THINGS THAT GO BUMP IN THE NIGHT
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I. INTRODUCTION

A. Recorded Documents that give us nightmares

1. Clauses contained in Deeds
2. Missing information
3. Exhibits not attached
4. Incorrect descriptions
5. Liens and judgments of record

B. Wills and other death issues that haunt us

1. Unique wills
2. Holographic wills
3. Wills that rule property from the grave
4. Intestate succession
5. Disclaimer
6. Augmented Estate Spouse must join as a signatory on a Deed of Gift 64.2-305(b)
7. Creditors claims

C. Fraud that make us keep the lights on at night

1. Current fraud issues facing title companies
2. National fraud statistics

D. And sometimes laugh

1. Power of Attorney
2. Fall from tree
II. RECORDED DOCUMENTS

A. The Clerks rule on recording vs. what we see from the record room¹

1. The Clerk requires documents to have some basic criteria

   a. Names
   b. Property adequately described
   c. Signatures acknowledged and notarized

2. Examples of Deeds lacking basic information

   a. Transfers by Deed – A Deed passes legal title from seller to buyer. To be effective, the deed must be lawfully executed and delivered. (In writing, describe the land, signed by the grantor, grantor has the present intent to convey the deed to grantee, grantee does not reject the deed.)²

   b. Deeds without Legal Description (or in our case a unique legal description – (e.g., Deed conveying Sun Moon & Stars³)

   c. Deeds without grantors, grantees⁴

3. Acknowledgements

   a. Documents with mistakes in the acknowledgment
   b. A writing that is not properly acknowledged will be presumed in proper form if more than 3 years have passed⁵

4. Illegible Documents

   1. Clerk may refuse a document that is not legible⁶

5. After Acquired Property

   a. Deed to person conveying property which grantor does not own at the time⁷

¹ Va §17.1-223
² Deed recorded in Deed Book 4677 page 1860, Circuit Court of Arlington County
³ Deed recorded in Deed Book 6457 at Page 178 in Hillsborough County, FL.
⁴ Deed to King James
⁵ Va §55-106.2
⁶ Va Code §55-106.5
⁷ Va Code §55-52
6. Deed to Incapacitated Person

   a. Deed to minor children
   b. Deed from Incarcerated Felon – Case scenario Spotsylvania County
   c. Deed to Incapacitated persons Void
   d. Deed Destroyed in Civil War

III. WILLS THAT HAUNT US

A. Requirements of a valid will 64.2-403

   1. Must be in writing
   2. Signed by the testator or some other person in the testator’s presence

B. Transfers by Will

   1. Fee Simple Absolute is devisable by will
   2. Will must contain specific language of devise
   3. Property to be devised must be described
   4. Heir must be age of majority
   5. Property can be bequeathed to a testamentary trust for the benefit of a minor child. Trustee of Trust will be signatory for property until terms of trust met and the minor child has reached the age of majority.
   6. Powers of sale specifically give to the Executor to sell property and disburse proceeds to heirs based on language contained in the will.
   7. Will must be read carefully to determine if Executor has the power of sale
   8. Executor (with power of sale) is required to execute deed
   9. Trustee of Testamentary Trust is required to execute deed where property is held in the Trust
   10. If the Will does not give the executor the power to sell property, powers may be obtained by court order
   11. Heir may disclaim inheritance

C. Unique wills

   1. Will of Earl J. Broyles

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8 Va Code §64.2-1427
9 Freiert deed recorded in Deed Book 1716, page 579 in Land Records of Spotsylvania County, VA.
10 Deeds and Newspaper Articles from Spotsylvania County, VA
11 Va Code §11-8
12 Deed Book 351, page 345, Prince William County, VA
13 Freiert deed recorded in Deed Book 1716, page 579 in Land Records of Spotsylvania County, VA. Ian was 11 years old and Emily was 3 years old at the time of the conveyance.
14 Will Broyles.
a. The Will dictates that if any of Mr. Broyles children place him in a
nursing home then they will be pretermitted and receive nothing under
the will

2. Will of Dorothy Pollard and Court Order prohibiting heirs from entering
mother’s home

3. Holographic will McGhee v. Edwards The seven children of Dr. and Mrs.
Monfort Jones established 11 inter vivos trusts. Each trust created a class of
beneficiaries described as “direct lineal descendants” of various persons. As
of January, 2000 there were approximately 142 beneficiaries.

4. Will of Louise Virginia Williams bequeathing $100 and nothing more.

5. Holographic Will

IV. FRAUD THAT MAKES US LEAVETHE LIGHTS ON AT NIGHT

A. Mortgage fraud rains in all climates. When the market is in high gear, scams
gravitate toward equity skimming and inflated appraisals. When the market has
tanked as in the past few years, the schemes include loan origination, fraudulent or
manufactured documents, credit enhancements, property theft and loan modifications.
Loan modification fraud flourishes due to volume, time constraints, financial
information that cannot be independently confirmed and strict lending guidelines.
More than half of all loan modification are re-defaulting.

B. Mortgage Fraud is the material misstatement, misrepresentation, or omissions relied
upon by an underwriter or lender to fund, purchase or insure a loan.

C. Mortgage Fraud is divided into two categories: Fraud for Property and Fraud for
Profit.

1. Fraud for Property usually involves a single loan where applicant can
embellish their income or the value of the home

2. Fraud for Profit usually involves multiple loans and elaborate schemes
perpetrated to gain illicit proceeds from property sales.

D. Mortgage Fraud Schemes

1. The common fraud schemes identified by the FBI included flipping, builder
bailouts, short sales and foreclosure rescues. As a result of tighter lending
practices, the following fraud schemes have been added to the list: reverse

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15 See attached Will of Dorothy Pollard and Court Order prohibiting heirs from entering mother’s home
17 Will of Louise Virginia Williams.
18 Holographic Will of Breiner
mortgage fraud, credit enhancements, condo conversions, loan modifications and pump and pay. Common techniques include straw buyers, identity theft, silent seconds, quit claim deeds, land trusts, shell companies, fraudulent loan documents, falsified settlement statements, leasebacks and inflated appraisals.

E. Mortgage Fraud Statistics

1. 2012 losses: estimated $13 in fraudulent residential mortgage originations (Source: CoreLogic)
2. FY 12 mortgage fraud Suspicious Activity Reports: 70,291 with losses of $2.69 billion
3. FBI mortgage fraud task forces/working groups: 84
4. Pending investigations (as of 3/31/13): 1,954 with 72 percent involving losses of $1 million or more
5. Cases opened in FY 2011 (as of 2/28/2011): 245
6. Total cases opened in FY 2012: 414
7. Successes in FY 2012: 1,079 indictments/information; 1,026 convictions

F. Title, Escrow and Settlement Fraud

1. Includes the diversion of the embezzlement of funds
2. Failure to payoff or satisfy outstanding mortgages or liens
3. Reconveyance of property without consent of homeowner
4. Failure to record documents including deeds and deeds of trust
5. Charging for title insurance but not issuing policy and keeping funds
6. Paying funds earmarked for subcontractors to general contractors who use funds to payoff prior debts
7. Dry closings
8. Delayed recording of loan documents
9. Filing fraudulent liens to receive cash at closing
10. Distributing settlement funds to co-conspirator
11. FY 2010 FBI investigated 21 cases involving non-satisfaction of mortgage scheme and the embezzling of more than $27 million in settlement funds.

G. Case Studies:

1. A former manager of a Virginia Beach title insurance company was sentenced in 2012 to 3-1/2 years in federal prison after admitting in court to stealing $200,000 from the company and trying to cover her actions. Amanda L. Deese, 38, of Virginia Beach pleaded guilty in U.S. District Court to one count of mail fraud. Deese was the office manager for the Virginia Beach office of Huntington Title & Escrow. She admitted in court that between 2007
and 2010, she wrote company checks to pay for personal expenses, including her mortgage and other bills. She also admitted that she fabricated a story to FBI agents that the company had authorized her to spend $3,500 a month for personal expenses. Smith also ordered Deese to make restitution to the owner of the title company, which has since gone out of business.

2. James Gordon Fields, 47, whose last known address is unknown, a man who was a fugitive from justice for more than a year, was sentenced in the United States District Court for the Western District of Virginia on a variety of fraud charges. The defendant pled guilty in early 2013 to two counts of bank fraud, one count of making a false statement in relation to a loan, one count of aggravated identity theft, one count of making a false statement under oath in relation to a bankruptcy case, and one count of engaging in a monetary transaction in criminally derived property of a value greater than $10,000. Fields was sentenced to 10 years in federal prison.

Fields previously admitted to submitting forged signatures on guarantees for loans; submitting fraudulent documentation showing he was the beneficiary of a $77 million trust, which in fact did not exist; and lying about all of the above during his bankruptcy proceedings. The defendant also forged documents in September 2007 and March 2008 that caused Wachovia Bank to issue more than $14 million in fraudulent loans. In addition, he admitted that at the time of his arrest, he removed a screen from a second story window and attempted to escape capture by United States Marshals. He was eventually apprehended two houses away.

3. Joon Park, a/k/a Joon Pak, and Joon Paik, 43, Falls Church, Virginia, was sentenced by U.S. District Judge William D. Quarles, Jr. to 188 months in prison followed by five years of supervised release for conspiring to commit bank fraud in connection with a scheme to fraudulently obtain loans. The resulting losses from the scheme totaled more than $100 million. Judge Quarles also ordered Park to pay a money judgment of $91,449,700 and forfeit all the property involved in the offense.

According to his plea agreement, Joon Park and his brother, Loren Park, owned and operated Jade Capital, a loan brokerage company specializing in securing loans for individuals interested in purchasing or refinancing small businesses in the Mid-Atlantic area. According to the indictment, Joon and Loren Park and others under their direction encouraged prospective borrowers to apply for business loans through an SBA program. Joon Park admitted that from 2003 until October 2011, he and others under his direction submitted SBA loan applications and supporting documentation to loan originators and underwriters on behalf of their clients that contained fraudulent documents, including: bank statements for borrowers that were altered to make it look like the borrowers had more cash to inject into the business they were buying than they in fact did; counterfeit cashier’s checks and fake gift letters that made it
look like the borrowers had more assets at their disposal to use as down payments than they did; fabricated resumes that made it look like the borrowers had more experience running the businesses they sought to purchase than they did; fake tax returns that made it look like the borrowers had greater income than they did; phony interim financial statements that made other businesses the borrowers owned look more profitable than they were; and a number of other misrepresentations.

The Parks charged a loan brokerage fee to both the financial institutions and the borrowers for assembling and submitting loan application packages that resulted in the issuance of SBA-guaranteed loans. The fees charged to borrowers were hidden from the financial institutions underwriting the loans. The Parks also had undisclosed ownership interests in businesses involved in some of the transactions and received loan proceeds, unbeknownst to the lenders, in a number of transactions. In one instance, the Parks did not have an ownership interest in a company involved in a transaction but persuaded the seller to assign some of the loan proceeds to them and then converted those proceeds to their own personal use.

Joon Park also worked with settlement attorney Seung E. Oh, to facilitate loan closings for deals that would otherwise fail to meet the lending parameters of the banks making the loans, by misrepresenting to the banks and to the SBA the true amount of money involved in the transactions and/or the true names of the parties taking part in the transactions. In addition to conducting fraudulent closings, Oh wired money to Jade Capital clients to make it appear as though they qualified for loans when they did not, and received, at Joon Park’s direction, loan proceeds to repay those loans.

Nick Park, a/k/a Nochol Park, 46, McLean, Virginia, was sentenced to 33 months in prison; and Joo Hyuk “John” Lee, 39, Richmond, Virginia, and Sang Hyun Kim, 35, Fairfax, Virginia, were each sentenced to three years in prison. Kim’s wife, In Jung Ham, 30, also of Fairfax, was sentenced to a year and a day in prison, for her role in the scheme. Judge Quarles ordered Lee to pay restitution of $1,900,325 and ordered Ham to pay restitution of $216,472.92. Lee, Kim and Ham were also ordered to forfeit the proceeds of the scheme and pay money judgments of $18,764,900, $13,432,000 and $15,725,000, respectively. Seung E. Oh, a/k/a Sandy Oh, 44, Great Falls, Virginia, pleaded guilty to conspiracy to commit bank fraud and money laundering, and is scheduled for sentencing on July 9, 2013 at 1:00 p.m.

4. Sovereign Citizens filing liens for outrageous sum or other seemingly frivolous claims create a form of Paper Terrorism.19

19 NY Times, 8-23-2013 In Paper War, Flood of Liens is the Weapon, Erica Goode.
IV. THINGS THAT MAKE US LAUGH

A. POA – From Eula, Evelyn, Erman, Ewell, Edgar, Eva, Ermel Eric and Ernest appointing Eulene to be their Attorney in Fact\textsuperscript{20}

\textsuperscript{20} Power of Attorney from 9 E’s to E
APPENDIX

1. § 17.1-223. Duty of clerk to record writings, etc., and make index.

A. Every writing authorized by law to be recorded, with all certificates, plats, schedules or other papers thereto annexed or thereon endorsed, upon payment of fees for the same and the tax thereon, if any, shall, when admitted to record, be recorded by or under the direction of the clerk on such media as are prescribed by § 17.1-239. However, the clerk has the authority to reject any writing for filing or recordation unless (i) each individual's surname only, where it first appears in the writing, is underscored or written entirely in capital letters, (ii) each page of the instrument or writing is numbered, (iii) the Code section under which any exemption from recordation taxes is claimed is clearly stated on the face of the writing, (iv) the names of all grantors and grantees are listed as required by §§ 55-48 and 55-58, and if a cover sheet is used pursuant to § 17.1-227.1, that the names of all grantors and grantees on the face of such writing are the same on the cover sheet, and (v) the first page of the document bears an entry showing the name of either the person or entity who drafted the instrument, except that papers or documents prepared outside of the Commonwealth shall be recorded without such an entry. The clerk has the authority to reject any deed for filing or recordation that does not comply with this section. Such writing, once recorded, shall be returned to the grantee unless otherwise indicated clearly on the face of the writing including an appropriate current address to which such writing shall be returned.

B. The attorney or party who prepares the writing for recordation shall ensure that the writing satisfies the requirements of subsection A and that (i) the social security number is removed from the writing prior to the instrument being submitted for recordation, (ii) a deed conveying not more than four residential dwelling units states on the first page of the document the name of the title insurance underwriter insuring such instrument or a statement that the existence of title insurance is unknown to the preparer, and (iii) a deed conveying not more than four residential dwelling units states on the first page of the document that it was prepared by the owner of the real property or by an attorney licensed to practice law in the Commonwealth where such statement by an attorney shall include the name and Virginia State Bar number of the attorney who prepared the deed, provided, however, that clause (iii) shall not apply to deeds of trust or to deeds in which a public service company, railroad, or cable system operator is either a grantor or grantee, and it shall be sufficient for the purposes of clause (iii) that deeds prepared under the supervision of the Office of the Attorney General of Virginia so state without the name of an attorney or bar number.

C. A document which appears on its face to have been properly notarized in accordance with the Virginia Notary Act (§ 47.1-1 et seq.) shall be presumed to have been notarized properly and may be recorded by the clerk.

D. If the writing or deed is accepted for record and spread on the deed books, it shall be deemed to be validly recorded for all purposes. Such books shall be indexed by him as provided by § 17.1-249 and carefully preserved. Upon admitting any such writing or other paper to record the clerk shall endorse thereon the day and time of day of such recordation. More than one book may be used contemporaneously under the direction of the clerk for the recordation of the writings mentioned in this section whenever it may be necessary to use more than one book for the proper
conduct of the business of his office. After being so recorded such writings may be delivered to
the party entitled to claim under the same.

2. Deed recorded in Deed Book 4677, page 1860, Arlington County, VA (attached)

3. Deed recorded in Deed Book 6457 at Page 178 in Hillsborough County, FL. (attached)

4. Deed going back to Land Grant of King James (attached)

5. § 55-106.2. Presumption that writings admitted to record are in proper form.

A writing that is not properly notarized in accordance with the laws of the Commonwealth shall
not invalidate the underlying document, however, any such writing shall not be in proper form
for recordation. All writings admitted to record shall be presumed to be in proper form for
recording after having been recorded, and conclusively presumed to be in proper form for
recording after having been recorded for a period of three years, except in cases of fraud.

6. §55-106.5. When clerk may refuse document to be recorded.

A clerk may refuse any document for recording in which the name or names of the person under
which the document is to be indexed does not legibly appear or is not otherwise furnished.

7. § 55-52. Conveyance of property not owned but subsequently acquired.

When a deed purports to convey property, real or personal, describing it with reasonable
certainty, which the grantor does not own at the time of the execution of the deed, but
subsequently acquires, such deed shall, as between the parties thereto, have the same effect as if
the title which the grantor subsequently acquires were vested in him at the time of the execution
of such deed and thereby conveyed.

8. § 64.2-1427. How property of nonresident infant or incapacitated person transferred to
foreign guardian, conservator, or committee.

When any nonresident infant or incapacitated person is entitled to property or money in the
Commonwealth, a petition to remove the property or money to the domicile of the infant or
incapacitated person may be filed by his guardian, conservator, committee, or other fiduciary
lawfully appointed and qualified in the state or country of his residence, in the circuit court of the
county or city in which the property or money, or some part thereof, is located. If entitlement to
the property or money was acquired other than by a will or was acquired by a will that restricts
the transfer out of the Commonwealth, the infant or incapacitated person, and the guardian of the
infant or the conservator or other fiduciary of the incapacitated person appointed in the
Commonwealth, if there is one, shall be made a party defendant to this petition. The court shall
appoint a guardian ad litem for the infant or incapacitated person who, as well as the conservator
or other fiduciary, if there is one, shall answer the petition on oath. Upon a hearing of the case on
its merits, or upon the petition without hearing if entitlement to the property or money was
acquired by a will that does not restrict the transfer out of the Commonwealth, the court may
order the fiduciary to pay and deliver to the foreign guardian, conservator, committee, or fiduciary, or his agent or attorney, all personal property and money in his possession belonging to the infant or incapacitated person, and authorize the foreign guardian, conservator, committee, or fiduciary to sue for, recover, and receive all money and personal property, including the accruing rents of his real estate, that belongs to the infant or incapacitated person in the same manner as if he were appointed a guardian, conservator, committee, or fiduciary of the infant or incapacitated person in the Commonwealth, and to remove the money and personal property to the state or country in which the foreign fiduciary was appointed and qualified.

9. Deed recorded in Deed Book 1716, page 579 in Spotsylvania County, VA. (attached)

10. Deed and News Articles, Spotsylvania County, VA. (attached)

11. § 11-8. Instruments executed by minors or unmarried widows to obtain benefits under certain federal legislation.

Any person under the age of eighteen or widow who has not remarried who is eligible for a guaranty of credit under the provisions of Title III of an Act of Congress of the United States approved June 22, 1944, entitled the "Servicemen's Readjustment Act of 1944," as now or hereafter amended, or other like federal law, shall be upon complying with the terms of this section, qualified to contract for and purchase any real or personal property with respect to which the guaranteed loan is to be made, to execute the note or other evidence of the loan indebtedness and to secure the debt by the execution of a deed of trust or chattel mortgage, or other instrument, upon the real or personal property acquired as aforesaid in connection with the proposed loan or theretofore acquired by such person, whether by purchase or otherwise, and such person shall, in all respects, be bound by such contracts or other instruments entered into as though he or she were of full age.

When any such person is under the age of eighteen years no contract, note, deed of trust, mortgage or other instrument required to obtain benefits under such federal legislation shall be executed by such person unless the circuit or corporation court of the city or county, or judge thereof in vacation, in which the property is located or to be used, after a petition signed by any such person shall have been filed with it or him, approve the same. Such petition shall set forth the facts pertaining to the proposed transaction and shall state why the judge or court should approve and authorize the execution of the necessary instruments.

The petition shall be heard by the court without a jury and its decision thereon shall be final. A guardian ad litem shall be appointed who shall make an investigation and report in writing whether in his opinion the best interest of the petitioner would be served by permitting the petitioner to enter into such transaction and the report shall be filed with the papers in the case. No such petition shall be approved by the court unless such approval is recommended by the report of the guardian ad litem and unless it is also recommended by the testimony of at least two disinterested and qualified witnesses appointed by the court, or the judge thereof in vacation. The order of approval shall recite the recommendation of the guardian ad litem and the witnesses and also their names and addresses. And the judge of the court hearing the case shall fix a reasonable fee for the attorneys and guardians ad litem.
The court, if of opinion that entry into such transaction would benefit the petitioner, shall approve the prayer of the petition and the petitioner, if he enter into such transaction and execute any instrument required therein, shall be bound thereby as if of full age whether all or part of the obligation secured be so guaranteed.

All rights which have accrued or obligations which have arisen under this section prior to January 30, 1947, are hereby declared valid and binding.

If the court approve the prayer of the petition such approval shall operate to vest title and confer the power to encumber or convey title to real or personal property acquired pursuant to such approval.

Any infant spouse of an infant veteran permitted by the court to make loans under this section may unite in any conveyance to effectuate such a loan as if he or she was a spouse of an adult signing as provided under the provisions of § 55-42, relating to the removal of disability of infancy in certain cases.

(1946, p. 432; Michie Suppl. 1946, § 5760a; 1947, p. 102; 1954, c. 602; 1972, c. 825.)

12. Deed recorded in Deed Book 351, page 345, Prince William County, VA (attached)

13. See attached Freiert deed recorded in Deed Book 1716, page 579 in Land Records of Spotsylvania County, VA.

14. Will of Earl J. Broyles. (attached)

15. Will of Dorothy Pollard and Court Order prohibiting heirs from entering mother’s home. (attached)

16. McGehee v. Edwards, 268 Va 15, 597 SE2d 99 (June 10, 2004) In 1929, 1930 and 1931, The seven children of Dr. and Mrs. Monfort Jones established 11 inter vivos trusts. Each trust created a class of beneficiaries described as “direct lineal descendants” of various persons. As of January, 2000 there were approximately 142 beneficiaries. Trustees filed a bill of complaint asking the court to determine who would be included in the term “direct lineal descendants.” The Court ruled that adopted, illegitimate and artificially conceived children would be included reasoning that the subsequent changes in the law over time would be “grafted” into the trust. The Supreme Court held that the trial court ruling would be correct if applied to wills (which speak at death) but not to trusts which should be interpreted under the law in effect at the time of execution of the trust. The Court concluded that adopted children were not included within the term “issue” and that only natural descendants of a common ancestor were included. The statute (Sec. 64.1-71) which abrogated the common law did not apply to trusts created prior to 1978.

17. Will of Williams. (attached)

18. Will of Breiner. (attached)

20. Power of Attorney from 9 Es to E. (attached)