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A Division of Fidelity National Title

# The Quill – February 2022



## THE QUILL ARTICLE

### Failure of Title – Corrective Affidavit

#### Facts:

On December 15, 1998, a developer obtained title to Lots 1-12 of Happy Place Subdivision. On May 9, 2001, the developer intended to convey Lot 3, but mistakenly conveyed Lot 7, to Anne Realle.\* On May 18, 2001, the developer conveyed Lot 7 to Jamie and Joellen Party. Lot 7 is the



insured lot. Subsequently, on June 7, 2001, the closing attorney attempted to resolve the legal description error in Ms. Realle's deed by recording a Statement of Explanation pursuant to GS 47-36.1 and a re-recorded deed to Ms. Realle. The legal description in the re-recorded deed was changed to Lot 3. The re-recorded deed was not re-executed by the developer/grantor.

On November 18, 2011, Mr. and Mrs. Party conveyed Lot 7 to the current owner, Mr. and Mrs. Wilshire. The Company issued an owner's policy to Mr. and Mrs. Wilshire insuring Lot 7. On May 15, 2018, the Wilshires entered into a contract to sell Lot 7. The closing attorney conducted a 30-year title search and found the error in Ms. Realle's deed. The insured immediately filed a title claim asserting that Ms. Realle had a competing prior claim of title to Lot 7. The claim was received by the Company and handled accordingly.

Back to my initial question, "How could this "failure of title" claim have been prevented?" Since the developer owned Lot 7 at the time Lot 7 was conveyed to Anne Realle, she became the vested owner of Lot 7. To correct the legal description error, prior to the conveyance to the Partys, Ms. Realle (and spouse, if applicable) should have conveyed her interest in Lot 7 back to the developer.\*\* As an aside, if Ms. Realle had encumbered Lot 7 with a loan secured by a recorded deed of trust (she did; however, the DT was satisfied prior to the initiation of the title claim), the beneficiary of the deed of trust would need to release Lot 7 from the deed of trust.

For this claim, it appears the closing attorney discovered the legal description error a few days after the deed to Mr. and Mrs. Party was recorded. To correct the matter at that time, Ms. Realle should have conveyed her interest in Lot 7 to Mr. and Mrs. Party. The beneficiary of the DT (for Ms. Realle's loan) should have released Lot 7 from the DT. Subsequent to the recording of the deed from Ms. Realle to Mr. and Mrs. Party, the deed of trust executed by Mr. and Mrs. Party, if applicable, should have been re-recorded to correct the chain of title. Finally, the search attorney should have performed an updated title search on Lot 7 to confirm there were no intervening liens or matters that needed to be dealt with prior to the remedial work.

Further, there are two rules of thumb to consider when thinking about using a "corrective or scrivener's" affidavit pursuant to NCGS 47-36.1:

1. As clarified by the enactment of Session Law 2017-110, affidavits recorded pursuant to NCGS 47-36.1 serve only to provide notice of an error in a recorded instrument. Such an affidavit does not actually correct the recorded instrument; and
2. The "typographical or other minor error" in a recorded instrument for which notice is being given must be "nonmaterial." An "error that would affect the respective rights of any party to the instrument is not a nonmaterial typographical or minor error." (See SL 2017-110 for further details.)

Should you have any questions regarding the use of a corrective or scrivener's affidavit to provide notice of an error in a recorded instrument, please do not

hesitate to reach out to me at [natasha.branch@fnf.com](mailto:natasha.branch@fnf.com) or Kate Foshee at [kate@barristerstitle.com](mailto:kate@barristerstitle.com).

By: Natasha N. Branch, Operations Manager and Title Counsel

\* The names of the parties included in the summary are fictitious

\*\* The Company did not insure Lot 3. As such this summary does not address remedial work necessary to correct the conveyance of Lot 3.

## MEET THE FAMILY:



Katie Meyers

Sales & Marketing  
Director

We would like to introduce you to one of the newest members of the Barristers Title Team, Katie Meyers. She is joining us as our Sales and Marketing Director.

Katie is a graduate of the University of South Carolina with a degree in Operations and Supply Chain Management and a minor in German. After going to school half an hour away from her hometown in SC, she moved to Charlotte to work for Fidelity National Title, Charlotte branch, as the Customer Relations Manager. Although Katie is new to the field of title insurance, she worked as a marketing intern for the University of South Carolina athletics during her years as an undergrad.

Katie loves to play tennis and attend any and every Gamecock sporting event she can! You can reach her at [kmeyers@barristerstitle.com](mailto:kmeyers@barristerstitle.com). Make sure to say hi when you see her out and about in the Charlotte area!

## RECIPE

### Jennifer's Ham & Cheese Sliders

Super Bowl LVI is coming up and some of you will surely be hosting for the big event (aka The Halftime Show!) Don't worry, we've got you! This easy and delicious twist on a classic will have your guests coming back for thirds. An added bonus, you can make them and freeze ahead of time. You're welcome! 🍷

#### Ingredients:

1 lb. ham (or turkey)

# RECIPE

1 lb. Swiss cheese  
6 packs of Pepperidge Farm Dinner Rolls (or any other small yeast rolls)  
2 sticks of butter  
1/4 cup brown sugar  
2 tbsp. of poppy seeds

## Directions:

Slice the package of rolls in half and remove the top half. Cut ham and cheese into 1-inch squares. Melt butter, sugar and poppy seeds and spoon on the bottom half of the rolls. Layer each roll with 2 slices of cheese and 2 slices of ham. Put the top the rolls on and wrap in foil. You can freeze it at this point. Thaw and bake on a cookie sheet with the foil still on at 325° for 15-20 minutes. Don't remove foil until you're ready to serve so the sliders stay hot. Slice through the bread to make sure they can be pulled apart.

## HAPPY VALENTINE'S DAY

### Valentine's Day Date Disasters

Valentine's Day is around the corner and whether you love it or hate it, there are always some funny stories to be found. We polled our staff to share some of our own date disasters and we have a few that will hopefully put a smile on your face today. Our date losses are your gain!

*"Andy took me to a driving range and I broke the club! I hit the ball and the head of the club followed it. I was so embarrassed....Obviously golf is NOT my thing, LOL!" ~ Maria Houghton, Title Underwriter and Office Manager*

*"Shane proposed in our house with rose petals starting at the door and those small candles lining the floor with the thought that him and the dogs would be waiting for me - him on one knee, when I walked in the door. However, the dogs were super excited to see me, of course, and excited dogs with candles on the floor isn't a good thing. We about burned our house down, and our dogs! We celebrated the engagement by getting hardened wax off of our dogs and our floors. This is a picture of Finn before I got home and before the incident." ~ Shelby LeHew, Commercial Title Assistant*



*"I went on a blind date through mutual friends who set us up. My date was a dancer and an up-and-coming actor. I thought, why not? If my friends think it will be a good*

match let's try it. We met at a pizza place where he showed his acting skills within the first fifteen minutes by grabbing everyone's attention at the restaurant by performing a scene of *The Joker* from *Batman*. Granted it was impressive, but HUMILIATING! I was mortified, and tried to wrap up the rest of the evening as he was trying to converse with other people about his acting career. Needless to say, there was no second date."

~ Keaira McGuire, Sales & Marketing

## IT'S SUPERBOWL SEASON

Snacks, commercials & halftime show...  
and maybe a little football!

When you watch the Super Bowl just for the snacks & someone starts talking to you about football...



People in their 40's when this year's Super Bowl halftime show comes on.



## THE QUILL RIDDLE?

Olympic Trivia

Q: What do the five Olympic rings stand for?

A. They represent the 5 continents (Antarctica not included)

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