emphasis added). While the omission of the word “acknowledge” after the word “severally” appears to have simply been a typographical error, the Supreme Court held the omission to be fatal stating that the certificate on the mortgage was “insufficient to authorize the record of the mortgage as constructive notice of its existence.”

While Florida courts appear to give great weight to the totality of the document, the cases discussed above suggest that an incomplete or incorrect acknowledgment may be used as a sword or a shield depending upon the posture of the case. The best way to avoid the situation is to draft and review the documents carefully to ensure the acknowledgment fulfills the requirements of the “acknowledgment” statutes. Several forms of acknowledgment are suggested in Sec. 695.25, F.S., although use of other forms is not precluded. □

Summary of Revisions to Title Notes 2008

The following is a summary of the significant changes to the *Fund Title Notes* updated through 2008. The Title Notes with the updates will be posted to The Fund's web portal (www.thefund.com) and may be downloaded in its entirety. The revision/replacement pages will be posted separately on the website; Fund Member Agents who are maintaining the paper binder of the Title Notes which was distributed previously may download the revised pages from the website.

Significant changes have been made to the following Title Notes:

TN 2.10.04 (Administration of Estates) Lien of Estate Tax Divested by Necessary Sale or Mortgage — both the content and the title of the TN were amended to clarify that a necessary mortgage also may divest the estate tax lien.

TN 5.05.01 (Bankruptcy) —Sale Free From Liens—deletes the caveat concerning divestment of lien, obligation or debt in favor of a state or its subdivisions based on sovereign immunity. The caveat was deleted based upon the following cases: *Central Virginia Community College v. Katz*, 546 U.S. 356 (2006); *Van Huffel v. Harkelrode*, 284 U.S. 225 (1931); *In re Omine*, 485 F.3d 1305 (11th Cir. 2007).

TN 18.03.02 (Judgments and Liens) — Creation of Judgment Lien—Sec. 55.10, F.S., and TN 18.03.03—Duration of Judgment Lien—incorporate The Fund's new guidelines for handling uncertified, expired, and otherwise unperfected judgment liens. The guidelines were previously published in 40 *Fund Concept* 33 (Apr., 2008).

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Florida's Revised Lis Pendens Statute – ‘It’s Not Your Father’s Lis Pendens Any More!’

By Michael E. Mirrington, Fund Sr. Underwriting Counsel

Effective Jul. 1, 2009, Session Law 2009-39 amended Sec. 48.23, F.S., (commonly referred to as “the Lis Pendens Statute”), making some significant changes of relevance to Fund Member Agents. It is common knowledge that recording a notice of lis pendens (LP) in connection with pending litigation involving real property has for many years been an effective legal mechanism for preserving the status quo as to the title to real property by providing constructive notice of that litigation and barring interests unrecorded at the time of the LP and those recorded subsequent thereto – absent intervention in the action by the holders of those interests. This article will highlight the recent changes to the statute and their relevance for issuing policies through ATFS.

Actions for Specific Performance and Actions not Based on a Duly Recorded Instrument

Under new Sec. 48.23(1)(b)(1), F.S., an action for specific performance or one not based on a duly recorded instrument is deemed to have no effect (except as between the parties) on the title to or a lien on the subject real property unless a LP is recorded in the public records of the county and has not expired or been discharged or withdrawn. An LP expires one year from the commencement of the action when the underlying action is *not* founded on a duly recorded instrument. Sec. 48.23(2), F.S.

When no LP has been recorded in connection with an action for specific performance or an action not based on a duly recorded instrument, or after the LP has expired, been withdrawn, or been discharged by the court, the revised statute indicates that the subject real property may be

conveyed or mortgaged for value to a third-party free of any interest claimed in the litigation by the party who recorded the LP or who failed to record an LP. The statute effectively preserves the bona fide purchaser status of a third-party purchaser even though they may have actual notice of the litigation involving the title to the real property. While this provision may benefit a third-party purchaser, it does not apply to a party to the subject litigation or the legal successor-in-interest of the personal representative of a deceased party. Sec.48.23(1)(b)(2), F.S. Also see TN 12.05.01 (rev. 12/09).

The case law under the prior LP statute held that a third party who had actual knowledge of the existence of the litigation would take title subject to the outcome of the litigation. Therefore, a policy exception for the litigation was required despite the absence of an effective LP. With these statutory revisions, it will be possible to insure a number of transactions following discharge of the LP in specific performance actions since the statute now protects third-party purchasers.

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Construction Lien Foreclosures.

In response to the revised statute, THE FUND has modified its position regarding the practical effect of the withdrawal or discharge of an LP in the context of a pending foreclosure of a construction lien. When the court enters an order confirming that the lien has been duly transferred to security and discharging the LP, no policy exception for the lien or the pending litigation is required provided that the real property is being conveyed or mortgaged for value. Alternatively, when the property owner transfers the construction lien to security and in response thereto the plaintiff/lienor withdraws the LP, no policy exception for the lien or the pending litigation is required provided that the real property is being conveyed or mortgaged for value. See TN 21.02.01(D) (rev. 12/09).

Underwriting Caveats

Extreme caution should be exercised before reaching the conclusion that the absence of an effective LP has dispensed with the necessity of a policy exception for pending litigation involving real property to be insured. For issuing policies through ATFS, new Sec. 48.23(1)(b)(2), F.S., may be relied upon only with respect to pending actions for *specific performance* in which no LP was ever recorded or the recorded LP has expired (without extension by the court) or been withdrawn or discharged and the real property is being conveyed or mortgaged to a third party for value.

Discharged LPs present at least one additional issue. The order discharging the LP may still be subject to appeal. Therefore, when the LP has been discharged by court order, title should not be insured without exception for a pending specific performance action until it is confirmed that the order is no longer subject to appeal. See TN 12.05.01 (rev. 12/09).

It is foreseeable that THE FUND would require a policy exception for pending litigation notwithstanding the absence of an LP or discharge, withdrawal, or expiration of the LP in situations in which the relief sought in the lawsuit is a direct attack on the integrity of the owner's title – such as where the owner's title is alleged to be the result

of fraud, undue influence, or mutual mistake. A similar result would ensue based on actions which (without limitation) attempt to create an encumbrance or servitude on the subject real property or which seek to impose a constructive trust on the title. Member agents should consult a Fund underwriting counsel for assistance in interpreting the effect of a discharged, expired, or withdrawn LP (or absence of an LP) on any pending litigation relevant to the property to be insured.

Time to Intervene in the Action

Prior to the statutory amendment, the holder of an unrecorded interest in the real property described in a recorded LP or the holder of an interest recorded after an LP had 20 days after the recording of the LP to intervene in the action or face their interest being divested upon judicial sale of the property. The time period for intervention has now been extended to 30 days. If the notice of lis pendens expires or is withdrawn or is discharged, the expiration, withdrawal, or discharge of the notice of lis pendens will not affect the validity of any unrecorded interest or lien. Sec. 48.23 (1)(d), F.S.

'Institution' of the Action

The previous version of the statute required that an LP set forth the "time of institution of the action." This was often a *technically* difficult requirement to meet, especially in cases where the LP was filed and recorded on the same day as the initial pleading. New Sec. 48.23(1)(c), F.S., now requires that the LP show the date of the institution of the action, the date of the clerk's electronic receipt, or the case number of the action.

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This change should ease any concerns of technical compliance.

LP in Certain Actions to Be Treated Like an Injunction

Sec. 48.23(3), F.S., was also amended. When the pending pleading does not indicate that the action is founded on a duly recorded instrument or on a construction lien under Ch. 713, F.S., or when the action no longer affects the subject property, the court *shall* control and discharge LPs in the same manner as a court would grant and dissolve injunctions. The previous version of the statute did not *require* the court to do this, although the court always had discretion to treat the LP in that manner.

Under the amendment, when an owner petitions the court for an order to set aside an LP which has been recorded against the owner's real property and the court refuses to dissolve the LP, the court would now have to proceed under Fla. R. Civ. P. 1.610 and Fla. R. App. P. 9.310 to consider whether the party who recorded the LP should post a bond in order to protect the property owner against loss sustained in the event that the claimant does not prevail in the lawsuit. In arriving at its decision, the court would have to conduct an evidentiary hearing in order to confirm that a bond is appropriate and to set the proper amount of the bond. *Levin v. Lang*, 994 So.2d 445 (Fla. 3d DCA 2008).

The amount of the bond must be reasonable in light of the damages which the owner demonstrates will likely result if the LP is later determined to be unjustified. *Licea v. Anllo*, 691 So.2d 29 (Fla. 3d DCA 1997). The discretion of the court to require a bond extends beyond cases in which the property owner can demonstrate irreparable harm. The court may evaluate the potential for other damages not rising to the standard of irreparable harm. *Nickerson v. Watermark Marina of Palm City*, 978 So.2d 187 (Fla. 4th DCA 2008).

It also appears reasonable that this provision of the revised statute would be relevant in the context of LPs recorded without corresponding litigation, a situation often detected in title examinations.

The revisions to this portion of Sec. 48.23, F.S.,

are not without some ambiguity. For example, how should one determine when an action "no longer affects" the subject property? It is reasonable to construe this language as pertaining to situations in which the claims asserted against the real property in the pleadings have been rendered moot. Examples might include actions seeking foreclosure of construction liens against real property in which the underlying liens have been transferred to security by the property owners under Sec. 713.24, F.S. In these cases the litigation has effectively been reduced to a suit to recover under the bond (to which the lien has been transferred) and therefore the action arguably no longer "affects the property."

The common theme throughout these situations is the potential for harm to the property owner when the litigation continues and the court has allowed a recorded LP against the property to remain in force. The revised statute now in effect mandates that the court make provision for the protection of the owner by evaluating the propriety and amount of a bond to be posted under the rules governing injunctive relief.

Conclusion

While the revisions to Sec. 48.23, F.S., are of great interest to litigators, real property practitioners, and title insurance agents, the revised statute should be applied with great caution in the context of insuring title transactions. The statute prescribes very limited circumstances under which title may be conveyed to a third party free of the claims against the real property in pending litigation as a result of the lack of a recorded LP or the withdrawal, expiration, or discharge of the recorded LP.

For issuing a policy through ATFS insuring real property which is the subject of a pending action for specific performance, no exception for the pending litigation will be required when no LP was ever recorded or the recorded LP has expired or been withdrawn and the property is being

THE FUND's main website can be accessed at www.thefund.com. THE FUND's website for consumers can be found at www.fundhomeinfo.com.

conveyed or mortgaged to a third party for value. Regarding specific performance actions where the court has entered an order discharging the LP, no policy exception for the pending litigation will be required once the order is no longer subject to appeal and the property is being conveyed or mortgaged to a third party for value. However, when the pending action seeks relief relevant to the subject real property other than specific performance or foreclosure of a construction lien (under the conditions discussed earlier in this article), a Fund underwriting counsel should be consulted for express approval to issue a title policy without exception for the pending litigation despite the absence of an LP or the expiration, withdrawal, or discharge of the LP. □

Summary of Revisions to Title Notes 2009

By Patricia P. Jones, Fund Vice President, Underwriting

The following is a summary of the significant changes to the *Fund Title Notes* updated through 2009. The *Title Notes* with the updates will be posted to THE FUND's web portal (www.the-fund.com) and may be downloaded in its entirety. The revision/replacement pages will be posted separately on the website; Fund Member Agents who are maintaining the paper binder of the *Title Notes* which was distributed previously may download the revised pages from the website.

Summary of Title Note Revisions 2009

TNs 5.01.01, 5.05.01, 5.05.02, 5.05.03, 5.05.04 and 5.06.02 (Bankruptcy) have all been revised to conform to the recent changes in the Bankruptcy Rules dealing with increasing various time deadlines such as filing objections; for length of time of stay following entry of an order authorizing the use, sale, or lease of property; and automatic stay of any order, decree of judgment, and filing appeals.

TN 10.02.02 (Deed Recorded After Grantor's Death—Proof of Delivery) was revised to clarify that the procedure for proving up delivery by affidavit is generally for those

instances where inadvertence or oversight caused the delivery question.

TN 11.10.01C (Limited Liability Companies) has been amended to add requirements emanating from *In re General Growth Properties*, 409 B.R. 43 (Bkrtcy S.D. N.Y. 2009), which found that entities related to the entity that filed for bankruptcy could be drawn into that bankruptcy proceeding.

TN 12.05.01 (Lis Pendens) has been completely re-written to conform to the revised lis pendens statute, Sec. 48.23, F.S., which became effective Jul. 1, 2009.

TNs 12.05.02 and 12.05.04 (Lis Pendens) concerning the lis pendens have been amended to conform to the revised lis pendens statute, Sec. 48.23, F.S., to reflect that the time deadline for an intervenor to intervene once a lis pendens has been recorded has been changed from 20 days to 30 days.

TNs 18.03.02 and 18.03.03 (Judgment Liens) were revised to reflect the change in the amount of the policy to which the insuring guidelines apply, as the amount for policies requiring underwriting approval has been changed from 3 million to 1 million dollars.

TN 21.02.01D (Construction Lien Litigation) was revised to eliminate the requirement for a stipulation to substitute the bond for the property, if the plaintiff/lienor withdraws the lis pendens in response to the lien having been transferred to bond. This change emanates from revisions in the lis pendens statute, Sec. 48.23, F.S., which became effective Jul. 1, 2009.

TN 22.02.12 (Small Lien Foreclosures) was revised to allow title derived from small lien foreclosures to be insured in certain circumstances, including when personal service on the owner of the property has been obtained.

TN 22.05.16 (Satisfaction of Revolving Credit Mortgages) has been revised to reflect a less onerous procedure which does not require the notice limiting future advances under Sec. 697.04, F.S.

SHORTCUT TO THE FINISH LINE: FUND INTRODUCES ‘POLICY – EXPRESS CHECKOUT’

BY PHILIP A. HOLTSBERG, SR. UNDERWRITING COUNSEL

One important way The Fund is Always Driven is its relentless pursuit of operational efficiencies available to our members in conducting their transactional real estate practices. These efficiencies help our members remain competitive, improve their profitability, and ultimately help preserve and protect the issuance of title insurance as a core component of the transactional practice of real property law. The purpose of this article is to announce and detail our support for a new efficiency-enhancing initiative we are dubbing “Policy - Express Checkout.” While this initiative is entirely optional and voluntary for each member to adopt (or not) in their practice, we believe that it offers significant economies and is worthy of your consideration and implementation.

Clients often mistakenly assume that the real estate closing is the transactional finish line for the closing agent. Experienced attorneys and their paralegals know better. The transactional finish line is not crossed until its file is completed, all i’s and t’s dotted and crossed, respectively, and the file is ready for archival storage. Let us use the metaphor of an iceberg to represent the aggregate time expenditures required by an attorney and their staff to completely handle a real estate transaction from intake through archival storage. From most clients’ perspectives, they see only the “tip” of that iceberg – the exposed part of the iceberg above the waterline. As

we know all too well, below the waterline remains the bulk of the iceberg mass: the time and effort expended either pre- or post-closing and almost all of it outside of the clients’ awareness (but hopefully not outside of their appreciation). The Policy - Express Checkout initiative is intended to shrink both the iceberg’s mass “below the waterline” while at the same time making more of the iceberg visible to the title agents’ clients and customers. Increased efficiency AND more client satisfaction. Interested? Read on!

The Fund is pleased to announce that members may now issue and deliver both owners’ and lenders’ policies simultaneously with their closing disbursements, even though the closing documents have not been filed in the official public records and recording information is not yet available! This allows you and your staff to work directly from your marked-up commitment and to prepare the final policy schedules at the precise moment when all of the required and pertinent information is at hand and is top-of-mind. Moreover, in many transactions you will

(Continues on page 4)



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be able to physically deliver the policy to the insured before they leave your office, or include it in the express delivery return envelope of the lender's closing package. This is what "Policy - Express Checkout" is all about - policy issuance and delivery before instrument recordation has occurred.

The remainder of this article is presented in a convenient question and answer format, hopefully anticipating and answering the questions you might have should you choose to implement Policy - Express Checkout in your office.

Q1: *We currently have a Fund branch prepare our draft commitment schedules (using a Product 20). If we decide to implement Policy - Express Checkout, does anything change in our order or in the delivered draft commitment schedules?*

A: No. You will continue to order and receive the same product, and there will be no change in the prepared draft commitment schedules.

Q2: *We currently have the Fund branch prepare our draft commitment schedules and final policies (using a Product 24). May we use this Product if we decide to implement Policy - Express Checkout?*

A: No. This product is designed anticipating that the final policy will be issued after the transaction documents have been recorded and the recording information is available. The Fund branch requests that you send in the marked-up commitment after closing, together with a request form for the final policy (which includes the policy jacket numbers you have pulled) once the recording is completed. Of course, if you started a transaction by ordering a Product 24, you can always convert it into a Product 20 and prepare the final policy schedules yourself.

Q3: *We currently conduct our own title examinations and prepare our own commitments. If we decide to implement Policy - Express Checkout, does anything change in either the title examination or commitment preparation process?*

A: No.

Q4: *Is there a different Closing Protection Letter (CPL) if we decide to implement Policy - Express Checkout; does anything about the CPL or the*

CPL request process change?

A: No.

Q5: *Is there any change required to the way we "narrow the gap" if we decide to implement Policy - Express Checkout?*

A: No. The "gap" is the time between the effective date of the commitment and the date the instruments to be insured will be recorded. "Narrowing" the gap is the process by which the original effective date of the commitment is brought closer to the date of closing. This entails updating the title examination to as current a time as is practicable prior to closing and the update not revealing any title defect or other adverse matters. You should still obtain a "gap affidavit" from the seller(s) or mortgagor(s) stating that there are no matters pending against them that could give rise to a lien that would attach to the subject property between the effective date of the commitment and the recording of the insured instruments and that they have not executed and will not execute any instrument that would adversely affect the title to the subject property or the lien of any mortgage to be insured. Finally, you should record the insured instruments as soon as possible after closing.

Q6: *Is Policy - Express Checkout available even if our firm does not e-record our closing documents using a service such as Simplifile (for example)?*

A: Yes. Policy - Express Checkout may be used by Fund Members who record closing documents the traditional way (by delivering them to the official recorder's office for processing and their eventual return, whether via courier, mail, overnight delivery, etc.) That said, The Fund strongly encourages its members to adopt and implement an e-recording solution as a way to garner additional efficiencies in their closing practices, to minimize the risk of gap matters arising, as well as the risks associated with document handling (e.g., misdelivery, lost documents, etc.).

Moreover, e-recording helps ensure that your firm is in compliance with the ALTA Best Practice Initiative.

Q7: *Our firm already uses an e-recording solution. Does Policy – Express Checkout apply to us?*

A: Yes. Policy – Express Checkout may still be used, even if your firm uses an e-recording solution. Thanks to e-recording, given that you will have the recording information for the instruments you should include that information in the final policies.

Q8: *If our firm uses Policy – Express Checkout, is there any difference in how we prepare the Owner’s Policy (OF6) Schedules A & B?*

A: Yes, but these differences are both simple and minor.

Schedule A: (i) The field for the Date of Policy should be completed with the actual date of closing disbursement (a time of day is not required). (ii) The field numbered 2, for the Estate or Interest in the Land should be completed using wording such as “as shown in instrument to be recorded in the Public Records of _____ County, Florida, which conveys the Land.”

Schedule B: For any instrument that is listed on Schedule B but which will be recorded with the vesting deed, describe the instrument, the parties to it, the type of instrument, and the recordation information as “to be recorded in the public records of _____ County, Florida.”

That’s all there is to it! (A completed example appears in the current edition of the *Fund Procedures Handbook*.)

Q9: *If our firm uses Policy – Express Checkout, is there any difference in how we prepare the Lender’s Policy (MF6) Schedules A & B-I and B-II?*

A: Yes, but these differences are both simple and minor.

Schedule A: (i) The field for the Date of Policy should be completed with the actual date of closing disbursement (a

time of day is not required). (ii) Field numbered 4, for the description of the Insured Mortgage should be completed using words rather than the recording information for the mortgage such as “Mortgage in the sum of \$ _____ from Borrower to Lender, dated _____, to be recorded in the Public Records of _____ County, Florida, which encumbers the Land.”

Schedule B-I: Usually, there will be no changes to the way Schedule B-I is prepared. However, if there are instruments to be recorded ahead of the insured mortgage that must be shown as exceptions senior to the insured mortgage on Schedule B-I, describe such instruments by identifying the instrument’s title, the parties, the execution date, and recite that the instrument as “to be recorded in the Public Records of _____ County, Florida, ahead of the insured mortgage.”

Schedule B-II: Usually, there will be no changes to the way Schedule B-II is prepared. However, if there are instruments to be recorded after the insured mortgage that must be shown as exceptions subordinate to the insured mortgage on Schedule B-II, describe such instruments by identifying the instrument’s title, the parties, the execution date, and recite that the instrument is “to be recorded in the Public Records of _____ County, Florida, after the insured mortgage.”

That’s all there is to it! (A completed example appears in the current edition of the *Fund Procedures Handbook*.)

Q10: *May the Lender’s Short Form Policy (SF6) be issued using Policy – Express Checkout?*

A: Yes. The SF6 schedules were designed to not contain a place for recording information in anticipation that they might be issued before that information was available. Simply use the date of disbursement as the effective date.

Q11: *If our firm uses Policy – Express Checkout, and the lender’s closing instructions call for the issuance of a Lender’s Short Form Policy (SF6) may we simply substitute and send a Lender’s Policy (MF6) issued prior to recordation of the insured documents?*

A: No. You should comply with the Lender’s Closing Instructions and furnish the type of policy jacket requested.

Q12: *If our firm uses Policy – Express Checkout, do we have to use it for all of our closings?*

A: No. Your firm remains totally in control and

may freely pick and choose when to use Policy – Express Checkout, or not.

Q13: *Are there any transactions when our firm should not use Policy – Express Checkout?*

A: Yes. In situations in which the risk of adverse matters appearing in the gap is increased, and your firm is closing in escrow, then you should not use Policy – Express Checkout. Remember, Policy – Express Checkout is available only after disbursements are made. You should contact a Fund Underwriting Counsel if there is a question whether Policy – Express Checkout is available for a particular transaction.

Q14: *May our firm use Policy – Express Checkout when we are the issuing title insurance agent, but someone else is handling the disbursement of the closing funds?*

A: Yes. However, Policy – Express Checkout is available only after disbursements are made. You should provide direction to the disbursement agent to make the disbursements and confirm disbursements have been made prior to issuing the policy(ies).

Q15: *May our firm use Policy – Express Checkout when we are the issuing title insurance agent, but another firm is handling the recording of the insured instruments?*

A: No. Policy – Express Checkout is available only when your firm is responsible for recording the insured instruments.

Q16: *Our firm used Policy – Express Checkout and issued the Owner's Policy to the buyer. Once the recorded documents come back, do we have to issue an endorsement to the Owner's Policy to reflect the recording date and/or information?*

A: No. The buyer has the identical coverage under a policy issued using Policy – Express Checkout as would exist under a traditionally issued policy that reflects the document recordation date as the policy's effective date and that contains the recording information for the vesting deed.

Q17: *Our firm used Policy – Express Checkout and issued the Owner's Policy to the buyer. The closing documents have been recorded. The named insured owner has requested an endorsement to the Owner's Policy to reflect the recording date and/or information. May we issue such an endorsement? If so, how do we do that and what is the charge?*

A: Yes. A Form E Endorsement form may be issued which contains the recording information for the vesting instrument. There is no premium for the endorsement. Deliver the original of the endorsement to the named insured, and send The Fund a copy of the issued endorsement.

Q18: *Our firm used Policy – Express Checkout and issued the Lender's Policy to the mortgagee. Once the recorded documents come back, do we have to issue an endorsement to the Lender's Policy to reflect the recording date and/or information?*

A: No. The mortgagee has the identical coverage under a policy issued using Policy – Express Checkout as would exist under a traditionally issued policy that reflects the document recordation date as the policy's effective date and that contains the recording information for the insured mortgage.

Q19: *Our firm used Policy – Express Checkout and issued the Lender's Policy to the mortgagee. The closing documents have been recorded. The named insured lender has requested an endorsement to the Lender's Policy to reflect the recording date and/or information. May we issue such an endorsement? If so, how do we do that and what is the charge?*

A: Yes. A Form E Endorsement form may be issued which contains the recording information for the insured mortgage and any other documents shown as “to be recorded” on the issued policy. There is no premium for the endorsement. Deliver the original of the endorsement to the named insured, and send The Fund a copy of the issued endorsement.

Q20: *If our firm uses Policy – Express Checkout, does anything change in how we currently retrieve serialized policy jackets from DoubleTime or ePolicyManager?*

A: No, because you are not to retrieve serialized policy jackets until the transaction has closed and funded.

Q21: *If our firm uses Policy – Express Checkout, does anything change in how we currently transmit issued policies and remit payment to The Fund?*

A: No, because you are to transmit the issued policies and remit payment to The Fund when you actually issue the policies. If you are not already doing so, this would be a great opportunity to begin remitting premiums electronically by taking advantage of the features built into DoubleTime. By submitting both the policy schedules and the premium remittance electronically you can benefit from additional labor and cost efficiencies.

Q22: *If our firm uses Policy – Express Checkout, does anything change in how we complete the policy schedules in DoubleTime?*

A: No, DoubleTime allows you to complete the policy schedules before the recording information is available. In fact, DoubleTime has built-in intelligence to streamline the preparation of the language that goes into Schedules A Paragraph 2 (of the OF6), and Paragraph 4 (of the MF6) based upon whether or not the recording information is entered into DoubleTime.

Q23: *Is Policy – Express Checkout compliant with the ALTA's Best Practices Initiative?*

A: Yes! In fact, the Policy – Express Checkout was, in part, conceived and implemented to facilitate and ensure compliance with the Best Practices Initiative in terms of both timely policy issuance/delivery as well as premium remittance. If you begin remitting policy premiums electronically together with the policy schedules, you will be even further down the road of Best Practices' compliance.

Q24: *If our firm uses Policy – Express Checkout, does anything change in our post-closing requirements and procedures?*

A: Not really. Some firms use policy

issuance as the procedural checklist reminder or placeholder to double-check that all post-closing matters are completed, and that the transaction file is almost ready for archival storage. You simply need to use a different step in the closing process as the tickler in your firm's standard operating procedures for post-closing follow through on the loose ends that need to be wrapped up and confirmed. For example, you still have the identical follow through responsibilities to confirm proper recordation of all documents, discharge of liens and encumbrances, balance sheet reconciliation, etc.

Q25: *Are there any changes to the way a prior policy may be used as a title base for examination purposes in a subsequent transaction if that prior policy was issued using Policy – Express Checkout?*

A: No. This includes policies issued by underwriters other than Old Republic National Title Insurance Company whose policy effective dates may predate the date of recordation of the insured instruments.

Q26: *Are there any changes to the way the Mutual Indemnification Agreement among and between the various underwriters (the Treaty) will be applied if the policy in question was issued using Policy – Express Checkout?*

A: No. This includes policies issued by underwriters other than Old Republic National Title Insurance Company whose policy effective dates may predate the date of recordation of the insured instruments.

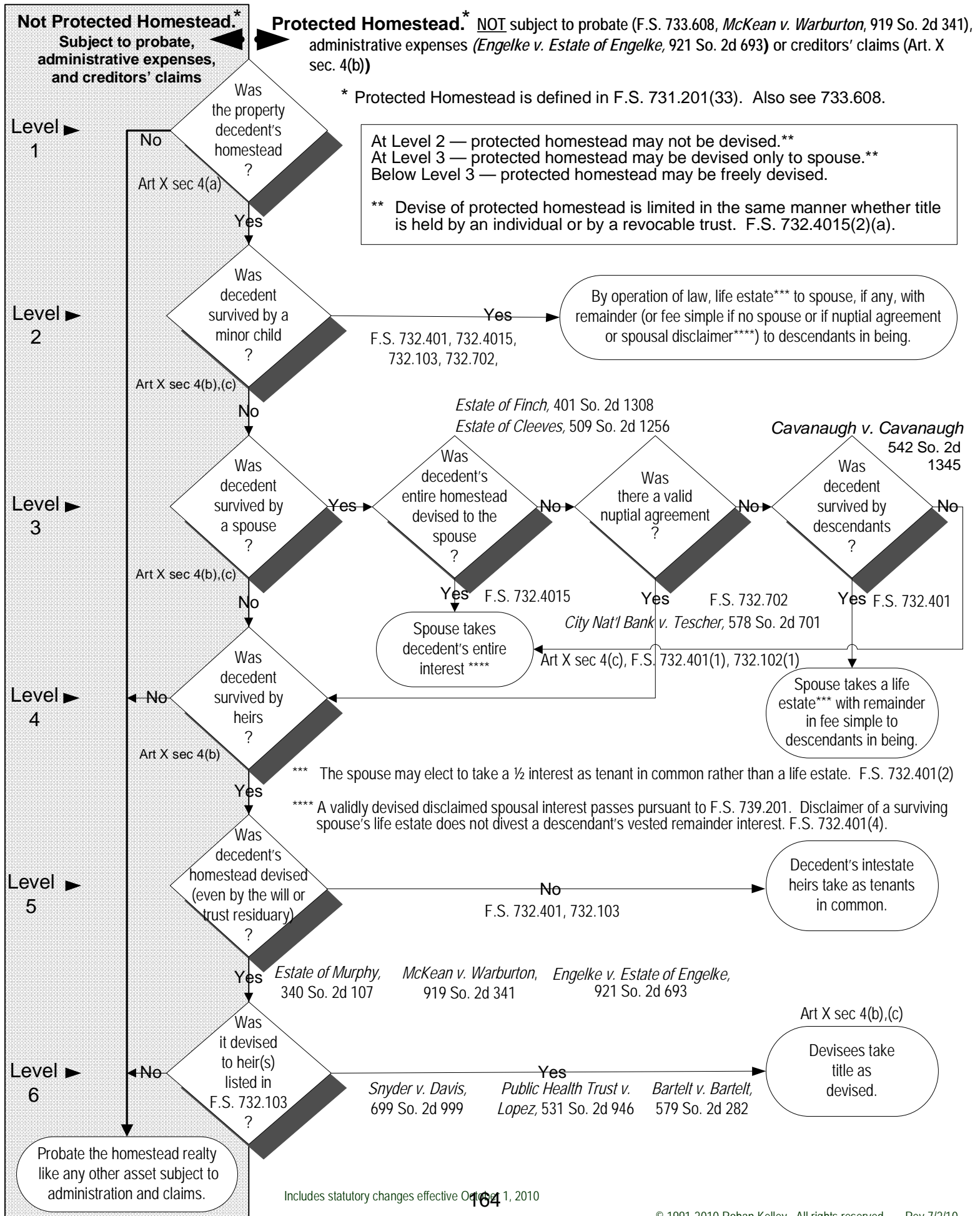
Q27: *Are there any changes to the promulgated rates for policies issued using Policy – Express Checkout?*

A: No.

As Abraham Lincoln said, "A lawyer's time and advice are his stock in trade." We believe that Policy – Express Checkout will save you much of the former, if you will only accept ours of the latter. If you have any additional concerns or questions about whether Policy – Express Checkout is right for you, we invite you to speak with your Fund Member Account Executive about them. □

The Fund's main website can be accessed at www.thefund.com. The Fund's website for consumers can be found at www.fundhomeinfo.com.

Kelley's Homestead Paradigm



Knox's Basic Judgment Lien Paradigm (updated 2015)

The Basic Judgment Lien Paradigm is an effort to organize the various changes to Florida judgment lien law since 1987. The inspiration was Rohan Kelley's use of a paradigm to organize and simplify Florida homestead law.

Like the homestead paradigm, the sheet is divided into two parts. If the answers to the questions leave you on the left hand side of the page, then the judgment is still a lien. If the answers carry you to the right hand margin at any point, then the judgment is not a lien. However, note **this paradigm does not address title insurance gap issues presented by judgments that are not perfected as liens**, nor any subsequent recordings of judgments that may create a perfected lien which must be run through the paradigm pursuant to the WARNING contained on the right hand side of the paradigm and the WARNING below.

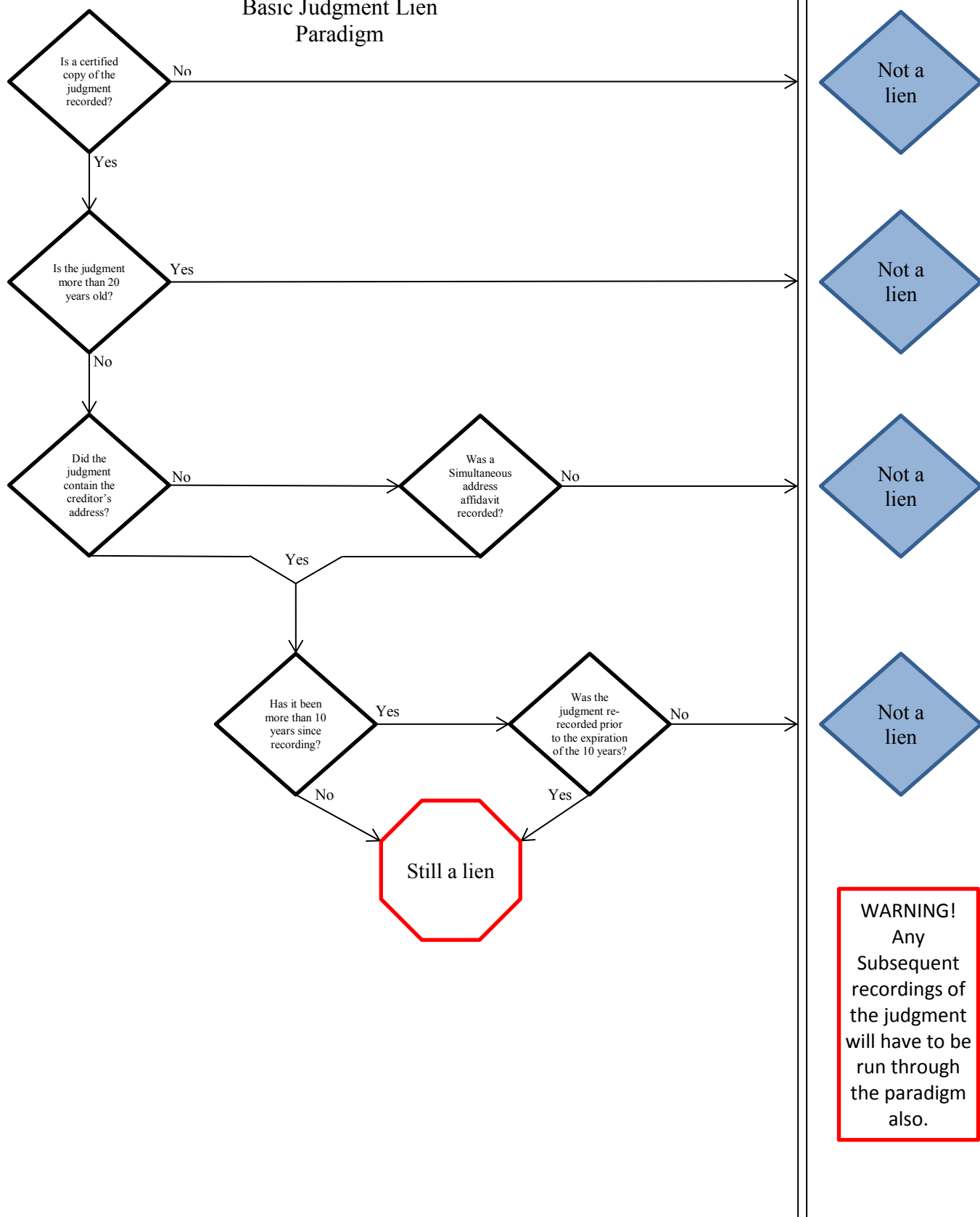
The basic paradigm is based on the following assumptions:

- 1) It deals only with case law as it exists on January 1, 2008. The user must stay current on statutory and case law changes.
- 2) It deals solely with Florida judgments. No effort has been made to factor in the various domestication processes for judgments of other jurisdictions.
- 3) It assumes that the debtor owns non-exempt real property that is subject to levy, i.e. the basic paradigm does not address issues of homestead, entireties, bankruptcy, etc.
- 4) The word "After" in the paradigm means "on or after". Because the recording of a certified copy is an absolute requirement for a judgment lien, where the words "recorded", "recording", or "re-recorded" are used in connection with a judgment, it means a certified copy.

WARNING: Each recording of a judgment must be reviewed independently to determine if a lien has been created. Just because the initial recording of a judgment contains a defect that prevents it from being a lien does not preclude a later recording that complies with the requirements to create a lien. *Hott Interiors, Inc. v. Fostock*, 721 So. 2d 1236 (Fla 4th DCA 1998) (where a judgment lacks creditor's address, lien is created with recording of a simultaneous address affidavit). In addition, any judgment that has been re-recorded after the initial 7 or 10 year expiration but prior to the expiration of 20 years from the initial recording, should be treated as a new judgment that must be run through the paradigm as of the date of its subsequent recording. *Franklin Financial v. White*, 932 So. 2d 434 (Fla. 4th DCA 2006).

Knox's Basic Judgment Lien Paradigm

F.S. 55.081



Preface

Purpose

The Affidavit Practice Manual (Real Estate Transactions) is to be used in conjunction with the Fund Title Notes and the Standard Commitment Clauses Handbook. It is geared to assist you in the preparation of affidavits that may be required to clear certain requirements raised in a title insurance commitment. These are only guidelines and suggested forms. The title agent may modify the forms and/or provisions to fit the individual problems raised under the title insurance commitment.

Assistance from The Fund

You will be faced with unique situations in which none of the suggested language in this Affidavit Practice Manual seems to fit. If you are uncertain about how to phrase a particular provision or whether a particular type of affidavit is acceptable to The Fund, do not hesitate to call an underwriting counsel to assist you.

Your Comments

The Fund revises and updates this Affidavit Practice Manual periodically. In this regard, we invite your comments and suggestions. As issuing title agents, you are in the best position to evaluate the quality and usefulness of these materials.

Chapter 1 — Affidavits: The Efficient Closing Tool

Affidavits can take the place of arduous searches for evidentiary documentation or court proceedings to determine facts. A credible person, with actual knowledge of facts, the proof of which is necessary in order to close a transaction, can attest to the facts so as to efficiently close and insure the transaction. To use an affidavit for this purpose, it must be acceptable in terms of format and in terms of function, i.e., the types of facts that qualify for this method of proof.

Affidavits lower risks to title. As a general rule, affidavits should not be solely relied upon to cure defects in title. Rather than cure an affirmative defect, affidavits are used to attest to facts that clarify issues raised by the record regarding a particular parcel. For example, an affidavit cannot cure an affirmative title defect such as an unexpired mortgage on record. Only a proper document from the holder of the mortgage or a court determination can completely eliminate the mortgage. However, an affidavit can clarify that the debt secured by the mortgage was paid so that the mortgage no longer secures an outstanding debt. Depending on the surrounding facts, for purposes of issuing a title insurance policy, the affidavit and additional evidentiary documentation may be sufficient to lower the risk to the title insurer of the mortgage's continued validity and enforceability so that a title policy may be issued with affirmative coverage over its enforcement or without an exception for the mortgage.

There are situations where an affidavit may be used in conjunction with other documents to cure defects in title. An example of this situation would be the execution of an affidavit of witness in conjunction with a re-recording of a deed subscribed by the same witness to cure the lack of witnesses in a recorded deed. Chapter 4 of this manual contains forms to both clarify facts and assist in the curing of title defects.

Affidavits clarifying issues of record. When used for clarifying issues raised by the record, the affidavit should be recorded. F.S. 695.03 requires that any instrument concerning real property to be recorded must be acknowledged. Therefore, in addition to the “sworn to (or affirmed) and subscribed before me” language, such affidavit should also be acknowledged so that it is acceptable for recording purposes. Under F.S. 28.222(3)(a), the clerk is authorized to record instruments relating to the ownership of real property.

Affidavits to clarifying issues off record. When used for attesting to facts necessary to clear matters not of record, the affidavit would not need to be acknowledged. Closing affidavits, which are used to clear matters outside the record, such as standard requirements in a commitment, need not be acknowledged.

Individual and fiduciary capacity of affiant. An affidavit may be defined as: a written statement of fact, under oath or affirmation, given by an individual, usually known as the “affiant, under personal knowledge,” before a person authorized by law to administer such oath or affirmation. Because affidavits are averments of an individual, they should not be worded so that the person signing is executing only in a fiduciary capacity. However, when the affidavits are signed by fiduciaries, there should be an additional clause affirming that the individual signing the affidavit binds the principal or business entity for which the individual is conducting the transaction.

Affidavit by affirmation. Under F.S. 92.52, an affirmation can be used in lieu of an oath. This statute must be read in conjunction with F.S. 117.05(4)(b), which states that the jurat shall contain the word “sworn.” See F.S. 92.50 for requirements in administering oaths as well as Ch. 117, F.S., which

governs the appointment of notaries public and contains further provisions in administration of oaths.

Role of form and function. For purposes of clearing title insurance commitment requirements, both form and function play an important role in determining the sufficiency of an affidavit. The following chapter will explain the several sections of a well drafted affidavit. The rest of the manual will explore the usage of affidavits to clarify individual issues and suggested forms.

6. FINDING BASE TITLE

The following guidelines apply to proposed commitments and policies not exceeding \$1 million. When the policy will exceed \$1 million, specific authorization must be obtained from Fund [underwriting](#). Refer to [Proposed Policies Over \\$1 Million](#) for additional information.

Prior Fund Policies

Several million Fund policies are in existence, covering land throughout Florida. Using an existing Fund policy as a title base will save time and money. To obtain copies of prior Fund policies, Fund members can use the Automated Title Information Data System (ATIDS), Web ATIDS or ATIDS XE using Policy search and order. The Fund's [Prior Policy](#) department is also available to assist in obtaining prior policies.

If the land has been previously insured by The Fund, a copy of Schedules A and B will be furnished. To obtain a copy of the prior policy and reissue authorization, you must provide the following:

- the legal description of the parcel to be insured or;
- the O.R. Book and Page of the Mortgage or Warranty Deed
- the type of policy to be issued;
- the amount of proposed policy; and
- the prior policy serial number, if known.

Policies as Title Base

Prior policies may be used as a title base if the amount of the proposed policy and the prior policy fit within the limitations discussed below, and if in the Member's evaluation there is no reason not to rely on the particular prior policy.

Fund Member's Responsibility to Evaluate Policies

The primary responsibility rests with the Fund member for determining whether a particular policy is acceptable. Reliability of a policy is affected by the examining reputation and integrity of the title agent who issued it. Additional factors include whether there are known title problems underlying the insured property or in the general area and the type of prior policy. Where there is an unfavorable title agent evaluation, the prior policy may not be used as a base.

Proposed Policies \$100,000 or Less

Prior Owner's or Loan Policies. If the amount of a proposed policy does not exceed \$100,000, a prior Fund owner's policy or an owner's policy of another underwriter signatory of the Revised Mutual Indemnification Treaty may be used as a title base for issuance of an owner's or loan policy. A summary of the Revised Mutual Indemnification Treaty with a list of the Treaty's signatories may be found in Appendix C of The Fund Title Notes. The title examination based upon the property's legal description should begin as of the effective date of the policy. If a prior Fund loan policy or a loan policy of another underwriter signatory of the Revised Mutual Indemnification Treaty is used as a base, the title examination based upon the property's legal description should begin as of the date the mortgagor of the previously Insured Mortgage acquired title to the property. All names occurring as a party within the examined chain of title require a complete 20-year name search and examination of resulting documents. Special

circumstances including bankruptcy, death or guardianship of a party in the chain of title will require a name search for a more extensive period of time.

Caution: Further examination may be necessary if there is any indication of superior interests that may have been subordinated to the Insured Mortgage. Subordination may have occurred in several ways. One way is by an instrument recorded before the date the mortgagor acquired title that is not disclosed in the loan policy. Another is a deed to such mortgagor containing a subordination provision. Also, a subordination may be recorded prior to the mortgage being insured and would not be included in an abstract beginning with the date of the Insured Mortgage.

Proposed Policies Exceeding \$100,000

If the amount of the proposed policy does not exceed by more than double the amount of the prior Fund or policy of another underwriter signatory of the Revised Mutual Indemnification Treaty, paragraph 1 above applies. If the proposed policy exceeds by more than double the amount of the prior policy, then permission is required before the prior policy may be used as a base. Contact Fund [underwriting](#).

Prior Policies Covering Other Parcels Within the Same Development

When no prior policy can be located insuring a particular parcel or unit in a platted subdivision or condominium, a minimum of two Fund policies, each written by separate Fund members, on parcels or condo units which are in the proximity of the subject parcel or condo unit, may be relied upon for base title. Common exceptions from the base policies must be included in the new policy. Examination of title on the property to be insured shall begin with the plat or declaration of condominium and come forward from that point.

For further instruction on use and evaluation of prior policies on different parcels as base title see “Base Title – Using Prior Policies Covering Other Parcels Within the Same Development,” [34 Fund Concept 135 \(Sept. 2002\)](#).

Prior Commitments

Commitments may not be used as a title base for issuing a commitment or policy.

Notes About Using Prior Policies

The authority to use a *prior policy* as a title base will come in the form of a copy of a prior policy. This authority covers only the specific legal description shown in the prior policy. The base title of even an adjoining lot may be quite different. If a prior policy is not usable as a title base, The Fund will inform you why it cannot be used.

The Short Form Residential Loan Policy **may not** be used as a title base.

Any exceptions shown in Schedule B of the prior policy must be shown in the new policy unless you have evidence that they have been cleared of record.

You must provide reissue rates for a prior owner's policy if the policy qualifies for reissue rates pursuant to Rule 69O – 186.00 3(2) F.A.C. Refer to the [Rating and Submitting the Forms](#) chapter of this handbook for additional information.

Title Assumption Certificates

A Title Assumption Certificate (TAC) shows the status of title to a platted lot or condominium unit, usually as of the recording date of the subdivision plat or declaration of condominium.

When you order title information from one of the branch offices that provide the Title Assumption

Certificates, give the legal description of the proposed policy and the Fund member's account number. To determine if there is a Title Status Report (TSR) on the property, use the DIIS Transaction in ATIDS or ask the branch office. If a TSR exists, a TAC will be delivered or mailed to you. A sample Title Assumption Certificate is shown in this chapter.

Important: A Title Assumption Certificate is not a prior policy and is therefore not available for reissue rate.

Notes About Using Title Assumption Certificates

The Title Assumption Certificate applies only to the specific description given. Status of the title of even an adjoining lot could be quite different. A certificate is necessary for each separate description.

Title information must be obtained and the title must be examined from the date authorized for assumption of title through the effective date of the commitment and policy.

Restrictions, easements, reservations, encumbrances, etc., shown on the Title Assumption Certificate must be shown as exceptions in Schedule B of the commitment or policy that you issue, unless they have been cleared of record.

Proposed Policies Over \$1 Million

When the amount of title insurance to be written will exceed \$1 million, specific authorization from The Fund is required.

If a Fund Branch Prepares Title Information: If a Fund branch prepares the commitment Schedules A and B as title base for a policy that will exceed \$1 million, Fund underwriting counsel will have already reviewed the status of title.

Include the Fund file number for the commitment under *Remarks* on the Policy/Endorsement Calculation Worksheet. Refer to the [Rating and Submitting the Forms](#) chapter of this handbook for instructions.

If a Fund Branch Does Not Prepare Title Information: If the title information is not based on Commitment Schedules A and B prepared by The Fund, the title agent must review the status of title with a Fund underwriting counsel, who will ask questions on title considerations revealed during the time period covered by the examination of title. These are listed in the [Checklist for Proposed Policies Over \\$1 Million](#) at the end of this chapter.

Important: This approval process does not relieve the Member of his or her liability to The Fund as provided in the [Agreement for Appointment of Policy-Issuing Agent](#) for Old Republic National Title Insurance Company.

Checklist for Proposed Policies Over \$1 Million

Fund Members issuing commitments to insure transactions in excess of \$1 million require approval of Fund underwriting counsel prior to issuing the commitment. The procedure for obtaining approval for such commitments is set forth below. Commitments issued by a Fund branch for greater than \$1 million are approved prior to delivery to Fund members and do not require further approval, except as to risk unrelated to the public record, such as water rights and creditors' rights.

Forward the following documents and information to any Fund underwriting counsel via E-mail or fax to (407) 855-5852:

- ☐ Proposed commitment
- ☐ Your contact information
- ☐ Prior title policy relied upon as base

You may also call the Underwriting Department at (800) 432-9594 to be directed to a Fund underwriting counsel.

Have the following information on hand to answer questions of the underwriting counsel.

General Information

- ☐ Title Agent name
- ☐ Name of proposed Insured(s)
- ☐ Fund Member number
- ☐ Policy amount and type
- ☐ Name of Project (if applicable)
- ☐ Type of property
(commercial, residential/vacant or improved)
- ☐ Type of transaction
(sale, refinance, or construction loan)

Base Title Information

- ☐ Prior title policy
- ☐ Other sources of title information

Title Considerations

Disclose and discuss with underwriting counsel any unusual title issues and insuring risks encountered during examination of title and preparation of the commitment. The following are examples of frequently encountered insuring risks:

- ☐ Access problems
- ☐ Judgment liens/tax liens
- ☐ Bankruptcy/foreclosure/other litigations
- ☐ Reservations/restrictions/mineral interests
- ☐ Endorsement and insuring requirements
- ☐ Divorces
- ☐ Construction lien risk
- ☐ Water rights
- ☐ Creditors' rights
- ☐ Probate/trusts/guardianships
- ☐ Business entities
- ☐ Easements/survey matters

Resources for Commitment Preparation

The following underwriting resources should be utilized in preparation of commitments:

- ☐ Fund Title Notes & Standard Commitment Clauses
- ☐ The Fund Concept
- ☐ Fund Procedures Handbook
- ☐ Fund Affidavit Practice Manual

Overview

- Introduction
 - Title Examination Principles
 - 6 Steps of Title Examination
 - Chopra to Black hypothetical
-



1
1

Materials

Title Examination Fundamentals Handout

- [TEF Handout.pdf](#)
- Page references 6
- Not critical during presentation
- PowerPoint slides
- CE / FL Bar information



2

2

Introduction

Title Search

- Identification/compilation of public records pertinent to a parcel of real property for Title Exam
 - Indexed to legal description of the property
 - Indexed to names of the parties

Title Examination

- Critical review of parcel's history through public records compiled by Title Search

Chain of Title

- Examiner product generated through Title Examination
- Muniments of title conceptualized as links in a "chain"



3

3



Why Examine Title?



4

Why Examine Title?

- Title insurance is not casualty insurance
- Cannot be issued without regard to adverse matters or title defects

INSURANCE

INSURANCE RATES AND CONTRACTS

627.784 Casualty title insurance prohibited.—A title insurance policy or guarantee of title may not be issued without regard to the possible existence of adverse matters or defects of title.



5



5

Why Examine Title?

“Core” and “primary” title services

Sec. 627.7711, F.S.

(b) “Primary title services” means determining insurability in accordance with sound underwriting practices based upon evaluation of a reasonable title search or a search of the records of a Uniform Commercial Code filing office and such other information as may be necessary, determination and clearance of underwriting objections and requirements to eliminate risk, preparation and issuance of a title insurance commitment setting forth the requirements to insure, and preparation and issuance of the policy. Such services do not include closing services or title searches, for which a separate charge or separate charges may be made.



6

6

Seminar Assumptions

- A complete title search has been performed and provided to us
- Examination standard looks for “marketable title of record”
 - Determine whether documents in chain of title show vendor has title
 - “free from reasonable doubt in law and fact as to its validity”

7

7



A Title Examiner's Mindset

- Muniments defective until proven otherwise
- Encumbrances valid until proven otherwise
- Build “scaffold” of knowledge
- Begin with clean/easy titles



8

8

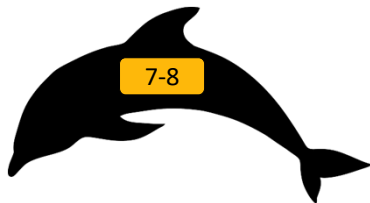
Title Examination Principles



9

Title Examination Principles

- A. When in doubt, speak with Fund Underwriting
- B. Title examination like swimming. “Swim” within your skill set
- C. Absent incontrovertible showing property not homestead,
 - Presume every attempted alienation is of homestead property



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Title Examination Principles

- D. No presumption of validity simply because a document is of record
- E. No presumption of validity of court judgments or orders
- F. No presumption of validity of governmental deeds

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8-9



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Title Examination Principles

- G. Not all titles are insurable according to sound underwriting principles
 - “Windfall” foreclosures
 - Non-charitable inter-vivos gift
- H. A title examiner is often charged to inquire about matters “outside the record”
- I. Examine entire instrument; pay attention to notations in margins and any alterations to instrument

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Title Examination Principles

- J. Marital status change can occur at any time
- K. Priority under Sec. 695.11, F.S. is determined by official registration numbers; not affected by mis-indexing by clerk of court
- L. Doubt efficacy of re-recording of an instrument
- M. Always read and understand certificate of person or entity providing title search

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10-11



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Title Examination Principles

- N. Protections afforded by Florida's recording act (Sec. 695.01, F.S.) only extend to creditors and bona fide purchasers "without notice"
 - Recording constitutes constructive notice shielding the holder against interests arising subsequent to recording
 - Later interests arising prior to recording will have priority unless notice can be proven
 - Florida is a "Pure Notice" not a "Race-Notice" jurisdiction

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Title Examination Principles

- O. Description referencing recorded plat or declaration of condominium incorporates all restrictions, easements, and reserved rights shown on the plat or declaration
- P. Examiners do not ignore wild or interloping instruments appearing in the title search; they may cloud the title
- Q. Examiners do not ignore a lis pendens
- R. Examiners do not ignore suggestion of bankruptcy involving a party while in title

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12-13



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Title Examination Principles

- S. Examiners do not ignore Notices of Commencement or Claims of Lien
- T. Not every recorded judgment requires certified copy to constitute a lien. Some judgment liens can be valid for longer than 20 years
- U. Judgment against a person with the same name as an owner in the chain of title presumed to be against that owner unless and until proven otherwise

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13-14



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Title Examination Principles

- V. Planned communities and other regimes with governing associations alert examiner to potential rights of prior approval, rights of first refusal, assessment rights and other matters
- W. The after-acquired title doctrine is an examiner's friend
- X. Nature can convey title
 - A. Accretion & Reliction & Erosion
 - B. Avulsion

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Title Examination Principles

- Y. Examiners develop and maintain good examining habits
 - Methodical
 - Consistent practices
 - Accurate, complete examination notes
 - Notes preserved separately from the transaction file prior to archiving

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Part II: Six Steps of Title Examination



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Review – A Title Examiner's Mindset

Muniments **defective** until proven otherwise

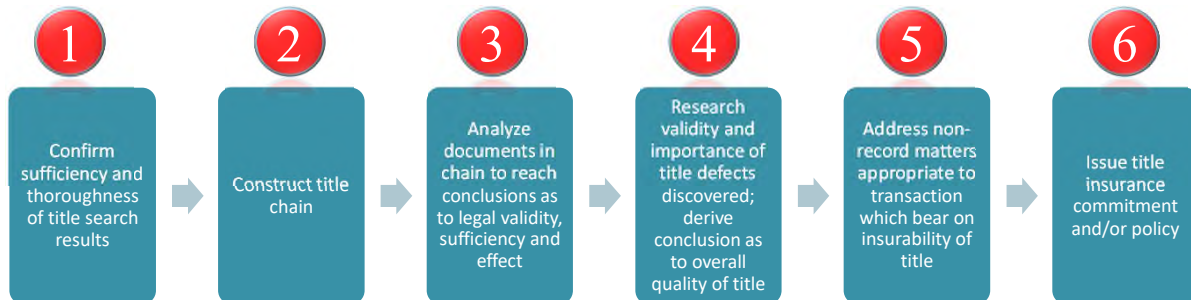
Encumbrances **valid** until proven otherwise



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Six Steps of Title Examination



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Six Steps of Title Examination

1. Confirm sufficiency and thoroughness of title search results
 - Verify correct complete legal and names searched for relevant time periods
 - Verify no gaps in time periods searched
 - Verify all entries identified by search results are present for examination
 - Eliminate any extraneous matters



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Legal Descriptions

- Fund Title Notes Ch.13 – Descriptions
 - Construing ambiguous description
 - Descriptions containing clearly erroneous information
 - Sufficiency of legal description examples
 - Test of sufficiency
- Fund Concept articles
 - *Simple Cures for Certain Legal Description Errors*
 - *Corrective Deed to Add Legal Description*

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Relevant Time Periods – Base Title

- Earliest point in time where quality of title may be assumed/search may commence
 - Earliest public records (EPR)
 - Base Title
- Underwriter establishes guidelines for acceptable Base Title
- Member may examine “behind” (prior to) Base Title but
 - Cannot begin search later than Base Title

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Sources of Base Title

- Prior Policy covering same property or same property plus additional property
 - Can be from any underwriter that has signed Treaty
 - If insuring more than \$100,000 need Underwriting permission to insure more than 2x prior policy
- Prior Fund or ORNTIC Policies on nearby lots in same subdivision
- Plats or Dec. of Condominium of record at least 7 years
- Marketable Record Title Act search
- Title Search Report
- Title Assumption Certificate

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Six Steps of Title Examination

2. Construct title chain

- Graphically depict through time interconnecting title transactions from source of ownership down to present owner
- Identify and describe
 - Liens
 - Encumbrances, and
 - Restrictions
 - Noting any obvious potential defects

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Chain of Title

- Trace ownership of title from source to present owner
- Confirm no gaps evident in chain
- Identify events which affected title during times each owner in title
- Determine if matters identified in preceding step were resolved
 - Ex) curative instruments



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Sources of Title

- Original sources of title include conveyances from sovereign (U.S., FL, Spain, England)
- “New” (independent) sources of title
 - Passage of title on death of an owner
 - Tax titles
 - Judicial sales, orders, & decrees
 - Adverse possession
 - Eminent domain
 - Boundaries by acquiescence and agreement
 - Accretion, reliction, and erosion (not avulsion)
 - Dedication
 - Marketable Record Title Act

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Six Steps of Title Examination

3. Analyze documents in chain to reach conclusions as to legal validity, sufficiency and effect



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Critical Review

- All muniments purporting to convey title must be analyzed to confirm that they are legally valid and sufficient
 - Correct execution by all proper parties, and
 - Accurate legal description
- All encumbrances must be analyzed to determine effect on property

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Deeds - Important Elements

- | | |
|-------------------------|--------------------------------------|
| • Delivery & acceptance | • Recitals ("subject to" provisions) |
| • Date of execution | • Signatures |
| • Parties | • Witnesses |
| • Consideration | • Proof of acknowledgement |
| • Granting clause | |
| • Legal description | |

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Mortgages/Assignments/Satisfactions

- Encumbrances not “links” in the chain of title
- Examined with special emphasis on names of parties, legal descriptions, execution, acknowledgment, and recitals
- Home Equity Line of Credit (HELOC)
- Mortgage Electronic Registration Systems, Inc. (MERS)
- Future advances
- Purchase money mortgages

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31-34

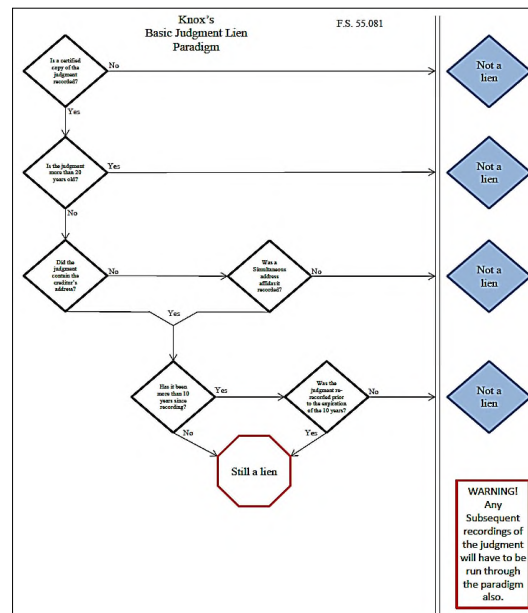


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Judgment Liens

- When in doubt about whether judgment may be ignored, call Underwriting
- Knox's Judgment Lien Paradigm can help
- Require satisfactions or releases of judgments that are liens on property
- Entireties property
- Federal preemption

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Other Encumbrances

- Florida real property taxes
- Federal and Florida estate tax liens
- Federal tax liens
- Restrictions, reverts and reservations
- Special assessment and municipal liens
- Perfected code enforcement board liens
 - Lien against *all* property of violator in county where recorded
 - Generally treated as having duration of 20 years from recording



Residential | Commercial | Education

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Steps of Title Examination

4. Research validity and importance of title defects discovered; derive conclusion as to overall quality of title



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Residential | Commercial | Education

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Problem Solving Techniques

- Affidavit or Corrective Instrument
 - Corrective instruments trump affidavits
 - Affidavits remove doubts about factual matters not resolved by public records
 - “Whenever possible...the examiner should accept and rely on an affidavit which states sufficient facts to negate a possible defect in an otherwise marketable title.”
 - Standard 3.3 (Florida Uniform Title Standards)

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Marketable Record Title Act

- Sec. 712, F.S.
- Valuable title examination tool
- Curative statute and basis to assert source of title
- Frequently misunderstood – does not “wipe out” everything older than 30 years
- Identify “root of title”
 - Title transaction
 - Describes land
 - Of record at least 30 years

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Marketable Record Title Act

- Identify interests Act does not eliminate
- Determine which surviving interests relevant
- Requires examining title *prior to root* for exceptions
 - Reservations by sovereign
 - Easements in use
 - Some mineral rights
 - Parties in possession and parties to whom taxes are assessed
 - Restrictions and covenants preserved under Florida Statutes

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Six Steps: Easements and Legal Access

5. Address non-record matters appropriate to transaction which bear on insurability of title

Examiners ascertain whether there is access, i.e., ability to get from property to a public roadway and vice versa without trespassing

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Six Steps: Easements and Legal Access

- In gross vs. appurtenant easement
- Dominant estate vs. servient estate
- Conveyance of dominant estate requires examination of easement parcel (servient estate) as well
- Consider width and use limitations
- Ensure easement survived all interim conveyances, especially when new sources of title involved

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Water Rights

- Sovereignty rights of state of FL in historically submerged land
- Riparian / littoral rights in waterfront property
- Excepted from coverage until carefully researched
- See Fund Sovereignty Lands programs for fuller discussion



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Other Non-Record Matters

Standard Exceptions: Remain unless requirements met to justify deletion

- General or special taxes and assessments not shown as existing liens by public records
- Rights or claims of parties in possession not shown by public records
- Encroachments, overlaps, boundary line disputes and other matters that would be disclosed by an accurate survey and inspection of premises
- Easements or claims of easements not shown by the public records
- Any lien or right to lien for services, labor, or material furnished, imposed by law and not shown by the public records
- Sovereignty lands

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Six Steps of Title Examination

6. Issue title insurance commitment and/or policy

- Use Standard Commitment Clause (SCC) Handbook to prepare title insurance products
- When uncertain about how to phrase a particular requirement or exception, contact one of the Fund Underwriting attorneys
- Include unresolved matters as a requirement or an exception in prepared title insurance products

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Part III: Hypothetical Purchase & Sale

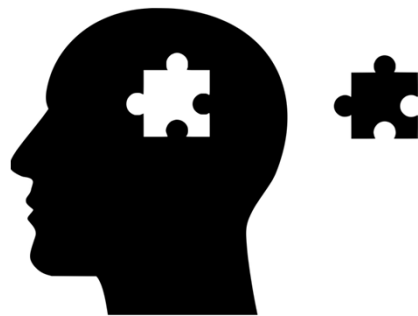


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Fund**[®]

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Review – A Title Examiner's Mindset

- Muniments defective until proven otherwise
- Encumbrances valid until proven otherwise



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Fund**[®]
Residential | Commercial | Education

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Review – Six Steps of Title Examination

1. Confirm sufficiency and thoroughness of title search results
2. Construct title chain
3. Analyze documents and chain to assess legal validity, sufficiency and effect
4. Research validity and importance of title deficiencies or defects; arrive at conclusion as to overall quality of title
5. Address non-record matters which bear upon insurability of title
6. Issue title insurance commitment and/or policy

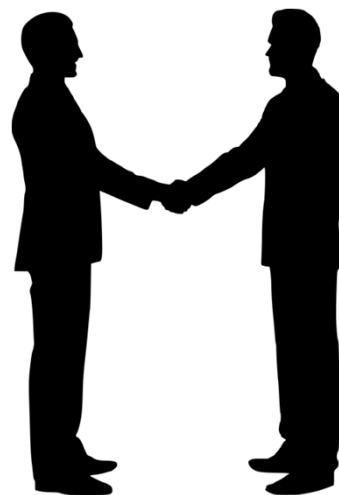
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Part III – Hypothetical Sale

- Contract for Sale & Purchase
- Tax Information
- Prior Policy
- Title Search Report
- Update Search
- Commitment



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2059 Tillman Ave, Winter Garden FL
Beds: 5 Baths: 3
Sqft: 3,394



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Hypothetical Sale

- Chopra to Black sale of home in Winter Garden
- Purchase price \$550,000
- New mortgage \$410,000
- Your firm doing title work per contract
- Prior Fund policy located
- Title Search Report (TSR) produced with associated documents



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Residential Contract For Sale And Purchase

THIS FORM HAS BEEN APPROVED BY THE FLORIDA REALTORS AND THE FLORIDA BAR

PARTIES: Rahul B. Chopra and Sonia Chopra, husband and wife
and Edward F. Black and Pamela M. Black, husband and wife

(a) Street address, city, zip: 2059 Tillman Avenue, Winter Garden, FL 34787

PURCHASE PRICE (U.S. currency): \$ 550,000.00

410,000.00

Buyer's Initials: *[Signature]* Seller's Initials: *[Signature]*
Florida Realtors/Promoter: 5 Rev 4/17 © 2017 Florida Realtors and The Florida Bar. All rights reserved.

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Recall: Mechanics of Constructing Title Chain

Page 1 of ____ Pages

Title Examination Chain Sheet

File Reference: _____ Buyer: _____
 Searched By: _____ Seller: _____
 Examined By: _____ Lender1: _____
 Tax Folio: _____ Lender2: _____
 County: _____ Policies to Issue & Amounts: _____
 Endorsements Needed: _____
 Property Description: _____
 Lies Within: Section _____ Township _____ Range _____ (Fractional _____)
 Replate: Y / N If Yes, original plat(s) to examine: _____

Base Title Information

Underwriter: Fund/ Other: _____
 Type of Policy: OP MP Other: _____
 Identical Legal: Y/N, If No, rationale for use: _____
 Policy Effective Date: _____
 Policy Amount: _____
 Current Transaction > 2X prior amount? Y/ N
 (If yes, Underwriting approval obtained? Y/ N)

Note: If prior Fund policy, do not rely on original or unofficial copies, obtain copy from Fund.

Date Current Exam Begins: _____
 Exam Begins With Title Vested In: _____
 Unsatisfied Encumbrances: _____

Legal Access Confirmed?

Y: Source is _____
 N: Exception required in Commitment & Policies

Current Title Information

Provider: ATIDS/ Other: _____
 Number of Entries: _____ Hard Copies _____
 Dates: Start / / End / /

Location Sketch of Property

Page ____ of ____ Pages

Conveyances	Encumbrances	Notes
O Inst. Type: _____ Grantor(s): _____ Grantee(s): _____ Date of Inst.: / / Date of Rec.: / / Clerk Ref.: _____ OR _____ Page(s) _____ Legal: _____	O _____	O _____
O Inst. Type: _____ Grantor(s): _____ Grantee(s): _____ Date of Inst.: / / Date of Rec.: / / Clerk Ref.: _____ OR _____ Page(s) _____ Legal: _____	O _____	O _____
O Inst. Type: _____ Grantor(s): _____ Grantee(s): _____ Date of Inst.: / / Date of Rec.: / / Clerk Ref.: _____ OR _____ Page(s) _____ Legal: _____	O _____	O _____
O Inst. Type: _____ Grantor(s): _____ Grantee(s): _____ Date of Inst.: / / Date of Rec.: / / Clerk Ref.: _____ OR _____ Page(s) _____ Legal: _____	O _____	O _____

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The Fund
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Title Examination

- Analyze documents in chain to reach conclusions as to legal validity, sufficiency and effect



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Title Examination Principles

- Review muniment
- WD into sellers
- “Vesting deed”
- Best source of legal description

THIS INDENTURE, Made the 2nd day of April, A.D. 2007, Between CENTERLINE HOMES AT BRONSON'S LANDING, LLC, a Florida limited liability company, of the County of Broward, in the State of Florida, party of the first part, and SONIA CHOPRA and RAHUL CHOPRA, wife and husband, of the County of ORANGE, in the State of Florida, whose post office address is 2059 TILLMAN AVENUE, WINTER GARDEN, FL 34787, party of the second part:

WITNESSETH, That the said party of the first part, for and in consideration of the sum Ten and 00/100 Dollars (\$10.00), and other valuable considerations, receipt whereof is hereby acknowledged, has granted, bargained, and sold to the said party of the second part, his/her/their heirs and assigns forever, the following described land, situate, and being in the County of ORANGE, State of Florida, to-wit:

Lot 86, BRONSON'S LANDINGS, according to the map or plat thereof as recorded in Plat Book 66, Page(s) 139-149, Public Records of Orange County, Florida.



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This Instrument Prepared by & return to:
Name: LARRY A. ROTHENBERG, ESQUIRE
Address: RELIANCE TITLE COMPANY
815 Coral Ridge Drive
Coral Springs, FL 33071
Parcel Identification Number: 10-23-01-0000-00-000

WARRANTY DEED
INSTR 200704039136
OR BK 85289 PG 1395 PG#44
NOTES: U. PARTIAL, COMP/ALL
UNRECORDED, FL
84/12/2007 - RECORDED IN
BLSR DOC 166 4-14-1-08
REC FILE #0-36

Witness Signature: LORRAINE FALCONE JONES
Printed Name: LORRAINE FALCONE JONES
BY: CRAIG S. PERRY, President
825 CORAL RIDGE DRIVE
CORAL SPRINGS, FL 33071

STATE OF FLORIDA
COUNTY OF BROWARD

I hereby certify that on this day, before me, an officer duly authorized to administer oaths and take acknowledgments, personally appeared CRAIG S. PERRY, as President of CENTERLINE HOMES, INC., the Manager of CENTERLINE HOMES AT BRONSON'S LANDING, LLC, a Florida limited liability company, known to me to be the person described in and who executed the foregoing instrument on behalf of said limited liability company, who acknowledged before me that he executed the same, and that he is personally known to me OR that I relied upon the following form of identification of the above-named person: N/A, and that an oath was not taken.

NOTARY SEAL
Lorraine Falcone Jones
Commission # 0342046
Expires August 23, 2009

Witness my hand and official seal in the County and State last aforesaid this 2nd day of April, A.D. 2007.
LORRAINE FALCONE JONES
Printed Notary Signature

My Commission Expires:

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Title Examination Principles- Review Muniment

- Q: Did 2d witness sign?
- Note: Notary is 1st witness
 - Not an issue in itself
 - Use to analyze other witness “signature”

In Witness Whereof, The said party of the first part has hereunto set its hand and seal the day and year first above written.

Signed, sealed and delivered in the presence of:

Witness Signature: LORRAINE FALCONE JONES
Printed Name: LORRAINE FALCONE JONES

Witness Signature: LARRY A. ROTHENBERG
Printed Name: LARRY A. ROTHENBERG

BY: CRAIG S. PERRY, President
825 CORAL RIDGE DRIVE
CORAL SPRINGS, FL 33071

In Witness Whereof, The said party of the first part has hereunto set its hand and seal the day and year first above written.

Signed, sealed and delivered in the presence of:

Witness my hand and official seal in the County and State last aforesaid this 2nd day of April, A.D. 2007.
LORRAINE FALCONE JONES
Printed Notary Signature

NOTARY SEAL
Lorraine Falcone Jones
Commission # 0342046
Expires August 23, 2009

My Commission Expires:



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Title Examination Principles- Review Muniment

- N. Protections afforded by Florida's recording act extend only to creditors and bona fide purchasers without "notice"

Sec. 695.01, F.S.

(1) No conveyance, transfer, or mortgage of real property, or of any interest therein, nor any lease for a term of 1 year or longer, shall be good and effectual in law or equity against creditors or subsequent purchasers for a valuable consideration and without notice, unless the same be recorded according to law . . .

Sec. 689.01, F.S.

(1) No estate or interest of freehold, or for a term of more than 1 year, or any uncertain interest of, in, or out of any messuages, lands, tenements, or hereditaments shall be created, made, granted, transferred, or released in any manner other than by instrument in writing, signed in the presence of two subscribing witnesses . . . provided, however, that no subscribing witnesses shall be required for a lease of real property or any such instrument pertaining to a lease of real property.

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Title Examination Principles- Review Muniment

THIS INDENTURE, *Made the 2nd day of April, A.D. 2007*

- "Muniments defective until proven otherwise"
- But witness issue cured by time and statute

95.231 Limitations where deed or will on record.—(1) Five years after the recording of an instrument required to be executed in accordance with s. 689.01; 5 years after the recording of a power of attorney accompanying and used for an instrument required to be executed in accordance with s. 689.01; or 5 years after the probate of a will purporting to convey real property, from which it appears that the person owning the property attempted to convey, affect, or devise it, the instrument, power of attorney, or will shall be held to have its purported effect to convey, affect, or devise, the title to the real property of the person signing the instrument, as if there had been no lack of seal or seals, witness or witnesses, defect in, failure of, or absence of acknowledgment or relinquishment of dower, in the absence of fraud, adverse possession, or pending litigation.



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Title Examination Principles- Review Muniment

EXHIBIT "A" TO DEED

DEED RESTRICTION MINIMUM HOLDING PERIOD AND RESTRICTION AGAINST LEASING

- Deed restriction
 - Can't sell for 2 years
- Terminated 2 years from 2007
- Moving on!

As a material consideration inducing the grantor ("Seller") under the attached deed ("Deed") to sell to the grantee under such Deed ("Buyer") that certain real property described in this Deed (the "Property"), Buyer has represented to Seller that Buyer intends to and will occupy the Property as Buyer's principal or secondary residence for a minimum of one (1) year from the closing of title to the Property or upon the sale of the last property owned by Seller located within the Association (as defined below), whichever is later (for purposes of this restriction sale shall mean the execution of a Purchase and Sale Agreement between Seller and a purchaser); however, in no event shall an owner be restricted under this provision for a period greater than two (2) years from the closing of title to the Property ("Minimum Holding Period"). Seller and Buyer have entered into a separate unrecorded No Investor Rider (the "Agreement") pursuant to which Buyer has agreed to occupy the Property as provided herein, and Buyer has agreed not to sell or lease the Property for the duration of the Minimum Holding Period. This Deed Restriction is to put third parties on notice of such commitments by Buyer, and Seller's rights upon a breach of such commitments by Buyer, as provided in the Agreement, and nothing contained in this Deed Restriction shall, or shall be deemed to, modify or amend the Agreement in any respect. In the event of any conflict between the provisions of the Agreement and the provisions of this Deed Restriction, the provisions of the Agreement shall prevail. Notwithstanding the foregoing, this Deed Restriction includes certain mortgagee protections which shall be in addition to, and shall not be superseded by, the mortgagee protections in the Agreement.

Buyer acknowledges that Seller, as a developer and builder of single family and multi-family residences, has an interest in ensuring that such residences, and the residences in the communities in which they are built, including the Property and the homeowner's association of which the Property is a part (such homeowner's association being referred to herein as the "Association") are purchased and occupied only by persons who will actually occupy them as a principal or secondary residence and to mitigate shortage of available residences for permanent residents.

3. Automatic Termination of Deed Restriction. The covenants set forth above, and the restrictions on the transfer or lease of the Property set forth herein and in the Agreement, shall automatically terminate and be of no further force or effect on the date which is two (2) years from the date of recordation of this Deed.

to hold title thereto in fee simple for the duration of the Minimum Holding Period.



Residential | Commercial | Education

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Title Examination Principles- Review Muniment

This Quit-Claim Deed executed this 10th day of May, A.D. 2007, by SONIA CHOPRA and RAHUL CHOPRA, wife and husband, whose post office address is 2059 TILLMAN AVENUE, WINTER GARDEN, FL 34787 (Grantors), to SONIA CHOPRA and RAHUL B. CHOPRA, wife and husband (Grantee), whose post office address is 2059 TILLMAN AVENUE, WINTER GARDEN, FL 34787.

WITNESSETH,

Grantors, for and in consideration of the sum of \$10.00 and other valuable consideration, receipt whereof is hereby acknowledged by Grantors, do hereby remise, release, and quit-claim unto Grantee forever,

This Quit-Claim Deed executed this 10th day of May, A.D. 2007, by SONIA CHOPRA and RAHUL CHOPRA, wife and husband, whose post office address is 2059 TILLMAN AVENUE, WINTER GARDEN, FL 34787 (Grantors), to SONIA CHOPRA and RAHUL B. CHOPRA, wife and husband (Grantee), whose post office address is 2059 TILLMAN AVENUE, WINTER GARDEN, FL 34787.

- Quit-Claim Deed
 - Sonia and Rahul to Sonia and "Rahul B."
- Owners conveyed same property to themselves
 - Maybe wanted to add Rahul's middle initial?
- Moving on!

SUBJECT TO TAXES FOR THE YEAR 2007 AND SUBSEQUENT YEARS, RESTRICTIONS, RESERVATIONS, COVENANTS AND EASEMENTS OF RECORD, IF ANY.

In Witness Whereof, Grantors have signed and sealed this Quit-Claim Deed or caused this Quit-Claim Deed to be executed in their respective names and their respective corporate seals to be hereunto affixed by their proper officers thereunto duly authorized the day and year first above written.

Signed, sealed and delivered in the presence of:

Witness Signature *[Signature]*

Printed Name *Veeran Chopra*

Witness Signature *[Signature]*

Printed Name *P. K. Chopra*

STATE OF FLORIDA

COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this 10th day of May, 2007, by SONIA CHOPRA and RAHUL CHOPRA, wife and husband. He/she is personally known to me or has produced as identification and did (did not) take an oath.

[Signature]
Signature of Acknowledger
My commission expires 06/17/2007



Residential | Commercial | Education

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Title Examination Principles

- All encumbrances analyzed to determine effect on title
 - Partial Release of Mortgage
- Common for developers to “pay as they go”
- Our lot included?
 - Good



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Partial Release of Mortgage

Know All Men By These Presents:

Whereas, CENTERLINE HOMES AT BRONSON'S LANDING, LLC, a Florida limited liability company, CENTERLINE ENTERPRISES, LLC, a Florida limited liability company, CENTERLINE HOMES ENTERPRISES ONE, LLC, a Florida limited liability company, CENTERLINE HOMES ENTERPRISES TWO, LLC, a Florida limited liability company, CENTERLINE HOMES ENTERPRISES THREE, LLC, a Florida limited liability company, CENTERLINE HOMES ENTERPRISES FOUR, LLC, a Florida limited liability company, CENTERLINE ENTERPRISES FIVE, LLC, a Florida limited liability company, CENTERLINE HOMES AT BALDWIN PARK I, LLC, a Florida limited liability company, CENTERLINE HOMES AT BALDWIN PARK II, LLC, a Florida limited liability company, CENTERLINE HOMES AT BALDWIN PARK III, LLC, a Florida limited liability company, CENTERLINE HOMES AT BALDWIN PARK IV, LLC, a Florida limited liability company, CENTERLINE HOMES AT BALDWIN PARK V, LLC, a Florida limited liability company, CENTERLINE AT BALDWIN and CENTERLINE PORT ST. LUCIE LTD, a Florida limited partnership, Borrower: collectively, jointly and severally, by instrument of Mortgage bearing date the 17th day of October, 2004, recorded in the Office of the Clerk of the Circuit Court in and for the County of Orange, State of Florida in Official Records Book 7665, Page 3886, together with that certain UCC-1 Financing Statement recorded in Official Records Book 7665, Page 3952, Modification, Future Advance and Spreaders Agreements recorded in Official Records Book 7783, Page 2719, O.R. Book 8056, Page 3144; O.R. Book 8028, Page 376; O.R. Book 8347, Page 5881; O.R. Book 8384, Page 1983; O.R. Book 8445, Page 3243, mortgaged unto BANK OF AMERICA, N.A., mortgagee, assignee, and successors, the premises therein particularly described, to secure the payment of the original sum of Twelve Million Three Hundred Thousand and No/100 Dollars (\$12,300,000.00), with interest as therein mentioned.

And Whereas, the said mortgagee has requested the said mortgagee to release the premises hereinafter described, being part of said mortgaged premises, from the lien and operation of said Mortgage:

Lots 62 & 86, BRONSON'S LANDING SUBDIVISION, according to the plat thereof as Recorded In Plat Book 66, Page 139, of the Public Records of Orange County, Florida.

To Have and to Hold the same, with the appurtenances, unto the said mortgagee heirs and assigns forever, freed, exonerated and discharged of and from the lien of said mortgage, and every part thereof; provided always, nevertheless, that nothing herein contained shall in anywise impair, alter or diminish the effect, lien or encumbrance of the aforesaid Mortgage on the remaining part of said mortgaged premises, or any of the rights and remedies of the holder thereof.

In Witness Whereof, the said Mortgagee has caused these presents to be executed in its name, and its corporate seal to be hereunto affixed, by its proper officers thereunto duly authorized this 17 April, 2007.

Signed, sealed and delivered in the presence of:

[Signature] Bank of America, N.A.
By *[Signature]* Vice President
Kathleen C. Gallagher
Vice President

[Signature] Notary Public
STATE OF FLORIDA - COUNTY OF FULTON
The foregoing instrument was acknowledged before me this 17 April, 2007, by *[Signature]* of Bank of America, N.A., a national banking association corporation, to be personally known to me or has been duly authenticated.

DEC 28 2006
NOTARY PUBLIC

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Title Examination Principles

- All encumbrances analyzed to determine effect on title
 - Sellers' Purchase Money Mortgage
- Recall:
 - Encumbrances valid until proven otherwise
- No issues found
- Pay off will become a B-I requirement
- Move on



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Return To: LOAN # 6597018909

Reliance Title Company
815 Coral Ridge Drive
Coral Springs, FL 33071

This document was prepared by:
MARIE RAMSEY
BANK OF AMERICA, N.A.
9000 SOUTH DE BLVD., #600
JACKSONVILLE, FL 322560000

INSTR 20070239199
DR BK 092009 PG 1399 PGS=19
PARTIAL RELEASE, CUMP/PROLLE
ORANGE COUNTY, FL
04/12/2007 02:05:09 PM
HIS BUL 14K 1,617,70
INSTR 100 364,27
REC FEB 16,2,00

MORTGAGE

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated APRIL 02, 2007 together with all Riders to this document.

(B) "Borrower" is ~~RAHUL~~ RAHUL and SONIA CHOPRA, HUSBAND AND WIFE

Borrower is the mortgagor under this Security Instrument.
(C) "Lender" is BANK OF AMERICA, N.A.

Lender is a NATIONAL BANKING ASSOCIATION organized and existing under the laws of THE UNITED STATES OF AMERICA

FLORIDA - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT Form 3010 1/01
BPL 0000
Page 1 of 16
VMP MORTGAGE FORMS - 000001-7301
CPL 03/30/07 1:14 PM 6597018909

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Title Examination Principles

- All encumbrances analyzed to determine effect on title
- “Revolving Credit” or Home Equity Line of Credit (HELOC)

INSTR 20070326699
OR BK 09266 PG 4797 PGS=9
MARTHA O. HAYNIE, COMPTROLLER
ORANGE COUNTY, FL
05/21/2007 08:33:07 AM
MTG DOC TAX 383.45
INTANG TAX 173.38
REC FEE 78.00

WHEN RECORDED MAIL TO:
Record and Return To:
Fiserv Lending Solutions
27 Inwood Road
ROCKY HILL, CT 06067

Chopra, Sonia

Acct # 1520

This Mortgage prepared by:
Name: CINDY WAHLSTROM
Company: Bank of America, N.A.
Address: FL9-000-02-73 9000 SOUTHSIDE BLVD., JACKSONVILLE, FL 32256-0000

MORTGAGE FOR USE WITH SECURED REVOLVING CREDIT AGREEMENT

MAXIMUM LIEN. The total amount of indebtedness secured by this Mortgage may decrease or increase from time to time, but the maximum amount of principal indebtedness which may be outstanding at any one time shall not exceed \$173,300.00, plus interest, and amounts expended or advanced by Lender for the payment of taxes, levies or insurance on the Property, and interest on such amounts.

THIS MORTGAGE dated April 2, 2007, is made and executed between SONIA CHOPRA AND RAHUL CHOPRA, MARRIED TO EACH OTHER, (referred to below as "Grantor") and Bank of America, N.A., whose address is 100 North Tryon Street, Charlotte, NC 28255 (referred to below as "Lender").

GRANT OF MORTGAGE. For valuable consideration, Grantor mortgages to Lender all of Grantor's right, title, and interest in and to the following described real property, together with all existing or subsequently erected or affixed buildings, improvements and fixtures; all easements, rights of way, and appurtenances; all water, water rights, watercourses and ditch rights including stock in utilities with ditch or irrigation rights; and all other rights, royalties, and profits relating to the real property, including without limitation all minerals, oil, gas, geothermal and similar matters, (the "Real Property") located in ORANGE County, State of Florida:

See Exhibit A, which is attached to this Mortgage and made a part of this Mortgage as if fully set forth herein.

The "Real Property or its address is commonly known as 2059 TILLMAN AVE, WINTER GARDEN, FL 34787-5469.

REVOLVING LINE OF CREDIT. This Mortgage secures the indebtedness including, without limitation, a revolving line of credit under which, upon request by Grantor, Lender, within twenty (20) years from the date of this Mortgage, may make future advances to Grantor. Such future advances, together with interest thereon, are secured by this Mortgage. Such advances may be made, repaid, and remade from time to time, subject to the limitation that the total outstanding balance owing at any one time, not including finance charges on such balance at a fixed or variable rate or sum as provided in the Credit Agreement, any temporary overages, other charges, and any amounts expended or advanced as provided in either the Indebtedness paragraph or this paragraph, shall not exceed the Credit Limit as provided in the Credit Agreement. It is the intention of Grantor and Lender that this Mortgage secures the balance outstanding under the Credit Agreement from time to time from zero up to the Credit Limit as provided in the Credit Agreement and any intermediate balance.

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Title Examination Principles

- C. Unless facts are clear that property is not homestead, examiner must presume that *every attempted alienation* is homestead property

INSTR 20070326699
OR BK 09266 PG 4797 PGS=9
MARTHA O. HAYNIE, COMPTROLLER
ORANGE COUNTY, FL
05/21/2007 08:33:07 AM
MTG DOC TAX 383.45
INTANG TAX 173.38
REC FEE 78.00

WHEN RECORDED MAIL TO:
Record and Return To:
Fiserv Lending Solutions
27 Inwood Road
ROCKY HILL, CT 06067

Chopra, Sonia

Acct # 1520

This Mortgage prepared by:
Name: CINDY WAHLSTROM
Company: Bank of America, N.A.
Address: FL9-000-02-73 9000 SOUTHSIDE BLVD., JACKSONVILLE, FL 32256-0000

MORTGAGE FOR USE WITH SECURED REVOLVING CREDIT AGREEMENT

MAXIMUM LIEN. The total amount of indebtedness secured by this Mortgage may decrease or increase from time to time, but the maximum amount of principal indebtedness which may be outstanding at any one time shall not exceed \$173,300.00, plus interest, and amounts expended or advanced by Lender for the payment of taxes, levies or insurance on the Property, and interest on such amounts.

THIS MORTGAGE dated April 2, 2007, is made and executed between SONIA CHOPRA AND RAHUL CHOPRA, MARRIED TO EACH OTHER, (referred to below as "Grantor") and Bank of America, N.A., whose address is 100 North Tryon Street, Charlotte, NC 28255 (referred to below as "Lender").

GRANT OF MORTGAGE. For valuable consideration, Grantor mortgages to Lender all of Grantor's right, title, and interest in and to the following described real property, together with all existing or subsequently erected or affixed buildings, improvements and fixtures; all easements, rights of way, and appurtenances; all water, water rights, watercourses and ditch rights including stock in utilities with ditch or irrigation rights; and all other rights, royalties, and profits relating to the real property, including without limitation all minerals, oil, gas, geothermal and similar matters, (the "Real Property") located in ORANGE County, State of Florida:

See Exhibit A, which is attached to this Mortgage and made a part of this Mortgage as if fully set forth herein.

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REVOLVING LINE OF CREDIT. This Mortgage secures the indebtedness including, without limitation, a revolving line of credit under which, upon request by Grantor, Lender, within twenty (20) years from the date of this Mortgage, may make future advances to Grantor. Such future advances, together with interest thereon, are secured by this Mortgage. Such advances may be made, repaid, and remade from time to time, subject to the limitation that the total outstanding balance owing at any one time, not including finance charges on such balance at a fixed or variable rate or sum as provided in the Credit Agreement, any temporary overages, other charges, and any amounts expended or advanced as provided in either the Indebtedness paragraph or this paragraph, shall not exceed the Credit Limit as provided in the Credit Agreement. It is the intention of Grantor and Lender that this Mortgage secures the balance outstanding under the Credit Agreement from time to time from zero up to the Credit Limit as provided in the Credit Agreement and any intermediate balance.

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Title Examination Principles

- Where's husband's signature?
- Lack of spousal joinder on encumbrance
 - Recall property assumed to be homestead
 - May create enforceability issue
- Will Commitment will still require pay off?
 - YES - **will be a B-I requirement**
 - **Encumbrances valid until proven otherwise**
 - Recall: opposite assumption for muniments



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MORTGAGE
(Continued) Page 8

Loan No: 68211064972899

GRANTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS MORTGAGE, AND GRANTOR AGREES TO ITS TERMS.

GRANTOR:
 X Sonia Chopra 2059 Tillman Ave
 Sonia Chopra Winter Garden, FL 34717-5411

WITNESSES:
 X Monica Pettit
 X Monica Pettit

INDIVIDUAL ACKNOWLEDGMENT

STATE OF FL)
 COUNTY OF Orange) SS

The foregoing instrument was acknowledged before me this 1st day of May, 2007, by SONIA CHOPRA, who is personally known to me or who has produced Florida Driver License as identification and did not take an oath.

Monica Pettit
 (Signature of Person Taking Acknowledgment)
Monica Pettit
 (Name of Acknowledger Typed, Printed or Stamped)
Senior Personal Banker
 (Title or Rank)
 (Serial Number, if any)

OR BK 6560 Pg 9077
 On file in the FL 2002-8338509
 07/08/2002 04:08:33pm
 Rec 42.00

Title Examination

- Encumbrances analyzed for effect on title
- In this type of agreement generally looking for
 - Restrictions on conveyances
 - None present
 - Assessments – ability to charge fees to owners
 - None present
 - Termination
 - Auto-renewal means still in effect
 - **Becomes Sched B-II exception**

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OR BK 6560 Pg 9077
 On file in the FL 2002-8338509
 07/08/2002 04:08:33pm
 Rec 42.00

Prepared by and Return to:
 JOHN KINGMAN KEATING, ESQUIRE
 KEATING & SCHLITZ, P.A.
 Telephone: 407.425.2907 • Facsimile: 407.843.8964
 749 North Garland Avenue, Suite 101
 Orlando, Florida 32801
 E-Mail: jk@keating.com

RECORDING INFORMATION ABOVE THIS LINE

DEVELOPMENT AGREEMENT
WINTERMERE HARBOR - PHASE III

THIS DEVELOPMENT AGREEMENT FOR WINTERMERE HARBOR - PHASE III (the "Agreement") is made, executed and entered into this 27th day of June, 2002 by and between the City of Winter Garden, a Florida municipality (the "City") and John Kingman Keating, as Trustee (the "Developer").

WITNESSETH:

WHEREAS, Developer, as purchaser, and Lawrence James Keene (the "Seller"), as seller, have previously entered into that certain Contract for Sale and Purchase dated the 14th day of May, 2001, as amended (the "Contract") for the sale and purchase of a parcel of real property in Orange County, Florida more particularly described as follows (the "Subject Property"):

All that certain land, situate in Orange County, Florida, more particularly described as:

Beginning at the Northwest Corner of the Northeast one-quarter (1/4) of the Southeast one-quarter (1/4) of Section 2, Township 23 South, Range 27 East; thence East 414.8 feet to an iron axis tree; thence South nine (9) degrees West 1318 feet more or less to the South line of the aforesaid Northeast one-quarter (1/4); thence West along said South line 217.3 feet more or less to the Southwest corner of the said Northeast one-quarter (1/4); thence North along the West line of the said Northeast one-quarter (1/4), 1292 feet more or less to the point of beginning, Containing 10 acres, more or less, of land and water;

which Subject Property is adjacent and immediately east of the existing Wintermere Harbor residential subdivision and development ("Wintermere Harbor");

WHEREAS, the Developer has submitted an application to the City requesting that the Subject Property be annexed into the City and re-zoned to R-1, Single-Family Residential and the

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- “Whenever possible examiner should accept and rely on affidavit which states sufficient facts to negate possible defect in otherwise marketable title.”
 - Uniform Title Standard 3.3
- Slightly different spelling (if present) irrelevant
- **Will generate B-I requirement**

DCC# 20140581188 B: 876
09/24/2014 08:54:01 AM Page 1 of 1
Rec Fee: 10.00 Doc Type: J
Martha O. Haynie, Comptroller
Orange County, FL
IO - Ref To: ASSET ACCEPTANCE

**FILED IN OFFICE
CIVIL DIV.**

CLERK OF COURT
ORANGE COUNTY, FL
JUL 24 2014

IN THE COUNTY COURTS AND FOR ORANGE COUNTY
STATE OF FLORIDA, CIVIL DIVISION

ASSET ACCEPTANCE LLC

Plaintiff,

vs.

RAHUL CHOPRA

Defendant(s).

CASE NO: 08SC1409 72

FINAL JUDGMENT AFTER STIPULATED AGREEMENT

THIS CAUSE having come before the court, and the courts having considered the court file and the affidavit of non-payment/non-compliance

IT IS ORDERED AND ADJUDGED that final judgment is hereby entered in favor of the Plaintiff, ASSET ACCEPTANCE LLC, P.O. Box 2036, Warren, MI, 48090, and against Defendant, RAHUL CHOPRA, 3026 LANDTREE PL, ORLANDO, FL 32812-5953, in the sum of \$2819.72 on principal \$426.02 as prejudgment interest, \$0.00 for attorneys fees with costs of \$280.00 less \$0.00 in payments, plus re-open fee cost of \$50.00, for a total sum of \$3575.74 which shall bear interest at the rate of 11% per year for all of which let execution issue.

ORDERED AND ADJUDGED that defendant shall complete Florida Small Claims Rules Form 7.343 (Fact Information Sheet) and return it to the plaintiff's attorney within forty five (45) days from the date of this Final Judgment, unless the Final Judgment is satisfied or a motion for a new trial or notice of appeal is filed.

Jurisdiction in this case is retained to enter further orders that are proper to compel the defendant to complete form 7.343 and return it to the plaintiff's attorney.

DONE AND ORDERED in chambers at ORANGE COUNTY, Florida on this 9 day of Sept., 2014.


COUNTY CLERK JUDGE

cc: ASSET ACCEPTANCE LLC, c/o Rodolfo J. Miro, P.O. Box 9065, Brandon, FL 33509, Bar - 0103799
RAHUL CHOPRA, 3026 LANDTREE PL, ORLANDO, FL 32812-5953

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Title Examination

- All encumbrances analyzed to determine effect on title
- **Will generate B-I requirement**
- There are two of these in our chain

Name of Taxpayer		SONJA CHOPRA		DOC# 2020000741 01/02/2020 01:27:27 P Print Document Print Document Orange County, FL OR - Ref To: INTERNAL	
Residence		7125 HIAWASSEE OVERLOOK DR. ORLANDO, FL 32835			
IMPORTANT RELEASE INFORMATION: For each assessment listed below, unless notice of the lien is refilled by the date given in column (e), this notice shall, on the day following such date, operate as a certificate of release as defined in IRC 6325(a).					
Kind of Tax (a)	Tax Period Ending (b)	Identifying Number (c)	Date of Assessment (d)	Last Day for Refiling (e)	Unpaid Balance of Assessment (f)
1040	12/31/2015	██████████	11/06/2017	12/06/2027	15628.52
1040	12/31/2016	██████████	10/15/2018	11/14/2028	17593.85
1040	12/31/2017	██████████	11/12/2018	12/12/2028	18322.75

[illegible]

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Title Examination Principles

- V. Planned communities and other regimes with governing associations alert examiner to potential rights of prior approval, rights of first refusal, assessment rights and other matters
- Declaration allows for assessments and restricts use
- Becomes a B-I requirement (assessments)
 - Need estoppel from HOA as to assessments
- AND a B-II exception (restrictions)

RETURN TO: *Kim*
Microservice, Holmes, Ward & Woodman, P.A.
P.O. Box 800
Winter Park, FL 32790-0800
RECORD AND RETURN TO:
Name: LEOPOLD, KORN & LEOPOLD, P.A.
Address: 20801 Biscayne Blvd., #501
Aventura, FL 33180
THIS INSTRUMENT PREPARED BY:
Name: Karen S. Leopold, Esquire
LEOPOLD, KORN & LEOPOLD, P.A.
Address: 20801 Biscayne Blvd., #501
Aventura, FL 33180

INSTR 20060613920
OR BK 00065 PD 1636 PGS=79
NORTH D. HAYNIE, COMPTROLLER
ORANGE COUNTY, FL
09/18/2006 08:50:09 AM
REC FEE 673.00

[Space above line reserved for recording office use]

DECLARATION OF COVENANTS AND RESTRICTIONS
FOR
BRONSON'S LANDING

THIS DECLARATION OF COVENANTS AND RESTRICTIONS FOR BRONSON'S LANDING ("DECLARATION") is made this 21st day of AUGUST, 2006, by CENTERLINE HOMES AT BRONSON'S LANDING, LLC, a Florida limited liability company ("DECLARANT").

WHEREAS, DECLARANT is the owner of the SUBJECT PROPERTY as described in this DECLARATION and desires to create a residential community on such property with open spaces and other common facilities for the benefit of such community, to be known as "BRONSON'S LANDING" (the "COMMUNITY"); and

WHEREAS, DECLARANT desires to provide for the preservation of the values and amenities in the COMMUNITY and for the maintenance of its common properties; and

WHEREAS, DECLARANT has deemed it desirable for the efficient preservation of the values and amenities in the COMMUNITY, to delegate and assign to a nonprofit corporation the powers of maintaining and administering the COMMUNITY properties and facilities and administering and enforcing these covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, DECLARANT has incorporated or will incorporate under the laws of the State of Florida, as a nonprofit corporation, BRONSON'S LANDING HOMEOWNERS ASSOCIATION, INC., for the purposes of exercising the functions stated above, which Association is not intended to be a "Condominium Association" as such term is defined and described in the Florida Condominium Act (Chapter 718 of the Florida Statutes).

NOW, THEREFORE, DECLARANT hereby declares that the SUBJECT PROPERTY, as herein defined, shall be held, sold, conveyed, leased, mortgaged, and otherwise dealt with subject to the easements, covenants, conditions, restrictions, reservations, liens, and charges set forth herein, all of which are created in the best interest of the owners and residents of the SUBJECT PROPERTY, and which shall run with the SUBJECT PROPERTY and shall be binding upon all persons having and/or acquiring any right, title or interest in the SUBJECT PROPERTY or any portion thereof, and shall inure to the benefit of each and every person, from time to time, owning or holding an interest in the SUBJECT PROPERTY, or any portion

LEOPOLD, KORN & LEOPOLD, P.A.
20801 Biscayne Boulevard, Suite 501, Aventura, FL 33180 Telephone: 305-935-5300
Document recorded as presented,
Orange County, FL Comptroller

10/18/2006 09:10:00 AM Declaration - 10.mpl

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Non-record Matters

- Standard Exceptions: remain unless requirements justifying deletion met
 - Taxes for year of effective date of policy

IMG Scott Randolph, Tax Collector
ORANGE COUNTY NOTICE OF AD VALOREM TAXES AND NON-AD VAL
ASSESSMENTS

ACCOUNT NUMBER: 0025881-4 ESCROW CODE: 296 BILLAGE CODE: 65 MG

REV2022 Feb2022 02-23-27-0805-00860
Dec2022 MARCH GROSS TAX BRONSON'S LANDINGS 66/139 LOT 86
Jan2023 INTEREST ADV

2059 TILLMAN AVE WINTER GARDEN 34787

BAC TAX SERVICE CORPORATION PAID 0060-00612961 \$8,826.17 11/24/2022 PO Box 545100
Orlando FL 32854-5100

To pay by credit card, call 1-855-414-8014 or visit www.ocstacol.com. A fee will be charged by Point and Pay for this service.
Or to mail in your payment, return the top portion of your bill with your check.
Make checks payable to Scott Randolph, Tax Collector • PO Box 545100 • Orlando FL 32854-5100

Scott Randolph, Tax Collector RETAIN FOR YOUR RECORDS 2022 REAL ESTATE
CHOPRA SONIA 02-23-27-0805-00860
CHOPRA RANIEL B BRONSON'S LANDINGS 66/139 LOT 86
2059 TILLMAN AVE
WINTER GARDEN, FL 34787-5489

LOAN NO. 871877927

NOTE ADDED 2059 TILLMAN AVE WINTER GARDEN 34787 Receipt will be mailed upon request.

AD VALOREM TAXES

TAX AUTHORITY	ASSESSED VALUE	EXEMPT VALUE	TAXABLE VALUE	MILLAGE*	TAX LEVIED
WINTER GDN	542,234	50,000	492,234	4.5982	\$2,240.39
GEN COUNTY	542,234	50,000	492,234	4.4347	\$2,182.01
STATE SCHOOL	542,234	25,000	517,234	5.2970	\$2,739.79
LOCAL SCHOOL	542,234	25,000	517,234	3.2400	\$1,679.96
LIBRARY	542,234	50,000	492,234	-.3748	\$186.49
SWW	542,234	50,000	492,234	-.3313	\$163.08

TOTAL MILLAGE*: 18.244 *DOLLARS PER \$1,000 OF "TAXABLE VALUE" AD VALOREM TOTAL: \$9,193.83

NON-AD VALOREM ASSESSMENTS

LETTING AUTHORITY: AIRPORT

NON-AD VALOREM TOTAL: \$0.00

TOTAL TAXES AND ASSESSMENTS: \$9,193.83

ORANGE COUNTY NOTICE OF AD VALOREM TAXES AND NON-AD VALOREM ASSESSMENTS

ACCOUNT NUMBER	RELEAS CODE	65 MG	ASSESSED VALUE	EXEMPTION	25,000	TAX LEVIED	TAXABLE VALUE
Nov2022	Dec2022	Jan2023	Feb2023	MARCH GROSS TAX	INTEREST ADV	RENEW CODE	296

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Title Examination Principles

- H. Title examiners often charged to inquire about matters "outside the record"
- Surveyor's Affidavit
- Appears minor corrections in calls in larger legal
- Might have to contact surveyor to understand
- If problem B-I requirement
- If not, still B-II exception (this is the case)

SURVEYOR'S AFFIDAVIT

STATE OF FLORIDA
COUNTY OF ORANGE

Before me, the undersigned authority, personally appeared licensed as a Professional Land Surveyor in the State of Florida, his license number being #5561, and has prepared and executed the plat known as Bronson's Landings, recorded in Plat Book 66, Pages 139 through 149, in the Public Records of Orange County, Florida.

The property lines along the southwest portion of the property contain apparent scrivener's errors as follows:

The bearing and distance of the south property line along the north boundary of Wintermere Harbor that reads S89°43'30"W, 1337.83' should read S89°45'48"W, 1337.82'.
The distance along the south line of Tract G that reads 893.82' should read 893.81'.
The bearing of the west property line along State Road 535 that reads N17°30'06"W should read N17°27'48"W.
The bearing of the north property line adjacent to State Road 535 that reads S53°53'18"E should read S53°51'00"E.
The bearing of the north property line along the west access road that reads N89°43'30"E should read N89°45'48"E.
The bearing and distance of the north property line adjacent to Lot 1 that reads N89°54'45"E, 175.30' should read N89°57'03"E, 175.12'.
The distance on the west property line that reads 1030.55' should read 1030.54'.
The distance on Lot 1 that reads 53.45' should read 53.44'.
The distance on Lot 1 that reads 31.68' should read 31.69'.
The bearing and distance of the north line of Tract J Conservation/Open Area that reads N89°43'30"E, 194.07' should read N89°45'48"E, 193.97'.
The bearing and distance on the north line of Tract L Permanent Utility Easement that reads S89°43'30"W, 138.93' should read S89°45'48"W, 138.98'.
The bearing on the west line of Tract L Permanent Utility Easement that reads N00°04'40"W should read N00°04'40"W.
The delta of the curve along the west line of Tract J Conservation/Open Area that reads 63°29'06" should read 63°29'06".

Affiant further sayeth not.

Sworn to and subscribed before me the 18th day of July, 2007.

Ralph Thomas Snow
Ralph Thomas Snow
Professional Surveyor and Mapper

Dolly Ojala
Dolly Ojala
Notary Public

DOLLY OJALA
MY COMMISSION # D085470
EXPIRES February 04, 2011
(407) 388-6153
Djola@notaryservice.com

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Title Examination Principles

- S. Examiners do not ignore Notices of Commencement or Claims of Lien filed under the Construction Lien Law
- NOC good for 1 year unless stated otherwise
- Moving on

NOTICE OF COMMENCEMENT

STATE OF FLORIDA
COUNTY OF ORANGE

THE UNDERSIGNED HEREBY GIVES NOTICE THAT IMPROVEMENTS WILL BE MADE TO CERTAIN REAL PROPERTY, AND IN ACCORDANCE WITH CHAPTER 713, FLORIDA STATUTES, THE FOLLOWING INFORMATION IS PROVIDED IN THIS NOTICE OF COMMENCEMENT:

1. DESCRIPTION OF PROPERTY (LEGAL DESCRIPTION OF PROPERTY, AND STREET ADDRESS, IF AVAILABLE): LOT 36 BRONSON'S LANDINGS
PLAT 66, PAGES 139-149, ORANGE CO., 2059 TILMAN AV.

2. GENERAL DESCRIPTION OF IMPROVEMENT: POOL

3. OWNER INFORMATION: RAHUL B. CHOPRA 2059 TILMAN AV. WINTER GARDENS, FL. 34787

A. NAME AND ADDRESS: RAHUL B. CHOPRA 2059 TILMAN AV. WINTER GARDENS, FL. 34787
B. INTEREST IN PROPERTY: FEES SIMPLE
C. NAME AND ADDRESS OF FEE SIMPLE TITLEHOLDER (IF OTHER THAN OWNER):

4. CONTRACTOR: SIGNATURE POOLS INC. 8816 COMMUNITY CIR. SUITE 43 ORLANDO FL 32819

A. NAME AND ADDRESS: SIGNATURE POOLS INC. 8816 COMMUNITY CIR. SUITE 43 ORLANDO FL 32819
B. PHONE NUMBER: 407-851-9086 FAX 407-351-5998

5. SURETY: N/A

A. NAME AND ADDRESS: N/A
B. AMOUNT OF BOND: N/A
C. PHONE NUMBER: N/A

6. LENDER: N/A

A. NAME AND ADDRESS: N/A
B. PHONE NUMBER: N/A

7. PERSONS WITHIN THE STATE OF FLORIDA DESIGNATED BY OWNER UPON WHOM NOTICES OR OTHER DOCUMENTS MAY BE SERVED AS PROVIDED BY SECTION 713.13(1)(a), FLORIDA STATUTES:

A. NAME AND ADDRESS: NONE
B. PHONE NUMBER: NONE

8. IN ADDITION TO HIMSELF, OWNER DESIGNATES THE FOLLOWING PERSON(S) TO RECEIVE A COPY OF THE LENDER'S NOTICE AS PROVIDED IN SECTION 713.13(1)(b), FLORIDA STATUTES:

A. NAME AND ADDRESS: NONE
B. PHONE NUMBER: NONE

9. EXPIRATION DATE OF NOTICE OF COMMENCEMENT (THE EXPIRATION DATE IS 1 YEAR FROM THE DATE OF RECORDING UNLESS A DIFFERENT DATE IS SPECIFIED): 1 YR.

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9. EXPIRATION DATE OF NOTICE OF COMMENCEMENT (THE EXPIRATION DATE IS 1 YEAR FROM THE DATE OF RECORDING UNLESS A DIFFERENT DATE IS SPECIFIED): 1 YR.

WARNING TO OWNER: ANY PAYMENTS MADE BY THE OWNER AFTER THE EXPIRATION OF THE NOTICE OF COMMENCEMENT ARE CONSIDERED IMPROPER PAYMENTS UNDER CHAPTER 713, PART 1, SECTION 713.13, FLORIDA STATUTES, AND CAN RESULT IN YOUR LIVING SPACE FOR IMPROVEMENTS TO YOUR PROPERTY. A NOTICE OF COMMENCEMENT MUST BE RECORDED AND POSTED ON THE JOB SITE BEFORE THE FIRST INSPECTION. IF YOU INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR AN ATTORNEY BEFORE COMMENCING WORK OR RECORDING YOUR NOTICE OF COMMENCEMENT.

SIGNATURE OF OWNER OR OWNER'S AUTHORIZED OFFICE/DIRECTOR: Rahul B. Chopra

SIGNATORY'S TITLE/OFFICE: Property Owner

THE FOREGOING INSTRUMENT WAS ACKNOWLEDGED BEFORE ME THIS 15th DAY OF OCTOBER 2007 BY OWNER (TYPE OF AUTHORITY, E.G. OFFICER, TRUSTEE, ATTORNEY IN FACT, ETC.)

COMMENCEMENT ARE CONSIDERED IMPROPER PAYMENTS FOR IMPROVEMENTS TO YOUR LIVING SPACE. IF YOU INTEND TO OBTAIN A NOTICE OF COMMENCEMENT, YOU MUST FIRST OBTAIN A NOTICE OF COMMENCEMENT. (NAME OF PARTY)

Rahul B. Chopra (NAME OF PERSON AS APPLICANT)

NOTARY PUBLIC

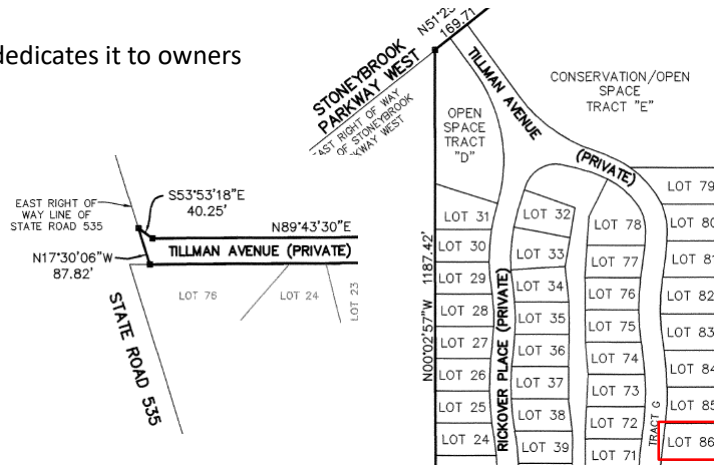
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Title Examination Principles – Plat

- Lot 86 in our legal description exists?
- Access?
 - Tillman Ave. private but plat dedicates it to owners
 - Connects to public road

BRONSON'S LANDINGS
DEDICATION

KNOW ALL MEN BY THESE PRESENTS, This is to certify that the undersigned Centerline Homes of Bronson's Landings, LLC, a Florida limited liability company, hereinafter referred to as "Owner" is the lawful fee-simple owner of the lands described in the caption hereon, and that it has caused the same to be surveyed, and that this plat made in accordance with said survey, is hereby adopted as the true and correct plat of said lands and that the Owner hereby dedicates said lands and plat for the uses and purposes herein expressed. No part of said lands, except as noted in this Declaration or otherwise on the face of this plat, is dedicated to the City of Winter Garden, Orange County or the public. None of the property designated as "Common Areas" on this plat is required for public use; such Common areas are not and will not be a part of the City or County system of public roads. Said Common Areas are instead part of the Common Areas created by this plat and will be subject to the Declaration of Covenants and Restrictions for Bronson's Landings to be recorded in the Public Records of Orange County (hereinafter referred to as the "Declaration"). The owner does hereby grant to the present and future owners of all lots and tracts shown on this plat and their guests, invitees, domestic help, and to delivery, pick-up and fire protection services, school services, police and other authorities of law, United States mail carriers, representatives of utilities, the City of Winter Garden, holder or mortgage liens on such lands, and such other persons as Owner, its successors and assigns, may from time to time designate, the non-exclusive and perpetual right of ingress and egress, and an easement for approved utilities, (including without limitation, operation, maintenance, installation, locating or replacing water and sewer facilities), over, under, above, through and across the roads and sidewalks and as they may from time to time be constructed on Tract G private roadways shown on this plat.



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Pre-closing Update

Attorneys' Title Fund Services, LLC
ATIDS XE
Subdivision Property Search for Orange County
Created for: Keebler, Nabisco, & Amos, P.A.
Customer No.: 899916

Certification Information	
File Reference: Chopra to Black	From Date: 1/1/1970
State: Florida	Through Date/Time: 6/13/2023 11:00 PM
County: Orange	Through Instrument: CN 2023-310578
Account Number: 10041	
File Open Date: 5/22/2023	
File Description: 2059 TILLMAN AVENUE	
Search From: 5/13/2023	Instrument Count: 0
Search Through: 6/13/2023	Search Date/Time: 6/26/2023 10:26:07 AM
Instrument Filter:	Search Status: Complete
Sort Criteria: Date of File (Ascending)	
Plat Reference: PB 66/139	
Plat Name: Bronson's Landings (Contains Lots 1-126 & Tracts A-H1-J-M)	
Date Of Plat: 9/18/2006	Retro Certified: No
Interval Ownership: No	Retro Certified Date:
Postings Conform: Yes	Authorized Levels: L / T /
Lot / Block / Township / Unit / Bldg / Range	Lot / Block / Township / Unit / Bldg / Range
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No Instruments Found
Search Complete

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Pre-closing Update

Attorneys' Title Fund Services, LLC
ATIDS XE
Name Search for Orange County
Created for: Keebler, Nabisco, & Amos, P.A.
Customer No.: 899916

Certification Information						
File Reference: Chopra to Black			From Date: 1/1/1970			
State: Florida			Through Date / Time: 6/13/2023 11:00 PM			
County: Orange			Through Instrument: CN 2023-310578			
Account Number: 10041						
File Open Date: 5/22/2023						
File Description: 2059 TILLMAN AVENUE						
Search From: 5/13/2023			Instrument Count: 1			
Search Through: 6/13/2023			Search Date/Time: 6/26/2023 10:32:07 AM			
Search Status: Complete						
Type: Personal		Name: Chopra, Rahul		Nicknames: Yes		Relationship: Seller
<u>Percent Likeness</u>		Last Name: 80		Similar Sounding: Yes		
		First Name: 65		Flip Names: No		
Name: Chopra, Rahul						
Primary Reference	Prev. Ctrd	Secondary Reference	Date of File	Type of Instrument	All Related References	Description/Comments
CN 2023-0304116		CN 2023-0304116	5/29/2023	Judgment	CR 2008-1409	
Search Complete						

Name Search for Orange County
Created for: Keebler, Nabisco, & Amos, P.A.
Customer No.: 899916

<u>Certification Information</u>	
File Reference: Chopra to Black	From Date: 1/1/1970
State: Florida	Through Date / Time: 6/13/2023 11:00 PM
County: Orange	Through Instrument: CN 2023-310578
Account Number: 10041	
File Open Date: 5/22/2023	
File Description: 2059 TILLMAN AVENUE	
Search From: 5/13/2023	Instrument Count: 0
Search Through: 6/13/2023	Search Date/Time: 6/26/2023 10:30:48 AM
	Search Status: Complete
Type: Personal	Name: Chopra, Sonia
<u>Percent Likeness</u>	Nicknames: Yes
Last Name: 80	Relationship: Seller
First Name: 65	Similar Sounding: Yes
	Flip Names: No
No Instruments Found	
Search Complete	

Step 4

Research validity and importance of title deficiencies or defects discovered and arrive at conclusion as to overall quality of title

- Chopra examination revealed following issues –

- Development Agreement
- Defective witnesses in vesting deed
- Revolving Credit Agreement Mortgage (HELOC)
- Homestead joinder requirement
- Notice(s) of Commencement
- Judgment
- Tax Lien(s)

Step 5

- Address non-record matters appropriate to transaction and which bear upon insurability of title
 - Access
- Standard Exceptions
 - General or special taxes and assessments not shown as existing liens by public records
 - Rights or claims of parties in possession not shown by the public records
 - Encroachments, overlaps, boundary line disputes, and any other matters that would be disclosed by an accurate survey and inspection of premises
 - Easements or claims of easements not shown by the public records
 - Any lien or right to lien for services, labor, or material furnished, imposed by law and not shown by the public records
 - Sovereignty lands

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Step 6

Issue title insurance commitment

- Use Standard Commitment Clause (SCC) Handbook as your guide to prepare it
 - If uncertain about how to phrase a particular requirement or exception, contact one of the Fund Underwriting attorneys
- Include unresolved matters as requirement or exception to title by including matter in prepared title insurance commitment

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Commitment

Schedule B-I Requirements



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Old Republic National Title Insurance Company

AMERICAN LAND TITLE ASSOCIATION COMMITMENT Schedule B-I

Issuing Office File Number: Chopra to Black

Requirements

All of the following requirements must be met:

1. The Proposed Insured must notify the Company in writing of the name of any party not referred to in this Commitment who will obtain an interest in the Land or who will make a loan on the Land. The Company may then make additional Requirements or Exceptions.
2. Pay the agreed amount for the estate or interest to be insured.
3. Pay the premiums, fees, and charges for the Policy to the Company.
4. Documents satisfactory to the Company that convey the Title or create the Mortgage to be insured, or both, must be properly authorized, executed, delivered, and recorded in the Public Records.
 - A. Warranty Deed from Sonia Chopra and Rahul B. Chopra, wife and husband, to Edward F. Black and Pamela M. Black, husband and wife.
 - B. Mortgage from Edward F. Black and Pamela M. Black, husband and wife, to Nutter Butter Bank in the amount of \$410,000.00.
5. An update of the title search must be completed just prior to the closing and the commitment must be endorsed to require clearance of, or take exception for, any additional title defects or adverse matters found.
6. Record satisfaction of the mortgage from Sonia Chopra and Rahul Chopra to Bank of America, N.A., dated April 2, 2007, and recorded in O.R. Book 9209, Page 1399, Public Records of Orange County, Florida.
7. Satisfaction of the revolving credit mortgage in favor of Bank of America, N.A., recorded May 21, 2007, in O.R. Book 9266, Page 4797, Public Records of Orange County, Florida. Said mortgage must be closed to future draws prior to closing, the payoff amount must be verified the day of closing, and owner must give an affidavit that owner has no checks or credit or debit cards facilitating draws from the account. Confirm that the Satisfaction of Mortgage is recorded post-closing.
8. Record satisfaction or affidavit of non-identity containing the legal description of the real property to be insured and sufficiently establishing that the affiant is not the same person named in the federal tax lien recorded under the following Official Records: Instrument No. 2019-0543912 and Instrument No. 2020-0000741, Public Records of Orange County, Florida.
9. The official records show one or more certified judgments or state tax liens against Rahul Chopra, individually, or a similarly named person. Since it appears title was taken and may have been continuously held as tenants by the entirety, these judgments or tax liens have not been listed. It is necessary for you to evaluate how title was taken and has been held to date. If you determine that such liens may have attached to the property covered herein, this product will be modified, at your request to list and provide copies of these instruments. See T.N. 18.03.05 and 30.06.
10. Execution of closing affidavit by appropriate parties representing possession and no adverse matters, including actions taken by owner or others that would give rise to litigation or lien.
11. Closing funds are to be disbursed by or at the direction of the Title Agent issuing this policy.
12. Homeowner's Association estoppel letter must be furnished showing that all assessments are current and that there are no unpaid special assessments.

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Commitment

Schedule B-II Exceptions



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Exceptions

THIS COMMITMENT DOES NOT REPUBLISH ANY COVENANT, CONDITION, RESTRICTION, OR LIMITATION CONTAINED IN ANY DOCUMENT REFERRED TO IN THIS COMMITMENT TO THE EXTENT THAT THE SPECIFIC COVENANT, CONDITION, RESTRICTION, OR LIMITATION VIOLATES STATE OR FEDERAL LAW BASED ON RACE, COLOR, RELIGION, SEX, SEXUAL ORIENTATION, GENDER IDENTITY, HANDICAP, FAMILIAL STATUS, OR NATIONAL ORIGIN.

The Policy will not insure against loss or damage resulting from the terms and provisions of any lease or easement identified in Schedule A, and will include the following Exceptions unless cleared to the satisfaction of the Company:

1. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the Public Records or attaching subsequent to the Commitment Date hereof but prior to the date the Proposed Insured acquires for value of record the estate or interest or Mortgage thereon covered by this Commitment.
2.
 - a. General or special taxes and assessments required to be paid in the year 2023 and subsequent years.
 - b. Rights or claims of parties in possession not recorded in the Public Records.
 - c. INTENTIONALLY DELETED.
 - d. Easements or claims of easements not recorded in the Public Records.
 - e. Any lien or right to a lien, for services, labor or material furnished, imposed by law and not recorded in the Public Records.
3. Any Owner's Policy issued pursuant hereto will contain under Schedule B the following exception: *Any adverse ownership claim by the State of Florida by right of sovereignty to any portion of the Land insured hereunder, including submerged, filled and artificially exposed lands, and lands accreted to such lands.*
4. INTENTIONALLY DELETED.
5. All matters contained on the Plat of Bronson's Landings, as recorded in Plat Book 66, Page 139, Public Records of Orange County, Florida.
6. Surveyor's Affidavit recorded in Official Records Book 9361, Page 4281, Public Records of Orange County, Florida.
7. Development Agreement recorded July 8, 2002, in Official Records Book 6560, Page 9077, Public Records of Orange County, Florida (hereinafter "Development Agreement"). Such Development Agreement may establish and provide without limitation for restrictions regarding land use and development.
8. Use Agreement recorded March 21, 2006, in Official Records Book 8539, Page 4387, Public Records of Orange County, Florida (hereinafter "Use Agreement"). Such Use Agreement may establish and provide without limitation for obligations pertaining to landscaping, irrigation, and maintenance of paved roads and pavement markings.
9. Covenants, conditions, rights, assessments, easements and restrictions recorded September 18, 2006, in Official Records Book 8865, Page 1636, Public Records of Orange County, Florida (hereinafter "Declaration"). Such Declaration may establish and provide without limitation for easements, liens, charges, assessments, or option to purchase, a right of first refusal and/or the prior approval of a future purchaser or occupant.
10. Any lien provided by County Ordinance or by Ch. 159, F.S., in favor of any city, town, village or port authority, for unpaid service charges for services by any water systems, sewer systems or gas systems serving the land described herein; and any lien for waste fees in favor of any county or municipality.

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Proof Commitment Before Delivery

- Review title insurance commitment for accuracy and sufficiency
- Note effective date and make certain it is proximate to closing date
- Verify names and spellings of proposed insureds and title holders
- Verify legal description of property and match it to survey and contract

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Proofread Commitment Before Delivery

- Carefully review copies of all exceptions and defects capable of documentation, confirming that they do, in fact, apply to subject property
- Examine all exceptions to determine extent to which they render title not to be good and marketable and whether they are compatible with client's purposes for property
- Examine all requirements to confirm that they can be met in instant transaction
- Analyze title insurance commitment in context of client's intended use of property and contractual requirements of transaction

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Title Examination Fundamentals

Thank You!
for coming



Presented by : John B. "Jay" St. Lawrence
jst.lawrence@thefund.com
Fund Legal Education Attorney
©2022 Attorneys Title Fund Services



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CERTIFICATE OF ATTENDANCE

Certified Paralegals are required to record evidence of 50 hours of continuing legal education hours to renew the CP credential every 5 years. CLE hours are recorded in CPs' accounts through the [NALA online portal](https://www.nala.org/certification/certtest2view). Of the 50 hours, 5 hours must be in legal ethics, and no more than 10 hours may be recorded in non-substantive areas. If attending a non-NALA sponsored educational event, this certificate may be used to obtain verification of attendance. Please be sure to obtain the required signatures for verification of attendance. The requirements to maintain the CP credential are available from NALA's web site at <https://www.nala.org/certification/certtest2view>. Please keep this certificate in the event of a CLE audit or further information is needed.

PLEASE COMPLETE THE SPACES BELOW AND ATTACH A PROGRAM

Session Length In Hours	Session Topics (Description and Speakers)	Validation of Attendance
3.0 Substantive	Title Examination Fundamentals 101 / Michael Rothman	<i>Michael Rothman</i>

Name of CP (Please Print)			NALA Account Number (On Mailing Label)		
			149113		
Signature of CP			Name of Seminar/Program Sponsor		
			Title Examination Fundamentals 101 / ATFS, Inc.		
Address			Authorized Signature of Sponsor Representative		
			<i>Michael Rothman</i>		
			Date of Educational Event:		
City:		State (XX):			
Preferred e-mail address			Location:		
			Recorded Webinar		

For Office Use Only	
Substantive hours	
Non-substantive hours	
Ethics	



FL BAR Reference Number: 2410222N

Title: Title Examination Fundamentals 101

Level: Intermediate

Approval Period: 12/01/2024 - 06/30/2026

CLE Credits

General 3.0

Certification Credits:

Real Estate 3.0