

**MARYLAND SOCIETY OF SURVEYORS
FALL CONFERENCE
FRIDAY, OCTOBER 6, 2017
DELTA by MARRIOTT (formerly Hunt Valley Inn)
HUNT VALLEY, MARYLAND**

**THE REAL ESTATE SETTLEMENT PROCESS (BOTH COMMERCIAL AND
RESIDENTIAL) AND TITLE RELATED ISSUES; AND THE ENTANGLEMENTS OF
THE LAW FOR THE MARYLAND SURVEYOR**

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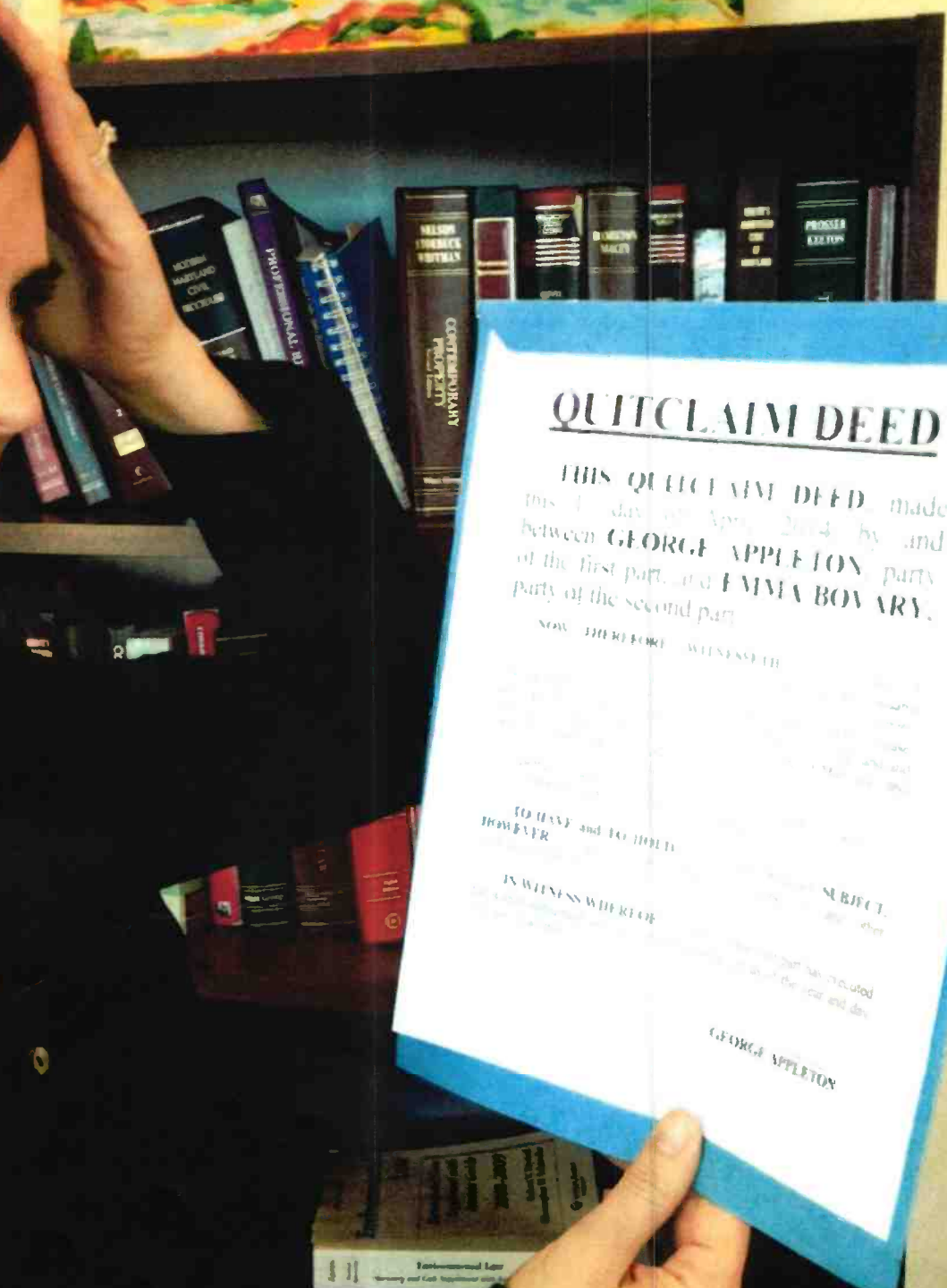
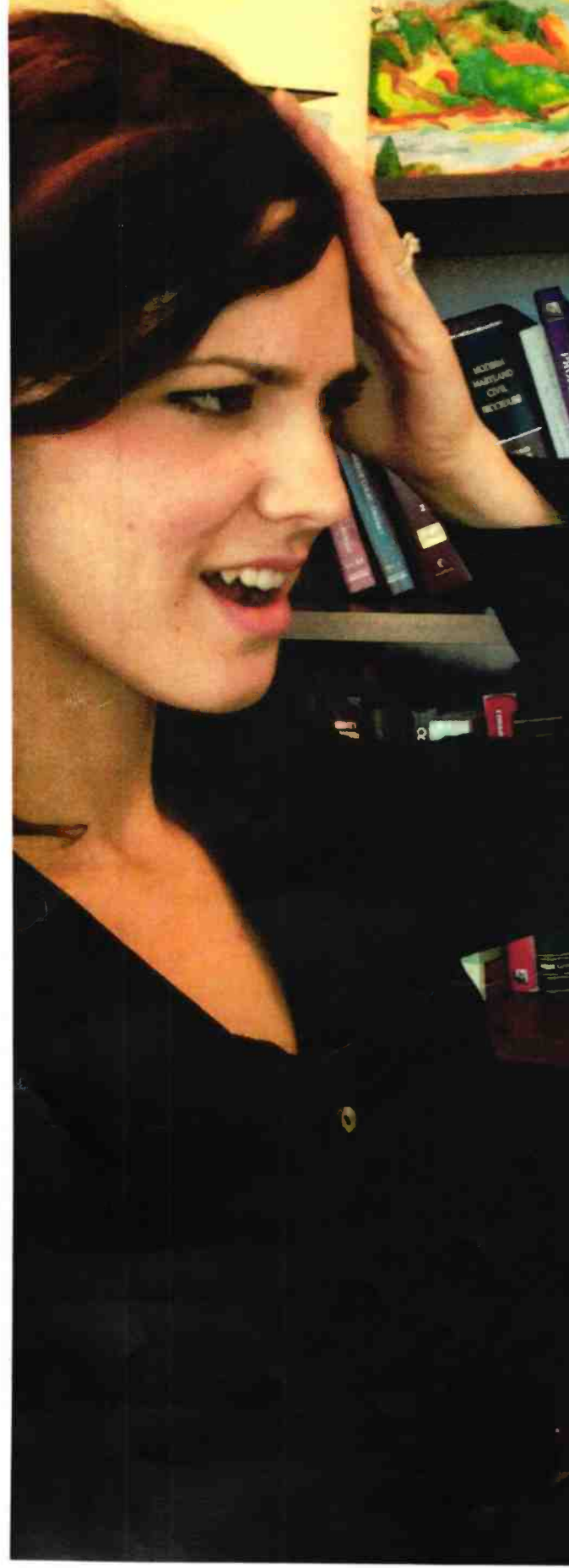
**THE REAL ESTATE SETTLEMENT PROCESS (BOTH COMMERCIAL AND
RESIDENTIAL) AND TITLE RELATED ISSUES: AND THE ENTANGLEMENTS OF
THE LAW FOR THE MARYLAND LAND SURVEYOR**

Land Surveyors are an integral part of every real estate closing, whether the closing be for commercial or residential purposes. Therefore, the surveyor should be knowledgeable about all of the relevant closing documents, and the terms contained therein, in order to be an active participant in the process; and to have a general understanding of the many aspects of the law which may be relevant to that process.

This seminar will include a review of the real estate contract, the title insurance commitment, the closing statement, title affidavits, the deed, powers of attorney, and the various types of "surveys" which may be required: the COMAR boundary survey and the location drawing.

Such legal concepts, which many times have an affect on a closing, will be discussed based upon actual situations, dealing with common law disabilities, assault and battery, dower, bank fraud, criminal convictions, family law (divorce, separation and same-sex marriage), foreign languages, acts of God, taxes, the Statute of Frauds, concealed weapons, estates and trusts, insurance, *inter alia* – there should be something in that list for every land surveyor to somehow relate - for both business and personal reasons.

And further, the following recent cases will be discussed: *Wood v. Valliant* (set-back line restrictions), *Grimes v Gouldmann* (deed language), *Rounds v. M-NCP&PC* (slander of title), *Brandt v. U.S.* (abandonment of railroad rights-of-way), and *Montgomery County, Maryland v. Bhatt* (adverse possession against a county); and the new quiet title statute.



QUITCLAIM DEED

THIS QUITCLAIM DEED, made
this 1 day of April, 2014, by and
between **GEORGE APPLETON**, party
of the first part, and **EMMA BOVARY**,
party of the second part.

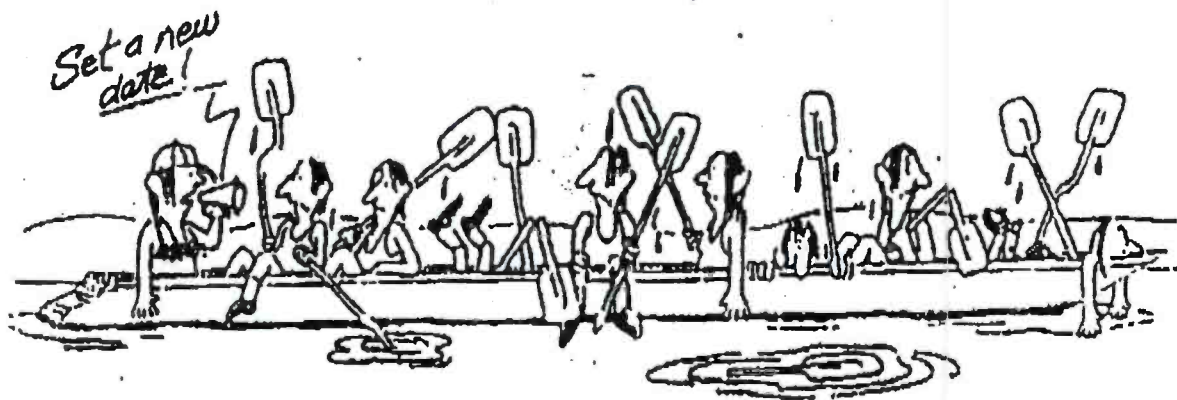
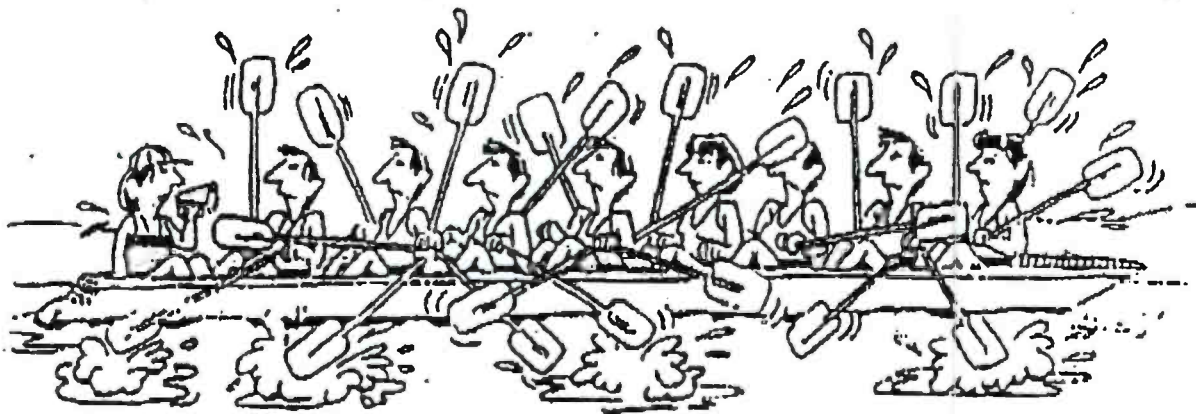
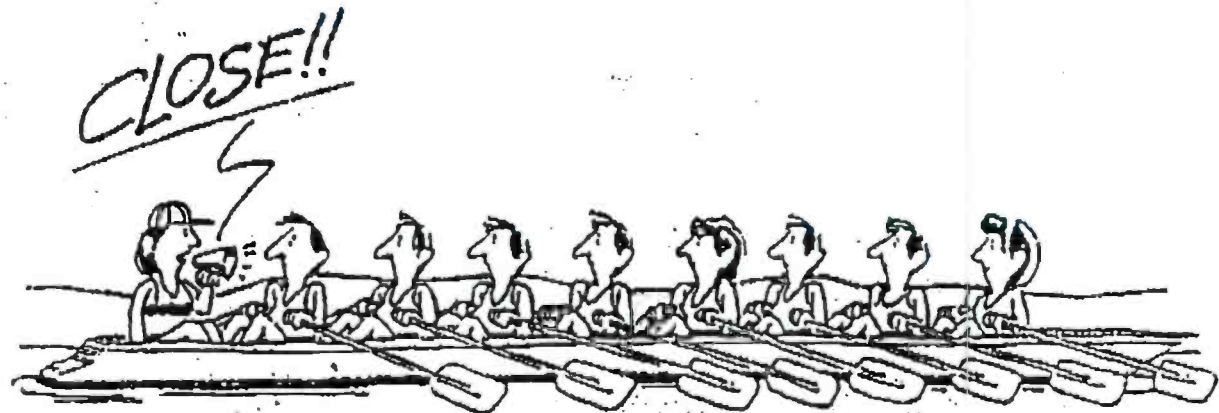
NOW, THEREFORE, WITNESSETH

TO HAVE and TO HOLD
HOWEVER

IN WITNESS WHEREOF

SUBJECT

GEORGE APPLETON



THE LAW AS IT INTERSECTS WITH **REAL ESTATE CLOSINGS AND** **RELATED SUBJECTS**

Introductory Note and Caveats: You cannot rely on any of the herein described principles of law, without the full knowledge and understanding of the factual basis for a particular situation, and without the proper advice from an attorney. Some of these situations have been derived from my experiences in practicing land surveying, many years ago, and as what I have learned from both of my practices as a profession land surveyor and as a practicing attorney, is that these two professions are so intertwined with one another in how issues with real estate, and other legal problems, can be understood and solved.

DOWER

Dower is the estate to which a widow is entitled, at common law, for the period of her life, in one-third of the lands and tenements of which her husband was seised in fee simple or fee tail, and which her issue, if any, might inherit. Dower is barred or defeated by a written release by the wife in favor of one having a freehold estate in the land, this being usually contained in the husband's conveyance or mortgage of the land. A *Treatise on the Modern Law of Real Property*, §178, Herbert Thorndike Tiffany, Callaghan and Company (1912).

Effective January 1, 1970, "The estates of dower and curtesy¹ are abolished." § 3-202, *Estates and Trusts, Annotated Code of Maryland*; *Silberman v. Jacobs*, 259 Md. 1, 267 A.2d 209 (1970).

At one time I was representing a very prominent bank, which was loaning money to a purchaser of a home located in the District of Columbia. My role was somewhat bland, as the title company was handling the closing, including the disbursement of all funds, and I was in attendance on behalf of the bank to just make sure that the papers got correctly signed. I noticed on the deed, which had been prepared by the title company, that only the husband's name appeared as a grantor, but I knew somehow that his wife was still alive. I mentioned my observation to everyone sitting around the settlement table, and said that I believed that the wife needed to also sign the deed in order to release her dower interest in the property. The reaction that I received from the husband was loud and clear in that there was no way his

¹ The estate by curtesy is that to which a surviving husband is entitled, for the period of his life, in all the lands and tenements of which the wife was seised during coverture in fee simple or fee tail, provided there was issue of the marriage born alive capable of inheritance. *Tiffany Real Property* (1912).

wife, from whom I learned he was estranged, and was in the process of divorcing, would sign anything - "There was no fu'en way, she would sign." The settlement officer quickly woke-up to the fact that I was correct, and ushered the grantor out of the conference room to privately talk with him. I could observe them speaking through the glass door, and the grantor was obviously and extremely upset - he appeared out-of-control, but I then saw that he had calmed down after the officer spoke with him some more. Both of them calmly returned to the conference room, and the officer softly said that "I'll have the signed and notarized deed back to you by tomorrow morning." The next day the deed, fully executed and notarized by the wife, was returned as promised. What happened?

BATTERY

A battery² is the intentional, unpermitted touching of the body of another that is harmful or offensive to the person who was touched. Included in the tort of battery is the unlawful beating of another person or the unlawful application of force to another person. *Epps v. State*, 333 Md. 121, 634 A.2d 20 (1993).

I was once conducting a closing for the conveyance of a parcel of land owned by a very dysfunctional couple, who brought with them their obnoxious, and over nourished, 10 year old son. There were many judgments and liens filed against the property, with funds needing to be paid to various creditors, and notations of criminal offenses, including various peace orders against family members and others, for such activities including assault and battery and other assorted crimes. It was obvious to anyone meeting this family that they all had some drinking issues, maybe some drug usage, certainly some history of abuse, and whatever. After some heated discussions and negotiations with the purchasers with respect to junk furniture and trash being left behind in the house, and broken doors, windows and appliances, the closing ended, and everyone appeared to be leaving in an orderly fashion, when I said: "It was nice meeting all of you, and...", I then held out my hand to shake the boy's hand as he passed by me, and instead of raising his hand to mine, this obnoxious boy threw a punch to my stomach. My first reaction was to return a blow to his head, but I was just so happy to be rid of this family, I just smiled and politely wished them all well for the future (if they have any), and for the rest of their violent lives.³

² With respect to civil liability, an "assault" has been defined as any intentional, unlawful offer of corporal injury to another person by force, or force unlawfully directed toward the person of another, under such circumstances as to create a well-founded fear of imminent peril. *Continental Cas. Co. v. Mirabile*, 52 Md.App. 387, 449 A.2d 1176 (1982).

³ Because the father had said on his way out of my office that he was going back to the house "to burn it down," I hired an armed private detective to keep watch over this house, as this family was moving the last of their junk from the premises.

THE AGE OF MAJORITY - A COMMON LAW DISABILITY

Except as otherwise specifically provided by statute, a person eighteen years of age or more is an adult for all purposes whatsoever and has the same legal capacity, rights, powers, privileges, duties, liabilities, and responsibilities as prior to July 1, 1973, persons had at twenty-one years of age, and the "age of majority" is hereby declared to be eighteen years. §24(a) Rules of Interpretation, Annotated Code of Maryland.

§ 13-204(a), *Estates and Trusts Article, Annotated Code of Maryland*, states that: If a basis exists as described in § 13-201, of this subtitle for assuming jurisdiction over the property of a minor or disabled person [appointment of a guardian], the circuit court, without appointing a guardian, may authorize or direct a transaction with respect to the property... of the minor or disabled person. These transactions include but are not limited to:... (2) Sale, mortgage, lease, or other transfer of property....

"Individual under disability" means an individual under the age of 18 years or an individual incompetent by reason of mental incapacity [*non compos mentis*]. Rule 1-202(1), *Maryland Rules of Procedure*.

I was asked by one of my partners to conduct a closing for a client of his, who was selling a parcel of land, with the record title showing that this client and five (5) of his children were in title to the property by virtue of a deed which my partner had previously prepared and recorded. The father appeared on the closing day, along with his children to sign a new deed, conveying the parcel to some innocent third party, and they were accompanied by an attorney, who I got to know very well over the years, and who later became a fine circuit court judge.

After meeting everyone in the room, I looked at the newly drafted deed, which listed the father and his 5 children as the grantors. I then took another look at the young children, wondering if they had the legal capacity to execute this deed. I then said: "If any of you are under the age of 18 years, please raise your hand." Four of these kids raised their hands, and I turned to the father and his attorney and said: "These kids do not have the legal capacity to sign this deed, as they are under the age of 18." The attorney said: "Well, the father can sign for them," and I said that he could not without a court order, and at that comment the father, his 5 children and the lawyer stood up and stormed out of the room, leaving me and the purchaser to wonder if they were ever going to return.

The next day they all returned in somewhat of a contrite and friendly manner, this time with an Order in hand from the circuit court, allowing the father to sign the deed for his children. Some things have a way of working out.

MENTAL CAPACITY - A COMMON LAW DISABILITY

According to the law in this State [Maryland], the acts of lunatics and infants are treated as analogous, and the contract of a person adjudged to be insane cannot be enforced against him. *Gillet v. Shaw*, 117 Md. 508 (1912). Non compos mentis - "Not of sound mind; insane," *Black's Law Dictionary*.

In determining whether a person has the mental capacity to make a valid and binding conveyance, the only question is whether he is able to clearly understand the nature and consequences of the conveyance, and the fact that his mental powers are impaired, or that he is subject to a delusion [Non compos mentis], if this is not such as to influence him in making the conveyance, does not impair its validity. § 503, *Tiffany Real Property* (1912).

An elderly woman came to see me one day to settle on a loan to be secured by a mortgage. Accompanying her was a small dog on a leash. She asked if she could bring the dog into the conference room, to which I said that "I love dogs, and she could certainly bring in the dog." After she had sat for a while reviewing various loan papers, she asked if I would mind if she could put the dog on the table, to which I consented, hoping that the dog would not wet on any of the papers. After the dog had gotten used to its new surroundings on the table top, the woman then said to me: "After all, it is his [the dog's(!)] money." I thought that I should just not respond to this comment and continued on with the closing, trying not to think about her mental capacity.

POWERS OF ATTORNEY AND A MENTAL DISABILITY

A "Power of Attorney" is a written document by which one party, as principal appoints another as agent that is, the attorney in fact, and confers upon the attorney in fact the power to perform certain specified acts or kinds of acts, on behalf of the principal. *King v. Bankerd*, 303 Md. 98, 492 A.2d 608 (1985).

A woman came to my office to settle on the sale of a condominium which her husband and she owned, as tenants by the entirety, in a large retirement community. When I observed that her husband was not with her, I asked about his whereabouts, and remarked that he needed to be at the closing to sign the deed of conveyance, as both the husband and his wife were in title to the property. The wife responded that: "It's okay, as he wouldn't understand anything anyhow," and that it didn't matter as "I have a power of attorney for him," I asked to see the power, but she then said

that at one time she had his power of attorney, "but, I have since lost it." I said in response, that he needed to be here at the closing, whether or not he understood anything, and that a "lost power of attorney" was not sufficient for her to sign the deed on his behalf. In a huff, she left the room to go back to her condominium in order to bring her husband to my office, leaving all the rest of the people involved with the closing to patiently wait for her return. In about an hour she returned, with her husband sitting in a wheelchair, and she wheeled him up to the conference room table. His wife apparently did not want to go to the trouble of bringing him to my office in his condition. The question in my mind was whether in addition to an apparent physical disability, was he suffering from a mental disability, based upon his wife's statement that "he wouldn't understand anything anyhow." Somehow I knew that this man had been an attorney before his retirement years, and to test his mental capacity I said: "I understand that you practiced law before your retirement" to which he responded: "Yes, I was a government attorney in the Roosevelt administration," to which I asked: "Was that Teddy Roosevelt or Franklin Roosevelt?" He then turned to me and said, "Jesus Christ, boy, it was Franklin Roosevelt, just how old do you think that I am?" I knew then that if he could distinguish between TR and FDR, he must still have all of his marbles, and I continued on with the closing.

IMPRISONMENT AND THE CRIMINAL LAW

Imprisonment, absence from the State, or marriage is not disabilities which extend the statute of limitations. §5-201, Courts and Judicial Proceedings, Annotated Code of Maryland.

One day I was walking through my office library and saw a young associate lawyer sitting at a table, and I could hear her crying. I went up to her to ask what was wrong, and she said that she had drafted a loan commitment letter, had it signed, and the closing was scheduled to take place today. But she had just realized that the borrower was living in the Maryland State House of Corrections in Baltimore, and therefore her client, the Bank of America, had loaned money to a convict. She blurted out that: "My God! My client just loaned money to a guy living in jail." I looked at the borrower's application for the loan and it appeared to be in good order, with all of his liabilities, assets and income properly listed; and that his address was correctly stated as being the location of the House of Correction in Baltimore. I told her that there was probably nothing to worry about, as imprisonment was no longer a recognized legal disability in Maryland, and apparently the Bank believed that its borrower had the ability to pay back the debt. She thanked me for my support, gathered up her loan papers, and drove to Baltimore to get the loan papers signed in the "Pen."

I also had the occasion to visit a prisoner - who was housed in the Montgomery County Detention Center, he having been convicted of various sex crimes, to sign some private loan documents. I had to wait in the Center's lobby for most of the day, through three "lockdowns," listening to screams and loud noise coming from every direction, for the prisoner to be brought to the visitor's window so that he could sign the documents. It was not one of my more enjoyable days as an attorney.

MARRIAGE AND DIVORCE

Concealment of a former marriage and a divorce is not such fraud as would vitiate a marriage. *Sackman v. Sackman*, 236 Md. 237, 203 A.2d 903 (1964); Concealment of prior insanity may amount to fraud invalidating marriage. *Holland v. Holland*, 224 Md. 449, 168 A.2d 380 (1961).

For most of us our names have taken many forms throughout our lives. For men, we may have used on occasion our full middle name(s), or just initials or nicknames, or maybe have changed our name by a court order; and for women, they may have used their maiden name, even after a marriage, or adopted their husbands' name in a marriage of two or more. With respect to a lender loaning money to anyone, there is usually an affidavit to be signed at the closing, listing all of the names which have been used by the borrowers, and which have been discovered from various sources including public records and private records - like from credit card companies and banks, to make sure that the borrower is one and the same person.

One day I presented to a couple, who were purchasing a house, an affidavit to be signed, with all of the variations of their present and former names listed, and with many deviations thereof, which stated that they were one and the same person, notwithstanding the use of many similar names. This newly married wife looked at the list of names on the affidavit, with her husband peering over her shoulder. For some reason, I knew that the husband knew that his wife had been married once before, but listed on the affidavit was a name that he had never seen before. He pointed to that name and said: "What is that name?" to which she responded, "We'll talk about it later," to which he again said: "We will talk about it now!" And she again responded: "We'll talk about it later." From that moment on not another word was spoken between the husband and his recent bride, or for that matter by anyone else in the room at the closing. I had apparently revealed in this name affidavit that the wife had been married not just once before, but twice before. Is this marriage fraud? I really do not know. I would, however, have liked to have been "a fly on the wall" during their trip back to their new house, and heard their conversation.

LAND PATENTS

Although the case law in this area is sparse, it appears that a requisite for valid title to real property is an original conveyance of public land by the State [a land patent]... Absent such a conveyance, on purporting to transfer an ownership interest in such property transfers nothing, and no quantity of successive transfers by deed nor the mere passage of time will metamorphose good title from void title. *Ski Roundtop, Inc. v. Wagerman*, 79 Md.App. 357, 556 A.2d 1144 (1989).

Ms. Wagerman, and her sister, were desirous of having a parcel of land surveyed, which they believed was located on a mountain top in Frederick County. However, the surveyor who the sisters approached one day in the field, explained that the parcel could not exist, and he knew that because he had surveyed all of the parcels on that mountain top, and found no evidence of the Wagerman parcel. However, the Wagerman sisters had a recorded deed [color of title] conveying the parcel to their father in 1921, which clearly described the parcel known as "Pleasant Hill." The purported title to this parcel apparently originated in 1812, when an application was filed with the State of Maryland for a land patent, however, the applicant never followed through with the process, and therefore the Wagermans did not have good title, notwithstanding a 177 year chain of title, which is far longer than the normal sixty (60) year search.

COMMUNICATIONS

While I was practicing land surveying, many years ago, and working with a prominent firm in Wheaton, Maryland, my boss, the chief of surveys - Gifford Dye, and I were in the habit each morning of going out on the pretense of looking at sites which the company had been engaged to survey, before any field work was commenced. Our outings were actually only an excuse to get a cup of coffee and a donut. One day our outing took us to look at a property containing an existing church (of course, after our coffee and donut), with the goal of the church's congregation being to have an addition to the church constructed, and thus it had to be staked out. After we parked, the Church's minister met us, and we exchanged some pleasantries, looked around and then headed back to the survey van to go back to the office. The minister again approached us, and asked Gifford: "Just when will your boys [the survey field crew] be out here." To which Gifford answered: "May the good Lord willing, we'll be out here tomorrow morning." The minister answered back: "Well thank you very much, Mr. Dye." We got back in the van and as we were driving away, Gifford put his head out the window, waived back to the minister, and said: "Goodbye Reverend, and may God Bless you," and the minister hollered back: "And God Bless you both" - at least I was included in the blessing. I then turned to Gifford and said: "What was all that stuff about "may the good Lord willing, and God Bless you'?" Now you must know that Gifford's life style

consisted of drinking, smoking, running around with loose women, not being too clean, and not believing in God [his God being the New York Stock Exchange] or country - but somehow we got along with one another and actually liked each other. Gifford then turned to me and said in a loud voice: "Jesus Christ, boy [that is how he usually addressed me], you need to know how to talk to these sons-of-bitches." That was the greatest lesson I ever learned as a surveyor and later I learned that it was so apt for getting along well in my practice of law.

BANK FRAUD

To recover damages in a fraud action under Maryland law, a plaintiff must prove: (1) that the defendant made a false representation to the plaintiff; (2) that the falsity was known to the defendant or made with reckless indifference to its truth; (3) that the misrepresentation was made for the purpose of defrauding the plaintiff; (4) that the plaintiff relied on the misrepresentation and had the right to rely on it; and (5) that the plaintiff suffered compensable injury resulting from the misrepresentation. *Bank of America, N.A. v Jill P. Mitchell Living Trust*, 822 F.Supp.2d 505 (2011).

When a borrower executes a Uniform Residential Loan Application for a loan to be guaranteed by Freddie Mac, the borrower acknowledges and agrees that the information provided in the application is true and correct, and that any intentional or negligent misrepresentation of information may result in civil liability, including monetary damages and/or criminal penalties, including a fine or imprisonment.

Once upon a time, in preparing for a closing, I noticed that on the application for a loan in the amount of \$750,000 that the age of the borrower was shown as being 19 years old. I remarked to my secretary that it seemed strange that the bank was committing to this young woman such a large loan amount. However, upon meeting her, what I observed was a woman many (many) years above the age of 19. I informed her that the application appeared to be in error, in that she did not appear to be 19 years old, and that it should be corrected, as it was a federal crime to make a false statement on a loan application. She looked carefully at the application, and then said to me: "Young man, we'll just leave it at that, and you should move on with getting me to sign the rest of these loan documents."

And, in another case, I always remember my law partner saying in response to someone shouting out "this is a fraud," to which my partner responded: "Can you please cite the five elements of fraud?" and hearing no response to this question, he continued on with that meeting.

THE AMERICANS WITH DISABILITIES ACT (ADA)
SETTLEMENTS WITH THE PHYSICALLY DISABLED
AND IN UNUSUAL PLACES

The ADA became law in 1990 and is a civil rights law that prohibits discrimination against individuals with disabilities in all areas of public life, including jobs, schools, transportation, and all public and private places that are open to the general public. The purpose of the law is to make sure that people with disabilities have the same rights and opportunities as everyone else.

My law firm is certainly affected by, and must comply with the ADA, but I have had situations which may have not directly come under the provisions of this federal statute. However, I always want to be as accommodating as possible to persons with disabilities. Therefore, I have conducted closings with the blind (providing them with a reader and a special device to keep their signatures neatly on the right signature line), the deaf (providing a signer), and conducting a closing in the back of a van for a person with a broken leg, which made it difficult for him to cross our parking lot and come up to my seventh floor office.

LANGUAGES

According to the Ethnologue catalogue of world languages, which is one of the best linguistic resources, it currently lists 6,909 world-wide living languages. The language most spoken in the world is Mandarin, with 845 million speakers. Spanish ranks second with 329 million speakers, and English is at third with 328 million.

In the course of conducting many closings for commercial and residential properties, I often found situations where an interpreter was needed, as the purchaser's only language was Mandarin, Cantonese, Spanish, French, Ethiopian, Russian, etc. Once in a closing with two Chinese families, the selling family spoke only Mandarin and the purchasing family spoke only Cantonese. I found that it was necessary to employ an interpreter so that both families would completely understand what was happening at this closing.

In another closing the purchasers were from South America, and my law partner was conducting the closing. At one point the purchaser remarked to his attorney, in pure Spanish, in a voice clearly heard by all, but apparently thinking that he was the only one in the room who understood Spanish: "Que Señor McKeever es bastante el culo, no es él." [That Mr. McKeever is quite the ass-hole, isn't he?"⁴]; and Mr. McKeever replied back, to the amusement of everyone in the room (at least for those who understood Spanish), in his crisp Central-American Spanish: "Si, Señor Gruner, habeas muy bien español." [Yes, Mr. Gruner, you speak very good Spanish.]

MEMORIES

*Oh better than the minting
Of a gold-crowned king
Is the safe-kept memory
Of a lovely thing.*

Sara Teasdale
(1884-1933)

*The awe and dread with which
the untutored savage contemplates
his [her] mother-in-law are amongst
the most familiar facts of anthropology.*

Sir James George Frazer
(1854-1941)

I received my undergraduate degree from the University of Maryland, and one of the many requirements for that degree was to complete four semesters of a language course. I put off taking such a course for a couple of years, but finally opted to take Spanish - thinking that it may be one of the easier languages to study. Now, this was a long time ago, however, I remember so well the day that my Spanish teacher - Maria Font, entered the class room, who I soon learned was a new arrival from Cuba. I was immediately taken in by her good looks (actually very pretty), and her smile and poise; and later by her personality and charm. Over the course of the semester I got to know her well, as I always found time to visit with her in her office to get some extra help with Spanish grammar (whether I needed it or not), but really just to chat with her. And, because I was a little older than most of the students in the class (having to work, at various jobs along the way to pay for my tuition), there was only a couple of years of age separating Maria from me. Often times my class mates would joke about how friendly Maria and I seemed to be with one another. Anyhow, I passed the course with a very good grade (of course), but I never saw Maria again.

⁴ This may not be the best translation.

Years later a young couple came to see me who were closing on a new home which they had purchased from one of my firm's developer clients. Various papers in the file indicated that while this new home was being completed by the builder, the couple was living with the man's mother - that is, the wife's "mother-in-law." I immediately noticed on the closing papers that the couple's last name was "Font" and I said to Mr. Font: "You know, when I was a student at the University of Maryland my Spanish teacher's name was Maria ...," and before I could finish the sentence, he interrupted me by saying: "Yes, that is my mother." I said "Oh my God," and went on to praise his mother, telling him what a great teacher his mother was, and how she was so kind, friendly and attractive, etc., etc. Mr. Font then thanked me for my very kind words about his mother, and told me that when he got home that evening he would certainly tell her that he had met me; and that I had very fond memories of her. He then turned to his wife, who had yet to say a word (remember - she is the "daughter-in-law" living with her "mother-in-law"), and he said to her: "You see, everyone doesn't think that she's a bitch!"

AN ACT OF GOD

An "Act of God" is the result of direct, immediate and exclusive operation of forces of nature, uncontrolled or uninfluenced by power of man and without human intervention, and is of such character that it could not have been prevented or avoided by foresight or prudence. *Watts v. Smith*, 226 A.2d (D.C.) 160.

During Isabel the hurricane in 2003, I was scheduled to conduct a closing on a Saturday morning, with a room full of people in attendance, but all of the electric power had been shut down in the building, because of Isabel. I could not use the computers, the phones, the lights - nothing. I did my best under the circumstances, as all of the closing papers had been printed out the night before. However, the real estate broker, who was of course anxious for his commission check at the closing, and a copy of the signed settlement statement, asked me: "I know that your power is completely off, but couldn't you just make one copy?"

CONCEALED WEAPONS

A person may not wear or carry a dangerous weapon of any kind concealed on or about the person. § 4-101(c)(1)... (d)(1) A person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 3 years or a fine not exceeding \$1,000 or both, *Criminal Law, Annotated Code of Maryland*.

The purchaser of a parcel of land arrived in my office one day for a closing, but without a certified or cashier's check to pay the amount which he owed under the terms of the contract of sale. But what he had with him was a suitcase, which I was told, contained \$245,000 in cash! Upon him opening the suitcase, I remarked to him: "Aren't you afraid to carry around that much cash on your person?" Patting the left side of his coat and then pulling it back, he revealed to me that he had strapped on to his body a shoulder holster, containing a rather large handgun, which with his other hand he caressed the stock of the gun. Without me touching any of the money, my next step was to ask him to please close-up his coat and his suitcase, and I then lead him down stairs to my bank for the cash to be counted, and deposited into my escrow account.

PEACE ORDERS

... an intake officer may file with the court a peace order request that alleges the commission of any of the following acts against a victim by the respondent, if the act occurred within 30 days before the filing of the complaint... shooting, rape or other sexual offense (or attempt), hitting with object, stabbing, shoving, threats of violence, harassment, stalking, detaining against will, trespass, malicious destruction of property, misuse of telephone facilities and equipment, misuse of electronic communication or interactive computer service, revenge porn, visual surveillance..., § 3-8A-19.1, *Courts and Judicial Proceedings, Annotated Code of Maryland*.

Property owners have an unquestionable right to enjoy their property in peace and quiet without molestation hindrance, and to use it for such purpose and pursuits as they will so long as their use of it does not harm others. An injury to the realty of another, or any wrongful interference with the possession of realty, is a trespass. Every unauthorized entry in the land of another constitutes a trespass. Thus, an action for trespass to real property may be maintained whether the defendant committed the trespass unwittingly or willfully and wantonly. *Baker v. Howard County Hunt*, 171 Md. 159, 188 A. 223 (1936), *inter alia*.

"Once upon a time" there was a disgruntled property owner, by the name of Shirley, who had been arguing for months with her neighbor (my client), by the name of Bobby, over the proper location of their common property line. During the course of this disagreement, Shirley had filed various peace orders against at least three surveyors who had the timidity to just come on to the disputed land to measure it - and she had also filed complaints against them with the Board for Professional Land Surveyors. Shirley had also filed for a peace order against Bobby for

trespass and other assorted alleged crimes. I won the case in the District Court and Shirley appealed her losing case, *pro se*, to the Circuit Court, with the Honorable Chief Judge Beard presiding.

On the stand Shirley kept talking about a barking dog, which I made it known to the judge that the case was not about a barking dog, and I was told to sit down. Shirley kept talking about the barking dog, and I stood up again and said to the judge: "Your honor this case is about a trespass, not a barking dog," To which the judge told me again to sit down, and that he was to be the judge of that. And still Shirley kept talking about a barking dog, at which point I stood up for the third time, and said: "Your Honor, with all due respect, I have a way to make this case more understandable to the court. You should summons the dog to court and have him testify - apparently the dog knows more about this case than anyone else," to which Judge Beard's eyes got larger than silver dollars, and at that moment I thought that he was going to hold me in contempt and ask the sheriff to take me downstairs to a holding cell, but instead he deliberately said: "I do not think that I can do that Mr. Demma - I don't think that I can give the dog an oath." To which I said: "You are correct, your Honor, you cannot give the dog an oath, and I am sitting down, and will not raise another objection." I knew at that moment that I had won the case, and five minutes later the judge slammed down his gavel and dismissed Shirley's application for a peace order, and gave judgment for Bobby.

ESTATES

"... within three months after his appointment, a personal representative shall prepare and file an inventory of property owned by the decedent at the time of his death, listing each item in reasonably descriptive detail, and indicating its fair market value as of the date of death of the decedent,..." § 7-201, *Estates and Trusts, Annotated Code of Maryland*.

At one time I got a lot of settlement work from a real estate agent at Leisure World - a large retirement community in Montgomery County. One day the real estate agent came to visit with me after her husband had died - he had fancied himself to be a ladies man and a good dancer. The agent wanted me to open up her husband's estate. I asked: "What assets do you think are in his estate?" The response was: "I don't believe that he owned anything, except that I did go through all of his belongings and the only things that I found in one of his coat pockets were a dime and a condom." I told the grieving widow that I did not think that it would be worthwhile, or even necessary, to open-up an estate for her late husband, to which she agreed.

INSPECTIONS

Most real estate contracts required that the purchaser perform certain inspections of the property to be conveyed, prior to the closing. Those inspections could be for termites, structural defects, well and septic systems, soils, environmental matters, lead based paint, etc.

One time I was helping someone who had just moved from a tough section of the inner-city, and who was purchasing a nice home in the burbs. I explained all of the conveying documents to him, including a report to the effect that there were no wood-boring insects, including termites, living or nesting in the property. He then slammed down his hand on the table, and responded to me in a loud and forceful voice: "Damn It! - Termites?... I don't care about termites; I want to know about rats!" I believe that I assured him that rats may not be a problem in his new home.

GOOD FUNDS AND THE UNIFORM COMMERCIAL CODE

A wire transfer, cashier's check, or a certified check is usually considered as "good funds" in a closing. A wire is considered good funds because the funds are wired from a bank directly to the title company's bank via the Federal Reserve System, and are immediately available. Another example of good funds would be a cashier's check, as these funds are immediately available from the bank. A certified check is a personal check that has been stamped and certified by a bank official that the funds are available in the account.

Once at the end of a closing, the purchaser presented me with a personal check for the payment of the balance of the down payment and for closing costs, all as due under the terms of the contract of sale. Notwithstanding the fact that he had been told by my office to bring a certified or cashers check for what he owed, he was adamant that his personal check was adequate. He insisted that his check was "as good as gold," and to prove his point he called the manager of his bank so that I could be assured that his check would clear the collecting bank. After he had spent some time discussing this matter on the telephone with the manager, I heard the purchaser say in a very soft, but clear voice: "Oh, my account has been closed"? It took hours that day for him to deliver to me "good funds" in order for him to complete his part of the closing.

FREDDIE MAC AND FANNIE MAE DOCUMENTS AND PROOF READING

Freddie Mac and Fannie Mae were created by Congress for the purpose of providing liquidity, stability and affordability to the nation's housing finance system. To that end, these agencies have standardized the basic documents to be used in connection with thousands of loans made each year to purchasers of real estate, including the "mortgage" document - the deed of trust, which consists of at least 16 pages, plus addendums, and all being printed by the Government Printing Office.

Anecdotally, very few persons involved in obtaining mortgage loans secured by their personal residence will take the time to read each and every word contained within such loan documents, much less understand the full meaning of the document, however, it appears from my personal experience that a young female elementary school teacher, and also a professional proof reader, with whom I once met, will usually take the time to read each and every word of each document, prior to signing them.

Once I sent to a purchaser of a residential lot, draft copies of all the HUD loan documents for her review (prior to the closing)- the purchaser being a professional proof reader. Notwithstanding that these same form documents have been signed by hundreds of thousands of home purchasers over many years, she phoned and told me that she had "found two (2) errors in the documents, one being a punctuation error, and the other being a grammatical error." I informed the Government Printing Office of these errors, however, I never received a response from the GPO, and these two errors remain to this day embedded in the form HUD documents.

ENCROACHMENTS

It is acknowledged that where the municipality has an undoubted right of action against a property owner because of a substantial encroachment on the sidewalk, and the enforcement of right would cause the owner substantial loss, the title to the property would not be free from reasonable doubt. A purchaser should not be compelled to rely upon the acquiescence of city officials in substantial interference with the property rights of the public. The municipality may convert a permitted encroachment into a public nuisance at any time by exercising its power to order its removal. The decisive test in determining whether the title to a certain property is marketable although it encroaches on a sidewalk is whether the encroachment is so immaterial that the municipal authorities are not likely to disturb it. *Sinclair v. Weber*, 204 Md. 324, 104 A.2d 561, 565 (1954).

Working in my surveying firm was Kenny, a diminutive young man - that is: a rather short man, who ran the prints for all of the jobs on which we were working. Kenny was a nice guy, but sometimes was rudely the brunt of jokes because of his size. One day, Gifford Dye, the chief of surveys, called me into his office and asked me: "Did you know that Kenny is suing the County?" I said "What - Kenny is suing the County? - Why?" And, Gifford responded by saying: "The County has built the sidewalk too close to his ass."

OTHER ADVICE FROM A LAND SURVEYOR

Here is another lesson that I learned as a young surveyor. One time in an attempt to uncover some property corners which would mark the bounds of a large wooded tract of land. After turning over fallen leaves, and digging here and there, finding nothing that resembled any form of a property corner - and for a while I believed that we were actually lost in the woods, the party chief said: "For God sake let's do something, even if it's wrong."

EXPERT TESTIMONY

In order to be accepted as an expert witness, a person must be shown to be competent on the subject on which he is to testify. *Stickell v. Baltimore*, 252 Md. 464, 250 A.2d 541 (1969). Generally, an expert is qualified because he is better able to form an accurate opinion as to the matter under consideration than is the average man of the community. This qualification applies whether he has gained his knowledge from observation or experience, study of books, maps or recognized authority, or any other reliable source. Whether the expert possesses the requisite qualifications is the preliminary question for the court, to be determined as a matter largely within its discretion. *Spence v. Wiles*, 255 Md. 98, 257 A.2d 1964 (1969). The court's determination of the qualification will only be disturbed on appeal if there is a clear showing of abuse of discretion.

Expert testimony may be admitted, in the form of an opinion or otherwise, if the court determines that the testimony will assist the trier of fact to understand the evidence or to determine a fact in issue. In making that determination, the court shall determine (1) whether the witness is qualified as with expert knowledge, skill, experience, training, or education, (2) the appropriateness of the expert testimony on the particular subject, and (3) whether a sufficient factual basis exists to support the expert testimony. *Maryland Rule 5-702*.

Once I was engaged to render expert testimony in the Circuit Court for Calvert County, Maryland, on the issues of the interpretation of certain language contained within recorded documents, and as delineated on various boundary surveys. The plaintiff's attorney, by whom I was hired, began his examination of me at 9:30 in the morning, and he finally ended at 5:30 in the afternoon. The attorney for the defendant was then given the opportunity to ask any questions of me (he had actually raised objections to just about every question which was asked of me - most of which were overruled), and after some thought he declined to ask me any questions, probably realizing that my answers would not help his case. I felt so relieved as I could finally leave Calvert County and begin my long journey back to Rockville. But the judge then interrupted my departure, as I was getting up from the witness chair, and said: "Before you step down, Mr. Demma, please let me ask you a few questions" (something that he could certainly do, if it were about the case): "I've got this property over there in Charles County and I am having a boundary problem with my neighbor, and I was wondering if you could help me." To which I answered: "Judge, are we on the record or off?" The judge immediately told the court reporter that we were now off the record, and after listening to the judge describe his boundary property, I then proceeded to tell him what his remedies may be. With the judge sitting on the bench, and with me still in the witness box, it seemed liked a very unique place for me to be giving him my advice on his private boundary issue.

Another time, I took the stand as a potential expert witness in an adverse possession case in the Circuit Court for Prince George's County, and in answering a question on *voir dire*, concerning my educational qualifications, saying that I graduated from the University of Maryland Law School, the judge turned to me and said: "Hey... I've been waiting for someone like you to come along who went to the University of Maryland School of Law" I could not believe that I was the first attorney to appear before him who had gone to Maryland's law school. He then asked "Did you know Alice Soled?" To which I responded, "Yes, I knew Professor Soled," and the judge shook his head and said: "That was some woman," to which I said: "Yes, Professor Solid was a fine teacher," and the Judge again shook his head, and said "Yes, that was some woman. Well, let's go back to this case, and let's continue on with your examination." Professor Solid was a very unique person - not that at all attractive, with a very strange irritating voice (affected by too much smoking), and a great teacher, but I still wonder to this day as to what the judge was trying to say.

THE POWER OF PRAYER

Often times in an attempt to solve difficult problems which arise with real estate issues, the only advice that can be given is to find a magician to solve the problem; or ask the question: "Do you believe in prayer?" And, when things cannot be adequately explained by science or common sense, I always remember my parish priest saying: "It's a miracle."

FIRST-TIME MARYLAND HOME BUYER AND DOMICILE

A "first-time Maryland home buyer" means an individual who has never owned in the State residential real property that has been the individual's principal residence. § 14-104 Real Property; and § 13-203, Tax-Property, Annotated Code

of Maryland. These two (2) sections of the Maryland Code provide for certain exceptions from the State recording and transfer taxes.

Also, if a purchaser intends to reside in the property which is located in the State of Maryland, there is also a credit against the State Recording Tax.

"Domicile" is defined as that place where a person has his or her true, fixed, permanent home, habitation, and principal establishment, without any present intention of removing therefrom. Jones v. Anne Arundel County, 432 Md. 386, 69 A.3d 426 (2013).

Once a lady who was intending to purchase a rather expensive newly constructed condominium unit in Montgomery County, came to me to review a "mountain" of documents, so that she would know what was involved with her purchase. She lived in an area of Montgomery County, commonly known as "Potomac," which is a "special place" in this world because of the host of very well-off people who live there. She walked into my conference room dressed "to the nines,"⁵ with enough jewelry hanging from her body to necessitate her liability insurance company to provide her with round the clock protection. After I had explained some fundamental aspects of condominium ownership, I then asked some rhetorical questions to make her understand that she may be entitled to certain tax credits at the closing, like: "Do you own any real estate in Maryland?" She said: "Oh, No." I said: "What? - You don't live in Maryland? Where do you live?" She then said: "I live in Potomac." I then said: "Like in Potomac, Maryland?" And she said: "Well, yes..."⁶

⁵ "To the nines" is an English idiom meaning "to perfection" or "to the highest degree" or to dress "buoyantly and high class."

⁶ One of my law partners once told me that when he dies, and goes to either

FIRE INSURANCE

A contract of insurance by which the underwriter, in consideration of the premium, undertakes to indemnify the insured against all losses in his houses, buildings, furniture, ships in port, or merchandise, by means of accidental fire happening within a prescribed period. Blacks Law Dictionary.

One time in administering an estate, five years after the descendant's death, I learned that there had not been any insurance coverage for that entire period of time. Whenever there is a change in the ownership of a property, either by a transfer or by death, the insurance company should be informed, and the coverage made certain.

INCOME TAXES

Our Constitution is in actual operation; everything appears to promise that it will last; but in this world nothing is certain but death and taxes. Benjamin Franklin (1706-1790), letter to M. Leroy (1789).

Once a client came to me after he found out that his family corporation had been forfeited because of the failure to pay its personal property taxes to the State of Maryland. This is usually easy to rectify, and I said that I could help him to get his corporation back in good standing. However, he then told me that he had not filed any personal or business federal or state income tax returns for the past five (5) years. Upon hearing this, I told him that he didn't necessarily need a real estate lawyer like me, but he should look for a CPA and maybe a criminal attorney.

ACCOMMODATIONS

My firm once did all of the legal work for a very large up-scaled condominium regime near the Potomac River, with many acknowledged prominent people buying the units. Although we represented the developer/seller of the condominium units, we conducted all of the closings, on behalf of the seller, in my office for this project, with the proper waiver of conflicts of interest given from the purchasers. However, some of the purchasers found it inconvenient to travel to my office, usually saying that they were just too busy (too important!), asking me to travel to their office for the closing. In all but one case I refused to conduct the closings except in my office.

heaven or hell, and is then reincarnated, he wants to come back as a "Potomac housewife." And one time a purchaser rescinded his contract because he learned that the property which he was purchasing was located in the city limits of Rockville, Maryland, rather than it being located in Potomac, Maryland, he having discovered this fact when he was driving to my office, and passed a road sign that read: "Welcome to Rockville," and his property was located just beyond that sign.

One of the contract purchasers was the Director of the FBI, who wanted me to come to his office to settle, which I refused to do, and he, driven by his chauffeur, came to Rockville. Then Kentucky Senator Wendell Ford also asked me to hold the closing in his office located in one of the Senate office buildings, to which request I refused. But then, Tip O'Neil, the Speaker of the House of Representatives, a most powerful position in our government⁷, personally asked me to come to his office on Capitol Hill for the closing, to which I agreed. The closing in Speaker O'Neil's office was somewhat regal, with all the trappings of governmental dignity and courtesies; along with the Speaker exhibiting great warmth, but with the obvious importance of his office.

DISBURSEMENTS

I once had a client who developed a number of small condominium regimes in and around the Maryland suburbs, and had found a parcel of land in Prince George's County to purchase. It was owned by an elderly lady, who had lived on this property for all of her life, having inherited it from her father. The sales price was \$200,000, and because of health problems she could not travel to Rockville for the closing, I had all of the documents delivered to her for signatures, and they were returned to me, all by Federal Express. However, she included a note with the signed papers that she wanted her sales proceeds to be disbursed to her in **8,000 \$25.00 checks**, as she did not have a bank account, or a social security number, but wrote that "the liquor store down on the corner" would cash those checks for her over a period of time. By telephone I told her that I could not disburse her money in that fashion. She then asked me to disburse the proceeds to her granddaughter, to which I again said "No." Somehow, and I do not quite remember how I managed to get my bank, which had a local branch in this lady's neighborhood, to open up a temporary account for her, and I then deposited by a wire transfer all of her sales proceeds into that account. I have no clue as to what ultimately happened to her money. I just have always hoped that the granddaughter did not get her hands on all of those funds.

CHANGE OF NAMES

In the absence of a statute to the contrary, a person may take and use any name he [she] wants, so long as his purpose is not fraudulent and the use of the name does not interfere with the rights of others [which is usually done at the time of marriage]. *Schroeder v. Broadfoot*, 142 Md.App. 569, 790 A.2d 773 (2002); At common law, adult may adopt any name by which he or she may become know, as long as he or she does so consistently and non-fraudulently. In re Adoption/

⁷ After the Vice-President of the United States, the Speaker of the House of Representatives is next in line to assume the duties of the presidency - the latest legislation being approved by Congress on March 9, 2006; Also see Constitutional Amendment XXV.

Guardianship N. 3155 Circuit Court for Harford County, 103 Md.App. 300, 653 A.2d 521 (1995); Maryland's name change statutes are not to be interpreted as the exclusive manner in which a name may be changed but are in furtherance of, and confer, an official sanction upon a common-law prerogative. *Klein v. Klein*, 36 Md. App. 177, 373 A.2d 86 (1977).

Rule 15-901, *Maryland Rules of Procedure* allows for a petition to be file with the Circuit Court to change ones name.

§ 7-105, *Family Law, Annotated Code of Maryland*, states that: "In granting a decree of absolute divorce, the court shall change the name of a party to either the name given the party at birth or any other former name the party wishes to use if: (1) the party took a new name on marriage and no longer wishes to use it; (2) the party asks for the change of name; and (3) the purpose of the party is not illegal, fraudulent, or immoral."

I was once involved in the conversion of a large apartment project into a condominium regime, and at the closing for one of the units, I noticed that Mr. and Mrs. Feldman, husband and wife - the purchasers, had the same last name - which is certainly normal, but what was not normal was that that last name was the same as the last name of the wife's parents (!), who were attending the closing with their daughter. I believe that the parents were supplying the funds for the purchase. I quickly concluded that rather than the wife taking her husband's last name, the husband had taken his wife's name. Later, there arose construction disputes between Joey, the builder/developer, and some of the purchasers, with respect to the quality of the renovations. In one case, dealing with a giant hole in the living room wall, about the size of a basketball, the Feldmans filed suit, and Joey was deposed. In an answer to one of the questions put to Joey at the deposition: "Do you know Mr. Feldstein?" Joey responded "No." The question was asked again of Joey, and this time in a more forceful voice: "Do you know Mr. Feldstein?" and Joey, looking somewhat puzzled, then scratched his head and answered: "Oh yeah, I remember, you mean that 'pussy' who took his wife's name?" - to which everyone in the room - the attorneys, the parties (including Mr. and Mrs. Feldstein), and the court reporter, all gasped in unison.

MORE ON NAMES AND BASEBALL

Under the common law, any adult or emancipated person, could change his or her name at will, without any legal proceedings, simply by adopting another name, as long as he did not do so for a fraudulent or criminal purpose. *Brown v. Brown*, No. 12184, District of Columbia Court of Appeals (1977).

Robin Roberts was a major league baseball starting pitcher who pitched primarily for the National League's Philadelphia Phillies, from 1948 until 1961. In 1976 he was inducted into the Baseball Hall of Fame. Warren Spahn was also a major league baseball pitcher who played his entire 21-year baseball career in the National League, primarily for the Boston Braves. He was elected to the Baseball Hall of Fame in 1973.

Once I had the occasion to exam the title to a residential lot in Prince George's County for the customary span of sixty years, for a gentleman by the name of Robin Roberts. I found, among other title items, an unpaid mortgage which needed to be paid and released. When I later met with Mr. Roberts, I asked him, what I always ask sellers of real estate, in an abundance of caution: "I see that you only have one mortgage encumbering your lot [?]." He responded, "Oh no, I have another mortgage, which your title examination apparently did not find." I thought, here is an honest man!⁸ I double checked my notes and again did not find a second mortgage listed, but then Mr. Roberts said: "Oh yes, I know what the problem is. When I was growing-up, and into my adult years, I sometimes used the name Warren Spahn - my father was an avid and devoted baseball fan, and he called me by that name, so I have gone through my life using both names, and I used the name Spahn for this second mortgage, and not Roberts." By a telephone call with my title examiner I had him recheck the land records, and found that Mr. Roberts was correct. He had mortgaged his property twice, but using two different names, once as Robin Roberts and the other time by Warren Spahn. I still wonder how that was possible, but it happened.

PERSUASION

Persuasion is "the act of persuading or the state of being persuaded... The ability or power to persuade... To cause someone to accept a point of view or to undertake a course of action by means of argument, reasoning, or entreaty." *The American Heritage Dictionary of the English Language, Fifth Addition.*

Once in a closing involving the aftermaths of a nasty divorce proceeding and a court ordered settlement, in which it was ordered that the wife refinance the marital home, have it conveyed solely into her name, and pay the husband from the refinance a certain sum of money for his equity. It was very apparent that the husband and wife hated one another. They did not utter one word to the other, and just threw nasty glances at one other from across the table. The husband appeared to be very cooperative, but Donna, the wife, was still out to make life as difficult as she could for her divorced husband. When I presented to Donna the first closing paper to be signed she refused, and

⁸ As Diogenes, the Greek philosopher (c.412 B.C. - 323 B.C.), would say: "I am just looking for an honest man."

said that she was really not in agreement with anything that had already been agreed to with her ex-husband - the "bastard," being the only way which she referred to him. I quickly realized that she was clearly upset, but that she just wanted someone to pay attention to her, and speak civilly to her. I gently touched her arm, giving it a light squeeze, and said in a soft voice: "Donna - please sign these closing papers, just do it for me, just please sign." Her response to me was: "Sure - Okay, whatever you want me to do."

REAL ESTATE BROKERS

A real estate closing is usually a happy occasion for everyone concerned. The purchaser gets a new place to live, usually in a better neighborhood, the seller gets a lot of money, the State and County get their recordation and transfer tax money, the lender gets its loan fees, all of the various inspectors, title examiners, attorneys and surveyors are usually paid at the closing, and the real estate brokers and agents finally get their "pay-day."

A real estate broker drove from Dorchester County to Rockville - more than a 100 mile trip, for the sole purpose of picking up his check at the closing. He did nothing at the closing but complain profusely about the time it took him to drive to Rockville and about the parking arrangements - he had parked across the street in a strip-mall lot. However, as he was gripping about the parking and his long drive back home, and while looking out of the window in my conference room, he saw his car getting towed away. He ran out of my conference room, and down the staircase (not waiting for the elevator), and chased down the street after the tow truck, all without getting his commission check. That afternoon, I put his commission check in the mail, along with a copy of the closing statement, and I've never heard a word back from him.

MOUNTAINS OUT OF MOLE HILLS

"Making a mountain out of a molehill" is an idiom referring to over-reactive, histrionic behavior where a person makes too much of a minor issue. It seems to have come into existence in the 16th century. Similar idioms include "Much ado about nothing." Wikipedia.

Often times in closing a contract for the sale and purchase of real property, last minute disputes concerning the condition of the property arise, usually pertaining to an item that is broken, or something that was not properly fixed in preparation for the sale and closing. These last minute disputes can get very heated, as everyone involved with the closing are anxious to conclude the sale without a waste of time, and the seller, especially, is usually anxious to receive his proceeds of sale.

One such case which I experienced was a dispute over the fixing of a screen door, which the repair was valued at about \$60. Apparently, the seller was refusing to fix the door, or pay for the repair, in accordance with his contract with the purchaser. The closing came to a halt as the purchaser, the seller and the real estate agents argued about who should pay for this repair. After about ten (10) minutes of argument, I did a very theatrical thing by standing up, pointing to each person in the room, and counting out loud each of the 12 people sitting around my conference table, saying that it was a waste of everyone's time to argue at this last moment over \$60. I then took \$60 from my own billfold, dropping the bills on the table in the direction of the purchaser, and said: "There, Miles & Stockbridge will pay for the broken screen door, in order to get this closing back on track, and over with, and I do not want anyone to say another word about this." Everyone shut-up, and for the most part did not say another word for the rest of the closing. When every document had been signed, and goodbyes were said by and to everyone, I walked back to my office, but I could feel that the seller was following me. He came into my office and said: "Do you think that I did the right thing back there by refusing to pay?" and I said: "No, you did not do the right thing - it was your obligation to pay," and at that he handed me three twenty dollar bills, shook my hand, and left. I guess that he had somehow "saved face" in front of everyone at the closing.

CEMETERIES

Absent a court order, a deed to land that contains a burial ground does not pass title free of the claims of the owners of that ground, or anyone who may have an interest therein. Demma, James J., *The Law of Boundaries for the Maryland Land Surveyor* (2008).

A "burial site" is defined as: a natural or prepared physical location, whether originally located below, on, or above the surface of the earth, into which human remains or funerary objects are deposited as a part of a death ceremony of a culture, religion, or group. With some exceptions (assuming that permission is received from the Office of the State's Attorney, the Department of Health and Mental Hygiene, and in some cases, the Maryland Historical Trust), a person may not remove or attempt to remove human remains from a burial site. Any person who violates these sections of the Code is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 5 years or a fine not exceeding \$10,000 or both. Subtitle 4. Crimes Relating to Human Remains, *Criminal Law Article, Annotated Code of Maryland*.

Many years ago I had the responsibility of surveying a tract of land for the development of a retirement community, containing approximately 1,000 acres. Upon an examination of the record title I learned that there were at least three (3) cemeteries located on the property, two (2) of which were obvious, but the other one could not be found. Through some detective work on my part, I located a woman in her late 80s who had once lived on the site - her father had owned much of this tract of land, but had lost it through various tax sales and foreclosures; and this woman was now living in a Catholic charity facility nearby. I went to interview her one very hot August day, hoping that she could enlighten me on the location of this cemetery, and she well-remembered where it was located. She said, "Oh, Yes. You just go to the Sam Jefferson house, turn left and walk up the steep hill, and there it is." I found the Jefferson house as it was shown on an old real estate sales map, and that house was still standing - the field crew having tied it in. I did what I was instructed to do, went to the Jefferson house, walked up the hill and found a small patch of land, surrounded by old broken down barbed wire, and inside were stones that looked like they could be there to mark some graves. The attorneys for the developer went through the procedure of obtaining a court order to have the remains (if any) removed. One day two (2) pickup trucks arrived at the alleged burial site and a bunch of men, employed by a local funeral home, jumped down from the trucks, with shovels and picks in hand. On the trucks were many small wooden pine boxes. These guys then proceeded to dig-up the area, shoveling dirt in every direction, and every now and then toss up a bone to someone standing on the bed of one of the trucks, who would catch the bone and drop it into a box, and then nail its lid shut. In less than an hour there were about 25 nailed-down boxes, and the guys then drove away to rebury these boxes and the bones contained therein, in an up-county cemetery. I believe, after closely watching this operation, that the remains of only two or three bodies were disinterred, and not 25, as there are certainly more than one or two bones to each human body. I later learned that the contract between the funeral home and the developer of the retirement community agreed on a set amount to be paid per body - apparently without anyone taking an inventory of the number of bones found!

PRESUMPTION OF DEATH

If the death of a person or the date of his death is at issue, he is not presumed dead in any proceedings under this subtitle or under Title 13 of the *Estates and Trusts Article*, merely because he has been absent from his place of residence and not heard about for any stated period of time. The issue shall go to the court as one of facts to be determined upon the evidence... § 3-102m *Courts and Judicial Proceedings, Annotated Code of Maryland*.

In one case the contract seller of a parcel of land alleged that she was the surviving tenant by the entirety of her husband, but she could not provide the title insurance company with his death certificate. She said that her husband had disappeared more than ten (10) years ago - he had probably run-off with a younger woman, and the wife had no idea of his whereabouts, therefore, according to her, he must be dead - at least she hoped so. Those allegations were not good enough for the title insurance company to insure the title to the parcel, without the husband's joinder in the deed of transfer, or a court order declaring that he was in-fact dead, in accordance with the aforesaid statute.

SAME SEX AND COMMON LAW MARRIAGES

Only a marriage between two individuals who are not otherwise prohibited from marrying is valid in this State. § 2-201(b), *Family Law, Annotated Code of Maryland*. [i.e., a person still cannot marry one's grandmother or child, by way of an example.]

This statute was effective on January 1, 2013, and the words "two individuals" were substituted for "a man and a woman."

One late Friday afternoon a same sex couple met with me (two guys), to settle on a home which they were purchasing as tenants by the entirety. All of the conveying documents were signed, notarized and "delivered" to me that afternoon, as the escrow agent. The recording process could not begin until Monday morning when the courthouse would open for business, however, one of the guys died over the weekend. Notwithstanding that the deed was not recorded on the closing day, it had been "delivered," and therefore the title had passed, and the survivor was vested with the title to the property as the surviving tenant by the entirety.

The effective date of a deed is the date of delivery, and the date of delivery is presumed to be the date of the last acknowledgment, if any, or the date stated on the deed, whichever is later. Every deed, when recorded, takes effect from its effective date as against the grantor, his personal representatives, every purchaser with notice of the deed, and every creditor of the grantor with or without notice. § 3-201, *Real Property Article, Annotated Code of Maryland*.

Generally, Maryland courts will honor foreign marriages as long as the marriage was valid in the state where performed... Maryland recognizes liberally foreign marriages, even those marriages that may be prohibited from being formed if conducted in this State... Maryland law prohibits the formation of common law marriages within the State... Yet, Maryland courts will recognize out-of-state common law

marriages, if valid where formed. *Port v. Cowan*, 426 Md. 435, 44 A.3d 970 (2012).

The State of Maryland does not recognize common law marriages, attempted to be entered into in this State, however, the District of Columbia does so recognize common law marriages entered into in that jurisdiction. On June 11, 2017 *The Washington Post* reported a story that two guys, James Spellman and Michael Kelly, friendship had grown into a romance, and that they lived as a couple just off of Logan Circle for nearly 19 years. Kelly died in 2013, and his last will and testament written before he met Spellman, left his nearly \$1 million estate to his four siblings. Spellman, argued that he had spousal rights to Kelly's estate, and petitioned the court to recognize his partnership with Kelly as a common-law marriage. The D.C. Superior Court ruled that Spellman and Kelly were legally married, and therefore Spellman was entitled to a part of Kelly's estate, notwithstanding that he was not mentioned Kelly's last will. As a part of Spellman's settlement with Kelly's family, it was agreed that the family would transfer \$625,000 to Spellman, and allowed Spellman to be buried with Kelly's remains - presumably after Spellman's death.

EASEMENTS NOT RECORDED IN THE LAND RECORDS

An easement can sometimes be effective and burden an estate in land without it being recorded among the Land Records, when it has been decreed by a court of record that such an easement has so been established.

Judgments in rem⁹ are held to be binding and conclusive not only on the immediate parties to the litigation, but upon all persons who may be interested in the res. This rule has been more simply stated by saying that a judgment in rem binds the whole world. In a true in rem proceeding the judgment binds even those receiving no notice of the proceedings. 46 *Am Jur*, *Judgments*, § 198.

In one case concerning a complaint to partition a parcel of land, an easement for ingress and egress was decreed and established by the circuit court, and an easement document was executed by the proper parties, but it was not recorded until after the servient tract had been conveyed. In that later transaction when the servient tenement was sold to a third-party, the report of title to the parcel being sold clearly showed that an easement had been decreed by the court, but because it was not recorded in the Land Records, its existence was ignored by the title company. In a second law suit for a declaratory judgment, the court decreed that the unrecorded

⁹ "In Rem" is a technical term used to designate proceedings or actions instituted against the thing, in contradistinction to personal actions, which are said to be in *personam*... a proceeding "in rem" is one taken directly against property. *Black's Law Dictionary*.

easement was in effect and did in fact burden the servient tenement, as the case file gave notice to the world of its existence.

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08/28/17

**THE REAL ESTATE SETTLEMENT PROCESS AND
TITLE-RELATED ISSUES FOR THE MARYLAND SURVEYOR**

**I.
THE TITLE INSURANCE COMMITMENT**

As a part of the settlement process, the surveyor should be able to fully understand the American Land Title Association ("ALTA") Commitment for Title Insurance. A copy of a typical ALTA Title Insurance Commitment is attached to these materials, with the intent of the title company to insure that good title will be vested in Hazel Hickory and Ever Greene; and the Huge and Benevolent Savings and Loan Association.

In connection with the title commitment, and in addition to the normal title search for a property (in Maryland, the "safe" historic search period covering 60 years), lenders may require that the attorney obtain U.C.C./litigation/tax lien/bankruptcy searches against the borrower, its general partners or members of other credit related parties, as applicable, and any guarantors or indemnitors, showing that all personal property used in connection with the operation of the property is owned by the borrower and is free from all liens, claims and encumbrances. Further, that the borrower, such other parties, and the Property are not subject to any pending litigation, bankruptcy proceedings or tax liens, and that such searches be updated as of the date of settlement.

Also, a lender could require (and usually will demand in commercial transactions), that the final title insurance policy include the following endorsements, among others, many of which cannot be provided without the surveyor's expert assistance:

Access	Assignment of Rents	Comprehensive
Contiguity	Creditor's Rights	Doing Business
Environmental	Subdivision	Survey
Usuary	Zoning	Variable Rate
Mineral Rights	Separate Tax Lot	Reverter

II.
COMPARE THE BOUNDARY SURVEY, THE LOCATION DRAWING
AND THE ALTA/ACSM SURVEY

(A) The Boundary Survey under the Maryland Minimum Standards of Practice, COMAR, Chapter 06, §03:

(1) The boundary survey is a means of marking boundaries for sufficient definition and identification to uniquely locate each lot, parcel, or tract in relation to other well recognized and established points of reference, adjoining properties, and rights-of-way.

(2) The purpose of a boundary survey is to establish, reestablish, or describe, or all of these, the physical position and extent of the boundaries of real property, including the discovery of visible indication of rights that may be acquired by prescription or adverse possession.

(B) The Location Drawing under the Maryland Minimum Standards of Practice, COMAR, Chapter 06, §06:

The purpose of a location drawing is to locate, describe, and represent the positions of buildings or other visible improvements, or both, affecting the property being inspected.

(C) The ALTA/ACSM Land Title Survey:

The fundamental purpose of this particular type of survey is to allow the title insurance companies to insure title to land without exceptions as to the many matters which might be discoverable from a survey and inspection that would otherwise not be evidenced by the public records.

III.
CERTAIN LEGAL DOCTRINES AND PRINCIPLES

ACCRETION - In the law of waters, accretion describes the gradual, natural process of the deposit of sediment along a shore, thereby building new fast land. 50 *Opinions of the Attorney General* 452. Any increase in land as a result of the gradual and natural process of sediment deposit along the shore that inures to the riparian land owner. *Linthicon v. Coan*, 64 Md. 439 (1886). The deposit of the soil itself is known as alluvion.

In Maryland navigable water is defined as where the tide ebbs and flows. Accretion means a gradual or imperceptible building up of the land underwater until it is no longer covered by the ebb and flow of tide to the high water mark. When and if fast land emerges to connect to existing fast land, it becomes, by operation of law, the property of the riparian owner of such existing fast land...Fast land by accretion is defined as that land lying above the high water mark that has become affixed to other fast land belonging to a riparian owner. High water mark is defined as that highest elevation of water in the course of the usual, regular, periodical ebb and flow of the time excluding the advance of waters above that line by winds and storms or by freshets and flood. *Van Ruymbeke v. Patapsco Industrial Park*, 261 Md. 470, 276 A.2d 61 (1971).

ADVERSE POSSESSION - The presumption of a grant, wherein the claimant shows that his possession was actual, notorious, exclusive, hostile, under claim of title or ownership, and continuous and uninterrupted for the period of twenty years. *Sterling v. Sterling*, 211 Md. 493, 128 A.2d 277 (1957); *Gore v. Hall*, 206 Md. 485, 112 A.2d 675 (1955).

To acquire title by adverse possession, a claimant must demonstrate that his occupation of the land has been actual, hostile, notorious, exclusive, under claim of title and continuous or uninterrupted for twenty years. Moreover, where adverse possession is not claimed under color of title, it extends only to the land actually occupied by the claimant. In determining whether the claimant's acts of dominion constitute adverse possession, the court is to consider the character of the land and the uses and purposes to which it is adapted because the type of possessory acts necessary to constitute actual possession in one case may not be essential in another. *Peters v. Staubitz*, 64 Md.App. 639, 498 A.2d 661 (1985).

ADVERSE POSSESSION BY MISTAKE - The modern trend and the better rule is that where the visible boundaries have existed for the period set forth in the Statute of Limitations, title will vest in the adverse possessor where there is evidence of unequivocal acts of ownership. In this view it is immaterial that

the holder supposed the visible boundary to be correct or, in other words, the fact that the possession was due to inadvertence, ignorance, or mistake, is entirely immaterial. *Tamburo v. Miller*, 100 A.2d 818 (1953).

ALTA/ACSM LAND TITLE SURVEY STANDARDS - Minimum standard detail requirements for land surveys, as adopted by the American Land Title Association, the American Congress on Surveying & Mapping, and the National Society of Professional Surveyors.

BOUNDARY MONUMENT - A monument when used in describing land, can be defined as any physical object on the ground which helps to establish the location of the line called for. It may be either natural or artificial and may be a tree, stone, stake, pipe or the like. Just as in contracts and wills the intention of the parties governs the interpretation of deeds. It is for that reason that monuments named in deeds are given precedence over courses and distances. *Delphay v. Savage*, 227 Md. 373, 177 A.2d 249 (1962).

CALLS FOR MONUMENTS - Calls for monuments, natural or artificial, generally prevail over courses and distances. If there is an inconsistency between a course and distance to a given point, the course will control the distance. The line of an adjacent tract, if known and established, may as well be a call in a deed as a natural object. Quantity is ordinarily not controlling, unless there are no calls for monuments or for courses and distances set out in the deed. *Wood v. Hildebrand*, 185 Md. 56, 42 A.2d 919 (1945).

EASEMENT - A right in the owner of one parcel of land, by reason of such ownership, to use the land of another for a special purpose. That is, it is a restriction upon the property rights of the owner of the servient estate by the owner of the dominant estate. *Maryland and City Council of Baltimore v. Brack*, 175 Md. 615, 3 A.2d 471 (1939).

EASEMENT BY NECESSITY - An easement by necessity is founded on public policy of the State which favors access from land to some public street. Easements by necessity may be implicitly granted or reserved. It may be implicitly granted from the necessity of the situation and it exists only so long as the necessity itself remains. *Johnson v. Robinson*, 26 Md. App. 568, 338 A.2d 88 (1975); and *Boucher v. Boyer*, 301 Md. 679, 484 A.2d 630 (1984).

1892 (LAND BINDING ON A STREET) - Refers to the year that a Maryland statute was enacted by the General Assembly (now §2-114, Real Property Article), which generally provides that a conveyance binding upon a roadway grants to the grantee title to the center line thereof, in the absence of an express provision to the contrary. §2-114 provides that any conveyance binding upon a

highway carries to the grantee title to the center thereof, in the absence of an express provision to the contrary. This applies to a private as well as a public way. The statute merely extends a presumption that was recognized at common law. *Callahan v. Clemens*, 184 Md. 520, 41 A.2d 473 (1945).

ENCROACHMENTS - It is acknowledged that where the municipality has an undoubted right of action against a property owner because of a substantial encroachment on the sidewalk, and the enforcement of right would cause the owner substantial loss, the title to the property would not be free from reasonable doubt. A purchaser should not be compelled to rely upon the acquiescence of city officials in substantial interference with the property rights of the public. The municipality may convert a permitted encroachment into a public nuisance at any time by exercising its power to order its removal. The decisive test in determining whether the title to a certain property is marketable although it encroaches on a sidewalk is whether the encroachment is so immaterial that the municipal authorities are not likely to disturb it. *Sinclair v. Weber*, 204 Md. 324, 104 A.2d 561, 565 (1954).

ENCUMBRANCES - An encumbrance by reason of encroachment exists when the owner of adjoining property is occupying some part of the property under examination, either with buildings or otherwise. An encumbrance exists when the buildings or other structures upon a vendor's land encroach upon land of adjoining proprietors without the sanction of an appurtenant easement. *Patton on Titles*, Second Edition, §676 (1957).

FEE SIMPLE ESTATE - An estate in land in which the grantee and his/her heirs and assigns have the absolute title forever, and, for the most part, without limitations or conditions. It is the greatest estate which one may enjoy in property and is in common language an absolute and unqualified ownership of the interests involved. In 4 *Kent's Commentaries* (14th ed.), p. 5, it is said that fee simple is an estate of perpetuity, and confers an unlimited power of alienation, and no person is capable of having a greater estate or interest in land. *State Roads Commission v. Johnson*, 222 Md. 493, 161 A.2d 444 (1960).

MARKETABLE TITLE - A title which is free from encumbrances and any reasonable doubt as to its validity, and such as a reasonable intelligent person, who is well informed as to facts and their legal bearings, and ready and willing to perform his contract and accept in exercise of ordinary business prudence. *Sinclair v. Weber*, 204 Md. 324, 104 A.2d 561 (1954).

A marketable title is one which a reasonable purchaser, who knows the facts and their legal bearing, would be willing to accept in the exercise of that prudence which businessmen ordinarily use in the transaction of their own affairs. If there

is a reasonable probability that the purchaser may be subject to the hazard of litigation to defend his title, that title is not marketable. A marketable title is one which is free from encumbrances and any reasonable doubt as to its validity and such that a reasonably intelligent person, who is well informed as to the facts and their legal bearing, and who is ready and willing to perform his contract, would be willing to accept in the exercise of ordinary business prudence. To be marketable the title must be so far free from defects as to enable the purchaser to not only hold the land in peace, but also, if he wishes to sell it, for him to be reasonably sure that no flaw in the title will appear to disturb its market value. *Myerberg, Sawyer & Rue, P.A. v. Agee*, 51 Md. App. 711, 446 A.2d 69, 72 (1982).

MINIMUM STANDARDS OF PRACTICE - Standards promulgated by the Maryland Board for Professional Land Surveyors to set forth the minimum acceptable level of performance to be exercised by all surveyors in Maryland. *Comar*, Title 09, Subtitle 13, Chapter 06.

MONUMENT - Any physical object on the ground which helps to establish the location of a line called for; it may be either natural or artificial, and may be a tree, stone, stake, pipe, or the like. *Delphey v. Savage*, 227 Md. 373, 177 A.2d 249 (1962); a monument is some tangible landmark to establish or indicate a boundary. *Parran v. Wilson*, 160 Md. 604, 154 A. 449 (1931).

PRESCRIPTION - The name given to a manner of acquiring title to an easement by long-continued use thereof. A prescriptive easement arises when a party has made adverse, exclusive, and uninterrupted use of another's land for 20 years. *Hoffman v. United Iron and Metal Co., Inc.*, 108 Md.App. 117, 671 A.2d 55 (1996).

PRESCRIPTION EASEMENTS - It is not disputed that in order to establish an easement by prescription it is only necessary to prove an adverse, exclusive and uninterrupted use of the way for twenty years. *Hendrix, Inc. v. Hanna*, 250 Md. 443, 243 A.2d 600 (1968).

QUIET TITLE - An action in equity, giving a person in possession of a parcel of land the remedy to remove a cloud, lien, encumbrance, or other adverse claim from the title, when the title is disputed or denied. *Barnes v. Webster*, 220 Md. 473, 154 A.2d 918 (1959); §14-108, Real Property Article, *Annotated Code of Maryland*.

REAL PROPERTY - Includes land in its broadest sense, including air space, the surface, the subsurface, and waters. *Anne Arundel County v. City of Annapolis*, 352 Md. 1177, 21 A.2d 217 (1998). To resolved questions of whether an item is "personality" or realty," there are several factors to consider: nature of annexation, i.e., actual or constructive; degree to

which land has been adopted to accommodate the use of the object; ease with which object may be removed without damaging real property; and intent of parties, which can be inferred from nature

of the object as well as context of its use and annexation. *Droney v. Droney*, 102 Md.App. 672, 651 A.2d 415 (1995).

RIGHT-OF-WAY - This term has a twofold signification. It sometimes is used to describe a right belonging to a party, i.e. a right of passage over the way, and also to describe the actual strip of land which encompasses the way. This term is frequently used to describe not only an easement right, but also the strip of land itself occupied by such use. Further, the grant of a right-of-way can be either in fee or as an easement. *Moakley v. Los Angeles Pac. Ry. Co.*, 139 Cal. App. 421, 34 P.2d 218 (1934); *Maysville & B.S.R Co. v. Ball*, 108 Ky 241, 56 S.W. 188 (1900). "Right of way," as used in the context of a grant, is a right belonging to a party to pass over the land of another. *Chevy Chase Land Co. v. U.S.* 355 Md. 110, 733 A.2d 1055 (1999).

SURVEY EXCEPTION - The part of a title insurance policy that excludes surveying matters from coverage, like encroachments, overlaps, and other items which would be disclosed by a recent and accurate land survey of the premises. It is a provision in a title insurance policy that denies coverage for any matter not of record which would be disclosed by an accurate survey and inspection of the premises. A subdivision plat, although usually prepared by a surveyor, is not necessarily a survey. *Lawyers Title Insurance Corporation v. Knopf*, 109 Md.App. 134, 674 A.2d 65 (1996).

TITLE INSURANCE - A one-premium agreement to indemnify a policyholder, in amounts not exceeding the face amount of the policy, for losses caused by either on-record and off-record defects that are found in the title or interest in an insured property to have existed on the date on which the policy is issued. Title insurance policy protects insured against loss or damage as a result of defects in or the unmarketability of the insured's title to real property. *Stewart Title Guar. Co. v. West*, 110 Md.App. 114, 676 A.2d 953 (1996); *Law Title Insurance*, Third Edition, Burke, Barlow.

TRESPASS - "Trespass" occurs when the defendant interferes with the plaintiff's interest in exclusive possession of land by entering or causing something to enter land. A trespass can occur either above the surface of the earth or beneath. *Rosenblatt v. Exxon Co., U.S.A.*, 642 A.2d 180, 335 Md. 58 (1994).

IV.
REMEDIES TO RESOLVE PROPERTY LINE PROBLEMS

ACTION FOR POSSESSION - A person who is not in possession of property and claims title and right to possession may bring an action for possession against the person in possession of the property. §14-108.1, Real Property Article, *Annotated Code of Maryland*.

BOUNDARY LINE AGREEMENT - It is well settled that where the boundary lines of adjoining landowners are not definitely known or their location is in dispute, such owners may establish the lines either by a written agreement, conveyance, or parole agreement. Such boundary lines may also be established by the parties' mutual recognition of, and acquiescence in, certain lines as the true boundary lines, the courts being reluctant to interfere therewith after the lines have been permitted to exist over such a period of time that satisfactory proof of the true lines is difficult. 12 Am Jur 2d, *Boundaries*, §77 (1962).

DECLARATORY JUDGMENT - The purpose of the declaratory judgment statute is remedial. It is to settle and afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations. It shall be liberally construed and administered. §3-402, Courts and Judicial Proceedings Article, *Annotated Code of Maryland*. There is nothing novel in bringing a declaratory action for the purpose of quieting title. *Shapiro v. Board of County Commissioners for Prince George's County*, 219 Md. 298, 149 A.2d 396 (1959).

EJECTMENT - This is an action in law for the recovery of land, where the plaintiff must show that he/she has the title and the right to possess the land, as described in the complaint. An action to try the right to possess a property against one who presently possesses it wrongfully. *Wood v. Grundy*, 3 H. & J. 13 (1810). Where the object of the proceeding is to obtain possession or realty, the remedy is ejectment. *Glorius v. Walkins*, 203 Md. 546, 102 A.2d 274 (1954). It is elementary that the plaintiff in an ejectment action must recover upon the strength of his own title and not upon the weakness of the title of the defendant. *Janoske v. Friend*, 261 Md. 358, 275 A.2d 474, 477 (1971), and former Subtitle T. Ejectment, *Maryland Rules*.

LAND PATENT - Any grant confirmed by Article 5 of the Declaration of Rights of the Maryland State Constitution; any valid grant made under prior law of the State of its interests in any vacant, resurveyed, escheat, or confiscated land; or any grant made under Title 13 of the Real Property Article of its interest in any land. Although the case law in this area is sparse, it appears that a requisite for valid title to real property is an original conveyance of public land by the State. Absent such a conveyance, one purporting to transfer an ownership interest in such property transfers nothing, and no quantity of successive transfers by deed nor the mere passage of time will metamorphose good title from void title. Effectuation of the intent of the original parties, agreement, or surveyor, as the case may be, is of paramount consideration in boundary dispute cases. *Ski Roundtop v. Wagerman*, 79 Nd.App. 357, 556 A.2d 1144, 1148, 1149 (1989).

QUIETING TITLE - It is well settled that a bill to quiet title will lie when the owner is in possession. The ground of equity jurisdiction is that, being in possession, the owner is denied a remedy at law. The scope of relief at common law, under a bill *quia timet* to quiet title or remove a cloud, has probably been somewhat enlarged by §14-108, Real Property Article, *Annotated Code of Maryland*. *Barnes v. Webster*, 220 Md. 473, 154 A.2d 918 (1959). The object of a bill to quiet title is to protect the owner of legal title "from being disturbed in his possession and from being harassed by suits in regard to his title by persons setting up unjust and illegal pretensions." *Wathen v. Brown*, 48 Md.App. 655, 429 A.2d 292 (1981).

QUITCLAIM DEED - A deed of conveyance operating by way of a release; that is, intended to pass any title, interest or claim which the grantor may have in the premises, but not professing that such title is valid, nor containing any warranty or covenants of title. 3 Ap. L.R. 940. *Cook v. Smith*, 107 Tex. 119, 174 S.W. 1094; *Pierson v. Bill*, 133 Fla. 81, 182 So. 631, *Blacks Law Dictionary*.

In modern practice a quitclaim is used where the grantor intends to convey only such interest as the grantor has, in contradistinction to a grant of the fee or other estate with a warranty of title. Such a deed is as effectual to convey whatever interest the grantor has in the subject of the deed as any other form of conveyance. 23 Am Jur 2d, *Deeds* §338.

SETBACK LINE RESTRICTIONS - Some title defects may be cured by operation of law. In general, a person may not initiate an action or proceeding arising out of a failure of a building or setback line restriction more than 3 years after the date on which the violation first occurred, if the building was constructed under a valid building permit. See §5-114, *Courts and Judicial Proceedings, Annotated Code of Maryland*.

TRESPASS TO TRY TITLE - When a plaintiff is able to allege and prove actual possession he may choose, alternatively or additionally, the action of trespass to try his title. *Poe, Pleading and Practice*, Tiffany's Edition, Vol. 1, says of trespass in §244:

The action is frequently resorted to for the purpose of trying a disputed question of title to land, as in the case of *Ridgely v. Bond*, in which it is declared, upon the authority of *Norwood v. Shipley*, that to maintain it, the plaintiff must either show title to the land on which the trespass was committed, or that he was in actual possession thereof at the time of the trespass....Indeed, the action is an obviously proper one to determine the divisional lines of adjacent land owners, where each of the parties claims title and possession of the land in dispute. *Honga River Gun Club, Incorporated v. Montchester Gun Club, Inc.*, 20 Md.App. 335, 315 A.2d 810 (1974).

TRESPASS QUARE CLAUSUM FREGIT - It is well settled in this State that an action of trespass *quare clausum fregit* is available for the trial of title to land, but when it is resorted to for that purpose recovery can be had only on the strength of the plaintiff's title, just as in ejectment. It would be necessary in ejectment for the plaintiff to establish a legal title to the land in dispute. *West v. Pusey*, 113 Md. 569 (1910); *Giles v. diRobbbio*, 46 A.2d 611 (1946).

It is well settled that a plaintiff in an action of trespass q.c.f. must prove possession. The gist of the action is the injury to the possession of the plaintiff. The holder of a perfect paper title who is not in possession cannot maintain trespass. His remedy is in ejectment. If, however, the plaintiff has a paper title to the whole tract and is in actual possession of part of it, his constructive possession of the remainder is presumed. *McAuliffe v. Lerch*, 57 A.2d 329 (1948).

VARIANCES - Basically, all zoning regulation, including rezoning, as well as exception and a variance, which are intended to relieve the harshness of a zonal restriction in a particular instance, is a lawful exercise of its police power by the sovereign state. As a general rule exceptions are granted sparingly, and under exceptional circumstances, to do otherwise would decimate zonal restrictions and eventually destroy all zoning regulations, and thus detrimentally affect the marketability of property within zoned areas. On the other hand, the existence of an unnecessary hardship usually justifies the granting of an exception. The criterion for determining unnecessary hardship is whether the applicable zoning restrictions when applied to the property in the setting of its environment is

so unreasonable as to constitute an arbitrary and capricious interference with the basic right of private ownership. *Marino v. City of Baltimore*, 215 Md. 206, 137 A.2d 198 (1957).

jjd

NO REAL ESTATE BROKER
NO DEFERRED PURCHASE MONEY OR ASSUMPTION
NO FHA OR VA FINANCING

CONTRACT OF SALE
(Montgomery County, Maryland)

THIS CONTRACT OF SALE, made this 6th day of September, 2017, by and between RODNEY ROOD, a limited liability company organized and existing under the laws of the State of Maryland (hereinafter referred to as "Seller"; HAZEL HICKORY and EVER GREENE (hereinafter collectively referred to as "Purchaser").

W I T N E S S E T H:

WHEREAS, Seller is the fee simple owner of the herein described property; and

WHEREAS, Purchaser is desirous of purchasing and Seller is desirous of selling the herein described property; and

WHEREAS, the parties are entering into this Contract for the purpose of memorializing their understanding concerning the terms and conditions of the sale and purchase of the herein described property;

NOW, THEREFORE, in consideration of the foregoing and the mutual promises, covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Property Description.** Seller agrees to sell and Purchaser agrees to purchase the property described as being Lot 7, Block D, in the subdivision known as "Pleasant View Estates," located in Montgomery County, Maryland, as delineated on that certain plat of subdivision recorded in Plat Book 14 at Plat No. 1789, among the Land Records for Montgomery County, Maryland, the same being described in a deed recorded in Liber 3789 at folio 410 among the said Land Records, with improvements thereon, including built-in heating plant, window air-conditioning units, all plumbing and lighting fixtures, kitchen equipment including range, refrigerator, built-in dishwasher and disposal, awnings, screens, storm doors and windows, venetian blinds, shades and indoor shutters, trees, shrubs and plants, all as now installed on the premises known as 7071 Title Drive, Rockville, Maryland 20850 (hereinafter collectively referred to as the "Property").

2. **Purchase Price.** The purchase price is Two Million, Five Hundred Thousand and 00/100 Dollars (\$2,500,000.00), and shall be paid by Purchaser to Seller as follows:

(a) A deposit (the "Deposit"), in the form of a check drawn from a local financial institution, in the amount of Twenty-Five Thousand and 00/100 Dollars (\$25,000.00) shall be paid at the time of execution of this Contract and delivered to James J. Dilemma, (the "Escrow Agent"),...

3. **Financing.**

(a) Purchaser is to obtain a loan, evidenced by a first deed of trust in lender's usual form, to be secured by the Property, in the approximate amount of Two Million and 00/100 Dollars (\$2,000,000.00), due in thirty (30) years and bearing interest at the best available rate at the time of settlement...

4. **Examination of Title and Costs.** Property is to be conveyed in the names of the Purchaser. PURCHASER HAS A RIGHT TO SELECT THE TITLE INSURANCE COMPANY, SETTLEMENT OR ESCROW COMPANY, OR TITLE ATTORNEY, MORTGAGE LENDER OR FINANCIAL INSTITUTION AS DEFINED IN THE FINANCIAL INSTITUTION'S ARTICLE OF THE ANNOTATED CODE OF MARYLAND, SELLER IS NOT PROHIBITED FROM OFFERING OWNER FINANCING AS A CONDITION OF SETTLEMENT. **Purchaser hereby selects and shall order the examination of title** and the preparation of all necessary conveyancing papers through the Escrow Agent.

SECTION 14-104 OF THE REAL PROPERTY ARTICLE OF THE ANNOTATED CODE OF MARYLAND PROVIDES THAT, UNLESS OTHERWISE NEGOTIATED IN THE CONTRACT OR PROVIDED BY LOCAL LAW, THE COST OF ANY RECORDATION TAX OR ANY STATE OR LOCAL TRANSFER TAX SHALL BE SHARED EQUALLY BETWEEN THE BUYER AND SELLER; Purchaser and Seller having so negotiated, it has been agreed that **the costs of the state recordation tax, state transfer tax and the Montgomery County transfer tax shall be shared equally between Purchaser and Seller.** All other settlement charges, notary fees, **cost of survey**, lender's fees and recording charges, except those incident to clearing existing encumbrances, shall be paid by Purchaser. Seller hereby agrees to pay any above-mentioned costs incurred if upon examination the title should be found defective and it is not remedied as herein stated. Seller also agrees to pay a reasonable closing fee for services rendered to Seller by the Escrow Agent...

5. **Settlement.** Seller and Purchaser are required and agree to make full settlement in accordance with the terms hereof on or before the 6th day of October, 2017.

6. **Forfeiture of Deposit...**

7. Title. The Property, including the aforesaid chattels, is sold free of encumbrances, unless otherwise stated herein. Any financing statements will be satisfied and released by Seller at time of settlement. Title is to be in fee simple, good of record, marketable and insurable at regular rates, subject however, to all of the covenants, rights of way, easements, conditions and restrictions of record, if any, otherwise the Deposit is to be returned and sale declared off at the option of Purchaser, unless the defects are of such a character that they may be remedied by legal action within a reasonable time, but Seller is hereby expressly released from all liability to Purchaser for damages by reason of any defect in the title. If legal steps are necessary to perfect the title, such action must be taken promptly by Seller at Seller's own expense, whereupon the time herein specified for full settlement by the parties will thereby be extended for the period necessary for such prompt action.

8. Performance...

9. Adjustments. Rents, taxes, water and sewer charges, oil, escrows, insurance and interest on existing encumbrances, are to be adjusted to date of settlement. Taxes, general and special, are to be adjusted according to the certificate of taxes issued by the collector of taxes,...

10. Conveyance. Seller agrees to execute and deliver a good and sufficient special warranty deed, containing a covenant of further assurances. Purchaser agrees to have the deed of conveyance promptly recorded.

11. Insurance...

12. Possession. Seller agrees to give to Purchaser possession and occupancy of the Property at the time of settlement, free of any leases, licenses or other rights of occupancy or use for any portion of the Property...

13. Property Condition....

14. Subdivision Plat. Purchaser acknowledges receipt of an entire copy of the recorded subdivision plat prior to execution of this Contract...

15. Master Plan...

16. Notice and Disclosure of Availability of Sewage Disposal System and Designated Areas...

17. Termite Inspection...

18. Financing Provisions...

19. Notices...

20. Inspection Contingency...

21. Additional Items to Convey at Settlement..

22. Right to Waive Conditions...

23. Agency...

24. Property Condition Disclosure Statement. Purchaser is advised that under Maryland law (Real Property Article, Section 10-702) they are entitled to receive from Seller a written residential property condition disclosure statement or a written residential property disclaimer statement, on a form provided by the Maryland Real Estate Commission..

25. Distribution of Marijuana. Seller and Purchaser each acknowledge that they are aware that due to the conflict between federal and state laws concerning the cultivation, distribution, manufacture or sale of marijuana, the title insurance company is not be able to close or insure any transaction involving land that is associated with these activities.

26. Miscellaneous. We, the undersigned, hereby ratify, accept and agree to this Contract and acknowledge receipt of a copy thereof. The undersigned mutually agree that **this Contract shall be binding upon them, their heirs, administrators, personal representatives, successors and assigns**; that the provisions hereof shall survive the execution and delivery of the deed herein stated and shall not be merged therein; that this Contract contains the final and entire agreement between the parties hereto, and they shall not be bound by any terms, conditions, statements, warranties or representations, oral or written, not herein contained; and ...

Seller:

Rodney Rood (SEAL)

Purchaser:

HAZEL HICKORY (SEAL)

EVER GREENE (SEAL)

TRANSIT-TAPE SURVEYS, INC.

11 GRAY'S INN COURT
ROCKVILLE, MARYLAND 20850

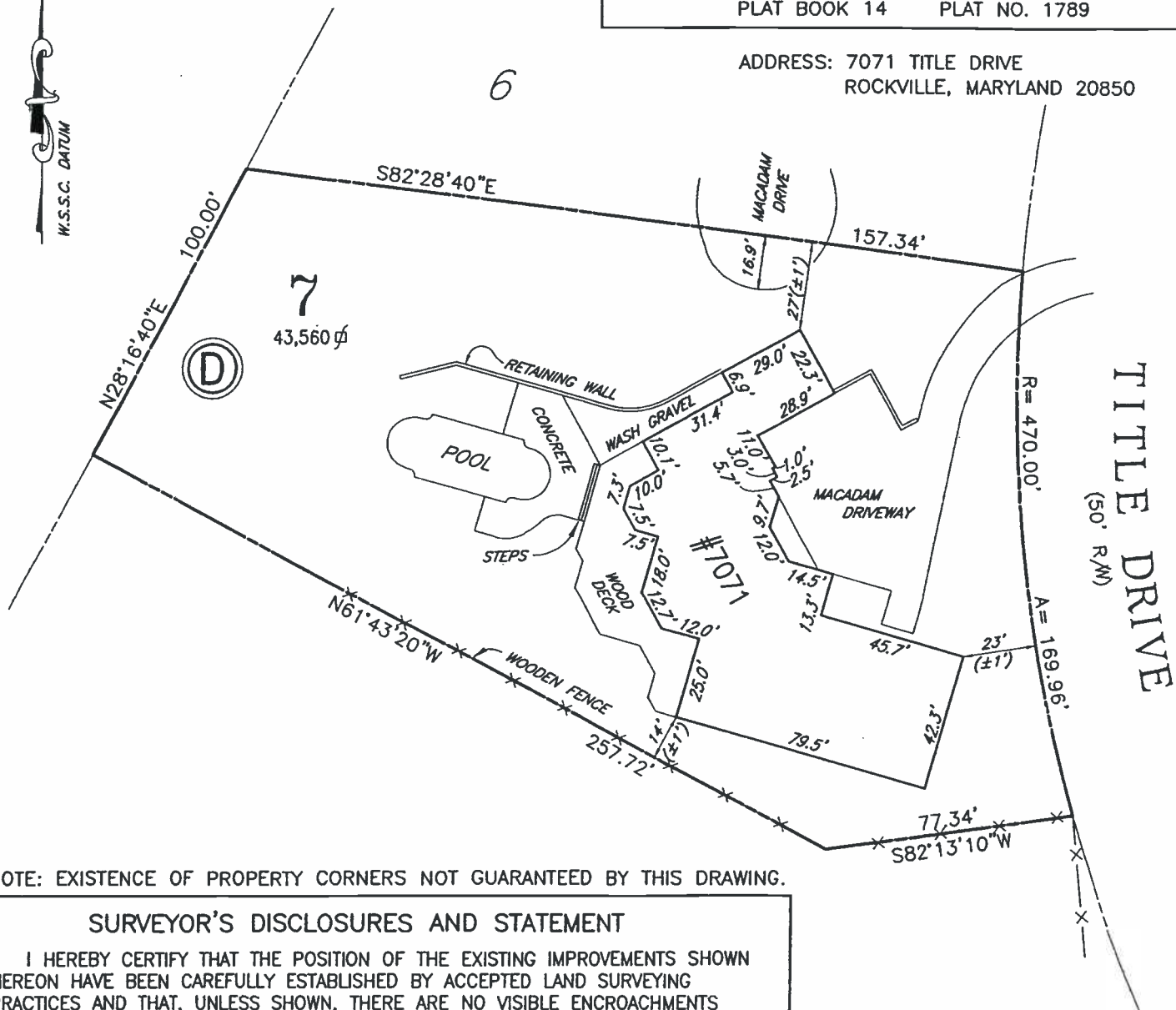
LOCATION DRAWING

LOT 7, BLOCK D

PLEASANT VIEW
ESTATES

ROCKVILLE (4TH) DISTRICT
MONTGOMERY COUNTY, MARYLAND
PLAT BOOK 14 PLAT NO. 1789

ADDRESS: 7071 TITLE DRIVE
ROCKVILLE, MARYLAND 20850



NOTE: EXISTENCE OF PROPERTY CORNERS NOT GUARANTEED BY THIS DRAWING.

SURVEYOR'S DISCLOSURES AND STATEMENT

I HEREBY CERTIFY THAT THE POSITION OF THE EXISTING IMPROVEMENTS SHOWN HEREON HAVE BEEN CAREFULLY ESTABLISHED BY ACCEPTED LAND SURVEYING PRACTICES AND THAT, UNLESS SHOWN, THERE ARE NO VISIBLE ENCROACHMENTS EITHER WAY ACROSS THE PROPERTY LINES. THE PLAN IS OF BENEFIT TO A CONSUMER ONLY INsofar AS IT IS REQUIRED BY A LENDER OR A TITLE INSURANCE COMPANY OR ITS AGENT IN CONNECTION WITH CONTEMPLATED TRANSFER, FINANCING OR REFINANCING. THE PLAN IS NOT TO BE RELIED UPON FOR THE ESTABLISHMENT OR LOCATION OF FENCES, GARAGES, BUILDINGS, OR OTHER EXISTING OR FUTURE IMPROVEMENTS. THE PLAN DOES NOT PROVIDE FOR THE ACCURATE IDENTIFICATION OF PROPERTY BOUNDARY LINES, BUT SUCH IDENTIFICATION MAY NOT BE REQUIRED FOR THE TRANSFER OF TITLE OR SECURING FINANCING OR REFINANCING. THIS DRAWING WAS PREPARED W/O THE BENEFIT OF A TITLE REPORT

I HAVE EITHER PERSONALLY PREPARED THIS BOUNDARY SURVEY OR WAS IN RESPONSIBLE CHARGE OVER ITS PREPARATION AND THE SURVEYING WORK REFLECTED IN IT, ALL IN COMPLIANCE WITH THE REQUIREMENTS SET FORTH IN REGULATION .12 OF TITLE 09, SUBTITLE 13, CHAPTER 06, COMAR.

JOHN LANGFORD
PROFESSIONAL LAND SURVEYOR
MD. No. 1995

JOB NO.: 010-02

SCALE: 1"=50'

DRAWN: dfd

DATE: MAY 1, 2007

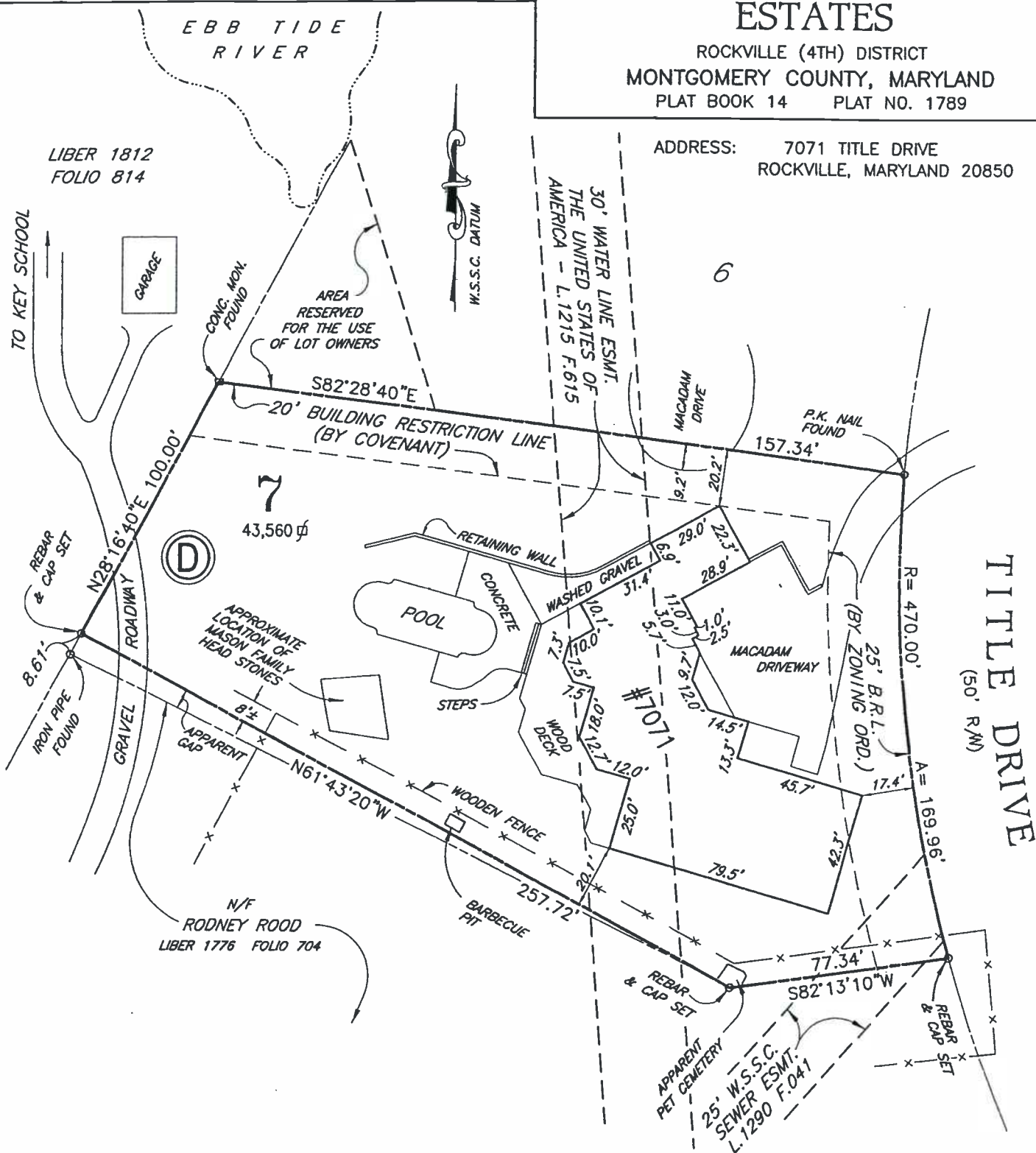
TRANSIT-TAPE SURVEYS, INC.

11 GRAY'S INN COURT
ROCKVILLE, MARYLAND 20850

BOUNDARY SURVEY LOT 7, BLOCK D PLEASANT VIEW ESTATES

ROCKVILLE (4TH) DISTRICT
MONTGOMERY COUNTY, MARYLAND
PLAT BOOK 14 PLAT NO. 1789

ADDRESS: 7071 TITLE DRIVE
ROCKVILLE, MARYLAND 20850



SURVEYOR'S STATEMENT

I HAVE EITHER PERSONALLY PREPARED THIS BOUNDARY SURVEY OR WAS IN RESPONSIBLE CHARGE OVER ITS PREPARATION AND THE SURVEYING WORK REFLECTED IN IT, ALL IN COMPLIANCE WITH THE REQUIREMENTS SET FORTH IN REGULATION .12 OF TITLE 09, SUBTITLE 13, CHAPTER 06, COMAR.

JOHN LANGFORD

P.L.S. NO. 1995

JOB NO.: 010-03

SCALE: 1"=50'

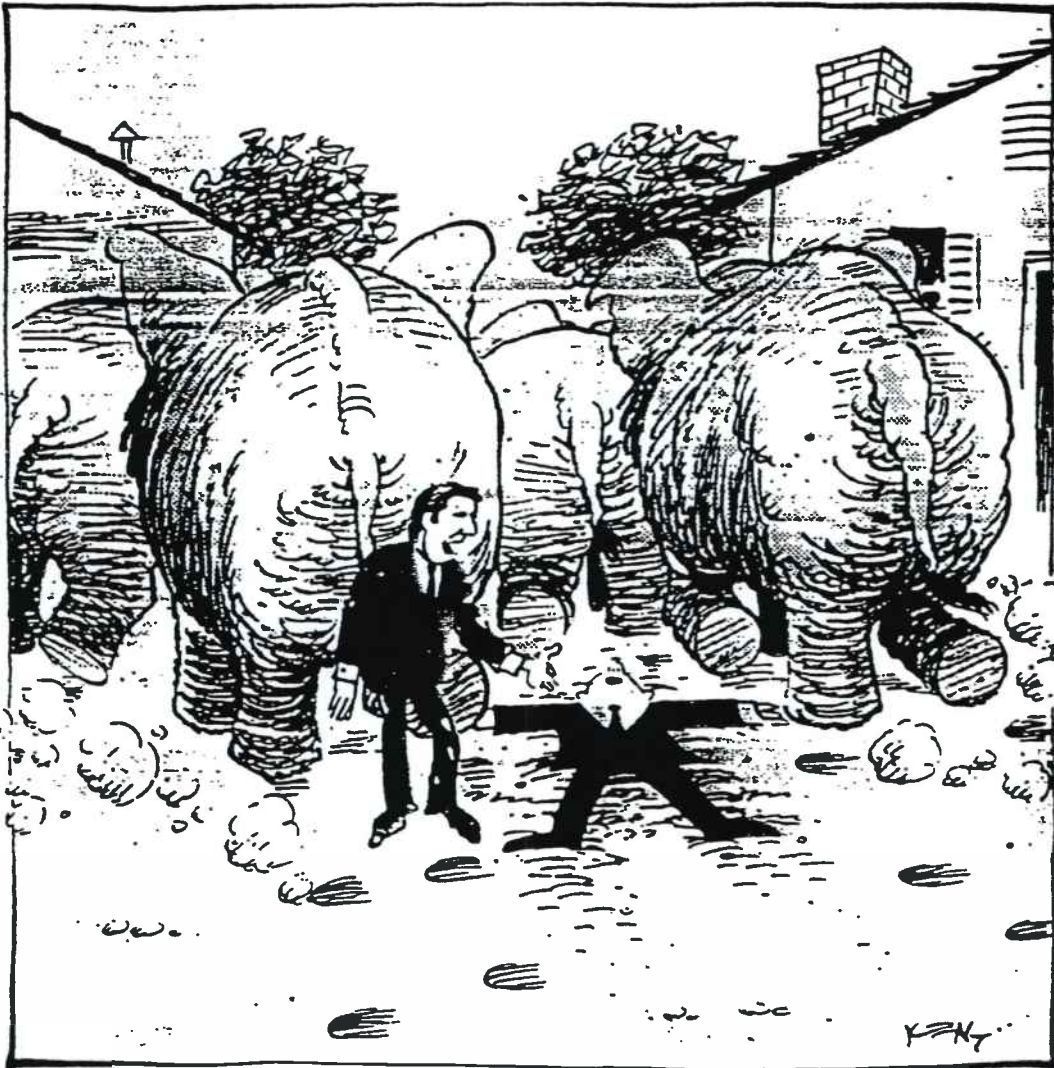
DRAWN: dfd

DATE: MAY 25, 2007



" No access?! You can swim can't you?!"

EASEMENTS



"Gee, Mr. Dobbs . . . it sure looks like 'a visible and apparent easement' to ME!"

THIS DOCUMENT CONSTITUTES A STATEMENT OF THE TERMS AND CONDITIONS ON WHICH A TITLE INSURER IS WILLING TO ISSUE A POLICY OF TITLE INSURANCE IF THE TITLE INSURER ACCEPTS THE PERMIUM FOR THE POLICY. IT IS NOT A REPRESENTATION AS TO THE STATE OF TITLE AND DOES NOT CONSTITUTE AN ABSTRACT OF TITLE.

Fidelity National Title Insurance Company

File No. **DILEMMA**

SCHEDULE A

1. Effective Date: October 3, 2017

2. Policy or Policies to be issued:	Amount of Insurance
(a) ALTA Owner's Policy (6/17/06)	\$2,500,000.00
Proposed Insured:	
HAZEL HICKORY and EVER GREENE	
(b) ALTA Loan Policy (6/17/06)	\$2,000,000.00
Proposed Insured:	
HUGE & BENEVOLENT SAVINGS & LOAN ASSOC.	

3. The estate or interest in the land described or referred to in this Commitment and covered herein is **Fee Simple**.

4. Title to the **FEE SIMPLE** estate or interest in said land is at the effective date hereof vested in:
RODNEY ROOD

5. The land referred to in this Commitment is described as follows:

Lot numbered Seven (7) in Block lettered "D" in the subdivision known as "PLEASANT VIEW ESTATES," as per plat recorded in Plat Book 14 at Plat No. 1789, among the Land Records for Montgomery County, Maryland.

Countersigned:

DILEMMA, P.C.
342 Hungerford Court
Rockville, Maryland 20850

By: _____
AUTHORIZED OFFICER OR AGENT

Fidelity National Title Insurance Company

SCHEDULE B – SECTION I

Requirements

The following are the requirements to be complied with:

1. Payment to, or for the account of, the sellers or mortgagors of the full consideration for the estate or interest to be insured.
2. Instruments in insurable form which must be executed, delivered and duly filed for record:
 - A. **Deed from RODNEY ROOD to HAZEL HICKORY and EVER GREENE conveying the subject property set forth under Schedule A.**
 - B. **Deed of Trust from HAZEL HICKORY and EVER GREENE to HUGE & BENEVOLENT SAVINGS & LOAN ASSOC. conveying the subject property set forth under Schedule A.**
3. Payment of all taxes, assessments and charges levied against subject premises, which are due and payable.
For informational purposes only:
County/State Real Estate Taxes to Montgomery County, Maryland for the period ending June 30, 2018, in the amount of \$25,324.62, are currently due and payable.
Tax ID #: 01-02-3456789
4. Satisfaction and release of that certain Deed of Trust from Rodney Rood to Leroy Brown, Trustee, dated the 16th day of June, 2003 and recorded the 29th day of June, 2003 in Liber 6666 at folio 666, among the Land Records for Montgomery County, Maryland, securing You Owe Us Mortgage, in the original sum of \$950,000.00.
5. Satisfaction and release of that certain Deed of Trust from Rodney Rood to Robin Hood, Trustee, dated the 28th day of May, 2004 and recorded the 30th day of June, 2004, in Liber 7804 at folio 333, among the Land Records for Montgomery County, Maryland, securing Let Us Help Equity, in the original sum of 300,000.00.
6. Redemption and release of 2006 Tax Sale filed by Montgomery County, Maryland.
7. Satisfaction and release of record that certain Lien and Judgment for unpaid Tax under the Maryland Income Tax Law, filed the 1st day of June 2003, against Rodney Rood in the Circuit Court of Montgomery County, Maryland as Confessed Judgment No. 123456.
8. Satisfaction and release of record of that certain Federal Tax Lien for unpaid Tax, filed the 2nd day of May, 2005, against Rodney Rood in the Circuit Court for Montgomery County, Maryland, as Tax Lien No. 76543.
9. Satisfaction and release of that certain Mechanics Lien filed the 15th day of November, 1005, by We Fix It Builders, Inc. vs. Rodney Rood, in the Circuit Court for Montgomery County, Maryland, as Lien No. 98789.
10. Title Escrow held for release of 30' Water Line Easement to the United States of America, as recorded in Liber 1215 at folio 615, among the Land Records for Montgomery County, Maryland, and the removal of the water line itself.

NOTICE: Please be aware that due to the conflict between federal and state laws concerning the cultivation, distribution, manufacture or sale of marijuana, the Company is not able to close or insure any transaction involving Land that is associated with these activities.

Fidelity National Title Insurance Company

SCHEDULE B – SECTION II

Exceptions

Schedule B of the policy or policies to be issued will contain exceptions to the following matters unless the same are disposed of to the satisfaction of the Company:

1. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date the Proposed Insured acquires for value of record the estate or interest or mortgage thereon covered by this Commitment.
2. Rights or claims of parties other than the Insured in actual possession of any or all of the property.
3. Easements, or claims of easements, not shown by the public records.
4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land. The term "encroachment" includes encroachments of existing improvements located on the Land onto adjoining land, and encroachments onto the Land of existing improvements located on adjoining land.
5. Any lien, or right to a lien, for services, labor or material heretofore or after furnished, imposed by law and not shown by the public records.
6. Taxes for the year 2018-2019 and subsequent years, a lien not yet due and payable.
7. Real estate taxes, other public charges (including, but not limited to, assessments by any county, municipality, Metropolitan District or Commission) and the balance of any such charges payable on an annual basis which are not yet due and payable.
8. AS TO PROPERTIES LOCATED IN ALLEGANY, GARRETT AND WASHINGTON COUNTIES: Any right, title, interest, estate, grant, easement, or reservation of subsurface areas of the land described in Schedule A, including but not limited to, any oil or gas rights, or minerals or mineral rights appearing in the Public Records and any rights of access to said oil or gas rights, or minerals or mineral rights for the purpose of mining, drillings, extraction or exploration.
9. This Commitment for Title Insurance does NOT constitute a report of title and is not to be relied upon by the insured(s) or any other party as a title report or representation of the status of title. Any title search and examination conducted by or for the Company in connection with the issuance of a Title Insurance Policy, if any, is solely for the benefit of the Company. The sole liability of the Company and/or its issuing agent hereunder shall be as set forth in the Conditions and Stipulations of the Final Title Insurance Policy jacket. Neither the Company nor its issuing agent shall be liable to the proposed insured(s) or any other party for any claim of alleged negligence, negligent misrepresentation, or any other cause of action in tort in connection with this Title Insurance Policy.

NOTE: Any reference herein made as to restrictions and/or restrictive covenants is intended to include, as if said language was set forth after each exception "omitting any covenant or restriction based on race, color, religion, sex, handicap, familial status or national origin", unless and only to the extent that said covenant: (A) is exempt under Chapter 42, Section 3607 of the United States Code, or (B) relates to handicap but does not discriminate against handicapped persons.

10. "Minimum" building restriction lines; easements for water mains, sanitary sewer, storm drains; drainage and storm water management; public utility easements (10' P.U.E.); slope easements; and all other easements and rights-of-way established or incorporated by reference per the Owner's Dedication (and, in some cases, drawn) on a plat of subdivision styled "Pleasant View Estates" per plat thereof recorded in Plat Book 14 at Plat No. 1789 among the Land Records for Montgomery County, Maryland.

NOTE: The Loan Policy will insure, however, that such building restriction lines have not been violated and that any future violation thereof will not cause a forfeiture or reversion of title.

Fidelity National Title Insurance Company

SCHEDULE B – SECTION II (Continued)

11. Declaration of Covenants, Conditions and Restrictions (relating, *inter alia*, to the organization of the Pleasant View Estates Homeowners Association, Inc.) dated the 1st day of May, 2001 and recorded the 2nd day of May, 2001 in Liber 15555 at folio 71, among the Land Records for Montgomery County, Maryland.

NOTE: The Loan Policy will insure, however, that such covenants, conditions and restrictions have not been violated and that any future violation thereof will not cause a forfeiture or reversion of title.

12. Right-of-Way to the Potomac Edison Company, dated the 24th day of October, 1919 and recorded the 5th day of December, 1919 in Liber 543 at folio 911, among the Land Records for Montgomery County, Maryland.
13. Covenants and Restrictions contained in a certain Deed, dated the 1st day of March, 1924, and recorded the 1st day of July, 1925 in Liber 711 at folio 411, among the Land Records for Montgomery County, Maryland.

NOTE: The Loan Policy will, however, affirmatively insure against loss of damage occasioned by the enforcement or attempted enforcement of the aforesaid covenants and restrictions resulting in an order of a court of competent jurisdiction requiring the removal of any improvements otherwise lawfully constructed or the abatement of any use of the land referred to herein otherwise lawfully permitted.

14. A Sewer Easement (25' wide) to the Washington Suburban Sanitary Commission dated the 5th day of January, 1945 and recorded the 7th day of January, 1945, in Liber 1290 at folio 41, among the Land Records for Montgomery County, Maryland.
15. A 20' Building Restriction Line (by Covenant) and a 25' B.R.L. (by Zoning Ordinance), as delineated on that certain Boundary Survey, dated the 5th day of June, 1995, prepared by John Langford, Surveyor. (P.L.S. No. 1995).
16. A Water Line Easement (30' wide) to The United States of America dated the 16th day of May, 1936 and recorded the 4th day of June, 1936, in Liber 1215 at folio 615, among the Land Records for Montgomery County, Maryland.
17. Title to the premises as situate inside the title lines and enclosed by the "Wooden Fence"; and the effect, if any, of the following items, to wit: "Gravel Roadway"; "Location of Mason Family Head Stones"; "Macadam Drive"; "Macadam Driveway"; "Barbecue Pit"; "Apparent Pet Cemetery"; and the location of the structure known as "7071" as it apparently encroaches across the 25' B.R.L. and the 30' water line easement; all as delineated on that certain Boundary Survey, dated the 25th day of May, 2007, as prepared by John Langford, Surveyor (P.L.S. No. 1995).

NOTE: Further, the Loan Policy shall not insure against loss or damage which may occur by reason of a change in the use or character of the "Gravel Roadway" for ingress or egress, or against any loss of damage which may occur by the overburdening of the same.

18. Rights or claims of parties other than the proposed insured in actual possession of any or all of the insured premises, including, but not limited to the rights of parties in possession under unrecorded leases, and other rights of parties in possession as tenants; and unrecorded easements, discrepancies or conflicts in boundary lines, shortages in area and encroachments which an accurate, current and complete land survey of the insured premises would disclose.

NOTE: The Loan Policy will insure, however, that the improvements do not encroach on any of the easements referred to above in Items 6 and 8 of this Schedule B, Section 2, either located or unlocated on the insured premises.

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that I, **RODNEY ROOD**, do hereby constitute and appoint my son, **RODNEY ROOD, JR.**, my true and lawful attorney-in-fact, for me and in my name, and in my stead, to make, execute, accept and deliver any contract, paper and other document in regard to the sale and purchase of the herein described land and premises, lying in the State of Maryland, County of Montgomery, in accordance with that certain Contract of Sale dated the 6th day of September, 2017, and more particularly described as follows:

Lot numbered Seven (7) in Block lettered "D" in the subdivision known as "PLEASANT VIEW ESTATES," as per plat recorded in Plat Book 14 at Plat No. 1789, among the Land Records for Montgomery County, Maryland.

MY ATTORNEY-IN-FACT shall, upon such terms and conditions as he may deem proper, in his discretion, endorse and carry out the terms and conditions of said Contract of Sale.

I FURTHER HEREBY make, constitute and appoint my aforesaid attorney-in-fact to make, endorse, receive, sign, seal, execute, acknowledge, accept and deliver any and all deeds, checks, receipts, releases, warranties, affidavits, contracts, addenda, settlement statements, loan commitments and disclosure documents, truth-in-lending statements, all forms of commercial papers, endorsements to checks, or the like, and any such other instrument or instruments in writing of whatever kind, character and nature as may be necessary, in his discretion, to complete the sale, purchase and the settlement process for the herein described land and premises.

FURTHER, THIS POWER OF ATTORNEY shall remain in full force and effect until revoked, suspended or terminated by a document executed and acknowledged by me and recorded among the Land Records for Montgomery County, Maryland, and I hereby ratify, confirm and accept all prior acts, if any, made by my attorney-in-fact in connection with the aforesaid land and premises. This Power of Attorney shall be binding on me, my heirs, successors, assigns, executors, administrators and personal representatives, and any person receiving this Power of Attorney shall be entitled to rely on the authority herein given until and unless a document expressly revoking the powers herein given is recorded among the aforesaid Land Records.

NOTWITHSTANDING anything herein contained to the contrary, this Power of Attorney shall not terminate or be affected or impaired by my disability, it being my express intention that this Power of Attorney shall survive my disability, pursuant to the provisions of Title 13, Sections 601 and 602, Estates and Trusts Article, *Annotated Code of Maryland*.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on this 1st day of October, 2017.

_____(SEAL)
RODNEY ROOD

AFFIDAVIT

THE UNDERSIGNED, RODNEY ROOD, JR., having been appointed as the true and lawful attorney-in-fact for **RODNEY ROOD**, hereby certifies that the Power of Attorney hereinabove given has not been revoked or terminated and that I have no knowledge, actual or constructive, of the death, disability or incompetence of **RODNEY ROOD**.

RODNEY ROOD, JR.

STATE OF MARYLAND)
) **ss:**
COUNTY OF MONTGOMERY)

THIS IS TO CERTIFY that on this 6th day of October, 2017, before me, the subscriber, a Notary Public in and for the State aforesaid, personally appeared **RODNEY ROOD, JR.**, and made oath in due form of law that the facts and matters contained in the foregoing Affidavit are true.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year first above written.

James J. Dilemma **Notary Public**

My commission expires: June 11, 2020.

A. Settlement Statement

U.S. Department of Housing and Urban Development

OMB Approval No. 2502-0265

B. Type of Loan

1. ☐ FHA	2. ☐ FmHA	3. ☐ Conv. Unins.	6. File Number DILEMMA	7. Loan Number 911	8. Mortgage Insurance Case Number
4. ☐ VA	5. ☐ Conv. Ins.	C. Note: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(p.o.c.)" were paid outside the closing; they are shown here for information purposes and are not included in the totals. WARNING: It is a crime to knowingly make false statements to the United States on this or any other similar form. Penalties upon conviction can include a fine and imprisonment. For details see: Title 18 U. S. Code Section 1001 and Section 1010.			TitleExpress Settlement System Printed 08/28/2017 at 08:11 LCD
D. NAME OF BORROWER:		HAZEL HICKORY and EVER GREENE			
ADDRESS:		7071 Title Drive, Rockville, MD 20850			
E. NAME OF SELLER:		RODNEY ROOD			
ADDRESS:		(Address Unknown)			
F. NAME OF LENDER:		HUGE & BENEVOLENT SAVINGS & LOAN ASSOC.			
ADDRESS:		27 Windfall Blvd. #1300, Make Believe, MD 20850			
G. PROPERTY ADDRESS:		7071 Title Drive, Rockville, Maryland 20850 Lot 7, Block D, "PLEASANT VIEW ESTATES"			
H. SETTLEMENT AGENT:		Dilemma, P.C.			
PLACE OF SETTLEMENT:		342 Hungerford Court, Rockville, MD 20850			
I. SETTLEMENT DATE:		10/06/2017			
J. SUMMARY OF BORROWER'S TRANSACTION:			K. SUMMARY OF SELLER'S TRANSACTION:		
100. GROSS AMOUNT DUE FROM BORROWER			400. GROSS AMOUNT DUE TO SELLER		
101. Contract sales price		2,500,000.00	401. Contract sales price		2,500,000.00
102. Personal Property			402. Personal Property		
103. Settlement charges to borrower (line 1400)		90,140.46	403.		
104.			404.		
105.			405.		
Adjustments for items paid by seller in advance			Adjustments for items paid by seller in advance		
107. County taxes	10/06/17 to 06/30/18	18,594.51	407. County taxes	10/06/17 to 06/30/18	18,594.51
108. Assessments	10/06/17 to 12/31/17	226.43	408. Assessments	10/06/17 to 12/31/17	226.43
109.			409.		
110.			410.		
111.			411.		
112.			412.		
120. GROSS AMOUNT DUE FROM BORROWER			420. GROSS AMOUNT DUE TO SELLER		
200. AMOUNTS PAID BY OR ON BEHALF OF BORROWER			500. REDUCTIONS IN AMOUNT DUE TO SELLER		
201. Deposit or earnest money		25,000.00	501. Excess Deposit (see instructions)		
202. Principal amount of new loans		2,000,000.00	502. Settlement charges to seller (line 1400)		185,764.00
203. Existing loan(s) taken subject to			503. Existing loan(s) taken subject to		
204.			504. Payoff of First Mortgage Loan		855,416.15
			YOU OWE US MORTGAGE		
205.			505. Payoff of Second Mortgage Loan		255,317.17
			LET US HELP EQUITY		
206.			506.		
207.			507. 2016 Tax Sale		29,392.02
208.			508. 2017 Tax Bill w/penalties		26,342.59
			Montgomery County, MD		
209.			509. MD Withholding		86,082.61
			Clerk of the Court		
Adjustments for items unpaid by seller			Adjustments for items unpaid by seller		
213.			513. Go Ahead & Get It VISA		7,600.00
214.			514. Water Bill Escrow		700.00
215.			515. Maryland Tax Lien		3,514.15
216.			516. IRS Lien		10,111.14
217.			517. Mechanics Lien		45,444.41
218.			518. Repair Escrow		3,000.00
219.			519. Title Escrow		25,000.00
220. TOTAL PAID BY/FOR BORROWER			520. TOTAL REDUCTION AMOUNT DUE SELLER		
300. CASH AT SETTLEMENT FROM OR TO BORROWER			600. CASH AT SETTLEMENT TO OR FROM SELLER		
301. Gross amount due from borrower (line 120)		2,608,961.40	601. Gross amount due to seller (line 420)		2,518,820.94
302. Less amounts paid by/for borrower (line 220)		2,025,000.00	602. Less reduction amount due seller (line 520)		1,533,684.24
303. CASH FROM BORROWER			603. CASH TO SELLER		
583,961.40			985,136.70		

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SETTLEMENT STATEMENT

File Number: DILEMMA

PAGE 2

TitleExpress Settlement System Printed 08/28/2017 at 08:11 LCD

L. SETTLEMENT CHARGES		PAID FROM BORROWER'S FUNDS AT SETTLEMENT	PAID FROM SELLER'S FUNDS AT SETTLEMENT
700. TOTAL SALES/BROKER'S COMMISSION based on price \$2,500,000.00 @ 6.000 = 150,000.00			
Division of commission (line 700) as follows:			
701. \$	150,000.00 to DITZY DINERO, INC.		
702. \$	to		
703. Commission paid at Settlement			150,000.00
800. ITEMS PAYABLE IN CONNECTION WITH LOAN			
801. Loan Origination Fee	1.250 % Huge & Benevolent	25,000.00	
802. Loan Discount	%		
803. Appraisal Fee	to We Guess Appraisal Services	450.00	
804. Credit Report	to FBI Credit Report Services	45.00	
805. Lender's Inspection Fee	to Huge & Benevolent	150.00	
806. Flood Certification Fee	to Noah's Flood Service	15.00	
807. Lenders Review Fee	to Huge & Benevolent	350.00	
808.			
809.			
810.			
811.			
900. ITEMS REQUIRED BY LENDER TO BE PAID IN ADVANCE			
901. Interest From	10/06/2017 to 11/01/2017 @ \$ 361.1100 /day 26 Days	9,388.86	
902. Mortgage Insurance Premium for	to		
903. Hazard Insurance Premium for	1 year to Don't Play With Matches Ins. Co.	4,200.00	
904.			
905.			
1000. RESERVES DEPOSITED WITH LENDER FOR			
1001. Hazard Insurance	2 mo. @ \$ 350.00 /mo	700.00	
1002. Mortgage Insurance	mo. @ \$ /mo		
1003. City Property Taxes	mo. @ \$ /mo		
1004. County Property Taxes	5 mo. @ \$ 2,110.32 /mo	10,551.60	
1005. Annual Assessments	mo. @ \$ /mo		
1009. Aggregate Analysis Adjustment		-1,500.00	
1100. TITLE CHARGES			
1101. Settlement or closing fee			
1102. Abstract or title search	to Columbus Land Search	295.00	
1103. Title examination			
1104. Title insurance binder	to Dilemma, P.C.	25.00	
1105. Document Preparation	to Dilemma, P.C.	150.00	
1106. Insured Closing Letter	to Fidelity National Title Insurance Company	25.00	
1107. Attorney's fees	to Dilemma, P.C.	450.00	
(includes above items No:)			
1108. Title Insurance	to Fidelity National Title Insurance Company	8,275.00	
(includes above items No:)			
1109. Lender's Policy	2,000,000.00 - 4,575.00		
1110. Owner's Policy	2,500,000.00 - 3,700.00		
1111.			
1112.			
1113.			
1200. GOVERNMENT RECORDING AND TRANSFER CHARGES			
1201. Recording Fees Deed \$ 60.00 ; Mortgage \$ 60.00 ; Release \$ 50.00		120.00	50.00
1202. State Recordation Tax	Deed \$ 30,560.00 ; Mortgage \$	15,280.00	15,280.00
1203. FTHB State Transfer Tax	Deed \$ 6,250.00 ; Mortgage \$		6,250.00
1204. County Transfer Tax	Deed \$ 25,000.00 ; Mortgage \$	12,500.00	12,500.00
1205.			
1300. ADDITIONAL SETTLEMENT CHARGES			
1301. Survey	to Transit-Tape Surveys, Inc.	3,500.00	
1302. Pest Inspection	to Pests Here & There Termite, Inc.	125.00	
1303. Release Recording Services	to Dilemma, P.C.		100.00
1304. Messenger/Fed-X/Copies	to Dilemma, P.C.	45.00	34.00
1305. Termite Damage	to Pests Here & There Termite, Inc.		1,550.00
1306.			
1307.			
1308.			
1400. TOTAL SETTLEMENT CHARGES (enter on lines 103, Section J and 502, Section K)		90,140.46	185,764.00

HUD CERTIFICATION OF BUYER AND SELLER

I have carefully reviewed the HUD-1 Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction. I further certify that I have received a copy of the HUD-1 Settlement Statement.

HAZEL HICKORY

EVER GREENE

RODNEY ROOD

WARNING: IT IS A CRIME TO KNOWINGLY MAKE FALSE STATEMENTS TO THE UNITED STATES ON THIS OR ANY SIMILAR FORM. PENALTIES UPON CONVICTION CAN INCLUDE A FINE AND IMPRISONMENT. FOR DETAILS SEE TITLE 18: U.S. CODE SECTION 1001 AND SECTION 1010.

The HUD-1 Settlement Statement which I have prepared is a true and accurate account of this transaction. I have caused or will cause the funds to be disbursed in accordance with this statement.

By: _____

DEED

THIS DEED, made this 6th day of October, 2017, by and between **RODNEY ROOD**, party of the first part; and **HAZEL HICKORY** and **EVER GREENE**, parties of the second part:

WITNESSETH: That for and in consideration of the sum of Two Million Five Hundred Thousand Dollars and No/100ths (\$2,500,000.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the party of the first part does hereby grant and convey unto the parties of the second part, in fee simple, as joint tenants, all of that land and premises situate in the County of Montgomery, State of Maryland, being more particularly described as follows:

Lot numbered Seven (7) in Block lettered "D" in the subdivision known as "PLEASANT VIEW ESTATES", as per plat recorded in Plat Book 14 at Plat No. 1789, among the Land Records for Montgomery County, Maryland.

BEING the same land and premises described in a deed recorded in Liber 3789 at folio 410, among the Land Records for Montgomery County, Maryland.

TO HAVE and TO HOLD said land and premises herein described or mentioned and hereby intended to be conveyed unto and to the only proper use and benefit forever of the parties of the second part, in fee simple, as joint tenants, with the right of survivorship; **SUBJECT, HOWEVER**, to all covenants, easements, conditions and other restrictions of record.

TOGETHER WITH the buildings and improvements thereupon erected, made or being, and each and every of the rights, alleys, ways, waters, privileges, appurtenances and advantages to the same belonging or in any way appertaining.

AND the party of the first part does hereby covenant that he will warrant specially the land and premises hereby conveyed and that he will execute such other and further assurances of said land and premises as may from time to time be requisite.

IN WITNESS WHEREOF, the party of the first part has set his hand and seal and delivered these presents, as of the year and day first above written.

RODNEY ROOD, by Rodney Rood, Jr., his
Attorney-in-Fact (SEAL)

STATE OF MARYLAND)
) ss:
COUNTY OF MONTGOMERY)

I **HEREBY CERTIFY**, that on this 6th day of October, 2017, before the subscriber, a Notary Public in and for the State aforesaid, personally appeared **RODNEY ROOD**, by Rodney Rood, Jr., his attorney-in-fact, known to me (or satisfactorily proven) to be the person described in the foregoing instrument and acknowledged that he executed the same and did acknowledge the foregoing deed to be his act for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and Notarial Seal.

James J. Dilemma Notary Public

My Commission expires: June 11, 2020.

THE UNDERSIGNED, a member in good standing of the Bar of the Court of Appeals of Maryland, hereby certifies that the within instrument was prepared by him or under his immediate supervision.

James J. Dilemma

Parcel ID#: 01-01-01010101
Title Insurer: Fidelity National

OWNERS' AFFIDAVIT OF SURVEY

TITLE INSURANCE COMPANY: Fidelity National Title Insurance Company

LENDER: HUGE & BENEVOLENT SAVINGS & LOAN ASSOC.

PROPERTY: 7071 Title Drive, Rockville, Maryland 20850

PREVIOUS SURVEY: Transit-Tape Surveys, Inc. dated May 25, 2007, by John Langford,
Surveyor, P.L.S. No. 1995

THIS AFFIDAVIT IS GIVEN TO INDUCE THE TITLE INSURANCE COMPANY (THE INSURER) TO ISSUE ITS COMMITMENTS OF TITLE INSURANCE AND ITS FINAL LENDER'S POLICY OF TITLE INSURANCE TO YOUR LENDER WITHOUT A SURVEY EXCEPTION AND WITHOUT THE NECESSITY OF YOU HAVING TO OBTAIN A NEW LOCATION SURVEY.

The undersigned Owner hereby states, UNDER PENALTIES OF PERJURY, as follows:

1. That I/We am/are the owner(s) of the Property;
2. That attached hereto and made a part of this Affidavit is the previous survey prepared on my/our behalf, which I/we obtained at the time of my/our purchase or last refinance of the Property;
3. That the previous survey as presented has not been altered in any detail since its completion and delivery by the registered property line surveyor or the professional land surveyor;
4. That a physical examination of the Property discloses no discrepancy between the Property and the previous survey;
5. That I/we have not built or relocated any fence, fences, driveways, walkways, buildings or accessory structures on the Property since the date of the previous survey;
6. That my/our neighbors have not built or relocated any fence, fences, driveways, walkways, buildings or accessory structures along or adjacent to my/our Property lines;
7. That no one is adversely holding any portion of the Property;
8. That no one has claimed any portion of the Property or is maintaining that he, she and/or they own any portion of the Property;
9. That there have been no physical changes in the boundary lines of the Property as shown on the previous survey; and
10. That I/we have not made any alterations, enlargements and/or additions to the exterior of the improvements as shown on the previous survey.

RODNEY ROOD

Sworn to and subscribed before me this 6th day of October, 2017.

NOTARY PUBLIC

My commission expires _____