

TITLE SEARCHING



RISK MANAGEMENT PRACTICE
GUIDE OF LAWYERS MUTUAL

Title Searching

RISK MANAGEMENT PRACTICE GUIDE OF LAWYERS MUTUAL

Real estate can be a complicated area of practice, with the possibility of major ethical and malpractice implications arising from simple and repetitive functions. Additionally, real estate attorneys frequently rely on paralegals and staff to assist with many tasks necessary to complete a transaction. Paralegals often do the little – and big – things which make a real estate transaction close smoothly. Attorneys must oversee their activities to ensure proper compliance with laws and regulations as, ultimately, the attorney is responsible for the work.

Completing each transaction as a team is essential for a well-functioning real estate practice.

HOW TO USE THIS GUIDE

This Lawyers Mutual Practice Guide will help maximize the rewards and minimize the risks of practicing real estate law. It is designed as a tool for firms that currently engage in real estate practice as well as those looking to branch into this area of law.

Here are some suggested uses:

- To instruct attorneys and staff on legal ethics and risk management.
- To create job descriptions for real estate attorneys and paralegals.
- To develop hiring criteria.
- To help with staff orientation.
- To help with staff training.
- To use as a topic at a firm meeting or retreat.
- To use as curriculum for in-house continuing education.

This Guide offers general information which should benefit most practices. It is not intended as legal advice or opinion, nor does it purport to establish a specific standard of care for your practice.

Every law office is different. Your needs are unique. This Guide suggests ways to bring out the best in your real estate practice.

For more information – or if you have additional questions – please contact Lawyers Mutual’s Client Services Team.

LAWYERS MUTUAL LIABILITY INSURANCE COMPANY OF NORTH CAROLINA

5020 Weston Parkway, Suite 200, Cary, North Carolina 27513

Post Office Box 1929, Cary, North Carolina 27512-1929

919.677.8900 | 800.662.8843 | 919.677.9641 FAX | www.lawyersmutualinc.com

TABLE OF CONTENTS

Introduction	2
How to Perform a Title Search	3
Reviewing Someone Else's Title Search	11
Updating and Recording	12
<u>Appendix: Sample Forms</u>	
Full Title Search Checklist	13
Current Owner Update Checklist	14
Deed Abstract Form	15
Estate File Abstract Form	16
Chain of Title Form	17
Out Conveyance Form	18
Clerk's Checks Table	19
Attachment of Clerk's Checks	20
Clerk's Checks Forms	22
Civil Action Abstract	23
Judgment Abstract	24
Claim of Lien Abstract	25
Lien Abstract	26
Lis Pendens	27
Special Proceedings Abstract (Foreclosure)	28
Special Proceedings Abstract (Other Than Foreclosure)	29
Title Exception Sheet	30
Order of Documents to be Presented in Title Search	31
Title Update and Recording Form	32

DISCLAIMER: *This document is written for general information only. It presents some considerations that might be helpful in your practice. It is not intended as legal advice or opinion. It is not intended to establish a standard of care for the practice of law. There is no guarantee that following these guidelines will eliminate mistakes. Law offices have different needs and requirements. Individual cases demand individual treatment. Due diligence, reasonableness and discretion are always necessary. Sound risk management is encouraged in all aspects of practice.*



Introduction

The old adage in the legal profession of “anyone can do real estate” could not be further from the truth. The practice of real estate can be extremely rewarding to today’s attorney; however, it also provides many opportunities for errors, oversights, and mistakes which may be memorialized forever as a part of the public record. Historically, around forty percent of all claims reported to Lawyers Mutual originate from real estate matters, with the majority of these claims arising from the performance or review of a title examination. Attorneys practicing in this area must have a keen eye for detail.

One tool in safeguarding against errors is developing a methodical approach for searching and reviewing title. While every title search itself is unique and requires the undivided attention of the practitioner, the opportunity for error can be minimized if work is performed in the identical manner, using the same processes, forms, and checklists for each search. The processes, forms, and checklists included in this package are intended to assist you in the performance and review of the title search in an effort to eliminate or greatly reduce the opportunity for such errors and oversights. These forms should be modified to meet the specific needs of your locality, client base and office.

“

While every title search itself is unique and requires the undivided attention of the practitioner, the opportunity for error can be minimized if work is performed in the identical manner, using the same processes, forms, and checklists for each search.

How to Perform a Title Search

GATHER PRELIMINARY INFORMATION

Before beginning your title search, it is necessary to obtain as much client and property information as possible on the realty being conveyed. Information may include:

- the name of the current owner,
- street address,
- legal description,
- date of acquisition,
- existing title insurance information,
- the necessary scope [length] of title search.

Much of the preliminary information can be gathered from the purchase contract or loan commitment, a copy of which should be in your file. Additionally, most attorneys will have the buyer and seller, through their respective Realtors, complete an information sheet providing contact information, payoff estimates, etc. For refinance transaction, a modified sheet should be completed by the property owner, with the assistance of their loan officer. A sample information sheet is included in this Guide and it is recommended the sheet be transmitted with an initial engagement letter.

Search Length

The exact scope of a “full” title search is rather subjective, depending on with whom you speak, and generally ranges from thirty to sixty years. Additionally, the stated duration of a search is the minimum period which must be searched, with the period frequently much longer than the name would indicate. For example, a standard of ‘forty year search’ requires the examination of the public record for forty years and then search for the next link in the title.

In lieu of performing a full title search, customary

practice in North Carolina allows for “tacking” or “updating” from an existing policy of title insurance. This practice involves starting the search from the effective date of an existing owner’s title policy and searching forward— potentially eliminating decades of older conveyances, mortgages and other encumbrances. While this practice can save you and your staff substantial time and effort, the shorter title exam necessarily relies upon the work of a prior certifying attorney and his/her staff, all of whom may or may not be known.

In many refinance situations, title insurers are frequently willing to issue lender title policies based upon even shorter period certifications. For example, many underwriters will issue lender’s policies based



PRACTICE TIP

Before beginning your title search, it is necessary to obtain as much client and property information as possible on the realty being conveyed. Information may include:

- the name of the current owner,
- street address,
- legal description,
- date of acquisition,
- existing title insurance information,
- the necessary scope [length] of title search.

upon a 'current owner search,' which requires an attorney to only certify title from the date the present owner of the property obtained title. These searches should never be performed in purchase transactions or when an owner's policy is desired, as the owner's policy is likely to have exceptions severely limiting the coverage. And while the searches may be appropriate for refinances, practitioners need to carefully look at the individual underwriter's specific guidelines for this type of search. For example, some underwriters will only allow this limited search if the current owner obtained title via a general warranty deed and financed the transaction with a loan which is secured by a deed of trust benefitting an institutional lender. Most underwriters will also require the judgment index be searched for a ten year period, regardless of how long the current owner has been on title.

Whether you are updating from a prior policy or otherwise completing a shorter search, State Bar Ethics Rules (RPC 99 and 2009 FEO 17) require your client be fully informed of the limited search prior to your engagement. It is our strongest recommendation your intent be communicated in writing and preferably be in an engagement letter detailing other aspects of the representation. The client should be given the opportunity to obtain a 'full search' at an additional fee, if they should so desire.

Additionally, when completing a certification to a title insurance agency or underwriter, you should be very clear whether you are completing a limited or full search. The title underwriter primarily bares the risk of tacking, and should be made fully aware of the risk they are accepting. Title insurance companies are required to discount premiums if they are provided an existing owner's policy on the same realty, which is less than ten years old. This discount is available whether the certification is based upon a full search, update from prior policy, or limited search.

If the current owner is unable to provide a copy of his/her owner's policy of title insurance, it is



Whether you are updating from a prior policy or otherwise completing a shorter search, State Bar Ethics Rules (RPC 99 and 2009 FEO 17) require your client be fully informed of the limited search prior to your engagement.

customary to request prior policies from local title insurance companies, many of which have employees standing ready to locate and transmit prior policies. In the event that a prior owner's policy of title insurance cannot be located, a full title search is likely required, unless your client is willing to agree to a current owner search, and such search remains appropriate (ex/ not in purchase transactions).

Start by Obtaining Tax Information

In North Carolina, ad valorem property taxes are a super-lien on real property. Making sure all taxes are disclosed, and to the extent possible, paid, is a primary responsibility of a real estate attorney. For this reason, and due to the ease of locating information based upon the current owner's name and property address, first place most searches begin is the website for the county tax office.

The websites should allow a searcher to obtain specific property information on the subject parcel, including the tax account number, tax parcel number, PIN, assessed tax values, township, municipality, fire district, and likely a limited ownership history (including the recording information for the last conveyance). In addition to the tax website, it is now necessary for a title searcher to be proficient with the relevant county's

online resources which likely include the local Register of Deeds office, Tax Department, and Geographic Information Services. It is important to remember every county has unique nuances and may do things a little differently than its neighbors. If your practice spans multiple counties, it is absolutely necessary to read the fine print disclaimer for each website explaining what information is and is not included in the online service.

Many county tax agencies list and collect all taxes for other municipalities and local governmental entities, but not all do. When searching title for the first time in a locale, you will need to determine if a local city or possible water district independently bills or allows their county to handle the collection. If the billing is not unified, separate inquiries must be made to each taxing authority.

NUANCES ABOUT TAX BILLS

Tax Proration

N.C. Gen. Stat. §39-60 states, “Unless otherwise provided by contract, property taxes on the real property being sold shall be prorated between the seller and buyer of the real property on a calendar-year basis.” Most, if not all, standard contracts will have similar language dictating taxes be pro-rated on January 1 – December 31 basis. The fact the county may use a different fiscal year is irrelevant for determining the buyer and seller’s proportion of outstanding taxes.

Discontinued Discounts/Deferments

The listed tax may be discounted due to the parcel’s current use or the special status of the owner. Disabled veterans and their spouses, senior citizens on limited incomes and those using parcels for agricultural purposes may be receiving substantial discounts on their tax bills. The discount likely will not carry forward, and may relate back for several years. A detailed discussion is beyond the scope of this handout, however, determining if the listed tax will carry forward to the new owner and whether any prior discounts will become due should be investigated for every closing.



NUANCES ABOUT TAX BILLS

TAX PRORATION. Most, if not all, standard contracts will dictating taxes be pro-rated on January 1 – December 31 basis.

DISCONTINUED DISCOUNTS/ DEFERMENTS. The listed tax may be discounted due to the parcel’s current use or the special status of the owner. Determining if the listed tax will carry forward to the new owner and whether any prior discounts will become due should be investigated for every closing.

MUNICIPAL ASSESSMENTS. Be sure to check if there are any municipal assessments on the subject property. Municipal assessments may be levied for public work which improves real property like street paving, curb and gutter installation, water and sewer lines, and sidewalk construction.

Municipal Assessments

Before you are done, be sure to check to see if there are any municipal assessments on the subject property. Municipal assessments may be levied for public work which improves real property such as street paving, curb and gutter installation, water and sewer lines, and sidewalk construction. While assessments should be disclosed by the current owner, the searcher should still verify. Most municipalities post assessments online in searchable formats, however, not all do. If you are unsure how to search for assessments for a particular municipality, a call to the governmental entity is warranted and should be documented.

ESTABLISH CHAIN OF TITLE

After gathering preliminary and computer information, it's time to create your chain of title. Going backwards in time, use the grantee index to locate each link in the chain. Start with the name of your current owner and search in the grantee index to locate the first deed in your chain.

Remember that you are using the grantee index to create the chain of title because you are searching for the entry made when each owner acquired the property (i.e., was the grantee). There is a good chance the recoding information for this instrument will be available on the county tax office, also. If you are still have difficulty locating a deed into a particular owner, you may be dealing with inherited property or property which has passed through some type of court action.

You may also be dealing with situations created by names changes as a result of marriage, divorce, or some statutorily recognized name change procedure. Therefore, you may need to check marriage licenses, the civil actions index, the special proceedings index and the registrations/miscellaneous index in the Civil Division of the Clerk of Superior Court.

To determine if you are dealing with property which passed through an estate, check the devisee index in the Estates Division of the Clerk of Superior Court. Using a preprinted abstract form, examine and abstract the deed or estate file to verify the validity of the first link in the chain. (See attached Deed Abstract Form and Estate Abstract Form.) Continue this process of (i) searching the grantee or devisee index to locate the next link in your chain and (ii) abstracting each deed or estate file, noting any deed defect, will defect, or estate administration concern. Pay special attention to notary acknowledgments to determine their validity.

In addition, you should plat each metes and bounds description contained in the chain deeds to ensure that each legal description is valid. There are software programs available for minimal sums which will draw it for you after the calls have been entered. Your preferred title insurance underwriter or agency is a great resource in recommending an up to date and affordable program, and may be able to provide substantial discounts on certain software.

When you have successfully traced the chain of title back to your predetermined scope, summarize the information in outline form, arranging it in



In addition, you should plat each metes and bounds description contained in the chain deeds to ensure that each legal description is valid. There are software programs available for minimal sums which will draw it for you after the calls have been entered.

chronological order and reciting each link in the chain. If the link is a deed, cite the grantor, grantee, date of deed, date of recording, deed book reference, and brief property description. If the link is an estate, cite the decedent’s name, date of death, estate file number, and brief property description.) (See attached Chain of Title Form.)

EXAMINE OUT CONVEYANCES

Now you are ready to bring the title forward to see what each owner may have done with the subject property during his/her period of ownership. Use your chain of title as a reference to create separate out conveyance sheets for each of your property owners. (See attached Out Conveyance Form (page 18.)) On separate sheets of paper, print the name of each owner as well as the dates to be searched. Search each owner in the grantor index, checking each owner from the date of the deed into them to the date of recording of the deed out of them (or to the present for your current owner). Examine the grantor index thoroughly, writing down the book and page corresponding to each entry of the owner’s name.

Take special care when entering the name to be searched as a minor keystroke error may result in missing a conveyance, possibly leading to a total title failure.

It is imperative your chosen search term or terms be broad enough to capture common name variations or nicknames for the party for which you are searching. When the property owner has a common name, especially in larger counties, this can be a burdensome task. However, there is no substitute for grinding through these names to verify the property was not mortgaged, conveyed away or otherwise encumbered.

For example, a person named “James T. Harris,” could potentially be indexed under the following names: James Harris, Jim Harris, Jimmy Harris, J. T. Harris, J. Thomas Harris, James Thaddeus Harris,

and James Turner Harris, Jr. Each entry could be your property owner and unless you have strong evidence the result is for another individual, it must be further examined and included on your title opinion if it cannot be eliminated.

While a search using ‘J Harris’ would work in the above situation, things can be even more complicated when nicknames begin with different letters (‘Rick’ and ‘Dick’ for Richard). In addition to searching the owner’s legal name, you should search for common alternate spellings (‘Phillip’ and ‘Philip’).

Be mindful of the standard abbreviations for non-human names as set forth in the North Carolina Association of Registers of Deeds’ Minimum Standards for Indexing Real Property Documents as published by the North Carolina Secretary of State Land Records Division. Copies are posted in the offices of the Registers of Deeds and can be downloaded from the

OUT CONVEYANCE FOR _____
 FROM _____ TO _____

BOOK/PAGE	INSTRUMENT	DESCRIPTION

EXAMPLE
SEE PAGE 18

Copyright © 1998-2005 Teresa L. Bowling, CLAS

TITLE SEARCHING

Wake County Register of Deeds at <http://web.co.wake.nc.us/rdeeds/index.pdf>.

Never rely upon the “brief description column” in the grantor index to determine whether an index entry may or may not affect your property. Every year Lawyers Mutual is presented with multiple claims in which the brief description of an out-conveyance was inaccurate and not further examined by the certifying attorney.

After you have examined the grantor index for each owner and written down the book and page for each grantor entry that is or may be your owner, you must review all documents listed on your Out Conveyance sheet, making note of the type of instrument and property (or document) description. Thoroughly examine the legal descriptions contained therein, paying particular attention to unfamiliar legal descriptions, legal descriptions containing multiple tracts, and multi-paged exhibits, any of which could include the subject property. If a document has or had an effect on the title to the subject property, mark your Out Conveyance sheet by circling or placing an asterisk beside the book and page number for easy identification and follow up.

SUBDIVISION SEARCH

After you have examined the name of each owner in the grantor index, complete your search of the grantor index by searching the name of the subdivision, if applicable. The purpose of this step is to ensure that you are aware of all relevant maps and restrictive covenants for the subdivision in which the subject property is located. There are instances where maps and restrictive covenants affecting the subject property may not be indexed under the owner’s name and therefore would not be found during the routine search of their name in the grantor index. Here are two examples: (i) where a recorded subdivision map was signed by the manager of an LLC property owner in her individual capacity (rather than as manager)

“

Never rely upon the “brief description column” in the grantor index to determine whether an index entry may or may not affect your property. Every year Lawyers Mutual is presented with multiple claims in which the brief description of an out-conveyance was inaccurate and not further examined by the certifying attorney.

and where the name of the LLC is not shown (in many counties, the map would be indexed only under the name of the individual and the name of the subdivision - not the name of the LLC); and (ii) where a recorded amendment to restrictive covenants is signed by the required percentage of the then owners but where the owner of the subject property did not join in its execution (in many counties, the amendment would be indexed under the names of all property owners who signed and in the name of the subdivision not the name of your property owner). Carefully examine all recorded maps showing the subject property, looking for easements, building setbacks, and special notations affecting the subject property.

PERFORM CLERK’S CHECKS

A concurrent step with the Register of Deeds search is to search each of the owners in the relevant clerk of court indices, most all of which have computerized in recent years. While each county is responsible for its own data entry, the databases themselves are all maintained through a uniform program, called VCAP, by the North Carolina Administrative Offices of the Court (NCAOC). The system is horrendously outdated, the antithesis of user friendly, and very difficult to navigate. A user must become familiar with arcane codes and be able

to use function keys to perform certain tasks. Additionally, formatting with the AOC can be unforgiving. For example searching “Harris, J” in a larger county would return a result indicative of no judgments against Mr. Harris. However, the correct entry of “Harris,J” (no space) would likely reveal dozens of entries which require further investigation.

The NC AOC publishes the Public Access User Manual, which can be viewed or downloaded at <http://www.nccourts.org/Courts/Lawyers/Documents/civilpublicaccessusermanual.pdf>. This manual should be studied extensively by prospective title searchers and supervising attorneys. The AOC manual details several nuisances and abbreviations, the use of which is mandatory by the local Clerk in entering data. Of particular concern are the following sections:

1. Alias Names – details how d/b/a s are indexed.
2. Special Names – indexing rules for entities with certain name formats.
3. Governmental Names – indexing rules for governmental agencies.
4. Common Abbreviations – mandatory abbreviations.

Lawyers Mutual frequently is presented with claims arising out of an attorney’s failure to search the appropriate abbreviation. At the time of publication of this Guide, the above four items are found on pages 13-15 of the 2004 Public Access User Manual.

While the customary search rules for clerk’s checks are more subjective, here are the standards used in many firms:

- **Judgments, Liens, Lis Pendens Index.** Search each owner who has had any ownership interest in the property during the past ten (10) years. Pay special attention to uncanceled monetary judgments or federal tax liens against current or prior owners, claims of lien against the subject property, and lis pendens alerting you to a civil action or special proceeding involving the subject property.
- **Civil Action Index.** Search each owner who has had an interest in the property during the past ten (10) years. Be particularly aware of the following types of pending lawsuits: actions filed to perfect a claim of lien on the subject property, actions involving the title of the subject property, actions seeking a divorce judgment between married current owners, actions seeking a monetary judgment against the current owner, which action could ripen into a monetary judgment prior to the scheduled closing; and actions for the condemnation of a portion or all of the subject property. In the event



While the customary search rules for clerk’s checks are more subjective, here are the standards used in many firms:

JUDGMENTS, LIENS, LIS PENDENS INDEX. Search

each owner who has had any ownership interest in the property during the past ten (10) years.

CIVIL ACTION INDEX. Search each owner who has had an interest in the property during the past ten (10) years. Be particularly aware of pending lawsuits.

SPECIAL PROCEEDINGS.

Search each owner in your chain of title from the beginning of the index to either (i) the date of recording of the deed out of them (if prior owner); or (ii) the present (if current owner). Be on the lookout for foreclosures involving the subject property, petitions to partition or sell the subject property, name changes, and condemnation proceedings involving the subject property filed pursuant to N.C. Gen. Stat. §40A Article 2.

a dismissed civil action involves the perfection of a claim of lien, review the file carefully to determine if the action was dismissed with or without prejudice. If the dismissal was without prejudice, the lien is not extinguished and may be perfected by the filing of a subsequent civil action if re-filed within one year from the dismissal of the prior action.

- **Special Proceedings.** Search each owner in your chain of title from the beginning of the index to either (i) the date of recording of the deed out of them (if prior owner); or (ii) the present (if current owner). Be on the lookout for foreclosures involving the subject property, petitions to partition or sell the subject property, name changes, and condemnation proceedings involving the subject property filed pursuant to N.C. Gen. Stat. §40A Article 2.

Using a preprinted clerk's check form, list each owner and reflect the appropriate time periods to be checked before commencing your search. Also, use preprinted abstract forms to recite relevant information for each clerk's item found in your search. (See attached Clerk's Checks Table, Attachment of Clerk's Checks, Clerk's Checks Form, and individual Clerk's Checks Abstract Forms.)

NON HUMAN OWNERS

Finally, confirm the entity status of any non-human current owner. For general partnerships and sole proprietorships, check the grantor index in the Register of Deeds for partnership documents and assumed name certificates. For corporations, limited partnerships, LLCs, and LLPs, check the corporations database via the NC Secretary of State web site (<http://www.secretary.state.nc.us/corporations/CSearch.aspx>) for organizational documents and current entity status. Depending upon the search period, it may be necessary to research further the old leather bound books still kept in the Clerk of Superior offices. The



If there is ever a question as to the relevancy or attachment of a matter, include it on the title exception. As the old saying goes: when in doubt, let the title insurer decide if it is important.

old paper books are usually kept in different divisions (estates, special proceedings, and civil) meaning full title searches may require a fair amount of time and give the searcher a good work out.

COMPLETE TITLE EXCEPTION SHEET

The final step is putting it all together. Most firms use a title exception sheet or title summary sheet to memorialize the results of the title search. (See attached Title Exception Sheet.) The title exception sheet is a snapshot of the title to the property as of the search date and should reflect all matters affecting title to the subject property as of that date, including outstanding deeds of trust, easements and other encumbrances, matters shown on recorded maps, deed deficiencies, unpaid monetary judgments, pending civil actions, active claims of lien, and pending foreclosures. Title exceptions sheets usually do not include matters which once affected the title to the subject property, but which have been resolved or otherwise disposed of prior to the search date, such as cancelled deeds of trust and judgments, civil actions dismissed with prejudice, and dismissed foreclosures – though listing such matters for informational purposes may be helpful. To properly complete the title exception sheet, carefully review the chain of title, deed abstracts, out conveyance sheets, clerk's checks abstracts, maps, and restrictive covenants, making sure to note all relevant items. If there is ever a question as to the relevancy or attachment of a matter, include it on the title exception. As the old saying goes: when in doubt, let the title insurer decide if it is important.

Reviewing Someone Else's Title Search

In order for an attorney to competently supervise and review title work prepared by someone else, he or she must have either practical experience searching titles. This is certainly no profound proclamation; however, it is not uncommon to hear stories of new attorneys with little or no real estate background choosing to do real estate closings until their litigation or estate planning practice picks up and who hire a freelance paralegal to do the title work. How can this attorney properly (and ethically) supervise the work of the freelance paralegal or review their title work? Equally disheartening are stories of long-time real estate practitioners who glance at a title exception sheet and rubber stamp a preliminary opinion on title without a careful review of the underlying title work. In order for the system of utilizing paralegals to conduct title examinations to work, there must be active supervision during the title search and a thorough review of the final product, including, but not limited to the following guidelines:

- Create an environment where the title searcher feels comfortable asking questions and bringing concerns during the course of the title work. Mentor your paralegal and use these opportunities to explain the applicable case law and general statutes which give rise to certain title searching processes.
- When the title search is submitted for your review, have a sit-down meeting with your paralegal to discuss the title work and allow him or her to alert you to items out of the ordinary or of particular import.
- Carefully review the title exception sheet and the recorded documents noted thereon.
- If you are updating or tacking onto a prior owner's title insurance policy, inspect the legal description and the title exceptions contained therein to ensure the ongoing applicability of prior exceptions and to note any inaccuracies or typographical errors.
- Examine the recorded plats, making sure that all easements and other matters affecting the subject property are properly reflected on the title exception sheet.
- Pour over the chain of title and deed abstracts searching for any outstanding property interests or deed defects. If applicable, review the plats of the metes and bounds descriptions made a part of prior deeds to ensure closure and the validity of the legal description.
- Scrutinize the Out Conveyance sheets, making sure that all recorded documents currently affecting the subject property have been properly noted on the title exception sheet.
- Scan the restrictive covenants for term, setbacks, reserved easements, reversionary clause, rights of first refusal and repurchase options retained by the developer.
- If applicable, review condominium formation documentation to ensure compliance with N.C. Gen Stat. §47A or 47C.
- Study the abstracts of the clerk of court files, paying special attention to uncanceled judgments and pending civil actions. This is a good time to see what claims of lien, if any, have been filed recently against the current owner. A pattern of claims of lien being filed in connection with other lots owned or recently conveyed by a builder puts you on notice that the same thing may happen with the subject property.
- Confirm the payment in full of ad valorem taxes for prior years and confirm whether or not there are any municipal assessments pending or confirmed.

Finally, pay special attention to the completed preliminary opinion on title. If you did not prepare it yourself, inspect it thoroughly to ensure that it accurately reflects the results of the title search that you have so carefully reviewed.

Updating and Recording

The time period between the initial title search and the closing of the transaction may be several days to several weeks. Upon completion of the closing and prior to the documents being recorded, title to the subject property must be updated. Complete this updating process with same thorough and methodical care with which you have conducted the initial title search. If your title update reveals any newly-filed document examine the item and, if applicable, complete the appropriate abstract form. It is not uncommon to find an intervening deed of trust, claim of lien, or monetary judgment affecting the subject property. (See Title Update and Recording Form.)

Finally, be mindful of the “end-of-the-month crunch” and plan your updating and recording carefully. If at all possible, conduct your title updates and record throughout the day and avoid recording large batches of documents at the end of the day. If you are recording multiple transactions, remember to record your documents as soon as possible following your title update. If you choose to update multiple transactions and record them all in one batch, keep in mind the very real possibility that an item adverse to title could easily be recorded, docketed or filed between the time of the first title update and the time of the document recording.



If your title update reveals any newly-filed document examine the item and, if applicable, complete the appropriate abstract form. It is not uncommon to find an intervening deed of trust, claim of lien, or monetary judgment affecting the subject property.

Full Title Search Checklist

- _____ 1. Obtain/assemble preliminary information on requested title search, including prior owner's title insurance policy, if available, and required scope [length] of title search.
- _____ 2. Obtain current ownership information from County Tax Assessor's Office. Begin filling out Title Exception Sheet.
- _____ 3. Establish Chain of Title
 - _____ a. locate deed(s) into Current Owner
 - _____ b. abstract deed(s) and, if applicable, plat legal description(s)
 - _____ c. continue this process of locating and abstracting each successive deed in the Chain of Title
 - _____ d. summarize on Chain of Title form
- _____ 4. Bring title forward
 - _____ a. Examine Grantor Index for earliest Owner **from Date of Deed into Owner to Date of Recording of Deed out of Owner**. Create list of "hits" using Cross Conveyance Sheet.
 - _____ b. Locate and examine each hit listed on earliest Owner's Cross Conveyance Sheet.
 - _____ c. Examine Grantor Index for each successive Owner **from Date of Deed into each Owner to Date of Recording of Deed out of each Owner or to present for current Owner**. Create list of hits using Cross Conveyance Sheet.
 - _____ d. Locate and examine each hit listed on each successive Owner's Cross Conveyance Sheet.
 - _____ e. In applicable, examine Index to Maps for each Owner. Create list of hits using Cross Conveyance Sheet.
 - _____ f. If applicable, locate and examine map for each Index to Map entry in each successive Owner's name using Cross Conveyance Sheet.
 - _____ g. If applicable, examine Grantor Index for Subdivision name. Create list of hits using Cross Conveyance Sheet.
 - _____ h. If applicable, locate and examine each hit listed for each Grantor entry in Subdivision name using Cross Conveyance Sheet.
 - _____ i. If applicable, examine Index to Maps for Subdivision name. Create list of hits using Cross Conveyance Sheet.
 - _____ j. If applicable, locate and examine maps for all Index to Maps entries in Subdivision name using Cross Conveyance Sheet.
- _____ 5. Clerk's Checks
 - _____ a. Examine each Clerk's Index and UCC Index for each Owner.
 - _____ b. Pull and review files/dockets for all entries in each Owner's name using Clerk's Checks Form and appropriate Clerk's Checks Abstract Form.
- _____ 6. Taxes
 - _____ a. Verify payment of real property taxes for past ten years.
 - _____ b. Print current tax billing statement/receipt.
- _____ 7. Assessments - Check for the existence of pending or confirmed assessments by either contacting the appropriate municipality or, if applicable, by checking the printed or on-line assessment roll. Remember to write down the name and date of the source of the information.
- _____ 8. Title Exception Sheet - Complete all information on title exception sheet, including information on deeds of trust, easements, setbacks, judgments, etc. In order to do this correctly, you should review all deed abstracts, Out conveyance sheets, maps, and clerk's check abstracts looking for any deed defects or encumbrances on property.

Current Owner Update Checklist

- _____ 1. Obtain/assemble preliminary information on requested title search, including prior owner's title insurance policy and required scope [length] of title search.
- _____ 2. Obtain computer information from County Tax Assessor's Office. Begin filling out Title Exception Sheet.
- _____ 3. Establish Chain of Title
 - _____ a. locate deed(s) into Current Owner
 - _____ b. abstract deed(s) and, if applicable, plat legal description
 - _____ c. summarize on Chain of Title form
- _____ 4. Bring title forward
 - _____ a. Examine Grantor Index for Current Owner **from Date of Deed into Owner to the present**. Create list of "hits" using Cross Conveyance Sheet.
 - _____ b. Locate and examine each hit listed on Current Owner's Cross Conveyance Sheet.
 - _____ c. If applicable, examine Index to Maps for Current Owner. Create list of hits using Cross Conveyance Sheet.
 - _____ d. If applicable, examine Grantor Index for Subdivision name **from Date of Deed into Owner to the present**. Create list of "hits" using Cross Conveyance Sheet.
 - _____ e. If applicable, locate and examine each hit listed for each Grantor entry in Subdivision name using Cross Conveyance Sheet.
 - _____ f. If applicable, examine Index to Maps for Subdivision name. Create list of hits using Cross Conveyance Sheet.
 - _____ g. If applicable, locate and examine maps for all Index to Maps entries in Subdivision name using Cross Conveyance Sheet.
- _____ 5. Clerk's Checks
 - _____ a. Examine each Clerk's Index and UCC Index for Current Owner.
 - _____ b. Pull and review files/dockets for all entries in Current Owner's name using Clerk's Checks Form and appropriate Clerk's Checks Abstracts.
- _____ 6. Taxes
 - _____ a. Verify payment of real property taxes for the past ten years. If the current owner acquired the property within the past ten years, review the title policy with regard to taxes and confirm payment of ad valorem taxes shown as due or delinquent therein and all subsequent years (usually from and including the year of the acquisition to the present).
 - _____ b. Print current tax billing statement/receipt.
- _____ 7. Assessments - Check for the existence of pending or confirmed assessments by either contacting the appropriate municipality or, if applicable, by checking the printed or on-line assessment roll. Remember to write down the name and date of the source of the information.
- _____ 8. Title Exception Sheet - Complete all information on title exception sheet, including information on deeds of trust, easements, setbacks, judgments, etc. In order to do this correctly, you should review all deed abstracts, Out conveyance sheets, maps, and clerk's check abstracts looking for any deed defects or encumbrances on property.

Deed Abstract

GRANTOR _____

GRANTEE _____

RECORDED IN

BOOK _____ PAGE _____

DATE/TIME _____ A.M./P.M.

1. Kind of conveyance _____
2. Date of conveyance _____
3. Consideration \$ _____
4. Granting Clause _____
5. Habendum Clause _____
6. Does the above conveyance contain covenants:
 - (a) of seizing _____
 - (b) power to convey _____
 - (c) against encumbrances _____
 - (d) against claims of others _____
7. Does the deed contain any special limitations, provisions or restrictions? _____
8. Is it properly executed? _____
9. Is it properly acknowledged? _____
10. If before 2/7/1945, was privy exam of wife held? _____
11. Date of acknowledgment? _____
12. Before what officer acknowledged? _____
13. Did certifying officer affix seal? _____
14. Was the order of probate correct? _____
15. Revenue: \$ _____
16. Description: Lot, Block, Map ()
 Metes & Bounds () Both ()
 Reference to Previously Recorded Instrument ()
 Other () _____
17. Surveyed? Date of Survey _____
 Surveyed By? _____

RECITALS AND DESCRIPTIONS:

Estate File Abstract

Name of Decedent: _____

Date of Death: _____

Estate File No.: _____

Will Probated: _____ (date)

Heirs or Devisees: _____

_____ per _____

Personal Representative: _____

Creditor's Notice: _____ (date)

Final Account: _____ (date)

Inheritance Tax Certificate: _____ (1977 to date)

Estate Tax: _____

Wills:

1. Type of proof for probate: _____

2. Provide for "after born": _____

3. Dissent: _____

4. Witnesses Disinterested: _____

5. Executor has power of sale: _____

6. Trusts: _____

7. Additional Information: _____

Chain of Title Form

 (legal description of property searched)

LINK NO.	BOOK	PAGE	DESCRIPTION	DATE OF DEED DATE OF RECORDING
			<p style="text-align: center;"><u>GRANTOR(S)</u> <u>GRANTEE(S)</u></p> <p>_____ to _____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p>	
			<p>_____ to _____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p>	
			<p>_____ to _____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p>	
			<p>_____ to _____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p>	

Thru _____ at _____ a.m./p.m. (search date)

Copyright © 1998-2005 Teresa L. Bowling, CLAS

Clerk's Checks Table

Clerk's Check	What	why	where	who	when
Civil Actions	lawsuits	<ol style="list-style-type: none"> civil action for money owed or civil action to perfect claim of lien on property other than subject property can progress into money judgment, which will be a general lien (as of the date of docketing of the judgment) on all real property owned civil action to perfect claim of lien on subject property can progress in a money judgment which will be a specific lien (as of the date of first furnishing as stated in the claim of lien) on subject property civil action for divorce can alter interest in real property - will convert tenancy by the entirety to tenancy in common civil action involving subject property (i.e., regarding boundary line dispute, adverse possession claim, or condemnation) can change ownership and/or legal description of subject property 	Office of Clerk of Court In many counties, the Clerk of Court is located on the main floor of the county courthouse.	Review Civil Action Index in the name of each Owner who had an interest in the property during the past five (5) years.	FROM: Five (5) years ago from date of search TO: Date of recording of Deed out each prior Owner or, if Current Owner, to the present (Date of search)
Judgments, Liens, Lis Pendens	money judgments, claims of lien, federal tax liens, employment security commission (ESC) liens, and lis pendens (notice of pending litigation)	<ol style="list-style-type: none"> money judgments docketed are general liens (as of the date of docketing of the judgment) on all real property owned money judgment arising from a perfected claim of lien on the subject property will be a specific lien (as of the date of first furnishing as stated in the claim of lien) on subject property claims of lien are filings evidencing that labor and/or materials have been supplied, but not paid for (must be filed within 120 days of last furnishing of labor and/or materials) - can be perfected by filing civil action within 180 days of last furnishing of labor and/or materials lis pendens are filings in the judgment index which give notice of a pending lawsuit - may affect subject property 	Office of Clerk of Court	Review Judgment Index in the name of each Owner who had an interest in the property during the past ten (10) years.	FROM: Ten (10) years ago from date of search TO: Date of recording of Deed out each prior Owner or, if Current Owner, to the present (Date of search)
Special Proceedings	foreclosures, name changes, petitions to partition, petitions to sell	<ol style="list-style-type: none"> foreclosures of current deeds of trust have an immediate impact on the status of title name changes affect chain of title and indicate additional research necessary in Grantor Index and all other Clerk's Indices petitions - land owned by tenants in common can be sold or partitioned by court order upon petition of one tenant in common condemnations by private condemnor 	Office of Clerk of Court	Review Special Proceedings Index for every owner in your Chain of Title.	FROM: Beginning of the Index TO: Date of recording of Deed out each prior Owner or, if Current Owner, to the present (Date of search)
Registrations (f/k/a Miscellaneous)	resumption of use of maiden name or prior husband's name, notices of claim of lien, notices of contract	<ol style="list-style-type: none"> additional name changes notices of claim of lien against subject property (some clerk's offices file notices of claim of lien separate from claims of lien) notices of contract on subject property 	Office of Clerk of Court	Review Registrations Index (formerly called Miscellaneous Index) for current Owner only.	FROM: Beginning of the Index TO: End of the Index
UCCs (not a true "Clerk's Check," but searched for in same manner)	financing statements on fixtures and personal property	evidences a debt which must be paid off if secured property in UCC is part of subject property	Office of Register of Deeds In many counties, the Register of Deeds is located on the main floor of the county courthouse.	Review UCC Index in the name of each Owner who had an interest in the property during the past five (5) years.	FROM: Five (5) years ago from date of search TO: Date of recording of Deed out each prior Owner or, if Current Owner, to the present (Date of search)

¹ Money Judgment against one spouse does not attach to property owned as tenants by the entireties; however, if tenancy by the entireties is dissolved by divorce, conveyance between spouses or death, money judgment will then attach to property owned by debtor tenant in common (divorce or conveyance between spouses) or debtor surviving spouse (death).

Attachment of Clerk's Checks

Remember that the reason that you examine records within the Office of the Clerk of Court ("Clerk's Checks") is to find items that may affect title to the Subject Property. It is important to review and abstract all Clerk's Checks discovered in your search, but not all of them will affect title to real property. Only the Clerk's Checks which may affect title to real property should be listed on your Title Exception Sheet a/k/a Title Summary Sheet.

Here are some examples of items that may affect title to property as of your search date, and therefore, should be listed on your Title Exception Sheet:

- **Pending Civil Actions involving the Current Owner as Defendant.** Any pending Civil Action involving the Current Owner as a Defendant has the potential to progress into a Judgment against the Current Owner prior to the scheduled closing. It is important to be aware of the possibility that a Judgment could be docketed between the initial title search and the time of the closing. Technically, the pending civil action does not attach to the real property, but a subsequent judgment docketed against the Current Owner would be a general lien on all real property owned and would attach to the subject property. The closing attorney should monitor all pending Civil Actions to be aware of any judgments docketed prior to closing.
- **Pending Civil Actions for Divorce Involving the Current Owner.** Any pending Civil Action for Divorce Involving the Current Owner has the possibility into progress to a Divorce Judgment prior to the scheduled closing. It is important to be aware of the possibility that a Divorce Judgment could be docketed between the initial title search and the time of the closing. Technically, the Divorce Judgment does not attach to the real property, but a divorce judgment puts one on notice that the tenancy by the entirety has been severed and leaves open the possibility of interim marriages to third parties. Any interim marriage to a third party would create a marital interest in favor of that third party. In addition, if you had previously found monetary judgments against only one spouse (where the Subject Property is owned as Tenants by the Entireties), the effect of the divorce would be to sever the Tenancy by the Entireties, causing that monetary judgment to then attach to that spouse's one-half undivided interest in the Subject Property. It is the possibility of an outstanding marital interest of a third party or a monetary judgment attaching to one spouse's one-half interest in the Subject Property that causes the concern (not the pending civil action for divorce).
- Uncancelled Judgments against unmarried Owners or, if property owned as Tenants by the Entireties, against both spouses. Unpaid judgments are a general lien on real property and attach as of the date of docketing.
- Uncancelled Federal Tax Liens against any Owner. Unpaid Federal Tax Liens are a general lien on real property and attach as of the date of docketing. Note: North Carolina law has held that Federal Tax Liens against one spouse holding title as tenants by the entirety does not attach to entirety properties; however, a recent Supreme Court case has held that it does. Most title insurance companies in North Carolina are requiring that such Federal Tax Liens are disclosed and settled in order to insure title.
- Pending Claims of Lien if 180 days have not elapsed since last furnishing.

- Pending Special Proceedings involving Foreclosure against Deed of Trust on subject property.
- Uncancelled Judgments against only one spouse when, as of the time of search, seller/owner owns real property as tenancy by the entireties.¹
- Here are some examples of items that would not affect title to property as of your search date, and therefore, should not be listed on your Title Exception Sheet:
- Closed Civil Actions. Note, however, civil actions dismissed without prejudice may be re-filed within one year. Lawsuits including causes of action for the perfection of liens should be reported unless the deadline to refile has lapsed.
- Cancelled Judgments.
- Cancelled Federal Tax Liens.
- Claims of Lien that have been cancelled or have expired without being perfected by a lawsuit within 180 days of last furnishing of labor and/or materials. As stated above, lien perfection lawsuits which have been dismissed without prejudice should be reported on the preliminary and final opinions unless the deadline to refile has passed.
- Pending Special Proceedings involving Foreclosure against Deed of Trust on property other than subject property.

Note 1: As a matter of law, this type of judgment does not attach to real property owned by tenants by the entireties; however, it is prudent to have it listed on the title exception sheet (perhaps with a disclaimer that it is against only one spouse) since the possibility exists that prior to the closing, the tenancy by the entirety may be severed, thereby causing the judgment or lien to then attach to the judgment debtor's one-half interest in and to the subject property.

These lists are for examples only and are not inclusive of all possible Clerk's Checks.

CIVIL ACTION ABSTRACT

File Number: _____ Pending or Closed: _____

Plaintiff(s): _____

v.

Defendant(s): _____

Complaint Filed: _____ (date)

Nature of Complaint:

If file closed, Disposition (explain below): _____ date of disposition

_____ Voluntary Dismissal with Prejudice
_____ Dismissed by Court
_____ Order of Discontinuance
_____ Other

_____ Voluntary Dismissal without Prejudice
_____ Judgment against Defendant(s)
docketed _____ - _____

If file open, last pleading filed:

Additional Information:

Judgment Abstract

Judgment Docket Number: _____ - _____ (book and page number)

Corresponding Civil Action File No.: _____

Plaintiff(s): _____

v.

Defendant(s): _____

Judgment Docketed: _____ (date and time)

Judgment for:

_____ Monetary Judgment

\$ _____ principal \$ _____ attorney's fees

\$ _____ costs _____% interest from _____ (date)

_____ Divorce

_____ Possession

_____ Other, explain below

Paid and Satisfied/Cancelled of Record: _____ If so, date: _____

Partial Payment: _____ Partial Release of Real Property: _____

Execution Returned: _____

Transcript: _____ If so, to what County: _____

Additional Information:

Claim of Lien Abstract

File : _____ (book and page number and/or "M" number "04 M 2345")

Claim of Lien Docketed: _____ (date and time)

Lien Claimant(s): _____

Property Owner(s): _____

Person Contracted with, if different than Property Owner: _____

Real Property: _____

Services/Materials Provided: _____

Date of First Furnishing: _____

Date of Last Furnishing: _____

Amount of Claim: \$ _____

Paid and Satisfied/Cancelled of Record: _____ If so, date: _____

Perfected by Civil Action: _____ If so, File No.: _____

Judgment from Civil Action: _____ If so, Judgment Docket: _____ - _____

Lien Abstract

Judgment Docket Number: _____ - _____ (book and page number)

Lien Docketed: _____ (date and time)

Lien Claimant(s): _____ Internal Revenue Service
 _____ Employment Security Commission
 _____ Other: _____

Lien for:

_____ Money Owned

\$ _____ principal \$ _____ attorney's fees

\$ _____ costs _____ % interest from _____ (date)

_____ Other, explain below

Paid and Satisfied/Cancelled of Record: _____ If so, date: _____

Release Filed: _____ Yes _____ Partial _____ Full
 _____ No

Lis Pendens

Judgment Docket Number: _____ - _____ (book and page number)

Lis Pendens Docketed: _____ (date and time)

Civil Action File No.: _____

Plaintiff(s): _____

v.

Defendant(s): _____

Special Proceeding Abstract (Foreclosure)

Special Proceeding File No.: _____

Debtor(s): _____

Record Owner(s): _____

Deed of Trust: Book _____, page _____, _____ County Registry

Trustee: _____

Beneficiary: _____

Notice of Hearing Served On: _____

Order By Clerk: _____ (date)

Notice of Sale:

Publication: _____
_____ (dates run)

Posting: _____
_____ (dates)

Report of Sale: _____ (date) \$ _____ (amount of bid)
_____ (bidder)

Upset bid: _____ (date) \$ _____ (amount of bid)
_____ (bidder)

Final Report and Confirmation of Sale: _____ (date) \$ _____ (amount of bid)
_____ (bidder)

Notice of Foreclosure Filed: _____ (date) Book _____, page _____

Special Proceeding Abstract (Other than Foreclosure)

Special Proceeding File No.: _____

Petitioner(s): _____

Respondent(s): _____

Nature of Petition: _____

If file open, last pleading filed:

Additional Information:

TITLE EXCEPTION SHEET

Full ()		From	Instr.	in File		
Limited ()		From	Instr.	in File		
Purchaser(s)			Property Address:			
Owner(s)			Township			
Lot:	Block:	Subdiv.:	BM:	Page:		
For Reference See Files:						
Year	By Whom Listed	How Described	County Taxes		Personal Taxes	
			Real Value	Amount	Val.	Amount
Listing For Current Year			PIN			
			Parcel #		Account #	
Tax	Real:		Personal:		FD:	
Assessments:						
Checked by:						
Liens, Lis Pendens:				Unpaid PP Taxes:		
Special Proceedings:				Lun:		
C.I.D.			Corp. Charter	Book	Page	
U.C.C.						
Judgements:						
Covenants:						
Open Estates:		From:		Received:		
Pay-off/Assumption letters ordered:		From:		Received:		
Set Back per recorded Map:	Front:	Side St.:	Side Lot:	Rear:		
Set Back per Covenants:	Front:	Side St.:	Side Lot:	Rear:		
Other recorded maps:						
Time:	Paralegal:	Dated		at		p.m.
Time:	Attorney:	Dated		at		p.m.

Order of Documents to be Presented in Title Search

- Title Search Checklist (Full or Current Owner Update)
- Title Exception Sheet
- Property Card
- Tax Receipts and/or Tax Bills
- Assessment printouts (if applicable)
- Copies of Outstanding Deeds of Trust
- Copies of Recorded Exceptions to Title (easements, rights of way, etc.)
- Chain of Title
- Copies of each Deed Abstract and corresponding Deed (in the order they are listed on the Chain of Title Summary)
- Clerk's Checks Form
- Copies of Cross Conveyance Sheets (in the order they are listed on the Chain of Title Summary)
- Restrictive Covenants
- Maps and plats

Title Update and Recording Form

File No. _____

CHECK FOR:

Margins - 3" top 1st page; 1/2" everywhere else	_____
Prepared by and return to	_____
Acct. numbers	_____
Revenue amount = _____	_____
Grantee's mailing address	_____
Document dated	_____
Grantor block & signatures match	_____
Proper notary acknowledgements	_____
Seal for notary & expiration date	_____
Any exhibits	_____
Costs figured correctly	_____
Checks signed	_____

_____ No Title Update; or

_____ Update from _____ (date at bottom of Title Exception Sheet)

NSP	_____	Grantor	_____
JLLP	_____		_____
CID	_____	Grantee	_____
UCC	_____		_____
GTR	_____	Brief Desc.	_____
TEMP	_____		_____

SPECIAL INSTRUCTIONS:

_____ Pay taxes (owner as of Jan. 1 _____
and/or acct. no. _____)

_____ Deliver _____ to _____

_____ Call _____ with recording information.

_____ Return receipt to _____

RECORDING SEQUENCE: _____ (Note any seconds in between) (Attach receipt here)

Paralegal time: _____