

Handbook for South Carolina Dirt Lawyers

Second Edition

TABLE OF CONTENTS

Chapter 1 – Traps for the Unwary	1
Chapter 2 – Searching Titles	13
A. Introduction	13
B. Search periods	15
C. Getting started-establishing the chain of title	16
D. Complications in establishing the chain of title	17
E. The next step – abstracting deeds, estates, and foreclosures	18
F. Next – checking “outconveyances” and liens	20
G. Next – checking property taxes	22
H. Next – checking judgments and tax liens against the purchaser	22
I. If the search leads to Federal records	23
J. Prepare a summary	23
Exhibit A: Sample Chain of Title	26
Exhibit B: Sample Derivation Clause	27
Exhibit C: Sample Deed Abstract Form	28
Exhibit D: Sample Estate Abstract for Estates Prior to July 1, 1987	29
Exhibit E: Sample foreclosure Abstract Form	31
Exhibit F: Sample Completed Check Sheets	32
Exhibit G: Sample Title Summary	37
 Chapter 3 – Insurable Title vs. Marketable Title (and curing title defects)	 39
 Chapter 4 – Basic Title Insurance	 47
A. Introduction	47
B. Premiums	48
C. Indemnity agreement	49

Table of Contents

D.	Policyholder	49
E.	On-record defects	51
F.	Off-record defects	51
G.	Amount of insurance	53
H.	Defects in existence on the date of the policy	53
I.	Policy forms	53
J.	The commitment	54
K.	Parts of the title insurance policy	55
L.	Endorsements	61
1.	Provide mortgage guaranty insurance	61
2.	Insure title to personal property	62
3.	Insure superpriority hazardous waste liens	62
4.	Insure losses without claim of right	62
5.	Insure losses from unmarketable mortgages	62
Chapter 5 – Title Insurance Policy Endorsements		63
Exhibit 1		
ALTA 1-06	Street Assessments	85
Exhibit 2		
ALTA 2-06	Truth in Lending	86
Exhibit 3		
ALTA 3-06	Zoning – Unimproved Land	87
ALTA 3.1-06	Zoning – Completed Structure	88
Exhibit 4		
ALTA 4-06	Condominium	90
Exhibit 5		
ALTA 5-06	Planned Unit Development	92
ALTA 5.1-06	Planned Unit Development	93
Exhibit 6		
ALTA 6-06	Variable Rate Mortgage	94
ALTA 6.2-06	Variable Rate, Negative Amortization	95
Exhibit 7		
ALTA 7-06	Manufactured Housing Unit	96
ALTA 7.1-06	Manufactured Housing – Conversion; Loan	97
ALTA 7.2-06	Manufactured Housing – Conversion; Owners	99

Table of Contents

Exhibit 8		
ALTA 8.1-06	Environmental Protection Lien	100
Exhibit 9		
ALTA 9-06	Restrictions, Encroachments, Minerals	101
ALTA 9.1-06	Restrictions, Encroachments, Minerals- Owner's Policy, Unimproved Lands	103
ALTA 9.2-06	Restrictions, Encroachments, Minerals- Owner's Policy, Improved Land	105
ALTA 9.3-06	Restrictions, Encroachments, Minerals Endorsement	107
ALTA 9.4-06	Restrictions, Encroachments, and Mineral Endorsement – Owner's Policy- Unimproved Land	109
ALTA 9.5-06	Restrictions, Encroachments, and Mineral Endorsement – Owner's Policy- Improved Land	111
Exhibit 10		
ALTA 10-06	Assignment	113
ALTA 10.1-06	Assignment and Date Down	114
Exhibit 11		
ALTA 11-06	Mortgage Modification	116
Exhibit 12		
ALTA 12-06	Aggregation	118
Exhibit 13		
ALTA 13-06	Leasehold – Owner's	119
ALTA 13.1-06	Leasehold – Loan	122
Exhibit 14		
ALTA 14-06	Future Advance – Priority	125
ALTA 14.1-06	Future Advance – Knowledge	128
ALTA 14.2-06	Future Advance – Letter of Credit	131
ALTA 14.3-06	Future Advance – Reverse Mortgage	133
Exhibit 15		
ALTA 15-06	Nonimputation – Full Equity Transfer	136
ALTA 15.1-06	Nonimputation – Additional Insured	137
ALTA 15.2-06	Nonimputation – Partial Equity Transfer	139

Table of Contents

Exhibit 16		
ALTA 16-06	Mezzanine Financing	140
Exhibit 17		
ALTA 17-06	Access and Entry	142
ALTA 17.1-06	Indirect Access and Entry	143
Exhibit 18		
ALTA 18-06	Single Tax Parcel	144
ALTA 18.1-06	Multiple Tax Parcel	145
Exhibit 19		
ALTA 19-06	Contiguity – Multiple Parcels	146
ALTA 19.1-06	Contiguity – Single Parcel	147
Exhibit 20		
ALTA 20-06	First Loss- Multiple Parcel Transactions	148
Exhibit 21		
ALTA 21-06	Creditors’ Rights	150
Exhibit 22		
ALTA 22-06	Location	151
ALTA 22.1-06	Location and Map	152
Exhibit 23 -	Doing Business Endorsement	153
Exhibit 24 -	Fairway Endorsement	154
	Fairway Endorsement (Limited Partnership)	155
	LLC Fairway Endorsement	156
	LLP Fairway Endorsement	157
Exhibit 25 -	Going Concern Endorsement	158
Exhibit 26 -	Last Dollar Endorsement	159
Exhibit 27 -	Revolving Credit Endorsement	160
Exhibit 28 -	Shopping Center Endorsement	161
Exhibit 29 -	Survey Endorsement	162
Exhibit 30 -	Usury Endorsement	163
Chapter 6 –	Affirmative Coverage	165

Table of Contents

Chapter 7 – Ethics in Real Estate Transactions	169
A. Competence	170
B. Scope of representation	171
C. Safekeeping property	173
D. Diligence	175
E. Communication	175
F. Conflicts of interest – multiple representation	176
G. Conflicts of interest – prohibited transactions	177
H. Conflicts of interest – former client	178
I. Unauthorized practice of law	178
J. Selected South Carolina Ethics Cases and Ethics Advisory Opinions	180
Chapter 8 – Preparing Closing Statements	193
A. Federal law	193
B. State law	193
C. Gathering information	195
D. Paid outside of closing and net funding	195
E. Prorations	196
F. Certification	197
Chapter 9 - Selected Title and Closing Issues	201
1. Access issues	201
2. Acknowledgments and probates	201
3. ALTA/ACSM Land Title Surveys	202
4. Beachfront management	203
5. Bonds for title; contracts for deed; contracts for sale	205
6. Borrower’s right to select attorney	208
7. Closing protection letters; insured closing letters	209
8. Cemeteries	210
9. Churches	210
10. Closing and trust accounting software	211
11. Condominiums and PUDs	211
12. Construction	214

Table of Contents

13. Contracts	220
14. Deeds	222
15. Deeds in lieu of foreclosure	224
16. Deed recording fee	224
17. Disclaimers	225
18. Dockominiums	227
19. Dual contracts	228
20. Easements	228
21. Encroachments and setback issues	230
22. Engagement letters	231
23. Entities--corporations, partnerships, limited partnerships, limited liability companies and limited liability partnerships	231
24. Environmental matters	233
25. Estates	234
26. Extended coverage	236
27. Failing lenders	236
28. Fixtures	237
29. Flood insurance	237
30. Forfeitures	238
31. Hazard (casualty) insurance	239
32. "Heirs property"	239
33. Insurance Department Regulations; legislation concerning title agents	239
34. IOLTA	240
35. Islamic financing	240
36. Joint tenancy with right of survivorship	241
37. Judgments	242
38. Leases	242
39. Legal descriptions	243
40. "Mail away" closings	244
41. Mobile homes	245
42. Mortgage Electronic Registration Systems, Inc. ("MERS")	246
43. Mortgage satisfactions	247
44. Opinion letters	248

Table of Contents

45. Partition actions	249
46. Permanent Resident (“Green”) Cards	249
47. Persons with disabilities and minors	250
48. Powers of attorney	251
49. Prepayment penalties	252
50. Privacy Act	252
51. Private agreements	253
52. Proceedings to determine heirs	253
53. Quiet title actions	254
54. Railroads	254
55. Repairs	255
56. Residential Landlord Tenant Act	255
57. Residential loan broker licensing	255
58. Restrictions	256
59. Secondary market	257
60. Seller disclosures, termite letters, heating and cooling system letters, home inspections, home warranties	258
61. Servicemembers Civil Relief Act	260
62. Survey matters	260
63. Tax deeds in chains of title	261
64. Tax issues	261
65. Timeshares	267
66. Trusts	269
67. Trust accounting	269
68. Truth in Lending Act – Regulation Z and the Right of Rescission	270
69. Uniform Gifts to Minors Act	272
70. USA Patriot Act	272
71. Water rights	273
Chapter 10 – Basic Bankruptcy for Dirt Lawyers	275
A. Introduction	275
B. Real estate overview of bankruptcy law	276
C. The Bankruptcy Court system	277

Table of Contents

D.	Commencement of bankruptcy cases; vesting title in the estate	279
E.	Bankruptcy proceedings	280
F.	The automatic stay	281
G.	The many ways property can come out of bankruptcy	282
H.	Foreclosure of a debtor's property	286
I.	Liens survive bankruptcies	287
J.	Since liens survive bankruptcies, what could bankruptcy lawyers do to assist their clients?	289
K.	Discharge	289
L.	Conversion	289
M.	Reopening cases	290
N.	Dismissal of a case	290
O.	Practice tips for the real estate practitioner	290
 Chapter 11 – Fraud and Forgery		291
A.	Illegal flip transactions	292
B.	“Silent” second mortgages	294
C.	Inflated deposits and soft second mortgages	295
D.	Nominee loans; straw buyers and borrowers	295
E.	Fictitious or stolen identity	295
F.	The helping hand	295
G.	Air loans	295
H.	Asset “rental” programs	296
I.	Employment verification programs	296
J.	Backward applications	296
K.	Equity Skimming	296
L.	Payments to third parties	296
M.	Foreclosure scams	297
N.	Sale prices higher than list prices	297
O.	Money laundering	297
P.	Occupancy fraud	297

Table of Contents

Chapter 12 – Useful Web Sites	301
A. General use; search engines	301
B. South Carolina specific	301
C. Locating lenders	301
D. National	302
E. Title Insurance Companies	303
F. 1031 Tax Exchange	303
G. Locating existing Title Policies	303
H. Production software	303
I. South Carolina County Web sites	304
Table of Cases	307
Index	310