

Real Estate Topics
Or
Various Tips, Comments and Suggestions

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Greg is board certified in Commercial Real Estate. He has served as President of the Tom Green County Bar Association and Chairman of the State Bar Grievance Committee. Greg is a member of the Texas Bar Foundation and the College of the State Bar of Texas. He has been a co-owner of First Title Company in San Angelo for almost 50 years.

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Every practicing attorney at some point is going to have occasion to be involved with real estate. A person's residence is generally the major financial asset of an individual. Most attorneys and their clients will buy, sell, refinance or get a home equity loan on the residence. Both divorce and death also touch on the ownership of real property.

To those attorneys whose practice centers in real estate and on other areas, I would like to make several recommendations, tips and suggestions.

- 1) **Advice:** For individuals, use the **FULL & COMPLETE** name on your birth certificate as modified by marriage.
- 2) **Tip:** If your client already has used a shorten name in title, one may help correct the problem in subsequent documents by using the full, complete name with the notation "also known as."
- 3) **Warning:** Title companies attempt to solve the problem of "same name" with "Name Affidavits." Your client generally will pay the expense for preparing the curative affidavit..
- 4) **Notice:** Both trusts and estates are not legal entities and a deed just naming the trust or estate is not correct. One should convey title to and from the trustee or representative in their named capacity.
- 5) **Essential requirement:** Use the correct legal description to real estate with name of county and state. Generally, street addresses and tax appraisal district account numbers are not sufficient.
- 6) **Trivia point:** Often legal descriptions for unplatted tracts will contain a "Certificate Number" or an "Abstract Number." These are generally superfluous.

- 7) **Complaint:** Too many divorce decrees (usually *pro se*) do not have a proper legal description in awarding the residence.
- 8) **Tip:** If a deed is not executed as part of the divorce decree, a certified copy of the lengthy decree must be obtained and recorded in the county deed records at your client's expense.
- 9) **Tip:** One source for a copy of the vesting deed with its correct legal is the county appraisal district (CAD) website. Usually there is a "history" section which will set out the last vesting deed with the recording data, a copy of which one can then get from the county clerk's office. But do not use the CAD property ID number for a legal description.
- 10) **Tip:** Always be aware that the greatest potential for error in transactional agreements is making last minute changes. The attorney may overlook issues that would have been caught at the beginning, but became important only shortly before closing.
- 11) **Warning:** One should avoid the temptation to shorten Real Estate Sales Contracts involving residential property, as Texas law requires the Seller to furnish the buyer numerous disclosures. Often TREC is best.
- 12) **Major warning:** Only under extreme, limited conditions should one use a contract for deed (also called installment contract, executory contract, lease to own, etc). There are many unconscionable penalties awaiting those souls who, in an attempt to save a dollar, use the contract for deed.
- 13) **Recommendation:** The General Warranty Deed and the Special Warranty Deed are still the preferred methods to convey title in Texas.
- 14) **Notice:** A "Quitclaim" is not a deed nor instrument of conveyance. It is a release or relinquishment of claim. It strips the grantee of many legal protections such as doctrines of being a bona fide buyer, after-acquired title, limitations, etc.

- 15) **Reminder:** A notary's acknowledge adds no validity to a document. The purpose is to allow the document to be recorded with the county clerk. A careful draftsman may deliberately omit a notary's acknowledgement to prevent the recording of the instrument with the county clerk.
- 16) **Tip:** With the expanded use of "Memos," the full lease, option or agreement is not recorded in the public records. An examiner then has no notice of when the term expires. The owner's scrivener (ie, attorney) should add language to the "Memo" to be recorded reflecting the terms of the termination of the right created.

Developing issues:

- 1) **Reverse mortgages:** Many family members report problems with reverse mortgages created by their parents.
- 2) **Solar panels:** In listing a home for sale, many homeowners forget to factor in the additional expense of the unpaid lien for the purchase of solar units.
- 3) **Mineral and Surface Conflict:** Use of the surface for green energy is expanding and sometimes creates a conflict between the superior rights of the mineral owner and the ability of the surface owner to use surface.
- 4) **DNA tests:** We have the issue of DNA tests, which may reflect previously unknown descendants in the chain of time. What is the effect where an affidavit of heirship has been used in place of a will? And the question of when a will devises real property to a group designated as "all my grandchildren."