ENCUMBERING PROPERTY:
THE TROUBLES WITH "HEIR" PROPERTY and OTHER MATTERS

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Once Upon a Time ... There lived two sisters, Jane and Sarah. Jane and Sarah are in their late sixties and early seventies. They live together in an ancient house with no electricity, no plumbing and no insulation. They heat with a wood burning stove. Sarah has always taken care of Jane who was diagnosed with diminished mental capacity many years ago. Jane is now deaf. Sarah is now having difficulty carrying the wood for the stove. Their only source of income is social security. There are no close family members to assist them. The house sits in the woods on what Sarah and Jane say is five acres, they are uncertain as to where the boundaries are. They say that they inherited it from their grandfather Axel.

Can a housing foundation help Sarah and Jane by either fixing up the house or bring in a modular or manufactured home?

I. IDENTIFY THE PROPERTY.

There are two basic examinations of the property that need to be done: first, a physical examination of the property, which may include obtaining information regarding requirements imposed by governmental authorities; and second, a title search in the local Circuit Court Clerk's Office.

A. EXAMINE THE PHYSICAL ASPECTS OF THE PROPERTY TO DETERMINE IF IT IS SUITABLE FOR ASSISTANCE.

1. Is the house suitable for renovation? Can you get a building permit for the improvements? Is the soil suitable for the improvements?
2. What are the local zoning and subdivision requirements for building in that area (check for acreage and setback requirements, access requirements, flood plain and stormwater management issues)?
3. Does the property perk? Will the local health department approve the installation of a drain field? Is there sufficient acreage to locate a reserve drain field?
4. Can a well be drilled?
5. What utilities are available to the property? Where are they? Can a new or renovated structure be connected to available utilities?
6. Does the property have adequate access to a public road?
7. Can you identify boundaries in the field to determine what the topography of the land is that you will be dealing with?

a. If the boundaries are unknown to Sarah and Jane, check with the neighbors, and look for physical monuments such as fences, trees that have been marked, etc. If no one knows where the boundaries are you will need a survey as it is important that all improvements and the well and septic field be installed on the property and not on the neighbors' property who, unless they agree to give an easement for the well or septic field, can require that the well and/or septic field be torn out at your expense. Improvements that violate the building setbacks required by local government, as well as any building setbacks established by plats, deeds or other documents (including covenants and restrictions) in the chain of title, would have to be torn down.

b. Before a survey is ordered, a title search should be done as this may give you additional clues as to the boundaries and it will also indicate who are the record owners of the property, who may not be Sarah and Jane, before you expend money on the survey, etc.

8. A note about commercial property: commercial property must be approached in a completely different manner from residential property. A homeowner can decide to ignore various problems and hope that if they sell the property a new owner (and their lender) would be just as forgiving. With commercial property various business risks are always part of the process, however, in order to determine what the business risks are, careful due diligence must take place. Typically with commercial property, due diligence will include some of the following requirements: getting an accurate physical (and topographical) survey, conducting an environmental audit, studying the current zoning and proffers on the property, determining if the intended use of the property is permitted under local ordinances and any covenants and restrictions on the property, assessing the available utilities and the easements for utilities, assessing the access to the property and what requirements VDOT and local government may have for access/sidewalks, etc., looking at traffic studies, examining flood plain information and existing and potential stormwater management requirements, obtaining soil studies, determine whether the intended use is economically feasible, and conducting a careful title search on the property.

B. THE TITLE SEARCH.

A title search needs to be done by a qualified title searcher. Hopefully you will be able to get a local title insurance company or agency to give you a discounted rate. The current standard for a title search in Virginia for some title companies is to go back at least 40 years to the last general warranty deed. Other title companies may only do a "one owner"

search, which is not sufficient for heir property (or indeed any property, other than a property which has already been extensively searched and you just need to know what judgments, liens and delinquent taxes the current owner may have on the property). The "true" standard for title searching in Virginia remains a 60 year search.

See Exhibit A for a brief explanation of how the title searcher goes about the search. What the title searcher is looking for are answers to the following questions:

1. Who is the record owner of the property?

    a. This may not be Sarah and Jane; they said it was their grandfather, therefore to get the title searcher started you should give them their grandfather Axel's name, the tax map identification number, and any other information you may have regarding the property, ie. what road it is on, the number of acres, etc.

    b. If the property is in the grandfather's name you will need to provide the title searcher with a family tree.

2. What is the property as it appears of record?

    b. Here the title searcher will be examining the descriptions contained in deeds and plats of record to try and determine what was actually deeded (which may not be what that last deed recites) to the record owner, who in Sarah and Jane's case is the grandfather.

    a. The title searcher may not be able to finish the search without a recent survey if the deeds in the chain of title contain only vague descriptions.

    b. What is a vague description?

        1. "All my land in Fluvanna County, Virginia." Without saying where the grantor got the property.
        2. "Beginning at the intersection of the right of way of the party of the second part a little southeast of Palmyra depot on the south side of said right of way with a line running on the eastern boundary of the public road leading through the place known as "Mt. Airy" and running the eastern side of said road to its intersection with the boundary line between the property conveyed herein and the Palmyra Mills property belonging to the estate of W.B. Taylor, deceased, and thence in an easterly direction along the northern boundary line of the said mill property to a corner and stone, and thence south along the boundary line of said property to a stone on

said line just opposite a honeysuch tree, thence in an easterly direction near the base of the bluff by a blazed apple tree two hundred and three feet, to a young sycamore blazed, thence in the same direction two hundred and two feet to another young sycamore blazed, thence one hundred and three feet to a blazed persimmon thence easterly one hundred and three feet to a set rock thence in the same direction to the branch at a blazed ash ..." [*From a 1907 deed to a railroad, unfortunately all the trees died*].

N.B. Do not put too much trust in tax maps, they are not known for their accuracy.

3. Does the property have encumbrances such as existing deeds of trust, judgments, mechanics' liens, delinquent taxes, all of which can dispossess Sarah and Jane if someone chooses to foreclose, bring a creditor's suit to sell the real estate so that creditors can be paid, bring an action to enforce a mechanic's lien or auction the property off for delinquent taxes. Since Sarah and Jane do not have 100% ownership in the property the title searcher must also search under the names of all the other heirs and some of the other heirs may have encumbered the property.

4. Does the property have covenants and restrictions on it? Such as, no mobile homes or manufactured homes; required square footage; vegetative buffers; location of structures; types of structures permitted; are certain building materials required; etc.? Is the owner of the parcel required to pay costs for maintaining the road? Does the structure have to be approved by a homeowners' association or other controlling entity? What are the costs associated with such approval? With commercial property one must take a very close look at any covenants and restrictions to make sure a particular use is not prohibited, and to ascertain what requirements are imposed on the parcel (if there is a common area the annual common area charges may be expensive).

5. Finally, one of most important questions - does the property have a defect of title? Can the title searcher establish a chain of title for the required period? Possible defects of title, but by no means a complete list, are:

   a. The seller to grandfather did not own the property, no one knows where the seller acquired the property.
   b. The seller sold more land than he owned according to the land records.
   c. The seller did not own 100% of the interests in the property.
   d. The signatures were not properly notarized, and the curative statute for notary acknowledgments in the Code of Virginia does not save it.
   e. The property cannot possibly be where the deed says it is.
   f. The deed was signed pursuant to a power of attorney that was not recorded

in the Clerk's Office.

g. There are outstanding interests, as in Sarah and Jane's case, see their family tree. Also, there are no affidavits of heirs of record establishing how Sarah and Jane claimed their interests.

h. Liens, judgments, delinquent taxes.

i. Restrictions on the property that can divest ownership - ie. "to the railroad for so long as the property is used as a railroad...".

j. Easements or other rights that prevent or interfere with the intended use, such as an easement for a high tension power line that is 150 feet wide, or underground easements that go through the center of the property thereby limiting the available building area on the lot.

k. ETC.....

6. AND, another very important questions - can you physically get to the property? Is there an adequate **recorded easement of right of way** to the property for access (vehicles) and for utilities? There are three types of access easements: recorded, by necessity and by prescription. *Warning*: a court must award easements by necessity and prescription. You only get easements by necessity or prescription if you can prove the elements required - in court.

An easement, as defined by Black's Law Dictionary is: "A right of use over the property of another." There are a variety of easements that can encumber property, including easements for access, utilities, septic fields, wells, viewshed, etc.; not all easements are perpetual. Easements may be personal, for a certain time period, for a specific one-time use or perpetual. THE EXACT WORDING OF THE EASEMENT MATTERS.

a. A recorded easement is usually contained in a deed with language similar to the following: "together with a non-exclusive perpetual easement of right of way twenty-five feet in width along the existing dirt road known as "Dirt Road," for the purpose of ingress and egress to and from Virginia State Route 100." An easement can also be contained in a separate deed of easement setting forth the details of the easement. The recorded easement needs to be carefully examined to make sure that easement described is actually how everyone gets to the property, and to ascertain whether there are restrictions in the use of the easement. The width of the easement can also be an issue if large pieces of equipment must be moved onto the property (an 8' easement is not sufficient for large equipment).

b. An easement of necessity is where a large parent tract is subdivided into smaller lots and the developer "forgot" to include an easement in the off-conveyances, leaving some of the lots landlocked. If all the elements are met, a court may award an easement by necessity. A pleasant conversation

with the neighbor may result in the neighbor understanding that an easement is necessary and the neighbor may be willing to sign a deed of easement.

c. An easement by prescription is what many people have, particularly on "old" properties. It has only been in recent decades that there have been demands by lenders and purchasers for a recorded easement, although fights between neighbors over roads are as old as the need to get to a property. However, in recent years these fights have been escalating as new people enter neighborhoods who have not grown up beside one another. An easement by prescription is where a road has been used for more than twenty years in a manner that is hostile (without permission), lasting, uninterrupted (no gates put up blocking access, trees have not grown up in the track), and visible. A court may award an easement by prescription but only for the use that has actually been occurring - ie. once a year on a track 6 feet wide to move cows. If neighbors block a road an injunction needs to be filed in the Circuit Court asking the court to establish an easement by prescription. Seeking an easement by prescription in court can be time consuming, expensive and often the outcome can be in doubt. It can often be cheaper to buy the easement. An easement by prescription is not deemed sufficient for title companies, lenders and purchasers for access to the property.

d. For utilities almost all utility companies are going to require a recorded easement to get services to the property. Again, time to be nice to the neighbors. Identify the closest utility connection and go talk to the neighbor whose land the connection is on, and any in between that connection point and the new structure. The utility companies each have their own deeds of easement that they will require all to sign. [For commercial properties, access and adequate easements for utilities are absolutely critical. Not only for the current intended use, but also for future uses.]

A title searcher can only find easements that are recorded in the land records in the Circuit Court Clerk's Office, although the title searcher may find evidence of an easement by necessity or prescription in recorded plats. Recent decisions handed down by the Virginia Supreme Courts have indicated that the mere showing of an easement on a plat is insufficient - there must be an easement stated and identified in a deed or other instrument.

QUESTION: Can you move a singlewide or a large truck down the track to the house? The sisters do not own a car. Trees have grown right up to the edge of the track. Can you cut down the trees? The answers depend on what type of

easement you have, how wide it is, and how nice the neighbors are.

The title searcher will furnish a report setting forth what was found. For protection of the eventual noteholder, title insurance almost always required. By issuing a title insurance policy the title insurance company is insuring to the lender that, unless specifically set forth in the policy, there are no defects to the title. The lender wants to make sure that it can foreclose on the property (and later sell it) without difficulty if there is a default. The title insurance commitment that is received prior to a closing will also set forth what exceptions to title that the title searcher found - items such as easements, restrictions and covenants, liens, judgments, delinquent taxes, plats that show easements for access, drainage, etc. In examining a title insurance policy, beware the exceptions. Not all title insurance policies are created equally. Title insurance companies are becoming more conservative regarding coverage.

II. THE PROPERTY HAS BEEN IDENTIFIED IN SOME MANNER, THE RECORD OWNER HAS BEEN DISCOVERED - GRANDFATHER AXEL. NOW, WHO REALLY OWNS THE PROPERTY?? ASSUMING AXEL DID NOT LEAVE A WILL, TIME FOR THE DREADED FAMILY TREE.

A. Basic Rule - Determining who inherited what interest depends on when someone died and who they left behind. Virginia law always applies for Virginia property.

B. Sources of information in somewhat the usual order of investigation.

1. Records in the Circuit Court Clerk's Office - wills, affidavits, birth records, death records, census records.
2. Bureau of Vital Records.
3. Family history, family bible and family friends.
4. Ancestry.com or other genealogy sources.
5. Cemeteries.
6. Church records.

Always verify the information. Someone (using their personal knowledge) is going to have to sign an affidavit under oath as to the family tree. Illegitimates count in Virginia, you need the entire unedited family history. It is always best to have two disinterested, but knowledgeable, individuals sign affidavits, or, have every member of the family who can be located sign an affidavit. Occasionally, you will need to have affidavits for each branch of the family. By insisting on affidavits you have a greater chance of finding out who are the "true" family members.

C. Questions to Ask:

1. When did he/she die? Exact date.
2. Was he/she married when he/she died? Separated does not count, only a final decree of divorce counts.
3. Did the spouse survive? The name of the spouse is needed.
4. Did he/she have any children? Who was the other parent of those children? The surviving spouse?
5. Who are the children?
6. If a child was adopted, what the child legally adopted?

See family tree attached as Exhibit B for an example of a finished product. See Exhibit C for an affidavit of heirs loosely constructed off the family tree. Last names were left off to protect the innocent. This is taken from a real family history. What is amazing about this family is that they kept track of each other.

D. What law was in effect on the DAY that someone passed away?

1. Have someone consult the Code of Virginia statute in effect as of the date of death.
2. Basic breakdowns, edited for length, follow showing when the law changed *this is not to be used to determine interests as a full recitation of the code sections are not included.*

1787 to 1922:	children (or descendants); then intestate's father; then intestate's mother and siblings (or descendants); then one moiety to paternal; the other to maternal kindred - grandfather if none, grandmother and aunts and uncles on the same side, etc..... *Note:* Spouses not mentioned.
7/1/1922:	children (or descendants), then father and mother or survivor; then brothers and sisters (or descendants); then surviving spouse; then paternal and maternal moities
3/29/1923:	Same until you get to the moities.
7/1/1956:	children or descendants; then surviving spouse; then father and mother or survivor; then to brothers and sisters or descendants; etc.
7/1/1982:	Surviving spouse unless intestate had children by one other than surviving spouse - if so, then children get it, subject to dower interest; then to children or descendants, etc.
7/1/1985:	See Section 64.2-200, attached as Exhibit D.

Prior to January 1, 1991 the surviving spouse had a dower or curtesy interest that in 1977 became a one-third fee simple interest, prior to 1977 it was a life estate only.

E. Based on our family tree, and affidavit loosely based on family tree, shown in Exhibit C, who really owns the real estate?

1. Sarah and Jane together own a .432 interest in the real estate. Is this enough for your purposes? Note that an interest of potentially a .122 interest, depending on when Mary Ann died (date of death currently unknown) went down Sarah and Jane's great-grandmother's line from her second marriage to persons unknown.

2. Problems with not having a 100% ownership:

a. The other owners can force a sale with a partition suit. Sarah and Jane would have to petition the court to try to get the value of their improvements.

b. There may be judgments, etc. against the other owners and those creditors can bring a creditors suit asking the court to sell the property to pay the creditors, Sarah and Jane would only get the value of their interest.

c. The other owners can move in on Sarah and Jane potentially making their life miserable and defeating your purpose of providing an adequate home for them.

III. NOW WE KNOW WHO OWNS THE PROPERTY, NOW WHAT?

A. Will other family members deed their interest to Sarah and Jane? Choices of deeds:

1. Deed of gift: must be signed by family member and their spouse.

2. Quitclaim deed: does not contain a warranty (guarantee) of title, useful when interest owned by grantor is unknown or uncertain. Many title companies will often not accept a quitclaim deed as sufficient to pass title. It can depend on the exact wording in the deed.

3. Deed of bargain and sale: where Sarah and Jane buy out the other family member's interest. If Sarah and Jane have been paying the taxes it is useful to mention to family members that Sarah and Jane are entitled to be paid back each family member's share of the taxes. Rent usually does not enter into the equation to be prorated between the parties unless Sarah and Jane have had *exclusive* possession of the property (ie. have kicked everyone else out).

If other family members are willing to deed their interests, have a real estate attorney draw up the deeds as a poorly drawn deed will cause more problems than it will solve.

B. Partition Suit. This is a court suit that asks the court either to divide the property in kind with each heir owning an interest receiving a portion of the real estate. All county and city ordinances must be abided by, so if your county has a minimum lot size and there is not enough land, a partition in kind may not be feasible. The alternative is for a third party to purchase the property or for one of the heirs to purchase the property. A partition suit may have to be resorted to if Sarah and Jane want to own 100% of the property and if not all heirs can be located, there is the potential for unknown heirs, or if heirs refuse to convey their interests. A partition suit can take several months, particularly if it is contested. A major issue is always the fair market value of the property. The interest of an unknown heir would be paid into court and if the heir does not appear will eventually escheat to the Commonwealth of Virginia. These suits are not inexpensive.

C. Suit for Adverse Possession. A suit for adverse possession is possible where the inhabitant of the property has for a period of at least 15 years used the property in a manner which is adverse and hostile to all others, visible, uninterrupted, lasting, and exclusive. Suits for adverse possession are usually not possible against co-tenants. Co-tenants are those who acquire the property together, which is the case with heir property. Proving that the possession is exclusive, adverse and hostile to other co-tenants is usually very difficult with heir property. The claimant would have to overtly kick out all other heirs, and there would have to be evidence that those heirs considered themselves "kicked out." Another difficulty with a suit for adverse possession is identifying the property being claimed. The claimant would have to prove use of ALL of the property, not just the house and yard area.

D. You decide to go ahead with Sarah and Jane having only a .432 interest in the property.

1. See above problems listed where Sarah and Jane do not own 100% of the property.
2. Jane was diagnosed many years ago as "incapacitated" and she is now deaf. Can she sign a note and deed of trust?

IV JANE'S DIFFICULTIES. CAN JANE SIGN A LEGAL DOCUMENT?

A. What is the current diagnosis of Jane's condition? Is she competent to sign a deed of trust and note?

1. Check with the local Department of Social Services to see if they are providing any services to Jane. They may have a recent diagnosis which they, of course, will not let you see, but they may indicate whether they believe she is competent. Their opinion will carry some weight in court, depending on what is in their file.

2. Talk to Jane. Does she know who you are? Does she understand what you are trying to do? Can she identify the property? Can she sign her name? Can she read? Does she understand the concept of a note and deed of trust? Can she remember what she did yesterday and the day before, so that she will remember signing a note and deed of trust.

3. When in doubt, get a physician's opinion. You do not want to be accused of taking advantage of an incapacitated elderly person, and the deed of trust may be rendered void or voidable.

B. What if Jane is not competent to sign the note and deed of trust - What then?

1. See if Jane has an existing valid power of attorney authorizing someone to sign for her. Have an attorney review the power of attorney as not all powers of attorney are created equally. There are powers of attorney that would not give the authority to sign the note and deed of trust.

2. If there is not a valid power of attorney in force, a conservator must be appointed by the Circuit Court for Jane. The Department of Social Services may, given Jane and Sarah's lack of funds, help with this. The conservator would be court appointed after a hearing declaring Jane incapacitated and unable to perform certain legal tasks. At that same hearing, if the matter is requested in the petition for the appointment of a conservator, the Court can determine whether it would be appropriate for the new conservator to execute the note and deed of trust on Jane's behalf. The Court may or may not appoint Sarah as the conservator. Depending on your court it can take a few weeks or more to have a conservator appointed. It can also be expensive. The Department of Social Services does have a small fund to pay for such petitions, depending on the circumstances of the case.

V. THE NOTE AND DEED OF TRUST

A. The Note. This is basically the IOU.

1. A standard Fannie Mae/Freddie Mac Note is attached as Exhibit E showing what is basically covered in the note for a residential loan. The

documentation for a commercial loan would be quite different, usually with more requirements.

2. Forgivable notes. When the note is to be forgiven in certain circumstances, those circumstances must be clearly set forth. The ideal note is written so that anyone who can read can understand when the note is due and when it may be forgiven.

3. The borrower signing the note must be competent mentally to do so. Physical disabilities are usually not a problem if the person can understand what is being read to them, if, for instance, they are blind; problems may arise if the person is blind and deaf. If the person cannot understand English or is deaf, get an interpreter. Any time a legal document is being signed we must be sensitive to the signer's capabilities or lack thereof. The Americans with Disabilities Act requires that efforts be made to accommodate a person's disabilities.

4. Make sure the note is explained to the person signing it. Here one must be concerned with the unauthorized practice of law. If you work for the noteholder you are able to explain the note to the person signing, otherwise, you must be licensed to practice law in Virginia.

5. Beware the person who will not read the note or have it explained to them. Be sensitive to someone who does not want to admit that they cannot read.

B. The Deed of Trust.

1. The Deed of trust is recorded in the local Clerk's Office. The deed of trust actually conveys the "legal" title to the property to the trustee named in the deed of trust. The property described in the deed of trust comes under the control of the trustee in the event of a default to enable the trustee to conduct a nonjudicial foreclosure, and frequently contains additional covenants from the borrower which were not contained in the note, such as the promise to insure the property, pay taxes and assessments, etc. It also provides for foreclosure of the property in the event that there is a default of the terms contained in the note and deed of trust. A commercial deed of trust (a "security instrument") often has terms that are different from a residential loan, and is usually paired with a loan agreement setting forth additional terms for the loan. In a commercial loan the fixtures and other collateral are often encumbered by a Uniform Commercial Code financing statement as deeds of trust unless other terms are included therein, only affect the real estate.

2. The borrower signing the deed of trust must be competent to sign it, ie. must understand what they are signing.

3. If the borrower signing the deed of trust has less than a 100% interest in the property the deed of trust encumbers only what that borrower owns.

4. The deed of trust should include the following, at a minimum:

    a. Terms of payment, ie. What is due, when is the payment due monthly, and, under what circumstances the entire outstanding loan is due - death of the borrower? if borrower no longer resides on the property? If borrower rents, sells or otherwise conveys the property. This all needs to be carefully spelled out in the deed of trust.
    b. It should secure the costs of collection of the debt, clearing title, repairing or securing property for foreclosure.
    c. Promise to pay insure the property, real estate taxes, and assessments.
    d. Restrict the borrowers ability to put another deed of trust on the property?

5. Make sure the description of the property in the deed of trust is accurate!

6. Check the insurance policy for coverage of the dwelling, description of the property, owners and exceptions. The lender MUST be listed on the loss payable clause.

VI. WHAT IF SARAH AND JANE ONLY HAVE A LIFE ESTATE?

Life Estates die with a person, so a deed of trust on a life estate is a very fragile thing. It can evaporate when the life tenant dies unless the "remaindermen" have also signed the deed of trust. You would have to get the "remaindermen" (those who end up with the property when the life tenant dies) who have an interest in the property to also sign the deed of trust, along with the life tenant. The life tenant can sign the note as the sole borrower. It would be best to spell it out in the note that it is due when the life tenant dies. It is important to carefully identify the remaindermen who would need to sign the deed of trust.

If someone else, other than Sarah and Jane, has a life estate, that person needs to sign the deed of trust as they have a vested interest in the real estate. The life tenant has the right to occupy the property, exclude all other persons, and even rent it during their lifetime.

If a prior life tenant has died, an affidavit should be recorded in the Circuit Court Clerk's Office setting forth when the person died, to prove that the life estate has been extinguished.

VII. WHAT IF SARAH AND JANE ONLY HAVE A LEASE WITH THE RIGHT TO PURCHASE THE PROPERTY, OR A LAND SALES CONTRACT? READ THESE DOCUMENTS CAREFULLY AND REMEMBER, THESE INSTRUMENTS MAY CONTAIN PROMISES TO CONVEY THE PROPERTY SOMETIME IN THE FUTURE, BUT ONLY IF CERTAIN PAYMENTS ARE MADE AND CERTAIN CONDITIONS SATISFIED.

A. A Lease with the option to purchase the property should contain, in addition to all of the provisions of a lease, all of the elements a typical contract to purchase has. The Lease should clearly spell out what rights, obligations and liabilities everyone has and specifically how the option to purchase is triggered. If it does not, have the lease revised and amended to include the appropriate provisions to purchase the property. Often the lease will state that the tenant may only exercise the option to purchase if there has been no default. One needs to get written confirmation from the landlord as to what the landlord thinks the terms are, and whether the option to purchase is still alive. Just because the document says it is a lease/purchase does not mean the tenant has the right to purchase the property. And, one still needs to examine the property and the title to the property. Remember a lease to purchase arrangement is still just a lease until a deed is recorded.

B. Land Sales Contracts must be approached with extreme caution. A land sales contract, which should be recorded in the Clerk's Office, usually burdens the "buyer" with all the responsibilities and liabilities of a landowner, but the "buyer" does not receive a deed for the property until all payments have been made. If the "buyer" misses one payment or defaults on any provision in the land sales contract the "seller" can withhold the deed and evict the "buyer," even if the only payment the "buyer" is late on is the very last payment. If you are dealing with someone holding a land sales contract, you should restructure the land sales contract to an arrangement that has a greater chance of actually conveying title to the buyer. As with the lease to purchase agreement, a land sales contract does not make the "buyer" the owner until a deed is recorded. The property and title should still be examined as if in a purchase, which individuals often ignore.

VIII. WHAT IF THE PROPERTY DOES NOT PERK SUFFICIENTLY FOR A TRADITIONAL SEPTIC SYSTEM?

Alternative septic systems are expensive to install, and additional steps must be taken when they are installed. Disclosures must be recorded in the Circuit Court Clerk's Office and the system requires maintenance that the typical traditional system does not require.

IX. FOR DEALING WITH REAL ESTATE, REMEMBER: IF IT IS NOT IN WRITING IT PROBABLY DOES NOT EXIST. AND, IT BETTER BE SIGNED BY ALL PARTIES IN INTEREST. AND, WORDS MATTER. THE EXACT WORDS USED MATTER.

TYPICAL SEARCH BY A TITLE SEARCHER

1. Check land book to see whose name the property is taxed under, get the tax assessment, the amount of the annual taxes, whether the property is taxed under a land use assessment that may be lost if a structure is put on the property thereby triggering roll-back taxes, and, hopefully, a deed book or will book reference showing where the person listed acquired the property. The land book may show who is receiving the tax ticket each year.

2. Look up and examine the deed to Grandfather Axel. Note the date of the deed, who the grantors were, the exact name of the grantee (who should be Grandfather Axel), whether the deed was a general warranty deed or a special warranty deed, the description of the real estate conveyed, examine any plat of record for acreage, streams, problems with boundary lines, access to a public highway, notations by the surveyor (such as line unknown, area claimed by neighbor) etc., note where the grantors acquired the property to begin the "chain of title," note carefully any restrictions or unusual provisions, check the signatures and notary acknowledgment, also note when the deed was recorded.

3. Look up and examine the deed where the grantors to Grandfather Axel got the property and continue to go down the chain of title to the last *general warranty* deed at least 60 years ago.

4. Once the chain of title has been established, check each owner for outconveyances looking for deeds of trust, out conveyances of the property, liens, easements, restrictions, etc., basically anything to do with the subject property.

5. Check each owner for judgments going back at least 20 years.

6. Check each owner for financing statements going back at least 10 years.

7. Check to make sure the taxes are paid to date.

8. If an access easement is sought you will need to examine the title to each property over which the road passes to make sure you know who the record owners are and to see if there is a deed of trust on the property as the trustees, who hold the legal title to the property, would have to sign the easement on behalf of the noteholder.

EXHIBIT A

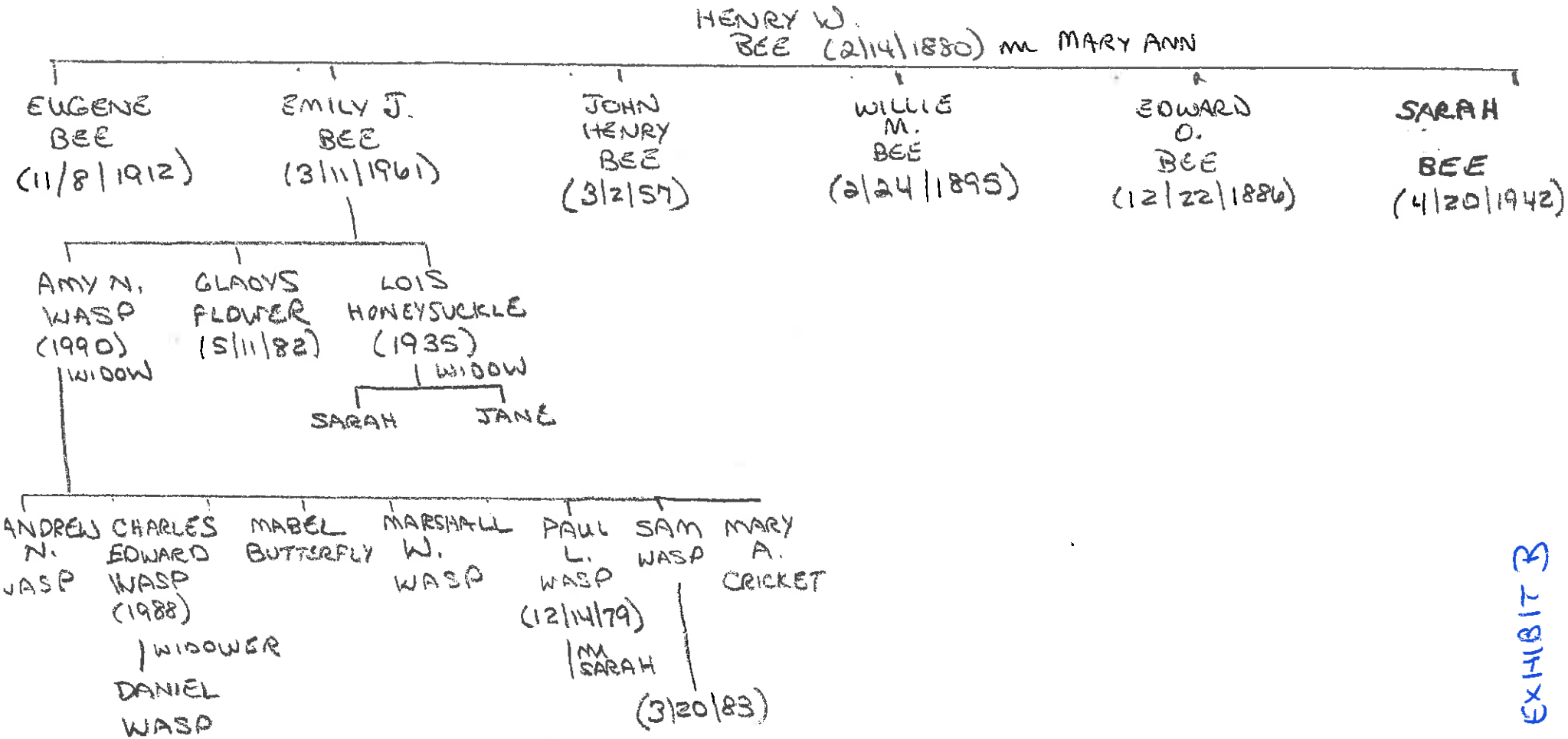

EXHIBIT B

EXHIBIT B

AFFIDAVIT

STATE OF VIRGINIA,

COUNTY OF FLUVANNA, to-wit:

_____, after first being duly sworn, deposed and said as follows:

THAT, **HENRY W. BEE,** died on February 14, 1880, intestate, leaving his surviving wife, Mary Ann Bee, who he married in Fluvanna County on November 24, 1867, who has since passed away, and six surviving children as his sole heirs at law, namely: Eugene Bee, Emily J. Bee, John Henry Bee, Willie M. Bee, Edward O. Bee and Sarah Frances Bee.

THAT, **EUGENE BEE** died on November 8, 1912, as evidenced by a certificate of death, a copy of which is attached hereto and made a part hereof, unmarried, intestate and without children, leaving as his sole heirs at law his mother, Mary Ann Scott Bee, and his brothers and sisters, namely: Emily J. Bee, John Henry Bee and Sarah Frances Bee.

THAT, **EMILY J. BEE,** died Emily Jane Bee Wood, a widow, intestate, on March 11, 1961, survived by three children as her sole heirs at law, namely: Amy N.Wasp, Gladys Flower, and Lois Honeysuckle.

THAT, **AMY N. WASP**, died intestate, a widow, in 1990, survived by seven children who are her sole heirs at law, namely: Andrew N. Wasp, Charles Edward Wasp, Mabel Butterfly, Marshall W. Wasp, Paul L. Wasp, Sam Wasp and Mary A. Cricket.

THAT, **CHARLES EDWARD WASP**, died intestate, a widower, in 1988, leaving as his sole heir, his only child, Daniel Wasp.

THAT, **PAUL L. WASP**, died intestate on December 14, 1979, survived by his wife, Sarah

EXHIBIT C

Wasp, as his sole heir at law, and no children.

THAT, **SAM WASP**, died intestate, unmarried, with no children on March 20, 1983, leaving as his sole heirs at law his brothers and sisters, namely: Andrew N. Wasp, Charles Edward Wasp, Mabel Butterfly, Marshall W. Wasp, and Mary A. Cricket.

THAT, **GLADYS FLOWER**, died intestate, a widow, on May 11, 1982, leaving as her sole heirs at law her sisters or their descendants, namely: Andrew N. Wasp, Charles Edward Wasp, Mabel Butterfly, Marshall W. Wasp, Sam Wasp, Mary A. Cricket, Jane Honeysuckle and Sarah Honeysuckle.

THAT, **LOIS HONEYSUCKLE,** died intestate, a widow, in 1935, leaving as her sole heirs at law, her children, Sarah and Jane.

THAT, **JOHN H. BEE** died intestate, unmarried and without children on March 2, 1957, as evidenced by his certificate of death, a copy of which is attached hereto and made a part hereof, leaving as his sole heir at law, his sole surviving sister, none of his other siblings having any surviving descendants, namely: Emily Jane Bee Wood.

THAT, **WILLIE M. BEE**, died intestate, unmarried and without children on February 24, 1895, leaving as her sole heirs at law her mother, Mary Ann Scott Bee, and her surviving brothers and sisters, namely: Eugene Bee, John Henry Bee, Emily Jane Bee Wood, and Sarah Frances Bee.

THAT, **SARAH FRANCES BEE**, died intestate, unmarried and without children on April 20, 1942, leaving as her sole heirs at law her surviving brothers and sisters or their descendants, namely: John Henry Bee and Emily Jane Bee Wood.

THAT, **EDWARD O. BEE**, died intestate, unmarried and without children on December 22, 1886, leaving as his sole heir at law his mother, Mary Ann Scott Bee, and his brothers and sisters,

namely: Eugene Bee, Emily J. Bee, John Henry Bee, Willie Bee and Sarah Frances Bee.

WITNESS the following signature and seal this _____ day of _____, 20___.

_____

The foregoing affidavit was sworn to, subscribed and acknowledged before me this _____ day of _____, 20___ by _____.

My commission expires:

_____
Notary Public

§ 64.2-200. Course of descents generally; right of Commonwealth if no other heir.

A. The real estate of any decedent not effectively disposed of by will descends and passes by intestate succession in the following course:

1. To the surviving spouse of the decedent, unless the decedent is survived by children or their descendants, one or more of whom are not children or their descendants of the surviving spouse, in which case, two-thirds of the estate descends and passes to the decedent's children and their descendants, and one-third of the estate descends and passes to the surviving spouse.

2. If there is no surviving spouse, then the estate descends and passes to the decedent's children and their descendants.

3. If there is none of the foregoing, then to the decedent's parents, or to the surviving parent.

4. If there is none of the foregoing, then to the decedent's brothers and sisters, and their descendants.

5. If there is none of the foregoing, then one-half of the estate descends and passes to the paternal kindred and one-half descends and passes to the maternal kindred of the decedent in the following course:

a. To the decedent's grandparents, or to the surviving grandparent.

b. If there is none of the foregoing, then to the decedent's uncles and aunts, and their descendants.

c. If there is none of the foregoing, then to the decedent's great-grandparents.

d. If there is none of the foregoing, then to the brothers and sisters of the decedent's grandparents, and their descendants.

e. And so on, in other cases, without end, passing to the nearest lineal ancestors, and the descendants of such ancestors.

B. If there are either no surviving paternal kindred or no surviving maternal kindred, the whole estate descends and passes to the paternal or maternal kindred who survive the decedent. If there are neither maternal nor paternal kindred, the whole estate descends and passes to the kindred of the decedent's most recent spouse, if any, provided that the decedent and the spouse were married at the time of the spouse's death, as if such spouse had died intestate and entitled to the estate.

C. If there is no other heir of a decedent's real estate, such real estate is subject to escheat to the Commonwealth in accordance with Chapter 10 (§ 55-168 et seq.) of Title 55.

EXHIBIT D

(Code 1950, § 64-1; 1956, c. 109; 1968, c. 656, § 64.1-1; 1977, c. 474; 1982, c. 304; 1985, c. 189; 1990, c. 831; 2012, c. 614.)

NOTE

June ___, 20___ Town, Virginia

[*Property Address*]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. $_____ (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is _____. I will make all payments under this Note in the form of cash, check or money order.

I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

«6point line advance»

2. INTEREST

Interest will be charged on unpaid principal until the full amount of principal has been paid. I will pay interest at a yearly rate of _____%.

The interest rate required by this Section 2 is the rate I pay both before and after any default described in Section 6(B) of this Note.

3. PAYMENTS

(A) *Time and Place of Payments.*

I will pay principal and interest by making payments every month.

I will make my monthly payments on the ___ day of each month beginning on the ___ day of _____, 20___. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If on the ___ day of _____, 20___, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at 1 Bank Street, City, Virginia 20000, or at a different place if required by the Note Holder.

(B) *Amount of Monthly Payments.*

My monthly payment will be in the amount of U.S. $_____.

EXHIBIT E

4. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under the Note.

I may make a full Prepayment or partial Prepayments without paying a Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. However, the Note Holder may apply my Prepayment to the accrued and unpaid interest on the Prepayment amount, before applying my Prepayment to reduce the Principal amount of the Note. If I make a partial Prepayment, there will be no changes in the due date or in the amount of my monthly payment unless the Note Holder agrees in writing to those changes.

5. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces the Principal, the reduction will be treated as a partial Prepayment.

6. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) *Late Charge for Overdue Payments.*

If the Note Holder has not received the full amount of any monthly payment by the end of _____ (___) calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be ___% of my overdue payment of principal and interest. I will pay this late charge promptly but only once on each late payment.

(B) *Default.*

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

(C) *Notice of Default.*

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of principal which has not been paid and all the interest that I owe on that amount. That date must be at least thirty (30) days after the date on which the notice is mailed to me or delivered by other means.

(D) *No Waiver by Note Holder.*

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

(E) *Payment of Note Holder's Costs and Expenses.*

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

7. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Any notice that must be given to the Note Holder under this Note will be given by delivering it or by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

8. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

9. WAIVERS

I and any other person who has obligations under this Note waive the rights of Presentment and Notice of Dishonor and waive the benefit of the homestead exemption as to the Property described in the Security Instrument (as defined below). "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

10. UNIFORM SECURED NOTE

This Note is a uniform instrument with limited variations in some jurisdictions. In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses which might result if I do not keep the promises which I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions are described as follows:

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than thirty (30) days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.

_____(SEAL)
Borrower

_____(SEAL)
Borrower

[Sign Original Only]

This is to certify that this is the Note described in and secured by a Deed of Trust dated the ___ day of _____, 20___ on the Property located in _____ County, Virginia.

My commission expires:

_____
Notary Public