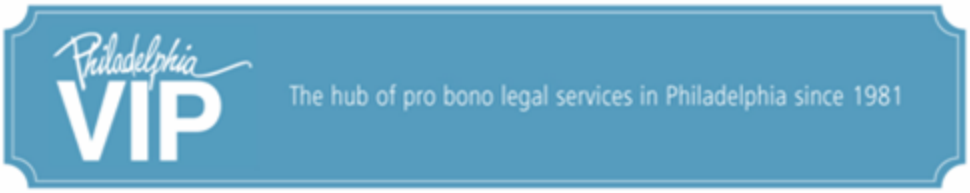

QUIET TITLE TRAINING GUIDE

Handling Cases Involving Problems with Title to Real Estate

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With many thanks to our host

Portions of these materials were originally created by Edward Hayes, Esquire, of Fox Rothschild LLP, and are reprinted with his permission.

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Appendix

This training guide and the complete Appendix are available online:
https://www.phillyvip.org/resources/?_sft_resource-category=quiet-title

THE IMPACT OF HOMEOWNERSHIP ISSUES ON CLIENTS AND THE GREATER PHILADELPHIA COMMUNITY

Homeownership cases are also known as "tangled title" cases. Our clients have embraced this term, because it describes a variety of legal issues that create a problem with ownership of real estate or a "cloud" on title. Many homeowners first find out during a crisis that they do not have legal title to their homes.

Individuals who have a "tangled title" problem have a legal interest in their homes but are not the record (or legal) owner. There are many scenarios in which an individual may have a tangled title problem. Many individuals are living in a home titled in the name of a deceased relative whose estate was never probated. Others may have entered into a lease/purchase agreement (also know as rent-to-own agreements or installment land contracts), where they have paid all or most of the purchase price for their home to the owner but the owner has since died, disappeared, or refused to convey title. Some individuals may also be the victim of a fraudulent deed transfer, whereby someone forged their name on a deed and purported to transfer title of their home out of their name.

VIP clients are referred from other agencies, including: Community Legal Services, Philadelphia Legal Assistance, Homeless Advocacy Project, and the SeniorLAW Center.

The Impact on Clients

Tangled title problems have serious consequences for low-income Philadelphians. Without legal title to their home, our clients may not be able to:

- obtain a grant or loan to make urgently needed repairs;
- enter into a payment plan for delinquent water/sewer or real estate tax bills, in order to avert a Sheriff's sale of their home;
- negotiate with a mortgage company as to a delinquent mortgage;
- obtain homeowners' insurance; or
- transfer or encumber title in the future

As a result, if tangled title issues are left unresolved, clients are often left with the nearly impossible choice of living in unsafe conditions or becoming homeless. Unresolved tangled titles may also eventually lead to foreclosures and Sheriff's sales, if delinquent bills relating to the property cannot be negotiated. Because of these consequences, tangled title problems may ultimately deprive individuals of the only asset that could prevent them and their future generations of sinking more deeply into poverty.

It is notable that many Philadelphians without title to their homes are elderly. At least

5% of the elderly interviewed at senior centers describe themselves as homeowners but also say that their names are not on the deed to their property. Additionally, one-third of all properties in Philadelphia are owned by senior citizens. Thus, the impact of homeownership issues on the Philadelphia housing stock is significant due to its prevalence within the elderly population alone.

The Impact on Homes and Neighborhoods in Philadelphia

The impact of tangled titles also extends far beyond the individuals whose homes are directly affected, reaching into the neighborhoods and the broader Philadelphia community in which these homes lie. When an individual with a tangled title problem is forced to leave a property due to her inability to repair it, the property is left abandoned and in significant disrepair. Vacant homes are prone to attracting criminal activity and also pose safety and fire dangers. Consequently, the City may board up or demolish such homes, which is done largely at taxpayers' expense due to the City's inability to collect the costs through the sale of a valueless property. Abandoned properties also decrease the value of other properties on the block by an average of $7,000 and may prevent other homeowners who live within 50 feet from obtaining homeowners' insurance due to the heightened risks. Unresolved title problems also contribute to the occurrence of homelessness in the City, further straining very limited resources available to the approximately 2,500 Philadelphians who already sleep in shelters in the City every night.

The Difference That Volunteer Attorneys Make

Solving homeownership issues and encouraging estate planning can preserve housing, stabilize neighborhoods, prevent homelessness, and strengthen the Philadelphia community's real estate tax base. Volunteer attorneys who assist clients in obtaining title to their homes greatly contribute to the Philadelphia community's ability to meets these goals. Volunteer attorneys also contribute by assisting clients in taking proactive, preventative steps to safeguard their ownership interests in their homes, such as by creating wills for their clients and helping clients to obtain title insurance. While homeownership issues among low-income clients can be difficult to prevent altogether, early intervention can help keep people in their homes and can decrease the prevalence and impact of homelessness and home vacancy on Philadelphia's citizenry and community.

HELPFUL RESOURCES AND CONTACT INFORMATION

The following are resources that will be of help to you in handling a VIP homeownership case:

- Pennsylvania Consolidated and Unconsolidated Statutes, http://government.westlaw.com/linkedslice/default.asp?SP=pac-1000 **- This website provides free access to the Pennsylvania Consolidated and Unconsolidated Statutes, including:**
    - **Title 21, Deeds and Mortgages – including §§ 721(1)-(12) (Mortgage Satisfaction Act)**
    - **Title 68, Real and Personal Property – including §§ 901 – 911 (Installment Land Contract Law**

- Pennsylvania Code, Rules of Civil Procedure, http://www.pacode.com/secure/data/231/231toc.html **- This website provides free access to the Pennsylvania Code's Rules of Civil Procedure.**

Also, below is a list of contact information for agencies that are frequently encountered in handling quiet title matters.

Philadelphia Court of Common Pleas, Office of Judicial Records, Civil Filing Center and Electronic Filing Support	City Hall, Room 296	(215) 686-4251, 4252 Electronic Filing Support: (215) 686-2530, 2531
Philadelphia Court of Common Pleas, Office of Judicial Records, Civil Motions Program	City Hall, Room 280	(215) 686-8863, 6671, 2526, 2528
Philadelphia Court of Common Pleas, Office of Judicial Records, Discovery Court Program	City Hall, Room 691	(215) 686-4246, 4247

Most importantly, you can always contact VIP with any questions or concerns that you cannot otherwise resolve. We are always here to provide guidance or advice whenever we can.

However, we ask that our volunteer attorneys use our training materials as a primary resource. Our most current training materials, including sample forms, are available at

http://www.phillyvip.org/content/training-materials (agree to the Terms of Use; then under the "Online Resource Library" on the left, click the "Homeownership" link), downloadable in both Word and PDF format. Our website also contains recent developments and updates that are relevant to all of our homeownership clients' cases.

Also, VIP sets up relationships between volunteer attorneys and mentors with extensive quiet title litigation experience. **We strongly encourage our volunteers to make use of these mentors for consultation on substantive or procedural legal issues not otherwise addressed by the training materials or by any outside resources they reference.** Please do not hesitate to contact VIP for referral to a quiet title litigation mentor.

The VIP staff can be reached at 1500 Walnut Street, Fourth Floor, Philadelphia, PA, 19102, (215) 523-9550, fax (215) 564-0845. The following are staff members at VIP whom you may also contact directly:

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KGastley@PhillyVIP.org

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LSchoonmaker@PhillyVIP.org

STEP 1: COMPILING PERTINENT DOCUMENTATION AND INFORMATION ON THE PROPERTY AND OPPOSING PARTIES

Before you determine which approach to take regarding your client's homeownership case, you should first gather as much information as you can regarding the property and the decedent. To begin, you may find your client to be more open and communicative if you reassure him or her that all information that he or she relays to you is confidential.

It is particularly important to ask open-ended questions that probe the client for as much potentially useful information as possible, as clients sometimes tend to relay only that information that they view as relevant and/or favorable to their case. It is useful to stress to clients how important it is that you have as much information on the property and decedent as possible before you can proceed forward with their case. Clients often may have or be able to easily obtain the documents or information you need to proceed forward with their case, but they may not realize the importance of the documents or information until you ask about it from several different angles.

I. Documents Pertaining to the Property

A. BASIC PROPERTY INFORMATION

1. Documents Held by the Client

First, you should collect from the client all documents that he or she has that pertain to the property, including, as applicable:

- the deed to the house
- any applicable agreements (e.g., lease/purchase agreement, lease with an option to purchase, mortgage)
- receipts for payments made by the client pursuant to the agreement, if applicable
- mortgage statements, particularly if foreclosure is an issue
- utility and tax bills, particularly if they are delinquent and/or may subject the property to foreclosure or a Sheriff's sale

2. OPA Account Details

Second, if it is not already included in your case file, you should obtain the property's OPA Account Details from the Philadelphia Office of Property Assessment (OPA). The OPA

Account Details provides basic information on the property including the last sale of the property, its assessed value, and any tax balances owed on the property. You can find this information by going to http://opa.phila.gov and clicking on "Property Search."

3. Deeds and Other Recorded Documents

You should receive a copy of the last deed recorded for the property with the VIP case file. Should you need copies of any other documents recorded at the Philadelphia Department of Records – including other deeds or mortgages – please ask a VIP staff member to send you the document. (See "Helpful Resources and Contact Information" for our contact information.) VIP can obtain these documents (often through "PhilaDox," the Department of Records' online index) at no charge.

B. TITLE REPORT

A few weeks after you receive the referral for your VIP case, a VIP staff member will send you a title report for your client's property. It is essential to review the title report very carefully, in order to find out if there are any liens, judgments, or other issues with the property that need to be considered before determining how to resolve the case. (See Appendix for more information on understanding title reports.)

Once you have received the title report, you should carefully review it and discuss the results with your client. Because the title report may reveal liens on the property that the client was not aware of, it is important that the client understand that if he or she obtains title to the property, it will be subject to those pre-existing liens. On occasion, VIP clients do decide not to proceed forward with obtaining title to the property due to extensive liens of which they were not aware. **As a result, it is vital that you advise and counsel the client as to this issue.**

If the results on the title report are unclear or appear in error, it is very useful to discuss it with the title insurance company that ran the report**. Should you need any further help in deciphering or otherwise analyzing the meaning of the items listed on the title report, please see the Appendix for a guide on understanding title reports. You may also contact a VIP staff member for guidance at any time.** (See "Helpful Resources and Contact Information" for our contact information.)

C. DELINQUENT UTILITY CHARGES AND REAL ESTATE TAXES

Many VIP homeownership clients have delinquent utility charges and/or real estate taxes on their property. Often, the VIP case file will indicate whether there are delinquencies. Sometimes, clients will be aware of these delinquent bills when you first speak with them. In

other cases, you and the client may only become aware of the delinquencies by analyzing the title report. Regardless, it is important that your client understand that he/she will become responsible for paying down those delinquent balances once he/she has title. (See "Step 6: Dealing with Utility Charges and Real Estate Taxes" for further information on how VIP clients can enter into low-income payment plans for delinquent utility charges and real estate taxes once they obtain legal title.)

1. If Your Client's Property Has Delinquent Real Estate Taxes

a. Communicating with the City

If your client's property has delinquent real estate taxes, it is very important that you promptly send a letter to the City Law Department. The City is now regularly initiating court actions to have properties with delinquent real estate taxes sold at Sheriff's sale through the City Law Department. However, the City has agreed to delay any such court action against VIP clients who are in the process of obtaining legal title to their homes **and** who submit an Owner Occupied Payment Agreement (OOPA) Application for the delinquent taxes. The OOPA is a payment plan for delinquent taxes available to low-income record owners and equitable owners. (VIP probate clients are equitable owners because they are heirs with a legal interest in the property.) See the section "Dealing with Utility Charges and Real Estate Taxes" for more information on the OOPA.

As a result, you **must** contact the City to alert them that you are assisting your client in obtaining legal title and to request that they continue to delay court action against your client's property so that your client has time to submit an OOPA application. Once the OOPA is submitted to the City Law Department and approved, the court action will be informally stayed. See the section "Dealing with Utility Charges and Real Estate Taxes" for further explanation of the OOPA. (See Appendix for a sample letter to send to the City. See also, the section "Dealing with Utility Charges and Real Estate Taxes" for a further explanation of the parties involved with collecting delinquent real estate taxes.)

b. Registering a Notice of Interest with the City

In addition to sending the above correspondence, it is also advisable to formally register a notice of your client's interest in the property with the City, pursuant to 53 PA. C.S. § 7193.1. (See Appendix for the language of this statute.) This registering provides extra protection that you and your client will receive notice if the City does pursue collection of the delinquent real estate taxes in court.

The notice should be sent to the Philadelphia Department of Revenue and should include your client's name, residence, mailing address, and a description of the real property in which your client has an interest.

D. Determining the Value of Clients' Homes

In some VIP quiet title cases, you may need to determine the value of your client's home, often in order to negotiate with opposing parties. If a value is needed, you should review the Appendix for information on determining the value of your client's home, including the issue of obtaining an appraisal.

II. Information Pertaining to Opposing Parties

A. Opposing Parties Who Cannot Be Located

See Appendix for tips on searching for missing parties.

If you are not sure if a party is deceased, you can search the Social Security Death Index for free online at the following website:

- familysearch.org: www.familysearch.org/search/collection/show#uri=http://hr-search-api:8080/searchapi/search/collection/1202535

In searching these records, any information you have on the person, including last known residence, date of birth, and social security number, will be helpful.

Note that the Social Security Death Index is <u>not</u> a complete database of all of the deaths that have occurred in the United States. The index may not contain entries for an individual who did not pay into the social security system, whose death was not reported to the Social Security Administration, whose death occurred in the earlier half of the 20th Century, or whose death occurred very recently. However, it is an excellent free resource to use in particular when the date of death is unknown.

B. Opposing Parties Who Are Deceased

If the record owner who would normally be named as the defendant in a quiet title action is deceased, you will want to check to see if anyone has ever opened his or her estate at the Register of Wills by calling (215) 686-6261. (It is helpful if you have the year of death when you call the Register of Wills.)

If the record owner is deceased, you should engage the following parties in negotiations and/or litigation:

- the personal representative (AKA the executor or administrator) of the record owner's estate, if an estate has been opened (e.g., "Mary Heller, acting as the Personal Representative of the Estate of Samuel Jones");

- any known heirs of the record owner, by name; *and*

- any unknown heirs of the record owner (i.e., "Unknown heirs of the Estate of Samuel Jones")

Note that a deceased person cannot be a party to an action, and any attempt to name a deceased person as a party to an action is completely void and of no effect. (See *Montanya v. McGonegal*, 757 A.2d 947 (Pa. Super. 2000).)

STEP 2: ANALYZING THE APPLICABLE LAW – CLAIMS UPON WHICH A QUIET TITLE ACTION CAN BE BROUGHT

Once you have gathered the initial information and documentation on your client's quiet title case, you should next analyze the strength of your client's claim to title under the applicable law.

I. Lease/Purchase Agreements (AKA Installment Land Contracts)

Many VIP clients are seeking legal assistance because they have entered into lease/purchase agreements (also known as rent-to-own agreements and installment land contracts). Our clients typically seek legal help once they have paid all or most of the purchase price due under the agreement, but the seller has died, disappeared, or refuses to convey title to the client.

In this type of case - specifically, where the buyer is obligated to make six or more installment payments to the seller prior to obtaining legal title – Pennsylvania's installment land contract law applies (which is codified at 68 PA. C.S. §§ 901-911; see, in part, Appendix). The sections below discuss the important provisions of Pennsylvania's installment land contract law.

A. THE TRANSFER OF EQUITABLE AND LEGAL TITLE

In a lease/purchase agreement, the buyer becomes the equitable owner of the property when the agreement takes effect (typically, when it is signed by both parties). However, legal title remains in the name of the seller until the buyer has paid the purchase price in full, at which point the seller is bound to transfer legal title to the buyer. Thus, Pennsylvania law treats the relationship between a seller and buyer in a lease/purchase agreement as it does a mortgagee and mortgagor in a residential mortgage. (See *Anderson Contracting Co. v. Daugherty*, 417 A.2d 1227 (Pa. 1979); *Stillwater Lakes Civic Ass'n v. Krawitz*, 770 A.2d 118 (Pa. Commw. Ct. 2001).)

1. Responsibility for Real Estate Taxes and Other Fees

Though there is no state case law directly on point, the law in Pennsylvania strongly

suggests that, absent any express provision in the agreement, the buyer is responsible for real estate taxes and other fees associated with the property once the agreement is made. (See *Anderson Contracting Co. v. Daugherty*, 417 A.2d 1227 (Pa. 1979); *Stillwater Lakes Civic Ass'n v. Krawitz*, 772 A.2d 118 (Pa. Commw. Ct. 2001).)

B. IMPLIED COVENANT FOR GOOD AND MARKETABLE TITLE

The seller gives an implied covenant that he will maintain good and marketable title during the entire term of the agreement. (See 68 PA. C.S. §§ 907(a)(1), or Appendix.) Note, however, that in order for a buyer to compel a seller to convey title "free and clear" of all encumbrances, the agreement must state such. Otherwise, the buyer must take title subject to any encumbrances that existed on the property at the time that the agreement was made.

The seller *can* mortgage the property (or incur some other lien) during the term of the agreement without breaching this covenant *as long as* the balance owed on the seller's mortgage (or other lien) does not exceed the unpaid balance of the purchase price. (See 68 PA. C.S. §§ 907(f), or Appendix.) For instance, if the buyer still owes $30,000 on the purchase price, the seller can mortgage the property as long as it is for an amount less than $30,000 *and* the balance owed on the mortgage never exceeds the balance that the buyer owes.

C. REMEDIES AVAILABLE TO BUYERS

1. If the Seller Is in Default

If the seller refuses to convey title once the buyer has fully performed under the agreement, the buyer can file a quiet title action to obtain title to the property.

If the seller instead breaches the implied covenant for good and marketable title, the buyer has the option of either (1) terminating the agreement and recovering her principal payments, or (2) remaining in possession of the property and paying interest only (and other costs and fees that are the responsibility of the buyer, such as real estate taxes and utilities, *but not* principal) to the seller. Before exercising either option, the buyer must give the seller written notice of the option the buyer will be electing after 60 days has passed. Before the 60 days has expired, the seller can then cure his default and provide notice of such to the buyer. (See 68 PA. C.S. §§ 907(b)-(c), or Appendix.)

If the seller does not cure his default, the buyer can then exercise the option she previously elected:

(1) *Terminating the contract* – If the buyer has decided to terminate the contract *and* has

surrendered possession, she can file an action to recover the payments she made that went toward the principal balance, as well as any other damages suffered. (See 68 PA. C.S. §§ 907(d), or Appendix.)

(2) *Remaining in possession and paying interest only (and other costs and fees)* – If the buyer has decided to remain in possession and pay interest only (and other costs and fees that are the responsibility of the buyer, such as real estate taxes and utilities), she must be prepared to pay the principal amount withheld if and when the seller cures the default. (See 68 PA. C.S. §§ 907(b)(2), or Appendix.)

2. If the Buyer Is in Default

If the buyer defaults on the agreement, she can surrender possession and then file an action to recover the payments she made that went toward the purchase price under the following conditions:

1) The buyer can only recover payments made in excess of 25% of the purchase price.

2) The seller can deduct from those payments any damages that the seller suffered due to the buyer's default.

(See 68 PA. C.S. §§ 906, or Appendix.)

D. REMEDIES AVAILABLE TO SELLERS

If the seller wants to terminate the agreement due to default by the buyer, the seller must give written notice of such (1) 30 days prior to termination, if the default is for failure to make installment payments, *or* (2) 60 days prior to termination, if the default is for failure to make repairs to the property. (See 68 PA. C.S. §§ 904, or Appendix.)

If the buyer does not cure his or her default, the seller can then do one of the following:

(1) *Terminate the contract* – The seller can terminate the contract and file an action for damages for breach of contract and/or for the recovery of possession of the property. (See 68 PA. C.S. §§ 905(d), or Appendix.) The seller's damages for breach of contract can include the amount by which the contract price exceeds the market price at the time of breach, as well as any unpaid amounts due (in installment payments or repairs) up to the point that the buyer surrenders possession of the property, but *cannot* include the unpaid balance of the purchase price. (See 68 PA. C.S. §§ 905(e), or Appendix.)

(2) *File an action for recovery of the amount in default* – The seller can file an action to recover the amount due up to the point that the buyer surrenders possession of the

property. (See 68 PA. C.S. §§ 905(c), or Appendix.) In taking this course of action, the seller still maintains the right to terminate the contract if the buyer does not cure the default. (See 68 PA. C.S. §§ 905(b), or Appendix.)

However, it is important to note that after the Pennsylvania installment land contract law was passed, the Pennsylvania Superior Court provided additional protection for defaulting buyers in lease/purchase situations by finding that sellers must comply with Act 6 (a law mandating that mortgage companies follow certain procedures in foreclosure actions) in order to terminate the lease/purchase agreement. (See *Anderson Contracting Co. v. Daugherty*, 417 A.2d 1227 (Pa. 1979).) In *Anderson*, the court extended the application of Act 6 to installment land contracts, under the premise that installment land contracts are considered "residential mortgages" under the language used in Act 6. (See *id.* at 1230-32; see also 41 P.S. § 101 *et al.*) The court did note that there is a conflict between the remedies and cure provisions in the installment land contract law and those in Act 6, but it did not settle the conflict. As a result, **the current law in Pennsylvania is that a seller must comply with Act 6, including bringing a mortgage foreclosure action, when a buyer in a lease/purchase agreement has defaulted.**

E. ENFORCING ORAL AGREEMENTS

Generally, the Statute of Frauds bars the enforcement of any oral contract pertaining to real estate. However, Pennsylvania courts have carved our exceptions to this rule that make many VIP clients' oral lease/purchase agreements enforceable. **Please contact a VIP staff member to obtain a copy of a research memorandum and supporting case law regarding this issue.** (See "Helpful Resources and Contact Information" for our contact information.)

F. RIGHTS OF THIRD-PARTY PURCHASERS (POTENTIAL *BONA FIDE* PURCHASERS)

It is important in all quiet title cases to assess whether there has been a transfer of the property to a third party since the client's interest in the property arose and, if there has been, whether that transfer has given the third party superior rights (or "priority") in the real estate. In many lease/purchase cases, the seller attempts to transfer title of the property to a third party or mortgage the property after the client's lease/purchase agreement commenced. In such a case, it is very important to determine whether that transfer has given the third party superior rights (or "priority") in the real estate.

Pennsylvania is a race-notice state, which means that if two or more parties claim a competing interest in real estate, the party who first records the document by which he or she obtained an interest in the property has superior rights (or "priority") in the real estate if that party is a bona fide purchaser. (See 21 Pa. C.S. § 351.) A bona fide purchaser is defined as a third party who (1) buys a property for meaningful value (e.g., not simply for $1 from a relative or friend), and (2) does not have actual or constructive notice that another party has an interest

in the property.

Analysis of a claim by a third party that they are a bona fide purchaser and thus should have priority in the real estate generally focuses on the issue of whether the third party (the "new owner" or the mortgage company) had notice of the client's interest in the property:

- Actual Notice: The client may assert that the third party had actual notice of his interest in the property – i.e., the third party came by to look at the property before "purchasing" it, and the client told the third party at that time that she owned the property and was not selling it. However, it is not common for a client to assert that a third party had actual notice of his interest.

- Constructive Notice: More commonly, the client may assert that the third party had constructive notice of his interest in the property. A third party is deemed to have constructive notice of another's interest in the property if any of the following are true:

    - An inquiry as to the interests of the party in possession of the property would reveal the client's interest in the property.

    - An examination of documents recorded at the local Department of Records would reveal the client's interest in the property. (This is generally not applicable in fraudulent conveyance cases, since the client is instituting the quiet title action in order to restore his record ownership.)

Thus, **a third party receives the protection of Pennsylvania's race-notice recording statute and thereby has priority over the client only if all of the following conditions are met:**

(1) the third party purchased the property for meaningful value,
(2) the third party was not explicitly told that the client had an interest in the property,
(3) the third party actually inquired into the interests of the person in possession of the property (e.g., the client) and the client did not make known his true interest, and
(4) the third party recorded her interest in the property before the client restored his record ownership of the property.

    - If the third party does not meet all of the above conditions, he is not a bona fide purchaser and thus should not receive the protection of Pennsylvania's race-notice recording statute, even if the third party recorded his interest first. As a result, you should ask the court to enforce the client's lease/purchase agreement and invalidate the third party's deed or mortgage.

    - If the third party does meet all of the above conditions, he is a bona fide purchaser and thus should receive the protection of Pennsylvania's race-notice recording statute. Since the third party recorded his interest in the property, the third party's deed or mortgage will stand. At this point, you should discuss with VIP how to proceed with the client's case. (See above, "Helpful Resources and Contact Information", for our contact information.)

Please contact a VIP staff member to obtain a copy of a research memorandum and supporting case law that address this issue. (See "Helpful Resources and Contact Information" for our contact information.)

II. Fraudulent Conveyances

Clients may need legal assistance to remedy a fraudulent conveyance that has occurred. Fraudulent conveyances most often involve a forgery of the owner's signature on a deed or an individual coercing or defrauding an owner into signing a deed. When one of these events occurs, a quiet title action can be brought to attempt to invalidate the fraudulent deed and restore the client as the legal and record owner of the property. However, it is very important to note the distinction between these two types of fraudulent conveyances:

- Forged deeds are **void ab initio**. – If an owner can prove through a quiet title action that her signature was forged on the deed, the fraudulent deed is considered void from its inception. This means that any subsequent transfers of title – including deeds and mortgages – are also void. In this instance, a third party who attempted to "purchase" the property from the grantee on the fraudulent deed or a bank that accepted a mortgage on the property from the grantee have no claim to title to the property; instead, their only cause of action lies against the grantee for the monetary value of the damage they have suffered.

- Deeds obtained by coercion or defrauding are **voidable.** – If an owner can prove through a quiet title action that she was improperly coerced or defrauded into signing a deed to the grantee, the fraudulent deed is considered voidable. This means that any subsequent transfers of title – including deeds and mortgages – are potentially valid until the owner attempts to invalidate the fraudulent conveyance. In this instance, it is very important to determine whether the subsequent transfer of title has given any third party (including subsequent purchasers or mortgagees/banks) superior rights (or "priority") in the real estate. See "Rights of Third-party Purchasers (Potential *Bona Fide* Purchasers)" for a thorough explanation of this important issue.

Please contact a VIP staff member to obtain a copy of a research memorandum and supporting case law that address this issue. (See "Helpful Resources and Contact Information" for our contact information.)

In both types of fraudulent conveyance cases, there may be a number of defendants involved. Sometimes, the person who perpetrated the fraud simply forged the true owner's signature on a deed and lists himself as the "grantee" on the fraudulent deed. Other times, the perpetrator may have acted as an "agent" claiming to have the authority to sell the property to a third party, with the third party having paid the perpetrator a purchase price in order to become the "grantee" on the fraudulent deed. Such a third party may or may not have been

complicit in the fraud. Because deeds cannot be recorded unless they are acknowledged in front of a notary, there may also be a notary involved who has acted negligently or in bad faith. Lastly, if the perpetrator or a third-party purchaser has taken out a mortgage on the property, the mortgage company would also need to be named as a defendant, to attempt to invalidate their interest in the property as well.

It is worth noting that some VIP clients who are victims of a fraudulent conveyance may not currently live in the property. In fact, if your client had to leave their home for a period of time (for example, due to treatment for an illness, or a brief re-location), their absence from the home is often the trigger for the perpetrator preying on their property, because the perpetrator has assumed that the client has abandoned the property and will not fight to regain title to it. In these situations, it is always important that the volunteer attorney frankly assess the condition of the property with the client, to ensure that it is not now in such disrepair that the client does not have a reasonable prospect of making it a safe, habitable home in the future.

- *Note on Statute of Limitations*: There is **no statute of limitations** in Pennsylvania for invalidating a fraudulent conveyance.

A. RIGHTS OF THIRD-PARTY PURCHASERS (POTENTIAL BONA FIDE PURCHASERS)

It is important in all quiet title cases to assess whether there has been a transfer of the property to a third party since the client's interest in the property arose and, if there has been, whether that transfer has given the third party superior rights (or "priority") in the real estate. In fraudulent conveyance cases, the perpetrators of the fraud often "sell" the property to a third party or obtain a mortgage against the property. In such a case, it is very important to determine whether that transfer has given the third party superior rights (or "priority") in the real estate.

Pennsylvania is a race-notice state, which means that if two or more parties claim a competing interest in real estate, the party who first records the document by which he or she obtained an interest in the property has superior rights (or "priority") in the real estate ***if*** that party is a *bona fide* purchaser. (See 21 PA. C.S. § 351.) A *bona fide* purchaser is defined as a third party who (1) buys a property for meaningful value (e.g., not simply for $1 from a relative or friend), and (2) does not have actual or constructive notice that another party has an interest in the property.

There are two important steps in analyzing a claim by a third party that they are a *bona fide* purchaser and thus should have priority in the real estate despite the fraudulent conveyance:

- Step 1: Was the original disputed conveyance the result of a forged deed or merely a fraudulent deed (obtained by coercion or other fraud)?

- If the disputed conveyance was the result of a forged deed, it does not matter whether the third party can prove that they are a *bona fide* purchaser, since any conveyance that follows a forged deed is invalid. In this case, you should ask that the court invalidate the forged deed and any deeds or mortgages that followed, *even if* the grantee or bank is a *bona fide* purchaser. (See discussion, above.)

- If the disputed conveyance was the result of a fraudulent deed (obtained by coercion, duress, or fraud), you need to analyze whether the third party is a *bona fide* purchaser. (See discussion, below.)

- Step 2: If the disputed conveyance was the result of a fraudulent deed (obtained by coercion, duress, or fraud), is the third party a *bona fide* purchaser?

  - Analysis of such a *bona fide* purchaser argument generally focuses on the issue of whether the third party (the "new owner" or the mortgage company) had notice of the client's interest in the property.

  - *Actual Notice:* The client may assert that the third party had actual notice of his interest in the property – i.e., the third party came by to look at the property before "purchasing" it, and the client told the third party at that time that she owned the property and was not selling it. However, it is not common for a client to assert that a third party had actual notice of his interest.

  - *Constructive Notice:* More commonly, the client may assert that the third party had constructive notice of his interest in the property. A third party is deemed to have constructive notice of another's interest in the property if any of the following are true:

    - An inquiry as to the interests of the party in possession of the property would reveal the client's interest in the property.

    - An examination of documents recorded at the local Department of Records would reveal the client's interest in the property. (This is generally not applicable in fraudulent conveyance cases, since the client is instituting the quiet title action in order to restore his record ownership.)

  - Thus, a third party receives the protection of Pennsylvania's race-notice recording statute and thereby has priority over the client only if all of the following conditions are met:

    (1) the third party purchased the property for meaningful value,
    (2) the third party was not explicitly told that the client had an interest in the property,
    (3) the third party actually inquired into the interests of the person in possession of the property (e.g., the client) and the client did not make known his true interest, *and*
    (4) the third party recorded her interest in the property before the client restored his

record ownership of the property.

- If the third party does not meet all of the above conditions, he is not a *bona fide* purchaser and thus should not receive the protection of Pennsylvania's race-notice recording statute. As a result, you should ask the court to invalidate the fraudulent deed and the third party's deed or mortgage.

- If the third party does meet all of the above conditions, he is a *bona fide* purchaser and thus should receive the protection of Pennsylvania's race-notice recording statute. Since the third party recorded his interest in the property, the third party's deed or mortgage should stand, even if the court finds that the original disputed conveyance was fraudulent.

- If the third party *bona fide* purchaser conveys the property to a non-*bona fide* purchaser, that grantee/ non-*bona fide* purchaser still receives *bona fide* purchaser protection. Roberts v. Estate of Pursley, 700 A.2d 475 (Pa. Super. Ct. 1997).

Please contact a VIP staff member to obtain a copy of a research memorandum and supporting case law that address this issue. (See "Helpful Resources and Contact Information" for our contact information.)

III. Adverse Possession Claims

Some VIP clients have an ownership interest in the property in which they live under adverse possession law, because they have lived at the property for such a long period of time and have been acting like the *de facto* owner of the property.

In order to acquire title by adverse possession, the plaintiff must establish that he is in possession of the property *and* that his possession is:

(1) actual;
(2) continuous (temporary breaks do not defeat adverse possession; see also discussion, below, regarding tacking);
(3) visible, notorious and distinct, (use that puts a reasonable person on notice that the land is being held by the adverse possessor as their own);
(4) exclusive (not based on use by a third party who is not a plaintiff); *and*
(5) hostile (not evidence of ill will but evidence of the intent to hold title against the interests of the record owner).

The plaintiff must also establish that he or she has been in possession of the property for a period of at least 21 years. (See 42 Pa.C.S. § 5530(a)(1).) Effective June 19, 2019, 42 Pa.C.S. § 5527.1(a) lowers the statutory period to 10 years for adverse possession of single-family dwelling not exceeding one-half acre. (See 42 Pa.C.S. § 5527.1(a).)

Along with the new 10-year statutory period, this law introduced a notification requirement for those filing to quiet title based on adverse possession (See 42 Pa.C.S. § 5530(c)). Notice upon the record owner is to be provided in a form approved by the Pennsylvania Supreme Court, as set forth in Rule 1065.1 of the Pennsylvania Rules of Civil Procedure. A template notice can be found in the appendix. If the record owner wishes to challenge the claim of adverse possession, he or she must respond to the action to quiet title within one year after the complaint and notice are served by commencing an action in ejectment against the plaintiff.

Nevertheless, the rights of successive owners may be "tacked" together to constitute a total of 21 years, as long as there is privity (some sort of chain or link – e.g., a purported agreement of sale or a familial relationship) between the successive owners whose period of adverse possession are being tacked together.

VIP has case law research available regarding various issues that arise in adverse possession cases. Please do not hesitate to contact a VIP staff member if you would like to review this research. (See "Helpful Resources and Contact Information" for our contact information.)

IV. Satisfactions of Mortgages

Clients may also have a problem with the title to their homes if there is a dispute over whether they have satisfied (i.e., fully paid) a mortgage they previously took out on the property. The Pennsylvania Mortgage Satisfaction Act (found at 21 P.S. §§ 721(1)-(12); see Appendix) provides the framework for seeking a mortgage satisfaction.

The Pennsylvania Mortgage Satisfaction Act provides that a lender is required to satisfy a mortgage upon demand (assuming that full payment has been made) within 60 days. However, demanding that the lender file a satisfaction can be difficult if the original mortgage company is no longer in existence. Difficulties also arise when the original mortgage company has assigned the client's mortgage to another company without properly filing an Assignment of Mortgage with the Department of Records. In such circumstances, it is necessary to track down the current mortgage holder (e.g., the company that bought out the original mortgage holder, or the company that has been assigned the mortgage). (See Appendix for tips on finding current mortgage holders.)

If the mortgage company fails to file a satisfaction of record within 60 days after demand is made, the mortgagor (the legal owner of the property) can bring a quiet title action against the mortgage company to have the record corrected and, under Pennsylvania law, can sue them for damages in the amount of the original mortgage price.

- *Note:* When filing a quiet title action for a mortgage satisfaction, there may also be additional claims to bring under the Pennsylvania Unfair Trades Practices and Consumer Protection Law and under state usury law, which provide for further damages. Please contact a VIP staff member to obtain a copy of a sample complaint bringing these claims. (See "Helpful Resources and Contact Information" for our

contact information.)

STEP 3: DETERMINING WHETHER THE CLIENT'S HOMEOWNERSHIP PROBLEM SHOULD BE RESOLVED

Once you gather the initial information on your client's case and analyze the applicable law, it is important to next consider whether it is to the client's advantage to resolve his or her homeownership problem. VIP makes a diligent effort not to refer any homeownership case where it is better for the client not to obtain title to the property. However, there are often facts and circumstances that may lead to this conclusion that are not fully developed until the volunteer attorney begins researching the client's case.

I. Assessing the Advantages and Disadvantages

The advantages to the client of resolving the homeownership problem may include:

- being able to stay in his or her home
- being eligible for home repair grant programs
- being able to negotiate with a mortgage company, utility company, or other lienholder to establish a payment plan to pay delinquent charges
- qualifying for a loan
- obtaining insurance on the home and the personal property within it
- being able to sell the house, transfer title, or leave the property to a friend or relative in a will

However, there may be disadvantages for the client in resolving his or her homeownership problem. For example, by obtaining legal title to the home, the client may:

- become responsible for a large amount of liens, as outlined in the title report, which he/she may be financially unable to handle or simply uncomfortable with assuming (see "An Important Note about Open Mortgages on the Property")

- risk losing the house to state assistance programs (like Medicaid and Medical Assistance) that provided the deceased record owner with services or benefit and thus have a claim on the assets of the deceased's estate

- subject the property to the claims of the client's creditors

Because every homeownership case is unique, it is vital that VIP and its volunteer attorneys carefully assess each client's case by considering the advantages and disadvantages to the client of resolving his or her homeownership problem *before* any major steps are taken to resolve the homeownership problem. In making this assessment, it is also important that

the attorney discuss these matters with the client and fully involve the client in the process of deciding how, and whether, the title problem should be resolved.

II. An Important Note about Open Mortgages on the Property

If your initial fact and document gathering (as described above in Steps 1 and 2) reveals that there is an open mortgage on the property (i.e., a mortgage that has not been satisfied or released of record) that is in the record owner's name, **it is vital that the mortgage situation be addressed before any steps are taken to actually transfer title of the property into the client's name**. This is because most mortgages contain a "due on sale" clause that states that the mortgage must immediately be paid in full if the mortgagor transfers title of the property to someone else.

If your client will need to obtain financing to take over a mortgage on the property, he or she should meet with a housing counselor immediately to go through a budget, obtain a credit score, and analyze the client's financial ability to handle a mortgage. **Please contact a VIP staff member for contact information for a housing counseling agency near your client.** (See "Helpful Resources and Contact Information" for our contact information.)

As you and your client address this mortgage issue, you should discuss any questions or concerns you have with VIP.

STEP 4: APPLYING TO THE TANGLED TITLE FUND

I. About the Tangled Title Fund

The Tangled Title Fund ("The Fund") is a grant program largely funded by the City of Philadelphia's Division of Housing and Community Development (DHCD) to help prevent homelessness and urban blight. It is administered by Philadelphia VIP. The monies in the Fund are used to pay for administrative, legal, and other costs that arise when low-income persons are seeking to clear title to their homes.

II. Client Eligibility for Receipt of Tangled Title Funds

In order to be eligible to receive Tangled Title funds, the client must meet the following requirements:

- The client must be "income eligible," meaning that his or her household income cannot exceed 200% of Federal Poverty Guidelines. VIP screens all clients to ensure that they are income eligible.

- The client's house must be structurally sound. It is not problematic if the property merely has repair issues; indeed, our clients often are seeking title on order to become eligible for a city repair grant. However, if the house is dangerous due to structural unsoundness or uninhabitable conditions, the client may not be eligible for Tangled Title funds.

- The extent of encumbrances on the property must not be too great. Liens held by the City for delinquent real estate taxes or liens for delinquent water and sewer charges are not necessarily problematic, because the relevant agencies are often willing to work with our clients to establish payment plans. However, third-party liens (particularly those sold by the City for delinquent taxes) that cannot be resolved may make a client ineligible for Tangled Title funds.

- The client's case must have decent prospects of resolution, from a practical legal perspective.

Generally speaking, any VIP homeownership client should be eligible for Tangled Title funds. However, if you have a concern that your client may not be eligible, you should contact the administrator of the Tangled Title Fund as listed on the Tangled Title Fund application

materials, available at tangledtitlefund.weebly.com.

III. The Application Process

Because both the approval process and actual disbursement of funds can take several weeks, **we strongly recommend that you submit a Tangled Title Fund application during the early stages of your client's homeownership cases.** The process works most smoothly and efficiently for you and the client when the client's application is approved before funds are actually needed, so that any questions or concerns that the Committee has regarding the initial application can be addressed up front and then disbursements can be made as promptly as possible thereafter.

A. Submitting a Complete Application

The most current application materials are available on the Fund's website, tangledtitlefund.weebly.com.

B. Costs That the Tangled Title Fund Covers

Most costs can be covered by the Fund. Following is a list of the most common costs incurred by clients and paid for by the Fund:

- probate filing fees (but not filing fees that can be waived by the filing and granting of a Praecipe to Proceed *In Forma Pauperis* (IFP))
- advertising
- inheritance tax (and interest and penalties, if your request for waiver is denied)
- real estate transfer tax
- title insurance, where the client is obtaining the property from a third party (and not through a will or intestate succession)
- delinquent real estate taxes and water/sewer charges (either principal amount owed, if not too high, or downpayment needed to establish a payment plan)
- other miscellaneous costs (but not recording fees)

Please note that neither VIP nor the Tangled Title Fund can provide funds for the client to pay consideration to the opposing party. While the Tangled Title Fund can pay for costs associated with the transfer of title, such as title insurance and transfer taxes, it cannot make any payments for consideration. As a result, if you are discussing a monetary settlement with an opposing party, it is vital that you discuss with the client, and with VIP as necessary, if and how the client may be able to make a settlement payment to the opposing party before any settlement agreement is reached or signed. Please contact VIP to discuss potential options that your client may have if a monetary settlement becomes possible. (See "Helpful Resources and Contact Information" for our contact information.)

If you are unsure whether a certain cost may be covered by the Tangled Title Fund, it is imperative that you discuss it with VIP *before* the cost is or must be incurred, or the Fund may not be able to pay or reimburse for that cost.

C. THE APPROVAL PROCESS

Once an application has been submitted, the Tangled Title Fund Advisory Committee reviews the case. In reviewing the case, the Committee will often provide guidance on strategies you can take to reduce costs or even avoid certain costs completely.

If the application is approved, the client becomes eligible to receive up to $4,000 in Tangled Title funds in the resolution of his or her case, based on the case description and budget submitted with the application.

IV. The Disbursement Process

Please visit the Tangled Title Fund's website, tangledtitlefund.weebly.com, for the most current information on requesting disbursements, the availability of funds, and our policy on firm donations and reimbursement.

STEP 5: RESOLVING QUIET TITLE CASES

I. Determining Who the Correct Parties Are

Once you and your client have decided to resolve your client's title problem, you should begin negotiating with the opposing parties to resolve the matter, if possible, but also prepare to file a quiet title or ejectment action, should it become necessary.

It is very important that you determine who all of the correct parties are before you begin negotiations or file a quiet title or ejectment action. Following are the most common parties that need to be included:

(1) record owner(s) of the property – These are the individuals named on the last valid, recorded deed. If the record owner of the property is deceased, see "Opposing Parties who are Deceased", for an explanation of who the correct party is.

(2) grantee on the last recorded deed – If a fraudulent deed was recorded after the last valid, recorded deed, the grantee(s) listed on the fraudulent deed should be parties to the action.

(3) perpetrator(s) involved in any fraudulent conveyance – If a fraudulent deed has been recorded, the perpetrator(s) involved should be parties to the action.

(4) mortgage company – If a mortgage company holds a mortgage on the client's property that will be affected by the quiet title or ejectment action (e.g., if you are seeking to invalidate the mortgage in a fraudulent conveyance case), the mortgage company (called the "mortgagee") should be involved as a party.

If you have any questions or concerns about who the correct parties are, you should discuss it with VIP before beginning negotiations or filing a quiet title or ejectment action. (See "Helpful Resources and Contact Information" for our contact information.) It is very important that you do not risk your client's claim to title by failing to join a necessary party in the action.

II. Resolving Title Problems Through Negotiations

It is nearly always advisable to first attempt to resolve problems with title to real estate without resorting to litigation. Some problems can be resolved by locating the opposing party and negotiating a settlement of the title problem at hand. In this instance, you may only need to prepare a deed, mortgage satisfaction or release, or other document for the parties to execute

and record.

When engaging in negotiations, you will likely need to determine the true net value of your client's home. (See Appendix for information on determining the value of your client's home, including the issue of obtaining an appraisal.) Often, the opposing party may think that the property is worth a lot of money, when in fact there may be many liens on the property that the opposing party incurred, significantly decreasing the net value of the property. Thus, you may be able to use any such unpaid liens as leverage in persuading the opposing party to sign his or her interest over to your client.

The only type of quiet title case that VIP does *not* recommend resolving solely through negotiations is a fraudulent conveyance case. A fraudulent deed should only be "undone" by obtaining a court order (through the filing of a quiet title action) that invalidates the fraudulent deed and confirms that your client is the legal owner of the property. It is *not* advisable to have the new "grantee" sign a deed over to your client, even if he/she actually agrees to do so, because that would only serve to validate the prior fraudulent conveyance, which would subject the property to creditors of the new "grantee" and which would result in transfer tax being owed. As a result, should the new "grantee" not object to your client's quiet title action (which does occur), it is best for the new "grantee" not to file an answer to your complaint and instead to sign a stipulation to that effect and then allow the court to enter a default judgment granting your quiet title action. (See Appendix for a sample stipulation.)

Please note that neither VIP nor the Tangled Title Fund can provide funds for the client to pay consideration to the opposing party. While the Tangled Title Fund can pay for costs associated with the transfer of title, such as title insurance and transfer taxes, it cannot make any payments for consideration. As a result, if you are discussing a monetary settlement with an opposing party, it is vital that you discuss with the client, and with VIP as necessary, if and how the client may be able to make a settlement payment to the opposing party before any settlement agreement is reached or signed. Please contact VIP to discuss potential options that your client may have if a monetary settlement becomes possible. (See "Helpful Resources and Contact Information" for our contact information.)

III. Resolving Title Problems Through Litigation

A. Applicable Rules of Civil Procedure

1. Rules Governing Quiet Title Actions

Actions to quiet title are governed by PA. R.C.P. 1061-1068. They may be brought to:

(1) compel an adverse party to commence an action of ejectment (*see* discussion, below);
(2) have a court declare the plaintiff's right or interest in the land, if that right or interest is in dispute;

(3) compel an adverse party to correct the record as to a right or interest in the land;
(4) validate, invalidate, or strike a deed or mortgage; *or*
(5) obtain possession of land sold at judicial or tax sale.

Note that the plaintiff must be in possession, or at least claim proper possession, of the land in order to bring a quiet title action. (See discussion, below, on when an ejectment or a quiet title action is appropriate.) Also note that there is no right to trial by jury in a quiet title action, so these actions will be resolved by motion or by a judge sitting in a bench trial. (See Pa. R.C.P. 1067, or Appendix.)

- *Note*: The Pennsylvania Superior Court has ruled that a seller in a lease/purchase agreement must comply with Act 6 (a law mandating that mortgage companies follow certain procedures in foreclosure actions) when a buyer has defaulted. As a result, a seller who wishes to terminate a lease/purchase agreement due to the buyer's default must file a mortgage foreclosure action, rather than a quiet title action. (See "Remedies Available to Sellers" for a full discussion of this issue.)

2. Rules Governing Ejectment Actions

Actions in ejectment are governed by PA. R.C.P. 1051-1058. (See Appendix.) An action in ejectment is brought by a plaintiff who has an immediate right to the property but who is out of possession. The purpose of an ejectment action is to remove the current occupants of the property and allow the plaintiff (the record owner) to resume possession.

- *Note*: If there is a landlord/tenant relationship between the plaintiff and defendant, the proper action is an eviction in Municipal Court. If there is no landlord/tenant relationship at issue, the proper action is an ejectment in the Court of Common Pleas.

The procedure for filing an ejectment action is largely the same as that of filing a quiet title action. (See Appendix for a sample Complaint in Ejectment.) The action can include a claim for rents or damages that arose from the defendant's possession of the land. There is no right to trial by jury in an ejectment action.

3. Determining Whether a Quiet Title Action or an Ejectment Action Is Proper

In some cases, it is clear whether a quiet title action or an ejectment action is proper.

- *Examples of when a quiet title action is proper:*
    - When the plaintiff is in possession of the property and is seeking to compel an adverse party to commence an ejectment action or forever be barred from asserting a claim against the property (under PA. R.C.P. 1061(b)(1))
    - When the plaintiff is in possession of the property and is seeking to have her

interest in the property determined by the court (under PA. R.C.P. 1061(b)(2)) – for instance, because she is the buyer in a lease/purchase agreement and would like to become the record owner

- When the plaintiff is not in possession of the property, does not have an immediate right to possession (and thus cannot bring an ejectment action), and is seeking to have her interest in the property determined by the court (under PA. R.C.P. 1061(b)(2)) – for instance, because she was the record owner, moved out of the property for a period of time, and a fraudulent deed has been recorded taking title out of her name and the "new owner" has taken possession of the property

- *Examples of when an ejectment action is proper:*

  - When the plaintiff is not in possession of the property and has an immediate right to possession – for instance, the plaintiff is the record owner of the property, moved out of the property for a period of time, and squatters moved into the property that she would now like to eject

In other cases, it is not as clear whether a quiet title action or an ejectment action is proper. This lack of clarity usually arises because it is unclear who has possession of the property, because (1) the property is abandoned or vacant, *or* (2) the plaintiff is out of possession but it is not clear that the defendant is in possession.

A 2002 decision by the Pennsylvania Supreme Court indicated that if there is an issue as to who is in possession, the trial court should first determine who is in possession and then decide whether it has the jurisdiction to hear an ejectment action or a quiet title action under PA. R.C.P. 1061(b)(2). (See *Siskos v. Britz*, 790 A.2d 1000, 1008 (Pa. 2002).) This is because a party can only file a quiet title action under PA. R.C.P. 1061(b)(2) if an ejectment action will not lie. Thus, if a party files an ejectment action and, in the alternative, a quiet title action under PA. R.C.P. 1061(b)(2) when possession is at issue, the trial court should first determine possession and then, if appropriate, decide the ejectment action before addressing the quiet title action under PA. R.C.P. 1061(b)(2).

B. INITIAL FILINGS

1. Commencing an Action Through a Writ of Summons

It can be necessary to commence an action involving a quiet title claim or an ejectment by a writ of summons rather than a complaint. The primary purpose of commencing a quiet title or ejectment action by summons is to enable you to file a *lis pendens* before you have prepared the complaint. A *lis pendens* protects the client's interest by putting third parties on notice that litigation pertaining to the real estate is pending and that your client has an interest in the property. (See "Filing a *Lis Pendens*" for further discussion on the *lis pendens*.) **If you are**

not sure if you should file a summons and *lis pendens* in your client's case, it is important to discuss it with a VIP staff member immediately. Failure to file a *lis pendens* can unnecessarily cause more harm to your client in many cases.

You can file a summons and *lis pendens* in any ejectment case. However, if you would like to file a summons and *lis pendens* in a quiet title case, you can only do so if you can list a claim other than a quiet title action as your primary cause of action. Examples of primary claims you could use include fraudulent misrepresentation stemming from the conveyance of real property (in the case of a fraudulent conveyance) and specific performance of a real estate contract (in the case of a lease/purchase agreement or agreement of sale). **Note that the Prothonotary's office will no longer accept a summons if a quiet title action is listed as the primary or only cause of action**, in accordance with Pennsylvania Rule of Civil Procedure 1063.

If you are able to commence the action by summons as explained above, you will need to file a Praecipe to Issue a Writ of Summons and the Writ of Summons itself. (See Appendix for sample forms.) When filing the summons, you will be prompted to answer the questions formerly found on the Civil Cover Sheet, regarding the basic case information (contact information for opposing parties and counsel, type of case, etc.). **When e-filing your summons, it is important to select the proper Program and Case Type.** Please see "Electronic Filing for Quiet Title and Ejectment Actions" on the court's mandatory electronic filing system and how to select the appropriate category for filing a summons.

You must then serve the Writ on all opposing counsel and unrepresented parties. (See "Service of Notice of the Initial Filing" on effecting service.)

When filing a Writ of Summons with a *lis pendens*, include all parties. If however, after the writ has been served, a new party emerges, you may reissue the writ to include new parties. Pa.R.C.P. 401(b)(2). Alternatively, Rule 401(b)(5) provides that "if an action is commenced by writ... and a complaint is thereafter filed, the plaintiff instead of reissuing the writ may treat the complaint as alternative original process and as the equivalent for all purposes of a reissued writ, reissued as of the date of the filing of the complaint." Therefore, a complaint following a writ acts as a reissued writ, and a reissued writ permits for new parties to be added.

2. Filing a Complaint

A quiet title or ejectment action should be commenced by filing a complaint if a summons is not necessary or possible. The complaint should lay out the facts upon which your client's claim to the property is based, as well as the applicable Pennsylvania law that gives your client that claim. (See Appendix for sample complaints based on adverse possession, a lease/purchase agreement, a fraudulent conveyance, a mortgage satisfaction, and an ejectment matter.)

When filing the complaint, you will be prompted to answer the questions formerly found on the Civil Cover Sheet, regarding the basic case information (contact information for opposing parties and counsel, type of case, etc.), if you have not already commenced the action through a summons. Please see "Electronic Filing for Quiet Title Case and Ejectment Cases" on the court's mandatory electronic filing system and how to select the appropriate category for

filing a complaint.

You must then serve the Complaint on all opposing counsel and unrepresented parties. (See "Service of Notice of the Initial Filing" on effecting service, depending on whether this is the initial filing.)

3. Filing a Praecipe to Proceed *In Forma Pauperis*

All volunteer attorneys should file a Praecipe to Proceed *In Forma Pauperis* (IFP) in order to have the filing fees and associated court costs, like service and certified copies, for the quiet title or ejectment action waived (due to the client's limited financial resources). Please see "Electronic Filing with a Praecipe to Proceed *In Forma Pauperis*" for a discussion of how the IFP is generated automatically through the mandatory Electronic Filing System.

- *Note*: Pursuant to Pennsylvania Rule of Civil Procedure 240, a party no longer needs to submit detailed information regarding his or her household income and expenses. Instead, if filing in person, it is now sufficient for the party's attorney to simply submit a praecipe to the Prothonotary certifying that the client cannot afford the court costs and is receiving free legal services.

Please note that neither VIP nor the Tangled Title Fund will reimburse volunteer attorneys, their firms, or our clients for filing fees that can be waived by the filing of an IFP. (If, for some reason, the client's IFP is filed but denied by the Court, reimbursement can be sought.)

4. Filing a *Lis Pendens*

A *lis pendens* can be filed in certain actions where title to real estate is involved. Its purpose is to protect the client's interest in real estate by putting third parties on notice that litigation pertaining to the real estate is pending and that your client has a right to the property. A *lis pendens* can be particularly useful if you believe there will be a delay in filing a complaint in an action regarding real estate.

Note that you can only file a *lis pendens* when an action pertaining to real estate has already been commenced by filing a summons or complaint. Thus, in the situation where you are not yet ready to file your complaint but would like to file a *lis pendens* in order to protect your client's interest in the property, you must start the action by filing a summons. A summons can be filed in any ejectment case. However, a summons can only be filed in a quiet title case if you can list a claim other than a quiet title action as your primary cause of action (e.g., fraudulent misrepresentation stemming from the conveyance of real property or specific performance of a real estate contract). The Prothonotary's office will no longer accept a summons if a quiet title action is listed as the primary or only cause of action, in accordance with Pennsylvania Rule of Civil Procedure 1063. (See "Commencing an Action through a Writ of Summons".)

If you need to file a *lis pendens* in your client's case, we recommend that you both (1) file

a Praecipe to Index as a *Lis Pendens* with the Prothonotary's office via the court's e-filing system, and (2) record a Praecipe to Record as a *Lis Pendens* with the Department of Records. (See Appendix for samples.) Please see "Electronic Filing for Quiet Title and Ejectment Actions" on the court's mandatory electronic filing system and how to select the appropriate category for filing a *lis pendens*.

- *Important Note*: **VIP can record a Praecipe to Record as a *Lis Pendens* for you for free**. You should send an original, signed Praecipe to Record to VIP to record for you.

Once you have filed and recorded the *lis pendens*, be sure to check that it shows of record on the court docket and in PhilaDox, the Department of Records' online index of recorded documents. (If you do not have access to PhilaDox, you can ask a VIP staff member to check for you.) It is the duty of the person filing and recording the document to ensure that it is recorded properly.

Once the *lis pendens* has been filed and recorded, you must send a copy to all opposing counsel and unrepresented parties. (See "Service of Notice of the Initial Filing" on effecting service.)

C. ELECTRONIC FILING FOR QUIET TITLE AND EJECTMENT ACTIONS

1. The First Judicial District's Mandatory Electronic Filing System

Effective January 5, 2009, electronic filing of all court documents is now mandatory in the Court of Common Pleas.

To access the electronic filing system, go to http://courts.phila.gov/, click on "Online Services," and then select "Civil, Criminal & Orphans' E-Filing". If you do not already have a user name, password, and PIN through the Civil Trial Division or the Orphans' Court Division, you will first need to click on the link "To Apply for a User Name." Then you can log in and navigate the electronic filing system.

Once you have access to the e-filing system, you are able to file all of your pleadings electronically. There is a User's Manual and a Tutorial available on the Electronic Filing homepage, to assist you in using the electronic filing system. You may also contact the Office of Judicial Records office at (215) 686-6650 or efsupport@courts.phila.gov with questions; they will generally respond within 1 to 2 days.

Following are the categories you should select when e-filing initial pleadings related to a quiet title or ejectment action:

- *summons for a primary cause of action (e.g., fraudulent misrepresentation, specific performance) and a secondary cause of action to quiet title:*
    - Program: Expedited Non-Jury

- Case Type: Equity – Real Estate

- *summons for an ejectment action:*
  - Program: Expedited Non-Jury
  - Case Type: Equity – Real Estate

- *complaint for a quiet title action based on any claim* <u>*other than*</u> *a fraudulent conveyance*:
  - Program: Major Non-Jury
  - Case Type: Quiet Title

- *complaint for a quiet title action based on a fraudulent conveyance*s:
  - Program: Major Non-Jury
  - Case Type: Real Estate – Fraudulent Conveyance

- *complaint for an ejectment action:*
  - Program: Expedited Non-Jury
  - Case Type: Equity – Real Estate

- *lis pendens*:
  - Filing Category: Indexing/Releasing Lis Pendens
  - Pleading or Document Filed: Praecipe to Index Lis Pendens

VIP has found that the simplest way to e-file is to submit a pleading electronically in PDF format. Exhibits can then be submitted either electronically (by scanning the exhibits and sending them as PDFs) or via fax. However, it is also possible to submit a pleading and accompanying exhibits via fax only.

Following are some practical tips if you choose to submit documents via fax:

- When you click the "Attach Using Fax Server" button on screen 5, the "Fax Serve Box" pops up. A green light automatically shows up under "Step 2," and time begins to run for you to fax your documents.

- From here, you should print the transmittal form (which will act as a cover sheet) by clicking on the PDF link under "Step 1." Write the number of pages you are faxing on the transmittal form. (It is best to fax no more than 10 pages at a time, as the system usually times out if you try to fax more pages than that at once.)

- Click "Re-Fax" at the bottom of the Fax Server Box, so that the time starts over again. Then <u>immediately</u> fax your exhibits, with the transmittal form as the first page.

- Once your fax machine prints out a confirmation page, wait 1 minute and then click on the "Click Here" button under "Step 2." You can then click on a link to view your faxed documents, and click either "Accept," "Cancel," or "Re-Fax" at the bottom of the Fax Serve Box.

2. Electronic Filing with a Praecipe to Proceed *In Forma Pauperis*

In order to file for *In Forma Pauperis* (IFP) status, you simply need to select the question "Are you filing In Forma Pauperis and without payment of filing fees?" on the payment screen (screen 6). You will then notice at the bottom of the final screen (screen 7) that the e-filing system has automatically generated a Praecipe to Proceed *In Forma Pauperis* and that filing fees will be waived. (As a result, you do **not** need to prepare an IFP Petition or Attorney Certification, as was previously required.)

Once the IFP has been filed, the court will review it and issue an Order either granting or denying it. If the IFP is approved, all filing fees and associated court costs are waived. If you do not receive a copy of the court's IFP Order within a reasonable amount of time after filing the IFP, you should check in with the Prothonotary's office to determine its status.

Once the IFP has been granted, you will receive a time-stamped copy of the Praecipe of IFP. You can print it off the e-fillings website. You should be able to file subsequent pleadings and obtain necessary court documents (e.g., certified copies of court orders) without payment of filing fees and court costs by presenting the time-stamped copy of the Praecipe of IFP.

D. SERVICE OF NOTICE OF THE INITIAL FILING

Notice that a summons or complaint (and a *lis pendens*, if applicable) has been filed must be given to all parties who have an interest in the real estate that may in any way be affected by the action. Giving "notice" means that a copy of the initial pleading has been given to all opposing counsel and unrepresented parties.

A process server must be engaged to effect service of the initial filing (either the summons or complaint). If you have resources from which you may be able to obtain service of process free of charge (e.g., a process server whom you regularly engage in your private practice and who may be willing to serve *pro bono*), we strongly encourage you to explore those resources. At this time, VIP does not have access to a process server willing to effect service at no cost.

You may also have the Sheriff's Office provide service of process to defendants located within Philadelphia if your client is granted IFP. If the Court has issued a Praecipe allowing your client to proceed IFP, the Sheriffs must waive the cost of service of the complaint. (See *Mooney v. Pennsylvania*, 134 Pa.Cmwlth. 557, 561-62, 578 A.2d 1384, 1386 (1990)). Visit the Sheriff's Office of the City and County of Philadelphia in the Land Title Building, 100 South Broad Street, 5th Floor, Philadelphia, PA 19110 with the time-stamped copy of the Praecipe for IFP and the complaints which need to be served on defendants in Philadelphia. Please keep in mind that the Sheriff's Office is backlogged with work, and your client's case may not be a priority.

If the process server effectuates service, he/she should sign an Affidavit of Return of Service noting the details of the service. (See Appendix for a sample affidavit.) This Affidavit should then be filed with the Office of Judicial Records. (See "Electronic Filing for Quiet Title and

Ejectment Actions".)

If the process server is unable to serve notice on an opposing party, he/she should sign an Affidavit of Return of No Service. (See Appendix for a sample affidavit.) This Affidavit should then be filed with the Office of Judicial Records, so that the attempted service is on record with the court. (See "Electronic Filing for Quiet Title and Ejectment Actions".)

Service of notice can often be a problem in quiet title and ejectment actions, particularly for clients whose claim to the property dates back some time. The defendant is often not in the jurisdiction, and/or his or her whereabouts are often unknown. The Appendix contains resources that you should use to try to locate missing parties.

- *Note on service of a summons and lis pendens*: If you are unable to locate one or more defendants when filing a summons and *lis pendens*, you can choose to file the summons and *lis pendens* without giving notice right away as long as you name the record owner of the property as the defendant on the summons and lis pendens. Under Pennsylvania Rule of Civil Procedure 401, you must then serve notice of the summons and *lis pendens* on the proper parties within 30 days of filing the summons. If service still cannot be effected, you can file a Motion for Alternative Service of the summons, or you can simply file the complaint and a Motion for Alternative Service of the complaint within 30 days of filing the summons. (See discussion below on filing a Motion for Alternative Service.)

1. What to Do When You Cannot Effectuate Service on a Party – Filing a Motion for Alternative Service

If one or more defendants cannot be located using, among other resources, the tips found in the Appendix, you will need to file a Motion for Alternative Service (also referred to as "special service"). (See Appendix for a sample motion.)

The motion should request (and the proposed Order that you submit along with the motion should also reflect) the type of service by which you would like to provide notice. Pennsylvania Rule of Civil Procedure 410(c) states that the court can direct one or more of the following methods of service when it grants a Motion for Alternative Service:

(1) publication of the notice, as provided by Rule 430(b);
(2) posting of notice on the property;
(3) sending the notice by registered mail to defendant's last known address; *or*
(4) another method the Court deems appropriate

Publication is quite costly; it averages about $500-$700 per printing for the typical quiet title or ejectment notice, depending on the length of the notice and the paper in which it appears. As a result, **it is advisable that the prayer for relief in your motion (as well as your proposed Order) request that service be made by (1) posting of notice on the property, and (2) sending the notice by registered mail to the defendant's last known address.**

- *Important Note*: Be sure that the prayer for relief and proposed Order address service of not only original process (i.e., service of the complaint) but also all subsequent pleadings. It is advisable to ask the court to allow you to serve subsequent pleadings by the least expensive method available (i.e., by regular mail).

In addition to the actual motion, this filing should include the following documents and information:

- *Attorney's Affidavit in Support of the Motion* – Pennsylvania Rule of Civil Procedure 430 requires that this motion be accompanied by an Affidavit stating the nature and extent of the investigation that you and your client have made to try to determine the whereabouts of the defendant(s) and the reason(s) service cannot be made, so as to illustrate your good faith efforts to locate the defendant. (See Appendix for a sample affidavit.) The Official Note to Rule 430(a) suggests the following methods:
    - inquiries of postal authorities pursuant to the Freedom of Information Act;
    - inquiries of relatives, neighbors, friends, and employers of the defendant; *and*
    - examinations of local telephone directories, voter registration records, local tax records, and motor vehicle records

- *Memorandum of Law in Support of the Motion* – This Memorandum of Law gives a very brief synopsis of the facts giving rise to the client's quiet title or ejectment action, the attempts to locate the missing parties, and the Pennsylvania Rule of Civil Procedure (430) under which the motion is being made. (See Appendix for a sample memorandum of law.)

- *Proposed Order* – This order should state the type of service by which you would like to provide notice. It should also address service of all subsequent pleadings. (See Appendix for a sample order.)

- *Stamped, Addressed Envelopes* – You must include stamped envelopes addressed to yourself, all counsel, and all unrepresented parties, so that the court can send a copy of its Order on the motion to all parties.

When filing the motion, you will also be prompted to answer the questions formerly found on the Motion Court Cover Sheet, regarding the basic information on the case and the motion being filed. Copies of the motion should be sent to the last known addresses for all opposing counsel and unrepresented parties immediately upon filing. (See "Electronic Filing for Quiet Title and Ejectment Actions".)

2. Effectuating Service Pursuant to a Court's Order for Alternative Service

Even if you do request alternative service by posting and regular mail, the court may

still order that notice of the pending action be published. The court may order that the notice be published as little as once in both a newspaper of general circulation and once in the *Legal Intelligencer*, or as many as three times in both a newspaper of general circulation and in the *Legal Intelligencer*. **If the court's order directs publication more than once in both types of papers, VIP strongly recommends that you submit a letter to the judge requesting that he or she reduce the publication requirement.** (See Appendix for a sample letter.) The court will review this request and, if granted, will issue an amended order that states the reduced amount of publication required to give notice.

You should also publish as short a notice as is legally sufficient. It is also important to investigate the rates of advertising in various newspapers of general circulation. (See Appendix for contact information and rates for publication.)

- *Note*: The Philadelphia Court of Common Pleas, Trial Division, has, in the past, accepted the *Philadelphia Tribune* as a newspaper of general circulation. The expense of advertising in the *Tribune* is typically significantly less than advertising in the *Philadelphia Inquirer* or *Philadelphia Daily News*. <u>However, it is best when approaching the issue of publication to investigate the rates of advertising in each paper, in order to minimize costs as much as possible.</u>

While Tangled Title Funds are available to pay for such publication costs (See "Step 4: Applying to the Tangled Title Fund"), funds can only be disbursed if the Tangled Title Fund Advisory Committee finds that the attorney has made reasonable efforts to reduce the cost of publication as much as possible.

Once you have published the notice as required by the court, you should file a Return of Notice with the court. (See Appendix for a sample Return of Notice. See also "Electronic Filing for Quiet Title and Ejectment Actions".)

Should you have any questions or concerns about publication of your client's quiet title or ejectment action, do not hesitate to contact the staff at VIP. (See "Helpful Resources and Contact Information" for our contact information.)

E. SERVICE OF NOTICE OF SUBSEQUENT PLEADINGS

Most documents filed with the Court after the initial filing must also be served on opposing parties.

If you had a process server who was able to effectuate service of original process on an opposing party, notice of subsequent pleadings can simply by sent by first-class mail and certified mail, return receipt requested. (Pennsylvania Rule of Civil Procedure 440(a) only requires notice of subsequent service to be sent by first-class mail. However, it is advisable to send subsequent service by certified mail, return receipt requested, as well, so that you can track the delivery and receipt of the service. You should also still send notice by first-class mail at the same time, since certified mail is more likely to be rejected by the recipient.)

If you effectuated service of original process through a court order for alternative service, notice of subsequent pleadings should be given by the means specified in the court order. If the court order did not address service of subsequent pleadings, you should contact the judge's clerk to discuss it.

Once notice of a subsequent pleading has been given, you should file an Affidavit of Service. (See Appendix for a sample affidavit.) You may wish to wait to file this Affidavit until receiving the signed return receipt card back from the recipient, so that you can also include a copy of that signed card as an exhibit to the Affidavit. (See "Electronic Filing for Quiet Title and Ejectment Actions".)

F. How to Proceed When the Defendant Files an Answer

Once service of the complaint has been effected, the defendant has 20 days to file an Answer to the complaint. If the defendant does file an Answer within 20 days, the parties should then discuss the possibility of settling the case without proceeding to trial. You may also need to file a Reply if the defendant's Answer also contains a New Matter.

Once the complaint and answer have been filed, the court will issue a scheduling order, directing all counsel and unrepresented parties to attend a Case Management Conference at a set time. As plaintiff's counsel, you are responsible for sending a copy of this Order to all parties. Prior to the conference, you must also complete a Case Management Conference Memorandum that provides details on your client's claim. (See Appendix for the memorandum form.) You should bring the original memorandum to give to the court officer presiding over the conference and copies to give to opposing parties.

At the Case Management Conference, you will need to be prepared to discuss the basic allegations of your client's claim and the timeline on which you expect to be able to complete discovery. Any opposing parties who appear at the conference will be expected to do the same. The court officer will then issue a Case Management Order setting out the timeline for the case, including the deadlines for discovery, filing of pre-trial motions, and the court's scheduling of a settlement conference, a pre-trial conference, and a trial.

Once court has issued its Case Management Order, you should then proceed with discovery and the filing of any applicable pre-trial motions. Please note that VIP does have free resources available to assist with discovery, including court reporters for depositions. **Please be sure to discuss such resources with VIP well in advance of when they will be needed.** (See "Helpful Resources and Contact Information"for our contact information.)

You should also continue negotiating with the opposing parties to try to come to a settlement agreement on the matter, if possible. However, **please note that neither VIP nor the Tangled Title Fund can provide funds for the client to pay consideration to the opposing party**. While the Tangled Title Fund can pay for costs associated with the transfer of title, such as title reports and transfer taxes, it cannot make any payments for consideration. As a result, if you are discussing a monetary settlement with an opposing party, it is vital that you discuss with the client, and with VIP as necessary, if and how the client may be able to make a

settlement payment to the opposing party before any settlement agreement is reached or signed. Please contact VIP to discuss potential options that your client may have if a monetary settlement becomes possible. (See "Helpful Resources and Contact Information" for our contact information.)

Also, please note that **the only type of quiet title case that VIP does *not* recommend resolving solely through negotiations is a fraudulent conveyance case**. A fraudulent deed should only be "undone" by obtaining a court order (through the filing of a quiet title action) that invalidates the fraudulent deed and confirms that your client is the legal owner of the property. It is *not* advisable to have the new "grantee" sign a deed over to your client, even if he/she actually agrees to do so, because that would only serve to validate the prior fraudulent conveyance, which would subject the property to creditors of the new "grantee" and which would result in transfer tax being owed. As a result, should the new "grantee" not object to your client's quiet title action (which does occur), it is best for the new "grantee" not to file an answer to your complaint and instead to sign a stipulation to that effect and then allow the court to enter a default judgment granting your quiet title action. (See Appendix for a sample stipulation.)

If your client's case is scheduled for trial, please be advised that the various judges conduct trial differently. Please contact VIP if you are scheduled for trial and would like insights on what to expect.

G. How to Proceed When the Defendant Does Not File an Answer or Otherwise Respond to the Filing of the Complaint

If the defendant does not file a response to the complaint within 20 days, the defendant is deemed to have failed to plead and/or defend against the action. At that point, you should send the defendant a 10-day notice of intention to take a default judgment.

1. Sending a Notice of Intention to Take a Default Judgment

A 10-day notice of intention to take a default judgment warns the defendant that the court can enter a default judgment against him or her if he or she does not appear and defend against the action. (See Appendix for a sample notice.)

- *Note*: If the court has already entered an Order for special service pursuant to a Motion for Alternative Service, the Order should direct what type of service of the 10-day notice is required. However, if the Order does not address the service required for this type of notice, it is advisable to discuss with the Prothonotary's office how to proceed.

If the defendant does not respond to the 10-day notice within the 10-day time period, you can then move for entry of a default judgment.

2. Filing a Motion for Entry of a Default Judgment

Once the 10 days expire on the notice, you can then move for entry of a default judgment pursuant to Pennsylvania Rule of Civil Procedure 1066. (See Appendix for a sample motion.) Actions in Quiet Title, which seek equitable relief and a court order, cannot have a standard Praecipe for Default Judgment according to Pennsylvania Rule of Civil Procedure Rule 1037.1. Instead, a motion for default judgment must be filed so a court Order may be issued granting default and providing the specific equitable relief the client is seeking.

The motion should include the following documents as exhibits:

- *Copy of the Complaint and Motion for Alternative Service (if applicable)* – You should include a copy of the complaint and, if applicable, the Motion for Alternative Service, for the court's convenience.

- *Proof of Service of Original Process* – This is proof that the initial filing (i.e., a summons or a complaint) was served upon the defendant(s) against whom default judgment is being sought. This could be an Affidavit of Return of Service by a process server (if personal service was effectuated) or an Affidavit of Return of Notice (if original process was served constructively by publication.).

- *Proof of Service of Complaint* (if applicable) – If original process was effected for service of a summons and not a complaint, you must also provide documentation that the complaint was served upon the defendant(s) against whom default judgment is being sought should be filed. This should be an Attorney's Affidavit of Service, which should include a copy of the signed return receipt card that you received back from the recipient.

- *Copy of Notice of Intention to Take a Default Judgment* – A copy of the 10-day Notice should be included, which should include a copy of the signed return receipt card that you received back from the recipient.

- *Attorney's Affidavit in Support of the Motion* – This affidavit certifies that the attorney effected proper service on the defendant of the complaint and then of the 10-day notice, including copies of the signed return receipt cards, and that the defendant has not filed a response to the action within the proper time frame. (See Appendix for a sample affidavit.)

In addition to the actual motion, this filing should include the following documents:

- *Memorandum of Law in Support of the Motion* – This Memorandum of Law gives a very brief synopsis of the facts giving rise to the client's quiet title or ejectment action, the procedural history of the case (e.g., dates of filings and service), and the Pennsylvania Rule of Civil Procedure (1066) under which the motion is being made. The factual summary should largely be the same as that recited in the complaint. (See Appendix for

a sample memorandum of law.)

- *Proposed Order* – The order should request several things:

  - that final judgment be entered in the name of the plaintiff and against the defendant based upon the motion for entry of a default judgment;

  - that any forged, fraudulent, or otherwise invalid deed and/or mortgage is declared void and cancelled of record (if applicable);

  - that the defendant and all persons claiming under him are forever barred from asserting any right, lien, title, or interest in the property, and that title to the property is quieted in favor of the plaintiff and against all claims of the defendant and all persons claiming under him;

  - that any other relief that the plaintiff is seeking be entered in favor of the plaintiff and against the defendant; *and*

  - that the Commissioner of the Department of Records be directed either to: (1) execute a deed or mortgage satisfaction on the record owner's behalf conveying title to the plaintiff and to record that deed or mortgage satisfaction waiving payment of transfer tax (in the case of a lease/purchase agreement, adverse possession claim, or mortgage satisfaction), *or* (2) to record a Deed of Confirmation acknowledging the plaintiff as owner (in the case of a fraudulent conveyance) waiving the recording fee.

  See Appendix for a sample order.

  Note that a Proposed Order in a lease/purchase or adverse possession case should direct the recording of the deed without payment of transfer tax and recording fees. If the court accepts the proposed order with this language, the deed can be recorded without transfer taxes being required. (Transfer taxes are never required when a Deed of Confirmation is being recorded to strike a fraudulent conveyance, so it is not necessary to include this language in such a Proposed Order.)

  Also note that, in a fraudulent conveyance case, it is very important that the order not direct the defendant to re-convey title back to the plaintiff, as that would appear to validate/legitimate the fraudulent conveyance.

- *Proposed Deed or Mortgage Satisfaction* – The motion should include a proposed document that is either (1) a deed or mortgage satisfaction to be signed by the Commissioner of the Department of Records on behalf of the record owner (for lease/purchase, adverse possession, and mortgage satisfaction cases), or (2) a Deed of Confirmation that the plaintiff and the Commissioner of the Department of Records signs (for fraudulent conveyance cases). (See Appendix for samples.)

- *Stamped, Addressed Envelopes* – You must include stamped envelopes addressed to yourself, all counsel, and all unrepresented parties, so that the court can send a copy of

its Order on the motion to all parties.

When filing the Motion, you will also be prompted to answer the questions formerly found on the Motion Court Cover Sheet, regarding the basic information on the case and the motion being filed. Copies of the motion should be sent to all opposing counsel and unrepresented parties immediately upon filing. (See "Electronic Filing for Quiet Title and Ejectment Actions".)

3. Hearing on the Motion for Entry of a Default Judgment

The Philadelphia Court of Common Pleas procedure for Default Judgments often includes a hearing on the Motion. The Motion for a Default Judgment may be granted on the papers. This positive development requires less time (e.g., no appearance at the hearing). If this does not happen, a hearing on the motion will be scheduled. You should appear at the hearing, but expect your motion not to be granted. Instead, the Motions Court judge will likely order that the case proceed according to the Case Management Order (i.e., proceed toward trial). The case will then be assigned to a judge

If you do not anticipate the need for any discovery, the parties can request an expedited hearing from the Court.

If your client's case is scheduled for trial, please be advised that the various judges conduct trial differently. Please contact VIP if you are scheduled for trial and would like insights on what to expect.

If the Court grants your request, a hearing will be scheduled. **It is imperative that your client appear at this hearing prepared to testify as to the facts giving rise to the Quiet Title Action.** (Please note that in the VIP cases that have gone through this process, the testimony required has been very brief.) The court will also expect you to produce (1) a copy of the most recently recorded deed (or, in the case of a fraudulent conveyance, the most recently recorded deed that was not fraudulent), and (2) a proposed Order. If the court is satisfied by your client's testimony, it will issue an order granting your requested relief at that time.

4. Obtaining Final Judgment

If the court grants your motion for default judgment and accepts your proposed order language as described immediately above, final judgment is entered in favor of your client. In that case, you will need to obtain a certified copy of the court's Order from the Office of Judicial Records, in Room 284 of City Hall. If you have already filed an IFP on your client's behalf, the $30 fee should be waived; however, you should take a copy of the court's IFP order with you to the Prothonotary when you make your request for a certified copy. Requests for certified copies take 3-5 business days to process.

However, if the court grants your motion for default judgment but gives the defendant 30 days to come forward to contest it, you must then wait 30 days, during which time the defendant can file a Petition to Open the Default Judgment. (See Pa. R. Civ. Pro. 237.3.) If that 30-day period expires without the defendant having filed a Petition to Open, you should then file a praecipe for entry of final judgment with the Office of Judicial Records. (See "Electronic

Filing for Quiet Title and Ejectment Actions".) Once the Office of Judicial Records grants the praecipe, you will need to obtain a certified copy of the court's Order from the Office of Judicial Records, in Room 284 of City Hall. If you have already filed an IFP on your client's behalf, the $30 fee should be waived; however, you should take a copy of the court's IFP order with you to the Prothonotary when you make your request for a certified copy. Requests for certified copies take 3-5 business days to process.

IV. Completing the Transfer of Title in a Quiet Title Action

Once you have reached an agreement with the opposing party *or* once the Court's order conveying title to your client is final, you then need to complete the transfer of title to your client by obtaining title insurance, if applicable, and then by recording the appropriate documents with the Department of Records.

A. TITLE INSURANCE

1. Considering Whether to Obtain Title Insurance

Before a deed conveying title to the client is executed and recorded, you and your client should always discuss whether the client should obtain title insurance. Title insurance serves 2 primary functions: (1) it insures that the client has indeed received good title to the property, and (2) it insures that the client has received free and clear (unencumbered) title to the property.

- Note that title insurance does not "clear" pre-existing liens and encumbrances from the property that are listed on the title report. It simply insures the buyer against any liens and encumbrances that the title insurance company did not pick up in its title report and that could theoretically arise in the future.

It is VIP's advice that you and your client always explore a title insurance policy to see what level of coverage could be provided. In making the decision as to whether your client should obtain title insurance, you should consider the following:

- If the client is receiving title from the record owner(s) pursuant to an agreement (e.g., a lease/purchase agreement or an agreement of sale) or because the record owner(s) otherwise wishes to transfer their interest to the client, title insurance can insure that the client has received good title to the property.

- If the client is receiving title from the record owner(s) pursuant to an agreement (e.g., a lease/purchase agreement or an agreement of sale) title companies should insure over judgments against the seller that were taken after the buyer fully paid on the purchase price and before the buyer was made the record owner.

- If the record owner(s) is supposed to be transferring title to the client title "free and

clear" of all liens and encumbrances (e.g., pursuant to an agreement that specifies that the client is to receive title free and clear), title insurance can insure that the client receives such free and clear title.

- Title insurance may not be necessary if there has been a court order (e.g., pursuant to a quiet title action) issued that vests title in the client.

- If there are many liens and encumbrances on the property, which would have to be excepted from the policy, it may not be practical (or even possible) to obtain title insurance.

Please do not hesitate to contact Philadelphia VIP should you have any questions or concerns about title insurance. (See "Helpful Resources and Contact Information" for our contact information.) **If you are uncertain as to whether your client needs to obtain title insurance, you should contact VIP to discuss the issue before the deed transferring title to the client is executed and recorded.**

2. If You and Your Client Decide to Obtain Title Insurance

If you and your client decide to obtain title insurance, it is very important that the deed not be executed nor recorded until the title insurance company holds a settlement meeting with the necessary parties. This is to ensure that the title insurance company does, indeed, deem the transfer to be insurable or, alternatively, that any problems with title are cleared up before the deed is executed and recorded. Thus, if title insurance is necessary, **it is the attorney's responsibility to have the title insurance company conduct a closing where title is transferred.**

The title company will conduct the actual execution of the deed. In order to conserve funds, however, you should (1) prepare the deed to be signed, using the guidance in the section below, and (2) coordinate with the title company and VIP to have VIP record the document so that the recording fee is waived. (See Appendix for sample deeds. Note that you will need to prepare a Deed of Confirmation if the court's order did not direct either the record owner or the Commissioner of the Department of Records to sign the deed as the "grantor.")

- *Important*: All deeds should be given to VIP to be recorded, because James P. Leonard, Commissioner of the Department of Records, has generously agreed to record documents for VIP clients with a waiver of the typical recording fee. **Due to this arrangement, please note that neither VIP nor the Tangled Title Fund will reimburse volunteer attorneys, their firms, or our clients for recording fees.**

Please note that Tangled Title Funds are available to cover the cost of the title insurance premium. (See "Step 4: Applying to the Tangled Title Fund".)

3. If You and Your Client Decide Not to Obtain Title Insurance

If you and your client decide not to obtain title insurance, you should send your client a letter explaining the liens and judgments listed on the title report and confirming your and your client's joint decision not to obtain title insurance. (See Appendix for a sample letter.) It

is very important that your client fully understands what he or she is taking title to and be aware of and comfortable with the liens and judgments showing on the title report.

As mentioned above, if the client is receiving title from the record owner(s) pursuant to an agreement (e.g., a lease/purchase agreement or an agreement of sale) and the title report includes judgments against the seller that were taken after the buyer fully paid on the purchase price and before the buyer was made the record owner, these judgments should not attach to the property. Please advise your client that if such a judgment-holders later try to make a claim against client's property, the client can contact to VIP for assistance.

B. PREPARING THE APPROPRIATE DOCUMENTS

Once you and your client have determined whether your client needs title insurance *and* once you have sent your client a letter confirming this decision, you can then move forward in recording the appropriate documents to transfer title to your client.

1. Preparing a Deed

If a deed needs to be prepared, use the following guidelines.

a. Preparing the Deed Document

The following points should be considered in preparing the deed:

- See Appendix for various sample deeds.
- If there is a court order that merely quiets title in the name of your client and does *not* direct the record owner or the Commissioner of Records, on the record owner's behalf, to sign a deed over to your client, you need to prepare a Deed of Confirmation that only the client will sign and that describes the client's claim to title, including the quiet title action.
- If there is a court order that directs either the record owner or the Commissioner of Records, on the record owner's behalf, to sign a deed over to your client, you need to prepare a Deed to that effect. Note that if the Commissioner is signing the deed on the record owner's behalf, VIP will take care of obtaining the Commissioner's signature on the deed prior to recordation.
- The recitals (paragraphs) in the deed should include information on the last recorded deed (the deed where the decedent had obtained title), as the sample deeds in the Appendix illustrate:
    - Prior to December 6, 1999, deeds were identified by deed book name, number, and page number. The deed book name is derived from the initials of the Commissioner of the Department of Records in office at the time the deed was recorded. (See Appendix for a list of deed book names according to years.) The deed book number and the page number appear

on the deed itself, generally stamped at the top of the page. As an example, a deed recorded in 1982 and stamped with "D 0365 278" would be recited as "Deed Book E.F.P., No. 365, at page 278."

- Since December 6, 1999, deeds are now given a "Document ID" number that is used in lieu of the deed book name, number, and page number.

b. Completing the Transfer Tax Forms

The following points should be considered in completing the transfer tax forms:

- VIP suggests listing the client, rather than yourself or a paralegal, as the "Correspondent."
- You do not need to list a tax parcel number in Section C.
- In completing the "Valuation Data" section on the forms:
  - You must state the actual consideration that the grantee paid for the property, if any.
  - The "County Assessed Value" can be found on the Office of Property Assessment (OPA) website. (See "OPA Account Details" for information on accessing the OPA website.) Be sure to use the OPA's total assessed value, and not its market value.
  - The Common Level Ratio Factor (CLRF) is now 1.01, effective July 1, 2017. **Changes in the CLRF typically occur every July 1**. The numbers can be found on PA Revenue's website: https://www.revenue.pa.gov/GeneralTaxInformation/Tax%20Types%20and%20Information/RTT/Documents/clr_factor_historical.pdf.
  - See the instruction pages that accompany the transfer tax forms for additional information on completing the forms.
- *Note*: You must always submit transfer tax forms with any deed that is being recorded, even if the transfer is excluded from transfer tax.

c. Payment of and Exclusion from Transfer Tax

Title transfers made as a result of quiet title actions may be subject to transfer taxes. However, they may be excluded from transfer tax in the following situations:

- if the quiet title action is striking a fraudulent deed that wrongly took title out of the client's name;

- if the court's order directs the Commissioner of the Department of Records to record the deed without requiring payment of transfer tax (see "Filing a Motion for Entry of a Default Judgment" for details on submitting a Proposed Order that makes this request);

- if the client is actually obtaining title to the property through testate or intestate succession; *or*

- if the client is obtaining title to the property from certain family or household members

    - *Note*: In November of 2007, the City amended the Philadelphia Code to exempt from Philadelphia real estate transfer tax "financially interdependent persons" (FIPs). FIPs are defined in Phila. Code § 19-1402 as "persons who live together as a single household and who, for at least six months, have agreed to share the common necessities of life and to be responsible for each other's common welfare." (See Appendix.)

      In order to claim this exemption, you should explain your client's status as an FIP in relation to the grantor on the city transfer tax form. Note that this exemption applies only to Philadelphia, and not Pennsylvania, transfer tax.

See 72 PA. C.S. § 8102-C.3, and Phila. Code §§ 19-1402 and 19-1405, or Appendix to determine if your client's title transfer is excluded from transfer tax. If you are unsure as to whether your client's title transfer is subject to transfer tax, you should contact the staff at Philadelphia VIP. (See "Helpful Resources and Contact Information" for our contact information.)

If the transfer is subject to transfer tax, you must submit payment for the transfer tax along with the deed and transfer tax forms:

- Transfer tax is a percentage of one of the two following values:

    - *If your client obtained title through a bona fide arm's length sale for actual monetary worth*, then it is a percentage of the total consideration paid.

    - *If your client instead obtained title by inheritance, by gift, or for consideration less than the actual monetary worth of the real estate*, then it is a percentage of the "fair market value." The "fair market value" is the *OPA total assessed value* multiplied by the *Common Level Ratio Factor* as of the time of the decedent's death. (See "Completing the Transfer Tax Forms" for how to

find these figures.)

  - See Appendix for the Pennsylvania statute and Philadelphia Code section that further explain how to use these values to calculate the transfer tax owed.

- Philadelphia transfer tax is 3.278% of the value as determined above. Checks or money orders should be made out to "City of Philadelphia."

- Pennsylvania transfer tax is 1% of the value as determined above. Checks or money orders should be made out to "Commonwealth of Pennsylvania."

- Transfer tax can be paid for by the Tangled Title Fund. See "Step 4: Applying to the Tangled Title Fund"

d. Completing an Attorney Affidavit

Effective November 3, 2008, attorneys must now submit a notarized Affidavit in order to record a deed without the Department of Records having to run a possibly time-consuming "deed name match." Please include "Philadelphia VIP" in addition to your name and/or firm in the space following "the attached deed is being filed by…" in the second paragraph. (See Appendix or http://www.phillyvip.org/content/training-materials, for a type-in version.)

City Council Bill No. 080424-A amended Title 2 of the Philadelphia Code by creating new requirements for all deed documents submitted for recording. (See Philadelphia Code ch. 2-200 (2008).) The new ordinance requires the Department of Records to perform a "name match" of the grantor's name on the new deed and the grantee's name on the prior deed, which can be time-consuming if the last recorded deed has not been electronically indexed. However, the ordinance exempts the Department from having to run a name match if an attorney or title company submits the deed for recording. Thus, the Department of Records now requires attorneys and title companies to submit an Affidavit affirming their status and the validity of the new deed, so that they can be exempt from the name-match process.

e. Obtaining a Certified Copy of the Court's Order

If the deed is being recorded pursuant to a court order issued in a quiet title action, a certified copy of the order must be recorded. (See "Obtaining Final Judgment".)

2. Preparing a Release of Mortgage

If a release of mortgage needs to be prepared, see Appendix for a sample.

- *Note*: The recitals (paragraphs) in the mortgage release should include information on the last recorded deed (the deed where the decedent had

obtained title), as the sample deeds in the Appendix illustrates:

- Prior to December 6, 1999, deeds were identified by deed book name, number, and page number. The deed book name is derived from the initials of the Commissioner of the Department of Records in office at the time the deed was recorded. (See Appendix for a list of deed book names according to years.) The deed book number and the page number appear on the deed itself, generally stamped at the top of the page. As an example, a deed recorded in 1982 and stamped with "D 0365 278" would be recited as "Deed Book E.F.P., No. 365, at page 278."

- Since December 6, 1999, deeds are now given a "Document ID" number that is used in lieu of the deed book name, number, and page number.

3. Preparing a Praecipe to Remove a *Lis Pendens*

If you previously recorded a Praecipe to Record as a *Lis Pendens* with the Department of Records, you should now prepare and sign a Praecipe to Remove the *Lis Pendens*. (See Appendix for a sample.) You should then follow the instructions below to have the Praecipe recorded by VIP with a waiver of the usual recording fee.

Once VIP returns the original recorded Praecipe to you, you should be sure to check that it shows of record in PhilaDox, the Department of Records' online index of recorded documents. (If you do not have access to PhilaDox, you can ask a VIP staff member to check for you.) This is important to ensure that there is no cloud on the client's claim to title in the future.

Note that a Praecipe to Remove the *Lis Pendens* does not need to be filed with the Office of Judicial Records, because the *lis pendens* indexed by the court is automatically removed when the court case is resolved.

C. RECORDING THE DOCUMENTS

Once you have prepared the documents as explained above and are ready to record them, **they should be sent to VIP by certified mail, hand-delivery, or some other type of delivery that can be tracked (since the original, executed deed is being transmitted), so that VIP can record it with the Recorder of Deeds with a waiver of the usual recording fee.**

- *Important*

  All documents should be given to VIP to be recorded, because James P. Leonard, Commissioner of the Department of Records, has generously agreed to record

documents for VIP clients with a waiver of the typical recording fee. **Due to this arrangement, please note that neither VIP nor the Tangled Title Fund will reimburse volunteer attorneys, their firms, or our clients for recording fees.**

You can send a Release of Mortgage or a Praecipe to Remove a *Lis Pendens* to VIP for recording without any additional documentation.

If you are sending a Deed to VIP for recording, please be sure to include all of the following documents that are required by the Philadelphia Department of Records:

- the executed Deed
- 2 copies of the Philadelphia Real Estate Transfer Tax Certification and 1 copy of the Pennsylvania Realty Transfer Tax, Statement of Value
- *if the transfer is subject to transfer taxes*, payment for Philadelphia and Pennsylvania transfer taxes
- a notarized Attorney Affidavit
- a certified copy of the court's order, if applicable (see "Obtaining Final Judgment")

The Recorder of Deeds will record the document and return the original recorded document to VIP. VIP will then return the original recorded document to you, so that you can then transmit it to your client.

V. A Note on the Use of § 3390 and § 3546 Petitions for Clients Who Have Entered into Lease/Purchase Agreements

Clients who have entered into lease/purchase agreements (or installment land contracts) typically come to VIP for legal assistance once all or most of the purchase price due under the agreement has been paid, because the seller has either disappeared, died, or refuses to convey legal title to the client. Typically, a "quiet title" action is the appropriate action to bring on behalf of a client with an installment land contract, which will force the seller to convey legal title.

However, if the seller died before he or she could convey legal title to the client *or* before the client could pay the full purchase price, a petition can instead be brought in Orphans' Court to get title to the property into the client's name. There are two types of Orphans' Court petitions that can effectuate this result: a § 3390 Petition for Specific Performance of a Contract or a § 3546 Petition for Determination of Title. A § 3390 Petition is most appropriate if the deceased seller's estate has been opened and is being administered by a Personal

Representative, because § 3390 of the Pennsylvania Probate, Estates, and Fiduciaries ("PEF") Code (located at 20 PA. C.S.) allows a court to force a Personal Representative to honor an agreement made by the deceased to purchase or sell real property. (See Appendix.) However, because in a VIP case the seller's estate typically has not been opened by a Personal Representative, it is usually more appropriate to file a § 3546 Petition when the seller in an installment land contract has died, because § 3546 of the PEF Code is broader than § 3390 and allows a person who claims an interest in real estate through a decedent to petition the court to "determine title" to the real estate, regardless of whether the deceased seller's estate has been opened.

While a further discussion of the § 3390 and § 3546 Petitions is beyond the scope of these materials, it is important to note that they are available options in cases where a seller in an installment land contract has died before the client could pay the full purchase price or before legal title was conveyed to the client. Should you find that your client's case may be more appropriately served by the filing of a § 3390 or § 3546 Petition rather than a quiet title action, please contact one of the VIP attorneys for assistance in proceeding with your client's case. (See "Helpful Resources and Contact Information" for contact information for VIP staff.)

STEP 6: DEALING WITH UTILITY CHARGES AND REAL ESTATE TAXES

I. Delinquent Utility Charges

If your client has delinquent utility charges, you should first assist the client in resolving his or her homeownership issue, as the client cannot negotiate to establish a payment plan and/or request a waiver of certain charges until he or she has legal title. However, if your client has received notice of a foreclosure or Sheriff's Sale for delinquent utility charges, please contact VIP immediately.

Once the client has obtained legal title to the property, you may assist your client in entering into a payment plan for the delinquent charges. Alternatively, you can contact a VIP staff member for information on how your client can enter into a payment plan. (See "Helpful Resources and Contact Information" for our contact information.)

II. Delinquent and Current Real Estate Taxes

A. THE CONSEQUENCES OF DELINQUENT REAL ESTATE TAXES

The City collects real estate (property) taxes annually. If real estate taxes remain unpaid, penalties and interest accrue. A lien is then put on the property for the value of the unpaid taxes. A lien is like a mortgage, as in the property typically cannot be sold without the back taxes being paid in full. Particularly if the amount of delinquent taxes owed is quite high, the City can request that the property be sold in order to pay the back taxes.

Taxes run with the property, not with the person. Therefore, if an individual buys a house on which back taxes are owed, that individual is responsible for payment of the back taxes.

B. THE PARTIES INVOLVED WITH TAX COLLECTION IN PHILADELPHIA

The City of Philadelphia no longer owns *all* of the delinquent real estate tax liens for city properties. Instead, the City has sold many of the delinquent tax liens that originated *prior to 1997* to a company called MBIA. U.S. Bank currently acts as the trustee handling the liens for MBIA, and thus U.S. Bank is listed as the "plaintiff" when it files court actions for delinquent real estate taxes. U.S. Bank/MBIA has hired the law firm of Linebarger Goggan Blair & Sampson, LLP ("Linebarger") to represent them in collecting these delinquent taxes.

The City does still own the tax liens that originated *in or after 1997*. It also owns a small portion of the tax liens that originated *prior to 1997*. Following is how the City has divided the duties involved with collecting on its tax liens:

- The City uses its Department of Revenue to collect some real estate tax liens.
- The City uses its Law Department to represent them in court on all real estate tax liens.
- The City previously hired the law firms of Linebarger and Goehring Rutter & Boehm ("GRB") to collect some real estate tax liens that pre-dated June 2018.

C. VIP CLIENTS SHOULD BE ELIGIBLE FOR OWNER OCCUPIED PAYMENT AGREEMENTS (OOPA) FOR DELINQUENT REAL ESTATE TAXES

On October 15, 2013 a City Ordinance modifying the Philadelphia Code on real estate taxes (Chapter 19-1300) went into effect. Under the Ordinance, all of VIP's homeownership (tangled title) clients should be eligible for low-income payment plans for their delinquent real estate taxes.

The new guidelines permit equitable owner-occupants of property to apply for financial hardship payment agreements for delinquent real estate taxes even if their names are not on their deeds. The primary caveat is the clients must be equitable owners of their properties working toward obtaining title to their properties within three years. Previously, equitable owners were either barred from entering payment plans or were permitted to enter the plans on a case-by-case basis. Consequently, they were at high risk of losing their homes at Sheriff's sales.

As of September 1, 2018, the new payment plan *applications* -- Owner Occupied Payment Agreement (OOPA) Applications – should be addressed to the City of Philadelphia's Department of Revenue, Taxpayer Services.

If a VIP homeownership client has delinquent real estate taxes and/or a court action was filed, a VIP staff member advises the client to apply for an OOPA and sends the client the application. The case file you receive should note that this advice was given. As the volunteer attorney, you may need to contact the tax collector to confirm that the OOPA application was approved and the tax case, is there is one, was informally stayed.

If a tax collector sues your client *after* the case is referred to you, you will need to contact the City Law Department, which is exclusively handling new real estate tax delinquency cases, to request that further court action be informally postponed to give your client time to submit an OOPA application. VIP strongly encourages volunteers to either help their clients complete and submit OOPA applications or to the connect clients with housing counselors for assistance. The OOPA application and a link to a list of housing counseling agencies are available in the online Appendix to this manual. If you have any questions about the new Ordinance or the OOPA applications, please contact VIP. (See the section "Helpful Resources and Contact Information" for our contact information.)

D. PROTOCOL FOR HANDLING CASES WITH ACTIVE REAL ESTATE TAX LITIGATION

If you receive a case where a court action was filed, VIP has already negotiated a postponement or informal stay of the action. For VIP cases, the tax collectors have agreed to indefinitely postpone or informally stay court actions to give our clients time to submit an OOPA application. It may be necessary for you to contact the City Law Department to confirm the OOPA was approved and further court action was informally stayed. The case file you receive should clearly note the status of the client's OOPA and tax case. The case file should also note the contact at the tax collector for your client's tax case, if the tax case arose before June 2018. If you are unsure of the status of the tax case or need the contact information for a tax collector from an older OOPA, please contact VIP. (See the section "Helpful Resources and Contact Information" for our contact information.)

1. How to Contact the Tax Collector

All communication with the tax collectors should be in writing. Email is fine. If you do not receive a response to an email, call. Confirm all phone calls in writing. Updates sent to the tax collector may be brief. See the Appendix for a sample email to send to the tax collector.

At the request of the tax collectors, all correspondence with the tax collector must include:

In the subject line (if sending an email):

- Property address, including zip code
- OPA #
- court case #, (if there is a tax case)

In the body of the message:

- Client's name
- Property address, including zip code

- OPA #
- Court case #2. Whom to Contact at the Tax Collector

City of Philadelphia Law Department

Email Lisa Bender and cc Jim Zwolak

Lisa Bender
Administrative Assistant
Phone: (215) 686-05229
Lisa.Bender@Phila.Gov

James J. Zwolak, Esq.
Divisional Deputy City Solicitor
Phone: (215) 683-5305
james.zwolak@phila.gov

City of Philadelphia Law Department
1515 Arch Street, 15th Floor
Philadelphia, PA 19102

City of Philadelphia Department of Revenue

E-mail: Revenue@Phila.Gov
Phone: (215)989-6600

City of Philadelphia Department of Revenue
Municipal Services Building
1401 John F. Kennedy Blvd.
Philadelphia, PA 19102

E. Assisting Your Client in Paying Current Real Estate Taxes

Once your client has title to his/her property, it is **imperative** that he/she keep up with the current real estate taxes owed on the property. **The OOPA requires current taxes to be paid. If they are not paid, the client is in default of the agreement and the tax collector has the right to proceed with the tax case, if one was filed, or to initiate a tax case against the property.** Thus, it is very important that you clearly explain to the client the responsibility to pay the real estate taxes every year going forward *in addition* to the responsibility to paying under the OOPA.

As a result, you should be sure to share with your client the **important information** contained in the Appendix regarding current real estate taxes. See the Appendix for a sample letter to send to your client, instructions for your client on how to pay current year real estate taxes, and tips for paying real estate taxes in future years.

- *Note*: The instructions on how to pay current year real estate taxes reference "payment coupons" that should be submitted with all payments, to ensure that the City properly allocates your client's payments. Thus, **you should print these coupons off at the Philadelphia Department of Revenue's website (at**

https://ework.phila.gov/revenue/) and send them to your client.

- You should advise your client that if he or she pays their current year tax bill in full by December 31 of that year, he or she can apply in the following year to the Pennsylvania Department of Revenue for a **property tax rebate**. (See Appendix for more information on the property tax rebate program.)

STEP 7: HELPING YOUR CLIENT AVOID FUTURE HOMEOWNERSHIP PROBLEMS

I. Educating Your Client

Once your client receives title to the property, it is vital to educate the client on preventing future homeownership problems. Following are some simple issues you can discuss with your client at the conclusion of his or her homeownership case to empower him or her to prevent potential homeownership problems in the future:

- Encourage the client to make a will, and assist the client in making a will (or refer the client back to VIP for such assistance), that devises his or her ownership interest in the property to the individual(s) they wish to receive it

- Encourage the client to initiate formal probate proceedings (or to seek legal assistance for such) when a relative who owns property dies, so that title can be properly transferred to the relative's heirs, and encourage the client to educate his or her own heirs on this issue

- Strongly encourage the client to enter into straight sales agreements rather than lease/purchase agreements in order to purchase property, whenever possible

- Educate the client on the importance of having attorneys and title insurance companies involved when they purchase property from a third-party (non-relative) and on the consequences if such parties are not involved (e.g., receiving title to severely encumbered property)

- Educate the client on the legal significance of deeds, so that he or she understands that, by signing a deed, he or she is unconditionally signing away his or her entire interest in the property

- Strongly encourage the client to always have an attorney draw up papers to document any promise he or she makes concerning the property (e.g., a will, deed, agreement of sale)

II. Information on Basic Estate Planning

The substance of this section was originally prepared by Howard M. Soloman, Esquire, of the Law Offices of Howard M. Soloman.

In educating your client on preventing future homeownership problems, it is useful to have a general grasp of how clients can use estate planning to protect their own interests and their potential heirs' interests in property. Below is a brief discussion of estate planning that may be of assistance to you in discussing estate planning with your client.

A. DEFINING ESTATE PLANNING

Estate planning is an arrangement for the use, conservation, and transfer of property during life and upon death. It can involve an attorney, an accountant, an insurance agent, a trust officer, and/or a financial planner.

B. THE IMPORTANCE OF ESTATE PLANNING

Estate planning is important for several reasons:

- It can provide for the owner's lifetime needs, such as children's education, retirement income, replacement of income in the event of disability, and management of property in the event of the owner's incapacity.

- It can provide for the disposition of the owner's assets upon the owner's death in such a way that property is maximized and is left in accordance with the owner's wishes and the needs of the owner's family. Without estate planning, property will pass in accordance with state laws of intestacy, which may or may not be consistent with intent of the owner.

- It can designate a guardian for the owner's minor children in the event of the owner's death.

- It can designate a person to take over the owner's affairs in the event of the owner's incapacity.

C. THE FUNDAMENTALS OF ESTATE PLANNING FOR CLIENTS

1. How Various Types of Property Pass upon Death

- Life insurance, and other assets with beneficiary designations (such as retirement accounts), pass to the named beneficiary.

- Jointly held assets with a right of survivorship (such as property held by two or more persons as "joint tenants") automatically become the property of the surviving co-owner(s).

- Assets held "in trust for" another person pass to the designated beneficiary.

- Other probate property passes in accordance with the decedent's will or, if the decedent did not leave a will, in accordance with state intestacy law.

    - Generally, Pennsylvania intestacy laws provide that the decedent's property passes to his or her surviving spouse and children. If there is no surviving spouse or children, the property is distributed to other more distant relatives as specified in the intestacy laws. If the relatives as specified in the law cannot be found, the property will pass to the Commonwealth (which is called an "escheat"). (See 20 PA. C.S. §§ 2101-2103.)

2. Planning for the Transfer of Assets at Death Through Wills

a. The Benefits of Wills

The basic instrument for transferring property at death is a will. A will can accomplish a variety of functions to facilitate the transfer of property from the testator to his or her designated beneficiaries. For example:

- A will can allow a testator to control which individuals get their property, how much of their property each individual receives, and how and when each individual gets the property.

- A will can allow a testator to address details such as the administration of his or her estate, the payment of various fees and debts, and the appointment of a guardian for the testator's minor children

b. Making and Executing a Will

In order to make a valid will, the testator must be at least 18 years old and must have a clear idea of what his or her assets are. Additionally, the following requirements must be met in regards to execution of the will:

- If it is a holographic (handwritten) will, the entire will must be handwritten, and it must be signed by the testator.

- It must be signed by the testator at the end of the document. Any writing appearing after the signature of the testator is not valid.

- The testator should sign the will in the presence of two witnesses.

    - Under Pennsylvania law, a testator who merely signs his or her name on a will, and who otherwise meets capacity requirements, has technically executed a legally valid will. The law does not require the presence of two witnesses nor a notary.

    - However, it is strongly recommended that all testators have two witnesses present when they sign their will, for a variety of reasons. For instance, two witnesses are required either if the testator signs the will by mark or if the testator is unable to sign the will and permits another to do so in his or her stead. Additionally, most other states require the testator to sign his or her will in front of two witnesses. Thus, a will validly executed in Pennsylvania without two witnesses but admitted for probate in another state may not be accepted as valid.

- The testator and two witnesses should each sign a "self-proving affidavit" in the presence of a notary.

- The signing of a self-proving affidavit in the presence of a notary is strongly recommended. If a will is signed by the testator and by two witnesses, and if the testator and those witnesses then each sign a separate "self-proving affidavit" in the presence of a notary, the will becomes "self-proving."

- A self-proving will is beneficial, because the witnesses to the will will not be required to appear before the Register of Wills when the will is offered for probate.

c. Elective Rights of a Surviving Spouse Against a Will

Although the decedent's wishes as expressed in a will generally must be honored, a surviving spouse cannot be "cut out" of a will in the absence of an agreement to the contrary (such as a premarital agreement), as long as the surviving spouse and decedent were still legally married as of the decedent's death. Instead, a surviving spouse is entitled to "elect" against the decedent's will and receive a share of the decedent's assets as determined by state law.

If a spouse does elect to take against the will, he or she must give up other assets, as determined by state law. Thus, such an election must be made with care.

d. Rights of Pretermitted Spouses and Children

Again, although courts will generally honor the decedent's wishes as expressed in his or her will, a "pretermitted" spouse or child may still be able to receive some of the decedent's estate assets. A spouse is considered "pretermitted" if the decedent made a will, and then years later married his or her spouse but never made another will to devise assets to that spouse. Similarly, a child is considered "pretermitted" if the decedent made a will, and then years later had a child but never made another will to devise assets to that child.

Thus, if your client is a pretermitted spouse or child, you should consider whether he or she still has a legal claim to a portion of the decedent's estate assets. See 20 PA. C.S. § 2507(3)-(4).

3. Planning for the Transfer of Assets at Death Through Other Instruments

a. Powers of Attorney

A Power of Attorney permits a designated individual, called the "agent", to act on behalf of an individual, called the "principal," during the principal's lifetime. The Power of Attorney may permit the agent to manage the principal's affairs, property, or some combination thereof. A principal must be of age to execute a valid Power of Attorney.

A Power of Attorney expires upon the death of the principal. However, a Power of

Attorney can be made "durable," so that it remains effective even if the principal becomes incapacitated. It is also possible to create a "springing" Power of Attorney, which is effective only when the principal becomes incapacitated.

b. Advance Directives

Advance directives, also knows as "living wills," are used to provide guidance to doctors and family members in making decisions about medical care at a time in the event that an individual cannot express his or her own wishes due to a medical condition. Another person also can be appointed to make medical decisions on an individual's behalf.

APPENDIX

TO

QUIET TITLE TRAINING GUIDE

Handling Cases Involving Problems with Title to Real Estate

The complete Appendix may be found online at
https://www.phillyvip.org/resources/

APPENDIX

GENERAL RESOURCES

Resource Guide for Homeowners
Title Report Guide
Searching for Missing Parties
Finding Current Mortgage Holders
Freedom of Information Act (FOIA) Request Form
Determining the True Value of VIP Clients' Homes
Publication – Contact Information and Rates for Newspapers

COURT FILINGS

Praecipe to Index as *Lis Pendens*
Praecipe to Record as *Lis Pendens*
Praecipe to Issue Writ of Summons
Writ of Summons
Praecipe to Reissue Writ of Summons
Complaint to Quiet Title (based on adverse possession)
Complaint to Quiet Title (based on a fraudulent conveyance)
Complaint to Quiet Title (based on a lease/purchase agreement)
Complaint to Quiet Title (based on a mortgage satisfaction)
Complaint in Ejectment
Praecipe to Reinstate Complaint
Affidavit of Return of Service
Affidavit of Return of No Service
Attorney's Affidavit of Service
Motion for Alternative Service
Attorney's Affidavit in Support of Motion for Alternative Service
Memorandum of Law in Support of Motion for Alternative Service
Proposed Order for Alternative Service
Reduced Publication Letter to Judge
Return of Notice
Case Management Conference Memorandum
Stipulation Not to Contest Quiet Title Based on a Fraudulent Conveyance
Notice of Intention to Take a Default Judgment
Motion for Entry of Default Judgment Pursuant to PA. R. Civ. P. 1066
Attorney's Affidavit in Support of Motion for Entry of Default Judgment
Memorandum of Law in Support of Motion for Entry of Default Judgment
Proposed Order for Entry of Default Judgment
Praecipe for Entry of Final Judgment

Praecipe to Remove *Lis Pendens*
Notice by Posting

DEED FORMS

Letter to Client with Title Insurance Information
Standard Special Warranty Deed
Deed Signed by the Commissioner of the Department of Records
Deed of Confirmation Pursuant to a Court Order Invalidating a Fraudulent Conveyance
Deed of Confirmation Pursuant to a Court Order Invalidating a Fraudulent Conveyance, with Property Being Returned to Estate of Decedent
Satisfaction of Mortgage
List of Deed Book Names
Philadelphia Real Estate Transfer Tax Certification
Pennsylvania Realty Transfer Tax, Statement of Value
Attorney Affidavit for Recording a Deed

REAL ESTATE TAX FORMS

Letter to the City, Linebarger, and GRB (XSPAND) Regarding Representation of Your Client
Sample Letter to Your Client on Current Year and Future Real Estate Taxes
Information for Clients on Paying Current Year Real Estate Taxes
Tips for Clients on Paying Future Real Estate Taxes
Sample Email to Real Estate Tax Collector

STATUTES AND RULES

Registering a Notice of Interest in Real Property for Tax Collection Purposes

53 PA. C.S. § 7193.1 Notice of Interest

Installment Land Contract Law

68 PA. C.S. § 902 Findings and Declaration of Policy
68 PA. C.S. § 903 Definitions and Applications of Act
68 PA. C.S. § 904 Notice to Terminate Contract upon Purchaser's Default
68 PA. C.S. § 905 Seller's Remedies
68 PA. C.S. § 906 Action Maintainable by Defaulting Purchaser
68 PA. C.S. § 907 Implied Covenants of the Seller
68 PA. C.S. § 908 Allocation of Monthly Payments
68 PA. C.S. § 909 Existing Remedies of Purchaser

68 PA. C.S. § 910	Incorporation into Contracts

Mortgage Satisfaction Act

21 P.S. §§ 721(1)-(12)	Satisfaction of Mortgage on Margin of Record or by Satisfaction Piece & Fine for Neglect

Adverse Possession

42 Pa. C.S. § 5527.1.	Ten year limitation

Actions to Quiet Title

Pa. R. Civ. P. 1061	Conformity to Civil Action and Scope
Pa. R. Civ. P. 1062	Venue
Pa. R. Civ. P. 1063	Commencement of Action
Pa. R. Civ. P. 1066	Form of Judgment or Order
Pa. R. Civ. P. 1067	Trial Without Jury

Actions in Ejectment

Pa. R. Civ. P. 1051	Conformity to Civil Action
Pa. R. Civ. P. 1052	Venue
Pa. R. Civ. P. 1055	Pleading More Than One Cause of Action
Pa. R. Civ. P. 1056	Counterclaim and Conditional Verdict
Pa. R. Civ. P. 1058	Trial Without Jury

§ 3390 Petition for Specific Performance of a Contract

20 PA. C.S. § 3390	Specific Performance of Contracts

Transfer Tax

72 P.S. § 8101-C	Definitions
72 P.S. § 8102-C.3	Excluded Transactions
PHILA. CODE § 19-1402	Definitions
PHILA. CODE § 19-1405	Excluded Transactions

HYPOTHETICAL CASES

Problem 1 – Divorced husband still a record owner of property

Mr. and Mrs. Smith were married in 1964. After saving money so they could buy a home, they purchased a property in 1974 and took title as tenants by the entireties. Shortly after the purchase of the property, Mr. Smith leaves the state with another woman.

In 1992, Mr. Smith obtains a divorce decree from the Family Court in Charleston, South Carolina. As part of the decree, Mrs. Smith obtains use, title and possession of the marital home. Mr. Smith is directed to sign such documents as are necessary to convey title to Mrs. Smith. Mr. Smith doesn't do so and Mrs. Smith does nothing about it.

In 1998, Mrs. Smith seeks a home equity loan to make improvements to the property. The lender indicates that it is unwilling to make the loan unless Mr. Smith executes the note and mortgage because Mr. Smith continues to hold a record interest in the property.

How do you fix the problem?

Problem 2 – No deed recorded to purchaser

Ms. Smith has been renting a property for years. She finds a house she would like to purchase and the price is one acceptable to Ms. Smith. She signs an agreement of sale with Mr. and Mrs. Jones, the owners of the property, which provides that she will make a down payment of $3,000 at the time of the signing of the agreement of sale and will pay an additional $2,500 in two weeks at which time title would be signed over to Ms. Smith.

Ms. Smith pays the down payment and the additional monies called for under the agreement. Mr. and Mrs. Jones execute a bill of sale for the property and agree to record a deed conveying title to Ms. Smith. Mr. and Mrs. Jones never record a deed to the property.

Ms. Smith learns that no deed was ever recorded when she attempts on a later date to convey title to the property into joint ownership with her new husband.

How do you fix the problem?

Problem 3 – Lease purchase with no deed recorded

Mr. and Mrs. Smith have been leasing a property since 1985 from Mr. and Mrs. Jones. In 1990, they entered into a lease purchase agreement providing that all rental payments from 1990 forward would be considered payments against a purchase price of $10,000 and that if all payments were timely made, title would be transferred to them when the full purchase price was paid.

The full $10,000 was paid in 1995 and the Smiths stopped making lease payments to Mr. and Mrs. Jones. The Smiths assumed that upon the last payment, the property was now owned by them. They continued in possession of the property.

In 1999, the Smiths needed to make repairs to the property and sought a mortgage to cover the cost of the repairs. The lender refused to make the loan as title to the property was still in the name of Mr. and Mrs. Jones. The Smiths contact Mr. and Mrs. Jones and requested that they execute a deed. The Joneses refuse unless they are paid an additional $5,000 for their trouble. In addition, a search of the public records discloses that a judgment was entered against Mr. and Mrs. Jones in Philadelphia County in 1997 by a credit card company for $14,000.

How do you fix the problem?

Problem 4 – Unsatisfied mortgage of record

Mr. and Mrs. Smith have owned their home since 1962. At the time they purchased the property, they obtained a mortgage for $12,000 from ABC Mortgage Company. The mortgage was paid in full in 1992.

Mr. and Mrs. Smith have entered into an agreement of sale to sell the property to Mr. and Mrs. Williams. The title search performed in connection with the sale discloses that the mortgage to AB Mortgage Company was never satisfied.

In analyzing this problem, assume first that ABC Mortgage Company is still in business. How do you fix the problem?

In the alternative, assume that ABC Mortgage Company went out of business in 1995. How do you fix the problem?

Problem 5 – Property in grandparents' name

Ms. Smith has been living in the property 123 Main Street with her grandparents and her mother since her birth. Her grandparents passed away in 1964 and her mother passed away in 1993. She has paid all of the taxes on the property since her mother passed away. She is now interested in mortgaging the property to make improvements. She is turned down because title to the property is in her grandparents' names and the property cannot be mortgaged.

How do you fix the problem?

First American

First American Title Insurance Company
200 Kelly Road, Suite E2
Quakertown, PA 18951
Phn - (877)379-2430
Fax - (610)376-7069

Limitation of Liability for Informational Report

IMPORTANT - READ CAREFULLY: THIS REPORT IS NOT AN INSURED PRODUCT OR SERVICE OR A REPRESENTATION OF THE CONDITION OF TITLE TO REAL PROPERTY. IT IS NOT AN ABSTRACT, LEGAL OPINION, OPINION OF TITLE, TITLE INSURANCE COMMITMENT OR PRELIMINARY REPORT, OR ANY FORM OF TITLE INSURANCE OR GUARANTY. THIS REPORT IS ISSUED EXCLUSIVELY FOR THE BENEFIT OF THE APPLICANT THEREFOR, AND MAY NOT BE USED OR RELIED UPON BY ANY OTHER PERSON. THIS REPORT MAY NOT BE REPRODUCED IN ANY MANNER WITHOUT FIRST AMERICAN'S PRIOR WRITTEN CONSENT. FIRST AMERICAN DOES NOT REPRESENT OR WARRANT THAT THE INFORMATION HEREIN IS COMPLETE OR FREE FROM ERROR, AND THE INFORMATION HEREIN IS PROVIDED WITHOUT ANY WARRANTIES OF ANY KIND, AS-IS, AND WITH ALL FAULTS. AS A MATERIAL PART OF THE CONSIDERATION GIVEN IN EXCHANGE FOR THE ISSUANCE OF THIS REPORT, RECIPIENT AGREES THAT FIRST AMERICAN'S SOLE LIABILITY FOR ANY LOSS OR DAMAGE CAUSED BY AN ERROR OR OMISSION DUE TO INACCURATE INFORMATION OR NEGLIGENCE IN PREPARING THIS REPORT SHALL BE LIMITED TO THE FEE CHARGED FOR THE REPORT. RECIPIENT ACCEPTS THIS REPORT WITH THIS LIMITATION AND AGREES THAT FIRST AMERICAN WOULD NOT HAVE ISSUED THIS REPORT BUT FOR THE LIMITATION OF LIABILITY DESCRIBED ABOVE. FIRST AMERICAN MAKES NO REPRESENTATION OR WARRANTY AS TO THE LEGALITY OR PROPRIETY OF RECIPIENT'S USE OF THE INFORMATION HEREIN.

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SM

SEARCH REPORT

File No. 8114-4080243()

Prepared by: **First American Title Insurance Company**

EFFECTIVE DATE: 06/27/2018

THIS COMPANY has searched and examined the land records of title in Philadelphia from 12/30/1985 to the above effective date for the following:

See Exhibit A attached hereto and made a part hereof

Tax I.D. Number: 482271300 Assessment $62,500.00 (2018)

to the above date and found a fee simple title to be vested in:

[redacted]

And found said record to be free from recorded objections except as follows:

See Attachment No. 1

Attachment No. 1

1. MORTGAGE to secure an original principal indebtedness of $23,355.00 , and any other amounts or obligations secured thereby, recorded on 01/08/1986 in Mortgage Book [redacted], Page [redacted]
Dated: 12/30/1985
Mortgagor: [redacted], unmarried
Mortgagee: Commonwealth Eastern Mortgage Corporation Said Mortgage has been re-recorded 01/22/1987 in Mortgage Book [redacted], Page [redacted] of said Public Records.

   Last Assigned to Midfirst Bank on 04/29/1997 in Assignment Book [redacted], Page [redacted]

   Document(s) declaring modifications thereof recorded 03/20/2007 as Document No. [redacted]

   Document(s) declaring modifications thereof recorded 04/18/2011 as Document No. [redacted]

2. MORTGAGE to secure an original principal indebtedness of $12,995.00 (Open-End), and any other amounts or obligations secured thereby, recorded on 03/19/2001 in Document No. [redacted]
Dated: 02/12/2001
Mortgagor: [redacted]
Mortgagee: Classic Exteriors By [redacted]

   Last Assigned to Instant Funding LLC, a Nevada Limited Liability Company on 06/26/2007 in Document No. [redacted]

3. MORTGAGE to secure an original principal indebtedness of $1,970.48 , and any other amounts or obligations secured thereby, recorded on 02/25/2005 in Document No [redacted].
Dated: 01/28/2005
Mortgagor: [redacted]
Mortgagee: Secretary of Housing and Urban Development

   Note: This Deed of Trust/Mortgage may be a part of the HAMP program. Notwithstanding any demand supplied by the existing lender of the first Deed of Trust/Mortgage, we will require a separate demand from HUD in order to facilitate the payoff of this lien.

4. A FEDERAL TAX LIEN in favor of the United States of America, docketed 03/02/2017, in Case No. [redacted]
   Serial No.: [redacted]
   Debtor: [redacted] (6862 [redacted] Ave Philadelphia PA [redacted]) et al
   Amount: $2,653.61, and any other amounts due thereunder.

5. MUNICIPAL LIEN filed by City of Philadelphia on [redacted]/2009 in Case No. [redacted] in the amount of $1,078.70.

6. MUNICIPAL LIEN filed by City of Philadelphia on [redacted]/2004 in Case No. [redacted] in the amount of $3,151.01.

7. DISCLAIMER: This search does not constitute a title or other insurance product. First American Title Insurance Company provides the within information solely for the purpose of supporting the Philadelphia VIP program, and not for any financial gain. First American Title Insurance Company's

liability resulting from third party reliance upon any of the within information shall be limited to the fair market value of a present owner lien search as of the time such search was conducted.

8. FOR INFORMATION ONLY: Philadelphia Water Revenue Bureau Account No. [redacted].

9. If subject premises is located within a Business Improvement, Special Services or similar service District(s), additional assessments may be due to that District.

10. Subject to easements of party walls and the rights of adjoining owners therein.

11. Easement for access as set forth in Deed Book [redacted], Page [redacted]. Subject to the proportionate part of the expense for keeping same in good order, condition and repair at all times hereafter forever.

Note: This Deed of Trust/Mortgage may be a part of the HAMP program. Notwithstanding any demand supplied by the existing lender of the first Deed of Trust/Mortgage, we will require a separate demand from HUD in order to facilitate the payoff of this lien.

EXHIBIT A

(Legal Description)

ALL THAT CERTAIN lot or piece of ground with the buildings and improvements thereon erected.

SITUATE on the East side of [redacted] Street at the distance of 356 feet Northward from the North side of [redacted] Street in the [redacted] Ward of the City of Philadelphia.

CONTAINING in front or breadth on the said [redacted] Street 14 feet and extending of that width in length or depth Eastward between lines parallel with the said [redacted] Street, 54 feet to a certain 3 feet wide alley, leading from [redacted] Street to [redacted] Street.

TOGETHER with the free and common use, right, liberty and privilege of the above mentioned alley as and for a passageway and watercourse to all times hereafter, forever.

BEING known as [redacted] South [redacted] Street.

OPA NO. [redacted]

BEING the same premises which [redacted] and [redacted] husband and wife, by Deed dated 12/30/1985 and recorded 01/08/1986 in the Office of the Recorder of Deeds in and for the County of Philadelphia in Deed Book [redacted], Page [redacted], granted and conveyed unto [redacted]

Subchapter D. ACTION TO QUIET TITLE

Rule

1061. Conformity to Civil Action. Scope.
1062. Venue.
1063. Commencement of Action.
1064. Service.
1065. Specific Averments.
1066. Form of Judgment or Order.
1067. Trial Without Jury.
1068. Acts of Assembly.

Official Note

The Order of the Supreme Court, June 25, 1946, adopting the Rules of Civil Procedure governing Actions at Law, fixed Jan. 1, 1947, as the effective date and made said Rules applicable to actions pending at that time.

Rule 1061. Conformity to Civil Action. Scope.

(a) Except as otherwise provided in this chapter, the procedure in the action to quiet title from the commencement to the entry of judgment shall be in accordance with the rules relating to a civil action.

Official Note

No right to trial by jury is conferred by this rule. See Rule 128(f).

(b) The action may be brought

(1) to compel an adverse party to commence an action of ejectment;

(2) where an action of ejectment will not lie, to determine any right, lien, title or interest in the land or determine the validity or discharge of any document, obligation or deed affecting any right, lien, title or interest in land;

(3) to compel an adverse party to file, record, cancel, surrender or satisfy of record, or admit the validity, invalidity or discharge of, any document, obligation or deed affecting any right, lien, title or interest in land; or

(4) to obtain possession of land sold at a judicial or tax sale.

Source

The provisions of this Rule 1061 adopted June 25, 1946, effective January 1, 1947; amended through December 16, 1983, effective July 1, 1984, 13 Pa.B. 3999. Immediately preceding text appears at serial page (40045).

Rule 1062. Venue.

The action may be brought in and only in a county in which the land or a part of the land is located.

Rule 1063. Commencement of Action.

The action shall be commenced by filing a complaint with the prothonotary.

Source

The provisions of this Rule 1063 amended June 27, 2017, effective October 1, 2017, 47 Pa.B. 3805. Immediately preceding text appears at serial page (386148).

Rule 1064. Service.

In actions involving subsurface mineral, oil, or natural gas rights, if the plaintiff seeks to serve original process by publication pursuant to Rule 430 and obtains actual knowledge of a last known address of the defendant outside the county in which the property is located, the plaintiff shall explain in the affidavit required by Rule 430(a) the search for the defendant in that locale.

Official Note

For service of original process, *see* Rule 410 governing service in actions involving real property. *See* Rule 430 for additional requirements for service of original process by publication.

Source

The provisions of this Rule 1064 rescinded June 20, 1985, effective January 1, 1986, 15 Pa.B. 2452; amended November 29, 2016, effective January 1, 2017, 46 Pa.B. 7933; amended December 30, 2016, effective January 1, 2017, 47 Pa.B. 178. Immediately preceding text appears at serial pages (385502) to (385503).

Rule 1065. Specific Averments.

(a) Except as provided in subdivision (b), the plaintiff shall describe the land in the complaint.

(b) In an action to quiet title involving subsurface mineral, oil, or natural gas rights, the complaint shall describe the land by attaching:

(1) a summary of the abstract of the mineral, oil, or natural gas title, or the full abstract of the mineral, oil, or natural gas title if the title documents are not available in the courthouse records, and

(2) a statement of acreage involved that includes a metes and bounds description, if available, or other description sufficient to identify the subject land.

Source

The provisions of this Rule 1065 adopted June 25, 1946, effective January 1, 1947; amended April 12, 1999, effective July 1, 1999, 29 Pa.B. 2266; amended November 29, 2016, effective January 1,

2017, 46 Pa.B. 7933; amended December 30, 2016, effective January 1, 2017, 47 Pa.B. 178. Immediately preceding text appears at serial page (385503).

Rule 1066. Form of Judgment or Order.

(a) The court shall grant appropriate relief upon affidavit that a complaint containing a notice to defend has been served and that the defendant has not filed an answer, or after a hearing or trial on the pleadings or merits.

(b) Upon granting relief to the plaintiff, the court

(1) shall order that the defendant be forever barred from asserting any right, lien, title or interest in the land inconsistent with the interest or claim of the plaintiff set forth in the complaint, unless the defendant takes such action as the order directs within thirty days thereafter. If such action is not taken within the thirty-day period, the prothonotary on praecipe of the plaintiff shall enter final judgment;

Official Note

See Rule 248, authorizing the modification of any time period prescribed by the rules on written agreement or order of court.

(2) shall enter a final judgment that a document, obligation or deed affecting a right, lien, title or interest in the land is cancelled or is valid, invalid or discharged or that a copy of a lost plan, document, obligation or deed is an authentic copy;

(3) shall enter a final judgment ordering the defendant, the prothonotary, or the recorder of deeds to file, record, cancel, surrender or satisfy of record, as the case may be, any plan, document, obligation or deed determined to be valid, invalid, satisfied or discharged, and to execute and deliver any document, obligation or deed necessary to make the order effective; or

(4) shall enter any other order necessary for the granting of proper relief.

Source

The provisions of this Rule 1066 adopted June 25, 1946, effective January 1, 1947; amended March 27, 1956, effective July 1, 1956; amended August 10, 1979, effective August 31, 1979, 9 Pa.B. 2929; amended April 12, 1999, effective July 12, 1999, 29 Pa.B. 2266; amended December 16, 2003, effective July 1, 2004, 34 Pa.B. 9. Immediately preceding text appears at serial page (255221).

Rule 1067. Trial Without Jury.

The trial of actions to quiet title by a judge sitting without a jury shall be in accordance with Rule 1038.

Source

The provisions of this Rule 1067 adopted June 27, 1969, effective September 1, 1969; amended December 16, 1983, effective July 1, 1984, 13 Pa.B. 3999. Immediately preceding text appears at serial page (45825).

Rule 1068. Acts of Assembly.

(a) The rules of civil procedure shall not be deemed to suspend or affect:

(1) The Act of May 28, 1895, P.L. 124, No. 92, as amended by the Act of April 28, 1899, P.L. 123, No. 101, 21 P.S. § § 399, 497 to 499;

Official Note

This Act provides for the recording of subdivision plans.

(2) Section 506 of the Act of August 24, 1963, P.L. 1175, No. 497, 49 P.S. § 1506.

Official Note

This Act authorizes the entry of a rule to file a mechanics' lien or be barred.

(b) The Act approved June 10, 1881, P.L. 97, No. 105, as amended by the Act approved April 27, 1927, P.L. 461, No. 295, 21 P.S. § 688 is suspended absolutely, in accordance with the provisions of the Constitution of 1968, Article V, Section 10(c).

Official Note

This Act authorizes a rule to foreclose a mortgage or be barred.

Source

The provisions of Rule 1068 adopted March 11, 1991, effective July 1, 1991, 21 Pa.B. 1274.

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Subchapter C. ACTION IN EJECTMENT

Rule

1051. Conformity to Civil Action.
1052. Venue.
1053. Service. [Rescinded].
1054. Specific Averments. Abstract of Title.
1055. Pleading More Than One Cause of Action.
1056. Counterclaim. Conditional Verdict.
1057. Judgment. Execution.
1058. Trial Without Jury.

Rule 1051. Conformity to Civil Action.

Except as otherwise provided in this chapter, the procedure in the action of ejectment shall be in accordance with the rules relating to a civil action.

Source

The provisions of this Rule 1051 adopted June 25, 1946, effective January 1, 1947; amended December 16, 1983, effective July 1, 1984, 13 Pa.B. 3999. Immediately preceding text appears at serial page (40041).

Rule 1052. Venue.

The action may be brought in and only in a county in which the land or part of the land is located.

Source

The provisions of this Rule 1052 adopted June 25, 1946, effective January 1, 1947.

Rule 1053. Service.

[Rescinded]

Official Note

For service of original process, see Rule 410 governing service in actions involving real property.

Source

The provisions of this Rule 1053 reserved June 20, 1985, effective January 1, 1986, 15 Pa.B. 2452. Immediately preceding text appears at serial pages (87259) and (87260).

Rule 1054. Specific Averments. Abstract of Title.

(a) The plaintiff shall describe the land in the complaint.

(b) A party shall set forth in the complaint or answer an abstract of the title upon which the party relies at least from the common source of the adverse titles of the parties.

Source

The provisions of this Rule 1054 adopted June 25, 1946, effective January 1, 1947; amended April 12, 1999, effective July 1, 1999, 29 Pa.B. 2266. Immediately preceding text appears at serial page (212313).

Rule 1055. Pleading More Than One Cause of Action.

The plaintiff may state in the complaint any cause of action for rents, profits or any other damages which arise from the defendant's possession of the land.

Comment

The inability to join the action for delinquent rent has necessitated two separate actions when possession of the property and delinquent rent are both sought. An action in ejectment is required to obtain possession of the property and an action in assumpsit is required to recover the rent. Although not permitted in the court of common pleas, such joinder is permitted by the Rules of Civil Procedure for Justices of the Peace. Pa. R.P.C.J.P. 503C (8) permits the complaint to include amount of rent, if any, which remains due and unpaid . . . ."

In addition to delinquent rent, there are other claims for damages which cannot presently be joined, such as installment payments due under an installment land contract where the purchaser enters into possession before the time appointed for the conveyance of title. Under the Installment Land Contract Law of 1968, Act of June 8, 1965, No. 81, 68 P. S. § 901 et seq., applicable to cities and counties of the first and second class, the seller upon termination may, subject to restrictions set forth in the Act, maintain actions for recovery of possession and for unpaid installments prior to the surrender of the land.

The amendment will permit the joinder of causes of action for delinquent rent or delinquent installments under an installment land contract entered into in any city or county of the Commonwealth. Damages for "use of or injury to the land," presently permitted under the rule, are embraced in the new language, "damages which arise from the defendant's possession of the land."

Concurrently with the enlargement of the plaintiff's right to joinder, the defendant's right to counterclaim has also been enlarged. Under present Rule 1056, the defendant may counterclaim only if the plaintiff demands damages. The amendment deletes this language, thus eliminating the dependence of a counterclaim on the assertion of a claim by the plaintiff. This would permit a defendant under a residential lease to assert a claim for breach of warranty of habitability recognized by the decisions in *Pugh v. Holmes,* 253 Pa. Super. 76, 384 A.2d 1234 (1978), *Beasley v. Freedman,* 256 Pa. Super. 208, 389 A.2d 1087 (1978), and *Fair v. Negley,* 257 Pa. Super. 50, 390 A.2d 240 (1978).

Source

The provisions of this Rule 1055 adopted June 25, 1946, effective January 1, 1947; amended March 12, 1979, effective April 7, 1979, 9 Pa.B. 1167. Immediately preceding text appears at serial page (22272).

Rule 1056. Counterclaim. Conditional Verdict.

(a) The defendant may plead a counterclaim which arises from the same transaction or occurrence or series of transactions or occurrences from which the cause of action arose.

(b) A conditional verdict may be entered in an appropriate case.

Official Note

Adopted June 25, 1946, effective January 1, 1947.

Explanatory Note

Ejectment Rule 1055 permits the joinder in an action of ejectment of a cause of action for ‘‘profits for the use of or damages or injury to the land.’’ The courts have been divided in their construction of the word ‘‘profits.’’ It has been construed not to include ‘‘rent,’’ and accordingly a cause of action for delinquent rent accruing prior to commencement of the action cannot be joined with ejectment. See *Hanson v. Wintersteen,* 32 D. & C.2d 138 (1963). However, ‘‘profits’’ has also been interpreted to include rent, thus permitting the joinder of the causes of action. See dictum, *Phillips v. Bailey*, 26 Chester Co. Rep. 338 (1978).

The inability to join the action for delinquent rent has necessitated two separate actions when possession of the property and delinquent rent are both sought. An action in ejectment is required to obtain possession of the property and an action in assumpsit is required to recover the rent. Although not permitted in the court of common pleas, such joinder is permitted by the Rules of Civil Procedure for Justices of the Peace. Pa. R.P.C.J.P. 503C (8) permits the complaint to include ‘‘the amount of rent, if any, which remains due and unpaid . . . .’’

In addition to delinquent rent, there are other claims for damages which cannot presently be joined, such as installment payments due under an installment land contract where the purchaser enters into possession before the time appointed for the conveyance of title. Under the Installment Land Contract Law of 1968, Act of June 8, 1965, No. 81, 68 P. S. § 901 *et seq.,* applicable to cities and counties of the first and second class, the seller upon termination may, subject to restrictions set forth in the Act, maintain actions for recovery of possession and for unpaid installments prior to the surrender of the land.

The amendment will permit the joinder of causes of action for delinquent rent or delinquent installments under an installment land contract entered into in any city or county of the Commonwealth. Damages for ‘‘use of or injury to the land,’’ presently permitted under the rule, are embraced in the new language, ‘‘damages which arise from the defendant’s possession of the land.’’

Concurrently with the enlargement of the plaintiff’s right to joinder, defendant’s right to counterclaim has also been enlarged. Under present Rule 1056, the defendant may counterclaim only if the plaintiff demands damages. The amendment deletes this language, thus eliminating the dependence of a counterclaim on the assertion of a claim by the plaintiff. This would permit a defendant under a residential lease to assert a claim for breach of warranty of habitability recognized by the decisions in *Pugh v. Holmes,* 253 Pa. Super. 76, 384 A.2d 1234 (1978), *Beasley v. Freedman,* 256 Pa. Super. 208, 389 A.2d 1087 (1978), and *Fair v. Negley,* 257 Pa. Super. 50, 390 A.2d 240 (1978).

Source

The provisions of this Rule 1056 amended March 12, 1979, effective April 7, 1979, 9 Pa.B. 1167. Immediately preceding text appears at serial page (22272).

Rule 1057. Judgment. Execution.

Judgment in the action shall be enforced as provided by Rules 3160 to 3165, inclusive.

Official Note

Adopted March 30, 1960, effective November 1, 1960.

Rule 1058. Trial Without Jury.

The trial of actions in ejectment by a judge sitting without a jury shall be in accordance with Rule 1038.

Official Note

Added June 27, 1969, effective September 1, 1969.

The Civil Procedural Rules Committee, by communication dated Aug. 27, 1969, announced that amendment of this rule effective Sept. 1, 1969 applied to pending actions.

Source

The provisions of this Rule 1058 adopted June 27, 1969, effective September 1, 1969; amended December 16, 1983, effective July 1, 1984, 13 Pa.B. 3999. Immediately preceding text appears at serial pages (40044) and (40045).

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SUMMONS
CITACION

Commonwealth of Pennsylvania
CITY AND COUNTY OF PHILADELPHIA

COURT OF COMMON PLEAS
CIVIL TRIAL DIVISION

[PLAINTIFF'S NAME],

Plaintiff,

v.

[DEFENDANT'S NAME],

Defendant.

[MONTH] Term, [YEAR]

No. _____

To: [DEFENDANT'S NAME, STREET ADDRESS, CITY, STATE, ZIP].

You are notified that the Plaintiff,
Usted esta avisado que el demandante,

[PLAINTIFF'S NAME, STREET ADDRESS, CITY, STATE, ZIP],

Has (have) commenced an action against you.
Ha (han) iniciado una accion en contra suya.

JOSEPH H. EVERS
Prothonotary

By _____

Date _____

COURT OF COMMON PLEAS
CIVIL TRIAL DIVISION

[MONTH] Term, [YEAR], No. _____

[PLAINTIFF'S NAME, STREET ADDRESS, CITY, STATE, ZIP],
Plaintiff,

v.

[DEFENDANT'S NAME, STREET ADDRESS, CITY, STATE, ZIP].
Defendants.

SUMMONS

[LAW FIRM'S NAME]
BY: [ATTORNEY'S NAME], Esquire
Attorney for Plaintiff
Attorney I.D. No. [NUMBER]
[STREET ADDRESS]
[CITY, STATE ZIP]
[PHONE NUMBER]

[PLAINTIFF'S NAME]	:	PHILADELPHIA COUNTY
	:	COURT OF COMMON PLEAS
Plaintiff,	:	CIVIL TRIAL DIVISION
	:	
v.	:	[MONTH] TERM, [YEAR]
	:	
[DEFENDANT'S NAME]	:	
	:	
Defendant.	:	NO. [NUMBER]

<u>COMPLAINT – CIVIL ACTION</u>

(QUIET TITLE – 24500)

NOTICE TO DEFEND

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice arc served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Philadelphia Bar Association
Lawyer Referral and Information Service
1101 Market Street, 11th Floor
Philadelphia, Pennsylvania 19107-2911
Telephone: (215) 238-6333

AVISO

Lo(a) han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las páginas siguientes, usted tiene veinte (20) días de plazo al partir de la fecha de la demanda y la notificación. Hace falta asentar una comparecencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomará medidas y puede continuar la demanda en contra suya sin previo aviso o notificación. Además, la corte puede decidir a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted.

LLEVE ESTA. DEMANDA A UN ABOGADO INMEDIATAMENTE. SI NO TIENE ABOGADO O SI NO TIENE EL DINERO SUFICIEMIENTE DE PAGAR TAL SERVICIO, VAYA EN PERSONA O LLAME POR TELÉFONO A LA OFICINA CUYA DIRECCIÓN SE ENCUENTRA ESCRITA ABAJO PARA AVERIGUAR DONDE SE PUEDE CONSEGUIR ASISTENCIA LEGAL.

Asociación de Licenciados de Filadelfia
Servicio de Referencia E Información Legal
1101 Market Street, 11th Floor
Philadelphia, Pennsylvania 19107-2911
Teléfono: (215) 238-6333

[LAW FIRM'S NAME]
BY: [ATTORNEY'S NAME], Esquire
Attorney for Plaintiff
Attorney I.D. No. [NUMBER]
[STREET ADDRESS]
[CITY, STATE ZIP]
[PHONE NUMBER]

[PLAINTIFF'S NAME]	:	PHILADELPHIA COUNTY
	:	COURT OF COMMON PLEAS
Plaintiff,	:	CIVIL TRIAL DIVISION
	:	
v.	:	[MONTH] TERM, [YEAR]
	:	
[DEFENDANT'S NAME]	:	
	:	
Defendant.	:	NO. [NUMBER]

COMPLAINT – CIVIL ACTION
(QUIET TITLE – 24500)

1. This is an action to quiet title to that certain piece of real property in the City and County of Philadelphia denominated as 123 Main Street, Philadelphia, Pennsylvania, 19124 (the "Property"), and more fully described as follows:

[PROPERTY DESCRIPTION]

2. Plaintiff, Jane Smith ("Plaintiff"), is an adult individual who resides at 123 Main Street, Philadelphia, PA 19124.

3. Defendant, William Jones, is an adult individual maintaining an address at 345 Harris Street, Philadelphia, Pennsylvania, 19124. Defendant, Maria Jones, is an adult individual maintaining an address at 345 Harris Street, Philadelphia, Pennsylvania, 19124. William Jones and Maria Jones are husband and wife and are jointly referred to hereinafter as "Defendants."

4. Venue lies in this Court, because these actions stem from occurrences that took place in Philadelphia County and that concern real property located in Philadelphia County.

5. As of October, 1993, Defendants were the owners of certain property identified as 5555 Ruth Street, Philadelphia, Pennsylvania, 19188 (the "Property"). At or about this same time, Defendants placed the Property up for sale.

6. In or about late October, 1994, Plaintiff expressed an interest in purchasing the Property from Defendants.

8. On or about November 3, 1994, Plaintiff and Defendants entered into an "Agreement of Sale" for the Property that set forth a sales price of $5,500 and provided for the Property to be sold in an "as is" condition. A true and correct copy of the "Agreement of Sale" is attached hereto as Exhibit "A."

9. The Agreement further provided that: (1) Plaintiff was to make a down payment of $3,000 on November 3, 1994, and that the balance of the sales price was due on November 17, 1994; (2) title would be "signed over" on November 17, 1994, upon the payment of the balance of the purchase price; and (3) the taxes would be paid in full by defendants by November 11, 1994.

10. Pursuant to the terms of the Agreement, on November 3, 1994, Plaintiff paid $3,000 to Defendants.

11. Pursuant to the terms of the Agreement, on November 17, 1994, Plaintiff paid the balance of $2,500 to Defendants as well as $582.00 for water service for the Property.

12. On November 17, 1994, Plaintiff and Defendant executed a "Final Bill of Sale" that reflected that Plaintiff had paid for the property in full and that provided that the deed ("Deed") evidencing the transfer of title from Defendants to Plaintiff would be recorded. A true and correct copy of the Final Bill of Sale is attached hereto as Exhibit "B."

13. Defendants advised Plaintiff that they would make arrangements to have the Deed recorded immediately and that the Deed, once recorded, would be sent to the Plaintiff's address at the Property..

14. Despite demand, Defendants have failed and refused to record the Deed.

15. In addition, Defendants have encumbered the Property by allowing numerous judgments and other liens to be placed on the Property since it was sold to Plaintiff in November 1994.

WHEREFORE, Plaintiff prays as follows:

1. For an Order of this Court determining all adverse claims of Defendants William Jones and Maria Jones and all persons claiming under them.

2. For said Order to declare and adjudge that Plaintiff Jane Smith owns absolutely and is entitled to the quiet and peaceful possession of the Property and that Defendants William Jones and Maria Jones and all persons claiming under them have no estate, right, title, lien, or interest in or to said premises, and that title to the Property be quieted in Plaintiff Jane Smith against all claims of Defendants William Jones and Maria Jones and all persons claiming under them.

3. For said Order to direct the Commissioner of the Department of Records of Philadelphia County to execute the deed attached as Exhibit "C," on behalf of William Jones and Maria Jones, so that the deed can be recorded to properly acknowledge Jane Smith as owner of the Property located at [PROPERTY ADDRESS], Philadelphia, Pennsylvania, [ZIP CODE], and said deed shall be recorded, along with a certified copy of the Court's Order, without payment of transfer tax;

4. For the costs of this action and for such other relief that this Court deems necessary and proper.

_____
[LAW FIRM'S NAME]
BY: [ATTORNEY'S NAME], Esquire
Attorney for Plaintiff
Attorney I.D. No. [NUMBER]
[STREET ADDRESS]
[CITY, STATE ZIP]
[PHONE NUMBER]

Dated: _____

VERIFICATION

[PLAINTIFF'S NAME], being duly sworn according to law, deposes and says that [HE/SHE] is the plaintiff in the within action, that the facts set forth in the foregoing Complaint are true and correct to the best of [HIS/HER] knowledge, information, and belief, and [HE/SHE] understands that false statements herein are made subject to the penalties of 18 Pa. C.S.A. § 4904, relating to unsworn falsification to authorities.

_____
[PLAINTIFF'S NAME]

Dated: _____

[ATTORNEY'S NAME], Esquire
[ATTORNEY'S EMAIL ADDRESS]
Attorney I.D. No. [NUMBER]
[ATTORNEY'S LAW FIRM]
[STREET ADDRESS]
[CITY, STATE ZIP]
[PHONE NUMBER]

[PLAINTIFF'S NAME]
Attorney for Plaintiff

[PLAINTIFF'S NAME] [STREET ADDRESS] [CITY, STATE ZIP], Plaintiff, v. [DEFENDANT'S NAME] [STREET ADDRESS] [CITY, STATE ZIP], Defendant.	)	COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY CIVIL TRIAL DIVISION [MONTH] TERM, [YEAR] No. _____

PRAECIPE TO INDEX AS LIS PENDENS

TO THE PROTHONOTARY:

Kindly index this action as a lis pendens against the property located at [PROPERTY ADDRESS], Philadelphia, Pennsylvania, [PROPERTY ZIP CODE], more fully described in Exhibit "A" hereto. I hereby certify that title to the real estate is involved.

Respectfully submitted,

_____
[ATTORNEY'S NAME], Esquire
[ATTORNEY'S LAW FIRM]
Attorney for Plaintiff
[STREET ADDRESS]
[CITY, STATE ZIP]
[PHONE NUMBER]

Dated: [DATE]

CERTIFICATE OF SERVICE

I, [ATTORNEY'S NAME], Esquire, hereby certify that on [DATE OF SERVICE], a true and correct copy of the Praecipe to Index as Lis Pendens to the Prothonotary of the Court of Common Pleas of Philadelphia County was served by facsimile and first-class mail to the below-listed counsel:

[ATTORNEY], Esquire
[ADDRESS]
[CITY, STATE ZIP]

_____
[ATTORNEY'S NAME]

[LAW FIRM'S NAME]
BY: [ATTORNEY'S NAME], Esquire
Attorney for Plaintiff
Attorney I.D. No. [NUMBER]
[STREET ADDRESS]
[CITY, STATE ZIP]
[PHONE NUMBER]

[PLAINTIFF'S NAME]	:	PHILADELPHIA COUNTY
	:	COURT OF COMMON PLEAS
Plaintiff,	:	CIVIL TRIAL DIVISION
	:	
v.	:	[MONTH] TERM, [YEAR]
	:	
[DEFENDANT'S NAME]	:	
	:	
Defendant.	:	NO. [NUMBER]

MOTION FOR ALTERNATIVE SERVICE

Plaintiff, [PLAINTIFF'S NAME], hereby files this Motion for Alternative Service, and in support thereof avers the following:

1. Plaintiff instituted this action on [DATE OF FILING], by filing a summons against Defendant, [DEFENDANT'S NAME].

2. This matter involves an attempt by Plaintiff to obtain an Order from the Court directing that title to the property located at [PROPERTY ADDRESS] be declared, adjudged, and quieted in the name of [PLAINTIFF]; that [DEFENDANT] and all persons claiming under [HIM/HER] have no estate, right, title, lien, or interest in or to said premises; and that the Commissioner for the Department of Records of Philadelphia County execute a deed on behalf of [DEFENDANT] so that the deed can be recorded to properly reflect [PLAINTIFF'S NAME]'s

sole ownership of the property.

3. The Plaintiff's action is based upon the Installment Land Contract [HE/SHE] entered into on [DATE] with [DEFENDANT], for the purchase of the property located at [PROPERTY ADDRESS].

4. Plaintiff engaged a process server to serve the summons upon Defendant.

5. The process server was unable to serve Defendant, as the property listed as Defendant's last known address is vacant. A true and correct copy of the process server's Return of Not Found is attached hereto as Exhibit "A".

6. Counsel for Plaintiff has made a reasonable investigation concerning the whereabouts of Defendant and submits herewith as Exhibit "B" an affidavit regarding those efforts.

7. Plaintiff has filed its Complaint against Defendant and requires an Order permitting alternative service upon Defendant.

WHEREFORE, Plaintiff respectfully requests that the Motion for Alternative Service be granted and that Plaintiff be permitted to:

(a) Effect service of the Complaint by posting notice at the premises located at [DEFENDANT'S LAST KNOWN ADDRESS], and by forwarding a copy of the notice to that address by ordinary mail; and

(b) Effect service of any subsequent papers to be filed in this matter by ordinary United States Mail, postage prepaid, upon Defendant at

[HIS/HER] last known address, [DEFENDANT'S LAST KNOWN ADDRESS].

_____
[LAW FIRM'S NAME]
BY: [ATTORNEY'S NAME], Esquire
Attorney for Plaintiff
Attorney I.D. No. [NUMBER]
[STREET ADDRESS]
[CITY, STATE ZIP]
[PHONE NUMBER]

Dated: _____

[LAW FIRM'S NAME]
BY: [ATTORNEY'S NAME], Esquire
Attorney for Plaintiff
Attorney I.D. No. [NUMBER]
[STREET ADDRESS]
[CITY, STATE ZIP]
[PHONE NUMBER]

[PLAINTIFF'S NAME]	:	PHILADELPHIA COUNTY
	:	COURT OF COMMON PLEAS
Plaintiff,	:	CIVIL TRIAL DIVISION
	:	
v.	:	[MONTH] TERM, [YEAR]
	:	
[DEFENDANT'S NAME]	:	
	:	
Defendant.	:	NO. [NUMBER]
	:	

MEMORANDUM OF LAW IN SUPPORT OF
PLAINTIFF'S MOTION FOR ALTERNATIVE SERVICE

Plaintiff, [PLAINTIFF'S NAME], ("Plaintiff"), by and through her undersigned counsel, submits this Memorandum of Law in support of [HIS/HER] Motion for Alternative Service pursuant to Pennsylvania Rule of Civil Procedure 430.

I. MATTER BEFORE THE COURT

Plaintiff seeks alternative service pursuant to Pennsylvania Rule of Civil Procedure 430 as Defendants, [DEFANDANTS' NAMES], are both deceased.

II. STATEMENT OF THE ISSUES INVOLVED

Should the Court grant an Order of Alternative Service, pursuant to the Plaintiff's Motion for Alternative Service Pursuant to Pa. R. Civ. P. 430, due to the fact that Defendants are deceased and any heirs or assigns are unknown?

Suggested answer: YES

III. FACTS

As of April 9, 1973, Defendants owned the Property as tenants by the entireties. Upon information and belief, [DEFANDANT I NAME] died in November 1982. On or about February 6, 1987, Plaintiff entered into a lease agreement (the "Lease") for the Property with [DEFENDANT II NAME]. Plaintiff has continuously resided at the Property since entering into the Lease in February 1987.

On or about May 15, 1987, Plaintiff and [DEFENDANT II NAME] then entered into an Agreement of Sale for the property located at 123 Main Street, Philadelphia, Pennsylvania, 19155 (the "Property"). Plaintiff agreed to pay the purchase price of $2,000, and [DEFENDANT II NAME] agreed to execute a deed conveying title of the Property to Plaintiff. However, [DEFENDANT II NAME] failed to so execute the deed.

On or about October 22, 1991, [DEFENDANT II NAME] died. To the best of Plaintiff's knowledge, Defendants had a son who died shortly after [DEFENDANT II NAME]. Upon learning of [DEFENDANT II NAME] death, Plaintiff contacted [DEFENDANT II NAME] only known surviving heir, a sister (the "Sister"), to discuss the issue of title transfer. The Sister refused to speak with Plaintiff. Plaintiff has been unsuccessful in subsequent attempts to locate the Sister or to obtain title to the Property in her name through the Sister. An Estate was never raised on behalf of [DEFENDANT II NAME], and the whereabouts of any heirs or assigns is unknown.

Defendants are deceased and any heirs or assigns are unknown. Accordingly, Plaintiff requests the Court to enter an order of alternative service pursuant to Pa. R.C.P. 430.

IV. ARGUMENT

It is well-established under Rule 430 of the Pennsylvania Rules of Civil Procedure that a Court may grant an order for alternative service. Rule 430 (a) states:

> If service cannot be made under the applicable rule the plaintiff may move the court for a special order directing the method of service. The motion shall be accompanied by an affidavit stating the nature and extent of the investigation which has been made

> to determine the whereabouts of the defendant and the reasons why service cannot be made.

Pa.R.Civ.P. 430 (a) (2009).

In the present case, after investigation, Defendants have been found to be deceased.

Furthermore, Rule 430 (b)(2) states:

> When service is made by publication upon the heirs and assigns of a named former owner or party in interest, the court may permit publication against the heirs or assigns generally if it is set forth in the complaint or an affidavit that they are unknown.

Pa.R.Civ.P. 430(b)(2) (2009). In the present case, the heirs or assigns of Defendants are unknown.

Accordingly, Plaintiff respectfully requests that her motion for alternative service be granted.

V. RELIEF REQUESTED

Record owners, [DEFENDANTS' NAMES] are deceased and any heirs or assigns are unknown. As a result, Plaintiff is respectfully requesting this Court to enter an order of alternative service pursuant to Pennsylvania Rule of Civil Procedure 430.

For the foregoing reasons, Plaintiff requests that this Court grant Plaintiff's Motion for Alternative Service.

Respectfully submitted,

_____

[LAW FIRM'S NAME]
BY: [ATTORNEY'S NAME], Esquire
Attorney for Plaintiff
Attorney I.D. No. [NUMBER]
[STREET ADDRESS]
[CITY, STATE ZIP]
[PHONE NUMBER]

Dated: _____

Explanatory Comment

New Rule 1065.1 sets forth the form notice required by Section 5527.1 of the Judicial Code, 42 Pa.C.S. § 5527.1. Section 5527.1 provides for a ten-year limitation for adverse possession of real property under certain circumstances after which the adverse possessor may seek to acquire title to real property by filing an action to quiet title. Section 5527.1(c) requires the adverse possessor to provide notice relating to the respondent record owner's ability to cure the adverse possession. Section 5527.1(c)(3) directs that the notice is to be provided in a form approved by rule of the Pennsylvania Supreme Court and must include the following information: (1) that the record owners or their heirs, successors, and assigns shall have one year in which to respond to the quiet title action by commencing an action in ejectment against the adverse possessor to dispute the claim of adverse possession, (2) the metes and bounds description of the property, (3) deed reference, (3) street address, (4) postal zip code, and (5) uniform parcel identifier or tax parcel number. New Rule 1065.1 is intended to incorporate the requirements of Section 5527.1(c).

By the Civil Procedural
Rules Committee

David L. Kwass
Chair

[LAW FIRM'S NAME]
BY: [ATTORNEY'S NAME], Esquire
Attorney for Plaintiff
Attorney I.D. No. [NUMBER]
[STREET ADDRESS]
[CITY, STATE ZIP]
[PHONE NUMBER]

[PLAINTIFF'S NAME]	:	PHILADELPHIA COUNTY
	:	COURT OF COMMON PLEAS
Plaintiff,	:	CIVIL TRIAL DIVISION
	:	
v.	:	[MONTH] TERM, [YEAR]
	:	
[DEFENDANT'S NAME]	:	
	:	
Defendant.	:	NO. [NUMBER]

Notice Required by Section 5527.1 of the Judicial Code

To the above-named defendant:

The plaintiff in the above-captioned matter has filed an action to quiet title pursuant to Section 5527.1 of the Judicial Code, 42 Pa.C.S. § 5527.1, seeking to acquire title by adverse possession of real property described as follows:

_____
Street Address

_____
City, State, Postal Zip Code

_____
Deed Reference

_____
Uniform Parcel Identifier or Tax Parcel Number

_____

_____

_____

_____

Metes and Bounds Description

If you wish to challenge the claim of adverse possession, you must respond to the action to quiet title within one year after this complaint and notice are served by commencing an action in ejectment against the plaintiff.

_____

[LAW FIRM'S NAME]
BY: [ATTORNEY'S NAME], Esquire
Attorney for Plaintiff
Attorney I.D. No. [NUMBER]
[STREET ADDRESS]
[CITY, STATE ZIP]
[PHONE NUMBER]

Dated: _____