

## Tales From the Vault Claims Stories

"But he said he was a Doctor...!"

Elderly Mrs. Simpson and her husband have owned resort property for many many years. Mr. Simpson died a year ago. Attorney Jones is retained by Buyer Buoyant to close the purchase of the home, but from "Doctor" Sleazy Simon who it appears got a quitclaim deed from Mrs. Simpson a few months before Buoyant's closing, with no stamps and no consideration shown! Shortly after the closing Mrs. Simpson, who hasn't been down very much since losing her husband, comes to the house for a visit only to find that Buoyant is on site making major improvements!

RESULT: OF COURSE – IT WAS A FORGERY! TOTAL FAILURE OF TITLE!

For more information, check out our Chicago Bull, "Fraud Stories: Are you Watching Your Back?" at [www.northcarolina.ctt.com](http://www.northcarolina.ctt.com).

## "QUOTABLE"

*"It is a comfortable feeling to know that you stand on your own ground. Land is about the only thing that can't fly away."*

— ANTHONY TROLLOPE

*"No matter how dreary and gray our homes are, we people of flesh and blood would rather live there than in any other country, be it ever so beautiful. There is no place like home."*

— L. FRANK BAUM

*Your job just got easier!*



## CALENDAR OF EVENTS

### March 22

Asheville Area Paralegal Assoc.  
2nd Annual Ethics Symposium  
AB Tech / Enka Campus

### April 4

Triangle CREW Meeting  
Woman's Club / Raleigh

### April 9

CREW Charlotte Meeting  
Westin / Charlotte

### April 12

Charlotte Business Journal Seminar  
Identifying Great Leaders  
The Employers Assoc. / Charlotte

### April 12

Annual Spring Fling BBQ  
CTIC New Bern Office

### April 20-21

NC Bar Assoc. Real Property Section  
Annual Meeting  
Sheraton / New Bern

### May 3

Spring Fling BBQ  
CTIC Morehead City Office

### May 5

Guilford Co. Paralegal Assoc.  
CPE Seminar Hilton Garden Inn  
Greensboro

### June 30

NC Bar Assoc. Paralegal  
Certification Alternative Qualification  
Period Deadline

### August 8-11

NCLTA Annual Convention  
Mid Pines Resort / So. Pines

## INAUGURAL EDITION



It is with great pleasure that the employees of Chicago Title Insurance Company in

North Carolina share with you and your offices our first edition of the Chicago Title Examiner. Our goal is to relay pertinent information that brings value to you and your business. In this newsletter, you will find legal

articles about current issues in the real estate market as they relate to title insurance and your practice, as well as a calendar of events, practice pitfalls and how to avoid them, claims stories, project spotlights and last but not least, various product features. We are always looking for your suggestions and comments, so please share your thoughts with your local Chicago Title representative.

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## RAILROAD RIGHT-OF-WAY

### CTIC UNDERWRITING TEAM

North Carolina Railroad Company has recently announced and begun claiming and requiring new leases for a fee right-of-way of 100' on either side of the tracks (over 200' total width) on its entire corridor across the state, based on its 1849 charter granting authority to condemn up to that width. Needless to say, this will affect thousands of property owners – cities, counties, businesses and individuals. So it seemed a good time to reiterate some of

the basics of railroad right-of-way resources and law.

### Identifying the Railroad Company and the Interest Involved

A railroad company's interest may substantially affect the value and usability of property for its intended purpose. The interest may become apparent from reviewing the record legal descriptions of property to

SEE RAILROAD / PAGE 2



North Carolina Railroad System map available online at <http://www.bytrain.org/quicklinks/PDF/2005RailMap.pdf>

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## SOAP BOX



### Connie Banks & Jay Williams

Recently Connie and Jay supported us in closing a \$60MM FHA-insured bond deal to construct new facilities for Onslow County Hospital Authority'. The FHA really complicated the deal with a lot of special provisions and requirements that are really in conflict with how we typically operate in NC. However, Connie and Jay took the bull by the horns and addressed each and every requirement in an extraordinarily timely and accurate manner. In fact, when we went to closing, the FHA had absolutely no last-minute revisions or questions, which I understand is very rare. I appreciate the amount of time Connie and Jay spent on the deal. Their efforts resulted in a smooth closing.

- Arey W. Grady, III

Sumrell Sugg Carmichael Hicks & Hart, PA  
New Bern, NC

## MAKE IT A FAVORITE

www.northcarolina.ctt.com

Stay updated with frequent visits to the CTIC website. Locate offices, search legal articles and download needed forms. Add the site to your list of Favorites today!

## CHICAGO TITLE HAPPENINGS

**CLE SEMINARS**  
Over the months of January and February, Chicago Title hosted Sixty Minutes (X6) of Dirt, a North Carolina Bar 6 hour Accredited CLE seminar in eight locations across the state for more than 700 attorneys and paralegals. Sixty Minutes (X6) of Dirt featured Donald Cole, (Chief Underwriting Counsel for the Fidelity National Title Group family of title companies, including, Chicago Title) addressed national mortgage fraud; Alan Ferguson, a Member of The Firm at Fisher Park covered one hour of Ethics and Chicago Title State Underwriting Counsel addressed various topics. We are pleased that we will be able to provide the seminar to

paralegals across the state after filming the Charlotte seminar on February 7th. Look for more information on upcoming video showings for 6 hours of paralegal credit, including an hour of ethics.

### POWER OF ONE

Chicago Title's Commercial Resources Division, a platform for the commercial real estate professional to transact business with qualified, knowledgeable attorneys and underwriting staff, will soon be making its debut. Our quick turnaround on a quality product that exhibits attention to detail is unmatched by any other title company. Our services include, but are not limited to, 1031 Exchanges, National Title Information, Reinsurance, Out of State Order Placement and Administration, Commercial Endorsements, National Multisite capability and Escrow Services. These and a host of additional products and services for our commercial clients are easily accessible through our website at [www.northcarolina.ctt.com](http://www.northcarolina.ctt.com). Look for the Commercial Resources Division link on the home page. The Power of One - One Address, Many Services - and very, very exciting!

## WELCOME ROBBIE COX

Chicago Title welcomes W. Robbins (Robbie) Cox to our Legal Team. Though he will work out of the Raleigh office, Robbie will be assisting with underwriting questions from customers across the state and will provide support to all our offices. We are delighted to have him as part of the Chicago Title family.



### RAILROAD/CONTINUED FROM PAGE 1

be conveyed, recorded maps of the property or a current survey, or other right-of-way or documents in the chain of title. If the extent of the railroad company's rights is of concern to your client, as is usually the case in commercial transactions, then additional investigation into the source of the claimed right-of-way may be required.

A determination of the actual interest and rights of the property owner vis-à-vis the railroad company may involve review of the granting instrument (voluntary grant, condemnation, or company's charter) as well as relevant case law (which may interpret the language of any of the above, or which may even involve the particular company and the document language specific to this company).

### Easement or Right-of-way or Fee

The document creating the railroad right-of-way determines, directly or indirectly, both the ownership rights of the railroad company and the width of the right-of-way conveyed. The term "right-of-way" is a term of art. A right-of-way may encompass a limited purpose easement, or it may involve the entire fee simple absolute. *McCotter v. Barnes*, 247 N.C. 480; 101 S.E.2d 330 (1958). A deed reciting that the grantors did "sell and convey" to the grantee a described tract of land, with habendum "to have and to hold the same for railroad purposes in fee simple forever" conveys the fee simple and not a mere easement for railroad purposes." *Craig v. Southern Ry. Co.*, 262 N.C. 538, \*; 138 S.E.2d 35 (1964). Compare: *International Paper Co. v. Hufham*, 81 N.C. App. 606, \*; 345 S.E.2d 231 (1986), in which only a "right and privilege" to construct a railway was granted. "The terms (whether easement or fee, conditions, restrictions, and even width of the right-of-way) are determined, in order of priority, as outlined below. *Tighe v. Railroad*, 176 N.C. 244; *Griffith v. Southern Railway Company*, 191 N.C. 84 (1925). See also G.S. 39-1 which creates a presumption of fee simple conveyance.

To read more about the basics of railroad right-of-ways, visit our Legal Articles and Forms at [www.northcarolina.ctt.com](http://www.northcarolina.ctt.com).

## CTIC INSURES!

In October of 2006, Donald C. Perry, of Perry, Bundy, Plyer & Long L.L.P. entrusted Donna Altman, Monroe Branch Manager to provide appropriate title services on the largest transaction in her Chicago Title career. Mr. Perry, as local counsel for Union County, facilitated the county's acquisition of 95 plus acres along Crane Road as part of a school bond transaction with Ashley L. Hogewood, Jr. of the Charlotte office of Parker, Poe, Adams &

Bernstein as Special Bond Counsel responsible for real estate aspects of the transaction.

Mr. Perry performed a full title search to accommodate the title services needed on the transaction which had owners and lenders coverage in the amount of \$77,640,000.00. While the government and public finance considerations are complex, the real estate piece is material to the financing. Coordination by local and special bond

counsel, underwriting efficiency and the closing detail are all critical to meet the expectation of the investors, bond trustees and attorneys involved in the financing.

The transaction closed November 8th with a mark-up of the title commitment at closing. Mr. Perry delivered a final opinion and ancillary documents the next day and Donna produced the final policy the same day.

**CORRECTION TO PAGE 210 OF 2007 CLE MANUSCRIPT**  
As presented at our CLE (but erroneously not highlighted in earlier versions of our manuscript on p. 210, under section (2)): "Recording (and, therefore, re-recording) do NOT validate an otherwise invalid purported conveyance or mortgage" Though the Register of Deeds can re-record originals or certified copies under G.S. 47-14(a), that does not make the recordings valid, nor is it retroactive. G.S. 47-36.1 provides a legal authority for "minor error" corrections with a correction statement. But no statute sanctions mark-ups of certified copies. Nor is there authority for drafter "corrections" of substantial substantive issues (such as changing the property or parties, etc.) without a true correction document signed by all affected parties. Nor would any such correction or change be retroactive under our "pure race" recording statutes, G.S. 47-18 and G.S. 47-20. Those wishing to provide comment to or be included in broadcast emails for review of proposed clarifications of the above statutes, should e-mail Nancy.Ferguson@ctt.com.

## DID YOU KNOW?

### DID YOU KNOW THAT:

Effective January 23, 2007 IRS Rev. Proc. 2007-12 has set forth the acceptable submissions for the 1099-S Certification for No Information Reporting. The certification has been changed to include 2 new statements of Seller Assurance. Both assurances require the seller to certify the residence was not acquired in a 1031 type exchange within the past five years. For more information, go to <http://www.irs.gov/formspubs/index.html>.

### DID YOU KNOW THAT:

US Citizenship and Immigration Services (USCIS) will soon begin administering a pilot test of the new naturalization exam. Upon feedback from volunteer test-takers, the USCIS will refine questions and release the new exam in Spring 2008. How well would you do if you had to take the exam today? The NC Bar Association has posted the questions at <http://www.ncbar.org/news/1/1990/index.aspx>. Give it a try!

### DID YOU KNOW THAT:

DocPrep Online, Chicago Title's internet based document preparation system allows you to access and complete title opinion forms from your local computer via the internet and submit them electronically to the Chicago Title office or agent of your choice. Contact your local office for more information or go to [www.docpreponline.com](http://www.docpreponline.com) to sign up today.

## HANDY STATUTES

NCGS 32A-40(d)	AFFIDAVIT OF ATTORNEY-IN-FACT
NCGS 36C-10-1013	CERTIFICATION OF TRUST
NCGS 39-6.6	SUBORDINATION AGREEMENT
NCGS 47-18	PRIORITY OF SIMULTANEOUSLY RECORDED INSTRUMENTS
NCGS 59B	UNIFORM UNINCORPORATED NONPROFIT ASSOCIATION ACT (USEFUL FOR CHURCHES AND HOMEOWNERS' ASSOCIATIONS)
NCGS108A-70.5	MEDICAID ESTATE RECOVERY (LIEN ON REAL PROPERTY)

## PRACTICE PITFALLS ...and how to avoid them

All owners of property must be the grantor of deed of trust, even if not same as the borrower. Fundamental, right? Except we have seen a spate of erroneous purported conveyances, naming the borrowers as grantors when they have either insufficient or no legal title. Examples:

(1) Borrower is limited liability company but owners are the individual owners and bank only wants borrower shown on and signing deed of trust,

with owner to sign only a hypothecated security addendum - WRONG!

(2) Borrowers are individuals but owner is a family trust and bank only wants individuals to sign deed of trust and trustees to only sign a "trust addendum" - WRONG!

(3) Borrower is individual but owners are tenants-by-entireties and bank only wants borrower to sign without joinder of spouse who is co-tenant-by-entirety - WRONG!

All of these may result in a total failure of title since they do not contain granting clause by the actual owner of the property. Most addenda are not duly acknowledged. Even worse, they probably will not even be indexed in the public records since Registers are only required to index parties, i.e. named grantors and signers of the document itself, - NOT signers of addenda, attachments or exhibits to the instrument.

