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*The Journal of the  
Virginia State Bar  
Real Property Section*

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Vol. XLIV, No. 2

FALL 2023

**2023-2024 Real Property Section Officers**



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*Chair*



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The FEE SIMPLE is published semiannually by the Virginia State Bar, 1111 East Main Street, Suite 700, Richmond Virginia, 23219. It is distributed to members of the Real Property Section of the Bar.

Anyone wishing to submit an article for publication should send it in Microsoft Word format to Tracy L. Byrd at [tracyleebyrd@gmail.com](mailto:tracyleebyrd@gmail.com). Authors are responsible for the accuracy of the content of their article(s) in the FEE SIMPLE and the views expressed therein must be solely those of the author(s). Submission will also be deemed consent to the posting of the article on the Real Property Section website, <https://vsb.org/RP/groups/RP/rp-newsletters.aspx>.

The FEE SIMPLE reserves the right to edit materials submitted for publication.

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**SPRING 2024 SUBMISSION DEADLINE: FRIDAY, APRIL 5, 2024**

THE UPCOMING MEETINGS OF THE BOARD OF GOVERNORS OF THE REAL PROPERTY SECTION OF THE VIRGINIA STATE BAR WILL BE HELD ON:

FRIDAY, JANUARY 19, 2024 AT 1PM  
WILLIAMSBURG INN, WILLIAMSBURG, VA

FRIDAY, MARCH 1, 2024 AT 11AM  
KINGSMILL, WILLIAMSBURG, VA

**VSB ANNUAL MEETING**  
FRIDAY, MAY 31, 2024  
VIRGINIA BEACH, VA

Visit the section website

at

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and

for the Real Property Section *Fee Simple Journal*

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## LETTER FROM THE CHAIR



*Sarah Louppe Petcher, Partner, S&T Law Group PLLC, was born and raised in Paris, France. After a stint as a family law attorney in Fairfax, Sarah became General Counsel of the Northern Virginia Association of Realtors where she fell in love with real estate. During her tenure at NVAR, she learned not only about running a real estate association but came to understand the full picture of the real estate industry in the US. With this unique perspective, she partnered up with Toulou Dreifuss to form S&T Law Group and the 1031 Exchange Group with the goal to provide services to Realtor associations, real estate brokerages, real estate agents, and members of the public involved in real estate*

*transactions. Sarah received her Bachelor of Science and Bachelor of Arts degrees from Northwestern University, and her J.D. from George Mason University School of Law. Sarah is currently serving as the chair of the Real Property Section of the Virginia State Bar and has previously served as a Governor and Area Representative; She also served on the Young Lawyers' Conference of the Virginia State Bar when she received the R. Edwin Burnette Jr. Young Lawyer of the Year Award in 2007. Sarah lives in Falls Church, VA with her husband and two daughters. She tries to return home to France as often and she can.*

Dear Members of the Real Property Section,

I hope this message finds you well. As we navigate through the ever-evolving landscape of real estate law, I wanted to take a moment to address some of the key challenges that real estate practitioners are currently facing in the state of Virginia and how your participation in this Section can ensure that you stay abreast of these developments.

**Market Volatility and Uncertainty:** The real estate market has experienced significant fluctuations in recent times. From rapidly changing property values to shifts in demand, practitioners must stay attuned to these fluctuations and be prepared to provide informed advice to clients amidst uncertainty.

**Regulatory Changes and Compliance:** Virginia's real estate regulations and laws are subject to revisions and updates. Staying informed about these changes, particularly those related to zoning, land use, and environmental regulations, is crucial to ensure compliance and avoid legal pitfalls.

**Remote Transactions and Technology:** The rise of remote transactions and technological advancements in the industry have streamlined many processes but have also introduced new challenges. Ensuring the security and authenticity of electronically signed documents and online transactions is paramount.

**Affordability and Fair Housing:** Housing affordability remains a critical issue in many parts of Virginia. Real estate practitioners need to be well-versed in fair-housing laws and work towards providing equitable housing opportunities for all, while also being aware of potential legal implications related to affordability initiatives.

**Title and Boundary Disputes:** Title issues and boundary disputes continue to be challenges in real estate transactions. Keeping up with changes in the law is essential to prevent potential conflicts down the line.

**Land Use and Development:** As urban areas expand and evolve, land use and development disputes become more complex. Practitioners must have a solid grasp of local zoning ordinances and regulations to facilitate successful development projects.

**Changing Work Environment:** The COVID-19 pandemic has reshaped how legal professionals work. Balancing remote work arrangements with the need for in-person meetings and court appearances requires adaptability and effective communication.

**Ethical Considerations:** Real estate practitioners must uphold the highest ethical standards in their dealings. Navigating potential conflicts of interest, maintaining client confidentiality, and ensuring transparent communication are ongoing responsibilities.

**Litigation Trends:** Understanding emerging litigation trends in real estate is crucial. From disputes over purchase agreements to landlord-tenant issues, staying aware of current litigation can inform best practices and help avoid legal pitfalls.

The Real Property Section's Board of Governors and its area representatives work diligently to assist you in navigating this ever-shifting landscape. Over the last few months we have launched new programs: a video library on key topics which impact your day to day practice; a new e-newsletter called The Fee Tail now hits your inbox regularly with timely case law updates and articles written by your colleagues; a mentor-mentee program created by our Membership Committee to bring new lawyers into our field; and a similar program our Title Insurance Committee is working on to bring students and recent graduates into the settlement field. Additionally, our Programs Committee delivers timely, engaging, and challenging content year after year at our Advanced Real Estate Seminar (March 1<sup>st</sup> and 2<sup>nd</sup>, 2024 in Williamsburg) and our Annual Real Estate Seminar (May 14<sup>th</sup>, 2024 in Northern Virginia and in Richmond and online on May 21<sup>st</sup>, 2024).

These are just some of the exciting developments spearheaded by our dedicated volunteers. This year, it is your leadership's goal not only to increase our membership but to make sure we provide content and deliver value to all our members so that we may see an increase in your participation into the Section's committees and programs. I encourage each of you to stay engaged with the Real Property Section and take advantage of the resources and networking opportunities it offers. By sharing insights and experiences, we can collectively work towards addressing these challenges and advancing the field of real estate law in Virginia.

Thank you for your dedication to the practice of law and your commitment to upholding the highest standards of legal excellence.

Best regards,

Sarah Louppe Petcher  
Sarah@SandTlawgroup.com  
Chair, Real Property Section

**VIRGINIA LAWYERS WEEKLY 2023 LEADERS IN THE LAW  
AND UP-AND-COMING LAWYERS**

Virginia Lawyers Weekly has announced its 2023 Leaders in the Law. Among the honorees are the following members of the Real Property Section:

Benjamin D. Leigh, Troxell Leigh, Leesburg

Olaun Simmons, Vanderpool, Frostick & Nishanian, Manassas

In addition, Virginia Lawyers Weekly announced its 2023 Up & Coming lawyers; among the honorees are the following members of the Real Property Section:

P. Thomas DiStanislao, Butler Snow, Richmond

Rachel E. Hinson, Pender & Coward, Virginia Beach

*The Fee Simple*, on behalf of the section, extends congratulations to the 2023 honorees for their contributions to the practice of law in the Commonwealth.

## THE LIVING LIBRARY PROJECT

By The Video Library Subcommittee of the Membership Section of the Virginia State Bar

In September, the Membership Committee of the Section began unveiling sessions, or “chapters”, of the much-anticipated Living Library Project. The Living Library Project is a series of video productions featuring Section members presenting on various topics of real estate law. The first video in the chapter features a discussion of title insurance by presenters Kay Creasman (Chesterfield) and Kevin Pogoda (Manassas), both of Old Republic National Title Insurance Company. This first chapter consists of three videos, including two solo presentations by Kevin and Kay and a combined interactive session with both speakers.

In November, the Committee will release the next chapter on real estate litigation featuring presenters John Altmiller of Pesner Altmiller Melnick DeMers & Steele, PLC. (Fairfax) and Michael Derdeyn of Flora Pettit PC (Charlottesville). Scheduled for release in the first half of 2024 are additional chapters on easements, land use, and foreclosures. The Committee plans to develop new programs and release an informative new chapter on the second Wednesday of every other month.

While the format will remain flexible to accommodate the topic at hand, generally a dual-presenter format will be used in the videos, with fifteen to twenty minute individual presentations, followed by a dialogue of similar length between the two presenters. This setup gives viewers the type of keen insight as when discussing with a colleague the issues, challenges, joys and pains we encounter in our real estate practices.

The presentations are accessible to all members of the Bar but are composed principally for the benefit of present and future Real Property Section members. The Living Library Project is intended to promote professionalism in the practice of real estate law; to acquaint newer members of the Section with practice areas that they may not have considered; to provide an overview to experienced Section members who may be considering expansion of their existing areas of practice; to celebrate the knowledge and accomplishments of the presenters; and to serve as a tool for recruitment of new Section members. As the disclaimer to each chapter states, the videos are for “educational purposes only” and are not intended to “constitute legal advice.” Instead, the chapters are created to provide the viewer with an overview of the respective topics and are neither designed nor intended to answer specific questions or address specific fact patterns.

There are several methods of accessing the Living Library chapters. When each chapter is released, the public hyperlink to the YouTube channel of the Virginia State Bar will be disseminated to the Section membership and the new Virginia Bar Association ListServ via an e-mail blast. This e-mail and the public hyperlink can be forwarded by the membership to any friends, colleagues, or associates who might be interested in accessing and viewing the chapter. In addition, the chapters will be referenced in future editions of The Fee Simple. Finally, the chapters are accessible by the Section membership on the Virginia State Bar web portal under the Real Property Section webpage.

To help the Committee tailor future videos to the needs and suggestions of the membership, a short survey is appended to each chapter. A portion of the survey is set aside for comments regarding the contents. Viewers are requested and encouraged to complete the survey for each chapter, as the Committee envisions an ongoing commitment to updating and revising the presentations in order to best reflect the wants and needs of the audience.

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## HOW I GOT INTO TITLE INSURANCE AND WHY I STAYED

By Kay M. Creasman



*Kay M. Creasman is Vice President & Virginia State Counsel for Old Republic National Title Insurance Company. She has been a Virginia real estate attorney since 1978 and worked in the title insurance since 1992. She's active in the Real Property Section of the VSB, the Real Estate Section of the VBA and the Virginia Land Title Association. She is a frequent speaker and author for VaCLE as well as Old Republic Title and VLTA.*

The short answer as to how I got into the title insurance industry is that I answered a blind ad in a newspaper after I'd been an attorney for 15 years. The ad was looking for someone who knew real estate law and was able to write and teach. Objectively, it was a perfect fit for me. I'd been working in real estate since I first moved to Virginia in the middle of law school. I did in-person title searches my last year and a half of law school. (No electronic access in the 1970s.) The work was interesting. I liked working out puzzles, figuring out a chain of title, determining with certainty who owns 100% of the real estate, establishing legal access to the real estate, and defining the land to be purchased. Nothing has changed with this aspect of title work. We still figure out the chain of title, piece together who has inherited and who has been omitted, how the pieces of real estate fit together so all the acreage and boundary lines are established and how the owner is entitled to access to the real estate. It's fascinating work.

Having something that is interesting and challenging is critical for my mental well-being. The title insurance industry has given that to me and is why I will stay as long as I'm mentally able. Currently, a significant number of articles are written about attorneys (and others) obtaining a work-life balance. It's an ongoing process, not an end goal. When I decided to go to law school, I worked in a different industry that at that time had a mandatory retirement age. I wanted a job I could enjoy but never had to retire, something I could do forever, as long as my mind and physical health allowed. When I decided on law school the lack of mandatory retirement was one of my three purposes, the other two being to work with small businesses (which I have done) and to be a tax attorney (which I have never done.)

Becoming a tax attorney was not an option when I became pregnant with my first child simultaneously with taking the Bar exam. No way was I working 60 hours a week with an infant. If you read the articles by Pam Faber and Cynthia Nahorney in the last issue of *The Fee Simple* you will notice a reoccurring theme. Family has a way of changing work plans, especially for women, from a historical perspective. In five years, I had three children. I worked full time teaching undergraduate and graduate business students at Virginia Commonwealth University for 7 years, but it was not interesting enough for me to want to do it full time forever. I was not and am not that interested in research for research purposes with little if any practical application. I liked teaching enough that I taught part time in the MBA program at the University of Richmond for the next 14 years. In the meantime, I answered the advertisement and began my adventure in title insurance working for one of the large national title insurance underwriters.

You hear about ducks taking to water. They naturally want to swim. That pretty well sums up my relationship with the title insurance industry. Being a title insurance underwriter calls upon a wide range of legal knowledge, far beyond real estate. For example, you must know about **wills and trusts** to determine who inherited interests and who has authority to convey an interest in real estate; about **tax law** to determine if IRS liens have the potential for being filed, or once filed enforced; about **criminal law** to determine when and how incarcerated felons are able to sign deeds, powers of attorney and other forms needed to establish or convey title to real estate; **contract law** to know whether an agreement is enforceable or void due to the rule related to perpetuities (and you thought this was just a law school exercise); **construction law** to know when mechanic's liens apply; **civil procedure** to determine when the statute of limitations applies (over the years I've seen my Civil Procedure professor and both of us are amazed at how much I use the information learned there since I never have had any desire to be a litigator, at how often I read pleading to determine what is happening); **domestic relations/family law** to determine what liens apply at what time when the

parties are divorcing; **business organizations** to be able to determine who has authority to sign documents; **commercial transactions (UCC)** to know if a loan is usurious, or if a note is negotiable, or if a UCC statement needs to be addressed; **bankruptcy law** to determine if a debt is enforceable or not against real estate after a bankruptcy discharge; **agency law** to know how to explain to title insurance agents they are not an Underwriter's agent for settlement purposes; **conflict of laws** to address those situations with out of state or out of country wills, trusts, power of attorney forms or other documents; etc. About the only areas I haven't dealt with are admiralty law (even though we often discuss piers and waterfront property on navigable rivers, bays and the ocean), U.S. constitutional law, torts (unless it relates to a judgment or bankruptcy issue) and federal civil procedure. The examples above are truly the tip of the legal iceberg. Title insurance opens you to the practical application of almost any area of law, including litigation which is part of the claims aspect of the title insurance business.

I stayed with the national underwriter for 3 years but then due to administrative changes was ready for a different employment situation. Instead of moving to a different underwriter I partnered with a non-attorney settlement service provider (it was the late 1990s) to own and operate a title and settlement service. We spent a lot of time working on legislative matters because I am a firm believer you do not need to be an attorney to provide title and settlement services. Attorneys are needed but not for mundane repetitive work of conducting closings. That work is clerical to a great extent. The next ten years I was working non-stop, long hours and being able to put three children through three different colleges in three different states without debt for them or my husband and myself. That was the goal. By the time the last year of college was paid I was ready to stop working such long hours, and to be more efficient with the time I did work. That necessitated a move back to working for a national title underwriter.

Working with Old Republic Title is the perfect fit for me. I have a partnership with the other attorney underwriters in the office, even though all of us work remotely. These are people that I genuinely like and enjoy debating the merits of case law, statutes, or just language to be used as exceptions or requirements in title commitments and policies. At the same time, I don't have any pressure of billable hours or meeting income requirements. I have the flexibility to research matters that agents bring to us or that I find of interest. I can speak at seminars and webinars sharing the results of my research and my personal experiences, to focus on matters that can cause problems for those that own real estate, and to train others to be able to identify issues. The primary goal is to identify problems and eliminate them prior to them becoming an issue.

One of the best things about working in the title industry is I don't have to be a pure lawyer. In this industry we evaluate risk and can determine when a novel solution is appropriate to be able to insure a transaction and have it close in a timely manner. As an attorney there were matters I would want cleared up – obtain the court order, button down the potential for a problem to arise; but as a title insurance professional I recognize when the risk of loss is negligible and that if a problem arises the cost to cure it would be relatively small. Often this means inventing a solution which protects the insured as well as the title underwriter but may not have been used before, at least not as far as I know.

At the beginning of this article, I spoke briefly about work-life balance. I fashioned a career that worked for me and for my family. Starting when my youngest was 2 ½ we began traveling mostly during the summer with the first trip being to Alaska, and the northwest United States. My husband and I viewed this as our early retirement, enjoying time with the boys while they enjoyed being with us and we had the physical stamina to go whitewater rafting, hiking and exploring nature. By the time the youngest was 10 or so we'd traveled to every US state except Hawaii. When the younger two boys were in high school, we fulfilled one of my husband's lifelong dreams and took a trip on the Amazon River in Peru. Since we were there already, we began with a trip to Machu Pichu. All my children love to travel but the middle child became an archeologist who now works in Jordan, Egypt and The Sudan. Most of these trips occurred prior to my entry into title insurance but it certainly lends itself in this day and age to the flexibility of no longer needing to choose family or career. You can have it all.

## MY JOURNEY IN REAL ESTATE

By Stephen Gregory

Sit down and get comfortable because this is going to be a long ride. You may be excused when ennui sets in, though.

I left college 14 hours short of my degree because I felt I had no direction for the rest of my life. I went into the family business and opened a bicycle shop,<sup>1</sup> but I still felt I was stagnating mentally. During this time, two of my bridge partners started law school, and listening to them talk about it interested me and convinced me this should be my career. I finished my degree (in English, which has served me well as Editor here) and applied to various law schools.

My journey in real estate began with matriculation to what was then the International School of Law (now George Mason University School of Law<sup>2</sup>) in a brownstone walkup at 14<sup>th</sup> Street and Rhode Island Avenue in Northwest DC. I had made it to #3 on the wait list to attend UVa Law, but rather than wait another year, I decided to enroll in ISL, with the thought and the representation that it would be accredited by the time I graduated.

We were an eclectic group; almost all were older (some considerably so) than the average law student, and most were working to be able to attend. I took a night-shift job with the Department of Defense, converting service personnel paper files to microfiche. (Recall that in 1973, a fire destroyed many US Army personnel files.) Classes and work took up 14 hours of each day, leaving little time to study, much less eat and sleep. It likely also contributed to a bout of mononucleosis, and the combination of factors landed me on academic probation. I knew I had to change something; I switched my classes to night so I could work during the day.

At that time, I was dating a woman who worked for a law firm that did a lot of real estate. She said it would help me after graduating if I could get a job in law, and she helped set up an interview with a firm she knew that also specialized in real estate. Phillips, Kendrick, Gearhart and Aylor in Fairfax employed law students as title examiners, and they hired me to report to the well-known and respected John Hamilton Aylor. To learn how to search titles, PKG&A had me shadow Bob Teates for a week; Bob was also a law student, but he had a few years' experience.

Back then of course, the land records were all in 25-pound deed books in the courthouses; Fairfax land records were in the basement of the old County Courthouse under the watchful eye of Deputy Clerk Esther and her only-slightly-less cantankerous assistant, Gene (who was also the person who made copies for the searchers—by taking apart the deed books and running the pages through a copy machine). The denizens of the record room were a motley crew:

- What was affectionately then called the Cuban Mafia—those who had managed to flee Cuba before or soon after Castro had taken power: Jorge Fernandez; Miguel Munoz and his son Mike; Dr. Pondo; and others whose names I have forgotten.

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<sup>1</sup> Yes, that was me on *American Pickers*.

<sup>2</sup> I refuse to call it the Antonin Scalia School of Law. True story: after being on academic probation my first year, I brought my grades up and graduated with honors. It didn't say "with honors" on my diploma, so I went back to the school and told them how hard I had worked to get there. I was told, "here's a letter you can take to a printer and have it added." To this day, I have never displayed my law school degree.

- Gerry Kidwell, a lawyer with the old Davis & Ruffner<sup>3</sup> firm in Alexandria; Gerry's brother, Don, who occupied the slow winter months by compiling lists of such multiple-index grantors as railroads or people named Smith.
- Fred Garner, an attorney with Hazel, Beckhorn, & Hanes, cat lover and life-long bachelor. Gerry Kidwell loved to antagonize him by greeting him on arrival with "Morning, Fred. Ran over a cat on the way in."
- James Francis Xavier "Jimmy" Power, one of the tradition-bound old-timers.
- James B. "Jack" Lockwood, affectionately "Cap'n Jack," retired person who did occasional title searches.<sup>4</sup>
- Joe Burdette, an imp who wasn't above pranking Jimmy by taking a loose page from a deed book and telling Jimmy here was the copy he wanted. We worried if Jimmy's heart could take it.
- Sylvia Herb, one of the few women title-searchers at that time. The record room people were, to their credit, gender and color-blind.
- Bill Johnson, head of the title department at Boothe, Prichard & Dudley. Bill researched his ancestry and found that at some point, the "t" was dropped from his surname, so thereafter he was Bill Johnston.<sup>5</sup>
- Tim Witter, who started at PKG&A as a "runner" but became one of the more knowledgeable title examiners they had. Tim had a TR6 that I coveted from my time owning a Spitfire and GT6, but that's another story.
- Chip Millard, Keith Cruttenden, and Don Wells, at that time with Pioneer Title. Later, it would be my first title underwriter; Chip then went to work for Minnesota Title (now Old Republic), and I signed with them. More on this later.

There were others whose names I may have forgotten, and for which I apologize. Know that even without recognition, you are a part of this story.

Anyway, after a week following Bob Teates around, I was given my first title to search. And of course, it wasn't routine. Back in the chain of title, I found a deed from two brothers with no reference to their mother, who had been in title ten years earlier. Searched the will index; no entries. Again, there was no internet research available; if you wanted to search obituaries, you had to go to the newspaper office. Instead, I looked her up in the phone book.<sup>6</sup> And of course, she was listed. Took the search back and told Mr. Aylor what I had found, and that I didn't know what to do about the gap in the chain of title. He asked me if I had called the number, and if not, why not? Somewhat humbled, I went downstairs and dialed the listing. That led to the following exchange:

[Male Voice]; Hello?

[Rookie Title Examiner (me)] May I please speak with Mrs. \_\_\_\_\_?

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<sup>3</sup> Courtland Davis refused to add an "and being" clause to deeds prepared by the firm. He claimed he had no intention of helping lazy title examiners perform a search, and they could use the grantee index without his help.

<sup>4</sup> If you're ever in Fairfax, take a look at the "Covenant Not to Abandon" recorded in Deed Book 4189 at page 679, between Jack Lockwood, Gerry Kidwell, and Jimmy Power. It was reprinted in the Spring 2018 issue of the *Fee Simple*.

<sup>5</sup> Bill was at Stewart Title when I joined them in 1979—see below.

<sup>6</sup> Kids, ask your parents what a phone book was.

[MV] Who?

[RTE] Mrs. \_\_\_\_\_

[MV] You mean Maw?

[RTE] Um, well, I think so, yes.

[MV] Oh, hell, boy, she been dead over 10 years now.

[RTE] Oh, um, well, she's still listed in the phone book.

[MV] Yeah, we just never took her name off.

The RTE, of course, took this information back to Mr. Aylor,<sup>7</sup> who couldn't stop laughing. And that was the first moment that I knew real estate law would never be boring.

About a year later, Bill Johnson approached me in the record room and asked if I would be willing to come to work as a title examiner for Boothe, Prichard & Dudley (BP&D). It would mean a raise; PKG&A was paying me \$5,000/year (not bad money at that time), but BP&D was offering \$6500/year. I went to Walter Lockowandt, the managing partner of PKG&A in Fairfax and asked if he was willing to match BP&D's offer; without hesitating, he put his hand on my shoulder, wished me well, and said they would miss me.

The real estate section at BP&D was one of the most respected in the area, if not the state. Leading the department was Dennis McArver; among the attorneys in offices down the hall were Michael Bradshaw, Courtland Traver (no stranger to readers of this journal), and Sheild McCandlish.

John F. Kennedy, at a dinner in 1962 honoring Nobel Prize Winners, remarked, "I think this is the most extraordinary collection of talent, of human knowledge, that has ever been gathered together at the White House, with the possible exception of when Thomas Jefferson dined alone." That could have been said about Fairfax Sheild McCandlish at any gathering of real estate lawyers. His knowledge was encyclopedic<sup>8</sup>; he could tell you from memory the citation, court, date, and decision of cases for any issue or problem that came to his attention. The only person I've known in this state who had a similar storehouse of knowledge was the late Doug Dewing (also no stranger to readers of this journal).

Anyway, BP&D represented a number of builders and so had projects in quite a few counties in the Northern Virginia area,<sup>9</sup> and I became the out-of-county examiner. My sojourns took me to Arlington, Alexandria, Prince William, Fauquier,<sup>10</sup> Loudoun, Clarke, and points west. I became friendly with the clerks in all those counties—which I learned was invaluable after I started practicing.

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<sup>7</sup> Side note: John Aylor had a secretary named Joyce who typed so fast that an IBM Selectric couldn't keep up with her. To this day, I've never seen anything like it.

<sup>8</sup> Again, this was in the days before computerized research. You might, I suppose, say his knowledge was AmJur-ic or CJS-ic since that was the Lexis of the day—multiple volumes filled with references and cross-references, all by topic.

<sup>9</sup> Reston was a BP&D project.

<sup>10</sup> Fauquier County then wasn't as densely populated as it is now. The treasurer at that time was a Mr. Cox; he pretty much knew everybody in the county. You didn't have to do a title search in Fauquier; you could just walk into Mr. Cox's office and ask, "What can you tell me about the William Smith farm out on Route 229?" And he would likely say, "Oh, yeah, they got it from Joey Johnson in 1965, and he inherited it from his parents. There's the Jones farm to the west and Jackson to the east. All of them share a driveway off 229. Nice people." Gail Barb was the chief deputy clerk in Fauquier then; now, almost 50 years later, she's the Clerk.

I always said driving was easier than working, but I had to time all the trips to the outer counties in order to get back to DC for classes in the evening. Traffic then wasn't what it is now, but parking near the school was a bit of an adventure. One brutally hot August evening, I had just left classes and was waiting at a traffic light when a woman in a fur coat walked over and knocked on my window. It was at that point that I began to question the wisdom of attending night classes in the area of 14<sup>th</sup> Street and Rhode Island Avenue.

Sometime around 1978, the school moved into the old Kann's Department Store in Arlington, and that store parking lot was a godsend. In those days, it was possible to take the bar exam before you graduated, so in February 1980, I and some of my classmates trundled down to the John Marshall hotel in Richmond for the two days of anxiety and self-inflicted pressure. Scott Street, then secretary of the Board of Bar Examiners, used to greet the room of test-takers with a story I'm sure he felt was amusing: he told us that one time a student finished early and while he was waiting for time to expire decided to "connect the dots" of the filled-in ovals of the multiple choice section of the exam. When he did, he found that what it revealed was a picture of the Hotel Roanoke—which was where the next exam would be for those who failed in Richmond. Nervous laughter.

In May I got the good news and was sworn in as a member of the bar in June.

Even though I had four years navigating the real estate world during school, I wasn't sure what I wanted to do with my career. I took a job with a sole practitioner I had known from outside the legal world, but real estate wasn't a part of his practice. That internship lasted two years and ended rather abruptly—but that's a story for another time. I decided if ever I was going to go out on my own, there was no better time to try it; I was a little older than other lawyers who were two years past graduation and figured if I went with another firm, it (opening my own practice) would never happen. I rented a room in an accountant's office, built bookshelves out of 2x4s, got my Dad's old desk, and set up shop. As you can imagine, it took a while to build up clientele, so I fell back on what I knew—doing title searches for other lawyers. It did pay the bills!

After a couple of years in that 8'x8' room in the CPA's office, I needed more space. Luckily, two attorneys I had known for a while who specialized in real estate had space open in their office. One of them said to me, "Let me tell you why I do real estate. You can close the file in 30 days, the people leave your office smiling, and you get your fee in certified funds." I moved into their office on Maple Avenue in Vienna and was able to hire a support person (back then called a secretary). To give you an idea of the times, I invested \$3000.00 (!) in a TRS-80 model 12 computer—with its 8" floppy disks—and a compatible dot-matrix printer.

Upstairs from the law office was a real estate brokerage. My uncle worked there as a realtor, so I became friendly with the other realtors in that office. Eventually they began referring their clients to me to handle their closings; I must have done well because the number of cases steadily increased. I was doing my own title searches then, and at some point I was talking in the record room with Chip Millard who told me about the commissions title agents earned on policies they issued. By then, Chip was with Minnesota Title; I signed with them and gained another income stream for my practice.

By the end of the decade, I was again out of space. I rented an office with a conference room in a commercial condominium a block away, and added an attorney whose practice was not real estate. By this time, interest rates had fallen from the mid- to high-teens they had been just a few years earlier, triggering a tsunami of refinancing. Again—more space. I bought the office downstairs and kept the one I was renting; I also added another attorney who did have real estate experience.

Heady times, indeed—but it all changed drastically in the early '90s. First, banks and financial institutions were allowed to get into the title insurance business, and a substantial number of them decided to take advantage of what they perceived as a cash cow. Large banks opened their own agencies; smaller state and regional banks joined forces under a "bankers title" umbrella.

Then the Virginia State Bar proposed a rule that real estate transactions were the practice of law and could only be performed by a licensed attorney. This led to the response by the legislature of passing the Consumer Real Estate Settlement Procedures Act (CRESPA). With lay agencies being blessed by the legislature, non-attorney agencies proliferated and flourished, primarily through free-market competition.

The last factor was that the booming economy of the 90s went into recession. Much as it is today, home sales and refinancings became stagnant. The real estate practice I had worked so hard to build was now struggling. Two offices went down to one, as did the number of attorneys in the office, followed by support staff. By this time, I was an agent for Stewart Title, but the change in market circumstances made me concentrate on practice areas other than real estate. Even so, 20+ years after my introduction to real estate and the law, it still was the most appealing practice area to me. It was—and is—never dull or mind-numbing.

In the late '90s, Stewart had 2 underwriting counsel in the Northern Virginia area—Michael Smith and Walter Wilson. Walter took advantage of an opportunity to take over Delaware for Stewart, so Michael needed an assistant. The thought of not worrying about making enough to cover payroll and other expenses was intriguing; I accepted the position of underwriting counsel in the Fairfax office. Even though I had a good knowledge of title work, learning what I needed to know to be effective and helpful to Stewart's agents was daunting. Michael, however, was and is a tremendous mentor. Each day and each issue I addressed (with his guidance) made me more comfortable and more competent, and it wasn't long before I felt that I had found the place where I wanted to finish my career.

It was during my time with Stewart that I became active with ALTA and VLTA. I came to know not only Stewart's title agents, but through the land title associations, agents with other underwriters as well. All had their charms and quirks, but inevitably, they all became friends.

Shortly after I started with Stewart, Michael brought me the West Virginia Code and told me I was now in charge of underwriting for that state. I protested that I didn't know anything about West Virginia law; he told me not to worry, they weren't that different. (Ha!) At that time, Jim Jones was the West Virginia state manager, operating out of Stewart's Richmond office. Jim would visit agents there once a month or so, and I went with him on occasion. Eventually, Jim and Stewart parted ways, and I volunteered to take over managing West Virginia as well as underwriting. I would spend one week a month in West Virginia; the beauty of the state and the relaxed lifestyle there<sup>11</sup> was in stark contrast to the chaotic life of the DC Metropolitan area. I finally was able to convince Stewart that it needed a brick-and-mortar office there, and I was just the person to open it. October 2004 marked my move to "almost heaven," although I continued to serve as Virginia underwriting counsel as well.

Utopia was not to last, though; with the recession of 2008-09, mine was among the positions Stewart eliminated and I soon found myself back with a law firm in West Virginia, in the real estate department. The change in career direction only served to remind me of the passion I had developed for this practice specialty, leading into areas of real property law familiar and unfamiliar. The old dog—new tricks axiom was front and center every day at the firm, even in the principles with which I had had the most exposure over the years.

Still, I missed the underwriter side of the profession. In 2015, the opportunity presented itself for me to return, and I happily accepted. Even with the breadth of my experience over all these years, on the periphery are areas of real estate law of which I only know their existence.<sup>12</sup> We are fortunate to have in this section and in this bar members who practice in all aspects, from the mundane to the

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<sup>11</sup> Alas, those days are gone.

<sup>12</sup> Think, for example, maritime law, Native American issues, water rights, etc., to name only a few that have relation to real property law.

esoteric, and they are only too glad to be able to assist when the need arises. We are the epitome of a tight-knit community.

I often wonder what course my law career would have followed had my girlfriend of so long ago not steered me to real estate. For me, this path was ideal—no regrets. Had I known then what I know now, well, I wouldn't have made any different decision. I suspect lawyers who have devoted themselves to other practices may feel similarly, but real property has afforded me the career and the lifestyle that suits me best.

I warned you this would be a long ride; if you stuck with me to this concluding paragraph, thank you.



## STRIKING A BALANCE: THE IMPACT OF AIRBNB ON HOMEOWNER'S ASSOCIATIONS

By Hayden-Anne Breedlove



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In Virginia, a homeowner's association (HOA) is defined as a non-profit and non-stock corporation that is responsible for the management and maintenance of a planned community or condominium development. The HOA is typically governed by a board of directors elected by the homeowners, and is responsible for enforcing the rules and regulations of the community, as well as collecting assessments from homeowners to pay for common expenses.

According to Virginia law, an incorporated HOA is formed when the developer of a planned community or condominium development files articles of incorporation with the State Corporation Commission. The HOA is then responsible for managing and maintaining the common areas of the community, such as roads, sidewalks, parks, and recreational facilities.

Homeowner's associations (HOAs) are a common feature in many neighborhoods in Virginia, and these organizations often have rules in place that can affect the ability of homeowners to rent out their properties on Airbnb.

According to data from Airbnb, as of 2021, Airbnb had over 2 million listings in the United States, and it is estimated that the platform has seen significant growth since then.

In Virginia, Airbnb has seen a steady increase in the number of listings and guests. According to data from the company, in 2019, there were over 20,000 active listings in the state, with over 2 million guest arrivals.

One of the main concerns that HOAs have with Airbnb rentals is the potential for increased traffic and noise in the neighborhood. Many HOAs have rules that prohibit short-term rentals or place strict limits on the number of nights per year that a property can be rented out.

Another concern is the potential for damage to common areas and community facilities. While Airbnb hosts are required to have insurance, some HOAs worry that this will not be enough to cover any damage that may occur.

It's important for homeowners in an HOA to be aware of these rules and restrictions before deciding to rent out their property on Airbnb. In many cases, it may be necessary to get permission from the HOA before listing a property on the platform.

It's also important for homeowners to be aware of any state or local laws that may impact Airbnb rentals. In Virginia, there are currently no statewide regulations on short-term rentals, but some localities have passed their own rules and restrictions.

Overall, while there may be some challenges for homeowners who want to rent out their properties on Airbnb in an HOA community, it is still possible to do so with proper planning, research, and communication. Homeowners must be aware of the rules and regulations set by their HOA and must comply with any state or local laws that may impact short-term rentals.

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# PROPERTY TAX FORECLOSURES ON HEIRS PROPERTY

## THE DEVASTATING CONSEQUENCES AND RECOMMENDATIONS FOR PREVENTION\*

### About the Authors

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## 1. INTRODUCTION

While millions of homeowners fell behind on mortgage payments and were at risk of losing their homes to mortgage foreclosures during the COVID-19 pandemic, many others were facing another foreclosure crisis- the loss of their homes due to property tax lien foreclosures. This strict and often rapid tax lien foreclosure process has created a lesser- known plight faced by homeowners who have fallen behind on their property taxes. The impact of property tax liens are especially harsh for heirs who inherit property without a will or who have not yet gone through probate. The heirs of the deceased owner may now own the home, but if their names are not on the deed, they are not the record owners of the property. This creates what is known as heirs property, or a “tangled title” situation.

Heirs property owners may be unable to obtain loans or grants for home repairs, get homeowner’s insurance, or access utility or property tax assistance programs because they are not record owners. It is not uncommon for years to pass after the death of the original owner of the home without the property taxes being paid. Heirs may not receive notice of amounts due for property taxes because they are not the record owners of the property. By the time heirs realize the amounts due for property taxes, it is often soon before a tax sale, or after the sale has happened, and options are limited. The amounts owed are usually too high to pay in one lump sum to stop the sale or redeem the property. If one heir is able to pay the amounts due, they may not want to take on the burden alone without other heirs contributing. Selling the property before a tax sale for a reasonable amount to cover the tax debt might be difficult if there is not clear title or if there are heirs who do not agree on selling. The upcoming tax sale is also usually advertised in public records, and investors may try to take advantage of family members by offering to purchase a partial interest in the property quickly for less than fair market value.

While most states offer tax exemption and relief programs, they are usually limited to the record owner of the property. Heirs who inherit a home intestate will face difficulty accessing these programs because their names are not on the deed. By requiring this, many states exclude legal heirs from property tax relief options that could lower their tax burden and help them save the home. Further, establishing formal ownership of the home is difficult, costly, and time consuming and often requires the retention of an attorney.

This report will discuss the process used to place a lien on a home when a homeowner falls behind on property taxes and eventually foreclose on that property if the homeowner cannot pay the amounts in a certain period of time. We then discuss the unique issues heirs face when the record title owner passes away and leaves an overdue property tax bill. We review five sample states—Florida, Mississippi, Michigan, Texas, and Pennsylvania—and the policies they have, or do not have, to assist heirs with property tax bills, focusing on homestead exemptions. The report concludes with recommendations for protections states can implement to prevent property tax foreclosures and preserve homeownership.

## 2. THE TAX LIEN PROCESS

All states have laws that allow local governments to place a lien on a homeowner’s property for failure to pay property taxes. Many also impose liens for other municipal charges, such as a water bill or unpaid fines for property code violations.<sup>1</sup> If the lien is not paid within a certain period of time, the city or town can auction off the lien or the property, typically for the amount of the taxes and fees owed. The procedures involved with tax lien foreclosures are complicated and are rarely updated to ensure that the process provides sufficient protections to prevent the unnecessary loss of homes.

While each state has unique laws regarding unpaid property taxes, most states first provide a homeowner with some type of notice of delinquency regarding tax amounts. If the taxes are not paid within a certain period of time, a tax lien is placed on the property. This generally occurs by operation of a state statute. Tax liens almost always have priority over all other liens, including mortgages,

regardless of when the tax lien is placed on the property. If the tax lien remains unpaid, the tax deed or tax lien certificate is sold or assigned to a third party, or the property is taken by the local municipality.

### Tax Deed Sale

In jurisdictions where the property itself is sold at the auction, the purchaser receives a tax deed, providing full title in the property, subject to any redemption period. This is a tax deed sale. The tax deed is sold at auction to the highest bidder, and the proceeds are used to pay off the tax debt along with all fees, interest, penalties, and costs owed to the municipality. There is generally never a surplus because the bidding process at auction is not competitive.

Unlike at a traditional home auction, purchasers typically bid on the amount of taxes owed, not on the value of the property.<sup>2</sup> The tax deed purchaser can then sell the property at fair market value if the owner does not redeem by paying the taxes plus interest, fees, costs, and penalties within a certain period of time. Any surplus from the sale is usually kept by the purchaser. Examples of states with tax deed sales include Alaska, California, Delaware, Georgia and Hawaii.<sup>3</sup>

### Tax Lien Certificate Sale

In other jurisdictions, a tax certificate is sold to a third party who pays the tax debt and receives the right to collect on the tax debt with interest, costs, penalties, and fees. Examples of states with a tax lien certificate method of tax sale include Illinois, Maryland, the District of Columbia, Florida, and Indiana.<sup>4</sup> If the tax debt is not paid within a certain period of time, the purchaser can then initiate a court action or administrative process to obtain full title to the property, stripping the homeowner of all interest in the home. Investors are particularly interested in tax lien certificates because they make a profit by charging high interest rates on the outstanding amounts due or selling the property for fair market value after only paying the amount of the tax debt.

### Taking Without Sale - Strict Foreclosure

In some states, there is no sale at all, or it may not occur until after the property is transferred. The taxing authority or local municipality simply executes on its lien by taking the property. This is similar to the process no longer permitted in most states that is referred to as “strict foreclosure” of mortgages. After the owner is given notice of the tax lien and a period to redeem, the local municipality takes the property free and clear of all liens if the owner does not redeem. Once the property is taken, state law generally provides a procedure for final disposition of the property. In Michigan, for example, the property is initially forfeited to the county treasurer for unpaid taxes and fees and then sold at public auction to the highest bidder.<sup>5</sup> In Minnesota, the property is initially forfeited to the state for unpaid taxes and fees and then sold at public auction to the highest bidder for not less than the appraised value.<sup>6</sup> However, the Supreme Court recently struck down the Minnesota tax foreclosure process as unconstitutional. Any state with a strict foreclosure process faces a likelihood of having that statute struck down.<sup>7</sup> As a result, many states are rewriting their tax foreclosure laws now.

### Redemption Periods

Regardless of the jurisdiction's property tax foreclosure process, before the final stages of a tax foreclosure, many jurisdictions give a homeowner a redemption period to either cure the outstanding amounts owed before a foreclosure or reclaim the home by paying off the amounts owed after the foreclosure. Particularly in jurisdictions that allow tax lien certificate sales, the right to redeem can be so onerous as to be illusory. Some of these jurisdictions allow the tax lien certificate purchaser to charge excessive interest rates on the taxes owed that can be as high as 50 percent, depending on the jurisdiction, in addition to penalties, costs, and fees. This makes it extremely difficult for many lower-income homeowners to pay the amount owed within the prescribed time. If the homeowner

does not pay the inflated amounts, the tax lien purchaser can then sell the home and usually keeps all of the proceeds of the sale, even when the tax amount owed is a fraction of the value of the home. The homeowner faces a devastating loss of home equity as compared with other auction sales such as a home mortgage foreclosure auction that requires that the homeowner receive any excess funds after the liens, fees, and costs are paid.

Deborah Foss, a retired grandmother, and her wife and sister in Bedford, Massachusetts, were evicted and removed from their home in the middle of winter as she was suffering from COVID. She had nowhere to go and ended up living in her car. She had lost everything. Tallage, the investor that bought her tax lien, paid \$9,516 for the lien and later sold the home for \$242,000.<sup>8</sup>

The equity in the property could represent a homeowner's entire net worth and sole savings and security for retirement, as it did for Deborah Foss. Losing the home means the loss of a safe place to live and any meaningful opportunity to build wealth and financial security.

### Disproportionate Impact on Communities of Color

Property tax foreclosure sales are often concentrated in low-income communities with large populations of Black and Latino residents. Residents of these communities are more likely to have suffered from economic shocks that made it harder to pay property taxes, but did not access or qualify for property tax relief.<sup>9</sup> High rates of tax delinquency and foreclosure have been linked to vacant and abandoned properties, disinvestment and lower property values in affected communities, and adverse effects on the health of residents.<sup>10</sup>

Black and Latino property owners also pay higher taxes than similarly situated white property owners due to inequities in the tax assessment and appeals process. Assessed values are significantly higher for properties located in neighborhoods with lower valued homes and a high proportion of households of color.<sup>11</sup> One study found that for Black and Latino residents in aggregate, the assessment gap was 9.8 percent.<sup>12</sup> Nationally, Black residents had a nearly 13 percent higher property tax burden than white households in the same jurisdiction.<sup>13</sup> The higher effective tax rate for homeowners of color translated into an extra \$300- \$390 more per year in taxes. Similar patterns of over-assessment have been noted in news articles or research on Chicago, New Orleans, Detroit, New York, and other cities.<sup>14</sup>

These findings build on a history of intentionally discriminatory tax assessment practices against Black property owners in the Jim Crow Era. Black property owners, especially those who played key roles in the Civil Rights Movement, were often taxed at higher effective rates than similarly situated white property owners while simultaneously being denied access to the resources and institutions supported by their tax dollars.<sup>15</sup> Discriminatory assessments and other practices forced Black owners of valuable property into delinquency and foreclosure and contributed to the loss of land and homes, especially in the South.<sup>16</sup>

The unequal property tax burden means Black and Latino households cannot build home wealth at the same rate as white households and face a greater risk of tax foreclosure. Property taxes also add significantly to the cost of owning a home. Nearly a quarter of the disparity in homeownership costs for Black households as compared to white households is due to local property tax assessments.<sup>17</sup> For families living on the financial edge, higher property taxes combined with other property-related fees and costs increase the risk of foreclosure, displacement, and loss of generational wealth.

Tax foreclosure sales also affect the larger community. The purchase of tax liens and properties by institutional investors in gentrifying communities, for example, often transforms a portion of the housing stock into high-end properties crowding out lower-income residents and the elderly from once-affordable neighborhoods.<sup>18</sup> Homeowners who remain may see their tax bills increase significantly with the rise in property values. In other communities with lower valued homes, large-scale property tax foreclosures further depress property values and increase blight.

### 3. TAX LIENS AND HEIRS PROPERTY

The consequences of tax foreclosure sales are especially dire for heirs who inherit the property without a will. Homeownership is an important way to build wealth, particularly across multiple generations. In areas with increasing property values, the home can capture years of appreciated value. For many multi-generational households, a majority of the family's wealth is tied up in the home. Until a tangled title is resolved, access to that wealth is restricted, and residents cannot take full advantage of the home's value or protect that value for future generations. Without a deed, they cannot sell the home nor can they create an estate plan to pass it on to other generations.

#### Complications with Heirs Property

Heirs can live in the home for years after the death of the original owner without realizing they must go through the probate process to establish record ownership of the property. They often realize this predicament when they face issues with setting up utilities and negotiating past due utility bills; obtaining homeowner's insurance; qualifying for financial assistance to fund repairs; negotiating with a mortgage company; or accessing available property tax relief assistance. Many times, heirs learn of the tangled title issue when they are at their most desperate point financially and cannot access financial assistance due to the lack of record ownership. Heirs who face challenges in paying for maintenance of the property and property taxes find it difficult to access payment relief programs because they are not on the deed. Heirs who are not on the deed also cannot access the equity in the home to pay these expenses because they cannot borrow against the home without clear title.

When a homeowner dies intestate and there are several surviving heirs, there is also a risk that one of the heirs will seek to partition the property. A partition action is a court-ordered process where one property owner forces a sale or division of the property. In an urban context, division of the property is usually not feasible, so partition involves a sale. This allows people who own real estate together to take their share of the equity and go their separate ways. However, this may not always be desirable for all heirs, especially if the heirs living in the home want to retain the home. This situation is also ripe for investors who will offer to buy out the interest of one of the heirs in the property for a small price and then force the sale of the home to collect their share of the equity. In states which have passed it, the Uniform Partition of Heirs Property Act (UPHPA) gives heirs who do not want to sell the home the opportunity to buy out the other interests in the property for fair market value, preserving their ownership of the property.<sup>19</sup> If the heirs who want to keep the property cannot buy out the remaining heirs, a court can order an in-kind partition; a physical division of the property amongst the heirs, where practicable. While this can help some heirs who do not want the property sold, it can be a timely, costly, and emotional process. Further, the UPHPA has only been enacted in 22 states.

Even if there are no apparent disputes over the property, some heirs may be difficult to locate or they may not know of their ownership interest in the property, making it challenging for the other heirs to move forward. Lenders will not provide loans for fractional interests in a property and title insurance companies require clear title before a loan can be finalized. If one heir wants to buy out the other heirs, they will have to qualify for a mortgage loan, which can be very difficult for low-income heirs.

It is easy to see how heirs property owners can lose their homes to property tax foreclosures. Particularly in a tax lien certificate sale jurisdiction, when the taxes are not paid, a lien is placed on the property which can then be sold to a lien purchaser. The lien purchaser then demands the lien amount plus high interest, fees, and costs, which are extremely difficult for many heirs to pay. Tax lien purchasers typically do not offer repayment plans or other foreclosure avoidance tools as some local governments do. If it is not paid, then the lien purchaser can seek to foreclose on and sell the property, stripping the heirs of all the equity that had accumulated. In all jurisdictions, before a lien is placed on the property or a sale occurs, if there are multiple heirs who own the property, a single heir can sell their fractional interest to an investor, who can then petition the court for a partition sale

of the property. Each of these outcomes causes heirs to lose their family home and strips families of accumulated intergenerational wealth, putting them back at the starting line financially.

### Probating the Estate

Most property that only has a deceased homeowner's name on the title must go through the probate process. Proof of ownership of a home or any other property cannot be obtained before probate is complete.<sup>20</sup> The probate process can be complicated, time consuming, and expensive, particularly when there is no will governing the conveyance of the home. There are a number of fees involved, and an heir will most likely have to retain an attorney to navigate the process. For example, in Philadelphia the cost of remedying a tangled title is about \$9,200 for a home valued at the median of \$88,800.<sup>21</sup> After probate is complete, a new deed is drafted and must be recorded on the local registry of deeds. The entire process can take a year or more to complete. In the meantime, the heirs occupying the property have limited access to relief programs to help with utilities, mortgage payments, and property tax payments available only to record owners of the home.

### The Scope of the Problem

The Pew Charitable Trusts released a report<sup>22</sup> in August 2021 about the prevalence of tangled title in Philadelphia and the harsh consequences to heirs who inherit a home without will. The study found that more than 10,000 of the city's residential properties, collectively worth over \$1 billion, were affected by tangled title and that the neighborhoods most affected tend to be those with relatively low housing values, low incomes, and high poverty rates. Many heirs do not realize that there is an issue and do not realize the importance of filing probate after the death of their family member.

A 10-county study in Georgia using Computer Assisted Mass Appraisal (CAMA) data found an average of between 14-19 percent of all parcels were potential heirs property, totaling approximately \$2.1 billion in assessed value.<sup>23</sup> The study found that higher levels of heirs property were found in communities of color and communities with lower educational levels and higher poverty levels. Dougherty County, with a 71 percent Black or African American population,<sup>24</sup> had the highest percentage of heirs property at 24.8 percent, representing potential property values totaling \$648,643,199. The staggering amount of wealth tied up in heirs properties cannot be utilized to produce intergenerational wealth "because owners cannot leverage these assets to access capital or qualify for government funding assistance"<sup>25</sup> due to the lack of record title to the land.

## 4. PROPERTY TAX RELIEF OPTIONS IN CERTAIN STATES AND ACCESSIBILITY TO HEIRS

### Property Tax Exemptions and Abatements

Every state has enacted property tax exemptions or abatements for some homeowners who live in the home that help relieve at least a portion of their property tax by virtue of age, disability, income level, or personal status. These exemptions can provide significant relief for homeowners. For example, in Alaska, the principal residence of a resident who is (a) 65 or older, (b) a disabled person, or (c) a resident at least 60 years old who is the widow or widower of either is exempt from local property taxes on the first \$150,000 of the assessed value of the real property.<sup>26</sup> In Idaho, up to \$175,000 of a primary residence in which the owner resides or intends to reside is exempt from taxation.<sup>27</sup> In Florida, an owner who resides in a primary residence can receive a tax exemption of up to \$50,000 of the value of the property.<sup>28</sup>

The benefits, however, are not automatic. Most programs require the homeowner to apply for and submit proof of eligibility for an abatement or an exemption usually within a short period after the issuance of the tax bill. If an application is not timely made, the right to the relief will be lost. Often homeowners who stand to benefit most are not even aware of these programs and end up paying

more than necessary or not being able to pay the property tax bill. This is particularly true for heirs who inherit the property intestate. State and local property tax relief programs for homeowners routinely exclude homeowners who have tangled titles. Most programs require record proof of ownership: the heir's name on a recorded deed to the property. If the original owner was approved for an exemption, this exemption does not automatically apply to the heirs. Heirs of the property must apply anew for the exemption. If they do not, and continue to pay the exempt amount assessed to the original owner, they could face significant costs and penalties. This exclusion from certain property tax exemptions and abatements increases the likelihood of a tax foreclosure and perpetuates housing instability and loss of generational wealth.

The application of the homestead property tax exemption laws in Florida by some county appraisers highlights these dire consequences by imposing an egregious penalty on an heir who does not immediately provide notice of the owner's death to the county appraiser and file a new exemption application. The next section will examine the law in Florida, particularly how it is being wrongfully applied to heirs, and compare it with four other states that provide a penalty for the willful and wrongful claim to a property tax exemption but do not impose such a penalty on a surviving heir.

## FLORIDA

The Florida Constitution provides homestead property tax exemption benefits to the owner-occupant of real property if the property is their primary residence. A homeowner must submit an application for a homestead exemption with the county property appraiser, which in most counties is automatically renewed annually. Once the application is approved, the homeowner is exempt from property taxes on \$25,000 of the value of the property plus an additional \$25,000 exemption for property valued greater than \$50,000.<sup>29</sup> In addition, under the Save Our Homes (SOH) Amendment, after the first year that a home receives a homestead exemption and the property appraiser assesses it at just value, the increase in annual assessment on the property shall not exceed the lower of either 3 percent of the assessment for the prior year or the percentage of change to the Consumer Price Index.<sup>30</sup> If the property protected under the SOH cap changes ownership, the property will lose the SOH benefit and will be subject to assessment at just value on the following January 1.<sup>31</sup>

Under the SOH law, a change of ownership is defined as any sale, foreclosure, or transfer of legal title or beneficial title in equity to any person.<sup>32</sup> When a change of ownership occurs, the homestead exemption terminates and the property is reassessed at the current market value.

A "change of ownership" occurs upon the death of an owner except in limited circumstances including but not limited to when there is a surviving spouse, minor child or children, or a permanent resident who is legally or naturally dependent upon the owner.<sup>33</sup> Heirs who do not fall into one of the exceptions, which may include adult children, grandchildren, and parents living in their child's home, are required to file a new homestead application together with a deed showing they are the record owner of the property upon the death of the original owner. If they do not, and continue paying at the homestead rate in place through the deceased owner, they not only will be responsible for the difference between the old homestead tax amount and the current tax amount, but also some taxing authorities incorrectly interpret the statute to include the imposition of egregious penalties on the heir of 15 percent interest per annum and a penalty of 50 percent of the taxes exempted.<sup>34</sup> Also, for this same group, when the property is reassessed, the value undoubtedly will increase, causing the property taxes to increase even if a new homestead exemption is put in place. We explain below how this penalty is calculated, followed by an explanation of why the homestead penalty should not be assessed against heirs in this situation.



In a simplified example, assume that a homeowner who has a tax bill of \$1,000 per year based on an assessment of the home originally done many years earlier dies intestate, and her adult son remains in the home. The son continues to live in the home but does not file a new homestead application because he does not know he should. He continues to pay the \$1,000 per year in taxes. When the county appraiser realizes this three years later, a new appraisal is done and the taxes rise to \$3,000 per year. If the local appraiser imposes the homestead penalty lien, the son will face a lien for:

**Total penalty and taxes:**

\$2,000 (difference in the taxes owed vs. taxes paid) x 3 years = \$ 6,000

plus 15% interest each year = \$300 x 3 = \$ 900

plus 50% of the \$6,000 difference = \$ 3,000

**for a total of: \$ 9,900**

In addition, he must continue to pay the \$3,000 bill each year.<sup>35</sup> The son can apply for the homestead exemption going forward to limit his tax increase each year and to receive an exemption of taxes on up to \$50,000 of the home's value, but this will only affect future tax bills, and he risks losing the home if he cannot pay the existing \$9,900 tax bill.

**The creation of an astronomical penalty**

In 1979, when Darnell Simon was 9 years old, he moved to his mother's modest three- bedroom home in Jacksonville, Florida, with his mother and brother. His mother worked as a custodian to pay the mortgage; she wanted the boys to have a safe place to call their own. Darnell moved out when he was 18 but moved back in to take care of his mother in 2010 when she was diagnosed with cancer. Darnell's two daughters also lived with him at times as did his paternal aunt. His mother passed away in 2013. In 2014 Darnell suffered kidney failure, and he has been on dialysis ever since. When his mother died, Darnell believed his maternal aunt was organizing the estate and paying the property taxes. It was not until he received a notice of tax sale in 2019 that he realized the taxes had not been paid. He also did not know that he should apply for a property tax homestead exemption. From 2013 to 2017, the taxable value of the property was \$25,000 on an assessed value of

around \$60,000, resulting in annual property taxes owed of about \$750. By 2018, the exemption had been removed, and the assessed and taxable values jumped to \$84,000, with the resulting annual property taxes totaling around \$1,750. In addition, the city added homestead penalties for 2014 through 2017 totaling over \$10,000. Darnell borrowed money to pay some of the past due taxes and was provided a grant to pay through 2022, but he is terrified that he will not be able to pay the \$10,000 in penalties on his fixed disability income. His paternal aunt lives with him and is also on a fixed disability income because of her COPD and reliance on oxygen therapy. If the city forecloses on the home, Darnell says they will have nowhere to go. This home is his mother's legacy, and he hopes to be able to preserve it for his daughters and grandchildren.

**Timing and Process for Heirs Accessing the Florida Homestead Property**

**Tax Exemption**

There are questions regarding whether an heir can apply for the homestead exemption in their own right before having a final probate deed in their name. The statute states that before an exemption may be granted, "the deed or instrument shall be recorded in the official records of the county in which the property is located."<sup>36</sup> However, the statute also provides that a person who, on January 1, "has the legal title or beneficial title in equity" to the real property and makes the home his or her permanent residence is entitled to the exemption. It is arguable that the "deed or instrument" required to be recorded could include an affidavit of descent or heirship as allowed in other states discussed below, in order to give meaning to the first sentence, allowing the owner of the beneficial or equitable interest to apply for the exemption. The statute seems to contemplate this by permitting the property appraiser to "request the applicant to provide additional ownership documents to establish title."

The question of whether an heir can apply for the exemption without a final probate court deed is important because there is no specific grace period in the statute between when a family member dies and when an heir would be required to apply for the exemption in their own name. Completing the probate of an estate in order to obtain a probate deed can take nine months or more in Duval County. Except in limited circumstances, a property must go through the probate process before a new deed is drafted and recorded. A property tax exemption application must be filed by March 1, with a late deadline of September 18, for anyone who has title to the property as of January 1. After September 18 of that year, no homestead tax exemption applications are allowed for that year. This does not provide much time to probate an estate, have a new deed drafted and recorded, and file for the exemption. Thus, if a deed were required, many heirs would incur a penalty (or at a minimum, lose the homestead exemption for a period of time) even if they started the probate process right away. During this time, penalties may accrue and property taxes can increase, creating difficult financial repercussions for low-income heirs.

The Florida statute that imposes homestead penalties when a homestead exemption remains in place beyond the applicant's tenure should not be interpreted to apply to an heir like Darnell Simon who remains residing in the home after the death of a relative. The statute reads:

***The owner*** of any property granted an exemption who is not required to file an annual application or statement **shall notify the property appraiser promptly whenever the use of the property or the status or condition of the owner changes** so as to change the exempt status of the property. **If any property owner fails to so notify the property appraiser and the property appraiser determines that for any year within the prior 10 years the owner was not entitled to receive such exemption, the owner of the property is subject to the taxes exempted** as a result of such failure plus 15 percent interest per annum and a penalty of 50 percent of the taxes exempted. Except for homestead exemptions controlled by s. 196.161, the property appraiser making such determination shall record in the public records of the county **a notice of tax lien against any property owned by that person** or entity in the county, and such property must be identified in the notice of tax lien. **Such property is subject to the payment of all taxes and penalties.** Such lien when filed shall attach to any property, identified in the notice of tax lien, **owned by the person who illegally or improperly received the exemption.** (*emphasis added*)

This penalty is clearly meant to apply to the property owner who applied for and obtained the homestead exemption. The first time the owner is mentioned, it says the "owner of any property granted an exemption." That property owner, who was granted the exemption, has a duty to inform the appraiser if there is a change in the exempt status. It is this affirmative notice obligation that determines whether or not the owner incurs a penalty. If the owner fails to provide the notice, that same owner - "the owner of the property"- is subject to the penalty and a tax lien is placed on "any property owned by that person" - not on "the property" in question.

The interest and penalties imposed by section 196.011(9)(a) of the statute cannot reasonably be applied to an heir of a deceased owner.

1. "Owner" refers to "the owner of any property granted an exemption."
2. The provision places an affirmative obligation on "the owner" to notify the appraiser promptly if the "use of the property or the status or condition of the owner changes so as to change the exempt status of the property." This notification obligation is on the owner who was granted the exemption, not the heir of a deceased owner.
3. If the same owner fails to provide this notification to the appraiser and the appraiser determines the owner was not entitled to the exemption for a period of time yet continues to claim it, that owner is "subject to the taxes exempted as a result of such failure" plus interest and a penalty.
4. **The interest and penalty are directly tied to the failure of the owner who originally received the exemption to provide the required notification to the property appraiser.** As such, the

interest and penalty are imposed on the owner who received the exemption in the first place, and only based on wrongful conduct up until that owner's death.<sup>37</sup>

The purpose of that section of the statute is to penalize living homeowners who were granted an exemption and who abuse the homestead exemption scheme by failing to notify the tax assessor if they later move out of the home, for example to use it as an investment property or vacation home. Penalty statutes should be narrowly construed where there is any ambiguity.<sup>38</sup> They should not be applied harshly against innocent residents.<sup>39</sup>

In *Vega v. Robbins*, even though the Court did not apply the exemption retroactively, it did not impose a penalty on an adult son who filed for the homestead tax exemption over a year after his mother's death.<sup>40</sup> In *Kelly v. Spain*, the court held that “[n]o matter the form, the goal of homestead has remained stable: to protect the family.”<sup>41</sup> The penalty language in the statute in 9(a) was not intended to apply to heirs who remain in the home and, but for having to complete probate and file their own application, were in fact entitled to the homestead exemption. The penalty should only be imposed on a person who requests and receives an exemption and then intentionally or willfully does not notify the appraiser of a change in use of the property for their own financial gain. Florida county assessors should adjust their collection practices and stop imposing this penalty against heirs.

## MISSISSIPPI

In Mississippi, under the Homestead Exemption Law of 1946, all homeowners are entitled to an exemption from all ad valorem taxes on their homestead up to a maximum of the first \$7,500 of the property's assessed value, limited to \$300 of actual exempted tax dollars.<sup>42</sup> For seniors, though, the dollar amount is not capped. In addition, veterans with a service-connected total disability and who have been honorably discharged (and their unremarried surviving spouses) are exempt from all ad valorem taxes on the assessed value of the homestead.<sup>43</sup>

An eligible heir can qualify for the same homestead exemption of up to a maximum of the first \$7,500 of the property's assessed value through an “affidavit, court record, or such other evidence as may be required by the [Tax] [C]ommission.”<sup>44</sup> The Affidavit of heirship is a sworn statement provided by one or more family members and at least two unrelated parties that identifies the decedent's legal heirs. The affidavit establishes an heir's interest in the property and also, after a certain number of years have passed, provides an insurable title for sale of the property. When there are multiple heirs, the heirs of an undivided estate can elect to file for one homestead exemption on the entire undivided estate. The requirements for homestead exemption eligibility must be met. All the heirs must sign an affidavit authorizing the filing of the one homestead exemption.<sup>45</sup> Otherwise, if an heir files for the homestead exemption individually, they are entitled to the exemption only on their inherited portion of the property.<sup>46</sup> This requirement is especially burdensome for heirs who have inherited the property over multiple generations and do not know the names or contact information for all of the heirs.

Eligible residents must apply for the homestead exemption. Once it is granted, the resident does not need to file again unless there has been a change in the property description, ownership, or occupancy.<sup>47</sup> A person who willfully fails to notify the tax assessor of changes in the status of the homestead when required to do so can be found guilty of a felony and, upon conviction, may be punished by a fine of not more than \$5,000 or by imprisonment, or both. As in the Florida statute, the penalty is assessed against the person who claimed the homestead exemption and then willfully failed to notify the taxing authority of a change in ownership, not an heir who inherited and occupied the property.

## Michigan

In Michigan, homestead exemptions are provided for residents meeting certain income guidelines.<sup>48</sup> A homestead is eligible for exemption from taxation in whole or in part, based on guidelines developed by the local assessing unit.<sup>49</sup> Local guidelines may not set income limitations below the

federal poverty line.<sup>50</sup> Certain seniors, disabled residents, and veterans and their surviving spouses who meet the income guidelines are provided additional exemptions.

A property owner must file a Principal Residence Exemption Affidavit form with the tax assessor to obtain the exemptions. With the form, the owner certifies under penalty of perjury that “I own and occupy as a principal residence on the date stated [ ] and that I have not claimed a substantially similar exemption/deduction/credit in property in another state, and that the information contained on this document is true and correct to the best of my knowledge.” Michigan considers an “owner” for purposes of the tax exemption to be “[a] person who owns property as a result of being a beneficiary of a will or trust or as a result of intestate succession.”<sup>51</sup> An heir is therefore considered an owner of the property upon the death of the original owner and can apply immediately for the exemption.

A homeowner has 90 days after exempted property is no longer used as a principal residence by the owner claiming an exemption to file a notice of rescission of the exemption with the local tax authority. A penalty of up to \$200 is imposed on an owner who fails to file the notice of rescission.<sup>52</sup> In addition, a person who fails to rescind the exemption with the intent to wrongfully obtain an exemption is guilty of a misdemeanor and may be punished by a fine of up to \$5,000 or public service.<sup>53</sup> If a person claims an exemption in Michigan and a substantially similar exemption in another state, that person is subject to a penalty of \$500.<sup>54</sup> As with the Florida and Mississippi statutes, the penalty is placed on the owner who intentionally failed to notify the taxing authority of the change in status of the property.

## TEXAS

Texas does not impose any penalty for a delay in filing a homestead exemption application and also allows a look-back period for the new exemption once obtained. In Texas, a family or individual is entitled to a tax exemption of \$3,000 of the assessed value of their primary residence or \$40,000 in a school district.<sup>55</sup> An additional \$10,000 exemption is provided for an adult who is 65 years or older or disabled. Local tax authorities can offer an optional additional exemption of up to 20 percent of the value of the property and no less than \$5,000. The resident must apply with the local appraisal office. Most exemptions, once allowed, do not require subsequent applications.<sup>56</sup> The exemption applies to the property until ownership changes or the person's qualification for the exemption changes, at which time the original owner must notify the appraiser's office of such change.

If the appraiser discovers that an exemption has been erroneously allowed within the preceding five years, the taxing authority is entitled to impose taxes on the value that escaped taxation.<sup>57</sup> There is no other penalty imposed on the owner.

An application for a residence homestead exemption may be filed after the deadline for filing has passed if filed no later than two years after the delinquency date,<sup>58</sup> which is usually February 1 because property taxes are due January 31. A resident will receive a deduction on taxes owed if not yet paid or a refund on taxes paid.

Heirs who inherit property intestate in Texas have options to obtain the homestead exemption without having to produce a deed with their name. As of 2019, Texas allows an heir to submit an affidavit of heirship to establish ownership of the home for purposes of the homestead exemption application. The heir must provide an affidavit establishing their property ownership interest, a copy of the death certificate of the prior owner, a recent utility bill, and citation to any court record relating to the heir's ownership of the property. A recorded instrument is not required, however. Each heir with an interest in the property who occupies the property as the owner's principal residence, other than the applicant, must provide an affidavit that authorizes the submission of the application.<sup>59</sup> The applicant heir is entitled to 100 percent of the homestead exemption.<sup>60</sup>

This procedure allows an affidavit of heirship to be used when a decedent leaves behind real property without a will or other legal documents transferring title. The affidavit can also be used within four years of the deceased’s death if there was a will but it was not probated.

**PENNSYLVANIA**

In Pennsylvania, the Taxpayer Relief Act provides for property tax reduction allocations to be distributed by the State to each school district. Property tax reduction is provided through a homestead or farmstead exemption. Most owner-occupied primary residence homes and farms are eligible for property tax reduction.

Local governments can provide a tax exemption of a fixed dollar amount of the assessed value of each homestead property that is not in excess of one-half of the median assessed value of homestead property in the area.<sup>61</sup> The owner of real property must apply for the homestead exemption and generally will not have to reapply each year. The application form requires the applicant to assert that they are the owner of the property and they can face penalties and criminal prosecution for knowingly providing false information.<sup>62</sup> If there are multiple owners, not all need to apply.

If there is a change of use of the property, the owner must notify the assessor within 45 days of the change. Failure to notify the assessor results in penalties to the owner who failed to provide the notice. The penalties consist of payment of the taxes which would have been due but for the false application plus interest, a penalty of 10 percent of the unpaid taxes, and if convicted of a misdemeanor, a payment of up to \$2,500.<sup>63</sup> Again, the penalty is on the original owner who knowingly failed to notify the assessor.

Philadelphia has enacted additional protections for homeowners and allows a homestead exemption of \$80,000 (in 2023) of the assessed value of the property for residents who own and live in the property. Philadelphia allows heirs who inherit a property intestate to qualify for a conditional homestead exemption for three years. If the heir does not record a deed in their name within three years, the exemption is revoked going forward, not retroactively.<sup>64</sup> To apply for a conditional homestead exemption, an heir must submit an application, which includes a Homestead Affidavit certifying ownership of and primary residency at the property. The city also has a “Tangled Title Fund” through its Division of Housing and Community Development “to help preserve affordable housing, prevent homelessness, and strengthen communities.”<sup>65</sup> Grants are provided to help heirs probate the estate and clear legal title to the property.

Homestead Property Tax Exemptions	Owner of property must notify assessor upon change of ownership or entitlement to the exemption	If no notification, owner who obtained the exemption is penalized, not a successive owner or heir	An heir can submit an affidavit as proof of ownership instead of a deed	Exemption is allowed retroactively for a period of time
Florida	✓	✗ In some jurisdictions, statute is misinterpreted to impose severe penalty on heirs	✗ Statute has been misinterpreted as requiring deed	✗
Mississippi	✓	✓	✓	✗
Michigan	✓	✓	✓	✓ Pending Bill would make poverty exemption retroactive

<b>Texas</b>	✓	✓ No penalty imposed	✓	✓
<b>Philadelphia</b>	✓	✓	✓	✓

## 5. RECOMMENDATIONS

Owners of heirs property face a substantial risk of an excessive property tax burden, lack of information about relief programs, and property tax foreclosure. Our initial recommendations to remediate these risks are as follows:

- Recognize that heirs are the owners of an inherited property immediately upon death of the decedent and should be eligible for the property tax homestead exemption and other homeowner relief options. Allow heirs to apply for the homestead exemption upon the filing of an affidavit of heirship certifying their ownership of the property.
- Make it clear that penalties for failure to report a change regarding the property cannot be imposed on heirs who inherit a property intestate, or by will that is not yet probated, and intend to make the property their primary residence, and otherwise are eligible for the homestead exemption.
- Provide the homestead exemption retroactively for a certain period of time if the heir can attest to living in the property and otherwise qualifying for the exemption during that time period.
- Require that, upon the death of any homeowner as determined through death records, the tax authority shall provide notification to the heirs of the necessity to notify the tax assessor and the process by which they can and should apply for the homestead tax exemption.

Heirs property owners face an elevated risk of losing their home to property tax foreclosure or to investors who capitalize on property tax default situations. The problems highlighted in this report can be remedied through intentional actions by state and local governments to increase access to the homestead exemption and other tax relief policies. Given the prevalence of heirs property on communities of color, taking these steps is a crucial piece of an overall strategy to reduce the racial wealth gap by stopping the erosion of homeownership in these communities that has been taking place for decades. The time is now to enact meaningful changes to preserve intergenerational wealth.

## ENDNOTES

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- 2 See John Rao, *The Other Foreclosure Crisis: Property Tax Lien Sales 14* (2012), <https://www.nclc.org/wp-content/uploads/2022/09/tax-lien-sales-report.pdf>.
- 3 Alaska Stat. § 29.45.450; Cal. Rev. & Tax. Code §§ 3351 to 3972, 4101 to 4379, 4501 to 4505 (West); Del. Code Ann. tit. 9, §§ 8701 to 8779; Ga. Code Ann. §§ 48-3-2 to 48-3-28, 48-4-1 to 48-4-7; Haw. Rev. Stat. §§ 231-61 to 231-70.
- 4 35 Ill. Comp. Stat. §§ 200/21-5 to 200/21-445, 200/22-5 to 200/22-95; Md. Code Ann., Tax-Prop. §§ 14-808 to 14-854 (West); D.C. Code §§ 47-1330 to 47-1385; Fla. Stat. § 197.102 to

- 197.602; Ind. Code § 6-1.1-24-9.
- 5 Mich. Comp. Laws § 211.78m.
  - 6 Minn. Stat. §§ 282.01(6), 282.01(7), 282.01(13), 281.17.
  - 7 Tyler v. Hennepin County, Minnesota, 143 S.Ct. 1369 (2023).
  - 8 Grace Ferguson, 'Home Equity Theft' — In New Bedford and Across Massachusetts, New Bedford Light (Jan. 30, 2023), <https://newbedfordlight.org/home-equity-theft-in-new-bedford-and-across-massachusetts/>.
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  - 11 See Carlos Avenancio-Leon & Troup Howard, *The Assessment Gap: Racial Inequalities in Property Taxation* 25 (Wash. Ctr. for Equitable Growth, Working Paper, 2020), <https://equitablegrowth.org/working-papers/the-assessment-gap-racial-inequalities-in-property-taxation/>; Christopher R. Berry, *Reassessing the Property Tax* 4 (Mar. 24, 2021) (unpublished manuscript), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3800536](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3800536) (comparing a property's selling price with assessed value at the time of sale).
  - 12 Avenancio-Leon & Howard, *supra* note 3, at 20.
  - 13 *Id.*
  - 14 See generally Berry, *supra* note 3; Bernadette Atuahene, *Predatory Cities*, 108 Calif. L. Rev. 107 (2020); Jason Grotto, *Tribune Watchdog: The Tax Divide*, Chi. Trib. (June 10, 2017), <https://apps.chicagotribune.com/news/watchdog/cook-county-property-tax-divide/assessments.html> (property in working-class neighborhoods overassessed).
  - 15 Andrew Kahrl, *The Power to Destroy: Discriminatory Property Assessments and the Struggle for Tax Justice in Mississippi*, 82 J. S. Hist. 579, 591-92 (2016). See also Connor Bailey et al., *Heirs' Property and Persistent Poverty Among African Americans in the Southeastern United States*, 2019 Heirs' Property and Land Fractionation: Fostering Stable Ownership to Prevent Land Loss and Abandonment 9, [https://www.srs.fs.usda.gov/pubs/gtr/gtr\\_srs244.pdf](https://www.srs.fs.usda.gov/pubs/gtr/gtr_srs244.pdf).
  - 16 Andrew Kahrl, *More for Less: How Property Taxes Fuel Racial Inequality*, Tax Notes (Jan. 25, 2021), <https://www.taxnotes.com/special-reports/tax-history/more-less-how-property-taxes-fuel-racial-inequality/2021/01/21/216gq>.
  - 17 Michelle Aronowitz, Edward L. Golding & Jung Hyun Choi, *The Unequal Costs of Black Homeownership*, 2020 State of Housing in Black America: Challenges Facing Black Homeowners and Homebuyers During the COVID-19 Pandemic and an Agenda for Public Policy 2-10, <https://www.nareb.com/site-files/uploads/2020/10/2020-SHIBA-REPORT-OFFICIAL-COPY.pdf>.
  - 18 Cameron LaPoint, *Property Tax Sales, Private Capital, and Gentrification in the U.S.* 27 (Mar. 20, 2023) (unpublished manuscript), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4219360](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4219360).
  - 19 Uniform Partition of Heirs' Property Act, Uniform Law Commission (Oct. 19, 2010), <https://www.uniformlaws.org/viewdocument/final-act-97?CommunityKey=50724584-e808-4255-bc5d-8ea4e588371d&tab=librarydocuments>.
  - 20 In some states, if a homeowner has set up a certain kind of trust called a revocable or living

- trust, the heirs can secure ownership of a property without having to go through the probate process, but that kind of arrangement requires advance planning.
- 21** Garrett Hincken, *How ‘Tangled Titles’ Affect Philadelphia: Why Homeowners’ Names Must Appear on Official Records—And How It Hurts Families and Neighborhoods When They Don’t* 1 (2021), [https://www.pewtrusts.org//media/assets/2021/08/tangledtitlesphilly\\_report\\_final.pdf](https://www.pewtrusts.org//media/assets/2021/08/tangledtitlesphilly_report_final.pdf).
- 22** *Id.*
- 23** Shana Jones & J. Scott Pippin, *Learning About the Land: What Can Tax Appraisal Data Tell Us About Heirs’ Properties?*, 2019 Heirs’ Property and Land Fractionation: Fostering Stable Ownership to Prevent Land Loss and Abandonment 3, [https://www.srs.fs.usda.gov/pubs/gtr/gtr\\_srs244.pdf](https://www.srs.fs.usda.gov/pubs/gtr/gtr_srs244.pdf).
- 24** *QuickFacts Dougherty County, Georgia, United States Census Bureau* (2022), <https://www.census.gov/quickfacts/doughertycountygeorgia>.
- 25** Jones & Pippin, *supra* note 12, at 4.
- 26** Iaska Stat. § 29.45.030(e).
- 27** Idaho Code §§ 55-1001, 55-1003.
- 28** Fla. Stat. § 196.031(1).
- 29** *Id.*
- 30** *Id.* § 193.155(1) (part of the Florida Save Our Home Act).
- 31** *Id.* § 193.155(3)(a).
- 32** *Id.*
- 33** *Id.*
- 34** *Id.* § 196.011.
- 35** This is a simple illustration. Keep in mind that, per Fla. Stat. Ann. § 193.1554(3), the reassessment of the property is subject to a 10% Assessment Limitation: any change resulting from such reassessment may not exceed 10 percent of the assessed value of the property for the prior year.
- 36** Fla. Stat. § 196.031.
- 37** See Fla. Stat. § 196.161
- 38** *Bittner v. United States*, 143 S. Ct. 713, 724 (2023) (“Under the rule of lenity, this Court has long held, statutes imposing penalties are to be ‘construed strictly’ against the government and in favor of individuals.”); See, e.g., *State v. English*, No. 97-4104, 2002 WL 31455610, at \*2 (R.I. Super. Oct. 15, 2002) (“[S]tatutes are to be ‘strictly construed against the government or parties seeking to enforce statutory penalties and in favor of the persons on whom penalties are sought to be imposed.’ Known as the rule of lenity, this principle ‘rests on the fear that expansive judicial interpretations will create penalties not originally intended by the legislature.’”) (quoting 3 Norman J. Singer, *Statutes and Statutory Construction* §§ 59.3, 60:3 (6th ed., 2001)).
- 39** See *Bittner*, 143 S. Ct. at 723 n.7.
- 40** *Vega v. Robbins*, No. 03-23953, 2006 WL 779734, at \*6 (Fla. Cir. Ct. Mar. 17, 2006) (holding that a son was not entitled to a retroactive benefit of homestead exemption when his mother died; she left property in trust with him as executor, and he transferred title to himself upon her death).
- 41** *Kelly v. Spain*, 160 So.3d 78, 82 (Fla. Dist. Ct. App. 2015).
- 42** Miss. Code Ann. § 27-33-3; 35-006 Miss. Code R. § 003.01.101 (LexisNexis).



- 43 Miss. Code Ann. §§ 27-33-3, 27-33-67 to 27-33-79; 35-006 Miss. Code R. § 003.01.101 (LexisNexis).
- 44 Miss. Code Ann. § 27-33-17(f).
- 45 35-006 Miss. Code R. § 003.06.103.01.
- 46 *Id.*
- 47 Miss. Code Ann. § 27-33-31.
- 48 Mich. Comp. Laws §§ 211.1 to 211.7ff
- 49 *Id.* § 211.7u.
- 50 Senate Bill 55, which has passed the Senate, would extend a provision allowing an automatic poverty exemption under certain conditions and would allow for the exemption to be applied retroactively. S.B. 55,10 2d Leg., Reg. Sess. (Mich. 2023), <http://legislature.mi.gov/doc.aspx?2023-SB-0055>.
- 51 Mich. Comp Laws § 211.7dd(a)(iii).
- 52 *Id.* § 211.7cc(5).
- 53 *Id.* § 211.120(2).
- 54 *Id.* § 211.7cc(3)(a).
- 55 Tex. Tax Code Ann. § 11.13 (West).
- 56 *Id.* § 11.43(c).
- 57 *Id.* § 11.43(i).
- 58 *Id.* § 11.431(a).
- 59 *Id.* § 11.43(o).
- 60 The Texas Comptroller has created fill-in forms for these different scenarios. *Property Tax Exemptions*, Texas Comptroller of Public Accounts, <https://comptroller.texas.gov/taxes/property-tax/exemptions/> (last visited July 6, 2023).
- 61 53 Pa. Stat. and Cons. Stat. Ann. §§ 8581-8588 (West).
- 62 Property Tax Relief, Pa. Dep't of Cmty. and Econ. Dev., [https://dced.pa.gov/download/homestead-applicationpdf/?wpdmdl=58451&refresh=643d9e2e433fa1681759790&ind=0&filename=Homestead\\_Application.pdf](https://dced.pa.gov/download/homestead-applicationpdf/?wpdmdl=58451&refresh=643d9e2e433fa1681759790&ind=0&filename=Homestead_Application.pdf) (last visited July 6, 2023).
- 63 53 Pa. Stat. and Cons. Stat. Ann. § 8584(h) (West).
- 64 Affidavit in Support of Application for Homestead Exemption, City of Phila., <https://www.phila.gov/media/20220614120654/Revised-Affidavit-042314-2.pdf> (last visited July 6, 2023).
- 65 *Tangled Title Fund*, Phila. VIP, <https://www.phillyvip.org/tangled-title-fund/> (last visited July 6, 2023).

## CANCELLATION OF ATLANTIC COAST PIPELINE: WHERE ARE LANDOWNERS NOW?

By Christina Lollar Savage



*Christina Lollar Savage is an attorney at Lollar Law PLLC in Norfolk, VA. She has been a litigator for over 15 years and is licensed in VA, DC and NC. Ms. Savage currently focuses her legal practice exclusively on representing private property owners, both commercial and residential, in eminent domain proceedings against municipal, state and federal condemning agencies. She and the firm have extensive experience in the litigation of natural gas pipeline easements. Most recently she has represented and obtained just compensation for 100+ landowners in both the Atlantic Coast Pipeline and Mountain Valley Pipeline projects.*

In July of 2020, Dominion and Duke Energy (collectively “Dominion” or “the Company”) announced the cancellation of the Atlantic Coast Pipeline project (“ACP” or “the Project”), spanning 600 miles from West Virginia through Virginia and into North Carolina. The Company indicated the cancellation was due to ongoing schedule delays, court challenges, and increasing cost uncertainties which threatened the economic viability of the Project. At the time of ACP’s cancellation, Dominion had obtained easements for 98% of its pipeline route—approximately 3,100 tracts of private land. The easements were obtained either through private right-of-way settlements with landowners or through eminent domain.

At the time of the Project’s cancellation, approximately 33% of the 3,100 tracts of land were disturbed, including 31.4 miles of laid pipe in or above ground. Of the 2,000 parcels not disturbed, property rights advocates lobbied for Dominion’s immediate surrender of the easements; however, the Company indicated it needed access to those easements to complete the environmental restoration required by the Federal Energy Regulatory Commission (“FERC”).

Upon the Project’s cancellation, Dominion announced it would not request landowners to reimburse the Company for monetary compensation paid for the easements acquired. However, cancellation of the Project left landowners with many questions including whether Dominion would surrender the easements, whether landowners had rights to request a reversion of those easements, and what Dominion’s plans were to restore disturbed land or remove existing pipe left in or above ground. While it is true that eminent domain is generally handled under state law, Virginia does not address these particular questions in its eminent domain code. Arguably, absent state protections, upon the Project’s cancellation, ACP was no longer adhering to the “public use and benefit” provision under the Federal Natural Gas Act.<sup>1</sup> Upon cancellation of the Project alleged to be for the “public good,” the recorded easements prevented landowners from building, subdividing, or doing anything with their land that might violate the terms of the recorded easements.

In the beginning of 2021, Dominion submitted its restoration plan to the FERC. In November 2022, the FERC authorized Dominion to begin its environmental restoration work and the Company announced that it would start the process in the beginning of 2023 with plans to finish by the end of the year. Dominion noted that, once restoration was complete, another three years of monitoring would be required before it would consider releasing easements. Although Dominion also announced that it was developing a plan for releasing easements on properties that did not require restoration work, many of these easements have not been released despite landowner requests.

Many landowners who were represented by counsel prior to the Project’s cancellation negotiated easement abandonment provisions that included termination dates (i.e., 3-4 years) and also required Dominion to bear the cost to release/terminate the easements in the event of a period

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<sup>1</sup> United States Code: Natural Gas Act, 15 U.S.C. §§ 717-717w (1940)

of continued non-use. For some of those landowners, Dominion has released its easements at no cost to the landowners. However, other landowners with pipe in the ground signed addenda to Dominion's general agreement, with language which Dominion may rely upon in denying landowner requests to remove pipe in the ground and/or terminate its easements, potentially affecting the use of the land permanently.

Although Dominion claims it has reached agreements with landowners in Northampton and Halifax counties, North Carolina, to abandon its pipe in properties spanning miles, some landowners are refusing to allow Dominion to abandon such pipe in place. Dominion laid miles of pipe both above and in the ground on properties located in Northampton and Halifax counties where many property owners have owned their farms for generations. Given the untenable situation of balancing Dominion's promises of economic benefit for distressed communities against the threat of eminent domain, these landowners claim they participated in the ACP project in 2017 as a historical continuation of doing their part to help their communities. They claim Dominion promised an economic boost as a result of the ACP through enhanced tax revenues; however, due to the Project's cancellation their potential hopes of attracting industry to provide local jobs never materialized. Instead, these properties are now contaminated by a pipeline with no benefit or purpose, compromising the integrity of the properties that these landowners worked diligently for generations to preserve. These landowners are now demanding Dominion compensate them for the cost of removing the abandoned pipe creating both an environmental hazard and attractive nuisance.<sup>2</sup> To complicate matters, the FERC bought into Dominion's argument that it would be more of an environmental problem to remove the pipe placed in the ground and approved Dominion's reclamation plan allowing pipe to remain in the ground at a huge cost savings to Dominion but at a great monetary loss to landowners. Dominion's cost for the abandoned Project has been estimated at \$3 billion. Landowners subject to existing easements cannot put a price on the uncompensated cost to their properties of the abandoned Project.

It has been more than three years since Dominion announced the cancellation of the ACP. What lies in store for Virginia and North Carolina landowners with remaining easements, reclamation needs and abandoned pipe on their properties remains unknown. Due to these outstanding issues, property advocates are demanding the FERC take immediate action due to the federal agency's approval of an unnecessary and destructive pipeline project. These advocates conclude the FERC should use its broad authority to assist landowners by requiring that Dominion release all restrictions on existing easements and that the federal agency immediately address the monetary and environmental challenges faced by those landowners who have abandoned pipe remaining on their property.

Lollar Law PLLC will continue to supplement this article as Dominion makes future announcements regarding restoration efforts and any pending litigation regarding the ACP cancelation.

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<sup>2</sup> Considerable empirical data concludes that this pipe will rust without the cathodic protection that would have existed had ACP's project been completed with the pipe providing natural gas. Moreover, recent reporting by the *Wall Street Journal* of toxic chemicals from underground telecom cable leaching into ground water throughout the U.S. gives equal concern about the likely harm from ACP's large metal pipe coated with contaminates negatively impacting groundwater.

## THE GODFATHERS OF CYBERCRIME: THE 2022 VERIZON REPORT

by Sharon D. Nelson, Esq., John W. Simek and Michael C. Maschke  
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### **Roughly Four in Five Breaches Emanate from Organized Crime**

Granted, the three authors of this article are geeks. And yes, we get excited every year when Verizon releases its annual data breach investigation report (DBIR). The Verizon 2022 Data Breach Investigation Report, like all of its predecessors, is chock full of reliable information that law firms need to know.

One of the stunning revelations this year is that roughly four in five breaches arise from organized crime. The quaint notion of disheveled individuals sitting in a chair, drinking endless caffeine-laden beverages and eating lots of pizza while hacking away has given way to criminal cartels, which operate much as the American mobsters once did, right down to godfathers who make people an offer they can't refuse.

Many of the cartels, unsurprisingly, are in Russia, where their activities are tolerated and perhaps encouraged by the government. Just like the Mafia bosses, there is often some level of cooperation between the gangs – attacks and data leaks are coordinated, and they may share intelligence and even infrastructure.

By pooling their information about evading security software and dodging law enforcement, they increase their power and their ability to conduct successful attacks. Our government, at long last, is laser-focused on these cartels and sharing information with foreign governments, offering bounties for information about the gangs, upping its ability to trace cryptocurrency transactions and establishing new sanctions as well as imposing mandatory requirements on some entities to report data breaches.

### **New Data on Breaches – and the Human Element**

The Verizon DBIR is now in its 15<sup>th</sup> year and was based on 23,896 security incidents. 5,212 of those incidents were confirmed intrusions. It will take you a while to get through the 107-page report, but this article may suffice in giving you the highlights.

A tiny slice of good news: Last year, there was a human element involved in data breaches 85% of the time. That percentage has dropped to 82% this year. Not much comfort there, even if the numbers are headed in the right direction.

What are humans doing? They are falling for social engineering attacks, clicking where they shouldn't click, opening documents they shouldn't open and trying to evade the restrictions imposed by their cybersecurity policies and technologies. They use weak passwords (if allowed). They share passwords and reuse passwords. They let their browsers remember their passwords. They resist any implementation of multi-factor authentication.

Notably, humans misconfigure cloud storage. Typically, a cloud breach is not the cloud's fault – a user configures things incorrectly and thereby issues an engraved invitation to the hacker world.

The list of human mistakes is truly endless. This is one reason why security awareness training is so vital – particularly for law firms, who hold the confidential data of many people and entities.

### **Insiders or Outsiders?**

As the report notes, it is common to see stories about the prevalence of insider attacks. However, the statistics don't bear out that prevalence. Nearly three out of four cases exhibited evidence of the attack coming from an outside source. Internal sources accounted for only 18% of incidents.

While we find that statistic creditable, we note (as the report itself does) that insiders are sometimes very adept at keeping their malicious activity hidden!

### **Ransomware Stats**

Law firms, like all other entities, have been targeted by ransomware gangs. Ransomware made up 25% of security incidents between November 1, 2020 and October 31, 2021 and was used in 70% of all malware infections.

How do they get through our defenses? They steal credentials or buy them on the dark web. They use phishing attacks and they exploit vulnerabilities.

Seventy five percent of ransomware incidents involved an intrusion exploiting desktop-sharing software (40%) or email (35%).

Perhaps the most dire warning emanates from the fact that ransomware attacks increased 13% year over year. That represents a larger increase than the previous five years combined. And still the hits keep coming.

Though law firms have heightened their defenses, the ransomware gangs have gotten smarter too, so we play an endless cat and mouse game, in which the mouse often, but not always, evades the cat.

### **Money Makes the World Go Round**

Money makes the world go round as the song from “Cabaret” points out. So it is unsurprising that the report found that the motive in 89% of breaches was financial and 11% was espionage, perhaps a tribute to our troubled times. National-state affiliated cyber attacks continue to increase in sophistication.

While we are following a “Shields Up!” defense strategy as a country, we were late to the game – hopefully not so late that we cannot catch up. And as we remind lawyers all the time, law firms are a “one stop shop” for cybercriminals because they hold the data of so many entities.

We are encouraged by the strength shown recently by our government in its war against ransomware and other cybercrimes. It may take us some time to develop cyber defenses that result in unseating the godfathers of cybercrime. But that’s ok. We have it on good authority that “revenge is a dish best served cold.”

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Real Property Section of the Virginia State Bar

Summer Meeting of the Board of Governors and Area Representatives

Albemarle Hall Meeting Room, Hilton Oceanfront Hotel  
3001 Atlantic Ave., Virginia Beach, VA 23451  
(Live Attendance and Virtual Meeting via Microsoft Teams)

June 16, 2023 Summer Meeting Minutes

Welcome and meeting called to order by Karen Cohen, Section Chair, at 12:01 p.m.

**I. WELCOME AND ATTENDANCE.** Please see the attached list. Please contact the Section Secretary at the time of the meeting, Robert E. Hawthorne, Jr., at the following email address with any corrections, additions, or amendments to the attendance record: robert@hawthorne.law.

Karen Cohen reviewed the ground rules for participating live or via remote access.

**II. ANNOUNCEMENTS.** Karen called to attention an article in the Virginia Lawyer Magazine that Susan pointed out regarding Family law intersecting with real property law. She then directed attention to the memorial section of the magazine where there is a tribute to Marianne Gavlak Bundren, a former section member.

Karen announced that Jim Windsor is the new co-chair of the programs committee with Heather Steele.

**III. FINANCIAL REPORT.** Report presented by Karen Cohen. Informed the attendees that the numbers they have only go through March with a balance of a couple thousand dollars, which should be spent down by the end of the budget year. Attention was called to invoices coming in, including ones for the Fee Simple publication and an invoice for the video production project that she thinks will go into this coming budget year.

**IV. COMMITTEE REPORT.** John Hawthorne revived the Commercial Real Estate Committee and Karen let the attendees know that the Committee plans to meet in September for anyone interested in joining.

**V. ADOPTION OF MINUTES OF SPRING MEETING.** No comments, questions, or edits. Susan Pesner moved to approve, and Harry Purkey seconded the motion. Minutes were approved unanimously and adopted.

**VI. STANDING COMMITTEES.**

Fee Simple Committee - Steve Gregory reports that the Fee Simple Spring edition was a little later than normal. He states that the e-blast will go out by next week, and

that the printed copies will be mailed out soon. The deadline for submission of articles for the Fall issue is the first Friday of October. Steve gave a brief summary of issue highlights for the Spring edition coming soon.

Programs Committee - Sarah Louppe-Petcher and Jim Windsor. Sarah states that the last annual real estate seminar had the largest attendance ever, but the vast majority attended remotely.

**VII. AREA REPRESENTATIVE NOMINATION.** Karen introduced a new area representative, A. Garrett Kelly, nominated by Howard Gordon. Elected unanimously.

**VIII. SUBSTANTIVE COMMITTEE REPORTS.**

Karen Cohen directed attendees to the written reports previously filed.

Sarah Louppe-Petcher presented the strategic plan. She had a productive meeting with a group of the attendees to get ideas for next year and receive feedback. One of their plans is to get in touch with the current substantive committee chairs. Steve Gregory encouraged committee chairs to have their committees generate and produce one article for the Fee Simple each year.

Virginia Bar Association – Shane Murphy presented updates vicariously through Ben Leigh, who focused on the historic turnover anticipated in the General Assembly, highlighting the need for VBA involvement in matters related to property law.

Sue Tarley announced that the new Common Interest Community Committee Chair is William Sleeth, III.

**IX. INTRODUCTIONS FOR ATTENDEES.**

See list of attendees.

**X. SPECIAL ELECTION FOR NEW MEMBERS OF THE BOARD OF GOVERNORS.**

Susan Pesner presented a slate of nominees for three Board of Governors positions:

- a. Cynthia Nahorney
- b. Vanessa Carter
- c. Benjamin Winn

The slate of nominees for Section officers:

- a. Sarah Louppe Petcher - Chair
- b. Robert E. Hawthorne, Jr. - Vice Chair
- c. Rick Chess - Secretary/Treasurer

No nominations by the floor. Sarah Louppe Petcher moved to approve the slate of nominations and Karen seconded. All candidates were elected unanimously.

**XI. IMPROMPTU BUSINESS**

General discussion on how to submit reimbursement vouchers.

**XII. MEMBERSHIP COMMITTEE REPORT**

Rick Chess presented an update of Membership Committee activities and objectives.

Larry McElwain discussed the Video Library (specifically the first two videos involving Real Estate Litigation and Title Insurance), discussed project aspirations, including anticipated timeframes, and introduced the other subcommittee members:

Nana Yeboah presented and discussed the video clips and how videos are physically produced. A video “teaser” was presented to the audience.

Vanessa Carter remarked on production and publication aspects.

Harry Purkey presented a questionnaire for section members to provide to the committee concerning possible future videos.

Larry McElwain wrapped up the presentation with some closing remarks, including a plea for volunteer involvement. The presentation was well received by the attendees.

**XIII. ANNOUNCEMENT OF FALL MEETING AND CLOSING**

Karen announced that the Fall meeting would be held in September, with date, time, and venue to be determined.

Karen passed the gavel to Sarah Louppe Petcher as the new Chair.

Meeting adjourned at 1:12 p.m. without a motion or second, as other Bar events were awaiting the attendees.



Real Property Section of the Virginia State Bar

Spring Meeting of the Board of Governors and Area Representatives

Williamsburg Inn, East Lounge  
136 Francis Street East, Williamsburg, VA 23185  
(Live Attendance and Virtual Meeting via Microsoft Teams)

March 3, 2023 Spring Meeting Minutes

Welcome and meeting called to order by Karen Cohen, Section Chair, at 11:06 a.m.

**I. WELCOME AND ATTENDANCE.** Please see the attached list. Please contact the Section Secretary, Robert E. Hawthorne, Jr., at the following email address with any corrections, additions, or amendments to the attendance record: robert@hawthorne.law.

Karen Cohen welcomed both live and remote attendees to the meeting and reviewed the process for submitting travel reimbursement vouchers for meeting attendance.

**II. ADOPTION OF MINUTES OF FALL MEETING.** No comments, questions, or edits. Rick Chess moved to approve. Sarah L. Petcher seconded. Minutes were approved unanimously and adopted.

**III. FINANCIAL REPORT AND BUDGET UPDATE.** Report presented by Dolly Shaffner. She reported that the Real Property Section currently has two thousand twenty-five section members.

No questions or comments regarding the status of the budget were presented by the membership.

**IV. STANDING COMMITTEES.**

1. Membership committee - Rick Chess reports that the Membership Committee is continuing its work in five specific areas:

a. refreshing the Area Representative list regarding active participants who still wish to serve and updating contact information; and

b. how to get committees and committee chairs active, with at least quarterly meetings and regular reports submitted prior to section meetings; and

c. implementing a generational transfer of section and committee responsibilities to achieve continuity of projects and goals and to create new ones; and

d. reports that the Mentee/Mentor Program (headed up by Larry McElwain) is progressing. Robert Hawthorne, Jr. is charged with finding mentees, with assistance from Neil

Kessler, especially in regard to law school access to possible new members. Rick Chess will match mentors with mentees and oversee the program generally.

e. Larry McElwain reported on the living library video project. He needs volunteers for creating videos, and wants to fill subcommittees with a mixture of experienced attorneys with vigor with newer attorneys (also with vigor) with less than ten years of experience. He is on track to make an in-depth presentation of the video program at the June meeting. He also will reach out to the current sets of mentor/mentees and coordinate with the administrator. He expects volunteers will spend about five hours per month on this project. Thirdly, he feels that new Area Representatives would benefit from working with their nominating attorney and section administration to get acclimated to active participation in the section.

2. Fee Simple Committee - Steve Gregory and Hayden-Anne Breedlove. Steve again reported that the issue deadline for the Spring issue is the first Friday in April (as usual). He asked Rick Chess for a summary of the Mentor/Mentee program to go in the next issue of the Fee Simple. This upcoming issue will include legislative statutory changes and case law updates. He needs someone to summarize the latest legislative session and analyze its impact. The committee met briefly by phone. The committee needs more members.

Hayden-Anne Breedlove, co-editor, made some comments and thanked contributors.

3. Programs Committee - Sarah Louppe-Petcher and Heather Steele. Sarah reported on the seminar being presented today, including finding a replacement speaker for one of the topics at the last minute. She reports more registrants for this year's Advanced Real Property seminar than last year. She also was happy to report that the first edition of the Fee Tail had been released for what hopefully will be a quarterly occurrence. The agenda for the 41st Annual Real Property seminar is set. Sarah gave a special thanks to Kim Villio and her assistance as she well fulfills the duties and services previously provided by Tracy Banks.

## **V. SUBSTANTIVE COMMITTEE REPORTS.**

1. Commercial Real Estate - no report.
2. Common Interest Communities - no report.
3. Creditors' Rights - no report.
4. Eminent Domain - committee should be meeting soon.
5. Ethics - Blake Hegeman and Ed Waugaman. The Ethics Searchable LEO project is progressing.

6. Land Use - Karen Cohen and Lori Schweller. The committee submitted a written report.

7. Residential Real Estate - Ben Winn reported that Susan Walker had been elevated to emeritus status on the committee and that Rachael Hinson had agreed to serve as the new co-chair of the committee. The committee should be meeting virtually next week.

8. Title Insurance - Cynthia Nahorney. Cynthia and her committee continue to look for people in the title insurance and underwriting field to replace the aging title examiners and underwriters. The Virginia Land Title Association offers an education and licensing program. She would like to see possible trainers step up to help, particularly if they can offer employment to successful or promising trainees.

9. Virginia Bar Association - new Chair Shane Murphy advised that a legislative wrap-up would be provided at the June meeting.

#### **VI. NEW BUSINESS.**

1. Susan Pesner discussed the new Fee Tail project and a possible real estate listserv specific to Virginia. She recounted her conversation with Dale Wittman, coordinator of the national Dirt Digest listserv. She inquired if she could get a Board resolution to get posting approval, and search for a possible administrator/coordinator, perhaps a law school professor. She envisioned adding non-Virginia State Bar participants to the listserv. George Hawkins inquired if this listserv would be interactive (which it will not).

Katherine Byler reported that Regent law students were not showing much interest in getting involved with this particular section project. Discussion was had about contacting every law school property professor in Virginia law schools to find possible interest.

Rick Chess moved to approve the project and proposed that Listserv participants report and submit to any of three officers named to approve and pass on content submissions. Sarah L. Petcher seconded and the motion was approved unanimously.

2. One Area Representative candidate was presented for nomination:

a. Karen Cohen presented D. Scott Foster of GentryLocke, who concentrates his practice in Land Use and Solar Development.

Karen moved to close the nominations and Sarah seconded. The candidate was elected unanimously.

#### **VII. MISCELLANEOUS AND CLOSING:**

Announcements:

a. Congratulations to Real Property Section members who are listed on the Virginia Lawyers Weekly Attorney Hall of Fame.

b. Karen Cohen reported on the upcoming Heirs Property meeting in late March at the University of Virginia Law School.

c. Next meeting would be at the annual summer quarter to coincide with the State Bar meetings in June in Virginia Beach. More details to come.

d. Sarah Louppe Petcher has planned the upcoming strategic planning committee for assistance, advice, and guidance for her upcoming term as well as for transitioning to the following term.

e. The Annual meeting in June is back to a live format.

f. Dinner this evening will be held in the Allegheny Room at the Inn.

Meeting adjourned by the Chair at 12:03 PM.

**BOARD OF GOVERNORS  
REAL PROPERTY SECTION  
VIRGINIA STATE BAR  
(2023-2024)**

<b>Full Name</b>	<b>Position</b>	<b>Address of Record</b>	<b>Term Start</b>	<b>Term End</b>
Sarah Louppe Petcher	Chair	S&T Law Group 6641 Locust St Falls Church, VA 22046	7/1/2019	6/30/2025
Robert Hawthorne, Jr.	Vice Chair	Hawthorne & Hawthorne, P.C. 1805 Main Street, PO Box 931 Victoria, VA 23974	7/1/2018	6/30/2024
Richard B. Chess	Secretary	Chess Law Firm, PLC 3821 Darby Drive Midlothian, VA 23113	7/1/2017	6/30/2026
Karen L. Cohen	Immediate Past Chair	Gentry Locke Attorneys PO Box 780 Richmond, VA 23218-0780	7/1/2023	6/30/2024
Shane M. Murphy	Ex-Officio	Miles & Stockbridge, P.C. 1751 Pinnacle Drive, Ste 1500 Tysons, VA 22102	1/23/2023	6/30/2024
Cynthia A. Boretsky	Board of Governors	Fidelity National Title Insurance Co. 4525 Main Street, Ste 810 Virginia Beach, VA 23464	7/1/2023	6/30/2026
Vanessa S. Carter	Board of Governors	716 Dissdale Lane Chesapeake, VA 23320	7/1/2023	6/30/2026
George Hawkins	Board of Governors	Dunlap Bennett & Ludwig, PLLC 8300 Boone Boulevard, #550 Vienna, VA 22182	7/1/2022	6/30/2025
Blake Hegeman	Board of Governors	12101 Robson Street Henrico, VA 23233-1735	7/1/2021	6/30/2024
Kevin Pogoda	Board of Governors	Old Republic National Title Insurance Co 7960 Donegan Drive, Ste 247 Manassas, VA 20109	7/1/2022	6/30/2025
John E. Rinaldi	Board of Governors	Walsh, Colucci, Lubeley & Walsh, P.C. Glen Park I, Suite 300 4310 Prince William Parkway Prince William, VA 22192	7/1/2022	6/30/2025
Heather Steele	Board of Governors	Pesner Altmiller Melnick DeMers & Steele 8000 Westpark Drive, Ste 600 Tysons, VA 22102	7/1/2021	6/30/2024
Benjamin C. Winn Jr.	Board of Governors	Benjamin c. Winn Jr., Esquire, PLC 42485 Cochran Mill Road Leesburg, VA 20175	7/1/2023	6/30/2026
Dolly C. Shaffner	Liaison	Virginia State Bar 1111 E Main St Ste 700 Richmond, VA 23219-0026	7/1/2023	6/30/2024
Kim Villio	Liaison	105 Whitewood Drive Charlottesville, VA 22901-1613	7/1/2023	6/30/2024

This list and additional information about the Board of Governors can be found at:

<https://vsb.org/RP/groups/RP/rp-board.aspx>

**REAL PROPERTY SECTION  
VIRGINIA STATE BAR  
AREA REPRESENTATIVES  
(2023-2024)**

*[Note: as used herein, a Nathan<sup>1</sup> (\*) denotes a past Chair of the Section, and a dagger (†) denotes a past recipient of the Courtland Traver Scholar Award]*

**AREA REPRESENTATIVES**

Area Representatives are categorized by six (6) regions: Northern (covering generally Loudoun County in the west to Prince William County in the east); Tidewater (covering generally the coastal jurisdictions from Northumberland County to Chesapeake); Central (covering generally the area east of the Blue Ridge Mountains, south of the Northern region, west of the Tidewater region and north of the Southside region); Southside (covering generally the jurisdictions west of the Tidewater region and south of the Central region which are not a part of the Western region); Valley (covering generally the jurisdictions south of the Northern region, west of the Central region and north of Botetourt County); and Western (covering generally the jurisdictions south of Rockbridge County and west of the Blue Ridge Mountains).

**Central Region**

Ross Allen  
Owen & Owens  
15521 Midlothian Turnpike #300  
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# Virginia State Bar Real Property Section Membership Application

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## 1. Contact Information

Please provide contact information where you wish to receive the section's newsletter and notices of section events.

Name: .....

VSB Member Number: .....

Firm Name/Employer: .....

Official Address of Record: .....

.....

.....

Telephone Number: .....

Fax Number: .....

E-mail Address: .....

## 2. Dues

Please make check payable to the Virginia State Bar. Your membership will be effective until June 30 of next year.

\$35.00 enclosed

## 3. Subcommittee Selection

Please indicate any subcommittee on which you would like to serve.

### Standing Committees

- Fee Simple Newsletter
- Programs
- Membership
- Technology

### Substantive Committees

- Commercial Real Estate
- Creditors Rights and Bankruptcy
- Residential Real Estate
- Land Use and Environmental
- Ethics
- Title Insurance
- Eminent Domain
- Common Interest Community
- Law School Liaison

## 4. Print and return this application with dues to

Dolly C. Shaffner, Section Liaison Real Property Section  
Virginia State Bar  
1111 East Main Street, Suite 700  
Richmond, VA 23219-0026

