TOPIC: CHAIN OF TITLE

TITLE SEARCH & CLOSING RULES:
1. The chain of title comprises the listing of conveyances in and out of all interests in the property to be insured. Each interest must be fully accounted for up to the current time.

2. Time of recording governs priority of conveyances and encumbrances, not the book and page or order placed in the “books” of record. Therefore, two deeds of trust have co-parity or equal priority if they are recorded simultaneously unless either a subordination of the purported “second” is also recorded, or the purported “second” clearly shows on its face that it is a second mortgage subordinate to the simultaneously recorded first.

3. In order for any conveyance to qualify as valid at recording, it must also comply with all statutory and case law minimum requirements to constitute a conveyance, execution and acknowledgment statutes. (See “Conveyancing”)

4. The Minimum Standards for Indexing Real Property Instruments have been published by the Secretary of State and North Carolina Association of Registers of Deeds. They are available online at: http://www.secretary.state.nc.us/land/

5. Any deeds of trust, easements or outstanding ownership interests that are revealed by the record must be reported to the title company as exceptions. Notation should be made if they are to remain exceptions or if they are to be paid or recorded waivers, subordinations, joinders or releases obtained at closing, as appropriate for the particular exception.

TITLE INSURANCE REQUIREMENTS, EXCEPTIONS AND COVERAGE:
Title insurers rely completely upon the Preliminary and Final Title Opinions of the certifying approved attorney and the documents provided with them. If the conveyance from any interest holder through successive conveyances (whether by deed of estate) into the current owner cannot be determined, waivers or quitclaims may be required at closing, or an exception will be required in the policy for that interest.

FORMS:
Chain of Title Sheet
Exception Sheet

LEGAL DISCUSSION:
(Author: Jeffrey I. Hrdlicka)

"Chain of Title" is the record history of the ownership of a parcel/tract of real property. By examining the records the offices of the Register of Deeds and the Clerk of Superior Court (estates, special
proceedings and judgments), the successive conveyances of real property, and, thus its title ownership, can be established. In order to insure title to real property, we require that the certifying attorney search the property's chain of title for at least thirty years. Note - In some circumstances a shorter search period is allowed. (Please see Topic “Search Periods”)

Effect of Recording: Recording a document, such as a deed, deed of trust or easement, provides notice to third parties (those not a party to the document) that an interest in real property has been conveyed or is claimed. Third parties are entitled to rely upon the recorded document, if it is signed by the record owner of the property. This is the method in which priority to real property is established. Priority is established by the time of recording and not by the order of documents. As title insurance insures the ownership and priority of a real property interest, we can only insure real property interests which are established of record. In other words, we cannot insure deeds or deeds of trust which are not recorded.

Title Search: A title search is the method to establish a complete, unbroken chain of successive ownership of real property and to find any objections, exceptions, restrictions or defects in title. In a title search the searcher does the following:

1. Examines the grantee and grantor indexes to establish the chain of title and search for any out conveyances of interests to the real property.
2. Examines any recorded plats or maps of the subject property.
3. Examines the UCC Fixture Filing Financial statements.
4. Examines the good standing of corporate, limited partnerships, or limited liability company grantors.
5. Examines the judgments index for judgments, liens, or lis pendens.
6. Examines the lunacy index for all grantors.
7. Examines the special proceedings index for incompetency, foreclosures, or partitions.
9. Examines estate records to verify heirs, estate taxes, claims of creditors, and date of death.
10. If necessary, examines birth records, death records, or marriage records.

The “chain of title” is established by determining exactly who, owned exactly what interest, how and when they received it (by a record deed or will or intestacy, for example – often called the “in’s”) and how and when they transferred it out to another (usually called the “out’s”). If no “out” conveyance is found, then the person or entity is considered to still have an interest and must be accounted for in determining the documentation needed for closing. Usually this takes the form of a Requirement in the commitment for a deed from this owner to our proposed insured owner. But it could just as easily be a
requirement for a termination of a recorded lease or release of an easement or life estate that is to be cleared from the property and not desired as an exception to title after closing.
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EXCEPTION SHEET

CLOSING DATE: ____________________ SEARCH PERIOD: __________________ a.m./p.m.

BUYER/INSURED: _________________________________________________________________

SELLER: _________________________________________________________________________

ADDRESS: ________________________________________________________________________

BRIEF DESCRIPTION: _______________________________________________________________________

USE OF PROPERTY: COMMERCIAL ___ RESIDENTIAL ___ OTHER ____

COVERAGE AMOUNT: __________________

DEED REFERENCE: BOOK ________ PAGE __________ (Copies Attached)

DEEDS OF TRUST OF RECORD: (Copies Attached)

TO: ____________________________________________________ Trustee:____________________

Date:_________   Book ________  Page __________  Amt:___________

Circle one: Pay?     Remain?    Subordinate?)

TO: ____________________________________________________ Trustee:____________________

Date:____________   Book ________  Page __________  Amt:____________________

Circle one: Pay?     Remain?    Subordinate?)

TO: ____________________________________________________ Trustee:____________________

Date:____________   Book ________  Page __________  Amt:____________________

Circle one: Pay?     Remain?    Subordinate?)

NEW LENDER: __________________________________________________________

Coverage:_________________  Type of Loan: CV HUD VA COM RES CON

ALTA:   4(Condo) 5(PUD) 6(Variable Rate) 7(Mobile Home)

8.1(Environmental)  9(Comprehensive)    Other ____________    

RESTRICTIVE COVENANTS:

Book ______ Page ______ ; Book _______ Page __________ ;

Book ______ Page ______ ; Book _______ Page __________ ;

Book ______ Page ______ ; Book _______ Page __________ ;

Setbacks: Front: ______  Side: ______ Interior: ______  Rear: ______

Other: ________________________________________________________

PLAT OR MAP:   Book: ________  Page: __________

Setbacks: Front: ______  Side: ______ Interior: ______  Rear: ______

Other easements per map: ________________________________________

Access to Public Right of Way: Yes [ ] No [ ]

Direct [ ]; or over a private easement [ ]  If over a private easement, has a search been made of
adjoining property on which easement crosses?   Yes [ ] No [ ]

TOPIC: Chain of Title

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LIEN PERIOD EXPIRED: HAS / HAS NOT EXPIRED

MOBILE HOME LOCATED ON PROPERTY? _______

TAXES PAID THRU: ______  TAXES NOW DUE & PAYABLE ______

ASSESSMENTS DUE OR PAYABLE IN FUTURE INSTALLMENTS:

______________________________  

ATTORNEY’S SIGNATURE

Prior Policy:  Company_______________ Policy #_________________

Mail or Fax to:  ________________________________  

______________________________  

*PLEASE ATTACH CLERK’S SHEET AND/OR ESTATE SHEET IF APPLICABLE