



The Real Property Section is pleased to provide its members with *The Fee Tail*, a newsletter with timely cases and statutes of interest to the practice of real estate law in the Commonwealth. We welcome all of our members to submit ideas for future *Fee Tail* issues to [Sarah Louppe Petcher](#). We prefer to draw these cases from our members, so if you have recently litigated (or are aware of) a current real estate case, either at the trial court or appeals level or a recent statute of interest to the section, please contact us.

Below are a recent court of appeals case of interest, a ruling from the CFPB, and updated guidance from FinGen.

Cases of Interest

[Everett v. Parson](#) (Court of Appeals of Virginia, unpublished opinion) — July 16, 2024
In a recent unpublished opinion, the Court of Appeals of Virginia found that a circuit court had erroneously rejected a descendant's adverse possession claim, which relied on her mistaken belief that she owned a portion of a family farm that she and her husband had openly and exclusively utilized for farming and mining operations for more than two decades. The appellant, Anne Everett, had received two parcels by deed of gift from her father, Mr. Parson, in 1994. Parson himself had received the land under his father's 1973 will. Everett and her husband farmed the gifted parcels from 1994 until 2007. The farming activity was clearly visible from public roads. In 2007, with Everett's consent, a mining company that had rights pre-dating her ownership, took possession of the parcels and began mining operations. The mining operation was visible, exclusive, and continuous until at least the end of 2010.

In 2012, relatives of Everett asserted that the mining company was trespassing on a small

triangle of the land they believed had not been conveyed to Parson in the 1973 will. Instead, they asserted that the triangle had actually passed to Parson's mother under the residuary clause of the 1973 will and that Parson's mother had subsequently devised the parcel to all five of her children. Everett filed an action to quiet title against the relatives. She argued she acquired title to the triangle by adverse possession by openly and actively farming and mining the property for the statutory period. The relatives filed a demurrer, arguing that Everett could not adversely possess property that she mistakenly believed she had been deeded. The lower court agreed and dismissed the case. The Court of Appeals reversed. It explained that adverse possession requires a claimant prove actual, hostile, exclusive, visible, and continuous possession in order to prove a claim of right under adverse possession. Since Everett alleged that she had possessed and used the parcels in an exclusive manner that was visible from public roads, the fact that she mistakenly believed that she had been deeded the property did not defeat her claim because she still possessed a "definite and positive intention" to possess the disputed parcel and had done so for the statutory period to the exclusion of all others. In reaching its decision, the court stressed that Everett's claim to the parcels was not based solely on the description in the 1994 deed but also on her belief that the Everett Farm's property line included the two parcels. Had Everett based her claim solely on a mistaken belief that the 1994 deed conveyed the property to her, the outcome may have been different. See *Chaney v. Hayes*, 250 Va. 155 (1995) (use of property under mistaken solely under belief that it was granted by a recorded right will not support a claim of adverse possession).

Rulings of Note

[CFPB Advisory Opinion: Contracts for Deed subject to TILA](#) — August 12, 2024

A contract for deed is a type of home loan, alternatively called a "land contract," "land installment contract," "land sales contract," "bond for deed," "agreement for deed," or "buying on contract." Home loans commonly referred to as contracts for deed, which this advisory opinion refers to as "contracts for deed." In a typical contract for deed, a homebuyer agrees to make periodic payments to the home seller, and the seller retains the deed to the property until the loan is fully repaid. Loan terms vary but often range from five to 30 years and may include balloon payments. Properties are often purchased as is, without inspection or appraisal, and may have property condition issues that prevent them from being suitable for rental or qualifying for mainstream mortgage financing.

Additionally, because the sales price of the home may not be tied to appraisal or other typical market measures, the sales price may be inflated. During the repayment period, the buyer has the exclusive right to occupy the home and often assumes many of the responsibilities of homeownership, including paying for taxes, insurance, home maintenance, and repairs. In this opinion, the CFPB states that these contracts for deed are generally subject to the Truth in Lending Act (TILA) in the same manner as mortgage loans.

TILA applies only to creditors who make five or more extensions of credit per year, unless a particular loan or contract is high cost credit. In that case, a single extension of credit per year will trigger application of TILA. If TILA applies to a contract for deed:

- The seller has a duty to assess the buyer's duty to repay.
- The seller must provide the interest rate and other disclosures required by TILA.
- In most cases, balloon payments are prohibited.

[FinCEN Issues Notice to Financial Institution Customers on Beneficial Ownership Information Requirements](#) — July 26, 2024

The Financial Crimes Enforcement Network (FinCEN) issued a notice to customers of financial institutions about reporting beneficial ownership information. The Corporate Transparency Act requires certain entities, including many small businesses, to report to FinCEN information about the individuals who ultimately own or control them. A separate regulatory requirement currently requires many financial institutions to also collect beneficial ownership information from certain customers that seek to open accounts as part of federal customer due diligence requirements. This notice provides answers to key questions about: (1) reporting beneficial ownership information to FinCEN under the Corporate Transparency Act; and (2) providing beneficial ownership information to financial institutions in connection with federal customer due diligence requirements. FinCEN encourages financial institutions to share [this reference guide](#) with customers that may be required to report beneficial ownership information.



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