

Actual Situations in Which North Carolina Attorneys Made (Or Would Have Made) a Difference

- ◆ At closing, the attorney pointed out to the borrower that (1) the existing loan was fixed at a lower rate when the broker had said otherwise, (2) the loan had a substantial prepayment penalty, (3) the broker's fee (previously undisclosed) was \$5,000, (4) the loan had a 5-year balloon rather than being the promised 30-year loan and (5) that the borrower would *not* have to pay the fees if they did not close, notwithstanding the broker's protests otherwise. The borrower canceled the loan.
- ◆ Lender advised 87-year-old Mother to obtain loan to pay her son's debts of \$75,000 (due to her good credit and his bad credit), then convey the property to him. The loan package listed Mother as 67 years of age, retired just 4 months, had a loan amount of \$120,000, \$8,000 charges, a due-on-sale-or-conveyance clause and a prepayment penalty. Upon attorney's advice, they did not close. Had they closed, the loan would have been accelerated upon conveyance and son would have lost the property due to judgments and other serious credit problems
- ◆ Unsupervised paralegal closed a sale without assuring payment of an outstanding and substantial judgment against the seller, based on a "bond" submitted at closing. The bond submitted was an appeal bond; the judgment, which exceeded the sales price of the property, was affirmed on appeal and attached to buyer's property.
- ◆ Lender required Mother to deed ½ interest in her house to her ex-husband who was co-signing for loan for their daughter's college tuition. Husband and new wife refused to reconvey the ½ interest after closing.
- ◆ The lender's quitclaim had no granting language or legal description and the borrower's ex-husband has disappeared into the jungles of the Philippines, along with his as-yet not effectively conveyed ½ undivided interest.
- ◆ A lender required conveyance by the mother to herself and her daughter as tenants in common, since the daughter was co-signing on the loan, failing to advise on the immediate effects on the title of daughter's creditors and other title issues.
- ◆ A woman's uninsured "refinance" was to buy out her ex-husband's interest, based on a limited search of *her* title only that did not reveal his substantial federal tax liens, far exceeding the loan amount. (She was not covered. No title policy required.)
- ◆ Lender closed purchase from "heirs" to borrower. Multiple judgments are outstanding against one heir constituting liens on the property. Two minors are still holding title. Borrower closed in reliance on lender's "title report" and advice that no owner's title insurance protection was needed.
- ◆ Lender crossed out the entire correct legal description on deed of trust and replaced it with the description of the *entire development* shown on deed into the developer, based on a "title report" from a non-attorney, causing significant delays and costs to the consumer, the developer and multiple others to clear up the record title.
- ◆ Client was refinancing with Bank to pay off a construction loan (closed without a lawyer to "save the client some time and money") and comply with balloon payment not disclosed at time of initial closing. Lender intended another "nonlawyer closing" but the client took the closing package to client's regular attorney. The new documents included a deed of trust with a description which covered all of many acres when it should have described only a small parcel upon which the new house was located.
- ◆ Client was completely surprised to receive a full closing package with instructions to sign where indicated, have notarized where indicated, and return to the lender. Her closing package contained an affidavit for her to sign swearing that certain liens and matters of record did not affect her property, essentially making her the title insurer for the lender. Client contacted her attorney to explain the documents since the person at the lender's toll-free telephone number could not do so.
- ◆ Borrower applied for a loan to his LLC, for a second home held as income producing property, which the lender improperly processed the loan as an owner-occupied first home. Borrower advised Lender of the error and was told to convey the property from the LLC to their personal names,

close on the loan, then reconvey, post closing, despite a due-on-sale clause, affidavits to the contrary and interest escalation clauses of the loan documents. However, Lender refused to provide assurances of waiver of these penalties; Lender sells 100% of its loans.

- ◆ Young couple, tenants in a house, without much money, made an offer to owner but could not qualify for loan from Texas lender. The lender suggested that the owner and tenant back-date a lease agreement with portion of rentals to be applied to the purchase price to create cash credit at closing. The attorney advised the owner and tenant not to participate in this loan fraud.
- ◆ A young unmarried couple owned a home and were refinancing. At closing, the attorney elicited that they were refinancing so that she could "cash out" her share. When advised of her continuing liability under the note, even if she deeded her interest to the boyfriend, they negotiated a sale of the interest instead, relieving her of liability and vesting title as planned.
- ◆ At closing, the borrower questioned a prepayment penalty, to which the lender replied that it was "all right because they almost never really collect it." Since the lender sold 100% of their loans, the attorney insisted on relief from the lender in writing and permission to modify the Truth-in-Lending and other documentation - protecting the borrower from the beginning, rather than leaving the negotiation for a desperate time-sensitive payoff situation in the future when the borrower would have no leverage.
- ◆ A Borrower recently did a refinance in which they anticipated only a portion of their several acres of land would be included in the loan and they made application on this basis. The documents were prepared by an out-of-state lender and forwarded to them for signature at their home. Subsequent to this, they entered into an agreement to sell the acreage they thought was free and clear of the lien of the Deed of Trust and as time approached to close, were made aware by the buyer's attorney, following a title search, that the property was subject to the lien of the Deed of Trust and the lender had refused to release it without payment of a substantial release fee. Obviously, they find themselves in these circumstances because they did not have the benefit of counsel at the closing of the refinance.
- ◆ In 2000, a young couple with lots of consumer debt was contacted by lender, offered a loan at 12%, payment of \$1200, plenty of money to take care of consumer debt and have just one payment. House appraised at \$118K. At lender closing (without attorney), borrowers were presented with this first deed of trust, then a second deed of trust at 16% and payments of \$400, for a total combined debt of \$132,000. House was being marketed at \$125,000 (its actual value) when this was presented to the attorney who is now negotiating with the lender to prevent foreclosure. The clients have incurred significantly greater costs, lost time from work, suffered emotional distress, and will have a higher risk of continuing credit problems.
- ◆ In reviewing a Truth-in-Lending and Closing Statement from an out-of-state 1-800 lender, a client was unhappy and the attorney was shocked at the closing costs. Because of intervention at closing, they saved the client \$9,000 in lender closing costs - an extraordinary amount for a total charge for a closing in North Carolina, much less of net *savings* on a single closing. The attorney noted: "I have excellent personnel, but I do not believe that they have the knowledge or the intestinal fortitude to buck the lending agency. They would not have wanted me to lose the fee, and an independent paralegal would have been practicing law to have given the advice that I could and did give."
- ◆ Borrower conveyed property to an out-of-state irrevocable trust that did not contain sale or mortgage authority on advice of an out-of-state non-attorney "estate planning" adviser. Borrower no longer owned the asset and could not borrow or grant an effective deed of trust under applicable North Carolina law. In addition, Borrower may be liable under federal law fraud for having provided an affidavit otherwise to an equity line lender-bank. Borrower was unable to sell the property without court order in order to pay the debt. Thus, two non-attorney closings (the conveyance to trust and the equity line closing) led to substantial frustration, misunderstanding and expense for the consumer.
- ◆ Property inherited by sister and brother. Sister agreed to encumber her one-half interest to assist brother in obtaining consumer loan for improvements and other personal debts. Lender demanded that sister convey her interest to brother, or that brother sign deed of trust as if he owned the entire fee (a federal offense).

- ◆ Property being transferred as part of a tax-free exchange was determined to be encumbered by an equity line deed of trust, which included the address of the personal residence of the borrower-seller. Loan officer explained that its home office (out-of-state) arranged for title examination by an independent paralegal and prepared the documents. Loan officer had the borrower sign the documents. They all failed to notice that the property described on the deed of trust was located on a different street in a different area from the vacant lot intended to be exchanged. Delay in obtaining release and correction of the deed of trust (and paralegal title opinion) caused the borrower to lose the benefit of the exchange.
- ◆ Lender financed loan based on gift deed to borrower executed by title holder's purported attorney-in-fact (which power of attorney did not contain power to make gifts) one day after the title holder had died. The death certificate was of record and easily locatable in a title examination. Lender could produce no evidence of investigation of status of title holder on date of deed.
- ◆ Plat revised and recorded by seller prior to closing, but no copy provided to borrower and their contractor until closing. Determined that with setbacks, buffers and easements, the lot had insufficient usable area to build the contemplated home.
- ◆ Husband and wife were both successful professionals. For tax reasons, wife was purchasing home in her own name, and had negotiated all of the financing. The bank's documentation had husband co-signing the note and loan documents. Attorney brought it to the client's attention and were able to have the husband excluded.
- ◆ Lender had informed buyer that she had to buy credit life insurance because of her age, contrary to federal and state law.
- ◆ Seller was prepared to convey without joinder of estranged spouse, or recorded Prenuptial or Separation Agreement, based on advice of Buyer/borrower's lender.
- ◆ Lender was demanding that the borrower cancel a judgment owed by a third party to the borrower as a condition of closing.
- ◆ Lender insisted that guardian of minor, mentally retarded child should close without court order.
- ◆ Judgment liens which are for debts to private parties did not appear on credit report, so lender advised client that they did not apply.
- ◆ Independent paralegal failed to report over 100 judgments since the borrower had a common name.
- ◆ Lenders advised borrowers not to purchase surveys because the *lender* is protected by title insurance, failing to disclose that the *consumer is not protected*, thus leaving the consumer at risk without adequate informed consent.
- ◆ Restrictions prevented construction of or would require substantial redesign contemplated improvements, critical to the borrower's decision to purchase.
- ◆ On receiving a survey of the property prepared for the purchaser, the attorney (1) inquired and learned that necessary permits had not been obtained, (2) identified illegal fill activity since the historical legal description did not coincide with the survey, and (3) learned that the expensive home was built in violation of setbacks.
- ◆ Spouses held as tenants-by-the entirety, however, lender recorded equity line deed of trust signed only by Husband, without knowledge or joinder of Wife. Wife was awarded the property in a very acrimonious divorce, but was unable to sell it without litigation to release the lender's cloud (since it was not truly a lien) on the property. An attorney would have prevented the "cloud" from being created by notifying the lender of requirement for a spouse; independent searcher did not identify or understand the ownership and thus the problem.
- ◆ Borrower purchased but was not advised to record. Seller encumbered and defaulted prior to borrower's deed and property is now in foreclosure.
- ◆ Deed in voluntary partition erroneously believed to create tenancy by the entirety. The tenant in common died, leaving spouse and children from a prior marriage. New owner was led to believe that conveyance from surviving spouse alone was sufficient. When title was reviewed by attorney for a later refinance by the new owner, the interests of the children were identified, they refused to sign and "curative" action was initiated.

- ◆ Client arrived at closing to find that 3 uncanceled equity lines remained of record as well as the first mortgage. A lender on one prior loan was unlocatable to obtain cancellation documentation. The current lender was claiming one deed of trust was security for what client thought were a car loan and a credit card debt. The intended "current" equity line had never been recorded. Client was unable to close and will suffer a substantial loss trying to cure these title problems. Lender is unwilling to assist.
- ◆ Lender drafted deed of trust using on partial legal description, closed and recorded.
- ◆ Construction loan was closed by bank without advising borrower of need for inspections, lien waivers, etc. Bank continued to disburse long after problems with home and contractor became obvious.
- ◆ Lender recorded deed of trust outside the chain of title (before the borrower takes title)
- ◆ Borrowers were buying property from her father and obtaining a construction loan for a new home. Deed recordation was delayed by the public registry because the county was awaiting posting of payment of property taxes. Without informing borrower's counsel, Bank closed on loan with borrower and recorded construction loan documents prior to deed. Then, when borrower advised Bank to record once deed cleared, Bank made demand on the borrower and called the loan rather than re-record. The borrower incurred substantial inconvenience and costs from both delay and having to retain an attorney to "negotiate" with the bank. Had an attorney handled the closing, the deed of trust would have been properly recorded immediately after the deed and the costs would have been substantially less. Had the attorney not intervened, the borrower would have been significantly damaged since borrower had already advanced construction draws in reliance on the loan and Bank was making serious threats to their "A" credit standing.
- ◆ Client was to purchase property and obtain bank loan. Title problems delayed deed. Bank did a "lay closing" and forwarded check to client which did not have title.
- ◆ Client refinancing a rental property was advised by the Bank to sign as if it were their primary residence, a violation of state and federal law.