

LIST OF CHAPTERS

VOLUME 1

- Chapter 1** **REAL ESTATE MALPRACTICE**
Nancy Cohen, Esq.
- Chapter 2** **DEEDS AND CONVEYANCING**
Charles D. Calvin, Esq.
- Chapter 3** **SURVEYS**
Robert “Bo” Edwards, Esq.
- Chapter 4** **RECORD SEARCHES**
Daniel Sweetser, Esq.
- Chapter 5** **TITLE INSURANCE IN THE REAL ESTATE PRACTICE**
Peter Griffiths, Esq.
- Chapter 6** **MORTGAGES AND FINANCING**
Thomas L. DeVine, Esq.
- Chapter 7** **FORECLOSURE OF DEEDS OF TRUST BY THE PUBLIC TRUSTEE**
Deanne Stodden, Esq.

VOLUME 2

- Chapter 8** **JUDICIAL FORECLOSURE ACTIONS AND SHERIFF’S SALES**
Elizabeth S. Marcus, Esq.
- Chapter 9** **WHEN DIRT GOES TO BANKRUPTCY COURT**
Jennifer Salisbury, Esq.
- Chapter 10** **CONTRACT DRAFTING**
Jill T. Norris, Esq.
- Chapter 11** **REAL ESTATE CLOSINGS**
Catherine Hance, Esq.
Christopher J. Lane, Esq.
- Chapter 12** **QUIET TITLE ACTIONS**
Geoffrey P. Anderson, Esq.

Chapter 13 **LEASES: THEIR CREATION AND TERMINATION**
Paul Means, Esq.

Appendix A **COLORADO REAL ESTATE TITLE STANDARDS**

TABLE OF CONTENTS

VOLUME 1

Chapter 1	REAL ESTATE MALPRACTICE
------------------	--------------------------------

§ 1.1	GENERAL COMMENTS
§ 1.2	THE REPORTED CASES — RECOGNIZED AREAS OF LIABILITY
	§ 1.2.1—Statistics
	§ 1.2.2—Judgmental Liability
	§ 1.2.3—Privity — In General
	§ 1.2.4—Privity — Attorney As Escrow Agent
	§ 1.2.5—Conflicting Interests
	§ 1.2.6—Conveying And Creating Interests In Property — Scope Of The Attorney’s Retention
	§ 1.2.7—Sale, Transfer, Or Creation Of Interest In Real Property — Drafting Errors
	§ 1.2.8—Sale, Transfer, Or Creation Of Interest In Real Property — Erroneous Advice Or Failure To Advise
	§ 1.2.9—Sale, Transfer, Or Creation Of Interest In Real Property — Other Errors
	§ 1.2.10—Certification Or Examination Of Title
	§ 1.2.11—Security Interests — Failure To Create Or Advise
	§ 1.2.12—Security Interests — Failure To Perfect
	§ 1.2.13—Security Interests — Failure To Collect Or Protect
	§ 1.2.14—Cyber-related Malpractice Claims
§ 1.3	LIABLE FOR WHAT? — SPECIALIZATION
§ 1.4	LIABILITY TO WHOM? — PRIVITY
§ 1.5	THE COLORADO UNREPORTED CASES
	§ 1.5.1—Can You Prove What You Told The Clients?
	§ 1.5.2—Recent Colorado Cases
	§ 1.5.3—Can You Prove What The Client Told You?
	§ 1.5.4—Did You Procrastinate?
	§ 1.5.5—Are Your Title Sources Reliable?
	§ 1.5.6—Are You Sure Of The Law?
	§ 1.5.7—Do You Avoid Conflicts Of Interest?
	§ 1.5.8—Do You Protect Confidential Information?
	§ 1.5.9—Are You Insured? (Your Number May Be Up!)

§ 1.6 ADDITIONAL COLORADO RESOURCES

EXHIBIT

Exhibit 1A—Colorado Ethics Opinion No. 120, “Representing An Organization As A Party In Dispute”

Chapter 2 DEEDS AND CONVEYANCING

§ 2.1 DEEDS — INTRODUCTION

§ 2.2 TYPES OF DEEDS

§ 2.3 PARTS OF A DEED

§ 2.3.1—Premises

§ 2.3.2—Habendum And Warranties

§ 2.3.3—Testimonium

§ 2.4 POWERS OF ATTORNEY

§ 2.5 RECORDING

§ 2.5.1—What To Record

§ 2.5.2—Recording Versus Filing — Electronic Recording

§ 2.5.3—Where To Record

§ 2.5.4—Why Record?

§ 2.5.5—Constructive Notice Versus Actual Notice

§ 2.5.6—Bona Fide Purchaser

§ 2.5.7—How/Where To Record

§ 2.5.8—Recording Fees

§ 2.5.9—Real Property Transfer Declaration

§ 2.5.10—Special Taxes — State Documentary Fee

§ 2.5.11—Special Taxes — Local Transfer Taxes — Transfer Fee
Covenants

§ 2.5.12—Specific Documents To Be Recorded

§ 2.5.13—Colorado Law Versus The Laws Of Other States

§ 2.5.14—Documents Affecting Personal Property

§ 2.5.15—Standard Forms

§ 2.5.16—Acknowledgments? Witnesses? Format?

§ 2.6 BENEFICIARY DEEDS

§ 2.7 LIFE ESTATES

§ 2.8 SUMMARY OF REAL ESTATE IN PROBATE

§ 2.8.1—Prior To July 1, 1974

§ 2.8.2—On And After July 1, 1974 (The Date Of Enactment Of The Colorado Probate Code)

§ 2.8.3—Joint Tenancy, Beneficiary Deeds, And Life Tenants

§ 2.8.4—Foreign Probate

§ 2.8.5—Undistributed Property

§ 2.9 BIBLIOGRAPHY

EXHIBITS

Exhibit 2A—A Guide To The Proper Examination Of A Recorded Deed

Exhibit 2B—Deed Preparation Problem

Exhibit 2C—Title To Colorado Real Property Held In Trust

Exhibit 2D—Affidavits, Verifications, And Acknowledgments

FORMS

Form 2-1—Warranty Deed (Statutory Form — C.R.S. § 38-30-113)

Form 2-2—Warranty Deed

Form 2-3—Special Warranty Deed

Form 2-4—Bargain And Sale Deed (Statutory Form — C.R.S. §§ 38-30-113 And -115)

Form 2-5—Quitclaim Deed

Form 2-6—Personal Representative's Deed (Intestate Estate)

Form 2-7—Personal Representative's Deed (Testate Estate)

Form 2-8—Supplementary Affidavit Pursuant To C.R.S. § 38-31-102

Form 2-9—Affidavit (Death Certificate Unavailable)

Form 2-10—Conservator's Deed

Form 2-11—Petition To Reopen Estate Pursuant To § 15-12-1008, C.R.S.

Form 2-12—Order Re-Opening Estate Pursuant To § 15-12-1008, C.R.S.

Form 2-13—Letters Testamentary/Of Administration

Form 2-14—Acceptance Of Appointment

Form 2-15—Report Of Successor Personal Representative And Order Closing Estate

Form 2-16—Affidavit For Property Held In Joint Venture

Form 2-17—Registration And Recognition Of Protective Orders From Other States And Sworn Statement — Conservator For Adult

Form 2-18—Certificate Of Registration And Recognition Of Protective Orders From Other States — Conservatorship For Adult

Form 2-19—Registration And Recognition Of Guardianship Orders From Other States And Sworn Statement — Guardian For Adult

Form 2-20—Certificate Of Registration And Recognition Of Guardianship Orders From Other States — Guardianship For Adult

- Form 2-21—Domiciliary Foreign Personal Representative’s Sworn Statement
- Form 2-22—Certificate Of Ancillary Filing — Decedent’s Estate
- Form 2-23—Declaration Of Homestead
- Form 2-24—Release Of Homestead Exemption (By Non-Owner Spouse With Recorded Declaration Of Homestead)
- Form 2-25—Subordination Of Homestead Exemption (By Non-Owner Spouse With Recorded Declaration Of Homestead)
- Form 2-26—Quitclaim Deed (From Dissolved Colorado Corporation Or LLC)
- Form 2-27—Quitclaim Deed (From Dissolved Colorado Corporation)
- Form 2-28—Quitclaim Deed (Pursuant To C.R.C.P. 70)
- Form 2-29—Bill Of Sale
- Form 2-30—Power Of Attorney (Limited Purpose — Sale Of Property)
- Form 2-31—Power Of Attorney (Limited Purpose — Purchase Of Property)
- Form 2-32—Power Of Attorney
- Form 2-33—Real Property Transfer Declaration (TD-1000)
- Form 2-34—State Of Colorado Statutory Form Power Of Attorney (C.R.S. § 15-14-741)
- Form 2-35—Trade Name Affidavit (C.R.S. § 7-71-108)
- Form 2-36—Statement Of Partnership Authority
- Form 2-37—Statement Of Authority
- Form 2-38—Easement Deed And Agreement
- Form 2-39—Boundary Agreement
- Form 2-40—Party Wall Agreement Between Adjoining Owners
- Form 2-41—Partial Release Of Judgment Lien
- Form 2-42—Beneficiary Deed (C.R.S. §§ 15-15-401, *et seq.*)
- Form 2-43—Revocation Of Beneficiary Deed (C.R.S. §§ 15-15-401, *et seq.*)
- Form 2-44—Right Of First Refusal Agreement
- Form 2-45—Right Of First Offer Agreement
- Form 2-46—Agent’s Certification As To The Validity Of Power Of Attorney And Agent’s Authority (Pursuant To C.R.S. § 15-14-742, Effective January 1, 2010)
- Form 2-47—Affidavit Pursuant To C.R.S. § 38-35-109(5)

Chapter 3 SURVEYS

§ 3.1 CONTEXT: WHY SURVEYS?

- § 3.1.1—Identification And Description Of Real Property
- § 3.1.2—Definition Of “Legal Description”
- § 3.1.3—Other Methods Of Describing Real Property
- § 3.1.4—The Mandate For Accuracy In Legal Descriptions

Table of Contents

§ 3.2 SURVEYS: THE ESSENTIALS

§ 3.2.1—Purpose

§ 3.2.2—Methodology And Scientific Principles

§ 3.2.3—Translating Longitude And Latitude Into Surveys And Legal Descriptions Of Land In The United States And The State Of Colorado

§ 3.3 ORIGINS AND APPLICATIONS OF THE STATUTORY BASIS OF DESCRIBING LAND IN THE UNITED STATES

§ 3.3.1—The Rectangular Or Government System Of Survey

§ 3.3.2—The Government Rectangular System Is (Somewhat Or Partially) Derived From Meridians Of Longitude And Parallels Of Latitude

§ 3.3.3—Applications Of The Public Land Survey System To Legal Descriptions In Colorado

§ 3.4 SURVEYS, IN GENERAL

§ 3.5 SURVEY DEFINITIONS IN COLORADO STATUTES

§ 3.5.1—Monumented Land Survey

§ 3.5.2—Land Survey Plat

§ 3.5.3—Improvement Survey Plat

§ 3.5.4—Improvement Location Certificate

§ 3.5.5—Professional Land Surveyor Of Record

§ 3.6 ALTA/NSPS SURVEYS

§ 3.7 COLORADO STANDARDS FOR LAND SURVEYS

§ 3.8 DEPOSITING AND INDEXING OF SURVEYS (C.R.S. § 38-50-101)

§ 3.9 OTHER COMMENTS RELATING TO LAND SURVEYS

§ 3.10 SURVEYING BIBLIOGRAPHY

EXHIBITS

Exhibit 3A—Minimum Standard Detail Requirements For ALTA/NSPS Land Title Surveys (2016)

Exhibit 3B—From The Bylaws And Rules Of The State Board Of Licensure For Architects, Professional Engineers, And Professional Land Surveyors (9/1/2015)

Exhibit 3C—Sample Certificates Of Survey

- Exhibit 3D—Map Of The United States Showing Base Lines And Principal Meridians
- Exhibit 3E—Principal Meridians And Base Lines In Colorado
- Exhibit 3F—Correction Lines And Guide Meridians
- Exhibit 3G—Divisions Of A Section
- Exhibit 3H—Drafting Aids
- Exhibit 3I—Table Of Land Measurements And Section And Township Divisions
- Exhibit 3J—Sample Survey
- Exhibit 3K—Sample Subdivision Plat

Chapter 4 RECORD SEARCHES

§ 4.1 LAND RECORDS MAINTAINED IN THE COLORADO COUNTIES

- § 4.1.1—Uniformity?
- § 4.1.2—Where To Search — A Refresher
- § 4.1.3—Grantor Index
- § 4.1.4—Grantee Index
- § 4.1.5—Tract Index
- § 4.1.6—Search Methods
- § 4.1.7—After The Index — What?
- § 4.1.8—Reception Book
- § 4.1.9—Plat Book
- § 4.1.10—Varieties Of Books
- § 4.1.11—Tax Liens
- § 4.1.12—Up-To-The-Minute Searches
- § 4.1.13—Why A Record Search?
- § 4.1.14—The Clerk And Recorder’s Office
- § 4.1.15—Other Land Records
- § 4.1.16—Central Information System (CIS)
- § 4.1.17—Conducting A “Legal” Or Statutory Record Search In Colorado

§ 4.2 THE NAME GAME

§ 4.3 PATENT MEDICINE

- § 4.3.1—United States Patents
- § 4.3.2—State Of Colorado Patents
- § 4.3.3—Union Pacific Deeds
- § 4.3.4—Severed Minerals — Whose Rights Prevail, The Surface Owner Or The Mineral Owner?
- § 4.3.5—Notification To Mineral Owner Regarding Severed Mineral Rights

§ 4.4 BIBLIOGRAPHY

EXHIBITS

- Exhibit 4A—Survey And Sample Patents
- Exhibit 4B—Title Statutes
- Exhibit 4C—Abstract Of Title
- Exhibit 4D—Preliminary Title Opinion
- Exhibit 4E—Final Title Opinion
- Exhibit 4F—Illustration Of Mining Claims

FORM

- Form 4-1—Request For Notification Form

Chapter 5 TITLE INSURANCE IN THE REAL ESTATE PRACTICE

§ 5.1 RESIDENTIAL TRANSACTIONS — THE OWNER’S POLICY

- § 5.1.1—2006 ALTA Owner’s Policy With Standard Exceptions Deleted
(Extended Coverage)
- § 5.1.2—Substitution Of Form 130
- § 5.1.3—The Plain Language Residential Policy

§ 5.2 PREPARATION OF THE DEED

**§ 5.3 SELLER’S RELIANCE ON THE TITLE INSURANCE
COMMITMENT**

- § 5.3.1—Colorado Cases

§ 5.4 ACCESS — THE RECURRING PROBLEM

- § 5.4.1—Verifying Access
- § 5.4.2—Acquiring Access
- § 5.4.3—Limited Access
- § 5.4.4—Revocable Access
- § 5.4.5—The *Woody Creek Ventures* Case

§ 5.5 THE UNINSURED AND UNDERINSURED OWNER

- § 5.5.1—Protecting The Seller

§ 5.6 PROBATE LAWYERS AND TITLE INSURANCE

**§ 5.7 INTER VIVOS GIFTS OF REAL ESTATE — TRANSFERS
TO A DONEE OR A TRUST**

§ 5.7.1—Title Insurance For The Donee

§ 5.7.2—Title Insurance For A Trust

§ 5.8 WATER RIGHTS

§ 5.8.1—Water Rights Excepted From Coverage

§ 5.8.2—Nontributary Water Rights

§ 5.8.3—The Added Value Of Water Rights

§ 5.9 THE VAGARIES OF MINERAL COVERAGES

§ 5.9.1—Exclusion Of All Mineral Coverage

§ 5.9.2—Mineral Coverage Partially Excepted

§ 5.9.3—Proprietor Of A Vein Or Lode

§ 5.9.4—Patents Issued To The Railroads

§ 5.9.5—Recorded Mineral Leases

§ 5.9.6—Insuring Over Severed Mineral Estates —
Surface Relinquishments

§ 5.9.7—Reuniting Surface And Mineral Estates

§ 5.9.8—Protection Against State Minerals

§ 5.10 INSURING OVER THE WAITING PERIODS

§ 5.10.1—Quiet Title Decree

§ 5.10.2—Lis Pendens

**§ 5.11 INSURING OVER DEFECTS — NOT ALWAYS THE DESIRED
OUTCOME**

§ 5.11.1—Insuring Over Liens

§ 5.11.2—Know The Reasons For The Buyer's Willingness To Purchase
The Property

§ 5.12 THE UNSEEN ROLE OF THE COUNTY ASSESSOR

§ 5.13 REMEMBER TO USE ENDORSEMENTS

§ 5.14 TORRENS TITLE REGISTRATION SYSTEM

EXHIBIT

Exhibit 5A—Colorado Division Of Insurance Regulations 8-1-1 And 8-1-2

Chapter 6	MORTGAGES AND FINANCING
------------------	--------------------------------

§ 6.1	EVIDENCE OF DEBT; NEGOTIABLE INSTRUMENT
§ 6.2	SECURITY FOR REPAYMENT OF DEBT
§ 6.3	LIEN THEORY VERSUS TITLE THEORY
§ 6.4	DEED OF TRUST TO PUBLIC TRUSTEE — PECULIARITIES
§ 6.5	ASSIGNMENT OF EVIDENCE OF DEBT — SECURITY FOLLOWS
§ 6.6	NON-RECOURSE PROVISIONS
§ 6.7	PARTIAL RELEASE PROVISIONS
§ 6.8	NEGOTIATING THE LOAN DOCUMENTS
	§ 6.8.1—Onerous Loan Clauses — Events Of Default
	§ 6.8.2—Onerous Loan Clauses — Waivers
	§ 6.8.3—Onerous Loan Clauses — The Straight-Jacket
	§ 6.8.4—Onerous Loan Clauses — The Catch-All
	§ 6.8.5—Onerous Loan Clauses — Regulatory Responses
§ 6.9	HAZARDOUS WASTE CLAUSES IN DEEDS OF TRUST
	§ 6.9.1—Hazardous Waste <i>Not</i> Likely
	§ 6.9.2—Comprehensive Clauses
§ 6.10	VARIOUS SPECIAL DISTRICT CLAUSES
§ 6.11	ASSUMPTION OF THE INDEBTEDNESS/DEED OF TRUST
§ 6.12	SUBORDINATION; SELLER CARRY-BACK
§ 6.13	REVISED ARTICLE 9 (UNIFORM COMMERCIAL CODE)
§ 6.14	COLORADO REAL ESTATE COMMISSION-APPROVED FORMS
§ 6.15	BIBLIOGRAPHY
	EXHIBIT
	Exhibit 6A—Checklist And Negotiating Points — Borrower’s Issues On Loan Documents
	Exhibit 6B—Checklist For Reviewing Out-Of-State Deeds Of Trust

FORMS

- Form 6-1—Promissory Note
- Form 6-2—Promissory Note (UCCC — No Default Rate)
- Form 6-3—Promissory Note
- Form 6-4—Promissory Note
- Form 6-5—Promissory Note
- Form 6-6—Wrap-Around Promissory Note
- Form 6-7—Deed Of Trust (Assumable — NOT Due On Transfer)
- Form 6-8—Deed Of Trust (Due On Transfer — Creditworthy)
- Form 6-9—Deed Of Trust (Due On Transfer — Strict)
- Form 6-10—Deed Of Trust
- Form 6-11—Deed Of Trust, Assignment Of Rents, Security Agreement,
And Financing Statement
- Form 6-12—Addendum To Wrap-Around Deed Of Trust, Assignment Of
Rents, And Security Agreement
- Form 6-13—Deed Of Trust To Private Trustee
- Form 6-14—Note And Deed Of Trust Modification Agreement
- Form 6-15—Assumption Agreement, Consent And Release
- Form 6-16—Assignment Of Deed Of Trust
- Form 6-17—Extension Of Note And Deed Of Trust
- Form 6-18—Request For Full/Partial Release Of Deed Of Trust And
Release By Holder Of The Evidence Of Debt With Production
Of Evidence Of Debt Pursuant To § 38-39-102(1)(a), Colorado
Revised Statutes
- Form 6-19—Request For Full/Partial Release Of Deed Of Trust And
Release By Holder Of The Evidence Of Debt Without
Production Of Evidence Of Debt Pursuant To
§ 38-39-102(1)(a) And (3), Colorado Revised Statutes
- Form 6-20—Mortgage And Assignment Of Rents
- Form 6-21—Partial Release Of Mortgage
- Form 6-22—Release Of Mortgage
- Form 6-23—Assignment Of Leases And Rents
- Form 6-24—State Of Colorado Uniform Commercial Code —
Security Agreement
- Form 6-25—Security Agreement
- Form 6-26—Colorado UCC Financing Statement And Instructions
- Form 6-27—UCC Financing Statement Addendum And Instructions
- Form 6-28—Notice Of Right To Cancel
- Form 6-29—Subordination Agreement
- Form 6-30—Lender’s Estoppel Certificate

Chapter 7 FORECLOSURE OF DEEDS OF TRUST BY THE PUBLIC TRUSTEE

§ 7.1 PREFACE

§ 7.2 PRE-FORECLOSURE CONSIDERATIONS

§ 7.2.1—Notices

§ 7.2.2—Title Work

§ 7.2.3—Lien Position

§ 7.2.4—Real Estate Taxes

§ 7.3 COMMENCING THE FORECLOSURE

**§ 7.4 COMBINED NOTICE OF SALE AND RIGHT TO CURE AND
REDEEM**

§ 7.4.1—First Mailing

§ 7.4.2—Second Mailing

§ 7.4.3—Publication

§ 7.5 MAILING LIST

§ 7.6 RULE 120

§ 7.6.1—Venue

§ 7.6.2—Hearing Date

§ 7.6.3—Procedure For Filing The Rule 120 Action

§ 7.6.4—The Rule 120 Hearing

§ 7.7 CURE

§ 7.7.1—Single Point Of Contact

§ 7.7.2—Dual Tracking Prohibition

§ 7.8 THE SALE

§ 7.9 RECISSION OF SALE

§ 7.10 REDEMPTION

§ 7.11 TITLE; CONFIRMATION DEED

§ 7.12 MISCELLANEOUS

- § 7.12.1—Federal Tax Liens
- § 7.12.2—State Tax Liens
- § 7.12.3—Federal (Non-Tax) Encumbrances And Judgment Liens
- § 7.12.4—Bankruptcy
- § 7.12.5—Federally Insured Loans
- § 7.12.6—Installment Land Contracts
- § 7.12.7—Local Transfer Tax
- § 7.12.8—Fair Debt Collection Practices Act
- § 7.12.9—Excess Funds — Junior Lienors BEWARE, And Owners Be
ALERT
- § 7.12.10—Omitted Parties
- § 7.12.11—Homesteads
- § 7.12.12—CCIOA
- § 7.12.13—Personal Property — Foreclosure Of Lien
- § 7.12.14—Waiver Of Cure Right
- § 7.12.15—No Partial Redemption
- § 7.12.16—Assignment Of Note And/Or Deed Of Trust During Foreclosure
- § 7.12.17—Partial Release Of Lien Of Deed Of Trust During Foreclosure
- § 7.12.18—Eviction Following Foreclosure
- § 7.12.19—Scrivener’s Affidavits

EXHIBITS

- Exhibit 7A—CBA Formal Ethics Opinion No. 54
- Exhibit 7B—CBA Formal Ethics Opinion No. 72
- Exhibit 7C—A Quiz On Liens And Encumbrances In Colorado
- Exhibit 7D—Two Foreclosure Tax Traps
- Exhibit 7E—Colorado Public Trustees

FORMS

- Form 7-1—Foreclosure Checklist
- Form 7-2—Letter To Public Trustee Regarding Commencement Of
Foreclosure
- Form 7-3—Receipt
- Form 7-4—Notice Of Election And Demand For Sale By Public Trustee
- Form 7-5—Combined Notice Of Sale And Right To Cure And Redeem
- Form 7-6—Statement By Attorney For Qualified Holder Pursuant To
C.R.S. § 38-38-101
- Form 7-7—Mailing List
- Form 7-8—Amended Mailing List
- Form 7-9—Certificate Of Mailing

Table of Contents

Form 7-10—Verified Motion For Order Authorizing Sale Under
C.R.C.P. 120

Form 7-11—Notice Of Response Deadline

Form 7-12—Certificate Of Mailing And Posting Notice

Form 7-13—Order Authorizing Sale

Form 7-14—Response To Motion For Order Authorizing Sale

Form 7-15—Findings Of Fact And Order Authorizing Sale

Form 7-16—Return Of Sale

Form 7-17—Order Approving Sale

Form 7-18—Notice Of Intent To Cure Default Or Violation

Form 7-19—Notice To IRS Regarding Non-Judicial Sale

Form 7-20—Bid

Form 7-21—Withdrawal Of Notice Of Election And Demand For Sale By
Public Trustee

Form 7-22—Public Trustee’s Certificate Of Purchase

Form 7-23—Notice Of Intent To Redeem (With Affidavit Of Amount
Owed)

Form 7-24—Public Trustee’s Certificate Of Redemption

Form 7-25—Public Trustee’s Confirmation Deed

Form 7-26—Verified Complaint To Enjoin Public Trustee

Form 7-27—Motion For Temporary Restraining Order And Preliminary
Injunction

Form 7-28—Preliminary Injunction

Form 7-29—Agreement For Deed In Lieu Of Foreclosure

Form 7-30—Estoppel Affidavit (Deed In Lieu)

Form 7-31—Warranty Deed (In Lieu Of Foreclosure)

Form 7-32—Bill Of Sale (In Lieu Of Foreclosure)

Form 7-33—Assignment Of Intangible Property (In Lieu Of Foreclosure)

Form 7-34—Notice Of Rescission

Form 7-35—Colorado — Lost Note And Deed Of Trust Bond

Form 7-36—Sample Demand Letter And Notice

Form 7-37—Notice Of Affirmation Of Interest Of Omitted Party

Form 7-38—Statement Of Ownership

Form 7-39—Cure Statement

VOLUME 2

Chapter 8 JUDICIAL FORECLOSURE ACTIONS AND SHERIFF’S SALES

§ 8.1 INTRODUCTION

§ 8.2 GENERAL

§ 8.3 IS A JUDICIAL FORECLOSURE ADVISABLE?

- § 8.3.1—Priority Questions
- § 8.3.2—Injunction Probable
- § 8.3.3—Multiple Counties
- § 8.3.4—Federal Lien
- § 8.3.5—Real And Personal Property
- § 8.3.6—Less Expense
- § 8.3.7—Judicial Determination
- § 8.3.8—Omitted Party
- § 8.3.9—Combined With Other Relief
- § 8.3.10—Suit Against Guarantors
- § 8.3.11—Bankruptcy
- § 8.3.12—Possessory Rights
- § 8.3.13—Lost Or Defective Note
- § 8.3.14—Errors In The Deed Of Trust
- § 8.3.15—State Tax Lien

§ 8.4 PRE-FILING CONSIDERATIONS

§ 8.5 TITLE WORK

§ 8.6 JUDICIAL FORECLOSURE — COURT PROCEDURE

- § 8.6.1—Parties
- § 8.6.2—Venue
- § 8.6.3—Bankruptcy
- § 8.6.4—Federally Insured Mortgages
- § 8.6.5—Commencing The Action
- § 8.6.6—Receivers — C.R.C.P. 66
- § 8.6.7—Service Of Process
- § 8.6.8—Disclaimer
- § 8.6.9—Military Attorney
- § 8.6.10—Trial
- § 8.6.11—Judgment And Decree Of Foreclosure

§ 8.7 COMMENCING THE SHERIFF'S SALE

- § 8.7.1—Combined Notice Of Sale And Right To Cure And Redeem — Mail
- § 8.7.2—Combined Notice Of Sale And Right To Cure And Redeem —
Publish
- § 8.7.3—Mailing List
- § 8.7.4—Cure
- § 8.7.5—The Sale; Certificate Of Purchase
- § 8.7.6—Report And Return Of Sheriff And Order Approving Sale

Table of Contents

- § 8.7.7—Redemption
- § 8.7.8—Sheriff’s Confirmation Deed

**§ 8.8 JUDICIAL FORECLOSURE — POST-JUDGMENT
LEVY AND SALE**

§ 8.9 MISCELLANEOUS

- § 8.9.1—Installment Land Contracts
- § 8.9.2—State Liens
- § 8.9.3—Federal Tax Liens
- § 8.9.4—Federal Encumbrances And Judgment Liens
- § 8.9.5—Local Transfer Tax
- § 8.9.6—Fair Debt Collection Practices Act
- § 8.9.7—Excess Funds — File Notice Of Intent To Redeem
- § 8.9.8—Homesteads
- § 8.9.9—CCIOA
- § 8.9.10—Eviction Following Foreclosure

§ 8.10 JUDICIAL FORECLOSURE BIBLIOGRAPHY

EXHIBITS

- Exhibit 8A—Equitable Subrogation Cases
- Exhibit 8B—Overbid Question
- Exhibit 8C—Overbid Trial Court Case

FORMS

- Form 8-1—Complaint For Foreclosure Pursuant To Rule 105, C.R.C.P.
- Form 8-2—Notice Of Commencement Of Action (Lis Pendens)
- Form 8-3—Disclaimer Of Interest In A Portion Of The Real Property
Pursuant To Rule 105(f)(3), C.R.C.P.
- Form 8-4—Verified Motion For Appointment Of Receiver
- Form 8-5—Order Appointing Receiver
- Form 8-6—Oath Of Receiver
- Form 8-7—Bond Of Receiver
- Form 8-8—Inventory By Receiver
- Form 8-9—Final Report And Motion For Approval, Discharge Of Receiver,
And Release Of Surety Bond
- Form 8-10—Order Discharging Receiver And Releasing Surety Bond
- Form 8-11—Affidavit (Of Holder Of Indebtedness)
- Form 8-12—Affidavit Of Attorney
- Form 8-13—Judgment And Decree Of Foreclosure
- Form 8-14—Sheriff’s Combined Notice Of Sale And Rights To Cure And
Redeem

- Form 8-15—Sheriff’s Certificate Of Mailing
- Form 8-16—Notice Of Intent To Cure Default Or Violation
- Form 8-17—Bid
- Form 8-18—Sheriff’s Certificate Of Purchase
- Form 8-19—Letter From Attorney To Client Regarding Successful Bid
- Form 8-20—Report And Return Of Sheriff
- Form 8-21—Notice Of Charges Against Redemption From Sheriff’s Sale
- Form 8-22—Notice Of Intent To Redeem From Sheriff’s Sale
- Form 8-23—Sheriff’s Certificate Of Redemption
- Form 8-24—Sheriff’s Confirmation Deed
- Form 8-25—Letter From Attorney To Client Regarding Successful
Completion Of Foreclosure
- Form 8-26—Checklist — Judicial Foreclosure

Chapter 9 WHEN DIRT GOES TO BANKRUPTCY COURT

§ 9.1 INTERPLAY BETWEEN FEDERAL AND STATE LAW

§ 9.2 TYPES OF BANKRUPTCY CASES

- § 9.2.1—Liquidation — Chapter 7
- § 9.2.2—Rehabilitation — Chapters 9, 11, 12, And 13
- § 9.2.3—Cross-border Insolvencies — Chapter 15

§ 9.3 THE TRUSTEES AND THEIR ROLES IN CHAPTERS 7, 12, AND 13

- § 9.3.1—United States Trustee
- § 9.3.2—Case Trustees

§ 9.4 INTERNAL RESPONSES TO A BANKRUPTCY FILING

§ 9.5 PROPERTY OF THE ESTATE

**§ 9.6 IMMEDIATE EFFECT OF BANKRUPTCY FILING —
THE AUTOMATIC STAY**

- § 9.6.1—The Automatic Stay
- § 9.6.2—Scope Of Stay
- § 9.6.3—Relief From Stay
- § 9.6.4—Procedure For Obtaining Relief From Stay
- § 9.6.5—Exceptions To The Automatic Stay Impacting Real Property
- § 9.6.6—Serial Filings
- § 9.6.7—Sanctions For Violating The Stay

Table of Contents

§ 9.7 FIRST MEETINGS OF CREDITORS — 11 U.S.C. § 341

§ 9.8 TURNOVER OF PROPERTY BY A CUSTODIAN OR RECEIVER

§ 9.9 CLAIMS

§ 9.9.1—Secured Claims

§ 9.9.2—Priority Claims

§ 9.9.3—Filing A Proof Of Claim

§ 9.9.4—Timing

§ 9.9.5—Administrative Claims

§ 9.10 LEASES

§ 9.10.1—Pre-bankruptcy Considerations

§ 9.10.2—A Lease May Only Be Assumed With Court Approval And The
Entire Agreement Must Be Assumed With All Defaults Cured

§ 9.10.3—Rejection Of A Lease And Its Consequences

§ 9.10.4—Timing Of The Decision To Assume Or Reject

§ 9.10.5—Post-petition Performance

§ 9.10.6—Non-debtor Parties

§ 9.10.7—Leases May Be Assigned Regardless Of Non-assignment
Provisions

§ 9.11 USE, SALE, OR LEASE OF PROPERTY

§ 9.12 ASSIGNMENT OF RENTS

**§ 9.13 PROTECTIONS FOR PURCHASERS IN POSSESSION OF REAL
PROPERTY UNDER EXECUTORY CONTRACTS**

§ 9.14 CHAPTER 11 ISSUES

§ 9.14.1—First Day Orders

§ 9.14.2—Creditors’ Committees

§ 9.14.3—Disclosure Statement And Plan Confirmation

§ 9.15 EFFECT OF DISMISSAL OF A BANKRUPTCY CASE

§ 9.16 DISCHARGE

§ 9.17 AVOIDANCE ACTIONS

§ 9.17.1—Hypothetical Lien Creditor — 11 U.S.C. § 544(a)

§ 9.17.2—Preferential Transfers — 11 U.S.C. § 547(b)

§ 9.17.3—Fraudulent Transfers — 11 U.S.C. §§ 544(b) And 548

EXHIBIT

Exhibit 9A—Local Bankruptcy Rule 4001-1APP

FORMS

Form 9-1—U.S. Bankruptcy Court Notice Of Motion For Relief From Stay

Form 9-2—U.S. Bankruptcy Court Motion For Relief From Stay

Form 9-3—U.S. Bankruptcy Court Affidavit Of Willis Carpenter In Support Of
Motion For Relief From Stay

Form 9-4—U.S. Bankruptcy Court Order Granting Relief From Stay

Form 9-5—U.S. Bankruptcy Court Certificate Of Non-Contested Matter And Request
For Entry Of Order

Chapter 10 CONTRACT DRAFTING

**§ 10.1 PREPARING AND NEGOTIATING THE CONTRACT, INCLUDING
WORKING WITH BROKERS**

§ 10.1.1—Buyer, Seller, Broker — Whom Do You Represent?

§ 10.1.2—Working With The Broker

§ 10.1.3—The Contract Drafting Job — When Do You Get It?

§ 10.2 FORM VERSUS CUSTOM CONTRACT

§ 10.2.1—Form Versus Custom Contract — Pros And Cons

§ 10.2.2—Limitations On Brokers

§ 10.2.3—CREC Forms — Powerful Tools

§ 10.2.4—CREC Forms — Basic Guidelines For Use

§ 10.3 CONTRACT TO BUY AND SELL REAL ESTATE (RESIDENTIAL)

**§ 10.4 CONTRACT TO BUY AND SELL REAL ESTATE
(INCOME-RESIDENTIAL)**

§ 10.5 CONTRACT TO BUY AND SELL REAL ESTATE (COMMERCIAL)

§ 10.6 CONTRACT TO BUY AND SELL REAL ESTATE (LAND)

**§ 10.7 CONTRACT TO BUY AND SELL REAL ESTATE (RESIDENTIAL)
(COLORADO FORECLOSURE PROTECTION ACT)**

§ 10.8 COUNTERPROPOSAL

§ 10.9 AGREEMENT TO AMEND/EXTEND CONTRACT

§ 10.10 SOME DANGER AREAS

- § 10.10.1—Water Rights
- § 10.10.2—Special Improvements
- § 10.10.3—Title Exceptions
- § 10.10.4—Local Transfer Tax
- § 10.10.5—Environmental Issues

FORMS

- Form 10-1—Contract To Buy And Sell Real Estate (Residential)
- Form 10-2—Contract To Buy And Sell Real Estate (Income – Residential)
- Form 10-3—Contract To Buy And Sell Real Estate (Commercial)
- Form 10-4—Contract To Buy And Sell Real Estate (Land)
- Form 10-5—Contract To Buy And Sell Real Estate (Residential) (Colorado Foreclosure Protection Act)
- Form 10-6—Counterproposal
- Form 10-7—Agreement To Amend/Extend Contract
- Form 10-8—Personal Property Agreement

Chapter 11 REAL ESTATE CLOSINGS

§ 11.1 CLOSING MECHANICS

- § 11.1.1—Closing Statements, Generally
- § 11.1.2—Closing Instruction Letters/Closing Protection Letters
- § 11.1.3—Purchase Agreement Provisions Relating To Closing

§ 11.2 SELLER’S AND BUYER’S CLOSING STATEMENTS

§ 11.3 BROKER’S STATEMENT

§ 11.4 LOAN CLOSING STATEMENT AND REVISED BROKER’S STATEMENT

§ 11.5 REPORTING REQUIREMENTS

§ 11.6 TAX-RELATED ISSUES

EXHIBITS

- Exhibit 11A—Closing Statements And Worksheets
- Exhibit 11B—Sample Closing Problems
- Exhibit 11C—Checklist For Apartment House Closing
- Exhibit 11D—Checklist From A Major Transaction
- Exhibit 11E—Checklist For Representing Owner Constructing New House

- Exhibit 11F—Interest On Delinquent Taxes
- Exhibit 11G—Home Rule Cities And Towns — Local Real Estate Transfer Tax
- Exhibit 11H—Sample Local Transfer Tax (Vail)
- Exhibit 11I—Buying A House May Not Take A Lawyer’s Help
- Exhibit 11J—Colorado Real Estate Commission Position On Closing Costs
- Exhibit 11K—Water Rights — Well Permit Transfers — C.R.S. § 38-30-102(3)
- Exhibit 11L—Notice From The Colorado Division Of Water Resources

FORMS

- Form 11-1—Closing Statement
- Form 11-2—Worksheet For Closing Statement
- Form 11-3—Real Estate Tax Agreement
- Form 11-4—Real Estate Tax Agreement — Exchange
- Form 11-5—Agreement For Proration Of Condominium Assessments
- Form 11-6—Closing Instructions
- Form 11-7—Closing Instructions
- Form 11-8—Colorado Department Of Revenue Form DR 1083 — Information With Respect To A Conveyance Of A Colorado Real Property Interest
- Form 11-9—Colorado Department Of Revenue Form DR 1079 — Payment Of Withholding Tax On Certain Colorado Real Property Interest Transfers
- Form 11-10—Real Property Transfer Declaration
- Form 11-11—Escrow Instructions
- Form 11-12—Affidavit And Certificate Of Transferor For An Individual (FIRPTA)
- Form 11-13—Affidavit And Certificate Of Transferor Other Than An Individual (FIRPTA) (Corporation)
- Form 11-14—Affidavit And Certificate Of Transferor Other Than An Individual (FIRPTA) (Partnership)
- Form 11-15—Interim Lien Waiver, Release, Warranty, And Representation
- Form 11-16—Release Of Mechanics’ Lien
- Form 11-17—Complaint For Approval Of Corporate Surety Bond And Release Of Mechanics’ Lien
- Form 11-18—Order
- Form 11-19—Certificate Of Release
- Form 11-20—IRS Form 8594 — Asset Acquisition Statement
- Form 11-21—Colorado Office Of The State Engineer Form GWS-11 — Change In Ownership/Address — Correction Of The Well Location
- Form 11-22—Colorado Office Of The State Engineer Form GWS-12 — Registration Of Existing Well
- Form 11-23—Colorado Division Of Water Resources Fee Schedule

Chapter 12 QUIET TITLE ACTIONS

§ 12.1 INTRODUCTION

§ 12.2 GENERAL

§ 12.2.1—Declaratory Judgment

§ 12.2.2—Possession

§ 12.2.3—Water Rights

§ 12.3 IS A QUIET TITLE ACTION NECESSARY?

§ 12.4 PARTIES

§ 12.4.1—Known Parties, Living And Deceased

§ 12.4.2—Unknown Parties

§ 12.4.3—Names Of Parties

§ 12.4.4—Corporations And Other Entities

§ 12.4.5—Foreign Entities

§ 12.4.6—United States

§ 12.4.7—Colorado

§ 12.4.8—Omitted Parties

§ 12.4.9—Military Parties

§ 12.4.10—Plaintiff

§ 12.5 VENUE AND JURISDICTION

§ 12.6 TITLE INFORMATION

§ 12.7 COMMENCING THE ACTION

§ 12.7.1—Counterclaim/Cross-Claim

§ 12.7.2—Lis Pendens

§ 12.7.3—Class Action?

§ 12.8 SERVICE OF PROCESS

§ 12.8.1—Service By Publication

§ 12.8.2—Service By Mail

§ 12.8.3—Service On Entity If Registered Agent Is Not Available

§ 12.9 DEFENDING THE ACTION

§ 12.9.1—Contest And Counter

§ 12.9.2—Do Nothing

§ 12.9.3—Quitclaim

§ 12.9.4—Disclaimer

§ 12.9.5—Other Responses To A Quiet Title Action

§ 12.10 MILITARY ATTORNEY

§ 12.11 TRIAL

§ 12.12 DECREE

§ 12.13 POST-DECREE

§ 12.14 WHAT ABOUT *LOBATO* v. *TAYLOR*?

§ 12.15 QUIET TITLE BIBLIOGRAPHY

EXHIBITS

Exhibit 12A—Fictional Transcript

Exhibit 12B—Servicemembers Civil Relief Act (SCRA) Certificates

FORMS

Form 12-1—Summons

Form 12-2—Complaint Under Rule 105

Form 12-3—Notice Of Commencement Of Action (Lis Pendens)

Form 12-4—Motion For Publication

Form 12-5—Order For Publication

Form 12-6—Summons [By Publication]

Form 12-7—Certificate Of Mailing Of Copy Of Process

Form 12-8—Disclaimer Under Rule 105(c), C.R.C.P.

Form 12-9—Affidavit re: Military Service

Form 12-10—Motion For Appointment Of Attorney And For Order For
Entry Of Judgment

Form 12-11—Order Appointing Attorney

Form 12-12—Answer Of Attorney Appointed By The Court

Form 12-13—Final Order And Default Judgment

Form 12-14—Decree Quieting Title

Form 12-15—Checklist — Quiet Title Action

Form 12-16—Certificate Of Dismissal Of Action

Form 12-17—Stipulated Motion For Order Releasing Lis Pendens

Form 12-18—Order Releasing Lis Pendens

Form 12-19—Affidavit Of Service On Defendant _____ Pursuant To
C.R.S. § 7-90-704

Form 12-20—Complaint For Partition Of Real Property

Chapter 13 LEASES: THEIR CREATION AND TERMINATION

§ 13.1 LEASES, IN GENERAL

- § 13.1.1—Definition And Dual Nature
- § 13.1.2—Written Or Oral
- § 13.1.3—Types Of Tenancies
- § 13.1.4—Common Law And Statute
- § 13.1.5—Mobile Home Parks

§ 13.2 DRAFTING LEASES

- § 13.2.1—Names Of Tenant And Landlord
- § 13.2.2—Description Of Premises And Grant Of Possession
- § 13.2.3—Commencement Date And Length Of Term
- § 13.2.4—Rent
- § 13.2.5—Tenant’s Intended Use Of The Premises
- § 13.2.6—Repairs
- § 13.2.7—Alterations And Restoration
- § 13.2.8—Hazardous Waste
- § 13.2.9—Assignment Or Subleasing By Tenant
- § 13.2.10—Indemnity, Insurance, And Destruction
- § 13.2.11—Tenant Default
- § 13.2.12—Termination Of Lease By Tenant
- § 13.2.13—Permission For Landlord To Enter The Premises During
Lease Term
- § 13.2.14—Holding Over By Tenant
- § 13.2.15—Security Deposit Or Guarantee
- § 13.2.16—Attorney Fees
- § 13.2.17—OFAC Representations
- § 13.2.18—Cabling Removal
- § 13.2.19—Should The Lease Be Recorded?
- § 13.2.20—Protecting The Landlord From The Bankruptcy Of The Tenant
- § 13.2.21—Broker’s Lien
- § 13.2.22—Marijuana
- § 13.2.23—Short Term Occupancy

§ 13.3 SECURITY DEPOSITS

- § 13.3.1—Definition
- § 13.3.2—Residential Security Deposits
- § 13.3.3—Commercial Security Deposits

§ 13.4 LANDLORD’S LIEN (RESIDENTIAL PREMISES)

§ 13.5 TENANT'S RIGHTS

- § 13.5.1—Quiet Enjoyment
- § 13.5.2—Residential Warranty Of Habitability
- § 13.5.3—Required Documentation
- § 13.5.4—Receipt For Tenant Payments

§ 13.6 TERMINATION OF LEASES; UNLAWFUL DETENTION

- § 13.6.1—Termination And Default Notice
- § 13.6.2—Unlawful Detention
- § 13.6.3—Notices And Demands Preceding Unlawful Detainer Action
- § 13.6.4—Service
- § 13.6.5—Unlawful Detainer Actions
- § 13.6.6—Representation Of Landlord

FORMS

- Form 13-1—Post-Closing Occupancy Agreement
- Form 13-2—Office Lease (Multi-tenant)
- Form 13-3—Business Lease (Single Tenant Gross)
- Form 13-4—Residence Lease Agreement
- Form 13-5—Tenant Estoppel Certificate
- Form 13-6—Letter To Tenant Advising Of Sale And Transfer Of Security Deposit To New Owner
- Form 13-7—Owner's Notice Of Non-Liability
- Form 13-8—Notice To Quit (From Landlord)
- Form 13-9—Notice Of Intention To Quit (From Tenant)
- Form 13-10—Notice To Quit (With Holdover Terms)
- Form 13-11—Demand For Payment Of Rent Or Possession
- Form 13-12—Demand For Compliance Or Possession
- Form 13-13—Notice To Quit (Subsequent Non-Monetary Violation Of Lease)
- Form 13-14—Notice To Quit (Substantial Violation of Lease)
- Form 13-15—Demand For Possession (Following Foreclosure)
- Form 13-16—Certificate Of Service
- Form 13-17—Summons In Forcible Entry And Unlawful Detainer (County Court)
- Form 13-18—Summons (Unlawful Detainer) (District Court)
- Form 13-19—Complaint Under Simplified Civil Procedure (Forcible Entry And Unlawful Detainer)
- Form 13-20—Writ Of Restitution
- Form 13-21—Undertaking On Appeal
- Form 13-22—Sample Letter Of Intent To Sue
- Form 13-23—Lead-Based Paint Obligations Of Landlord

Table of Contents

Form 13-24—Lead-Based Paint Disclosure (Rentals)
Form 13-25—Short Form Lease

Appendix A COLORADO REAL ESTATE TITLE STANDARDS

SUBJECT INDEX
