

# TITLE INSURANCE WOES

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# Top "Woes"

- **Legal Descriptions, Surveys, Plats**
- **Interested parties -- identity, notice**
  - **Deeds of Trust**
    - **Buyer Issues**
    - **Construction**
    - **Mobile Homes**

# “Curatives” for “Woes”

- Minor Clerical Error, G.S. 47-36.1
  - Attorney-preparer
  - Not change legal description to add property
  - Explanation statement and notation in original instrument ( not a “true” copy)

# "Curatives" for "Woes"

- Reinstatement of dissolved entity
- Voluntary agreements
  - boundary line,
  - roadway or easement,
  - family settlement agreement
  - joinder of missed parties in existing document
  - consents by mortgagees / trustees

# "Curatives" for "Woes" (continued)

- Curative conveyances from multiple parties who *may* have an interest to assure estoppel (such as other heirs in an estate situation or last shareholders, officers and directors in a dissolved corporation)

# "Curatives" for "Woes" (continued)

- Re-recording of documents in the appropriate chain of title according to G.S. 47-18 and G.S. 47-20 (as compared to title by estoppel which is only an estoppel as between the parties and not binding upon third parties)

# "Curatives" for "Woes" (continued)

Obtaining and recording necessary documents, such as:

- Certified copies of orders of the U.S. Bankruptcy Court
- Articles of conversion, merger or name change amendment from the applicable Secretary of State
- Documents recorded in another county

# “Curatives” for “Woes”

Civil actions, including relief requested such as:

- Reformation of existing documents
- Quiet title (G.S. 41-10)
- Declaratory judgment (G.S. 1-253 *et seq.*)
- Equitable remedies
  - equitable lien
  - equitable subrogation
  - equitable subordination
  - constructive trust
  - resulting trust



# Resulting Trust

- Valuable consideration paid by payor
- Payor did not intend title to transferee
- Transferee did not pay consideration
- Trust presumed at law (not by parties)
  - NO fraud, actual or constructive

*Bowen v. Darden*, 241 N.C. 11, 84 S.E. 2d 289 (1954);

*Teachey v. Gurley*, 214 N.C. 288, 199 S.E. 83 (1938).

# Constructive Trust

- Fraud, actual or presumptive, duress, abuse of confidence, breach of duty or unconscionable conduct by “trustee”
- Contrary to the intention of “trustee”
- Imposed by court
- To prevent unjust enrichment

Roper v. Edwards, 323 N.C. 461, 373 S.E.2d 423 (1988)

# Equitable Lien

- Written contract
- Intention to charge property with obligation
- declared by court in equity

*Garrison v. Vermont Mills*, 154 N.C. 1, 69 S.E. 743, mod. On rearg., 152 N.C. 643, 68 S.E. 142

*Burrowes v. Nimocks*, 35 F.2d 152 (4th Cir.)

*Stanley v. Cox*, 253 N.C. 620, 117 S.E.2d 826

*Fulp v. Fulp*, 264 N.C. 20, 140 S.E.2d 708 (1965)

*Brinkley v. Day*, 88 N.C.App. 101, 362 S.E.2d 587 (1987)

# “Curatives” for “Woes”

Civil actions, including relief requested such as:

- adverse possession (or easement by prescription),
- Judicial Sales Act (NCGS Chapter 1, Subchapter 10, Article 29A)

# Civil Actions -- Drawbacks

- Investigation, location and joinder of *all* potential parties -- co-owners, possible claimants, lien creditors of all
- Active participation by insured in pleadings, discovery, ADR, court proceedings, appeals & possibly later recoupment action
- Attorneys' fees not available on all claims for relief
- Defenses: Betterments, adverse claims, consumer violations by lender-insureds

# "Curatives" for "Woes"

- Special proceedings:
  - Partition actions (G.S. 46-1 *et seq.*),
  - Cartway Proceedings (G.S. 136-68 *et seq.*)
  - Neighborhood public road (G.S. 136-67)
  - Church roads & utilities (G.S. 136-71)
  - Declare Public Right-of-way (G.S. 136-96.1)
  - Boundary proceedings (G.S. 38-1 *et seq.*)
  - Petition to sell property to pay debts in an open but insolvent estate

# "Curatives" for "Woes" (continued)

- Special proceedings:
  - Boundary proceedings (G.S. 38-1 *et seq*)
  - Petition to sell property to pay debts in an open but insolvent estate
  - Sell, lease or mortgage remainders (G.S. 41-11 or G.S. 41-11.1)

# Neighborhood Public Roads, G.S. 136-67, may apply if:

- portions of public road system, not taken over & not abandoned, open and in general use as a necessary means of ingress to and egress from the dwelling house of one or more families
- laid out, constructed, or reconstructed with unemployment relief funds
- outside of the boundaries of incorporated city or town, serve a public use & as a means of ingress or egress for one or more families



# Cartway, G.S. 136-68 *et seq.*

- cultivation of land, timber, working of any quarries, mines, or minerals, or operating industrial or manufacturing plants, public or private cemetery
- no access by public road or other adequate means of transportation, other than a navigable waterway
- 18' width -- *purchased* from fee landowner

# Declare Public Right-of-way, G.S. 136-91.1 (2003)

- 2/3 of road-frontage landowners join;
- right-of-way is depicted on an unrecorded map, plat, or survey;
- right-of-way has been actually open and used by the public;
- Recorded deeds for at least 3 parcels reference ROW as a named street or road;
- Meets construction standards of G.S. 136-102.6; conclusively deemed public.

# Boundary Proceeding, G.S. 38-1 *et seq.*

- Location of boundary, *not* title
- Requires proof of ownership by petitioner
- Survey(s) may be obtained but not required
- Appeal or any title dispute would effectively convert to Quiet Title Action; may require new action with additional parties

# "Curatives" for "Woes" (continued)

Passage of time, such as:

- expiration of life estate on death of the life tenant,
- expiration of statutes of limitations on lien enforcement,
- failure of surviving spouse to exercise election under G.S. 29-30,
- affirmation (or failure to disaffirm) by a minor within 3 years after reaching the age of majority

# "Curatives" for "Woes" (continued)

"Affirmative coverage"  
on a title insurance policy,  
in appropriate circumstances

# Affirmative Coverage INAPPROPRIATE

- Restrictive covenant prohibited intended use of property; high risk neighbors will object
- Void conveyance (incompetent, minor or missing)
- Uncanceled equity line

# Affirmative Coverage INAPPROPRIATE

- Outstanding lien (judgment, federal tax lien) exceeding property value
- Mobile home title not converted
- Prior uncanceled liens, for which payment is uncertain

The background of the slide features a faded, golden-brown image of a globe with a compass rose overlaid on it. The globe shows latitude and longitude lines, and the compass rose has four cardinal directions. The overall tone is warm and professional.

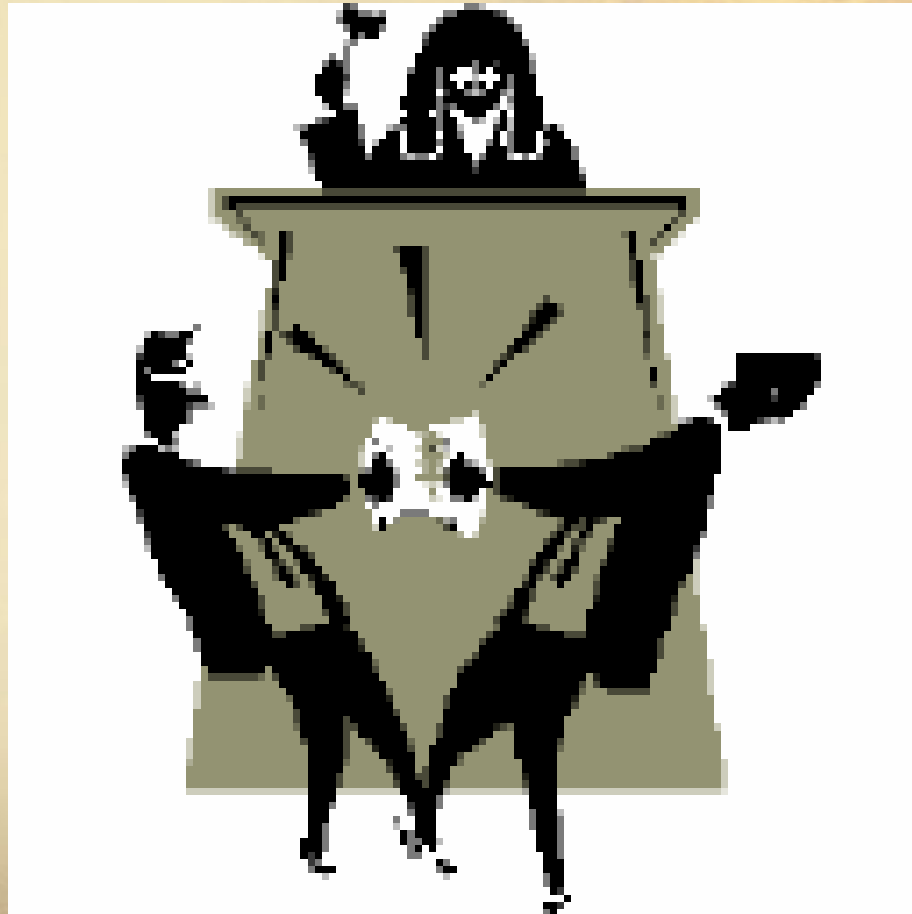
**REMEMBER:**

**Lender only cares about \$\$\$\$!**

**Client cares about their home, their  
property, their equity!**

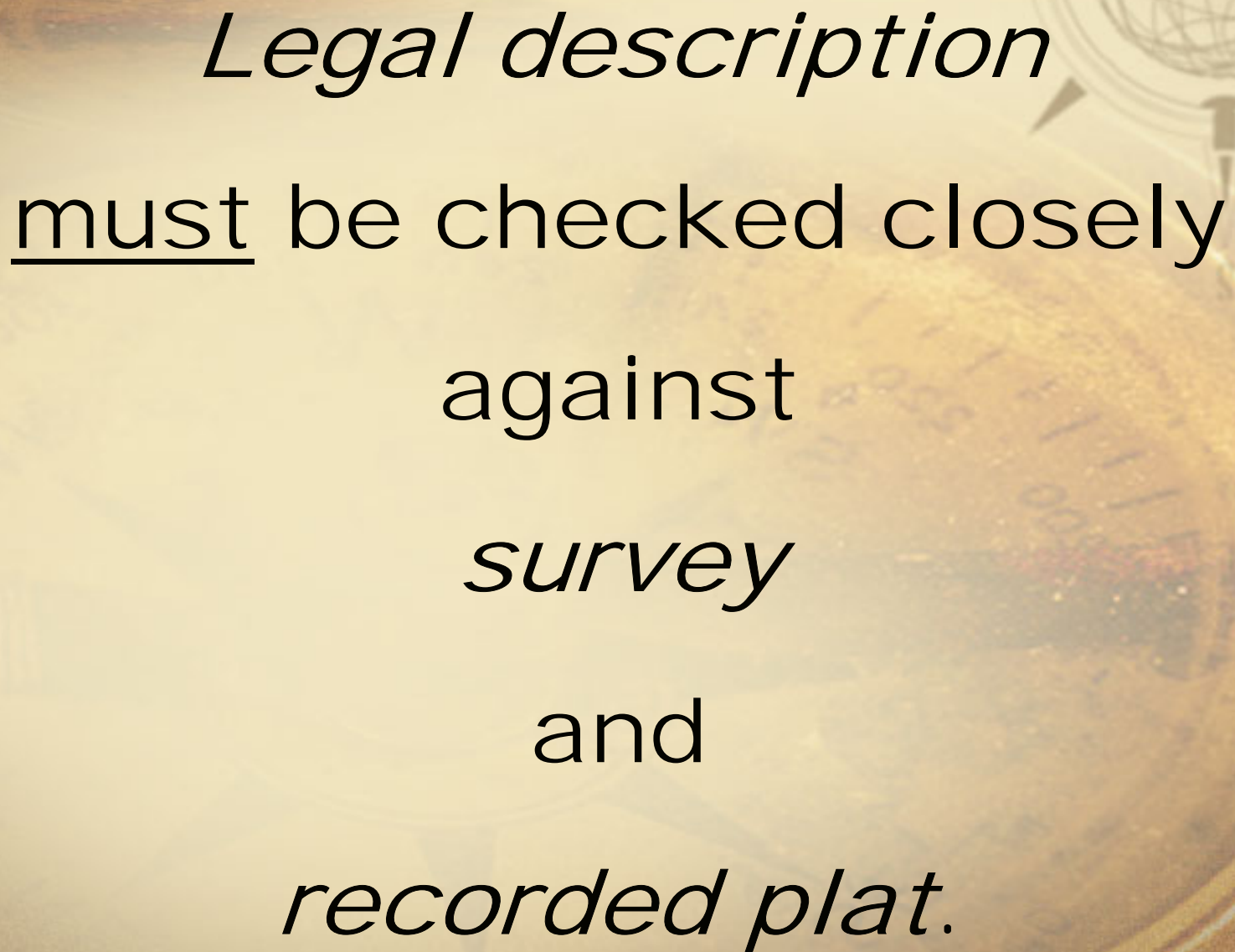


**“Woe” should mean  
“WHOA!”**



# Top "Woes"

**Legal Descriptions,  
Surveys  
Plats**



*Legal description*  
must be checked closely  
against  
*survey*  
and  
*recorded plat.*

# Property must be:

- **Locatable and identifiable “on the ground” using the *record* legal description and any information contained in the legal description or elsewhere in the recorded documents.**
- **unique property, not ambiguous that it could be one of several.**

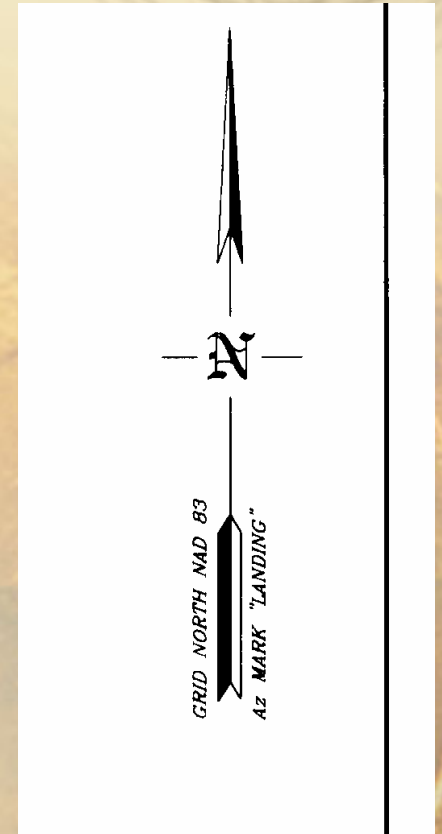
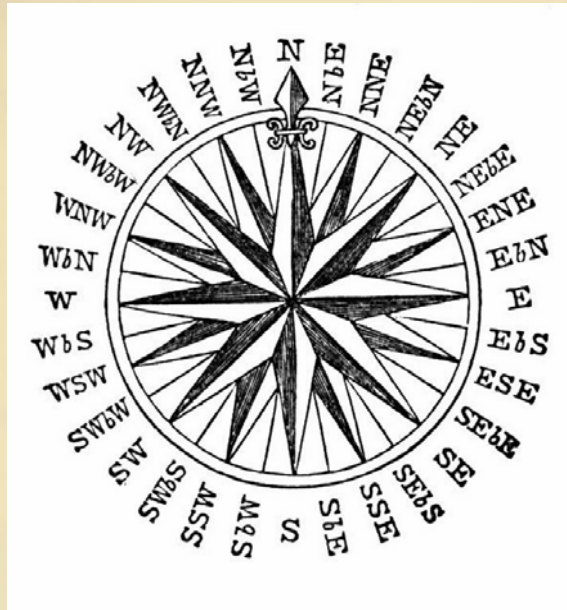
**Whether fee or easement or other interest  
being conveyed in the property**

# RECORDED PLAT

(G.S. 47-30)

- easements,
- setbacks,
- common areas,
- special or restricted use areas,
- restrictions,
- property lines,
- road boundary changes,
- access,
- consistency of your property's boundary lines and benefits (common areas, for example) with prior plats
- other matters

# Know how to draw out a legal description



TAX REF: 6796-09-9837

TOWN OF TRINITY  
D. B. 1703, PG. 1504

LITTLE UMHARRIE RIVER

N77°12'04"E

584.55'

B.E. ENTERPRISES  
DEED BOOK 1315, PAGE 2003  
TAX REF: 6796-09-9837

NEW LOT "B"  
198,798 ± SQ FT  
4.564 ± ACRES  
(D.M.D.)

LOT 8  
188,732 ± SQ. FT.  
4.333 ± ACRE  
(D.M.D.)

APPROXIMATE LOCATION 100-YEAR FLOOD  
AS PER P.B. 49, PG. 57  
# 370195-150-9

NIP  
REFERENCE  
IRON

PROPERTY LINE  
TO BE REMOVED  
BY THIS PLAT

N02°05'30"E

218.95'

384.94'

N87°52'24"W

(AREA=0.231 ± ACRES)  
(AREA=1.097 ± ACRES)

(TOTAL)  
421.11'

LOT 55  
STEEPLEGATE SUB.  
REDIVISION OF PHASE II  
P.B. 38, PG. 61

LOT 54  
STEEPLEGATE SUB.  
REDIVISION OF PHASE II  
P.B. 38, PG. 61

S02°08'24"W  
25.00'  
INTERSECTION (E)

N02°07'36"E

296.31'

IP

IP

EIP  
CONTROL  
CORNER

IP

38.12'

86.68'

city.  
fixed

DEEDS

*A*  
*Call*

21.00

31

75

DFLIN  
OCIATES, INC.  
HWY  
C 27360  
3377

**LOTS 53A & B  
STEEPLEGATE SUBDIVISION  
REDIVISION OF PHASE II  
PLAT BOOK 49, PAGE 20  
STEEPLEGATE EXTENSION &  
PHASE II REVISED SHEET I OF II  
PLAT BOOK 49, PAGE 57  
DEED BOOK 1635, PAGE 509  
DEED BOOK 1413, PAGE 1269  
TAX REFERENCES**

**6796-29-2027, 6796-29-1329  
TRINITY TOWNSHIP ~ RANDOLPH COUNTY  
NEAR ARCHDALE ~ NORTH CAROLINA**

*p/u*

PREPARED BY

**DAVIS-MARTIN-POWELL & ASSOC., INC.  
ENGINEERING-LAND PLANNING-SURVEYING**



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HIGH POINT, NORTH CAROLINA 27862  
PH (336) 886-4821 FAX (336) 886-4458**



DATE: 12-18-2002      SCALE: 1" = 100'      JOB No. S - 43957  
SURVEYED BY: DMP      DRAWN BY: EDV/JWG      CHECKED BY: JED



# Map Plotting Software

- **Deed Plotter+ For Windows**  
[www.deedplot.com](http://www.deedplot.com)
- **QuikPlat Lite** [www.landplot.com](http://www.landplot.com)
- **DeedChek** [www.deedchek.com](http://www.deedchek.com)
- **MapDraw**  
[www.informatik.com/mapdraw.html](http://www.informatik.com/mapdraw.html)
- **Plat Pronto**  
[www.bwmuncy.com/download.htm](http://www.bwmuncy.com/download.htm)

# Typical title issues to be checked on survey:

- Access
- Acreage
- Waterfront?
- Utilities
- Roads, drives
- Railroads
- Rights-of-way
- Setbacks, buffers
- Boundary lines
- Wrong property
- Old plats
- Encroachments by others
- Encroachments by your owner
- Fence lines
- Improvements
- Appurtenant easements

# Typical claims problems

- **Missing or erroneous calls**
- **Wrong property**
- **Not include all the property**
- **Too much property (i.e. entire subdivision)**
- **Wrong plat reference (and wrong “dirt”)**
- **Not attached to recorded documents**
- **Not referencing permanent monuments**
- **No owner’s survey**
- **Owner’s erroneous belief about coverage --  
access easement or property described**

# Possible resolutions

- Voluntary boundary line agreements
- Quitclaims / releases of interested parties
- Purchase access or tract from third party
- Boundary Line proceeding
- Cartway or other access proceeding
- Quiet Title Action
  - Reformation
  - Equitable remedies
  - Declaratory Judgment Action
  - Ejectment Action



***CHICAGO BULL  
VOLUME 1, EDITION 5***

Owners Need Surveys – Still!  
(Or, The *Risks To You and Your  
Client* of Lender’s “Survey  
Coverage Without a Survey”)

# Top "Woes" (cont'd)

**Deeds of Trust:**  
**Releases,**  
**Cancellations**  
**Subordinations**  
**Equity Lines**

# Risk Areas

- **Failure to cancel of record**
- **No *written* payoff or release terms**
- **Not following requirements**
- **Not “freezing” equity lines**
- **Not obtaining updated payoff amounts**
- **Failure to obtain subordination**
- **Short payoff**

## Risk Areas (cont'd)

- **Failure to send payoff letter with instructions to apply and contact immediately regarding shortage**
- **Failure to follow up post-closing**
- **Subordinated or paid off wrong deed of trust**
- **Release of wrong property**
- **Missed deeds of trust**



# Releases

- Deed -- so must comply with requirements of deed, i.e. parties, conveyance language, legal description, acknowledgments
- Must be signed by Trustee, who is the legal title holder under a deed of trust
- Lender's approval necessary
- Lender need not join in execution of release

# Releases (cont'd)

- May be some or all of property in deed of trust -- clearly described
- Must clearly identify the deed of trust from which property released
- Get agreement to release in writing
- Follow terms & conditions precisely

# Cancellations (G.S. 45-37)

- Closing attorney's responsibility to exercise all reasonable efforts to obtain cancellation -- **99 FEO 5**
- Lender closing instructions require "first lien" & lender is also your client -- **RPC 210 & CPR 100**

# Cancellations (cont'd)

- Title certification to title insurers
- Marketability of title impaired until cancellation of record, **Nick v. Baker, 125 N.C.App. 568, 481 S.E.2d 412, (1997)**

# Subordinations

- Identify deed of trust and parties (original and current)
- New statutory provision effective for instruments recorded after 10/1/03  
G.S. 39-6.6 -- “intent of the parties”
- Pre-10/1/03, required joinder of trustee, terms (incl. Interest rate)

# Hypothecated Security

- Borrower not exactly same as property owner
- Consideration to owner? (Fraudulent conveyance / creditor's rights risk)
- Identify "borrower" in DOT. See In re Foreclosure of Enderle, 110 N.C.App. 773, 431 S.E.2d 549 (1993)

# Equity Lines

- “Freeze” or termination letter signed by borrower -- G.S. 45-81
- Payoff is not enough!
- Not purchase money financing

# Possible resolutions

- Voluntary releases / subordinations
- Title company purchase lien and pursue personal remedies against borrower or others
- Quiet Title Action
  - Reformation
  - Equitable remedies
  - Declaratory Judgment
  - Ejectment



Top "Woes" (cont'd)

**Names & Interested Parties**

**Identifying**

**Chain of Title**

**Recording / Indexing**

**Tacking**

# INTERESTED PARTIES:

## Who are they?

- Identify
- Current legal names
- Record names
- Indexing
- Joinder of others
- Competency
- Capacity
- Approvals
- Creditors (incl. IRS)
- Potential claims of others (AIF, fiduciary, principal, offers, SH's)

The background features a faded, sepia-toned image of an antique map. A prominent compass rose is visible in the upper right quadrant, with a globe integrated into its design. The map's lines and text are subtle and serve as a decorative backdrop for the text.

CAUTION:

Be sure to include other  
parties involved

*in the closing itself*

# Identify Interested Parties: Record Title

- Critical to have *record* documents establishing each link:
  - Deed
  - Estate File in county
  - Deed of Trust - Foreclosure
  - Name change (entity or individual)
- Lien creditors of each owner  
Washburn v. Washburn, 234 N.C. 370; 67 S.E.2d 264 (1951)

# Special case: "Flipping"

- **Owner: Property conveyed multiple times within last year, or at closing!**

***Many closing instructions***

***request chain of title information***

- **Lender: Repeated refinances & costs**

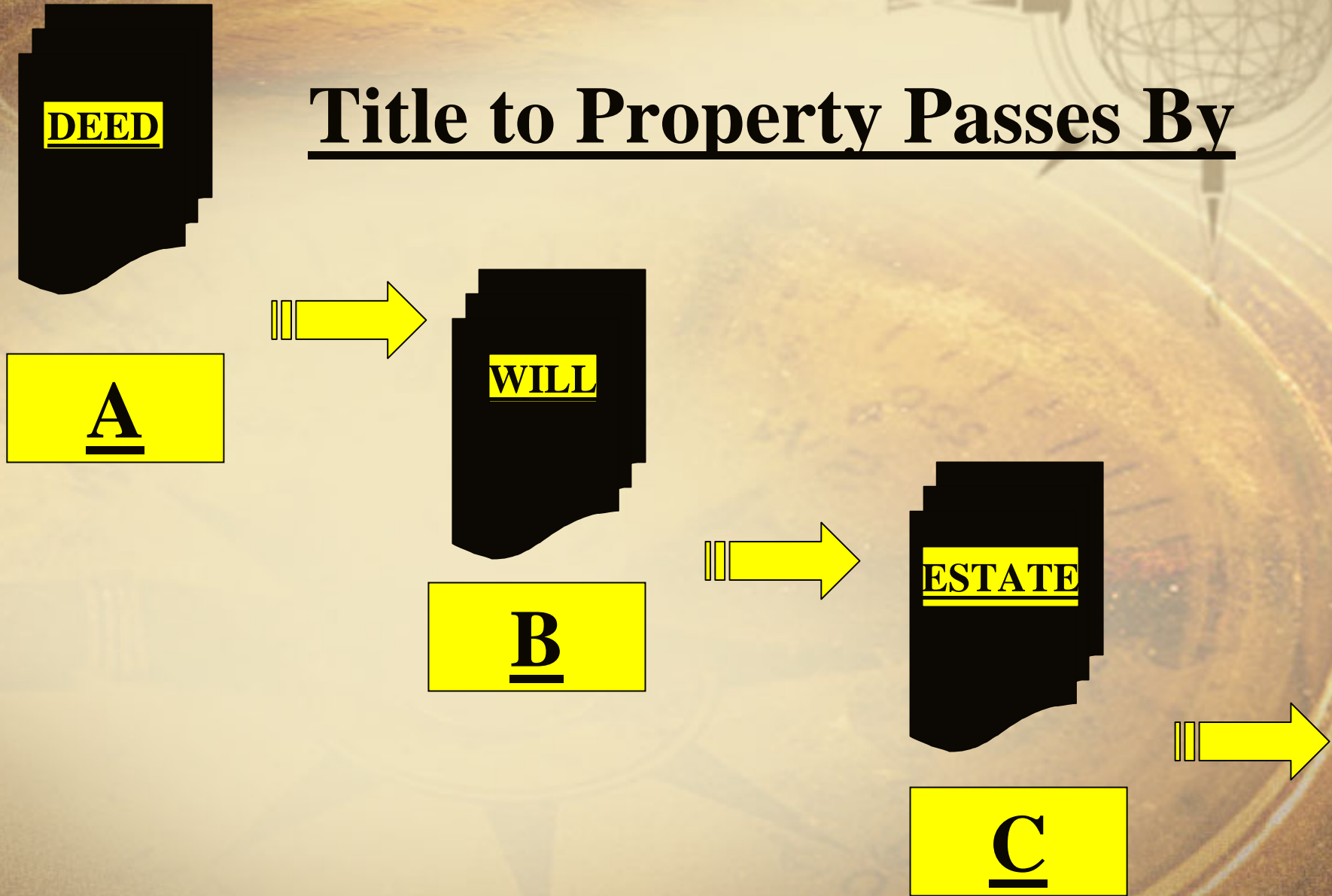
***Why the change???***

**Apply common sense!**

# Establishing and checking "Link"


- All potential owners of an interest must be checked (outs, judgments)
- Carefully review *document itself*, not just "grantor" & "grantee" names
- Sufficient "in" to determine interest
- Sufficient "out" to determine whether the interest still affects the property
- Invalid acknowledgment or recording = "link" is VOID

# Title to Property Passes By





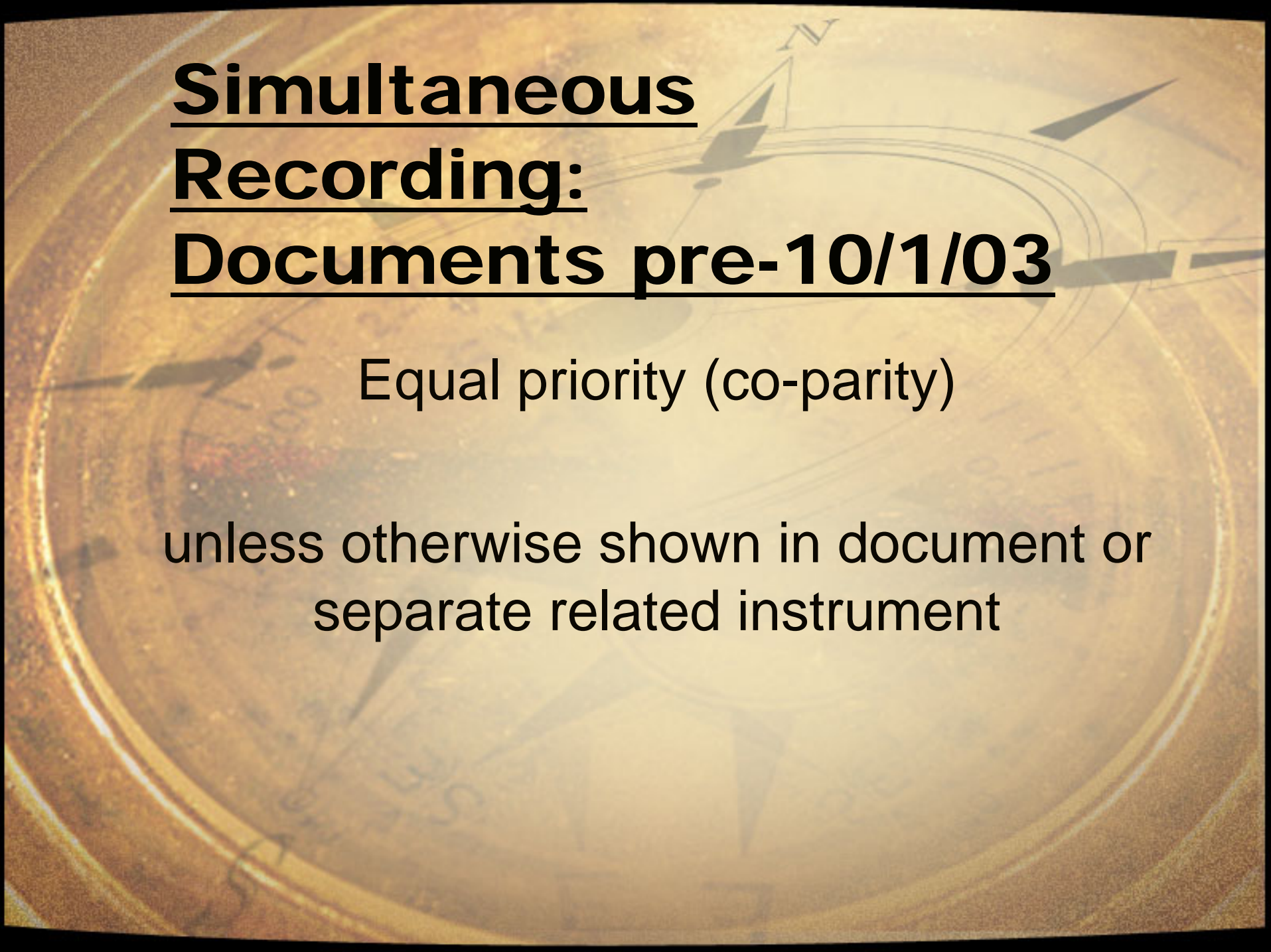




“Outside the chain of title” =  
*not effective* to bind third  
parties!!!

# Recording - Setting Priority (G.S. 47-18 & 47-20)

- **Conveyance of land, Contract to convey, Option to convey, Lease of land for more than three years, deed of trust shall have priority**
- **as against lien creditors or purchasers for a valuable consideration from the donor, bargainor or lessor**
- **from the time of registration thereof**
- **in the county where the land lies**



Simultaneous  
Recording:  
Documents pre-10/1/03

Equal priority (co-parity)

unless otherwise shown in document or  
separate related instrument

# Simultaneous Recording - effective on & after 10/1/03

- **Unless otherwise stated in document or separate instrument signed by party whose interest is adversely affected**
- **Priority presumed based on:**
  - Order of recordation**
  - If same time:**
    - Document number**
    - Sequential Book and page**

# Title by Estoppel vs. Record Chain of Title

- Race recording statutes  
    G.S. 47-18 & 47-20)
- Estoppel = binding on parties to the transaction, only
- “Outside” chain of title
  - cannot be found in title search
  - does not bind third party with recorded interest



Builders Sash & Door  
Co. v. Joyner,  
182 NC. 518, 109 S.E. 259 (1909)

**"In the construction of our registration laws, this Court has very insistently held that no notice, however full and formal, will supply the place of registration." (p. 521)**

# Examples of “links” -- missed or misunderstood

- Devisees under will
- Life tenants
- Members of a “class” of devisees or beneficiaries (such as “children” rather than named individuals)
- Spouse
- Easement interests, reserved or conveyed with another parcel

# Examples of “links” -- missed or misunderstood

- Unmarried co-tenants with an interest
- Trustee, Guardian or other fiduciary
- Judgment creditors of co-tenants (such as decedents' family, see Washburn v. Washburn)
- “Flipping” & mortgage fraud
- Title by Estoppel



# Recording Problems creating Missing Link

- **Rerecording deed and not deed of trust**
- **Names wrong on documents**
- **Recorded in wrong order**
- **Simultaneous recording**

# Title Search Problems creating Missing Link

- **Not checking all documents in chain of title**
- **Missed deeds of trust, judgments, easements or other exceptions**
- **Not updating at recordation (CSC & ROD)**
- **Not checking temporary indexes**

# Title Search Problems creating Missing Link (cont'd)

- **No conveyance of common areas to association**
- **Not fully reviewing estate and foreclosure files**
- **Not checking judgments on all owners, especially beneficiaries of estate**



# Minimum Standards for Indexing Real Property Instruments

<http://www.secretary.state.nc.us/land/>

- d. Non-human names containing Mount or Mt and Saint or St shall be converted into their abbreviated or full form. Such names shall be indexed as they appear in the document.

Example:

Name - Mount Olive Baptist Church

MOUNT OLIVE APPLIANCE INC  
MOUNT OLIVE BAPTIST CHURCH  
MOUNT OLIVE RADIO SUPPLY

MT HERMAN METHODIST CHURCH  
MT OLIVE BAPTIST CHURCH INCORRECT (Full word)  
MT PLEASANT BAPTIST CHURCH abbrev.

Name - St Joseph Hospital

ST CROIX TANNING CENTRE INC  
ST JOSEPH HOSPITAL  
ST MARKS CHURCH

SAINT JAMES BAPTIST CHURCH  
SAINT JOSEPH HOSPITAL INCORRECT (Converted)  
SAINT MATTHEW BAPTIST CHURCH

#### 5.06 Initials, Letters, and Acronyms.

- a. When a non-human name contains a human surname and two human given name initials, no space shall separate an initial from another given name initial. A space shall separate a surname initial or a series of two (2) or more given name initials from the given name or the surname.

Example:

Name - C C Magnum Inc

CATS MEOW CORP  
CC MAGNUM INC  
GRACE H. CLYMER INC

# Proper indexing is critical!!!!

- Minimum Standards for Indexing Real Property Instruments (mandatory since 1997)  
<http://www.secretary.state.nc.us/land/>  
(53 pages)
- pre-1997, Different counties with different standards
- Diverse population: Hispanic, Asian, Eastern European name conventions

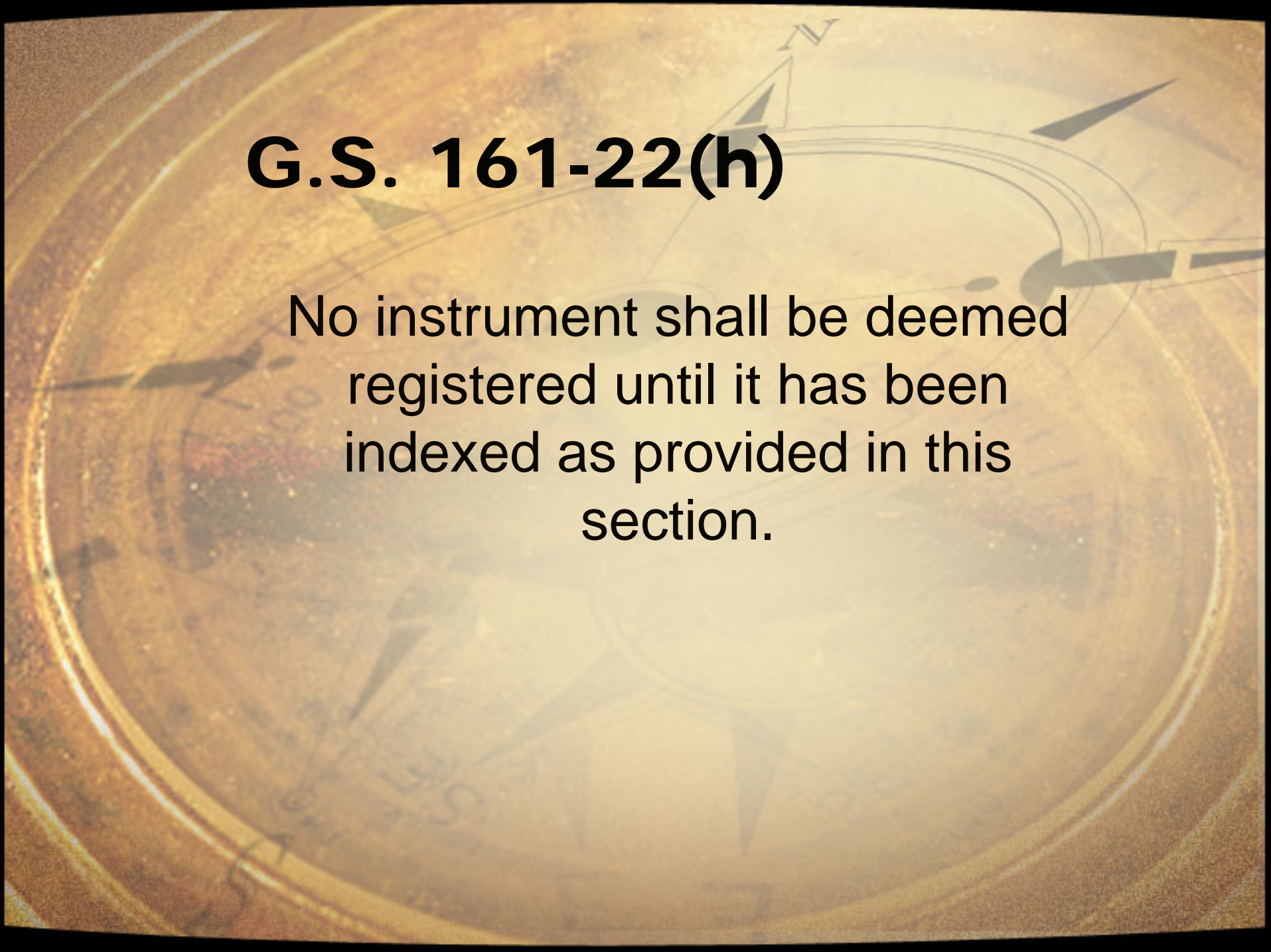
# Indexing

G.S. 161-14.2,

G.S. 161-22 &

G.S. 147-54.3(b) and (b1).

- Legible signatures
  - Plus initials in typed names
- Plus typed name (if varies from signature)
  - DOT - grantor & trustee only
    - Partnership & partners



G.S. 161-22(h)

No instrument shall be deemed registered until it has been indexed as provided in this section.



# Corporations, LLC's, and Limited Partnerships

- Secretary of State

[www.secretary.state.nc.us/  
Corporations/](http://www.secretary.state.nc.us/Corporations/)

- If property in prior name, need certified copies of “chain” of name changes

**Do you know your clients'  
names from past 10 years?**

*Name change  
special proceedings*

*Divorces; marriages*

# CHURCHES & RELIGIOUS ORGANIZATIONS

- Entity type & name in which title held
- Title limitations in vesting instrument  
Reversions and restrictions
- Type of organization now involved:
  - Nonprofit corporation -- G.S. Chapter 55A
  - Religious Societies -- G.S. Chapter 61
  - Voluntary organization -- G.S. 39-24

# CHURCHES & RELIGIOUS ORGANIZATIONS *(cont'd)*

- Local church
  - Organizational documents / requirements
  - Approval by congregation and board
  - Authorized persons
- Connectional churches
  - Organizational requirements
  - Due authorization and approval
  - Web sites

# POWERS OF ATTORNEY & ATTORNEYS-IN-FACT

- Principal Alive and Well (Exhibit A)
- Many lenders will not approve closing
- Why can't principal attend in person?
- Incompetent principal -- durable POA
- POA must be recorded in county registry in which property located *at or prior to* closing

# POWERS OF ATTORNEY --

## Powers of the AIF

- POA must give specific authority to deal with real estate
- No gifts unless specifically provided in POA or broad POA powers and gift to charitable organization continuing a “personal history” of such gifts
- No gifts or transactions to AIF unless specifically authorized in POA (incl. mortgaging property for loan to AIF)

# POWERS OF ATTORNEY

## Powers of AIF

- Does not give AIF the authority to act for the Principal in the Principal's fiduciary capacity -- such as where principal is officer of corporation or is AIF for a third party
- Recorded termination required
- Statutory notary forms
- Military POA's and acknowledgments
  - 10 U.S.C. 1044a

# ESTATES

## Who Inherits?

- Will?
- Date of Death?
- Estate file?
- Open or closed?
- Any heirs predecease decedent?
- Caveat or other special proceeding?



# INTESTATE ESTATE



- No Will, Invalid Will or Unprobated Will
- Estate Taxes (U.S.)
- Estate & Inheritance Taxes (N.C.)
- Creditors -- Notice & Payment
- Open or closed estate
- Fiduciary
- Evidence of identity of all heirs

# TESTATE ESTATE

The background of the slide features a faint, golden-toned image of a globe with a grid of latitude and longitude lines. In the upper right corner, there is a compass rose with four directional points. The overall aesthetic is professional and academic.

- Will
- Beneficiaries
- Estate Taxes (U.S.)
- Estate & Inheritance Taxes (N.C.)
- Creditors -- Notice & Payment
- Open or closed estate
- Fiduciaries -- Executor & Trustee

Recommendation --  
identify in your recorded  
documents:

- AKA's, FKA's, NKA's
- Reason for change (merger, marriage, etc.)
- Date of the change
- Location of other documents of the change (other state's Secretary of State, divorce in another county)

# Possible resolutions

- Voluntary releases / subordinations
- Title company purchase lien and pursue personal remedies against borrower or others
- Quiet Title Action
  - Reformation
  - Equitable remedies
  - Declaratory Judgment
  - Ejectment

# TACKING

- RPC 99
- Owner's policy only
  - Loan policies on limited (single owner) searches
  - Affirmative coverages for non-\$ things that would matter to owner
  - “Generic” exceptions in loan policies
- Only as good as the prior policy

# Tacking (cont'd)

The background of the slide features a faint, golden-toned image of a globe with a compass rose overlaid on it. The globe is centered in the upper right quadrant, and the compass rose is positioned around it, with its needle pointing towards the top. The overall aesthetic is professional and navigational.

- Advise client of risk
- Client planning changes / improvements?
- Judgment searches
  - All owners w/in 20 years
  - For the full 20-year period (not just to prior policy date)

# Tacking: Risk Cases

- **Prior policy has errors**
- **Prior policy on different property**
- **Inadequate search period**
- **Inadequate judgment search (full 20-years)**
- **Tacking to loan policy rather than owner's policy (coverage disappears)**
- **Tacking without full disclosure to and permission of client**
- **Not obtaining owner's coverage**

# Tacking: Risk Cases (cont'd)

- **Not obtaining enough owner's coverage (especially in commercial situation)**
- **Not adequately reviewing prior policy and its exceptions**
- **Not fulfilling requirements for necessary endorsements**
- **Not clearing problems with title company *prior to closing***



# Possible resolutions

- Voluntary releases / subordinations
- Title company purchase lien and pursue personal remedies against borrower or others
- Quiet Title Action
  - Reformation
  - Equitable remedies
  - Declaratory Judgment
  - Ejectment

The background of the slide features a faded, golden-brown image of a globe with a compass rose overlaid on it. The globe shows the continents and is surrounded by latitude and longitude lines. The compass rose has four cardinal directions marked with arrows. The overall aesthetic is that of an old, weathered map or document.

Top "Woes" (cont'd)

**Buyers**

**Competency**

**Judgments & Liens**

**Tacking**

**Patriot Act**

**Purchase Money**

# Buyers' Issues

- Structure ownership - other options (to prevent lien of a purchaser from attaching)
- Incompetency of purchaser / borrower
- Advise buyer of effects on ability to use property of co-tenants with judgments, federal tax liens or spouses
- Federal Debt Collection Procedures Act of 1990 (28 U.S.C. 3201(b) -- US judgment liens not subject to PM priority
- Loans for construction or equity lines -- bifurcated by Dalton Moran Shook case

# Purchase Money

- Same transaction. Childers V. Parker's, Inc., 274 N.C. 256, 162 S.E.2d 481 (1968)
- Same recording “package”
- Proceeds actually applied to purchase; “But for” the loan, there would be no purchase. Slate v. Marion, 104 N.C.App. 132, 408 S.E.2d 189 (1991)

# Purchase Money (cont'd)

- Lender priority *only*
- Marital interest of *non-title-holder* spouse is subordinate. NCGS 39-13
- For *purchase money* portion ONLY, not future construction -- Dalton Moran Shook case
- Not subordinate to construction loan. Carolina Builders. V. Howard-Veasey Homes, 72 N.C.App. 224, 324 S.E.2d 626 (1985)

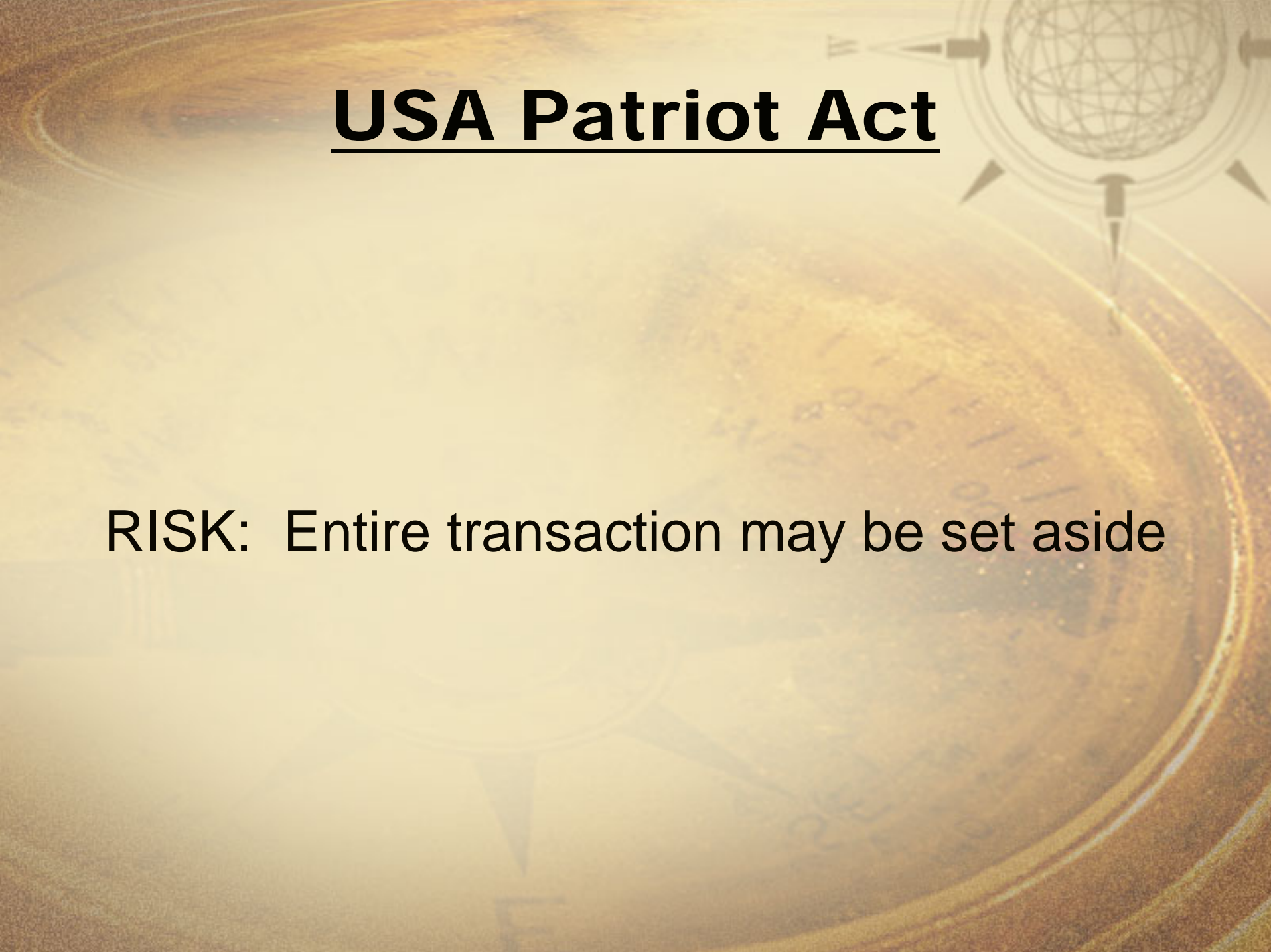
# Purchase Money: Issues

- Conveyance to only one spouse
- Mortgage solely for purchase, not future advance, construction, equity line
- Simultaneous recording
- Risky because no clear statutory authority

# Terrorists: OFAC list

- Executive Order 13224 / Foreign Assets
- Specially Designated Nationals and Blocked Person (“SDN”)
- U. S. Treasury, Office of Foreign Asset Control (“OFAC”)  
[www.treas.gov/offices/eotffc/ofac/sanctions/t11ter.pdf](http://www.treas.gov/offices/eotffc/ofac/sanctions/t11ter.pdf)
- American Land Title Association:  
[www.alta.org](http://www.alta.org)

# USA Patriot Act

The background of the slide features a faded, golden-brown image of a globe with a grid of latitude and longitude lines. A compass rose is overlaid on the globe, with its needle pointing towards the top right. The overall aesthetic is that of a historical or navigational map.

**RISK:** Entire transaction may be set aside



# Possible resolutions

The background of the slide features a faint, golden-toned image of a globe with a grid of latitude and longitude lines, positioned in the upper right quadrant. Below the globe is a compass rose with four cardinal directions indicated by arrows. The overall background has a textured, slightly grainy appearance with a warm, yellowish-gold color palette.

- Voluntary releases / subordinations
- Title company purchase lien and pursue personal remedies against borrower or others
- Quiet Title Action
  - Reformation
  - Equitable remedies
  - Declaratory Judgment
  - Ejectment

Top “Woes” (cont’d)

**Construction Loans &  
Mechanics’ Liens**

**Seller/Developer/Builder  
 (“Contractor” under G.S. Ch. 44A, Art 2)**

**“Commencement” & Subordinations  
 (Dalton Moran Shook case)**

# “Contractor” who can claim a lien under mechanics’ lien statute, G.S. 44A-8

Lien can be claimed by:

“Any person who performs or furnishes labor or professional design or surveying services or furnishes materials or furnishes rental equipment pursuant to a contract, either express or implied, with the owner of real property for the making of an improvement thereon . . . .”

Not required to be a licensed contractor under the licensing statute, G.S. 87-1 *et seq.*

Includes architects, graders, surveyors, suppliers and other contractors

**Dalton Moran Shook, Inc. v.**  
**Pitt Dev. Co.,**  
**113 N.C. App. 707, 440 S.E.2d 585**  
**(1994)**

- Single purchase/construction deed of trust
- Court bifurcated priority
- “purchase money” had first priority
- “construction / future advance” advances were subordinate to contractors employed prior to purchase (architects)

# Future Advance Provisions required in Deed of Trust, G.S. 45-68

- wholly or partly to secure future obligations
- amount of present obligations secured
- maximum principal amount, including present and future obligations, which may be secured thereby at any one time
- No more than 15 year period within which advances may be secured

## “Commencement”

“first furnishing of labor or materials at the site of the improvement by the person claiming the lien.” G.S. 44A-10

- Designing
- Surveying
- Contracting
- Grading
- Providing materials (special orders)
- **RISK!!!!** Closing “delayed” from original scheduled date and time

# Possible resolutions

- Voluntary releases / subordinations
- Title company purchase lien and pursue personal remedies against borrower or others
- Quiet Title Action
  - Reformation
  - Equitable remedies
  - Declaratory Judgment
  - Ejectment

# Top "Woes" (cont'd)

## **Mobile Homes**

**Owner of home -- outstanding DMV title  
(Prior owner, defaulted owner)**

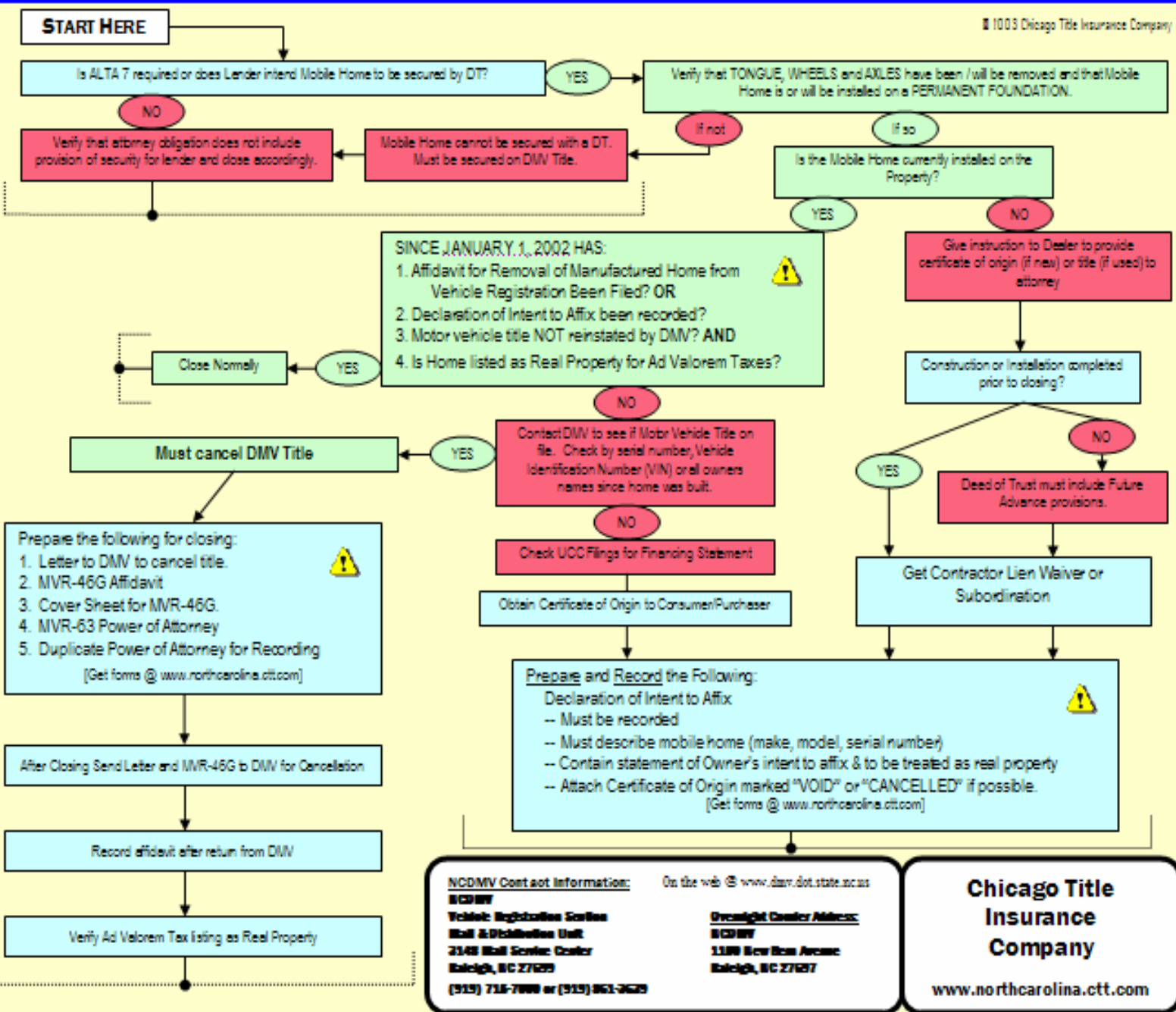
**Liens on DMV title  
(Prior lender, defunct lender)**



Statutory Conversion  
Documents for any  
transaction to be closed /  
foreclosed post 1/1/02

- Either G.S. 47-20.6 or 47-20.7 applies to convert title to RP
- [www.northcarolina.ctt.com/docs/word/MOBILEHOMES5-4-02.doc](http://www.northcarolina.ctt.com/docs/word/MOBILEHOMES5-4-02.doc)

**MOBILE HOME FLOWCHART**



**NCDMV Contact Information:** On the web @ [www.dmv.dot.state.nc.us](http://www.dmv.dot.state.nc.us)  
**NCDMV**  
**Vehicle Registration Section**  
**Mail & Distribution Unit**  
**2148 Mail Service Center**  
**Raleigh, NC 27629**  
**(919) 716-7000 or (919) 861-3629**

**Overnight Center Address:**  
**NCDMV**  
**1100 New Sun Avenue**  
**Raleigh, NC 27627**

**Chicago Title Insurance Company**  
[www.northcarolina.ctt.com](http://www.northcarolina.ctt.com)

Land / home  
deal =  
*construction*



Need subordinations / waivers from  
contractors (incl. seller) who graded,  
installed well, septic, driveway or other  
improvements

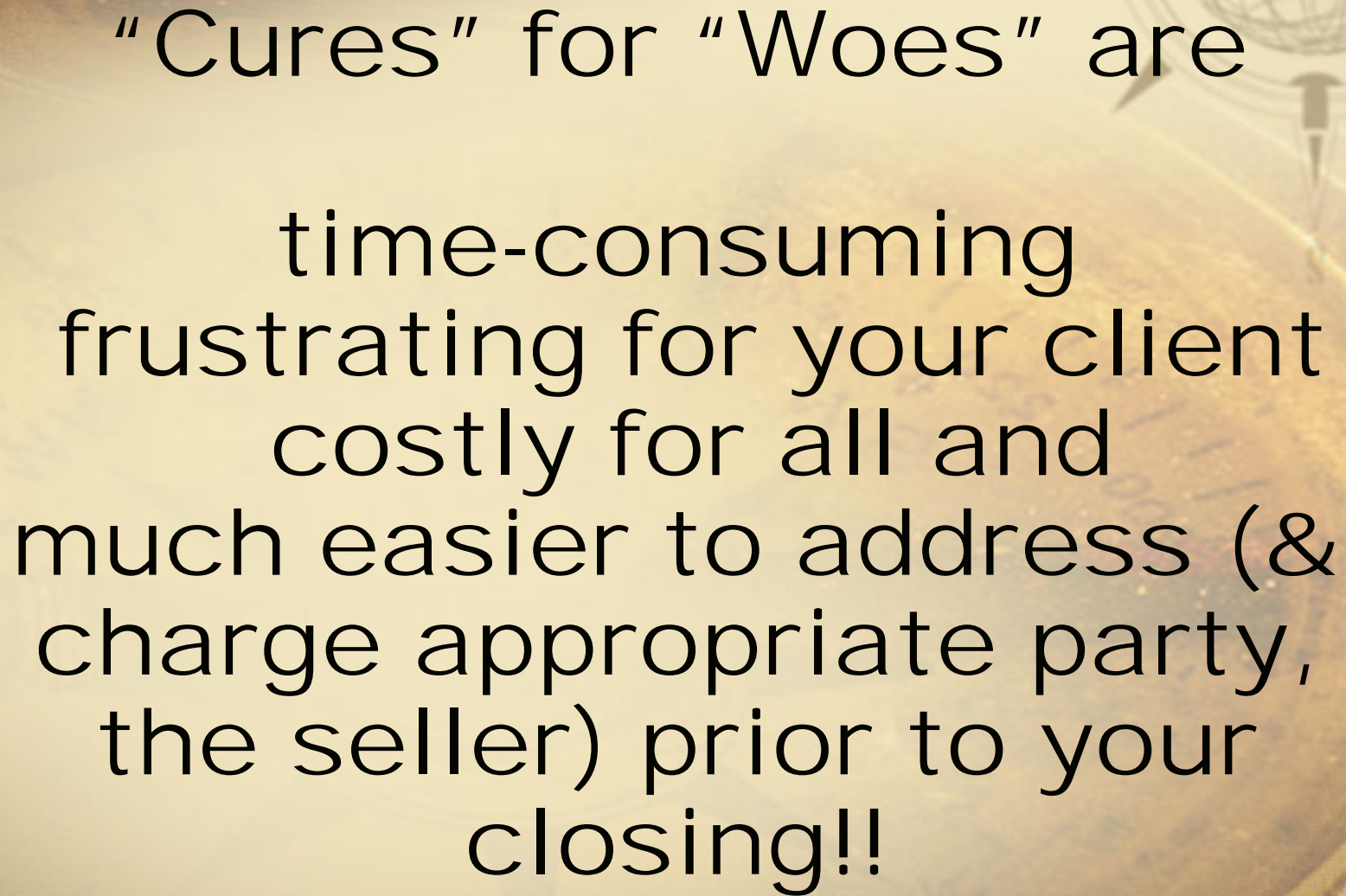
# Possible resolutions

- Voluntary statutory conversion documents from interested parties, incl. DMV record title holder(s) and lienholder(s)
- Assignment from DMV record lienholder, claim & delivery on mobile home, conversion to real property then foreclose

# Possible resolutions

The background of the slide features a large, semi-transparent globe in the upper right corner, showing latitude and longitude lines. Below the globe is a compass rose with four cardinal directions. The entire background has a warm, golden-brown color palette with a subtle, circular pattern that resembles a globe's projection.

- Quiet Title Action
  - Reformation
  - Equitable remedies
  - Declaratory Judgment
  - Ejectment
  - Judicial Sale

The background features a stylized globe with latitude and longitude lines, positioned in the upper right quadrant. Below the globe is a compass rose with four cardinal directions. The entire scene is set against a warm, golden-brown gradient with faint, concentric circular patterns, suggesting a map or a globe's surface.

“Cures” for “Woes” are  
time-consuming  
frustrating for your client  
costly for all and  
much easier to address (&  
charge appropriate party,  
the seller) prior to your  
closing!!

The background features a faded, sepia-toned image of an antique map. A prominent compass rose is visible in the upper right quadrant, with a globe integrated into its design. The map's lines and text are faint and difficult to discern. The overall color palette is warm, consisting of various shades of brown, tan, and gold.

Questions?



*Thank*

*You!*