# TUTE Spring 2023

## Description

*The Unknown Title Examiner*

Baby title examiners are taught that no two titles are alike, and thereâ??s no such thing as a perfect title. Even so, in the crush of business, itâ??s easy to overlook red flags that ought to put the examiner on notice to look deeper into the title. Here are a couple of examplesâ??one subtle, one glaring.

Bank of New York Mellon[1] foreclosed on property and took title (as they often do) as Trustee for, letâ??s say, the 2022 Commanders Quarterback Search Bonds, series Wentz. Agent receives an order to close a loan from a private lender, to be secured by the property. Agent misses these red flags:

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1. Deed grantor is Bank of New York Mellonâ??not as trustee for etc., etc.
2. Deed is signed by purported vice president in state where BONY does not have offices.
3. No financing for acquisition of property by grantee found.
4. Loan through private lender arranged through private financing broker. (IOW, limited credit research by lender).

Astute readers of this column can guess the outcome. The â??granteeâ?• was a total fabrication as was the â??vice president,â?• although both had what appeared to be valid IDs. The grantee fled with the loan proceeds and not only does no one where she is, no one knows *who* she is. Had the agent just realized the deed was invalid because the grantor did not match the foreclosure grantee, further inquiry would have revealed the fraud.

Now for a case in which the red flags had a spotlight shining on them as they fluttered for attention:

Agent was retained to close a reverse mortgage. This, in relevant part, was the â??source deed:â?•

**Bill of Sale of Personal Property**

IN CONSIDERATION of [redacted] of [redacted] (the 'Purchaser') providing $1.00 USD, which includes all sales taxes (the 'Purchase Price'), the receipt and sufficiency of which is hereby acknowledged, to [redacted] of [redacted] (the 'Seller'), the Seller SELLS AND DELIVERS the Property to the Purchaser.

PURCHASE PRICE: The Purchaser will pay the Purchase Price to the Seller by cash.

PROPERTY: The Seller will sell and deliver to the Purchaser the following personal property (the 'Property'):
3 Bedroom, three bathroom split level home.

Okay, now that youâ??ve stopped laughing, there are a couple of conclusions one can draw from this:

1. You try to download a legal document from the internet, and you get what you pay for; and
2. If we take this at face value, it appears the Seller sold the house but not the land under it.

It should be noted that the Purchaser and the Seller identified in this â??Bill of Saleâ?•[2] are siblings and thisâ??whatever it isâ??is not an armâ??s length transaction. The property was formerly owned by the mother of the siblings. All this alone should have prompted a closer look at the title search; had that occurred, the agent would have found that Mom died testate and her will *directed the property be sold and the proceeds divided between the siblings.* That language in Virginia wills means, of course, that title is vested in the Executor and the devisees have no interest other than in the proceeds of sale. That the siblings were named co-executors canâ??t validate a conveyance of property in which neither had an interest and neither conveyed in their[3] fiduciary capacity as executors.

But wait, thereâ??s more! (as the late Billy Mays was wont to say). An even closer look at the title would have revealed that prior to the date of the â??Bill of Sale,â?• the Court removed the siblings as executors for breach of their fiduciary obligations, and appointed a successor administrator for Momâ??s estate. Meaning, of course, that even had this Bill of Sale of Personal Property been executed by one of the siblings as Executor, it would still be invalid because that sibling no longer had any authority to do so.

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Unfortunately, the agent missed the flashing railroad crossbuck[4] and closed the reverse mortgage. When the successor administrator learned of the transaction, he filed suit to (among other things) void the mortgage and strip its lien from the property. If the loan proceeds canâ??t be recovered from the borrower sibling, the agent may very well have to cover the loss.

Anyone who has been in the title business for any length of time will almost certainly miss something sometime. Even the most experienced and careful agent can make errors; attention to details can, however, minimize the possibility of critical mistakes. If something looks off, take it to your underwriting counsel for review by a higher power; then if it blows up, you, the agent will not have liability for proceeding as you were authorized.

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[1] It has occurred to the author that BONY Mellon could be the next food craze.

[2] No, Bill of Sale is not one of the Knights of the Round Table.

[3] Yes, I know the pronoun doesnâ??t agree with the antecedent, but the author is trying to avoid identifying the gender of the siblings.

[4] I love mixing metaphors. I have my own bar set up for them. As you can guess, itâ??s a rather low bar. (Iâ??ll see myself out)

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This column was written (anonymously) for many years by Doug Dewing, who died in April 2022 far too young. Doug was a recognized authority on real property law in Virginia, a mentor and friend to many of us in the Commonwealth and beyond. This author succeeds Doug, but no one can replace him; this column and those that will follow are dedicated to his wisdom, which he readily shared with anyone who asked.

**Category**

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