

Avoiding Claims Land Mines

2021 Mississippi Fall Agency Seminar



Goals for this Presentation



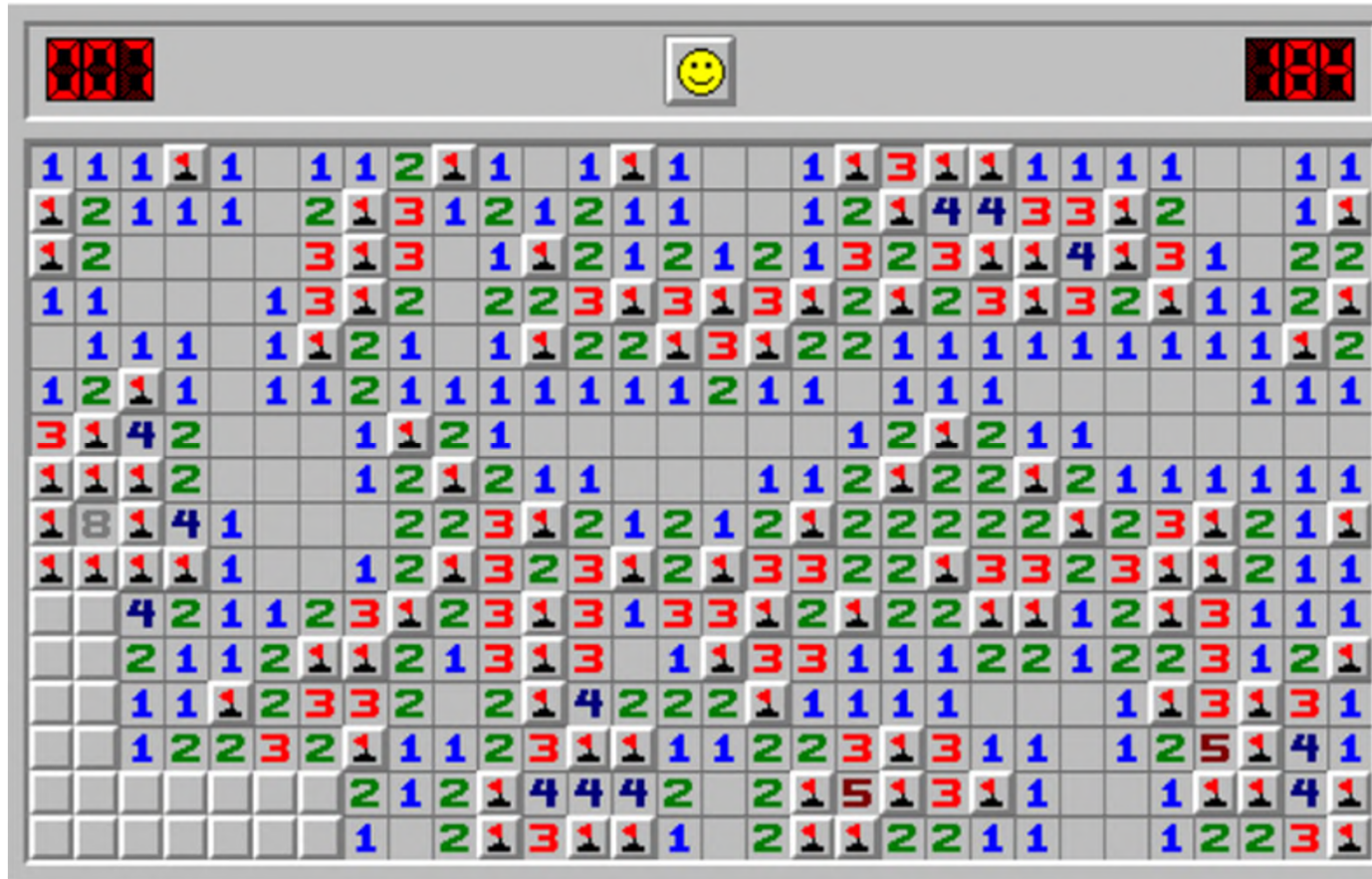
Alert you to potential issues that you may not be aware of in your practice.

Prepare you for ways to discover these problems.

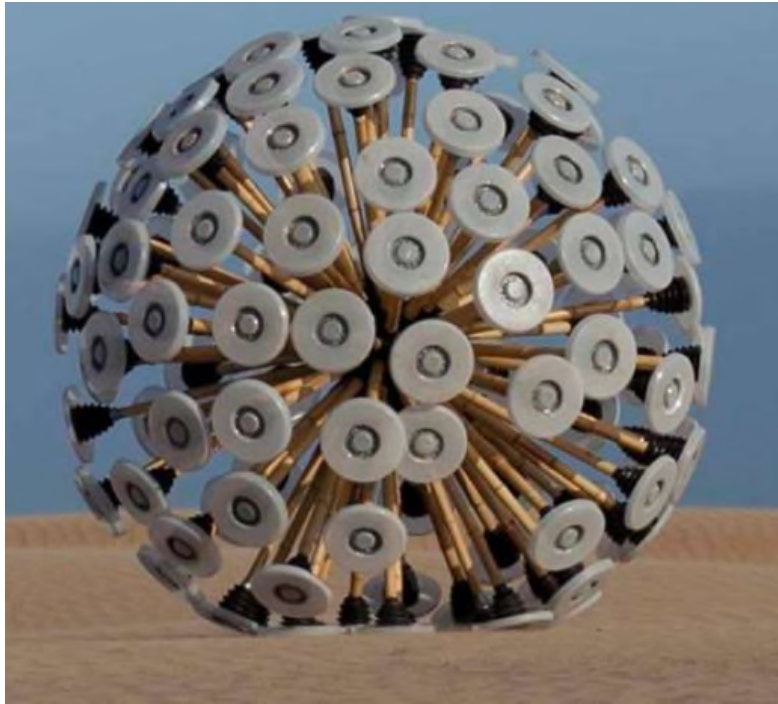
Enable you to set up safeguards to keep these issues from happening.

Educating you as to what to do if presented with one of these problems.

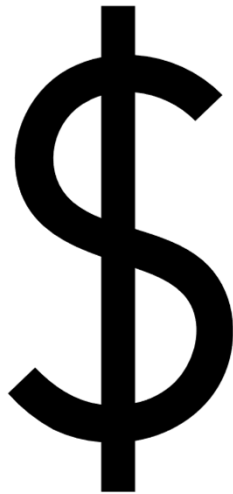
Old School Mine Sweeper



New School Mine Sweeper



One of the Biggest Problems



\$221,000,000.00 lost in real estate funds due to this in 2019.

11,677 real estate victims in 2019.

It is real as we have dealt with it as recently as August 2020.

Do you know what it is?

Real Estate Wire Fraud:

Potential Land Mine of Routing Instructions

Always call to verify the wire transfer instructions.

Also, don't forget to always call to verify the wire transfer instructions.



Real Estate Wire Fraud:

Potential Land Mine of Routing Instructions

- These schemes are always changing.
- Perpetrators can send bogus wire instructions when there has been no change in wire instructions.
- Don't assume you can catch this by just being careful and reviewing emails closely.
- This scheme is getting too good for people to catch.
- There is a burden associated with calling to verify wire transfer instructions. Nonetheless, it is essential today to call to verify.

Real Estate Wire Fraud: Which one is real?

Scheduled Escrow Disbursement(s):

These amounts may differ if your tax or insurance bills are more or less than the amount indicated below.

Below are the next disbursement dates from your impound account: PennyMac may make these disbursements prior to the due date to ensure timely payment.

Property Tax	\$822.50	January, 2021
Hazard Insurance	\$875.64	June, 2021
Mortgage Insurance	\$172.56	July, 2021

Amounts listed in the Scheduled Escrow Disbursement(s) section above are based on the last known amounts and will be paid by PennyMac as long as the loan is active; however, pending disbursement amounts are not included in the Total Payoff Amount Due. You must request an updated demand for current payoff figures or include those amounts in your remittance.

Note: The amount due in this statement does not include the Scheduled Escrow Disbursement(s) previously provided. An Updated Payoff Demand Statement Should Be Ordered Within One Business Day of the Anticipated Payoff Date

PAYOFF INSTRUCTIONS:

1. A late fee in the amount of \$10.24 may be added after the 16th of the month.
2. Funds MUST be sent via wire transfer, cashier's check, or title check only. Personal checks may not be accepted as payoff funds and may result in additional interest accrual.
3. For Office of Foreign Assets Control ("OFAC") requirements, wire remittance must include borrower's full legal name, date of birth and property address. If this information is not provided, it will delay the receipt of funds causing additional interest and other costs to be incurred.
4. A fee of \$1,000.00 will be imposed if you provide payoff funds and subsequently request to rescind the payoff, unless such fee is prohibited by law. The \$1,000.00 fee will be deducted from the payoff funds being returned to you.

Wire Instructions	Mail or Overnight Instructions
Bank Name: Sun Trust Bank PennyMac Loan Services, LLC ABA #123456789 Credit To: #123456789 Loan # 123456789 Attention: Payment Clearing	PennyMac Loan Services, LLC Attention: Cash Management 6101 Condor Drive Moorpark, CA 93021

PennyMac will prepare the release of lien and will submit for recording within the time limits established by each state after receiving full payoff funds.

The amount indicated in this Payoff Demand Statement is subject to change for various reasons, including but not limited to the following:

- When a charge of fifty (\$50) dollars or more impacts the Total Payoff Amount during the Good Through Date, PennyMac may send an updated Payoff Demand Statement to the same fax or mailing address of this demand and any previous Statements will be rendered null and void.
- Additional or anticipated fees and costs may be incurred during the Good-through Date period relating to collection, foreclosure, bankruptcy, or other defaults on your loan.
- Adjustments may be required to reflect disbursements made by, or payments owed to, your prior lender if the servicing of your loan was recently transferred to PennyMac.
- A fee may be assessed and your payoff may be delayed if a payment is returned unpaid by your financial institution for any reason which includes additional interest owed.

Payoff Demand 123456789 Page 3 of 8

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Payoff Demand 123456789 Page 3 of 8



Real Estate Wire Fraud:

Potential Land Mine of Routing Instructions

What to look for:

- Any changes at all to wiring instructions.
- Especially, any changes as closing nears.
- Any misspelled words and grammatical errors in the email.
- Any change in the email (compare to prior emails).
- Especially, any changes as closing nears.
(yes it is on this list twice for a reason!)

Did I mention to always call to verify wire transfer instructions?

Real Estate Wire Fraud:

Potential Land Mine of Routing Instructions

What to do if you suspect anything:

- Contact the person who sent you the email.
- Do NOT reply to the email address on the email.
- Do NOT call the phone number on the email.
- Independently search for the contact information of the sender, and reach out to them to ask about the changes.

Real Estate Wire Fraud:

Potential Land Mine of Routing Instructions

What to do if the money was stolen?

- **IMMEDIATELY** call your bank, and ask them to issue a recall notice on your wire. Make sure to use the word “fraud” as it will help get you through some initial gatekeepers.
- Everyone involved needs to change their passwords. If you can, go ahead and enable two-factor authentication on your email. This should be done before the fraud, but if not, it should be done when setting a new password after the fraud.
- Report the crime to [IC3.gov](https://www.ic3.gov).
- Contact us as we will help in any way we can.
- Do **NOT** assume your bank “will handle it.”
- File a Complaint and TRO to freeze the funds.



Real Estate Wire Fraud: Potential Land Mine of Routing Instructions

E&O Policies

- Unfortunately, E&O Policies typically do not cover these email account compromise schemes.
- This is true even if the attorney has a cyber liability endorsement to the policy.
- The E&O Insurance Companies consider this social engineering and not cyber crime. They see it as not hacking a computer, but hacking (or tricking) a person.



One of the Messiest Problems



This land mine could happen on almost every closing.

Most agents do not know it was a problem until years after closing.

This is a frequent claims issue.

It could (and should) be prevented every time.

Prior Mortgages:

Did that Mortgage or Line of Credit really get paid off?



Mortgages:

Sometimes mortgages can be paid down, but not closed out creating problems. Recorded releases are the only way to know for sure the lien is extinguished.

Home Equity Lines of Credits:

HELOCs are hard to close out sometimes, and can be tough to get released after the fact. HELOC borrowers sometimes use their “credit cards” and often run the balance back up after closing. This is because the HELOC was only paid down to \$0 and not officially released.

Prior Mortgages:

Potential Land Mine of Closing out Prior Mortgages

What to look for:

- Obtain an update to see if any new mortgages have been recorded.
- Make sure you have an updated Payoff Statement.

Prior Mortgages:

Potential Land Mine of Closing out Prior Mortgages

What to do at closing:

- Be sure to comply with all requirements of the Payoff Statement.
- Is it just “paying it down” or closing it?
- Does it require the borrower’s authorization?
- Does it have a tiny little box in the middle that needs to be checked or something that needs to be initialed prior to sending in? See example on following page.

Prior Mortgages: Potential Land Mine of Closing out Prior Mortgages



Authorization to Restrict, Modify or Close Line of Credit

Lender:

TCF National Bank
Attn: Customer Service
Mail Code PCC-2E-P
1405 Xenium Lane N
Plymouth, MN 55411

Loan Number: _____
Borrower(s): _____
Property Address: _____

I / We hereby authorize TCF National Bank to:

- Do not allow additional extensions of credit (advances) on my home equity line of credit. No further advances will be permitted. Reinstatement of advance privileges is subject to a written request, signed by all borrowers and TCF review/approval.
- Permanently reduce the credit line on my home equity line of credit to \$ _____
You must sign a loan modification agreement.
- Close / terminate my home equity line of credit.
County Release / Satisfaction fees may apply.

Borrower Signature Date

Name (printed)

Co-Borrower Signature Date

Name (printed)

Please return signed form to TCFLoanService@tcfbank.com or fax to 763-337-8885. If you have questions, call Loan Servicing at 1-800-823-5383 or 763-337-5826. Hearing Impaired TTY # is: 763-558-0284.

1029 RL- SERV 11-05-18

1405 XENIUM LANE MC: PCC-2E-P | PLYMOUTH, MN 55441 | P: 800-823-5383



Prior Mortgages: Potential Land Mine of Closing out Prior Mortgages

Line of Credit Payoff Request Form

Mail To: Account Management, P5-PCLC-01-M, 2730 Liberty Avenue, Pittsburgh, PA 15222

Enclosed is \$ _____ which represents the payoff of my Line of Credit account number _____
in name(s) of _____

The information below must be completed:

Home Equity Line of Credit

- Payoff only** - All or part of the outstanding balance is being paid. Do not suspend my ability to continue to use this account, or,
- Payoff, Terminate and Satisfy/Discharge Mortgage** - Upon the Bank's receipt of payment of the entire outstanding balance, terminate my home equity line of credit so that: (1) no further borrowings under the line of credit can take place, and (2) the mortgage will be satisfied/terminated/discharged.

If the **Payoff, Terminate and Satisfy/Discharge Mortgage** box is checked, and if at least one borrower signs this Payoff Request Form, but the Bank does not receive payment of the entire outstanding balance, my account will be terminated/closed but my mortgage will not be satisfied or discharged until the Bank's receipt of the entire outstanding balance.

If neither block is checked, the account will remain open and no satisfaction of mortgage will be filed.

Borrower Signature _____ Date _____ Co-Borrower Signature _____ Date _____

Notice to Borrower and Closing Agent: A request to terminate/close your home equity line of credit account and satisfy the mortgage will be processed if (1) the second block is checked, (2) all amounts owed are paid in full and, (3) at least one borrower on the account signs this payoff request. If this form is unsigned, your ability to continue using the account will not be affected.



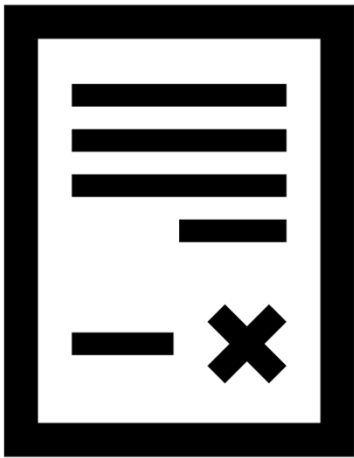
Prior Mortgages:

Potential Land Mine of Closing out Prior Mortgages

What to do after closing:

- Getting a Release and having it recorded is the only way to confirm it is closed out. Anything short of that, you can never be sure.
- Maintain records of payoff. I would have a separate file that I kept for longer than required records retention period that had a copy of the payment, the Payoff Statement, the delivery confirmation, and cover letter asking for it to be closed.

One of the Hardest Problems



Judges understandably may not take the closing attorney's side on this.

Victims may not know what is going on or that they are involved.

It is my least favorite claim to handle.

Do you know what it is?

Document Execution:

Did that Grantor really convey the insured property?



"Trust, but verify."

Ronald Reagan

Execution of instruments by
incapacitated persons.

Documents executed outside of the
office.

Powers of Attorney not recorded.

Document Execution:

Potential Land Mine of Making Sure the Right People Executed the Instruments Execution of Instruments by Incapacitated Persons

What to look for:

- Whenever an instrument is to be executed by someone who you have any suspicions about their capacity, act on it.
- In most cases the signor may not be fully capable to make the decision to sign.
- Some relatives may take advantage of an incapacitated person.

What to do:

- Obtain independent verification that they have the capacity to execute the instrument.
- Reach out to other relatives and/or doctors who have a relationship with the signor.

How it plays out:

- Elected Judges typically side with the incapacitated person who had their property taken from them.
- When attempting to cure these claims, experts are hired and the litigation is costly.

Document Execution:

Potential Land Mine of Making Sure the Right People Executed the Instruments

Documents Executed Outside of the Office

What to look for:

- When documents leave the office, you cannot be sure who is executing them.
- When someone is adamant that they take instruments outside of your office to someone for execution, that is a red flag.
- When a party brings in a document themselves (i.e., Release of Prior Mortgage, unrecorded Deed into them from relative, etc.), verify independently to confirm the documents are legitimate.

How Old Republic can help:

- If you need assistance in having a professional go to someone to have them execute an instrument, let us know. Old Republic has contacts all over the country to assist with this. OR SigningPro is the name of the entity.
<https://www.orsigningpro.com/index.html>



Document Execution:

Potential Land Mine of Making Sure the Right People Executed the Instruments

Powers of Attorney Not Recorded

What to look for:

- Whenever an instrument is executed by an Attorney-in-Fact, make sure there is an instrument recorded authorizing that execution.
- Take note that sometimes the recording of a Power of Attorney in and of itself is not good enough to provide the authority.
- Review the recorded instrument to confirm that it provides authority to execute the instrument in question.

One of the Most Seen Problems



Sometimes the old is better than the new.

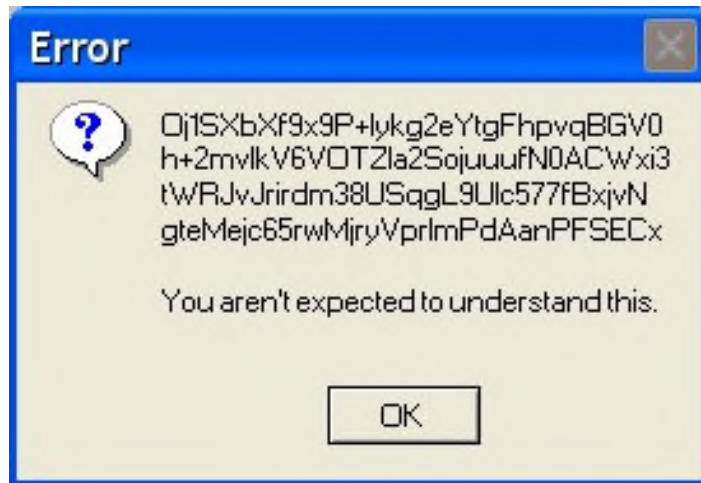
If it doesn't close, it leaves you open to problems.

Sometimes curing the problem brings in even more problems.

Do you know what it is?

Legal Description Errors:

Are the current and past legal descriptions correct?



Errors in the Legal description.

Legal Description Errors:

Are the current and past legal description correct?

Errors in the Legal Description

What to look for:

- Is a “newer, better” legal description being used in the insured transaction because it has been recently surveyed? If so, specifically what has changed.
- Does the legal description close?
- Do you foresee any issues?

How to prevent legal description problems:

- Can you plat it using Net Deed Plotter or some other software?
- Sales Pitch: *Net Deed Plotter* (by Greenbrier Graphics, LLC) only costs \$200 for a one time license. It is \$100 per license for additional employees. It is a very simple easy and cheap way to plat legal descriptions. I can do messy long legal descriptions in no time. It plats curves and is a great benefit to us here at Old Republic. Example shown on following pages:

Net Deed Plotter: Before

Description of Real Property

14.50 acres, more or less, lying and being located in the Southwest Quarter of Section 29 and the Southeast Quarter of Section 30, all in Township 21 South, Range 11 East, Randolph County, Alabama, which can be more particularly described as follows: Commence at the Southwest corner of Section 29, Township 21 South, Range 11 East in Randolph County, Alabama; thence run North 1 degree 30' West a distance of 757.52 feet to the point of beginning; thence run North 37 degrees 58' West a distance of 225.9 feet to a point; thence run North 52 degrees 54' East a distance of 50 feet to a point on the approximate center of a gravel driveway; thence run North 53 degrees 30' West along the approximate center of said drive a distance of 230 feet to a point; thence run North 17 degrees 11' West along the approximate center of said drive a distance of 690 feet to the East right-of-way of County Road No. 33 (Wadley-Wedowee Road); thence run North 52 degrees 54' East along said right-of-way a distance of 319.45 feet to a point on said right-of-way; thence run South 30 degrees 08' East a distance of 692.3 feet to a point; thence run North 52 degrees 54' East a distance of 50 feet to a point in the center of a small stream; thence run South 37 degrees 38' East a distance of 580 feet to a point; thence run South 52 degrees 54' West a distance of 500 feet to a point; thence run North 37 degrees 08' West a distance of 274.4 feet to the point of beginning. This being the same property shown on that survey map and plat dated August 18, 1992, for James R. and Linda Green by Horace Ray Edwards, Professional Engineer and Land Surveyor, State of Alabama Registration Number 9132, a copy of which was recorded on March 4, 1993, in Plat Book 4 at page 94, in the Office of the Judge of Probate of Randolph County, Alabama.

Green

ALSO: Commence at the Southeast corner of Section 30, Township 21 South, Range 11 East in Randolph County, Alabama; thence North 12 degrees 35' West a distance of 151.35 feet to a found iron pin, this being the point of beginning; thence North 64 degrees 27' West a distance of 439.2 feet to a found iron pin; thence North 48 degrees 00' West a distance of 600.47 feet to a found iron pin; thence North 42 degrees 00' East a distance of 217.21 feet to a found iron pin; thence North 48 degrees 00' West a distance of 412.38 feet to a found iron pin on the southeasterly right-of-way of the Wadley-Wedowee Road (County Road No. 33); thence curving to the right along said southeasterly R.O.W. North 43 degrees 20' East a chord distance of 134.8 feet and a radius of 580.04 feet to a concrete R.O.W. marker (P.T. Sta. 207+60); thence North 52 degrees 40' East a distance of 600.8 feet along said southeasterly R.O.W. to a found iron pin in a gravel driveway; thence South 11 degrees 14' East a distance of 513.27 feet along said driveway to an iron pin on the West side of driveway; thence South 52 degrees 44' East a distance of 381.84 feet to an iron pin in the center of said driveway; thence South 52 degrees 54' West a distance of 30 feet to an iron pin; thence South 37 degrees 08' East a distance of 600 feet to a found iron pin; thence North 52 degrees 54' East a distance of 500 feet to a found iron pin; thence South 37 degrees 08' East a distance of 200 feet to a iron pin; thence South 52 degrees 54' West a distance of 657.71 feet to the point of beginning. This land being and lying in the SW 1/4 of Section 29 and the SE 1/4 of Section 30, all in Township 21 South, Range 11 East, in Randolph County, Alabama, and containing 29 acres, more or less. According to survey map and plat dated January, 2000, for Linda L. Green by Horace Ray Edwards, Professional Engineer and Land Surveyor, State of Alabama Registration Number 9132.

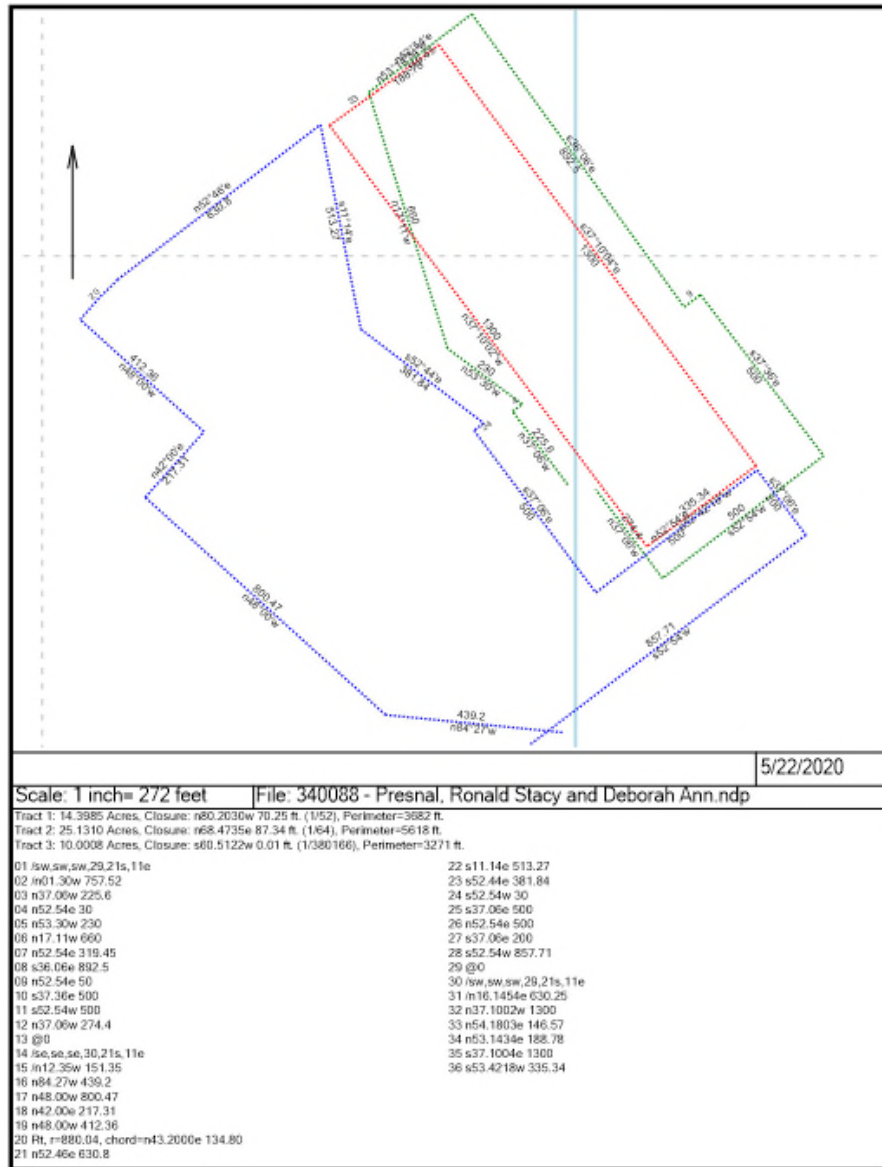
Blue

LESS AND EXCEPT: All that tract or parcel of land lying and being in the Southwest Quarter of Section 29, Township 21 South, Range 11 East and the Southeast Quarter of Section 30, Township 21 South, Range 11 East, Randolph County, Alabama, and being more particularly described as follows: Commencing at a rock corner located at the Southwest corner of Section 29, Township 21 South, Range 11 East; thence North 18 degrees 14 minutes 54 seconds East for a distance of 630.25 feet to a point and the true point of beginning of the hereafter described parcel of land; thence North 37 degrees 10 minutes 52 seconds West for a distance of 1300.00 feet to a point on the southeasterly right-of-way of County Road #33 (said road having an 80' right-of-way); thence North 54 degrees 18 minutes 03 seconds East along said right-of-way for a distance of 149.57 feet to a concrete monument; thence continuing along said right-of-way North 53 degrees 14 minutes 34 seconds East for a distance of 165.78 feet to a point; thence leaving said right-of-way South 37 degrees 10 minutes 04 seconds East for a distance of 1300.00 feet to a point; thence South 53 degrees 42 minutes 18 seconds West for a distance of 326.35 feet to a point and the true point of beginning. The above described tract contains 10.00 acres, more or less.

Red



Net Deed Plotter: After



One of the Most Preventable Problems



You sometimes hope time has passed since this problem.

You sometimes hope no time has passed since this problem.

Sometimes curing the problem brings in even more problems.

Do you know what it is?

Breaks in the Chain of Title:

Is there any interest in the Insured Property still out there?



Breaks in the chain of title.

Breaks in the Chain of Title:

Is there any interest in the Insured Property still out there?

Breaks in the Chain of Title

What to look for:

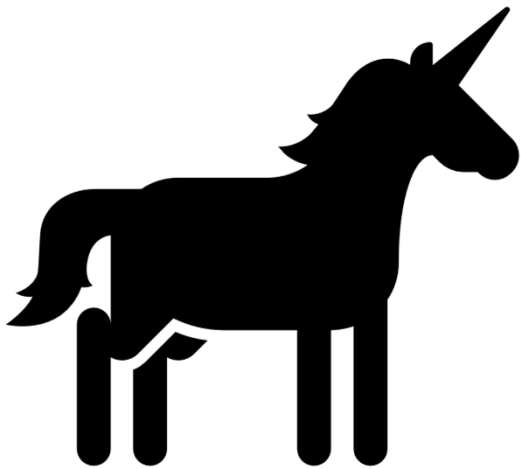
- **Look over the documents in the chain of title to confirm all possible parties in interest have conveyed, or are conveying, their interest.**
- **This may seem like a simple thing (and it is), but we get many claims due to this.**

How Old Republic can help:

- **If you have a question about an issue in the chain of title, our Underwriting Department is always available to assist. We always encourage you to ask any questions you have on the front end.**



One of the Rare Problems



Sometimes you don't know what you don't know and you have to lean on someone else.

This area of law can be quite taxing.

If you don't know this area of law, you may go bankrupt.

Do you know what it is?

Bankruptcy Liens and Federal Tax Liens:

The discharge cleared it, right? I'm sure it did. At least, I think it did.



Bankruptcy Discharge doesn't necessarily release property.

Federal Tax Lien not released by Certificate of Discharge.

Bankruptcy Liens and Federal Tax Liens:

The discharge cleared it, right? I'm sure it did. I think it did at least.

Bankruptcy Liens

- You discover a bankruptcy.
- You go look on Pacer and there is a date of Discharge last week.
- Is it ok to proceed since there is a Discharge?

Bankruptcy Liens and Federal Tax Liens:

The discharge cleared it, right? I'm sure it did. I think it did at least.

Bankruptcy Liens

What to look for:

- Just because the debt was discharged from the Bankruptcy does not mean the Bankruptcy is over.
- Any actions taken prior to the Bankruptcy being finalized would be a violation of the Automatic Stay.
- Discharges only discharge the debtors *liability* for the debt. The Trustee may still have work to do. The property will still be a part of the estate until it is abandoned or the bankruptcy is dismissed.

Bankruptcy Liens and Federal Tax Liens:

The discharge cleared it, right? I'm sure it did. I think it did at least.

Bankruptcy Liens

What to look for (continued):

- If the Trustee abandons it, you need to confirm it specifically abandons the subject property or all of the debtor's property.
- Once abandoned, title reverts back to the debtor.
- You need to look for a Final Accounting and an Order of Dismissal for the case.
- If the bankruptcy trustee has not abandoned the property or filed a Final Accounting and Order of Dismissal, do not proceed with your transaction.
- Even though the debt may have been discharged, the property is still a part of the bankruptcy estate.

What if you don't know what to look for?

- Ask one of our underwriters.



Bankruptcy Liens and Federal Tax Liens:

The discharge cleared it, right? I'm sure it did. I think it did at least.

Federal Tax Liens

- You discover a Federal Tax Lien in your abstract.
- The next line item on the abstract is a Discharge of Federal Tax Lien.
- Is it ok to proceed since there is a Discharge?

Bankruptcy Liens and Federal Tax Liens:

The discharge cleared it, right? I'm sure it did. I think it did at least.

Federal Tax Liens

What to look for:

- A Certificate of Discharge does not fully release a Federal Tax Lien.
- A Certificate of Discharge is similar to a Partial Release in the real property world.
- The Certificate of Discharge only applies to the property listed on it, so you need to confirm that your subject property is listed on it. If not, the Federal Tax Lien is still a lien on property owned by the taxpayer.

What if you don't know what to look for?

- Ask one of our underwriters.





Thank you so much for your business!

If I can ever be of assistance, don't hesitate to contact me.

Marc Bryant

Old Republic National Title Insurance Co.

Vice President, Claims Counsel

mbryant@oldrepublictitle.com

601-961-4813



OLD REPUBLIC INSURANCE GROUP