



TITLE TALK

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The Relationships Between Title and Encumbrances Or Stuck on You

By: William M. Amrhein, Assistant Vice President, Virginia State Counsel

The question and answer game proved to be so popular that we are going to continue its use. The topic for this issue is one that we deal with on a daily basis – encumbrances. Yes – this is a pretty basic topic but basics often get taken for granted so let's take a closer look.

1. What is an encumbrance?

The definition is not found in any case or statute in Virginia, but unofficially, I believe that Virginia has accepted the definition that an encumbrance is every right to, or interest in, the land, to the diminution of the value of the land, but otherwise consistent with the passage of the fee by a conveyance thereof.

2. OK! What does all that numbo-jumbo really mean?

In short, encumbrances are like legal chewing gum; where they stick on, they just don't go away. Their effects differ by degree, but they tend to lessen the value of the property because they limit, by their terms or by their mere presence, the dominion, enjoyment and control of the owner over the property.

3. Are all encumbrances the same? **No.**

4. Where do they come from?

Some origins include grants from an owner, statutory provisions of law, acceptance of a deed conveying title, decisions of circuit courts and language and depictions on recorded plats.

5. How long do they last?

That depends on what type they are; we'll take those up separately.

6. What types of encumbrances are there?

For starters there are financial encumbrances and non-financial encumbrances. The distinctions between these two types are obvious.

7. Are there others? **Yes – how about voluntary and involuntary.**

8. Any more?

Some encumbrances are perpetual; some have time limits; some can be extinguished.

Continued on page 2

9. Why do we care about encumbrances?

If encumbrances stick on title which they do and if we insure title which we do, then it is important to learn of their existence by having title searched.

10. What is the difference between an encumbrance and a title exception?

The simple answer is perspective; encumbrances are what attach to title; schedule B-1 requirements and B-II exceptions are what we call them when they appear in commitments and policies.

11. Are all encumbrances either requirements or exceptions in the commitment?

Yes, that is so.

12. Is that also true as to the policy?

Well – no! All encumbrances are exceptions in the policy but not the commitment.

13. Hold on here! What kind of game is going on here?

The truth is that encumbrances are a bit like cholesterol. There is good cholesterol (HDL); and there is bad cholesterol (LDL). The good encumbrances live on; the bad encumbrances are removed prior to policy.

14. So now are you telling me there are good encumbrances?

No, I stick by my answers in #'s 1 and 2, but if you want electricity, the power company will want an easement; if you want telephone service or cable, same deal. If you buy in a subdivision you get encumbered with setback lines and easements, but so does everyone else. The same comments apply to restrictive covenants. Sometimes you have to take the bad to get the good.

15. How do you tell the difference between good and bad encumbrances?

It is hard to define a solid rule. Financial encumbrances, whether voluntary or involuntary, are normally bad, but deeds of trust liens do get assumed by agreement. Normally, statutory encumbrances are mostly bad-notices of condemnations or lis pendens to name a few.

16. So encumbrances have to be an interest in land?

No, recordation of a licensee agreement which is personal to the license is an encumbrance.

17. So all exceptions are encumbrances?

Uh – gotcha! No, not really! An owner who is a minor or under disability is a title defect but not an encumbrance. The same would be true as to a missing heirs. Encroachments are encumbrances but without legal standing and should be removed. Having an owner in bankruptcy is not really an encumbrances nor a title defect but it must be dealt with.

So I have left you with more questions than answers – not a bad job if I say so myself, Ah, but the reason I did this article is to provide a basis to segue into liens which I will cover in the next issue and maybe covenants, easements and leases in the following. So if you thing this one was tough, try this on – what is the effect of a deed of trust lien on an easement for access over an adjacent parcel? I'll be back!

Ethics Lesson #1: Beware the Flipper

By: Julie Bergh, Chuck Hoyum, Jim Ucker
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Chris Closer was reviewing documentation in preparation for closing on Black-acre. Although the paperwork was, on its face, in order, some things just did not add up. This would be a two part closing. XYZ was to acquire title for the price of \$60,000. XYZ would then immediately convey title to Pat Z for the price of \$100,000. Pat Z was financing \$80,000 by giving a mortgage to Lender. (Chris saw that the assessed value for the real estate taxes was \$55,000). The source of Pat Z's down payment was unclear. That morning Broker, a valued client, had asked Chris to show that a \$20,000 down payment was made outside closing and should be shown as such on the HUD-1. The Lender's closing instructions did not specifically address these issues.

Recalling that we have duties to clients, customers and the public, what are our ethical and legal concerns? Should Chris second guess the Broker? The parties' agreements on the purchase prices? Delay the closing?

This was a real situation and was a "flipping" scheme where recently acquired property was being resold for a considerable profit with an artificially inflated value, involving collusion between a broker and an appraiser. Both the owner and the ultimate mortgage holder were at risk of losing their investment. While a quick facts may not be ignored because of HUD rules, lender instructions, and ethical obligations

The closer contacted a supervisor who wrote and faxed a letter expressing our concern to the lender. Thirty minutes later the lender cancelled 21 pending closings. Two years later our letter influenced counsel to dismiss ORNTIC from a class action in which the lender was suing numerous service providers over its losses in these flip transactions.



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To obtain details and registration information
visit the VLTA website at www.vlta.org.

☺ Website Addition ☺

If you visit our website at www.oldrepublictitle.com/va, you will notice that we have added a link under "Quick Links" called "Recording—Courthouse Information." This will take you to the National County Recorders Directory, which has address information for every county courthouse in the country. This will be an especially useful link for those of you doing business in more than one state.

~ ~ REVISED ~ ~ OLD REPUBLIC TITLE HOLIDAY SCHEDULE—2005

Old Republic Title will observe the following holidays for 2005:

New Year's Day	December 31, 2004
Memorial Day	May 30, 2005
Independence Day	July 4, 2005
Labor Day	September 5, 2005
Thanksgiving	November 24, 2005
*Day after Thanksgiving	November 25, 2005
Christmas Day	December 26, 2005

*Please note that the bolded holiday has been added as a day that all offices will be closed.

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For more information about this publication or for information about our agency program, contact: Richard E. Craig, Vice President, Area Manager and Counsel or Michelle Reynolds, Operations Manager at (800)232-6817 or (704)365-2300.

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