

2009 Title “Oddities” Creating Claims

OR
Why Real Estate Practice **IS** the Professional
Practice of Law
(not some minor delegable process!)



Tacking & Prior Policies ~ Common Fallacies ~



- Prior policy does **NOT** mean:
 - Title is marketable
 - Your client will be able to get coverage expected
 - BEWARE: Intervening quitclaim or trustee’s deeds
 - Prior *loan* policy (only)
 - Broad exceptions in the deed warranties
 - Exceptions in the prior policy
 - Claims have depleted policy &/or rendered property uninsurable
 - Exclusions from coverage
 - Loss won’t be suffered by an unhappy and uninformed client!

Tacking & Prior Policies ~ Common Fallacies ~

- Rules of Professional Conduct 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
 - Loan policy coverages “disappear” when loan paid
- Only as good as the prior policy
- Advise client of risk
- Client planning changes / improvements?
- Judgment searches
 - All owners within 20 years
 - For the full 20-year period (not just to prior policy date)

Tacking: Know the Risks!!

- Prior policy has errors
- Prior policy on different property
- Inadequate search period
- Tacking to loan policy rather than owner's policy (coverage disappears)
- Tacking without full disclosure to and permission of client
- Insufficient owner's coverage
- Inadequate review of prior policy and its exceptions
- Endorsement requirements not met
- Problems not addressed *prior to* closing



Title Opinions & Legal Descriptions !!! SIZE MATTERS !!!



- Replatted (change boundaries or common areas?)
- Larger or smaller or just different?
- Direct access?
- Appurtenant easements (septic, sewer, well)?
- REA's or cross easement agreements?

Taxes



- Taxes under prior parcel coding system in unfamiliar counties.
- Business personal property taxes.
- Taxes on whole tract or larger lot, prior to subdivision or especially minor subdivision.
- Missing deferred taxes
- Missing taxes due to the city in newly annexed areas

Condos, PUD's & HOA's Condo Act? Unit Ownership? PCA?



87

2004

Doc ID: 014910250023 Type: CRP
Recorded: 07/29/2004 at 10:29:08 AM
Fee Amt: \$59.00 Page 1 of 23
Workflow: 1812372
Buncombe County, NC
Otto W. DeBuhl Register of Deeds
406-428

Prepared by & Return to:

DECLARATION OF CONDOMINIUM UNDER
NORTH CAROLINA UNIT OWNERSHIP ACT

ESTABLISHING a plan for condominium ownership of property located in
Buncombe County, North Carolina, pursuant to the Unit Ownership Act of the
State of North Carolina, to be known as:

VILLAGE*

THIS DECLARATION OF UNIT OWNERSHIP, made and executed this 27 day of --

Page 1 Sec 1 112 A4 1" Ln 1 Col 1 REC NEW EDIT COPY

start

Condos, PUD's & HOA's

- Condo - units in place or have the engineer's certificate
- Owner's association dues – lender only
- Phases, amendments and access
- Declarations
- Rights of first refusal
- Notice of new owner to HOA
- Who owns common areas?
- Who has Declarant's rights?

Short Sales



- NCBA/NCAR Proposed Short Form Addendum
 - HUD Rules
 - Fraud risks

FOLLOW THE MONEY!
DISCLOSE! DISCLOSE! DISCLOSE!

Plats, Maps & Surveys



Location,
Location,
Location,
MATTERS!!!

SURVEYS PROVIDE:

- Verification of legal description
- Survey v. record legal
- Check with multi-county properties as to what needs to be recorded where
- Verify access (legal direct v. private means)
- General exceptions v. specific exceptions
 - boundary line disputes
 - easements
 - encroachments
- Commercial context – provide information needed for certain endorsements such as access, location, survey, contiguity
- Location of improvements, encroachments, easements, boundary line claims

**PROTECT
or
ADVISE
YOUR
CLIENT!!**



**CHICAGO TITLE INSURANCE COMPANY
NORTH CAROLINA**

Owners Need Surveys - Still!
(Or, The Risks To You and Your Client of Lender's "Survey Coverage Without a Survey")
CHICAGO BULL Volume 1, Edition 5

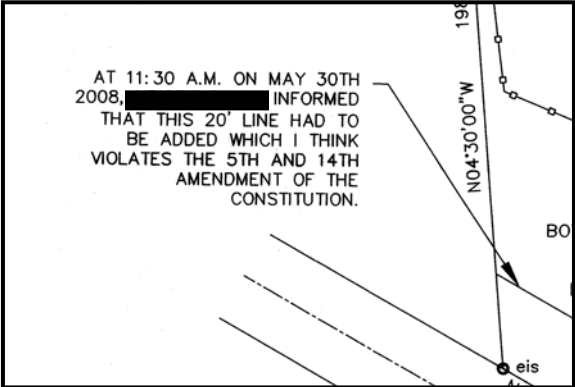
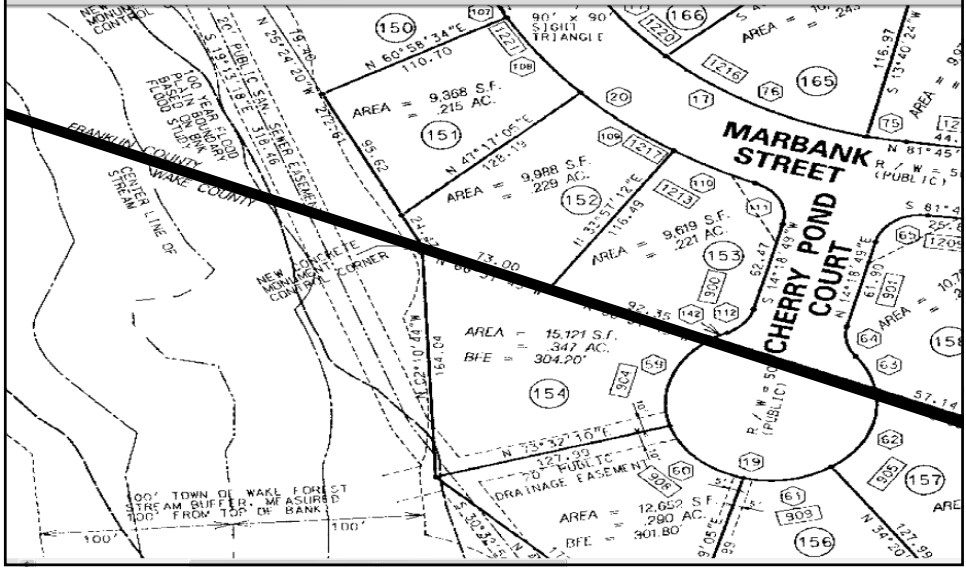
You have heard it a hundred times. In gathering information about a closing, you ask either the real estate broker or the owner about whether you should obtain a survey. Their response: "My broker told me I do not have to have a survey. The title insurance company will cover it." To assist in lowering costs, the practice of providing lender's coverage without a new survey was developed in residential transactions. In the absence of a current survey, the customary practice is to issue the loan policy without a survey exception. And now this has expanded into commercial properties (under \$5 million) as well! But the owner will not be covered, even in those situations where the lender might be! The owner's policy contains an exception for easements, setbacks and other matters which would have been shown on a survey. Below are a few examples of situations that arise all too often where the owner really needed a survey, for title insurance and other reasons! In many of these cases, the lender could have avoided delinquencies and other problems if they, too, had obtained an actual survey to identify problems at or before closing.

1. **Access:** Does the owner have "reasonable," "legal" or any right of access at all? Is this clear from the public record? Is the physical access within this legal access? Some examples: The driveway is actually across the property line on the neighbor's property or in an exclusive right-of-way for the benefit of an unfriendly neighbor. Physical access is over a private road, even though they abut a public road, and no one is sure who is responsible for maintenance of the private road, if anyone. Does your owner need a search of and title insurance coverage for a critical appurtenant easement? Is the access actually located in (but not recorded in the Registry of) the adjoining county? (NOTE: Physical access used may not be the same as the "legal" or "reasonable" access covered by a title policy.)
2. **Acreage:** Was actual acreage important to your owner in determining the value of the property? Will the sale violate a subdivision ordinance? Loss through an acreage discrepancy of even one acre of land to be developed for an office park may have serious financial ramifications for your client's development plan!
3. **Waterfront?** Does the property extend to the lake's high water mark or is it just lake

Oh, No!! County Lines

Access, Taxes, Schools, Voting

1869
Tools



AT 11:30 A.M. ON MAY 30TH 2008, [REDACTED] INFORMED THAT THIS 20' LINE HAD TO BE ADDED WHICH I THINK VIOLATES THE 5TH AND 14TH AMENDMENT OF THE CONSTITUTION.

As referenced & recorded in MC 47 Page 13, and remapped two (2) times since parcel has been recorded as to codify the asinine request of head planner [REDACTED] as it changes daily.

Roads, Streets & Abandonments

NCDOT NORTH CAROLINA DEPARTMENT OF TRANSPORTATION
Connecting people and places in North Carolina — safely and efficiently, with accountability and environmental sensitivity.

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Secondary Roads Database Lookup

Search for a Secondary Road:

Division Number: All
 County: All
 Road Number:
 Road Name:

Submit

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Public or Private?

<http://www.ncdot.org/dmv/forms/>

MVR-4 (Rev. 3/06) North Carolina Division of Motor Vehicles

Duplicate Certificate of Title and Assignment by Registered Owner
 Application for Duplicate

Year: Make:

Vehicle Identification Number:

Name of Registered Owner:

STREET OR R.F.D.

Mailing Address

IF DIFFERENT

First Lien: NAME:

Second Lien: DATE:

Third Lien: DATE:

In 1997, the North Carolina Division of Motor Vehicles. If the customer has an opportunity (We) would like the opportunity.

CHECK APPLICABLE BILLING
 Application for Duplicate
 Application for Duplicate

MOBILE HOMES

MVR-48G (Rev. 2/06) North Carolina Division of Motor Vehicles

Affidavit of Mobile Home Ownership

Year: Vehicle Identification (Serial):

Owner 1 ID #:

Owner 2 ID #:

Residence Address (in City and State):

Date of Lien:

Lienholder Name:

Address:

City:

I/We, the registered owner, have placed this property in the hands of the party. The deed to the property is recorded in the public records of the county of _____, State of North Carolina.

Mobile Home Flow Chart

Start Here

1. MVR-48G must be completed and recorded in the county records.

2. Verify that TOWNSHIP, WARD, and REC'D have been left on record and that Mobile Home is not to be recorded as a RETIREMENT FOUNDATION.

3. If so, Is the Mobile Home currently included on the Property?

4. If YES, Get instruction to Owner to provide certificate of origin from other County's authority.

5. If NO, Declaration of Intent to Abandon (to be recorded).

6. Make vehicle title "NOT" extendable by DMV AND

7. Is Home listed as Real Property for All Valuation Taxes?

8. If YES, Obtain Certificate of Origin in County/Purchaser.

9. Get Construction Lien Waiver or Subordination.

10. Prepare the following for filing:
 a. Letter to DMV to cancel title.
 b. MVR-48G Affidavit.
 c. Cover Sheet for MVR-48G.
 d. MVR-43 Power of Attorney.
 e. Qualifying Power of Attorney for Recording (Get form @ www.ncdotonline.com).

11. After Closing Send Letter and MVR-48G to DMV for Cancellation.

12. Record Affidavit after return from DMV.

13. Verify All Valuation Tax Billing on Real Property.

14. Since January 1, 2002 HAS:
 1. Affidavit for Removal of Manufactured Home from Vehicle Registration Been Filed?
 2. Declaration of Intent to Abandon been recorded?
 3. Make vehicle title "NOT" extendable by DMV AND
 4. Is Home listed as Real Property for All Valuation Taxes?

15. Prepare the following:
 a. Letter to DMV to cancel title.
 b. MVR-48G Affidavit.
 c. Cover Sheet for MVR-48G.
 d. MVR-43 Power of Attorney.
 e. Qualifying Power of Attorney for Recording (Get form @ www.ncdotonline.com).

16. After Closing Send Letter and MVR-48G to DMV for Cancellation.

17. Record Affidavit after return from DMV.

18. Verify All Valuation Tax Billing on Real Property.

19. Obtain Certificate of Origin in County/Purchaser.

20. Get Construction Lien Waiver or Subordination.

21. Prepare the following for filing:
 a. Declaration of Intent to Abandon.
 b. Must be recorded.
 c. Must describe mobile home (make, model, serial number).
 d. Complete statement of Owner's intent to allow it to be treated as real property.
 e. Attach Certificate of Origin marked "VOID" or "CANCELLED" if possible. (Get form @ www.ncdotonline.com).

22. Program and Record the Following:
 a. Declaration of Intent to Abandon.
 b. Must be recorded.
 c. Must describe mobile home (make, model, serial number).
 d. Complete statement of Owner's intent to allow it to be treated as real property.
 e. Attach Certificate of Origin marked "VOID" or "CANCELLED" if possible. (Get form @ www.ncdotonline.com).

23. NCDOT Contact Information:
 Title Registration Section
 1000 North Salisbury Street
 Raleigh, NC 27601
 Phone: 919-733-2000
 Fax: 919-733-2000
 Email: title@ncdot.gov

24. County Clerk's Office:
 1000 North Salisbury Street
 Raleigh, NC 27601
 Phone: 919-733-2000
 Fax: 919-733-2000
 Email: title@ncdot.gov

25. Chicago Title Insurance Company
 1000 North Salisbury Street
 Raleigh, NC 27601
 Phone: 919-733-2000
 Fax: 919-733-2000
 Email: title@ncdot.gov

NCDOT NORTH CAROLINA DEPARTMENT OF TRANSPORTATION
 Connecting people and places in North Carolina — safely and efficiently, with accountability and environmental sensitivity.

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Business | DMV | Newsroom | Programs | Construction | Travel & Maps

Post A Comment

Unit:DMV (Vehicle Registration)

Handles all initial incoming questions (e-mails) regarding Vehicle Registration. This includes license plates, tags and titles.

License Plate Number:

VIN Number:

Please address your questions/concerns here.

These emails are answered during normal business hours (Mon-Fri, 8am-5pm) within 7 business days. For DMV related questions, you may call 919-715-7000 during normal business hours for an immediate response. For all other questions, please call 1-877-DOI-4YOU during normal business hours for an immediate response.

Check the status of a previously posted Comment
 Please take the time to read our [Privacy Notice](#)

Name: Phone:
Ex: 919-999-1234

Email: Set Anonymous:

Comment:

File Attachment: Browse...


NOTE: File transfers are limited to 5 MB

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**Mobile Homes:
Got a question?**

https://apps.dot.state.nc.us/contactus/PostComment.aspx?unit=DMV_VR

Notary statute → NCGS Chapter 10B
 OR
 Recording statute → NCGS Chapter 47



Notaries

“Warm Bodies” (or not...)

AP# 0036396067 LNF# 0036396067

Noel Holdings, LLC (SEAL)
NOEL HOLDINGS, LLC -BORROWER

STATE OF North Carolina Durham County ss:
On this day personally appeared before me
Noel Holdings, LLC
to me known to be the individual described in and who executed the within and foregoing instrument,
and acknowledged that they signed the same as their free and voluntary act and
deed, for the uses and purposes therein mentioned.
GIVEN under my hand and official seal this 29th day of August 2007

D. ARLENE DAVIS
Notary Public
Durham County
State of North Carolina
My Commission Expires Mar 25, 2012
(Official Seal)

D. Arlene Davis
Notary Name: D. Arlene Davis
Notary Public for the State of North Carolina
My commission expires: 03/25/2012

Who???

Hague Convention Members and Non-Members www.hcch.net

The screenshot displays the HCCH website interface. On the left, there is a navigation menu with items like 'Apostille Section', 'Text of the Convention', 'Coercing States', 'How to get an Apostille', and 'Practical operation documents'. The main content area is titled 'HCCH Members' and shows details for Spain:

Country	Member since	National Organ
Spain	15-08-1955	Ministerio de Asuntos Exteriores División General de Asuntos Consulares y Protocolo de los Españoles en el Extranjero C/ General Paralela, 55 28017 MADRID tel: +34 (91) 379-1700 / 379-1610 fax: +34 (91) 379-0493

Below this, it lists 'Party to' various conventions, including:

- State of the Hague Conference on Private International Law [01]
- Convention of 1 March 1954 on civil procedure [02]
- Convention of 24 October 1956 on the law applicable to maintenance towards children [03]
- Convention of 15 April 1958 concerning the recognition and enforcement of maintenance obligations towards children [04]
- Convention of 5 October 1961 concerning the powers of authorities, applicable in respect of the protection of minors [05]
- Convention of 5 October 1961 on the Conflict of Laws relating to the Testamentary Dispositions [11]
- Convention of 5 October 1961 Abolishing the Requirement of Legal Public Documents [32]
- Convention of 15 November 1965 on the Service Abroad of Judicial Documents in Civil or Commercial Matters [44]
- Convention of 4 May 1971 on the Law Applicable to Traffic Accidents
- Convention of 18 March 1975 on the Law Applicable to Products
- Matters [20]
- Convention of 2 October 1975 on the Law Applicable to Products in Maritime Navigation [23]
- Convention of 2 October 1975 on the Recognition and Enforcement of Maintenance Obligations [25]

On the right side, there is a list of 'Conventions' with checkboxes for each, including:

- Austria
- Belgium
- Denmark
- France
- Germany
- Italy
- Japan
- Spain
- Switzerland
- United Kingdom
- United States of America
- European Community



**Chicago Title Seminar Series
2009**