North Dakota Law Review

Volume 46 | Number 2 Article 1

1969

Examining the Abstract of Title

J. Philip Johnson

EXAMINING THE ABSTRACT OF TITLE

J. PHILIP JOHNSON*

Introduction

Many otherwise experienced lawyers express dismay when a client appears with an abstract of title in hand. Even within the generalized practice of North Dakota, there are relatively few attorneys that handle the great majority of title examinations, usually in connection with the mortgaging of the property. There is no deep secret to the examination process but there is a certain amount of background and a few rules of practice that can be extremely helpful. The following is offered as an explanation and aid for title examination within this region and particularly this state.

1. HISTORY OF THE ABSTRACT-OPINION SYSTEM

The system of real estate title examination common to the upper midwest region of the United States is based upon the opinion of a lawyer gained from examination of an abstract of the real estate records. As with most law, and most particularly real estate law, the practice is best explained by examining its history.

Transfer of title in England, aside from the traditional enfeoffment method, involved a conveyance accompanied by transfer of the original documents of title.[1] For convenience, a summary or abstract of these documents was later furnished by the seller. In the colonies of North America, there developed a new system of public registration for conveyances of land.[2] Plymouth Colony adopted such a requirement in 1636 to prevent fraud and confusion in regard to land titles.[3] Similar acts followed in Massachusetts Bay, Virginia and other colonies. In 1795, based on the experience of the colonies and young states, the Northwest Territory of Ohio passed an act requiring that deeds not acknowledged or proved and recorded within twelve months of execution ". . . shall be adjudged fradulent and void against any subsequent purchaser, or

* Ph.B. University of North Dakota, 1960; J.D. University of North Dakota, 1962; Georgetown University Graduate School of Law, 1964-65; Member of the firm of Pancratz, Wold and Johnson, Fargo, North Dakota.

1. *See* P. BASYE, CLEARING LAND TITLES § 3, at 4 (1953).
2. *See* 4 AMERICAN LAW OF PROPERTY § 17.4, at 527-30 (A.J. Casner ed. 1952).
3. *Id.* at 528.

mortgagee, for valuable consideration"[4] unless recorded before the deed of the purchaser. This Act served as a model for laws in many states to follow.[5]

The State of North Dakota was formed out of the Louisiana Purchase and, along with other plains states, was occupied almost exclusively by Indian tribes until past the mid 19th century. The most prominent of these were the tribes of prairie cavalry known as Sioux, and in their own tongue, Dakota. Various territorial districts purported to include this area but the first effective administration was the territory of Dakota, established in 1861. Statehood came to North Dakota and South Dakota in 1889,[6] and with it the growth of title records. A professional class of abstracters developed and in 1925 North Dakota adopted a comprehensive law regulating them, setting forth duties, rights, fees and a bond requirement for the benefit of those relying upon the abstract.

2. THE RECORDING ACTS

One of the major authorities in the field of real estate law has concluded that ". . . the distinctive features of the American system of recording deeds are . . . indigenous."[7] The purpose of the system developed was to force all title documents onto a public record, replacing the earlier system of conveyance by one in possession and by the ceremony of public enfeoffment. Louisiana is apparently the only state varying from the basic concept of the recording acts and their system of deposit or registry arises from the earlier French statutes and Code Napoleon.[8]

The common law rule on successive conveyances by the same party of the same interest in land was quite simple, "first in time, first in right."[9] The recording acts of the various states fall into three basic categories: race type, notice type, and notice-race type. Under the "race" statute the first conveyance recorded has priority over any subsequently recorded conveyance. The "notice" statute would hold any unrecorded interest invalid against a subsequent bona fide purchaser or encumbrancer without notice. A combination of the two, the "notice-race" statute is used in a majority of the states,[10] including North Dakota.[11] Priority here is given to the purchaser or encumbrancer who has taken his interest without notice *and* recorded it ahead of other instruments.[12]

4. *Id.* at 533.
5. *Id.*
6. 1 R. POWELL, REAL PROPERTY § 92, at 347 (1969).
7. 4 AMERICAN LAW OF PROPERTY § 17.5, at 535 (A.J. Casner ed. 1952).
8. *Id.* § 17.4, at 534.
9. *See e.g.*, 6 R. POWELL, REAL PROPERTY § 912, at 269 (1969).
10. *Id.* § 913, at 277-78.
11. N.D. CENT. CODE §§ 47-19-41 and -45 (1960).
12. "'. . . [I]f the prospective buyer finds in the record evidence of a valid title in his

In connection with the basic provisions of the recording acts, there are ordinarily requirements to be met before an instrument may properly be recorded. Customarily this includes provisions for acknowledgment or attestation and, in North Dakota, the post office address of the grantee.[13] It has been generally held that instruments not entitled to be recorded or instruments out of the "chain of title" will not give "notice" under the recording acts.[14] This construction creates difficult problems in determining what is the "record" and some states, such as North Dakota, have resolved it by including all instruments that, in fact, are recorded against a tract.[15]

3. THE ABSTRACT OF TITLE

In various areas of the country, the use and significance of the abstract of title differs. In this region, its coverage and usage are perhaps most extensive. It must be remembered that the vendor of realty is generally under no obligation to prove his title, except as may be required by contract.[16] Custom and the requirements of mortgage financing have dictated the furnishing of abstracts. A few areas of this country may be considered in a pre-abstract stage, where community knowledge as to possession and previous ownership are the major factors relied upon. In other metropolitan and problem title areas there is what might be called a post-abstract stage where purchasers rely upon private certificates of title, Torrens title certificates or title insurance.[17] The greater part of the country still places primary reliance in the abstract of title and attorney's opinion.

The abstract should show, in abbreviated form, the source of title and any transfers, claims, liens, encumbrances or other items of record that affect the title.[18] Starting with an accurate caption of the real estate to be conveyed or mortgaged, the abstract should conclude with a certificate as to the period and the records covered.

---

vendor, pays value for this title to his vendor in good faith reliance on the record, and records his document of title before any other instrument showing an interest in a third party is placed of record, he will in most cases take precisely the interest the record indicates his vendor possesses whether the record is accurate or not." Crum, *Five Steps Toward Sounder Record Title,* 32 N.D. L. REV. 223 (1956); *see generally* 4 AMERICAN LAW OF PROPERTY § 17.5, at 541 (A.J. Casner ed. 1952); 6 R. POWELL, REAL PROPERTY § 913, at 277 (1969).

13. N.D. CENT. CODE § 47-19-05 (1960); *see generally* 6 R. POWELL, REAL PROPERTY § 914 (1969).

14. Messersmith v. Smith, 60 N.W.2d 276 (N.D. 1953); *see also* J.I. Case Co. v. Sax Motor Co., 64 N.D. 757, 256 N.W. 219 (1934); R. Patton, *The Mechanics of Title Examination,* MINN. ST. B. ASS'N, MINN. TITLE STANDARDS Pt. II, at 4 (1964); 6 R. POWELL, REAL PROPERTY § 914, at 278 (1969).

15. N.D. CENT. CODE § 47-19-41 (1960); N.D. ST. B. ASS'N, TITLE STANDARDS 1.021 (1962).

16. 1 R. PATTON, TITLES § 41, at 129 (2d ed. 1957).

17. *Id.* at 132.

18. *See* Exhibit A for example sheet of a North Dakota abstract of title.

In North Dakota, the complete abstract would cover records from the following sources:

1. The instruments recorded with the register of deeds, primarily deeds and mortgages, but also miscellaneous items such as the new security interests in fixtures under the Uniform Commercial Code, and federal tax liens.[19]

2. Records from the offices of the county auditor and treasurer relating to taxes attaching to the premises.[20]

3. The Clerk of the District Court's record of judgments and mechanic's liens.[21]

It has been said that the best security for one relying upon an abstract is confidence in the care and competence of the abstracter. This is aided somewhat by the statutory requirement of an abstracter's bond.[22] The bonding requirement has the further advantage of broadening liability from simple contractual liability to the abstract purchaser.[23]

4. THE MARKETABLE RECORD TITLE ACT

In the early English courts of law, title between a vendor and vendee was either good or bad. The courts of equity coined the phrase "marketable title" to describe a title free from reasonable doubts which a purchaser could be compelled to accept by specific performance.[24] As held by the courts of this country, an executory contract of sale assumes marketable title and provision for supplying abstract of title is construed as requiring marketable title of record.[25]

Some concerned real estate practitioners sought a cure for the many defects that might appear in or outside the record yet not constitute a real and present claim against the premises. The marketable record title acts were designed to meet this objective. Iowa adopted the first example of this type of legislation in 1919.[26] This Act operated to invalidate all claims arising prior to January of 1900, unless notice of claim was filed before July of 1920. The title holder could record an affidavit to establish his possession of the premises. In 1945, Michigan adopted a marketable record title

19. N.D. CENT. CODE Ch. 35-28 (Supp. 1969).
20. *See* N.D. CENT. CODE Chs. 57-20, -24 (1960), *as amended,* (Supp. 1969).
21. *See* N.D. CENT. CODE §§ 28-20-13, -19 (1960); N.D. CENT. CODE §§ 35-27-05, -12, -13 (Supp. 1969). For foreign judgments *see* N.D. CENT. CODE Ch. 28-20.1 (Supp. 1969).
22. N.D. CENT. CODE § 43-01-11 (Supp. 1969).
23. *Id.*
24. *See* 1 R. PATTON, TITLES § 46, at 156 (2d ed. 1957).
25. *Id.* § 47, at 172.
26. Ch. 270, [1919] Iowa Acts.

act after extensive study by the Real Property Committee of the Michigan Bar and Professor Ralph W. Aigler of the University of Michigan Law School.[27] This Act, which served as a model for much subsequent legislation, included a statutory definition of marketable title.

At the instigation of the Title Standards Committee of the State Bar Association of North Dakota, this state adopted a marketable record title act in 1951.[28] Borrowing liberally from a more recent Nebraska act, the statute consists of several major provisions:

1. A definition of marketable title as one vested in a person in possession with an unbroken chain of title extending for a period of twenty years.[29] This is reduced from the original period of thirty years.
2. Provision for recording notices of claims to be otherwise barred.[30]
3. Provision for recording an affidavit to show the fact of possession.[31]
4. Exclusion from coverage of the act for reversionary rights of lessors and remaindermen on a life estate; rights upon mortgages not barred by the statute of limitations; conditions subsequent; interests of the State of North Dakota, the United States and railroad companies.[32]

Some four to five years after the statute's enactment an American Bar Association Committee made a survey of fifteen recommended title practitioners throughout the state.[33] Thirteen of these always required an abstract of title back to the patent or origin with the United States, primarily because of the statutory exceptions. The two remaining would take a partial abstract covering the statutory period with an affidavit of possession — at least where the property was not of substantial value. Three of those questioned would not waive material defects that the statute purported to bar, apparently because of doubts concerning the statute's constitutionality.[34]

---

27. MICH. COMP. LAWS § 565.101 (West 1967).
28. N.D. CENT. CODE Ch. 47-19A (1960).
29. N.D. CENT. CODE § 47-19A-01 (1960).
30. N.D. CENT. CODE §§ 47-19A-03 to -06 (1960); " . . . [I]t is clear that the legislature intended to enact a law which is, in effect, a statute of limitation to run against old claims to real estate of any nature and however denominated, whether they be recorded or not." Leahy, *The North Dakota Marketable Record Title Act*, 29 N.D. L. REV. 265, 265-66 (1955).
31. N.D. CENT. CODE § 47-19A--7 (1960).
32. N.D. CENT. CODE § 47-19A-11 (1960).
33. REPORT OF COMMITTEE ON IMPROVEMENT OF CONVEYANCING AND RECORDING PRACTICES, ABA SECTION OF REAL PROPERTY, PROBATE, AND TRUST LAW, pt. 2, 95, 116 (1956).
34. *Id.* at 117; *see* Murrison v. Fenstermacher, 166 Kan. 568, 203 P.2d 160 (1949).

Now, more than thirteen years later, it appears that the Act enjoys even more universal acceptance. However, the Act will not allow an examiner to go back only the twenty year period, for two reasons. Objections covered by the Act should be cured by recording an affidavit of possession and, the abstract must be checked for interests excluded from coverage under the Act.

5. TITLE STANDARDS

It has been said that, unlike water, title examiners all tend to seek the highest level. Those in the profession have often berated the "fly speckers" who raise objections over the most technical of title problems. However, this is perhaps a natural result of a system wherein the examiner must satisfy his own objections and those that he might reasonably expect from his fellow examiners. There is always a touch of embarrassment in explaining why a title you cleared has later become unmarketable.

Marketable title acts are one means of avoiding technical objections; another is the development of Bar approved title standards. The Connecticut Bar Association first developed various written standards for common title questions and these were officially approved in 1938.[35] The Cass County Bar Association of our state appointed a committee in 1946 to study the problem and present to the State Bar Association standards for title examination.[36] State standards were subsequently developed, expanded and revised by a special Title Standards Committee of the State Bar. For the title examiner, these standards are a consistent reference in resolving abstract problems.

6. EXAMINING THE ABSTRACT

As noted by the general title standard of the North Dakota Bar, "The purpose of the examination and of objections, if any, made to the title, shall be to secure for the examiner's client a title which is merchantable of record and subject to no other encumbrances than are expressly provided for by the client's contract."[37] In areas of the country other than the upper midwest, we might be discussing a physical examination of documents from a grantor-grantee index.[38] For our purposes, we are concerned only with examination of the abstract of title itself.

35. *See* 1 R. PATTON, TITLES § 50, at 187-88 (2d et. 1957); P. BASYE, CLEARING LAND TITLES § 7, at 22 (1953).
36. Burnett, *Title Standards*, N.D. B. ASS'N SECTIONAL PROGRAM 42 (1949).
37. N.D. ST. B. ASS'N, TITLE STANDARDS, General Standard (1962). *See also* MINN. ST. B. ASS'N, MINN. TITLE STANDARDS, General Statement (1947).
38. *E.g.*, Johnson, *Basic Principles of Title Examination for the General Practitioner*, 7 PRAC. LAW. 39 (1961) (for Massachusetts practice).

Title examination can be a very individualistic process, but there are certain general principles on which there is substantial agreement. The abstract should be read at one sitting, with little interruption, and after a preliminary perusal to determine the nature of the chain of title. The initial examination should be to determine the accuracy and completeness of the abstract itself. Does the caption contain a full and correct description of the property? Is the certificate of the abstracter complete and up to date?[39] There is in general use a uniform abstracter's certificate for this state which eliminates the necessity for detailed checks as to the form of certificate.

As for the examining attorney, he is to be held liable to his client for losses resulting from failure to exercise reasonable care and skill, plus the knowledge requisite to proper performance of the examination.[40] There is no attorney guarantee of the title. Additionally, without special circumstances creating obligations to others, his liability extends only to those employing him.[41] In the process of examination, as a reasonable exercise of care and barring a prodigious memory for detail, he must construct his outline of the abstract's tale concerning title.

7. THE ATTORNEY OUTLINE

There are a considerable number of different systems whereby an examining attorney may keep track of his conclusions. The title authorities offer various forms of outlining,[42] but we might better examine a system used here in this state. For additional reference, an example outline is included at the conclusion of this article.[43] Our suggested outline is basically a "bare bones" approach and assumes a number of factors will be handled mentally. However, additional references may be included, depending upon the experience and preference of the examiner.

The outline page will be headed by the legal description of the real estate. Beneath that are reference notes in five or six columns. The first column describes the type of conveyance, *e.g.* "W.D." for warranty deed. The second column contains the abstract number of the conveyance. The grantor and grantee are described

39. *See generally* R. Patton, *The Mechanics of Title Examination*, MINN. ST. B. ASS'N, MINN. TITLE STANDARDS pt. II, at 1 .1964); Ruemmele, *Title Standards & Abstract Examination*, N.D. B. ASS'N SECTIONAL PROGRAM 35 (1960).

40. 1 R. PATTON, TITLES § 52, at 198 (2d ed. 1957); 7 C.J.S. *Attorney and Client* § 143 (1937).

41. 1 R. PATTON, TITLES § 52, at 201 (2d ed. 1957).

42. *See* 4 AMERICAN LAW OF PROPERTY § 18.5 (A.J. Casner ed. 1952); R. Patton, *The Mechanics of Title Examination*, MINN. ST. B. ASS'N, MINN. TITLE STANDARDS pt. II, at 1 (1964).

43. *See* Exhibit B.

in column 3, *e.g.* "J. P. ✓ ⟿ L. J." The check mark is included to indicate compliance with the most common title problem; a showing of marital status as to the grantor with joinder of any spouse. Many examiners will want to include an arrow or line to follow the chain of title from one conveyance to another. On the right side of the outline sheet are noted any encumbrances. One column lists the abstract number of the encumbrance, the next may describe it, *e.g.* "mtg" and the third for the assignments or satisfactions of that encumbrance.

Ordinarily the real estate description will not be listed unless that entry changes or varies the description. Any other special problems with a particular entry would, of course, also be noted.

8. PREPARING THE OPINION

After completing his examination of the abstract of title, and with his outline before him, the attorney should be ready to prepare his written opinion on the title. With some variations, the outline of his certificate or opinion will be as follows: "I have examined the accompanying abstract of title to [property description] continued to [date] and from it find that on said date marketable title of record was vested in [name of titleholder] free from encumbrances or defects, except as follows:"[44]

After this statement concerning the record title holder, the opinion should explain, in successive paragraphs, the encumbrances and defects against the property. A statement as to a title defect should ordinarily contain an explanation of the method of curing the defect. The examiner should carefully consider any objections for, as noted by the North Dakota Title Standards, "Objections and requirements should be made only when the irregularities or defects actually impair the title or reasonably can be expected to expose the purchaser or lender to the hazard of adverse claims or litigation."[45] Additionally, the examiner will soon discover that he must offer the seller a good explanation of what is holding up his sale.

In the process of drawing up his opinion, the examiner may wish to call to the attention of his client nonrecord items which might affect the title. These items, including zoning, special assessments and unrecorded mechanic's lien interests, may properly be covered by standard paragraphs. An example of such references for North Dakota use is included at the end of this article.[46]

44. *See e.g.*, 1 R. PATTON, TITLES § 49 (2d ed. 1957).
45. N.D. ST. B. ASS'N, TITLE STANDARDS General Standard (1962).
46. *See* Exhibit C.

9. THE FUTURE OF TITLE EXAMINATION

As has been noted by those involved in the title practice, there has been tremendous growth in the field of title insurance. In many areas of substantial growth in these companies, such as California, there has been a corresponding drop in the participation of lawyers in the real estate closing.[47] With the ability to advertise and promote their insurance and allied services, the title companies have assumed an ever increasing share of the real estate market. Lawyers eventually reacted to this situation and, in several states, lawyers' guaranty funds were formed. Under these programs the attorney, in conjunction with his services, would provide indemnity coverage for the title. The American Bar Association has had under consideration for more than a year a national bar related title insurance company.

At its annual meeting in June of 1966, the State Bar Association of North Dakota approved a recommendation of its Special Committee on Title Insurance. This proposal was an endorsement of Insured Titles, Inc., a Kansas based company formed by lawyers and abstracters, which was to make its stock available to North Dakota lawyers and abstracters. The company issued its policies based upon an abstract and attorney's opinion. Within this background, it was a bit surprising to read the conclusions of Henry G. Ruemmele who has written more in this area than any lawyer in the state. In a recent article in this *Review* he concluded that:

> The most economical, efficient and secure method of conveyancing and title evidencing is title insurance, using the public record as an underwriting base, and combining the search, examination and issuance of the policy into one operation.[48]

This was the system advocated and projected by Mr. Ruemmele for our area.

This view would appear to differ from an opinion expressed by Mr. Ruemmele several years earlier, in 1960 in which he supported the approach stated by Mr. Paul Basye as follows:

> Operations during recent years indicate that improvement in our conveyancing system can be made by two general methods: by adoption of real estate title standards and by adoption of comprehensive and systematic legislation.[49]

47. *See* Balbach, *Title Insurance and the Lawyer*, 52 A.B.A.J. 65, 66 (1966).
48. Ruemmele, *Title Evidencing in North Dakota*, 43 N.D. L. REV. 467, 484 (1967).
49. Ruemmele, *Title Standards and Abstract Examination*, N.D. B. ASS'N SECTIONAL PROGRAM 35 (1960).

Both of these methods have been adopted in North Dakota. We have adopted real estate title standards and have enacted marketable title legislation. Understandably, each is subject to updating.

There is an obvious element of self-interest in lawyers attempting to maintain their role in the title examination process. But that does not remove the strength of the counter-argument, particularly as applied to this area of the country. With an effective recording system based upon a tract index, a comprehensive marketable title act and approved title standards, the state has adopted most of the elements recommended for reform of the title system.[50] These elements, combined with a comparatively short title history, reduce the risks to be covered by title insurance to a minimal level. On a national level, title insurance is an extremely low risk industry, and under the circumstances of our area, its losses would likely be miniscule.[51] The title insurance policy itself is no panacea since it includes exceptions to coverage, and may be directed only to protect the mortgagee.

Doubtless, there are and will be commercial developments of such financial magnitude that title insurance is warranted. Additionally, there are national corporations that operate through title insurance companies as a matter of custom. However, in the ordinary residential or commercial transfer within our area, the title would hardly appear to reach the level of an insurable risk, so long as we maintain competent examiners. If lawyers do not maintain their competence in the area of title examination, this will become simply a murky specialty, to be judged only by the few who operate in this field.

50. *See* SIMES, A HANDBOOK FOR MORE EFFICIENT CONVEYANCING, ch. 5 (1961).

51. *See e.g.*, statement of Sen. William Proxmire, of Senate Banking Committee, listing the national loss ratio for title companies at 1.7% of premium. The Forum (Fargo, N.D.), April 12, 1969, at 12.

EXHIBIT A

EXAMPLE REFERENCES—NORTH DAKOTA ABSTRACT OF TITLE

No. 56

Hilding L. Olson and
Selma E. Olson,
husband and wife,

To

Ralph J. Gerhardt and
Vivian M. Gerhardt,
husband and wife,
Fargo, North Dakota

WARRANTY DEED $1. and other valuable consideration
Dated August 14, 1964
Filed Aug. 17, 1964 at 11:12 A. M.
Book "300" of Deeds page 45

****Grant, Bargain, Sell and Convey unto said parties of the second part, as joint tenants, and not as tenants in common, their assigns, the survivor of said parties, and the heirs and assigns of the survivor***Lot 6, Block 6, McDermott Addition to the City of Fargo,** in the County of Cass, and the State of North Dakota.

($15.40 Rev. Stps. Cancelled)

Free from all encumbrances except installments of special assessments or assessments for special improvements which have not been certified to the County Auditor for collection.

Acknowledged August 14, 1964 by Hilding L. Olson and Selma E. Olson, husband and wife, before Margrethe Nestegard, Notary Public, Cass County, North Dakota (Notarial Seal) Commission expires June 24, 1967.

No. 57

Ralph J. Gerhardt and
Vivian M. Gerhardt,
husband and wife,
Fargo, North Dakota

To

The Merchants National
Bank & Trust Co. of Fargo,
a corporation, Fargo,
North Dakota

MORTGAGE $12,000.00
Dated August 14, 1964
Filed Aug. 17, 1964 at 11:13 A. M.
Book "423" of Mtgs. page 85

****Grant, Bargain, Sell and Convey***Lot 6, McDermott Addition to the City of Fargo,** in the County of Cass, and the State of North Dakota, including all buildings and improvements thereon (or that may hereafter be erected thereon); together with***the rents, issues and profits thereof***

Acknowledged August 14, 1964 by Ralph J. Gerhardt and Vivian M. Gerhardt, husband and wife, before Margrethe Nestegard, Notary Public, Cass County, North Dakota (Notarial Seal) Commission expires June 24, 1967.

No. 58

The Merchants National Bank & Trust Co. of Fargo, by E. W. Anderson, Its Vice President, by L. D. Hovland, Its Assistant Cashier (Corporate Seal)

To

Ralph J. Gerhardt and Vivian M. Gerhardt, husband and wife

RELEASE OF MORTGAGE
Dated October 18, 1965
Filed Oct. 21, 1965 at 9.50 A. M.
Book "435" of Mtgs. page 596

Certify, that a certain Mortgage bearing date August 14, 1964and which said mortgage was duly filed for record***August 17, 1964; the said mortgage being recorded in **Book "423" of Mortgages, on page 85, ***fully paid and satisfied*** (Noted at entry No. 57 of Abstract)**

Acknowledged October 18, 1965 by E. W. Anderson and L. D. Hovland, Vice President and Ass't Cashier, respectively of the corporation, before Margrethe Nestegard, Notary Public, Cass County, North Dakota (Notarial Seal) Commission expires June 23, 1967.

EXHIBIT B

EXAMPLE FORM OF ABSTRACT OUTLINE

No. 14440 Lot 2, Block 4, Chandler's Broadway Addition, City of Fargo, North Dakota

	Pat	(1)	U.S. ⇒ A.R.J. [SE¼ 31-140-48]	~~(4) Mtg~~ (5)
	WD	(2)	A.R.J. √ ⇒ P.P.J.	~~(7) Mtg~~ (12)
+	QCD	(3)	P.P.J. ⇒ D.J.	~~(13) Mtg~~ (15)
	WD	(6)	D.J. √ ⇒ P.D.	~~(14) Assn Rts~~ (15)
	FD	(8)	re P.D. ⇒ A.D. & J.D.	
	QCD	(9)	A.D. √ ⇒ J.D.	
−	Plat	(10)	Chandler's Broadway Addition—Restrictive Covenants	
	Resol	(11)	Annexation	
	WD	(16)	J.D. √ ⇒ A.B. & B.B. [Lot 2, Block 4]	
	Afdvt	(17)	re No. 3	
	WD	(18)	A.B. & B.B. √ ⇒ L.T.D.	

ABBREVIATIONS

Pat	Patent
WD	Warranty Deed
QCD	Quit Claim Deed
FD	Final Decree of Distribution
Afdvt	Affidavit
Resol	Resolution
Mtg	Mortgage
Assn rts	Assignment of Rents
−	Apparent Title Defect or Encumbrance
+	Corrected Defect or Encumbrance

EXHIBIT C

EXAMPLE OF ADDITIONAL CONDITIONS TO OPINION UPON ABSTRACT OF TITLE

SCOPE OF OPINION: Unless otherwise stated, this opinion is written from an examination of the abstract only and the Court files of any proceedings that may appear, such as foreclosures, quiet title actions, probate proceedings or tax sales, have not been examined. According to the abstract there appear to be no judgments, no mechanic's or other liens, and no unpaid taxes against the described premises except as mentioned in the opinion.

LOCATION OF BUILDINGS: Abstract does not show the location of buildings. If buildings or other improvements are involved, you must satisfy yourself by survey or other proper investigation that the same lie within the boundaries of the property described in the abstract.

POSSESSION: You are charged with notice of the rights of persons in possession of the premises and of easements, encroachments and the like which, though not appearing of record, are capable of ascertainment by inspection or survey.

ZONING ORDINANCES: Information as to zoning restrictions is outside the scope of this opinion but can be obtained from the building inspector of the city in which the property is located.

MECHANIC'S LIENS: Such liens may be filed for record within 90 days after improvements or construction upon the premises. Therefore, if there have been any recent improvements, there is a possibility that liens for such work may still be filed though they do not appear in the abstract. In North Dakota, failure to file a mechanic's lien within the 90 day period does not defeat the lien except as against purchasers or encumbrancers in good faith and for value whose rights accrue after the 90 days and before any claim for the lien is filed. You should satisfy yourself that there has been no labor performed or material furnished which would subject the property to mechanic's liens or, if so, that they have been paid.

TAXES: In North Dakota, the general real estate taxes are not due until the first day of January following the year for which they are assessed and levied. Taxes assessed and levied in the current year are not shown in abstracts.

SPECIAL ASSESSMENTS: Special assessments are not normally shown in abstracts until they have been extended in the tax lists by the County Auditor. Consequently, it is possible for property to be subject to special assessments which do not appear in the abstract. If local improvements have recently been made, inquiry should be made as to special assessments from the city or county auditor involved.