

GEORGIA REAL ESTATE PRACTICE TOMORROW -
AN AGENDA FOR CHANGE

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Real Property Law Institute - CLE in Georgia

The public has a very low opinion of lawyers. We real estate lawyers tend to think that that opinion was caused by our brother litigators: by the criminal lawyers who brag about getting the guilty off or by the personal injury lawyers making huge contingent fees at the expense of widows and orphans.

Unfortunately, I believe that the public's perception is directed as much at real estate lawyers as at our brothers at the bar. We are perceived as slow to act, inefficient, and expensive.

On the other hand, most real estate lawyers feel totally frustrated. We are showered by paperwork demanded by the federal government and the lending institutions. We are aggravated by real estate agents who negotiate bad contracts and then expect us to close them immediately, overlooking all the problems. We are

besieged by clients who are accustomed to instantaneous service. Worst of all, we are accosted by everyone on the grounds that our fees are too high.

There is a measure of truth in both of these positions. Most real estate closings are routine and ministerial. They should be accomplished with great speed and at low cost. Unfortunately, they usually cannot be. We want to blame that on the government or the banks. The client, who is paying us to get his deal done, tends to blame us.

There are many types of common real estate problems which could be solved by real estate lawyers, saving enumerable hours of our time and untold dollars of our clients' money. However, these problems can only be solved by real estate lawyers working collectively on a state-wide basis through uniform procedures or new legislation.

I have divided these problems and proposed solutions into four areas. First, the need to develop more uniform forms; second, the need to modernize our record rooms; third, the need to revise our title standards; and fourth, the need to rewrite some substantive laws.

A. Forms.

Wes Warren spoke yesterday on the logic of the systems approach for real estate practice. I believe that it is not only the logical way it's the only to go. A client cannot comprehend why it takes a lawyer more than a few minutes to draft his house contract. He cannot understand why standard closing forms need to be redrafted and revised in every transaction.

I believe that we should take Wes Warren's system a step further. We should standardize our routine forms on a state-wide basis so that everyone will know what they say and so we can save time in negotiating and drafting them. Those of you who practice in South Carolina know that their deeds and mortgages are printed on standard forms approved state-wide. The state bar should sanction standard warranty deed, quitclaim deed, and debt deed forms. We could also draft standard forms for memoranda of leases, cancellations, and owner's affidavits.

As we all know, there are many times when other than standard provisions are added to debt deeds and other title documents. However, these can be handled as special stipulations or handled outside the recorded documents when necessary.

Perhaps our greatest need for standardized forms is in the negotiations of real estate sales contracts for residential property. Some metropolitan areas of the state, including Atlanta and Savannah, have fairly standardized forms that are sanctioned by the real estate boards in those cities. Those forms, while helpful, are written for the benefit of real estate agents rather than the parties.

The State Bar of Florida, together with the Florida Board of Realtors, has developed a standard real estate sales contract used statewide in virtually all residential transactions. A copy is attached as Addendum A. We could and should develop a similar form.

B. Record Rooms.

For the most part, our Georgia Record Rooms are anachronisms. We still operate 18th century record rooms in the age of the computer. Although some counties have introduced computer indexing, and Information America has made great strides in disseminating their information on an area-wide basis around Atlanta, we have a long way to go in modernizing our system.

I would like to outline some of the problems in Chatham County abstracting because I think they are typical of the problems faced in most other Georgia counties. While Chatham County does have a computerized Grantor/Grantee Index, it has not overcome many obstacles which waste the abstractor's time and the county's manpower:

(i) In order to search a title, an abstractor must make a trip to the County Tax Assessor's office to check the latest tax information on the parcel, he must go to the Delinquent Tax office in the Tax Commissioner's office to check delinquent taxes, he must go to City Hall to check whether city taxes have been paid, and he needs to go to the Record Room to actually run the title.

(ii) In order to record the documents in a routine closing, the closing attorney or someone working for him must make separate trips to the Clerk's office to record the documents and pay transfer tax, to the Tax Commissioner's office to pay intangibles tax and county taxes, and to City Hall to pay city taxes.

(iii) Although some of the county's lien docket such as federal tax liens and general executions are jointly indexed on the county's computer, other docket such as street paving liens and preliminary materialman's lien notices are indexed separately, necessitating separate searches. Different Georgia counties have widely varying procedures on lien indexes.

(iv) Although Chatham County and Savannah officials will give written statements of taxes due against a certain piece of property, many tax officials will not do that, requiring inefficient manual searches of tax digests for several years back.

(v) The computerized grantor index cannot be searched "on line" on a computer terminal. Abstractors must search numerous print-outs to run a title. These are often less efficient than searching old paste-on manual indexes.

Clearly, the technology is available to solve all these problems. Logically, a system could work as follows:

(i) A person recording a document would present the document together with a recording data sheet and the necessary fees to a clerk seated at a computer terminal. The computer terminal would have a "menu" on its screen containing the same information as is shown on the recording data sheet. I have attached an example of such a sheet as Addendum B in the Appendix. The clerk would immediately accept the document for recording, accept all of the fees, and fill in all of the data from the recording data sheet on the computer screen. On receipt of the information into the computer, the computer would

immediately assign a book and page number to the document, enter the document on the filing docket, update city and county tax records, update the county's reports for state transfer tax or intangibles tax, and update the county's accounting records on fees received for recording. The clerk could immediately stamp the book and page number and photocopy the document, automatically transmitting it to be printed in a deed record book. He could then return the original document to the party recording it. The process should not take more than five minutes.

(ii) The abstractor, operating in such a setting, should be able to obtain the entire chain of title to a piece of property while sitting at a computer screen. He should be able to call up on the screen a list of all documents containing a certain property description, name, property identification number, or book and page number in the Grantor or Grantee Index. After obtaining the entire chain of title, the abstractor could obtain "hard copies" of all of the documents in the chain of title for review back at the office by the attorney who ordered the title search.

(iii) Having established the data base necessary to operate the computers as above described, all of the information could be transmitted directly to law offices so that individual attorneys could order up the information on computer terminal screens in their offices.

(iv) The clerk in such a system would receive regular print-outs of transfer tax and intangibles tax reports and cash

receipts. The city and county would automatically receive payment of taxes upon transfer of properties. The governments could eliminate all clerical positions which now manually record documents, prepare filing dockets and indexes, and receive and prepare reports on intangibles tax and transfer tax.

Several years ago, a committee of the Savannah Bar Association studied implementing as a first step, a similar, but somewhat less ambitious system in Chatham County. We found that by making an investment of around \$150,000, the county could eliminate at least 3 full time staff positions.

While this may seem, to many of you, to be wildly futuristic, the technology is available today to accomplish such a system. As disc storage costs continue to drop and telecommunications capabilities continue to expand, it is likely that such a system will be cost effective within the next two decades.

The real impediments to developing a modern system are twofold: lethargy by consumers and clerks, and the archaic, 18th century recording procedures we employ today. Our lethargy is being shaken by the demands of the marketplace, but our present recording procedures can only be changed by concerted action.

We, as the primary record room consumers, should promote changes to facilitate record room reform. These changes should include the following:

(i) The State Bar and the Clerks of Court should develop a standard recording data sheet similar to the one I have attached as Addendum B. Use of such a sheet, even before

computerization, would increase speed of operation in the Clerk's office and reduce clerical errors by allowing the closing attorney, rather than an assistant clerk, to designate exactly how a document should be indexed.

(ii) Each county should maintain a unified index for all lien filings which affect real estate. The practice on this varies widely around the state and some legislation abolishing some of the lien indexes presently being maintained, and authorizing or compelling the unification of remaining lien indexes would be required.

(iii) Tax information concerning tax assessment, current outstanding bills, and delinquent taxes should be consolidated in one office. Likewise, street paving lien information should be maintained by the Clerk of Superior Court.

(iv) To save county manpower and recording steps, intangibles tax should be collected by the Clerk of Superior Court rather than the Tax Commissioner.

(v) In order to facilitate indexing, property descriptions should refer to tax property identification numbers and to the prior document in the chain of title.

(vi) To facilitate use of microfiche and other modern document storage methods, the legislature should abolish all legal requirements under which clerks must cross-index certain documents "on the face" of previously recorded documents. For example, clerks should not have to physically mark cancellations on the face of recorded debt deeds, if they, instead, index

cancellations and affidavits of facts by book and page number of prior documents, as well as by grantor-grantee.

Some of the above changes would undoubtedly cause "turf wars" between various local elected officials such as Tax Commissioners, Tax Assessors, City Treasurers, and the Clerks of Superior Court. These issues should be addressed comprehensively by us, by the clerks, and by the legislature on a statewide basis.

C. Title Standards.

The State Bar's title standards have not been updated in many years. They are deficient in handling many serious problems which arise in many abstracts. For example, the standards should clearly set out exactly what documentation is required for a lawyer to accept executions by partnerships, trusts and other entities. Jim Elliot's list of documents which should be required to back-up execution signatures from various types of entities presented in a speech here last year was excellent and should be included in the title standards.

D. Substantive Law Changes.

(i) Easements and Rights of Way.

Many Georgia title problems arise from the failure of utility companies to record easements which clearly define the property to which they relate, their failure to record usable maps, and their failure to reasonably limit the rights of the utility company in adjacent lands. For instance, many utility easements are not site-specific and refer to the land owned by the grantor rather than a specific area defined on a plat, and

many plats which are recorded by utility companies, railroads and the D.O.T. refer to mile posts or markers which are extremely difficult to locate with reference to other surveys and natural boundaries such as highways and rivers. Many utility easements provide for virtually unlimited access by the utility company over adjacent lands of the property owner who is the grantor.

In fairness to the utility companies, I have found them easy to deal with in granting reasonable requests for quitclaims and modifications. However, the need to constantly request such quitclaims unnecessarily infringes on the time of clients and lawyers, and could be eliminated by use of more standard easement forms and maps.

Perhaps this problem could be remedied by a joint committee of the bar, representatives of the utility companies and the highway department. However, legislation may be needed in this area. An improved procedure should be devised which would require utility companies and the highway department to record standard plats with each easement they record, and which would limit access to utility easements to adjacent roadways as they may exist from time to time.

(ii) Paper Streets.

The legislature has made strides in the last few decades by eliminating some traditional title problems presented by old uncanceled documents. O.C.G.A. §44-14-80 provides that debt deeds are presumptively cancelled 20 years after their due date. O.C.G.A. §44-5-60(b) provides that restrictive covenants are void in areas which have zoning laws after 20 years, and

O.C.G.A. §44-5-168 now provides that reservations of mineral rights may be void for non-use after 7 years. Similar legislation is needed to address the problem of "paper streets."

Until the last couple of decades, most Georgia counties did not have subdivision regulations. It was a common practice to record maps showing the potential development of large tracts of land, sometimes containing hundreds of acres, prior to the actual layout and development of the streets and lots shown on the map. As times changed, the developments changed, and playgrounds intended to be located at certain sites were not put there, streets were never laid out, housing was built on old rights-of-way, and some rights-of-way became undesirable because of changes in traffic patterns.

In Savannah, these problems are compounded by the age of the City and the inaccuracy of old surveys. There are literally dozens of miles of "paper streets" in Savannah and the unincorporated areas of Chatham County which have never been opened. All of these streets present time-consuming and expensive problems for real estate lawyers.

The biggest problems arise from a famous real estate case which many of you have probably run into. It is Tietjen v. Meldrim, 169 Ga. 678 (1929), and it involves the development of a subdivision on Wilmington Island in Chatham County. A large subdivision was laid out, some of the streets were never opened, and someone many years later sought to build in one of the old streets. A neighbor sued and the Supreme Court found that once a street was laid out on a subdivision map, it could not be

abandoned by implication, and all of the owners of lots in the subdivision had a perpetual easement of access over that street. See also, Stanfield v. Brewton, 228 Ga. 92 (1971). You can imagine the problems this has created in subdivisions which now contain several hundred lots. Some of the prime commercial areas of Savannah are subject to this problem.

I feel that the State Bar and the legislature need to address this problem by providing that unencumbered title to the land within a street right-of-way which is not opened and used within 7 years after the date it is shown on a subdivision map shall pass equally to the owners of the adjoining lots unless a title instrument such as a deed or a right-of-way easement is filed for record by the owner of the right-of-way prior to that time, or unless the right-of-way provides the sole means of access to a property.

(iii) Tax Sales and Land Registration.

The law should favor the creation and maintenance of marketable titles. It should facilitate clearing clouds on titles. It should also reasonably facilitate the collection of ad valorem taxes. Our current laws on tax sales, sheriffs sales and land registration frustrate all of these objectives. Thus, we have large numbers of unmarketable titles in this state. It is time that we address and solve these problems.

WHAT IS THE FUTURE OF REAL ESTATE PRACTICE?

I am sure that some skeptics will ask what all of us real estate lawyers will do for a living if we can no longer bill numerous hours writing residential sales contracts, running titles behind our abstractors, negotiating with Georgia Power about quitclaim deeds, and clearing the title to paper streets. Hopefully, their criticisms will not be intended as serious ones.

I do not know any lawyer who enjoys charging a client for work that is necessitated by senseless bureaucracy. Clients are and should be intolerant of paying for our time in straightening out problems that should be solved collectively by the law profession rather than individually in each case at great expense and without any permanent resolution.

If and when we can do away with these aggravations, we will have more time to spend on the substantive problems that our clients face today.

Beyond title practice, the Law of Zoning and Land Use Regulation, including aesthetic controls, historic review boards and environmental law is growing at an ever accelerating rate. Real estate syndications and other innovative financing techniques are growing more complex and more necessary for our clients every day. Condominium development is increasing in most areas of the state as the demand for lower priced, higher density housing increases. Finally, tax planning for real estate is becoming more necessary and important to our clients every day.

In short, there is plenty of serious, substantive and lucrative work for real estate lawyers to do today. We do not need to be wasting our time and our clients' money solving problems that should be settled on a state-wide basis once and for all, by the organized bar and the legislature. I hope that the bar, and each of us individually, will work hard to simplify, speed-up and improve the delivery of our work product to our clients. After all, they expect it, and, since they are paying for it, they deserve it.

**ADDENDUM A
CONTRACT FOR SALE AND PURCHASE**

10.15

PARTIES _____ as Seller
of _____ (Phone _____)
and _____ as Buyer
of _____ (Phone _____).
I, _____ hereby agree that the Seller shall sell and Buyer shall buy the following property upon the following terms and conditions WHICH INCLUDE the Standards For Real Estate Transactions on the reverse hereof or attached hereto hereinafter referred to as "Standard(s)"

I. DESCRIPTION:
(a) Legal description of real estate (Property) located in _____ County Florida

(b) Street address of any of the Property being conveyed is _____
(c) Personal property included _____

II. PURCHASE PRICE: \$ _____
PAYMENT:
(a) Deposit(s) to be held in escrow by _____ in the amount of \$ _____
(b) Subject to AND assumption of Mortgage in favor of _____ bearing interest at _____ % per annum and payable as to principal and interest \$ _____ per month having an approximate present principal balance of \$ _____
(c) Purchase money mortgage and note bearing interest at _____ % on terms set forth herein below in the principal amount of \$ _____
(d) Other _____ \$ _____
(e) Balance to close (U.S. cash, certified or cashier's check) subject to adjustments and prorations \$ _____
TOTAL \$ _____

III. FINANCING: If the purchase price or any part thereof is to be financed by a third party loan, this Contract for Sale and Purchase, (Contract), is conditioned upon the Buyer obtaining a firm commitment for said loan within _____ days from date hereof, at an interest rate not to exceed _____ %; term of _____ years; and in the principal amount of \$ _____ Buyer agrees to make application for, and to use reasonable diligence to obtain said loan. Should Buyer fail to obtain same or to waive Buyer's rights hereunder within said time, either party may cancel Contract.

IV. TITLE EVIDENCE: Within _____ days from date of Contract, Seller shall, at his expense, deliver to Buyer or his attorney, in accordance with Standard A, either (CHECK) (1) or (2): (1) abstract or (2) title insurance commitment with fee owner's title policy premium to be paid by Seller at closing.

V. TIME FOR ACCEPTANCE AND EFFECTIVE DATE: If this offer is not executed by both of the parties hereto on or before _____, the aforesaid deposit(s) shall be, at the option of Buyer, returned to him and this offer shall thereafter be null and void. The date of Contract ("Effective Date") shall be the date when the last one of the Seller and Buyer has signed this offer.

VI. CLOSING DATE: This transaction shall be closed and the deed and other closing papers delivered on the _____ day of _____, 19 _____, unless extended by other provisions of Contract.

VII. RESTRICTIONS, EASEMENTS, LIMITATIONS: The Buyer shall take title subject to: Zoning restrictions, prohibitions and other requirements imposed by governmental authority. Restrictions and matters appearing on the plat or otherwise common to the subdivision. Public utility easements of record (provided said easements are located contiguous throughout the property lines and are not more than 10 feet in width as to the rear or front lines and 7 1/2 feet in width as to the side lines, unless otherwise specified herein). Taxes for year of closing and subsequent years, assumed mortgages and purchase money mortgages, if any other: _____ provided, however, that none of the foregoing shall prevent use of the Property for the purpose of _____.

VIII. OCCUPANCY: Seller represents that there are no parties in occupancy other than Seller, but if Property is intended to be rented or occupied beyond closing the fact and terms thereof shall be stated herein, and the tenant(s) shall be disclosed pursuant to Standard G. Seller agrees to deliver occupancy of Property at time of closing unless otherwise specified below. If occupancy is to be delivered prior to closing, Buyer assumes all risk of loss to Property from date of occupancy, shall be responsible and liable for maintenance thereof from said date, and shall be deemed to have accepted the Property, real and personal, in its existing condition as of time of taking occupancy unless otherwise noted in writing.

IX. ASSIGNABILITY: (CHECK ONE) Buyer may assign may not assign Contract.

X. TYPEWRITTEN OR HANDWRITTEN PROVISIONS: Typewritten or handwritten provisions inserted herein or attached hereto as Addenda shall control all printed provisions in conflict therewith.

XI. INSULATION RIDER: If Contract is used for the sale of a new residence, the Insulation Rider shall be attached hereto and made a part hereof.

XII. SPECIAL CLAUSES: _____

THIS IS INTENDED TO BE A LEGALLY BINDING CONTRACT.
IF NOT FULLY UNDERSTOOD, SEEK THE ADVICE OF AN ATTORNEY PRIOR TO SIGNING.
THIS FORM HAS BEEN APPROVED BY THE FLORIDA ASSOCIATION OF REALTORS AND THE FLORIDA BAR
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WITNESSES (Two recommended but NOT required)

Executed by Buyer on _____ (SEAL)

(Buyer)

(Buyer) (SEAL)

WITNESSES: (Two recommended but NOT required)

Executed by Seller on _____ (SEAL)

(Seller)

(Seller) (SEAL)

Deposit(s) under II (a) received; if check, subject to clearance
By _____ (Escrow Agent)

BROKERAGE FEE: Seller agrees to pay the registered real estate Broker named below, at time of closing, from the disbursements of the proceeds of sale, compensation in the amount of _____ % of gross purchase price or \$ _____ for his services in effecting the sale by finding a Buyer, ready, willing and able to purchase pursuant to the foregoing Contract. In the event Buyer fails to perform and deposit(s) is retained, 50% thereof, but not exceeding the Broker's fee above computed, shall be paid to the Broker as full consideration for Broker's services including costs expended by Broker, and the balance shall be paid to Seller. If the transaction shall not be closed because of refusal or failure of Seller to perform, the Seller shall pay said fee in full to Broker on demand.

(Name of Broker) (SEAL) _____ (SEAL)

(Seller) _____ (SEAL)

(Seller) (SEAL)

STANDARDS FOR REAL ESTATE TRANSACTIONS

A. EVIDENCE OF TITLE. An abstract of title prepared or brought current by a reputable and existing abstract firm (if not existing then certified as correct by an existing firm) purporting to be an accurate synopsis of the instruments affecting the title to subject Property located in the public records of the county where the Property is situated through Effective Date. An abstract shall commence with the earliest public record, or such later date as may be customary in the county where the Property is situated. Seller shall convey a marketable title subject only to liens, encumbrances, easements or qualifications set forth in the Contract and those which shall be discharged by Seller at or before closing. Marketable title shall be determined in accordance with applicable Title Standards adopted by authority of The Florida Bar and in accordance with the Uniform Closing Declaration. Seller shall have 120 days from receipt of notice within which to remove said defects and if Seller is unsuccessful in removing them within said time Buyer shall have the option of either (1) accepting the title as it then is, or (2) demanding a refund of all monies paid hereunder which shall forthwith be returned to Buyer and thereupon Buyer and Seller shall be released, as to one another, of all further obligations under the Contract, however Seller agrees that he will if title is found to be unmarketable use diligent effort to correct the defects in title within the time provided hereafter including the bringing of necessary suits.

B. EXISTING MORTGAGES. Seller shall furnish a statement from the mortgagee setting forth principal balance, method of payment, interest rate and whether the mortgage is in good standing. If a mortgage requires approval of the Buyer by the mortgagee in order to avoid default, or for assumption by the Buyer of said mortgage, and if the mortgage does not approve the Buyer, the Buyer may rescind the Contract, or (2) requires an increase in the interest rate or charges a fee for any reason in excess of \$100.00 the Buyer may rescind the Contract unless Seller elects to pay such increase or excess. Seller and Buyer shall each pay 50% of such fee. Buyer shall use reasonable diligence to obtain approval. The amount of any escrow deposits held by mortgagee shall be credited to Seller.

C. PURCHASE MONEY MORTGAGES. The purchase money note and mortgage, if any, shall provide for a 30 day grace period in the event of default if it is a first mortgage and a 15 day grace period if a second mortgage, shall provide for right of prepayment in whole or in part without penalty, shall not provide for acceleration or interest adjustment in event of resale of the Property, and shall be otherwise in form and content required by Seller's attorney, provided, however, Seller may not include any provision imposing any lien or other general lien on the mortgage instrument in the mortgage instrument if the Property is located. Said mortgage shall require the owner of the encumbered Property to keep all prior liens and encumbrances in good standing until the owner of the Property from accepting modifications or of future advances under prior mortgages. All personal property being conveyed with at option of Seller is subject to the lien of the mortgage and evidenced by recorded Financing Statement.

D. SURVEY. The Buyer, within time allowed for delivery of evidence of title and examination thereof, may have the Property surveyed at his expense. If the survey, verified by a registered Florida surveyor, shows any encroachment of said Property or that improvements intended to be located on the Property or that encroachments of others or violate any of the Contract covenants, the same shall be treated as a title defect.

E. TERMITES. The Buyer, within time allowed for delivery of evidence of title and examination thereof, or no later than 10 days prior to closing, whichever date occurs last, may have the improvements inspected at his expense by a Certified Pest Control Operator to determine whether there is any visible termite infestation or visible existing damage from termite infestation in the improvements. If Buyer is informed of either of both of the foregoing, Buyer shall have 4 days from date of written notice thereof of 2 days after selection of a contractor, whichever occurs first, within which to have all damages, whether visible or not, inspected and estimated by a licensed building or general contractor. Seller shall pay valid costs of treatment and repair of all damage up to 1% of Purchase Price. Should such costs exceed that amount, Buyer shall have the option of cancelling Contract within 6 days after receipt of contractor's repair estimate by giving written notice to Seller or Buyer may elect to proceed with the transaction, in which event Buyer shall receive a credit at closing of an amount equal to 1% of said Purchase Price. "Termites" shall be deemed to include all wood destroying organisms required to be reported under the Florida Pest Control Act.

F. INGRESS AND EGRESS. Seller warrants that there is ingress and egress to the Property sufficient for the intended use as described in Paragraph VII hereof the title to which is in accordance with Standard A.

G. LEASES. Seller shall, not less than 15 days prior to closing, furnish to Buyer copies of all written leases and stopgap letters from each tenant specifying the nature and duration of said tenancy, occupancy, rental rates and advanced rent and security deposits paid by tenant. In the event Seller is unable to obtain such letter from each tenant, the same information shall be furnished by Seller to Buyer within said time period in the form of a Seller's affidavit and Buyer may thereafter contact tenants to confirm such information. Seller shall deliver and assign all original leases to Buyer at closing.

H. LIENS. Seller shall, both as to the Property and personally being sold hereunder, furnish to Buyer at time of closing an affidavit attesting to the absence, unless otherwise provided for herein of any financing statements, claims of lien or potential liens known to Seller and further attesting that there have been no improvements to the Property for 90 days immediately preceding date of closing. If the Property has been improved within said time, Seller shall deliver releases or waivers of all mechanic's liens, executed by general contractors, subcontractors, suppliers and materialmen, in addition to Seller's lien affidavit setting forth the names of all such general contractors, subcontractors, suppliers and materialmen and further attesting that in fact all bills for work to the Property which could serve as a basis for a mechanic's lien have been paid or will be paid at closing.

I. PLACE OF CLOSING. Closing shall be held in county wherein Property is located, at the office of attorney or other closing agent designated by Seller.

J. TIME. Time is of the essence of this Contract. Any reference herein to time periods of less than 6 days shall in the computation thereof exclude Saturdays, Sundays and legal holidays and any time period provided for herein which shall end on a Saturday, Sunday or legal holiday shall extend to 6:00 p.m. of the next full business day.

K. DOCUMENTS FOR CLOSING. Seller shall furnish deed, mechanic's lien affidavit, assignments of leases, and any corrective instruments that may be required in connection with perfecting the title. Buyer shall furnish closing statement, mortgage, mortgage note, security agreement and financing statements.

L. EXPENSES. State documentary stamps which are required to be affixed to the instrument of conveyance, intangible tax on and recording of purchase money mortgage to Seller, and cost of recording instruments shall be paid by Seller. Documentary stamps to be affixed to the note or notes secured by the purchase money mortgage, cost of recording the deed and financing statements shall be paid by Buyer.

M. PRORATION OF TAXES (REAL AND PERSONAL). Taxes shall be prorated based on the current year's tax with due allowance made for maximum allowable discount and homestead or other exemptions if allowed for said year. If closing occurs at a date when the current year's millage is not fixed, and current year's assessment is available, taxes will be prorated based upon such assessment, and the prior year's millage. If current year's assessment is not available, then taxes will be prorated on the prior year's tax provided however, if there are completed improvements on the Property by January 1st of year of closing, which improvements were not in existence on January 1st of the prior year, then taxes shall be prorated based upon the prior year's millage and an equitable assessment to be agreed upon between the parties. Billing which request will be made to the County Property Appraiser for an informal assessment taking into consideration homestead exemption. If not based on an estimate, the prorated amount shall be based on the estimate of either party to the transaction or subsequently readjusted upon receipt of tax bill on condition that a statement to that effect is set forth in the closing statement.

N. SPECIAL ASSESSMENT LIENS. Certified, confirmed and ratified special assessment liens as of date of closing (and not as of Effective Date) are to be paid by Seller. Pending liens as of date of closing shall be assumed by Buyer, provided, however, that where the improvement has been substantially completed as of the Effective Date, such pending lien shall be considered as certified, confirmed or ratified and Seller shall, at closing, be charged an amount equal to the last estimate by the public body of the assessment for the improvement.

O. PERSONAL PROPERTY INSPECTION REPAIR. Seller warrants that all major appliances, heating, cooling, electrical, plumbing systems, and machinery are in working condition as of 6 days prior to closing. Buyer may, at his expense, have inspections made of said items by licensed persons dealing in the repair and maintenance thereof, and shall report to Seller in writing such inspections at closing. In the event of any inspection prior to taking of possession thereof, or 6 days prior to closing, whichever is first, unless Buyer reports repairs within said period, he shall be deemed to have waived Seller's warranty as to failures not reported. Valid reported failures shall be corrected at Seller's cost with funds therefor escrowed at closing. Seller agrees to provide access for inspection upon reasonable notice.

P. RISK OF LOSS. If the improvements are damaged by fire or other casualty prior to closing, and costs of restoring same does not exceed 3% of the Assessed Valuation of the improvements so damaged, cost of restoration shall be an obligation of the Seller and closing shall proceed pursuant to the terms of Contract with cost therefor escrowed at closing. In the event the cost of repair or restoration exceeds 3% of the assessed valuation of the improvements so damaged, Buyer shall have the option of either taking the Property as it, together with either the said 3% of any insurance proceeds payable by virtue of such loss or damage, or of cancelling Contract and receiving return of deposit made hereunder.

Q. MAINTENANCE. Notwithstanding the provisions of Standard O, between Effective Date and closing date, personal property referred to in Standard O and real property, including lawn, inlumber and wood, if any, shall be maintained by Seller in the condition they existed as of Effective Date, ordinary wear and tear excepted, and Buyer or Buyer's designee will be permitted access for inspection prior to closing in order to confirm compliance with this Standard.

R. PROCEEDS OF SALE AND CLOSING PROCEDURE. The deed shall be recorded upon clearance of funds and evidence of title continuous at Buyer's expense, to show title in Buyer, without any encumbrances or change which would render Seller's title unmarketable from the date of the last evidence, and the cash proceeds of sale shall be held in escrow by Seller's attorney or by such other escrow agent as may be mutually agreed upon for a period of not longer than 5 days from and after closing date. If Seller's title is rendered unmarketable, Buyer shall within said 5 day period, notify Seller in writing of the defect and Seller shall have 30 days from date of receipt of such notification to cure said defect. In the event Seller fails to timely cure said defect, all monies paid hereunder shall upon Seller's demand and within 5 days thereafter, be returned to Buyer and, simultaneously with such repayment, Buyer shall vacate the Property and return same to the Seller in quiet enjoyment, upon the event Buyer fails to make timely demand for refund, he shall take title as it, waiving all rights against Seller as to such intervening defect except as may be available to Buyer by virtue of warranties, if any, contained in deed. In the event a portion of the purchase price is to be delivered from institutional financing or refinancing, the requirements of the lending institution as to time of day and procedures for closing and for disbursement of mortgage proceeds shall control, anything in this Contract to the contrary notwithstanding. Provided, however, that the Seller shall have the right to require from such lending institution at closing a commitment that it will not withhold disbursement of mortgage proceeds as a result of any title defect attributable to Buyer mortgage. The escrow and closing procedure required by this Standard may be waived in the event the attorney, title agent or closing agent insures against adverse matters pursuant to Section 627.7041, F.S. as amended.

S. ESCROW. Any escrow agent receiving funds is authorized and agrees by acceptance thereof to promptly deposit and to hold same in escrow and to disburse same subject to directions thereof in accordance with terms and conditions of Contract. Failure of clearance of funds shall not excuse performance by the Buyer. In the event of doubt as to his duties or liabilities under the provisions of this Contract the escrow agent may in his sole discretion continue to hold the monies until he is subject of this escrow until the parties mutually agree to the disbursement thereof, or until a judgment of a court of competent jurisdiction shall determine the rights of the parties thereof, or he may deposit the monies then held pursuant to the Contract with the Clerk of the Circuit Court of the County having jurisdiction of the matter and upon notifying all parties concerned of such action, all liability on the part of the escrow agent shall fully terminate, except to the extent of accounting for any monies theretofore delivered out of escrow. If a licensed real estate broker, the escrowee will comply with provisions of Section 475.25, F.S. as amended. In the event of any suit between Buyer and Seller where in the escrow agent is made a party by virtue of acting as such, the escrow agent hereunder, or in the event of any suit where an escrow agent is made the subject matter of this escrow, the escrow agent shall be entitled to recover a reasonable attorney's fee and disburse same fees and costs to be charged and assessed as court costs in favor of the escrow agent. All parties agree that it is the duty of the escrow agent to hold the funds in escrow and to disburse the same to the party entitled to receive the same, unless such party is the party liable to withhold breach of this Contract or of gross negligence on the part of the escrow agent.

T. ATTORNEY'S FEES AND COSTS. In connection with any litigation involving said estate proceedings arising out of this Contract, the prevailing party shall be entitled to recover reasonable attorney's fees and costs.

U. DEFAULT. If Buyer fails to perform this Contract within the time specified, the responsibility paid by the Buyer hereunder may be retained by or for the account of Seller as to all damages, costs and/or for the execution of this Contract, and full settlement of any claim, whereupon all parties shall be released of all obligations under the Contract or Seller, at his option, may proceed at law or in equity to enforce his legal rights under this Contract. If for any reason other than failure of Seller to render the title marketable after diligent effort, Seller fails, neglects or refuses to perform this Contract, the Buyer may, upon receipt of the performance or defect to receive the return of the deposit without thereby waiving any action for damages resulting from Seller's breach.

V. CONTRACT NOT RECORDABLE PERSONS BOUND AND NOTICE. Notwithstanding this Contract, no any notice thereof shall be required in any public records. The Contract shall remain in force to the benefit of the parties hereto and their successors and assigns. Whenever the contents of this contract are in whole or in part and one party thereto shall not be a party to the contract, the other party shall be as effective as if given to or to said party.

W. PRORATIONS AND ADJUSTMENTS. Taxes, assessments, rent, interest, insurance and other expenses and revenue of the Property shall be prorated as of date of closing. Buyer shall have the option of taking over any existing policy of insurance on the Property, if assumable, in which event premiums shall be prorated. The date of closing shall be increased or decreased as may be required by said prorations. All references in Contract to prorations as of date of closing, shall be deemed date of occupancy, if occupancy occurs prior to closing, unless otherwise provided for herein.

X. CONVEYANCE. Seller shall convey title to the Property by statutory warranty deed subject only to matters contained in Paragraph VII hereof and those other which are stated in Buyer Personal Property shall at the request of Buyer, be conveyed to Buyer by a separate instrument or warranty of title, to be recorded in the public records, unless otherwise provided for herein.

Y. OTHER AGREEMENTS. No prior or present agreements or representations shall be binding upon any of the parties hereto unless incorporated in this Contract. No modification or change in this Contract shall be of binding upon the parties hereto unless agreed to in writing by the parties to be bound thereon.

UNIFORM RECORDING DATA SHEET

(To be submitted to Clerk of Superior Court by the party seeking to record any document in land records in the State of Georgia)

County: _____

Grantor (or party to be entered in Grantor Index): _____

Grantee (or party to be entered in Grantee Index): _____

Date of Instrument: _____

Type of Instrument (Check one):

- Deed _____ Debt Deed _____,
- Cancellation _____, Easement _____,
- Restrictive Cov. _____, Affidavit of Facts _____,
- Timber Lease _____, Memo of Lease _____,
- Other _____ (describe) _____.

Prop. Descrip. _____

Tax Property Tax Identification Number _____

Recordation data of Prior instrument or document to be cancelled or indexed in chain of title _____

Subdivision Map _____

Plat _____

Transfer tax due _____

Intangibles tax due _____

Recording fee due _____

For Clerk's Use Only:

Date/Time Recorded: _____

Deed/Page: _____

Amounts received: Transfer tax _____ Intang. Tax _____
Recording fees _____

Acknowledged: _____
Deputy Clerk