MISCELLANEOUS TITLE CURATIVE AND CLOSING DOCUMENTS

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Chapter 26

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Kevin graduated from the University of Houston College of Law, in May, 1981, where he served as the Executive Editor of the *Houston Law Review*. Before law school, he graduated from University of Texas at Austin in December, 1977, graduating with honors and majoring in Finance.

ACTIVITIES

Past Chair, Real Estate Forms Committee, State Bar of Texas.

Past Chair (1993-1996), Dallas Bar Association, Real Property Section.

Member, Various Planning Committees for the State Bar of Texas and University of Houston.

Director, Advanced Real Estate Law Course (1994) (State Bar of Texas).

Moderator, Advanced Real Estate Law Course (1995) (State Bar of Texas).

Speaker/Author: Numerous articles written for real estate related legal topics, including the Dallas Bar Association Real Property Section, State Bar of Texas, South Texas College of Law, University of Texas Law School, University of Houston Law Center, and Southern Methodist University School of Law.

Member: City of Allen, Texas Planning and Zoning Commission

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MISCELLANEOUS TITLE CURATIVE AND CLOSING DOCUMENTS

I. TITLE DOCUMENTS.

A. Abstracts of Judgment.

A first or subsequent abstract of judgment that has not become dormant may be recorded and indexed in accordance with Chapter 52.001 of the Texas Property Code. Once recorded, the abstract of judgment is a lien on the defendant's real property located in the county in which the abstract is recorded and indexed. This includes real property acquired after recording and indexing. The lien continues for 10 years following the date of recording and indexing, unless the judgment becomes dormant during the 10-year period. Sec. 52.006 Property Code.

Section 52.0011 Property Code provides that if certain procedures are followed, abstracts judgment are not liens on real property during a pending appeal of the judgment. One procedure is to obtain the court's finding that the judgment lien would not substantially increase the degree to which the judgment would be secured when balanced against the defendant's costs of appeal. A certified copy of the finding must be recorded in the real property records in each county where the abstract of judgment is filed. If the court withdraws the finding, the lien exists from the date a certified copy of the withdrawal of the finding is filed in the real property records in each county where the abstract of judgment is filed. Title companies will generally rely on this statute, but with caution. Title companies typically do not rely on supersedeas bonds or cash or securities deposited with the court.

Sections 52.021-52.025 Property Code provide for cancellation of abstracts of judgment by court order. This procedure applies to abstracts recorded before September 1, 1993. For abstracts of judgment recorded on or after September 1, 1993, a court order is unnecessary if the debtor owned the property before the bankruptcy petition was filed and the debt evidenced by the judgment was discharged in the bankruptcy. A judgment discharged in bankruptcy is not a lien on property acquired after the bankruptcy petition was filed, Section 52.042 Property Code. The judgment lien is not affected if the debt evidenced by the judgment was not discharged, or if the property is not exempted in the bankruptcy and is abandoned during the bankruptcy. Section 52.043 Property Code.

Title examiners raise exceptions to abstracts of judgment against persons with the same or a similar name to the record owner. The closer then inquires whether the judgment debtor and the record owner are the same person. We typically check the contents of the abstract of judgment to confirm that the information shown does not establish a link with the record owner. If it appears that the record owner is not the judgment debtor, title companies typically accept "Affidavits of Identity." These are also called "Not Same Person

Affidavit," a "Not Me [sic] Affidavit," or the rather sad "Affidavit of Lack of Identity." A form for the Affidavit of Identity follows this section.

Sometimes a Release is the only appropriate way to cure an abstract of judgment. This can be a problem when the judgment creditor cannot be found. Section 31.008 Civil Practice and Remedies Code provides that the judgment debtor may pay the amount due to the judgment creditor to the court that rendered the judgment. There are certain notice requirements contained in the statute. The judge or the clerk of the court then executes the release on behalf of the judgment creditor. The release must recite several items of information specified in the statute.

RELEASE OF JUDGMENT LIEN

Date:

Judgment Debtor:

Judgment Creditor:

Judgment

Date:

Cause Number:

Style of Case:

Court:

Abstract of Judgment Recording Information:

Judgment Creditor acknowledges satisfaction of the judgment and releases to Judgment Debtor any and all liens existing by reason of the judgment and the filing of the abstract of judgment.

_____

[ACKNOWLEDGMENT]

AFFIDAVIT OF IDENTITY

TITLE COMPANY:

TITLE COMPANY

DATE:

AFFIANT:

PROPERTY:

The undersigned Affiant, after being duly sworn, here states under oath that the following information is true and correct:

1. Purpose of this affidavit. Affiant makes this affidavit to the Title Company as an inducement to it to complete a transaction concerning the Property. Affiant acknowledges that Title Company is relying upon the representations in this affidavit as being true and correct. Affiant also acknowledges that the contemplated transaction would not be consummated without this affidavit's being executed. Affiant represents that he or she is the person who signed this affidavit and, if applicable, that he or she is duly authorized to execute this affidavit.

2. Affiant is not the same person(s) named in the attached document.

_____

[JURAT AND ACKNOWLEDGMENT]

B. Ad Valorem Taxes. The tax exception in each title insurance form contains a blank. If all taxes are paid to the current year, the current year is entered. If taxes are not current, the title company usually collects and pays the amount due.

Payment of taxes for the current year becomes an issue on October 1 of each year. From October through December (and often into January of the upcoming year), the title company obtains tax information for the current year and then collects and pays these taxes. Tax information trickles in over the month of October, making this procedure a challenge.

Prior to 1988, title companies would frequently escrow funds estimated to be sufficient to pay current taxes, although the tax rolls were not yet certified. The State Board of Insurance found this practice to be impermissible. State Board of Insurance Bulletin No. 153, dated April 4, 1988, states that unless all taxes have been paid, the tax exception must be for the current year.

We occasionally use escrow agreements regarding payment of taxes. Three such agreements follow. We use the Agreement Regarding Payment of Real Estate Taxes when we act as escrow agent for payment of taxes but are not insuring that these taxes are paid. The Deposit and Indemnity Agreement can be used when tax information is available, but there is a dispute as to the amount due. We use the Escrow Agreement Regarding Taxes when taxes have been paid, but receipts are unavailable before closing.

AGREEMENT REGARDING PAYMENT OF REAL ESTATE TAXES

Date:

_____ National Bank
(Address)

RE: [Property Description], **PROPERTY**

Ladies and Gentlemen:

On this date, _____ is purchasing the Property from _____. Contemporaneously, _____ is executing a promissory note in the principal amount of $_____ payable to _____ National Bank ("Bank"), which promissory note is secured by a vendor's lien and deed of trust lien upon the Property.

_____ has been furnished information regarding the nonpayment of certain 19__ real property taxes. There will be an exception to the 19__ real property taxes on any policies of title insurance to be issued in connection with the closing of this matter, as follows:

> Standby fees, taxes and assessments by any taxing authority for the year 19__, and subsequent years, and subsequent taxes and assessments by any taxing authority for prior years due to change in land usage or ownership.

_____ agrees to indemnify and hold harmless _____ and Title Company regarding any claims for damages or alleged damages that may arise from the nonpayment of the subject real property taxes for the year of 19__.

_____ and _____ here by agree that the remainder of any unpaid real property taxes affecting the Property will be paid when appropriate tax bills have been furnished by the taxing authorities who remain unpaid, but in any event, not later than January 31, 19__, which is the last date to pay such taxes before they become delinquent.

_____ and _____ further agree that any proration of taxes at closing will be based upon the latest tax information available to Title Company. _____ and _____ agree that they shall make a further tax proration and adjustment between them, if necessary, when tax bills have been received from the taxing authorities.

EXECUTED this ____ day of _____, 20___.

[ENTITY NAME AND SIGNATURE LINES]

DEPOSIT AND INDEMNITY AGREEMENT

Title Company (hereinafter "TC") has noted as exceptions to the title to the property described in Exhibit "A" attached hereto (the "Property") the following actual or supposed rights, interests, claims, liens, encumbrances or defects in title (hereinafter "the Exception"):

Standby fees, taxes and assessments by any taxing authority for the year 19__.

_____ is the owner of the Property ("Owner"). Owner has requested TC to issue its title insurance policy(ies) with respect to the Property either without mention of the Exception or insuring against loss by reason thereof.

In consideration of the issuance by TC of the title insurance policy requested, Owner agrees as follows:

1. Owner agrees to save and hold TC, its agents and representatives, harmless and to indemnify them of and from all damage, liability, loss or expense, including without limitation attorney's fees and court costs, that they may incur as a result of issuing title insurance policies with respect to the Property without mention of the Exception or as a result of TC insuring against loss by reason thereof.

2. This agreement is binding upon Owner, its heirs, successors, assigns and personal representatives, and inures to the benefit of TC, its agents and representatives. None of the terms of this agreement may be changed except by a writing signed by the entity against whom such change is sought to be enforced.

3. Owner has deposited $_____ with TC (the "Deposit") to secure TC in the Owner's performance of its obligations under this agreement. If proof of payment of the subject real property taxes is not provided to TC prior to _____, then the Deposit may be used in payment of such taxes prior to their delinquency. If the Deposit is insufficient to pay fully all of such taxes, Owner agrees to tender promptly any additional monies needed to make full payment. If proof of payment is provided by Owner to TC prior to _____, then TC will refund the Deposit to Owner.

4. Owner has requested TC to place the Deposit in an interest-bearing account, with all interest earned on the Deposit to be paid to Owner.

5. For the purposes of reporting any interest earned on the Deposit, the federal tax identification number of Owner is _____ and its mailing address is:
_____.

DATED this _____, 20__.

[ENTITY NAME]

AGREED AND ACCEPTED:
TITLE COMPANY

ESCROW AGREEMENT REGARDING TAXES

RE: [Property Description], **Property**

Ladies and Gentlemen:

You are acting as escrow and closing agent for Title Company, regarding the subject transaction. In that regard, I understand that your investigation of the payment of real property taxes relating to the Property has shown that taxes for the year 19__ are presently unpaid in the total sum of $_____(the "Taxes").

I have paid the Taxes, with my payments totaling the sum referred to above; however, it is my understanding that such payments have not yet been credited to my tax accounts. In order to enable you to issue your policy of title insurance relating to the Property without exception to the Taxes, this letter will serve as an escrow agreement between Title Company and me. You will collect at closing and are authorized to hold the sum referred to above until I present to you original paid receipts received from the appropriate taxing authorities or photographic copies of the canceled checks used in payment of the Taxes. Upon presentation of this information to you, you will release to me the sum that you are holding in escrow. If I have not presented such information to you on or before January 25, 20__, and you have been unable to determine independently that the Taxes have been paid, then you are authorized to use the funds being held in escrow in payment of the Taxes in question.

Very truly yours,

C. Adverse Possession. Title insurance companies will generally only rely on adverse possession when there is a court decree or judgment vesting title in the adverse claimant. Sometimes the title company will rely on an Affidavit as to Use and Possession; but this is a case-by-case decision for the title company.

The form that follows is one that we used in a situation where there were overlapping boundaries.

AFFIDAVIT AS TO USE AND POSSESSION.

I, _____, after being duly sworn, do here state and depose as follows:

1. _____ (hereinafter Present Owner) is the present owner of certain real property located in _____,_____ County, Texas (hereinafter "the Property"), which property is more fully described upon EXHIBIT A attached.

2. The Property was acquired by Owner by Warranty Deed dated _____ and recorded in Volume _____, Page_____, Deed Records, _____ County, Texas.

3. The Property was owned by Owner, on _____, at which time certain improvements to the Property, including various apartment units and related improvements including paving for ingress, egress and parking purposes existed and were in place in the same location, as is more fully shown by survey performed by _____, dated _____, which is attached as EXHIBIT B.

4. A portion of the Property [here describe the property in question] is apparently the subject of an overlap in property descriptions for the Property and property descriptions for property lying immediately to the _____ of the Property.

5. Since _____, the date by which improvements had been completed by _____ upon the Property, _____ and its successors, and/or assigns, have claimed the Property as their own under the terms of their various deeds, adversely and to the exclusion of every other person and entity. Further, _____ and its successors, and/or assigns, have used the Property continuously, either having improved the Property with permanent buildings or other structures, or having improved the Property with surfaced parking. The use of the Property by _____ and its successors, and/or assigns has been uninterrupted since the date of acquisition of the property by _____, with no portion of the Property having been leased to any other person or entity. Additionally, since the date of acquisition of the Property, the holding and use of the Property by _____ and its successors, and/or assigns has been well known and notorious in the community. _____ and its predecessors in title have also paid all real property taxes assessed against the Property promptly as they became due. Since the date of acquisition of the Property, the possession by _____ and its successors, and/or assigns has been peaceable, not having been interrupted by adverse suit to recover the Property or an interest therein, or interrupted by any other adverse claim for use.

EXECUTED on _____, 20__.

[SIGNATURES, JURAT AND ACKNOWLEDGMENT.]

D. Assumed Names

Although a "d//b/a" or assumed name is not a legal entity that can acquire title to real property, we often find title taken that way. To cure this, title companies require that an Assumed Name Certificate be recorded in the Office of the County Clerk pursuant to Section 36.10 Business and Commerce Code. The grantor's name in the Deed or Deed of Trust will then be shown as [the name of the person or legal entity who is using the assumed name] d/b/a [the assumed name]. A form for the Assumed Name Certificate follows. We use this form when the registrant is an individual, but it can be modified for a partnership, estate, or REIT.

Requirements for the Assumed Name Certificate for an incorporated business or profession, limited partnership, registered limited liability partnership, or limited liability company are found in Section 36.11 Business and Commerce Code.

ASSUMED NAME RECORDS
CERTIFICATE OF OWNERSHIP FOR UNINCORPORATED BUSINESS OR PROFESSION

NAME IN WHICH BUSINESS IS OR WILL BE CONDUCTED:

BUSINESS ADDRESS:_____
CITY:_____STATE:_____ZIP CODE:_____

PERIOD DURING WHICH ASSUMED NAME WILL BE USED:_____
____ (not to exceed 10 years)

BUSINESS TO BE CONDUCTED AS (Check One):
__Proprietorship __Sole Practitioner __Joint Venture

__General Partnership __Limited Partnership __Real Estate Investment Trust

__Joint Stock Company __Other (name type)_____

CERTIFICATE OF OWNERSHIP

I/We, the undersigned, are the owner_ of the above business and my/our name_ and address_ given is/are true and correct, and there is/are no ownership(s) in said business other than those listed herein below.

- NAMES OF OWNERS -

NAME_____ SIGNATURE_____
Address_____ Zip Code_____
(Residence)

[REPEAT FOR ALL OWNERS]

[ACKNOWLEDGMENT]

E. Boundary Line Disputes

A title company's review of a survey may reveal the existence of a boundary line conflict. There may be a dispute over the actual boundaries between abutting property owners. There may also be encroachments or overlaps over boundary lines, or claims of adverse possession. The Agreement Regarding Boundary Line is the usual curative document used for such matters. This document not only establishes the boundary line between the abutting owners, but also provides for the conveyance by each owner to the other of any interest he or she might have in the other's land, taking into account the boundary line established in the agreement.

AGREEMENT REGARDING BOUNDARY LINE

OWNER:

ADJOINING OWNER:

PROPERTY:

PURCHASER:

RECITALS

A. By Contract dated _____, Purchaser contracted to purchase the Property from Owner.

B. An examination of title of the Property has revealed an apparent overlap and conflict of boundary lines between the Property and the property adjoining immediately to the _____ which is presently owned by Adjoining Owner. This boundary line conflict and apparent overlap arise because of the property descriptions used in various warranty deeds conveying title to the Property and the property adjoining to the _____.

AGREEMENT

For a good valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Owner and Adjoining Owner agree as follows:

1. Owner and Adjoining Owner establish the boundary line between the _____ line of the Property and the property of the Adjoining Owner as follows:

   [Describe the common line between the two properties, or preferably, describe the Property in its entirety using the agreed description and highlighting the boundary line being established.]

2. Owner and Adjoining Owner do hereby grant, sell and convey to each other their respective interests in the real property lying on the opposite side of the agreed boundary line from the property each of them owns.

3. This agreement is binding upon and inures to the benefit of Owner and Adjoining Owner, and their respective heirs, successors or assigns.

EXECUTED on _____, 20__.

_____
[Owner]

_____
[Adjoining Owner]

[Acknowledgment]

F. Condominiums

The By-Laws and Declarations of condominium regimes typically call for periodic maintenance charges. Title companies collect those charges that are due. Title companies ask the Condominium Association to execute an estoppel letter as to these matters.

Additionally, the condominium declaration may provide for a right of first refusal in the condominium association in the event of a proposed sale to a third party. In that event, a waiver of that right must be obtained; a form for that purpose follows.

ESTOPPEL LETTER

[DATE]

RE: _____, **SELLER**
_____, **PURCHASER**
Unit No. __, Building _, and an undivided _____% interest in the common elements of _____CONDOMINIUMS, City of _____, Dallas County, Texas, **PROPERTY**

Ladies and Gentlemen:

The terms of the condominium declaration relating to the Property and recorded in Volume _____, Page ____, Condominium Records, _____ County, Texas, created this homeowner's association. The declaration provides for the levying of certain assessment liens and charges against the Property.

Regarding such assessment liens and charges relating to the Property, we wish to inform you of the following:

1. As of this date, the last payment received for such assessment was for the month of ____ ____, 19__.

2. The amount of such monthly assessment is $_____.

3. The next monthly assessment is due on _____.

4. A transfer or processing fee of $_____ will be due upon sale of the unit.

Very truly yours,

[Condominium Association]

BY: _____

WAIVER OF RIGHT OF FIRST REFUSAL;
STATUS OF HOMEOWNER'S ASSESSMENTS

TITLE COMPANY: TITLE COMPANY

TITLE COMPANY GF NO.:

SELLER:

PURCHASER:

PROPERTY:

CONDOMINIUM ASSOCIATION:

NAME OF CONDOMINIUM (the Condominium):

1. Under a Contract of Sale, a copy of which is attached as Exhibit A, dated _____, Seller agreed to sell the Property to Purchaser.

2. The Declaration of Condominium and Creation of Covenants and Restrictions affecting units in the Condominium provides that if an Owner of any unit decides to sell or otherwise dispose of the unit, the Condominium Association of the Condominium shall first have the option to buy the unit from the Owner.

3. The Condominium Association consents to the transfer contemplated by the attached Contract of Sale for itself, its successors and assigns, and waives any and all right to purchase or lease the Property.

4. The Condominium Association certifies that all dues and assessments arising under the Declaration of Condominium relating to the Property have been paid through the month of _____, ____. The amount of the monthly assessment is $____, and the next payment of such assessment is due on _____, ____.

[Condominium Association]

BY:_____

[ACKNOWLEDGMENT]

G. Contracts for Deed (Executory Contract for Conveyance)

If the property might have been the residence of a purchaser under a Contract for Deed and the purchaser has defaulted, the title company will require proof that the seller has complied with Sections 5.061 - 5.063 of the Texas Property Code. If this notice is not given, a Release or Quit Claim Deed must be obtained from the contract purchaser. The title company will also ask which party is in possession of the property.

The State Bar of Texas Legal Form Manual for Real Estate Transactions contains forms for REINSTATEMENT OF CONTRACT FOR DEED, NOTICE OF LATE PAYMENT WHEN PROPERTY IS USED AS A RESIDENCE, and NOTICE OF CANCELLATION OF CONTRACT OF DEED.

H. Corporations. When a corporation is selling or mortgaging real property, the title company will require proof that these actions are authorized. The title company will also want proof of authority of those acting on behalf of the corporation. The following Certificate of Corporate Resolution is one that we frequently use.

CERTIFICATE OF CORPORATE RESOLUTION

We, _____, President, and _____, Secretary of _____, a Texas corporation, do hereby certify:

(1) that the corporation is duly organized and existing under the laws of the State of Texas;

(2) that all franchise and other taxes required to maintain its corporate existence have been paid when due and that no such taxes are delinquent;

(3) that no proceedings are pending for the forfeiture of its Certificate of Incorporation or for its dissolution, voluntarily or involuntarily;

(4) that there is no provision of the articles of incorporation or by-laws of the corporation limiting the power of its board of directors to pass the resolution appearing below and that the same is in conformity with the provisions of the articles of incorporation and by-laws;

(5) that the Secretary is the keeper of the records and minutes of the proceedings of the board of directors of the corporation and that on the __ day of _____, ____ there was held a meeting of the board of directors of the corporation, which was duly called and held in accordance with the law and the by-laws of the corporation, at which meeting all of the directors were present; and

(6) that at the meeting of the board of directors the following resolution was duly and legally passed and adopted. It has not been altered, amended, rescinded or repealed and is now in full force and effect:

RESOLVED, that _____, President of _____, be and is hereby duly authorized to execute any and all documents relating to the conveyance of certain real property more fully described upon EXHIBIT A attached hereto, which real property is presently owned by _____. Such authorization shall extend to, but not be limited to, the execution of a warranty deed or deeds, Seller's closing statement, and any affidavits relating to the condition of title of the subject real property.

We further certify that the following persons are the officers of _____ and are the persons authorized to act and sign the foregoing resolution:

_____ , President _____ , Vice President

_____ , Secretary _____ , Treasurer

Executed by the President and Secretary, respectively, of _____ on _____, 20__.

[SIGNATURE LINES]

I. Decedent's Estates

1. Estate Taxes

Procedural Rule P-11.b.(9) of the Basic Manual of Rates, Rules and Forms for the Writing of Title Insurance in the State of Texas allows a title insurance company to issue without an exception for unpaid federal estate taxes and state inheritance taxes if:

a. The title company examines a balance sheet of the estate and determines that the estate will have no difficulty in paying these taxes, and the title company takes an indemnity from responsible persons, or

b. The title company requires an escrow deposit pending payment of these taxes or pending receipt of lien waivers from the taxing authority or authorities, or

c. The title company examines the balance sheet of the estate and determines the estate will have no difficulty in paying its inheritance and estate taxes, and the title company obtains a letter from a responsible person agreeing to see that the taxes are paid our of the estate's assets.

The following affidavit is one that we frequently use in connection with estate taxes.

AFFIDAVIT REGARDING FEDERAL ESTATE TAXES

TITLE COMPANY:

TITLE COMPANY GF NO.:

SELLER(S):

PURCHASER(S):

NAME OF DECEDENT:

PROPERTY DESCRIPTION:

The undersigned affiant, after being duly sworn, hereby states under oath that the following information is true and correct:

1. Purpose of affidavit. This affidavit is made to the Title Company as an inducement to it to complete a transaction concerning the Property. The undersigned acknowledges that Title Company is relying upon the representations in this affidavit as being true and correct and that the transaction contemplated would not be consummated without this affidavit's being executed. The undersigned represents that he or she is the person whose signature is affixed below and, if applicable, that he or she is duly authorized to execute this affidavit.

2. Decedent's Estate. Affiant has personal knowledge of the nature and extent of the estate of Decedent. The Decedent died on _____, and was a resident of _____ County, _____. The gross taxable estate of Decedent (for purposes of determining the extent of federal estate tax liability under the Internal Revenue Code, as amended) is $_____.

3. Responsibility for Federal Estate Taxes. In the event that federal estate taxes are found due relating to the Decedent's estate, affiant states that either (a) such taxes have been paid, or (b) the estate of Decedent is sufficient to pay all such taxes, and that he or she, as the personal representative of the estate of Decedent, will supervise the prompt payment of such taxes.

EXECUTED on _____, 20__.

_____

[JURAT AND ACKNOWLEDGMENT]

2. Affidavits of Heirship

For a small estate with no other underwriting issues, a title company will usually rely on Affidavits of Heirship when the decedent had no will. These affidavits should be given by all of the heirs and by at least two disinterested parties with personal knowledge of the facts.

When a will has not been probated within the time allowed by law, a title company will usually rely on an Affidavit of Heirship with a copy of the will attached. The title company will require that all beneficiaries under the will and all heirs at law join in the conveyance. A form for such an affidavit follows. The Real Estate Forms Committee of the State Bar of Texas has also developed an excellent Affidavit of Heirship which is published in the Legal Form Manual for Real Estate Transactions.

AFFIDAVIT OF HEIRSHIP

TITLE COMPANY:

TITLE COMPANY GF NO.:

SELLER:

PURCHASER:

DECEDENT:

PROPERTY DESCRIPTION:

The undersigned affiant, after being duly sworn, hereby states under oath that the following information is true and correct:

1. Purpose of affidavit. This affidavit is made to the Title Company as an inducement to it to complete a transaction concerning the Property. It is also given for the purpose of clarifying title and ownership of the Property of Decedent. The undersigned acknowledges that Title Company is relying upon the representations in this affidavit as being true and correct and that the transaction contemplated would not be consummated without this affidavit's being executed. The undersigned represents that he or she is the person whose signature is affixed below and, if applicable, that he or she is duly authorized to execute this affidavit.

2. Factual Recitals. I was well acquainted with Decedent during his or her lifetime. Although not related to Decedent, I have full personal knowledge of the facts to which I testify in this Affidavit.

a. _____ died on _____, 19__ at the age of __ years. At the date of death, Decedent was a resident of _____ County, Texas. Decedent was married to _____ at the date of death, and had been married to this person for approximately ____ years.

b. There was(were) _____ child(ren) born to or adopted by Decedent and _____, his or her spouse:

a [son/daughter] whose name is _____, now __ years of age, and residing at _____.

c. All of the property owned by the Decedent at his or her death was community property held by the Decedent and his or her spouse. The Decedent's estate was not comprised of any separate property, as none of the Decedent's property consisted of gifts received, property owned prior to marriage, personal injury recovery, or inheritance received by the Decedent.

d. Decedent was never married to anyone aside from _____, and never

had any children except for _____.

e. _____ left a Last Will and Testament, a copy of which is attached.

EXECUTED on _____, 20__.

_____

[JURAT AND ACKNOWLEDGMENT]

J. Transfer of Lien, Release of Lien, Partial Release of Lien and Subordination.

1. **Transfer of Lien.** The Transfer of Lien is used to transfer ownership of the lien securing the repayment of debt due under a Real Estate Lien Note. Since it relates to an interest in real property, the Transfer of Lien must be filed in the appropriate real property records in order to be effective for third parties. Texas Prop. Code sec. 13.001 (a). The note secured by the vendor's lien, deed of trust lien, or both, should also be endorsed by its holder to the order of the transferee named in the Transfer of Lien.

During the course of a title examination, we occasionally find gaps in the chain of title relating to ownership of liens and the debt secured by them. In these instances, it is generally necessary to obtain a Transfer of Lien completing the chain of title of the lien interest.

2. **Release of Lien.** The uses of the Release of Lien are virtually self-explanatory. It may be used to release the lien or liens securing debt once the debt is fully paid. It may also be used to fully release the collateral property for a partial payment or other consideration, with the remaining debt becoming unsecured or secured by other property. We are surprised at the number of releases that are either not obtained or are not properly recorded even though the debt is fully paid. The Release of Lien, like other instruments relating to an interest in real property, should be recorded in the appropriate real estate records.

3. **Partial Release of Lien.** These are used when the holder of the note and lien is asked to release only a portion of the original collateral property. The original deed of trust or related loan document may or may not address this procedure. If it does not, then the holder is not obligated to grant a Partial Release of Lien, but may agree to do so.

4. **Subordination of Lien.** Occasionally, a new lender requires that a prior lien be subordinated as a condition to its loan. The document called Subordination of Vendor's Lien and Deed of Trust to Deed of Trust Lien, which is a State Bar of Texas form, is used when a new lender requires the subordination of existing lien rights.

K. Consent to Insure Around

Texas title insurance regulations provide for four instances in which the title company may properly "insure around" unreleased liens or claims for liens, but must obtain the written consent of the insured owner or mortgagee to do so. They are:

1. Inchoate liens exist, and the title company has agreed to accept either the indemnity of a financial institution or a cash escrow sufficient to satisfy the title company that it can obtain a release of lien relating to the particular matter.

2. Mechanics' liens are know to exist, and the title company has agreed to accept either the indemnity of a financial institution or a cash escrow sufficient for the title company to protect the interests of its insured(s) while the lien claims are being contested.

3. The title insurance company has already issued a policy without exception to the lien.

4. Another title insurance company has issued a policy without exception to the lien, and the current title company has obtained the prior title insurer's indemnity relating to the lien.

The Department of Insurance has not promulgated any form of consent to insure around. A form for this letter follows.

Date:

Re: [Description of Real Property], **Property**

Ladies and Gentlemen:

You have informed us that the following matters exist:

[INSERT MATTERS BEING INSURED AROUND]

You have proposed to issue a policy of title insurance with respect to the Property to us without exception for such matters and to insure us against such matter, according to Procedural Rule P-11 of the Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas. You have requested our written consent to issue your policy in this manner. We understand that by consenting to the issuance of the policy in this manner, we waive no rights under any policy of title insurance issued to us by you or your agent.

This will confirm our consent, as requested by you, to the issuance of your policy of title insurance in the manner indicated above.

Very truly yours,

[PURCHASER] OR [LENDER]

BY:_____

L. Easements

Problems occasionally arise from blanket easements, the use of which cannot be readily located. If the beneficiary the easement cooperates, this can usually be resolved by written agreement with the easement beneficiary. This Agreement should precisely define the area affected by the easement. If the location of the use of the easement has been placed outside the property in question, it would be appropriate for the beneficiary of the easement to execute a partial release of easement.

If the title company is satisfied that the blanket easement does not affect the property and that the service intended by the original grant of easement is located outside the property, the title company may give express insurance regarding the potential rights of the easement beneficiary.

DEFINITION OF EASEMENT

Original Easement

Date:
Grantor:
Grantee:
Recording Information:
Property Affected by Easement: [Exhibit A]

Present Easement Beneficiary:

Present Easement Beneficiary's Address (including county):

Present Property Owner:

Present Property Owner's Address (including county):

Defined Easement Area: [Exhibit B]

1. Grantor of the Original Easement granted certain easement rights to Grantee of the Original Easement over the Property Affected by Easement. This grant of easement was blanket in nature, and contemplated use by the Original Grantee of only a small portion of the Property Affected by Easement.

2. Present Easement Beneficiary is the proper and rightful owner of the easement rights granted to Grantee of the Original Easement.

3. Present Property Owner is the owner of all or a portion of the Property Affected by Original Easement. Present Property Owner has asked Present Easement Beneficiary to define and limit the property affected by the Original Easement, and Present Easement Beneficiary has agreed to do so.

4. For a valuable consideration, Present Easement Beneficiary agrees that the Original Easement will be limited and defined to fall exclusively within the Defined Easement Area. Present Easement Beneficiary releases and quitclaims to Present Property Owner any interest in the Original Easement falling outside the Defined Easement Area, to the extent that such Original Easement affects any property owned by Present Property Owner.

5. This agreement is binding on the heirs, successors and assigns of both Present Easement Beneficiary and Present Property Owner.

_____
[Present Easement Beneficiary]

_____
[Present Property Owner]

[ACKNOWLEDGMENTS]

M. Federal Tax Liens

There are several ways title companies deal with federal tax liens. First, if the property owner claims that the person identified in the notice of federal tax lien is not him or her, then an Affidavit of Identity may be used. This form was discussed previously in the Abstract of Judgment section of this article.

If full payment is made to the Internal Revenue Service for the tax lien, then the IRS will prepare and execute its own form of Certificate of Release. If the property owner succeeds in negotiating a partial payment of the tax in question in exchange for the IRS's partially releasing a particular parcel of land, then the IRS will prepare and execute its own form of Certificate of Discharge of the Property.

N. Foreclosure (nonjudicial)

1. Trustee's Affidavit

Title examiners examine the recorded loan and foreclosure documents to determine that the lienholder and trustee have complied with Section 51.002 Texas Property Code. Title examiners also look for additional notice requirements contained in the loan documents and for compliance with them. The title company also inquires whether notice was forwarded to each obligor and guarantor at the appropriate address. An affidavit from the trustee similar to the one which follows is often required by a title company before it will insure title following a nonjudicial foreclosure.

2. Notice to Internal Revenue Service

If the I.R.S. has filed a Federal Tax Lien that is junior to the lien being foreclosed, the trustee must give notice of the sale to the Internal Revenue Service. This notice must be sent at least 25 days prior to the date of the trustee's sale by registered or certified mail or by personal delivery to the district director of the IRS. Treas. Reg. sec. 301.7425-3 (a) (1). The I.R.S. then has a 120 day right of redemption. If notice is given, the title company will raise an exception for the Federal Tax Lien until the redemption period runs. If notice is not given, then the foreclosure simply has no effect on the Federal Tax Lien.

The State Bar of Texas Legal Form Manual for Real Estate Transactions contains forms for these documents.

O. Homestead

Designation of Homestead and Non-Homestead

Section 41.005 of the Texas Property Code provides for the voluntary designation of homestead property. The head of the family and that person's spouse must make the designation in a signed and acknowledged instrument. The designation instrument must then be recorded in the Office of the County Clerk in which all or part of the property is located.

The persons designating the homestead may change the boundaries of the homestead by executing and recording a new instrument meeting these same requirements. This change does not affect rights acquired by parties prior to the change.

Designations made before September 1, 1987 and according to prior law are voluntary designations under Section 41.005.

This voluntary designation is often used when an owner is mortgaging non-homestead property. Title companies usually rely on this, but with caution. If the property was in fact homestead, the lien is invalid.

When an owner designates certain acreage as homestead and certain excess acreage as non-homestead, the title company usually requires a survey of the property. The title company will want to know where improvements and access to public roadways are located.

The State Bar of Texas Legal Form Manual for Real Estate Transactions contains forms for these documents.

P. Joinder of Spouse

Section 5.81 Texas Family Code requires the joinder of spouses in order to sell, convey, or encumber homestead property. It does not matter whether the property is separate property of one spouse or community property. The only exceptions are those authorized by Sections 5.83 - 5.85 of the Texas Family Code. These sections pertain to incompetency of or abandonment by a spouse.

The title company inquires about marital status when an individual is conveying property. Most companies require that an Affidavit of Marital Status be executed by a single person conveying property.

The State Bar of Texas Legal Form Manual for Real Estate Transactions contains forms for these documents.

Q. Mechanic's Lien Contracts

If a loan is for the construction of improvements to the homestead, Article XVI, Section 50 of the Texas Constitution and Section 53.059 Texas Property Code require the lien to be structured as a Mechanic's Lien Contract. The contract must be:

entered into before material is furnished or labor is performed;

executed by both spouses, if the owner is married;

filed with the Office of the County Clerk in which the homestead is located.

Section 41.007 Texas Property Code contains mandatory language that must appear in the Mechanic's Lien Contract.

The State Bar of Texas Legal Form Manual for Real Estate Transactions contains forms for the various mechanic's lien documents.

The parties sometime underestimate the cost of the contemplated improvements, or later agree on extras. Title insurance companies usually only insure the additional amount if the original Mechanic's Lien Contract includes provisions contemplating such costs and extras. Sometimes, the additional work may be such that a separate Mechanic's Lien Contract for this work may be valid. The title company will require evidence that all bills for labor and material have been paid up to that time. The title company will also require evidence that no part of the additional amount is advanced to pay for materials already furnished or work already performed. This typically means execution of an Affidavit Regarding Home Improvements and a Bills Paid Affidavit.

R. Leases and Leasehold Issues

Issues involving rights of tenants and obligations of landlords occasionally must be dealt with by the title company. The landlord-tenant matters arising most frequently include dealing with the landlord's statutory and contractual lien, determining the existence of tenant's rights, and subordinating the rights of a tenant to that of a lender.

1. The owner of real property would execute this form to waive its statutory and contractual landlord's lien rights relating to the personal property of a tenant. This would typically be required by a lender taking a security interest in any of the personal property of the tenant.

LANDLORD'S LIEN WAIVER

Date:

Landlord:

Landlord's Mailing Address (including county):

Tenant:

Tenant's Mailing Address (including county):

Lender:

Lender's Mailing Address (including county):

Premises:

Tenant occupies the premises under a lease from Landlord and maintains personal property on the premises. Lender has a security interest in, or a lien on, or owns said personal property.

For valuable consideration, Landlord waives all rights to maintain or enforce a statutory or contractual landlord's lien, security interest, or any other claim against such personal property. This waiver binds Landlord's heirs and successors and inures to the benefit of Lender and its successors and assigns.

_____

[ACKNOWLEDGMENT]

2. Tenants in Possession

From a title company's standpoint, the existence of tenants in an incoming-producing property creates a burden on the title to the real property. For this reason, we would inquire concerning the existence of any tenancies, whether created by written agreement or oral. The first affidavit regarding leases which follows indicates that there are no such leases; this affidavit should permit the title company to remove any exception from coverage regarding rights of tenants in possession.

AFFIDAVIT REGARDING LEASES

TITLE COMPANY:

TITLE COMPANY GF NO.:

SELLER:

PURCHASER:

PROPERTY DESCRIPTION (the Property):

Seller, after being duly sworn, states under oath that the following information is true and correct:

1. Purpose of affidavit. This affidavit is made to the Title Company as an inducement to it to complete a transaction concerning the Property. The Seller acknowledges that Title Company is relying upon the representations in this affidavit as being true and correct. The Seller also acknowledges that the transaction contemplated would not be consummated without this affidavit's being executed. The Seller represents that he or she is the person whose signature is affixed below and, if applicable, that he or she is duly authorized to execute this affidavit.

2. Leases affecting the Property. No unrecorded written leases or oral leases affect the Property **except those referred on Exhibit B attached.**

EXECUTED on _____, 20__.

_____

[JURAT AND ACKNOWLEDGMENT]

3. Subordination, Attornment and Nondisturbance Agreement

When a lender requires a first lien for security of its loan, not subject to the rights of a tenant, the Subordination, Attornment and Nondisturbance Agreement would be appropriate. This document would subordinate the tenant's rights to those of the lender. However, the lender agrees that its subsequent foreclosure would not extinguish the tenant's lease, and that any purchaser at the foreclosure sale would take subject to the tenant's lease.

The State Bar of Texas Legal Form Manual for Real Estate Transactions contains a form for this document.

S. Lis Pendens Notices

Section 12.007 Texas Property Code contains the statutory requirements for contents and recording of a lis pendens notice. Section 13.004 provides that a lis pendens notice is effective from the time it is recorded, although service may not be complete. The court hearing the action may cancel the lis pendens notice on motion of a party or other person interested in the property affected by the notice. The court must decide that the party seeking relief can be protected by a deposit held by the court or "by the giving of an undertaking." Requirements for the deposit or undertaking are set out in Section 12.008.

A lis pendens notice may also be cured by:

a Release of the Notice of Lis Pendens and dismissal of the suit;

a successful suit to enjoin enforcement of the Lis Pendens Notice; or

a successful suit to quiet title or for slander of title.

When the court has entered a final judgment but no release of lis pendens has been filed, the title company will need to determine whether the time for appeal of the judgment has run.

A form for Release of Lis Pendens Notice follows.

RELEASE OF NOTICE OF LIS PENDENS

1. _____(the Plaintiff), by and through his attorney, _____, executed and recorded in Volume _____, Page ____ of the Real Property Records of _____ County, Texas, a document entitled "Notice of Lis Pendens."

2. The Notice of Lis Pendens relates to a lawsuit in which certain claims are made. These claims concern real estate in Dallas County, Texas, more particularly described on EXHIBIT A attached (the Property). The lawsuit is styled _____ under Cause No. _____.

3. Plaintiff has been requested to release the Notice of Lis Pendens and any claims in the lawsuit relating to the Property, and Plaintiff is willing to do so.

4. For a good consideration, Plaintiff releases all claims alleged against the Property described in the Notice of Lis Pendens.

EXECUTED on _____, 20__.

_____

[ACKNOWLEDGMENT]

T. Mechanic's Liens by Affidavit

Sections 53.051 - 53.059 Texas Property Code prescribe the procedure for perfecting statutory mechanic's lien claims. Even if the recorded affidavit does not technically comply with the statutes, the title company will raise an exception until the statute of limitations runs. The obvious reason is that the title company does not want to undertake the likely risk and cost of defense of the claim.

Section 53.101 requires the owner to retain 10% of the contract price or value of the work during construction and for 30 days after completion. Section 52.103 provides that only those subcontractors who file lien affidavits within 30 days after completion and who send the required notices have a right to share in the retainage. If the owner does not retain the 10% amount, the mechanic's lien claimants have a lien against the house, building, structure, fixture or improvement and of all the properties and lots necessarily connected with the improvement. Section 53.105. Owners rarely retain the 10% amount, and title companies raise exceptions to the recorded lien claims.

There are several options for curing mechanic's lien claims:

1. Waiver of Lien. As progress payments are made to subcontractors by the general contractor (or by the owner of the property), but certainly on final payment to each subcontractor, a waiver of lien should be obtained from each of them. This effectively estops any subsequent claim from any subcontractor from whom a waiver has been obtained.

   A form for this follows.

2. Release. This is the simplest cure in terms of procedure, but often the least popular. A form of release follows.

3. Bond to Indemnify Against Lien. Sections 53.171 - 53.176 Property Code provide for a bond to indemnify against liens. This bond is used when mechanic's lien by affidavit have already been recorded. The bond must be filed in the Office of the County Clerk. The requirements for the bond are found at Section 53.172. The title company will want to approve the bonding company. Also, the title company should be named as an obligee so that it can meet the requirements of Procedural Rule P-11.

   After the bond is filed, the county clerk issues notice of the bond to all named obligees as provided in Section 53.173. After service of the notice, the notice is returned to the county clerk. A purchaser, title insurer, or lender may rely on the bond, notice and return to the same extent as if the mechanic's lien claimant had filed a release.

4. Statutory Bond to Pay Liens or Claims. Sections 53.201 - 53.211

Property Code provide for a statutory payment bond for mechanic's lien claims. The bond and the contract (or a memorandum of the contract) between the original contractor and the owner shall be filed with the county clerk. A purchaser, lender, or other person acquiring an interest in the property or a title insurance company may rely on the recorded bond and contract as constituting payment of all mechanic's lien claims.

The title company will want to approve the surety company used.

5. Consent to Insure Around

If the title company issues its policy without exception to a recorded mechanic's lien claim based on an indemnity (with or without deposit) or a bond, it must obtain the consent of the proposed insureds. A form for a consent letter appears earlier in this article.

U. Mineral Interests

Sometimes it is impossible to obtain a release of an oil and gas lease. If the primary term has expired and there has never been production on the tracts described in the lease or on tracts which were unitized or pooled with the tract to be insured, the title company will usually rely on an Affidavit of Non-Production to remove the exception. This affidavit should be executed by a disinterested person who was a resident in the vicinity of the tract during the period in question.

The State Bar of Texas Legal Form Manual for Real Estate Transactions contains a form for this document.

V. Powers of Attorney

Title companies generally try to avoid using powers of attorney, preferring instead to have the parties personally execute all closing documents. But sometimes it is not possible to do this. Requirements may vary from title company to title company, but generally they are as follows:

1. The power of attorney must contain specific authority to sell, purchase, or mortgage the property to be insured.

2. The power of attorney must be recorded, or the original must be presented to the title company for recording.

3. There must be no recorded revocation of the power of attorney.

4. The title company will contact the principal by telephone on the day of closing to determine that the principal has not revoked the power of attorney and that the principal is still living and not disabled.

Sections 481 - 506 Texas Probate Code provide for a Durable Power of Attorney. Section 490 provides a nonexclusive form for this power of attorney; but the other forms must be in substantially the same form. Title companies will accept these when the powers relating to real property transactions are initialed and the form is otherwise properly executed. Section 489 requires that a durable power of attorney be recorded when used for execution and delivery of a document relating to a real estate transaction.

The document should be signed by the agent as follows:

> [Name of principal] by [name of attorney-in-fact], Attorney-in-Fact

The document should be acknowledged as follows:

> This instrument was acknowledged before me on [date] by [name of attorney-in-fact] as attorney-in-fact on behalf of [name of principal].

The State Bar of Texas Legal Form Manual for Real Estate Transactions contains a form for this document.

W. Restrictive Covenants

Restrictions covenants may be terminated by voluntary release, expiration, merger of estates, or court action. A form for Release and Termination of Restrictions follows:

RELEASE AND TERMINATION OF DEED RESTRICTIONS

1. By Warranty Deed dated _____,19__, recorded in Volume__, Page___, Deed Records, _____ County, Texas, _____ conveyed title to a certain _____ acre parcel of land to _____ and wife, _____, which real property is more fully described upon Exhibit "A" attached hereto (the "Property").

2. Such warranty deed contains certain special conditions relating to:
   [INSERT COVENANTS AND RESTRICTIONS]

   Such special conditions affect all of the Property.

3. _____ and wife, _____ now desire to convey to _____ and wife, _____, a portion of the Property containing _____acres of land. A condition of such conveyance, however, is that the covenants and restrictions referenced above be terminated as they affect the property which is to be conveyed (the "Unencumbered Property"), which property is more fully described upon Exhibit "B" attached.

For valuable consideration, the undersigned [Original Grantor], for himself, his successors and assigns, does hereby forever release and terminate the special conditions referred to above, recorded in Volume ____ Page ____of the Deed Records, _____ County, Texas, as such special conditions affect the Unencumbered Property.

EXECUTED on _____, 20__.

_____

[ACKNOWLEDGMENT]

X. Utility Districts

Section 50.301 of the Texas Water Code applies when any person is selling or conveying real property located in a water, sewer, drainage, flood control or other district with taxing authority. The seller must give the purchaser notice of the current tax rate unless the transfer comes within the exceptions described in the statute. Section 50.301(b) prescribes the form of notice. The seller is to give notice to the prospective purchaser prior to execution of the contract, or the purchaser may cancel the contract. At closing, the seller and purchaser must execute a separate copy of the notice with current information. The notice must also be acknowledged and recorded in the deed records.

The State Bar of Texas Legal Form Manual for Real Estate Transactions contains a form for this document.

II. CLOSING DOCUMENTS

A. Earnest Money and Other Escrow Funds-- Investment of Funds

Title companies are frequently asked to deposit earnest money and other escrow funds into interest-bearing accounts. At the time the title company makes the deposit, it must present the depository institution with an Internal Revenue Service Form W-9. The party to whom the earned interest is to accrue must have signed the Form W-9. Also, the form must show the party's tax identification number. Customarily, the title company also requires execution of an authorization form relating to the deposit. This form typically instructs the title company to make the deposit and indicates the limitations of FDIC insurance. A form is not provided.

B. Contracts for Purchase and Sale.

Release of Contract. If a contract of sale is not to be consumated, the title company will customarily prepare a Release. It is important to designate how the earnest money will be applied.

RELEASE OF CONTRACT

DATE:

GUARANTY FILE NO.:

CONTRACT OF SALE:

Seller:
Purchaser:
Date:
Property:
Earnest Money:
Title Company:
Real Estate Agent(s):

1. The Seller and Purchaser mutually agree that the Contract of Sale is not to be consummated. The parties agree that the Earnest Money being held by Title Company is to be paid to **Purchaser/Seller. CONSIDER WHETHER ANY FEES ARE TO BE PAID FROM THE EARNEST MONEY.**

2. Seller releases Purchaser and Title Company from any claims or rights arising under the Contract of Sale.

3. Purchaser releases Seller and Title Company from any claims or rights arising under the Contract of Sale.

4. Seller and Purchaser agree that the Contract of Sale shall be null and void.

5. The Real Estate Agent(s) release any interest in or right to a commission under the Contract of Sale.

_____
Seller

_____
Purchaser

_____
Agent

_____
Agent

C. Seller's Proceeds

1. Payment of Existing Loan. Title companies obtain payoff requests from existing lenders in writing. Besides the obvious need to learn the amount needed to pay the loan, the title companies usually need to know whether they have to make payment by cashier's check. Also, title companies need to know the cutoff time for payment before another day's interest accrues.

2. Federal Taxation.

   a. Form Substitute 1099. In many instances, the closing agent is required to report the sale or exchange of real estate to the Internal Revenue Service. This is done on Form 1099S. The obvious reason for this is to enable the IRS to cross-reference any potentially taxable real estate transactions to the appropriate taxpayers.

   b. Foreign Sellers. If the seller is a foreigner, as defined in Section 129 of the Deficit Reduction Act of 1984, the transferee is required to withhold 10 percent of the total sale price and remit this amount to the Internal Revenue Service. The agents of the transferor or the transferee may become responsible for the failure to withhold; this might include the seller's attorney, the title insurance agent, or a real estate broker. In certain instances, foreign sellers may obtain exemption from the Internal Revenue Service, making it unnecessary to withhold part of the sale price. These exemptions may take one of several forms; they frequently provide for written notice to the IRS during a specified period prior to closing. These limitations should be scrupulously observed.

The State Bar of Texas Legal Form Manual for Real Estate Transactions contains a form for this document.

D. Broker's Commissions -- Disbursement Authorization

Title companies usually require a written directive before splitting a commission between brokers. A form for this follows.

BROKER'S COMMISSION DISBURSEMENT AUTHORIZATION

TITLE COMPANY:
GF No.:

CONTRACT:
SELLER:
PURCHASER:
CONTRACT DATE:
SALES PRICE: $
REAL PROPERTY (the Property):
STREET ADDRESS:
LISTING BROKER:
CO-BROKER:

According to paragraph _____ of the Contract, this will authorize and direct COMMONWEALTH LAND TITLE COMPANY to disburse the following commissions upon the closing of the Contract:

1. Listing Broker's Commission:
   A. Name $
      Address
   B. Name $
      Address

2. Co-Broker's Commission:
   A. Name $
      Address

TOTAL BROKER'S COMMISSION: $

Listing Broker and Seller represent to TITLE COMPANY that the above fees are accurate and correct. Any adjustments due to errors in the above information will be made by and between the listing broker and seller directly, and will not be the responsibility of TITLE COMPANY.

[LISTING BROKER]
BY:_____

_____
Seller

E. Escrow Agreements. Title companies are asked to escrow funds or documents pending the resolution of various matters. A general form for escrow agreement follows.

ESCROW AGREEMENT

Date:

Escrow Agent:

Depositing Party:

Performing Party:

1. Escrow Agent, Depositing Party, and Performing Party are entering into this Escrow Agreement (the Agreement).

2. Depositing Party is depositing in escrow with Escrow Agent the following: [describe the funds or documents being deposited].

3. The purpose for this Agreement is to: [describe the exact purpose of the escrow arrangement].

4. Escrow Agent is to hold the [funds or documents] in escrow in anticipation of performance by the Performing Party of the following acts: [here describe the contingency or contingencies which Performing Party is required to perform].

5. If the Performing Party completes the contingencies referred to in paragraph 4 of this Agreement during the time specified in the Agreement, then the Escrow Agent is instructed to dispose of [the funds or the documents] in the following manner: [describe the payee or payees to whom the Escrow Agent is to make payment; or describe exactly the disposition the Escrow Agent is to make of the documents it is holding, e.g. record them with the _____ County Clerk, forward the original documents to Performing Party, etc.].

6. The contingencies required of Performing Party must be fully performed within ___ days from the date of this Agreement. If all contingencies are not fully performed within that time, then the Escrow Agent shall dispose of [the funds or the documents] in the following manner: [describe the payee or payees to whom the Escrow Agent is to make payment; or describe exactly the disposition the Escrow Agent is to make of the documents it is holding, e.g. return them to the Depositing Party].

7. Escrow Agent agrees to hold [the funds or the documents] in accordance with the provisions of this Agreement. Escrow Agent shall receive a fee of $____ for performance of the services called for under this Agreement, the payment of which shall be shared equally by Depositing Party and Performing Party. Depositing Party and Performing Party agree that Escrow Agent shall have no responsibility under this Agreement except for the safekeeping and handling of the [funds or documents]

deposited with Escrow Agent by Depositing Party. Escrow Agent shall not be liable for any act or thing done by it relating to this Agreement, except for the negligence or willful misconduct of Escrow Agent. If conflicting demands are made on Escrow Agent by Depositing Party and Performing Party, Escrow Agent may withhold its performance under the terms of this Agreement until such demands are withdrawn or the rights of the parties making the demands are settled by a court of competent jurisdiction.

8. Escrow Agent may resign as Escrow Agent by giving ____ days written notice to Depositing Party and Performing Party of its resignation. Escrow Agent shall then deliver [the funds or the documents] it is holding under the terms of this Agreement in accordance with the joint written instructions given it by Depositing Party and Performing Party. If no such instructions are given to Escrow Agent within the stated time period, then Escrow Agent is authorized to deposit all of [the funds or the documents] into the registry of a court of competent jurisdiction.

9. Depositing Party and Performing Party may remove Escrow Agent, with or without cause, and appoint a substitute escrow agent by giving joint written notice to Escrow Agent. Escrow Agent shall then deliver [the funds or the documents] as directed in the notice within 10 days of its date.

[DEPOSITING PARTY]

By:_____

[PERFORMING PARTY]

By:_____

ESCROW AGENT

By:_____

F. Representations of Seller and Borrower

The title company will usually require an affidavit from the seller or borrower confirming various facts at the time of closing. The affidavits will generally confirm the voluntary liens affecting the property, confirm that there are not involuntary liens against the seller or borrower, confirm that the seller or borrower has received no notice of paving assessment or lien, and confirm that the seller or borrower is not in bankruptcy.

SELLER'S AFFIDAVIT

TITLE COMPANY:

TITLE COMPANY GF NO.:

SELLER:

PURCHASER:

PROPERTY DESCRIPTION (the Property):

Seller, after being duly sworn, here states under oath that the following information is true and correct:

1. Purpose of affidavit. This affidavit is made to the Title Company as an inducement to it to complete a transaction concerning the Property. Seller acknowledges that Title Company is relying upon the representations in this affidavit as being true and correct and that the transaction contemplated would not be consummated without this affidavit's being executed. Seller represents that he or she is the person whose signature is affixed below and, if applicable, that he or she is duly authorized to execute this affidavit.

2. Debts and Liens. Except as indicated below, there are no loans, tax liens, abstract of judgment liens or other real estate liens affecting the Property, except: _____.

In the event Title Company is directed to pay any of the debts listed above, Seller understands that Title Company is relying upon either verbal or written payoff information furnished by the Creditor in computing such payments. If a Creditor deems any additional sum due and owing, Seller agrees to pay Creditor such sum, and additionally agrees to indemnify and to hold Title Company harmless with regard to any claim or alleged claim of the Creditor.

3. Real Property and Personal Property Taxes. All real property taxes assessed against the Property which are due and payable have been paid in full. All personal property taxes affecting any personal property being conveyed by Seller to Purchaser have been paid in full.

4. Improvement debts and liens. Except as indicated below, there are no unpaid debts relating to any personal property or fixtures that are attached to or a part of the Property. There are no security interests affecting the Property evidenced by financing statements, security agreements or otherwise, nor any unpaid bills for labor or materials used in connection with any construction of improvements on the Property. The exceptions are: _____ _____.

5. Government Liens. Affiant has received no notice of any paving or sewer liens or claims outstanding against the Property. There are no petitions for the paving of streets, alleys or sidewalks adjoining the Property which are known to the Affiant. No governmental authority is claiming a lien against the Property for costs incurred in removing trash, cutting grass or weeds, or removing or repairing a building. In addition, the Affiant has no notice of any use of the Property which may make it subject to a cleanup action under federal or state

environmental laws. There are no judgments, pending bankruptcies, creditor's rights proceedings, state or federal tax liens relating to Affiant in _____ County, Texas, or elsewhere.

6. Other Contracts. There are no other unreleased contracts of sale concerning the Property.

7. Foreign Status. Seller is not a foreign person within the meaning of Section 1445 of the Internal Revenue Code, as amended. Seller's Federal Tax Identification Number is:_____.

8. Civil Liability. The undersigned is liable to the Title Company, which is relying on this affidavit, for (1) payment of any unpaid debts or liens affecting the Property not disclosed above, and (2) attorney's fees and expenses incurred in enforcing such liability.

9. Criminal Liability. The undersigned is aware that a false or fraudulent representation knowingly made in this affidavit may constitute a felony under Texas Penal Code Sections 31.03 (theft) and 32.46 (securing document by fraud) or a Class A misdemeanor under Texas Property Code Section 53.085(c).

EXECUTED on _____, 20__.

_____

[JURAT AND ACKNOWLEDGMENT]

BORROWER'S AFFIDAVIT

TITLE COMPANY:

TITLE COMPANY GF NO.:

BORROWER:

LENDER:

PROPERTY DESCRIPTION:

Borrower, after being duly sworn, here states under oath that the following information is true and correct:

1. Purpose of affidavit. This affidavit is made to the Title Company as an inducement to it to complete a transaction concerning the Property. Borrower acknowledges that Title Company is relying upon the representations in this affidavit as being true and correct and that the transaction contemplated would not be consummated without this affidavit's being executed. Borrower represents that he or she is the person whose signature is affixed below and, if applicable, that he or she is duly authorized to execute this affidavit.

2. Debts and Liens. Except as indicated below, there are no loans, tax liens, abstract of judgment liens or other real estate liens affecting the Property, except: _____.

In the event Title Company is directed to pay any of the debts listed above, Borrower understands that Title Company is relying upon either verbal or written payoff information furnished by the Creditor in computing such payments. In the event a Creditor deems any additional sum due and owing, Borrower agrees to pay Creditor such sum, and additionally agrees to indemnify and to hold Title Company harmless with regard to any claim or alleged claim relating thereto.

3. Real Property and Personal Property Taxes. All real property taxes assessed against the Property which are due and payable have been paid in full.

4. Improvement debts and liens. Except as indicated below, there are no unpaid debts relating to any personal property or fixtures that are attached to or a part of the Property. There are no security interests affecting the Property evidenced by financing statements, security agreements or otherwise, nor any unpaid bills for labor or materials used in connection with any construction of improvements on the Property. The exceptions are: _____ _____.

5. Government Liens. Affiant has received no notice of any paving or sewer liens or claims outstanding against the Property. There are no petitions for the paving of streets, alleys or sidewalks adjoining the Property which are known to the Affiant. Further, no governmental authority is claiming a lien against the Property for costs incurred in removing trash, cutting grass or weeds, or removing or repairing a building. In addition, the Affiant has

no notice of any use of the Property which may make it subject to a cleanup action under federal or state environmental laws. There are no judgments, pending bankruptcies, creditor's rights proceedings, state or federal tax liens relating to Affiant in Dallas County, Texas, or elsewhere.

6. Civil Liability. The undersigned is liable to the Title Company, which is relying on this affidavit, for (1) payment of any unpaid debts or liens affecting the Property not disclosed above, and (2) attorney's fees and expenses incurred in enforcing such liability.

7. Criminal Liability. The undersigned is aware that a false or fraudulent representative knowingly made in this affidavit may constitute a felony under Texas Penal Code Sections 31.03 (theft) and 32.46 (securing document by fraud) or a Class A misdemeanor under Texas Property Code Section 53.085(c).

EXECUTED on _____, 20__.

_____

[JURAT AND ACKNOWLEDGMENT]

G. Insured Closing Service Letter

Article 9.49 of the Texas Insurance Code authorizes title insurance companies to issue Insured Closing Service Letters. The letter must be in the form prescribed by the Department of Insurance. There is no charge.

The Insured Closing Service Letter has always been available to a proposed mortgagee insured. A recent amendment to Art. 9.49 authorizes the issuance of the Insured Closing Service Letter to a seller or buyer if the title company is issuing an owner policy. The seller or buyer must request the Insured Closing Service Letter in writing. Also, the sales price of the real property must exceed the guaranty amount specified in Art. 9.48 (Title Insurance Guaranty). This amount is currently $250,000. In actuality, this letter is not yet available to a seller or buyer because the Texas Department of Insurance has not promulgated a form. The Texas Land Title Association has proposed adoption of a form for seller and buyer. This proposal will be considered at the upcoming title insurance rate hearing.

The promulgated form for the mortgagee's Insured Closing Service Letter is found at Section V, page 22, Basic Manual of Rates, Rules and Forms for the Writing of Title Insurance in the State of Texas.

H. Rights of Parties in Possession. Procedural Rule P-3 states that "Rights of Parties in Possession" shall mean:

> one or more persons who are themselves actually physically occupying the property or a portion thereof under a claim of right adverse to the record owner of the property as shown in Schedule A of the policy.
>
> P-3 also provides that "Rights of Parties in Possession" shall not include any right, claim or interest evidenced by a document recorded in the county where the property is located. A title company has the right to make a general exception as to rights of parties in possession; however, the insured must execute a written instrument stating that the insured waives inspection by the title company, and that the insured accepts the policy exception. If the insured does not waive the title company's inspection, the title company may charge for the reasonable and actual cost of the inspection. Often, title companies will rely on an Affidavit as to Possession executed by the seller. Forms for this affidavit and the Insured's Waiver of Inspection follow.

AFFIDAVIT AS TO POSSESSION

DATE:

AFFIANT:

TITLE COMPANY:

PURCHASER:

PROPERTY:

Affiant on oath swears that the following statements are true:

1. Affiant owns the Property.

2. No person or entity other than Affiant currently occupies the Property in whole or in part. No person or entity other than Affiant has occupied all or any part of the Property during the period in which Affiant owned the Property except the following:

3. Each of these persons or entities, if any are named, has permanently vacated the Property and claims no rights or interest in the Property:

4. Affiant makes these representations for the express purpose of: inducing the Purchaser to purchase the Property; inducing the Purchaser's lender, if any, to lend purchase money secured by a lien on the Property; and inducing the Title Company to insure title to the Property without exception for the rights of parties in possession. Affiant makes these representations with full knowledge that these parties are relying upon the truth of these statements.

_____

[JURAT AND ACKNOWLEDGMENT]

INSURED'S WAIVER OF INSPECTION

DATE:

INSURED:

TITLE COMPANY:

PROPERTY:

Pursuant to Procedural Rule P-3 of the Texas Department of Insurance, the Insured acknowledges that the Insured's policy of title insurance describing the Property will contain the following exception in Schedule B:

Rights of Parties in Possession.

The Insured also acknowledges that the Title Company is not conducting an inspection of the Property.

_____

I. Execution of Documents

A title search will sometimes reveal that a person has taken title and executed documents using different variations of the person's name. For example, the deed may name G. Timothy Hardin as the grantee; but a later deed of trust may be signed by George T. Hardin. To certify that this is the same person in each document, the title company will sometimes require execution of an Affidavit of Identity. A form for this affidavit follows.

AFFIDAVIT OF IDENTITY

TITLE COMPANY:

TITLE COMPANY GF NO.:

DATE:

PROPERTY:

AFFIANT:

AFFIANT'S OTHER NAME(S):

Affiant, after being duly sworn, states under oath that the following information is true and correct:

1. Purpose of affidavit. Affiant makes this affidavit to the Title Company as an inducement to the Title Company to complete a transaction concerning the Property. Affiant acknowledges that Title Company is relying upon the representations in this affidavit as being true and correct. Affiant also acknowledges that the contemplated transaction would not be consummated without this affidavit's being executed. Affiant represents that he or she is the person whose signature is affixed below and, if applicable, that he or she is duly authorized to execute this affidavit.

2. Facts concerning Name. Affiant is sometimes known by Affiant's other name(s). Affiant and the person(s) indicated by Affiant's other name(s) are the same person.

_____

[JURAT AND ACKNOWLEDGMENT]

J. Construction Loans

When issuing policies of title insurance in connection with construction loans, title companies will typically ask the owner to execute an Affidavit Regarding Non-Commencement of Construction.

The State Bar of Texas Legal Form Manual for Real Estate Transactions contains a form for this document.

If an owner policy is issued in an amount to include the cost of immediately contemplated improvements, Schedule B must contain the mechanic's lien exception and the "liability" paragraph (relating to increase in the policy amount as expenditures are made for improvements) as set out in Procedural Rule P-8.a. If a mortgagee policy is issued in connection with a loan made in whole or in part for the cost of improvements, Schedule B must contain the mechanic's lien exception and the "pending disbursement" paragraph set out in Procedural Rule P-8.b.

At the end of construction, the title company will ask the owner to execute a Bills Paid Affidavit and an Owner's Statement of Acceptance of Improvements. If it appears that all bills have been paid, the "liability" paragraph and the mechanic's lien exception will be removed from the owner policy. The mechanic's lien exception and the "pending disbursement" paragraph will be removed from the mortgagee policy. The State Bar of Texas Legal Form Manual for Real Estate Transactions contains a form for this document.