

**IT'S NOT JUST A NAME: TITLE IS IMPORTANT!**

**NATIONAL LAND CONSERVATION CONFERENCE – RALLY 2018  
PITTSBURGH, PENNSYLVANIA  
OCTOBER 12, 2018**

Page | 1

**DOUGLAS P. HILL, ESQ.  
SQUAM LAKES CONSERVATION SOCIETY  
P.O. BOX 696  
HOLDERNESS, NH 03245  
[squamslandtrust.org](http://squamslandtrust.org)**

**PAUL H. MACDONALD, ESQ.  
RANSMEIER & SPELLMAN P.C.  
ONE CAPITOL STREET, P.O. BOX 600  
CONCORD, NH 03302-0600**

\* \* \*

**PROFILE PROFESSIONAL BUILDING  
31 MOONEY STREET, P.O. BOX 817  
ALTON, NH 03809-0817  
[ranspell.com](http://ranspell.com)**

**Introduction**

Our presentation has five main topics, providing a 30,000 foot view of a complicated process in a very general fashion. Every jurisdiction has its own quirks – our goal is to get you to understand the concept of title, and why it is so important.

1. What is "title?"
2. How is title transferred or conveyed?
3. How is title researched and evaluated?
4. How does Title Insurance work?
5. What to do about "defects" and title questions – once you determine the state or quality of title, or find a "gap" – what next?

## **PRELIMINARILY, WHAT DO WE NEED TO KNOW?**

- 2017 LTA Standard 9F: Title Investigation and Recording
- Each of the three bullet points immediately below are Accreditation indicator elements.
  - 1. *Prior to closing and preferably early in the process, have a title company or attorney investigate title for each property or conservation easement the land trust intends to acquire*
    - a. *Update the title at or just prior to closing*
  - 2. *Evaluate the title exceptions and document how the land trust addressed mortgages, liens, severed mineral rights and other encumbrances prior to closing so that they will not result in extinguishment of the conservation easement or significantly undermine the property's important conservation values*
  - 3. *Promptly record land and conservation easement transaction documents at the appropriate records office*
- Take the time to analyze and understand the title product you obtain, and what the recommendations are.

Page | 2

## **WHAT IS "TITLE" TO REAL PROPERTY?**

- The public record of ownership history

## **HOW ARE PROPERTY INTERESTS TRANSFERRED?**

- Transfer by deed, will/trust, or court order
- Public Records: Deeds, probate court records, records of other courts
- The first step: The current owner search/investigation
  - Start the current owner search EARLY, because it often turns out to take longer than anticipated to solve problems
  - Who owns the property? Find out who needs to be in the room
    - All property interest holders MUST sign off on the conveyance
    - All mortgage and other lien holders MUST subordinate their interests to the conveyance
  - The proffered deed may not be the most recent one
  - Trusts, corporations, LLCs, missing siblings
  - Trustee's authority – obtain the trust instrument to ensure proper authority
    - Grantor revocable/inter vivos trusts
    - Irrevocable trusts
  - Locate current mortgages/lines of credit/assignments, unpaid taxes, liens, subsequent conveyances
- Key concept: Permanence and perpetuity. No unsubordinated liens.

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National Land Conservation Conference – Rally 2018, Pittsburgh, PA*

## **HOW IS TITLE SEARCHED?**

- Title search standards are largely jurisdiction-based – our example is drawn from the New Hampshire Bar Association Title Standards, which was established and is regularly reviewed and revised by the Bar board of governors
- New Hampshire Bar Association Title Standards Article I, Section 1, Purpose:  
*The objective of the title examiner is to determine whether or not the title in question is satisfactory of record. Objections to title should be made only when the defect or defects could reasonably be expected to expose the prospective owner, tenant, or lienor to adverse claims. The following Title Standards express the practice considered reasonable by the New Hampshire Bar Association.*
- Strictly a records-based examination – most likely the researcher will never set foot on the land
- How “good” is “good enough?”
- “Marketable Title”
  - Such that a reasonably prudent purchaser would accept in the real life marketplace
  - PSAs generally require “clear, recordable, marketable, insurable title free and clear of all encumbrances excepting current taxes not yet due and owing”
  - Note: taxes always “win” up to the time of closing
- Compare and contrast:
  - Title Search – the process of examination
  - Title Abstract – a document that sets out the title history according to time standards
  - Certificate of Title – a document stating the title search period, and detailing findings
  - Title Opinion – similar to the Certificate, with a statement of marketability and exceptions
  - Title Insurance Commitment/Policy – see below

## **What goes into the title search?**

- How far back in time must you go? In New Hampshire we could go back to the King’s Grant in every case, but our title standards have established reasonable time periods that minimize risk:
  - 35 years to a Warranty Deed, meaning the first warranty deed to the property >35 years back; or
  - 50 years to a Quitclaim, Foreclosure, or Fiduciary Deed; or
  - 85 years to a probate proceeding; or
  - Another starting point acceptable to the Grantee and/or the title insurance company.

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- Basics of a title search
  - In general:
    - Verify the current owner/grantor, then
    - Move back through previous deeds or other transfers to construct the required period of the “chain” (which is a picture of the sequential history of transfers from owner to owner), then
    - “Index” each owner forward to locate encumbrances and liens affecting the property.
  - Standards/requirements to look for: (See “Basics of a Title Search” handout)
    - Proper execution/form of deeds
    - Deed essentials
      - adequate property description – where is the land?
      - proper acknowledgment – the primary element of the “formalities of execution”
      - description of encumbrances and liens
      - benefits/appurtenances
      - municipal approvals
      - satisfaction of conditions/limitations in chain of title
      - prior owner obligations – undischarged liens
  - Do it early, to preserve sufficient time to fix defects
  - Focus on the revealed “exceptions,” “liens,” “encumbrances,” “defects,” “clouds,” and “black holes”
    - Now ask the question: how “good” is “good enough?” What are our needs?
    - Do the defects matter? How should they be resolved?
    - Discussion of defect resolution to follow, but consider the role of “affirmative coverage” under a title insurance policy to insure over known issues which a Company elects to cover, with or without payment of an additional premium
- Lawyers, title abstractors, and title companies:
  - A title “abstractor” is simply the person who researches title
  - Often no definition or licensing requirement for “title companies.” Frequently only serves as a closing or settlement agent
  - Sometimes title companies are related to a law firm, or employ attorneys, which is certainly something you should look for
  - Some title companies are issuing agents for title insurers

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### Title insurance

- A unique form of insurance because it insures against things that have already happened.
- Company will insure boundaries and acreage only if the “survey exception” is deleted, which requires a new/recent full instrument survey conforming with ALTA or in some cases local survey standards. Expensive/time consuming, but sometimes worthwhile.
- The **commitment** is a promise by the Company to provide a policy after the land trust takes title, and
  - All requirements and conditions are met – see Schedule B-1 of the sample commitment;
  - The policy will be SUBJECT TO certain Requirements and B-2 Exceptions
- Policy amount – how determined?
  - Needs to be based on a fair and reasonable estimate of the value of the estate being insured.
  - Any reasonable, documented assessment of value – based on some reasonable analysis – can work
- Why obtain title insurance?
- What does title insurance cover?
  - Defects outside the required search period
  - Deficient documents
  - Unrecorded defects
  - Fraudulent documents in the chain of title – forgeries
  - Defense!

### The role of surveying

- 2017 LTA Practice 9D. Determining Property Boundaries
  - 1. *Determine both the legal description and physical boundaries of each property or conservation easement*
  - 2. *If a conservation easement contains restrictions or permitted rights that are specific to certain zones or areas within the property, include the locations of these areas in the easement document so that they can be identified in the field (Accreditation indicator element)*
- Is there a current recorded survey? Unrecorded survey? Survey of adjoining land?
- Partial new survey to determine and monument “non-easement excluded area”?
- Role of Sketch Plans. Planning Board approval?
- Why does the surveyor sometimes find stuff not revealed by a competent title examiner?

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## Matters outside the title search

- Hazardous materials
- ESA
- Conditions appearing on the ground but not reflected in the title search
- State permitting requirements
- Actual encroachments and overlaps, driveways, utility lines
- Municipal votes and conditions not shown on a recorded plan

Page | 6

## WITH THIS INFORMATION IN HAND, WHAT SHOULD THE LAND TRUST DO?

- What is appropriate due diligence under LTA's Standards and Practices?
- Donated interests – Fee or easement – should they be treated differently?
- Always need a title search before committing to stewardship in perpetuity!
- Do the initial current owner search!
- Role of the PSA in conservation transactions
  - Payment responsibilities – surveys, subordinations, obligations to remedy title defects
- How “good” is “good enough?”
  - Issues of special interests to land trusts
    - Some defects/encumbrances might render property “unmarketable” to a commercial developer, but won't faze a land trust at all, i.e., current use taxation
    - Some may not affect “fair market value,” but might defeat a land trust's conservation objectives/mission, i.e., view or access easements benefiting an adjoining property
- How are significant defects resolved?
  - “Quiet title” court actions
  - “Declaratory judgments” by courts
  - Corrective deeds, discharges, subordinations, and other documents
  - Affirmative coverage – one benefit of title insurance is having an underwriter analyze the circumstances and suggest possible alternatives for resolution. Reasonably priced access to experts!

4811-7463-4353, v. 1

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**Index of Exhibits**

1. Land Trust Standards and Practices Standard 9: Ensuring Sound Transactions (2017)
2. New Hampshire Bar Association, NH Title Standards Article I
3. Sample Title Insurance Commitment
4. Sample Purchase and Sale Agreement for Conservation Interests
5. Form for chain of title
6. Sample Mortgage Subordination
7. Land Trust Title and Due Diligence Sequence: Perpetuity and Beyond
8. Basics of a title search

4832-9590-3601, v. 1

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**STANDARD 9**

# Ensuring Sound Transactions

Land trusts work diligently to see that every land and conservation easement transaction is legally, ethically and technically sound.

**PRACTICES****A. Legal Review and Technical Expertise**

1. Obtain a legal review of every land and conservation easement transaction, appropriate to its complexity, by an attorney experienced in real estate law
2. As dictated by the project, secure appropriate technical expertise, such as in financial, real estate, tax, scientific and land and water management matters

**B. Legal and Financial Advice**

1. Do not give individualized legal, financial or tax advice when providing transaction-related information
2. Recommend in writing that each party to a land or conservation easement transaction obtain independent legal, financial and tax advice

**C. Environmental Due Diligence**

1. For every land and conservation easement transaction, conduct or obtain a preliminary environmental investigation, transaction screen or Phase I assessment to identify whether there are any conditions that pose environmental risks, and take steps to address any significant concerns

**D. Determining Property Boundaries**

1. Determine both the legal description and physical boundaries of each property or conservation easement
2. If a conservation easement contains restrictions or permitted rights that are specific to certain zones or areas within the property, include the locations of these areas in the easement document so that they can be identified in the field

⊙ Accreditation indicator element | ⊞ Terrafirma enrollment prerequisite | ▲ Required for both



#### **E. Conservation Easement Drafting**

- 1. For every conservation easement,
  - a. Individually tailor it to the specific property
  - b. Identify the conservation values being protected
  - c. Allow only uses and permitted rights that are not inconsistent with the conservation purposes and that will not significantly impair the protected conservation values
  - d. Avoid restrictions and permitted rights that the land trust cannot monitor and enforce
  - e. Include all necessary and appropriate provisions to ensure it is legally enforceable
- 2. Review, on the land trust's own behalf, each potentially tax-deductible conservation easement for consistency with the Treasury Department regulations (U.S.C. §1.170A-14), especially the conservation purposes test of IRC §170(h)

#### **F. Title Investigation and Recording**

- 1. Prior to closing and preferably early in the process, have a title company or attorney investigate title for each property or conservation easement the land trust intends to acquire
  - a. Update the title at or just prior to closing
- 2. Evaluate the title exceptions and document how the land trust addressed mortgages, liens, severed mineral rights and other encumbrances prior to closing so that they will not result in extinguishment of the conservation easement or significantly undermine the property's important conservation values
- 3. Promptly record land and conservation easement transaction documents at the appropriate records office

#### **G. Recordkeeping**

- 1. Adopt a written records policy that governs how and when organization and transaction records are created, collected, retained, stored and destroyed
- 2. Keep originals of all documents essential to the defense of each real property transaction in a secure manner and protected from damage or loss
- 3. Create and keep copies of these documents in a manner such that both originals and copies are not destroyed in a single calamity

#### H. Purchasing Land or Conservation Easements

- 1. When buying land, conservation easements or other real property interests, obtain an independent appraisal by a qualified appraiser in advance of closing to support the purchase price
  - a. However, a letter of opinion from a qualified real estate professional may be obtained in the limited circumstances when:
    - i. A property has a very low economic value
    - ii. A full appraisal is not feasible before a public auction
    - iii. Or the amount paid is significantly below market value
- 2. In limited circumstances where acquiring land, conservation easements or other real property interests above the appraised value is warranted, contemporaneously document:
  - a. The justification for the purchase price
  - b. That there is no private inurement or impermissible private benefit

#### I. Selling or Transferring Land or Conservation Easements

- 1. When selling land, conservation easements or other real property interests,
  - a. Establish protections as appropriate to the property
  - b. If the sale is to a party other than another tax-exempt organization or public agency, obtain an independent appraisal by a qualified appraiser or a letter of opinion from a qualified real estate professional to determine the value of the asset and to support the selling price
  - c. Select buyers in a manner that avoids any appearance of impropriety
- 2. When selling or transferring conservation land or conservation easements to another tax-exempt organization or public agency, consider whether the new holder can fulfill the long-term stewardship and enforcement responsibilities



New Hampshire  
BAR ASSOCIATION  
*Equal Justice Under Law*

# NEW HAMPSHIRE BAR ASSOCIATION TITLE EXAMINATION STANDARDS

*This document is the product of the New Hampshire Bar Association's Real Property Law Section and represents the fifteenth revision of New Hampshire Bar Association Title Examination Standards, first published in 1954.*

Adopted by the New Hampshire Bar Association Board of Governors

On November 17, 2016

Effective December 31, 2016

## ARTICLE I. PURPOSE OF EXAMINATION AND PLACES OF SEARCH

**1-1. Purpose.** The objective of the title examiner is to determine whether or not the title in question is satisfactory of record. Objections to title should be made only when the defect or defects could reasonably be expected to expose the prospective owner, tenant, or lienor to adverse claims. The following Title Standards express the practice considered reasonable by the New Hampshire Bar Association.

*Comment: Title standards are primarily intended to eliminate technical objections which do not impair marketability and some common objections which are based on misapprehension of the law. The examining attorney, by way of a test, may ask, after examining the title, what defects and irregularities have been discovered, and as to each such irregularity or defect who, if anyone, can take advantage of it as against the purported owner, and to what end. (Adapted from the Model Title Standards, Simes and Taylor, University of Michigan Law School, 1960)*

*On marketable title, see Buxton v. Glennon, 122 N.H. 674 (1982); Belrose v. Baker, 121 N.H. 48 (1981); North Bay Council, et al v. Bruckner, 131 N.H. 538 (1989); McManus v. Rosewood Realty Trust, 143 N.H. 78 (1998).*

[1980, 1988, 2007]

**1-2. Prior Examination.** When an examiner discovers a situation which the examiner believes renders a title defective, and the examiner has notice that the same title has been examined by another examiner who has passed the defect, it is recommended that the examiner communicate with the previous examiner, explaining the objection and affording the opportunity for discussion, explanation, and correction.

[1988]

**1-3. Places of Search.** A standard search includes a search of the records of the Registry of Deeds, either in person or through the official registry website, and Registry of Probate in the county where the property is located. Search of records of other registries of probate, federal courts, including bankruptcy court, New Hampshire Superior and District Courts, or places where UCC filings are made is not necessary unless other records or information indicate a search of such records is necessary. However, a title is not marketable which requires examination of matters of record outside of this state when action could be taken in this state to make the title marketable as a matter of record. See Paradis v. Bancroft, 97 N.H. 477 (1952). A title examiner may rely on the records posted on the official registry websites through the date for which index records are available. See Standard 1-4.

[1988, 1990, 2007, 2011]

**1-4. Recording.** Every deed or other conveyance of real estate and every court order or other instrument affecting title to any interest in real estate shall be recorded in the Registry of Deeds for the county or counties in which the real estate is located, and such instruments shall not be effective as against bona fide purchasers for value until such recording occurs. The foregoing does not apply to probate records and initial property

tax liens, which are exempt by law from recording. RSA 477:3-a. See Standards 1-3, Comment to 5-6 (re divorce decrees) and 10-1 (re plans).

*Comment: For a discussion of what constitutes a document in the chain of title which provides notice to third parties, see C.F. Investments, Inc. v. Option One Mortgage Corp., 163 N.H. 313, 317-319 (2012). For a discussion of actual, constructive and inquiry notice, see Bilden Properties, LLC v. Birin, 165 N.H. 253, 257-259 (2013).*

[2007, 2008, 2011, 2012, 2013, 2014]



**First American Title™**

**Commitment for Title Insurance**

ISSUED BY

**First American Title Insurance Company**

**Commitment**

**FIRST AMERICAN TITLE INSURANCE COMPANY**, a Nebraska corporation ("Company"), for a valuable consideration, commits to issue its policy or policies of title insurance, as identified in Schedule A, in favor of the Proposed Insured named in Schedule A, as owner or mortgagee of the estate or interest in the land described or referred to in Schedule A, upon payment of the premiums and charges and compliance with the Requirements; all subject to the provisions of Schedules A and B and to the Conditions of this Commitment.

This Commitment shall be effective only when the identity of the Proposed Insured and the amount of the policy or policies committed for have been inserted in Schedule A by the Company.

All liability and obligation under this Commitment shall cease and terminate 180 days after the Effective Date or when the policy or policies committed for shall issue, whichever first occurs, provided that the failure to issue the policy or policies is not the fault of the Company.

The Company will provide a sample of the policy form upon request.

In Witness Whereof, First American Title Insurance Company has caused its corporate name to be affixed by its duly authorized officers on the date shown in Schedule A.

**First American Title Insurance Company**

Dennis J. Gilmore  
President

Jeffrey S. Robinson  
Secretary

(This Commitment is valid only when Schedules A and B are attached)

This jacket was created electronically and constitutes an original document

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ADDITIONAL - SEC 5 - 210,000 - CR  
CR OWNER

## CONDITIONS

1. The term mortgage, when used herein, shall include deed of trust, trust deed, or other security instrument.
2. If the proposed Insured has or acquired actual knowledge of any defect, lien, encumbrance, adverse claim or other matter affecting the estate or interest or mortgage thereon covered by this Commitment other than those shown in Schedule B hereof, and shall fail to disclose such knowledge to the Company in writing, the Company shall be relieved from liability for any loss or damage resulting from any act of reliance hereon to the extent the Company is prejudiced by failure to so disclose such knowledge. If the proposed Insured shall disclose such knowledge to the Company, or if the Company otherwise acquires actual knowledge of any such defect, lien, encumbrance, adverse claim or other matter, the Company at its option may amend Schedule B of this Commitment accordingly, but such amendment shall not relieve the Company from liability previously incurred pursuant to paragraph 3 of these Conditions.
3. Liability of the Company under this Commitment shall be only to the named proposed Insured and such parties included under the definition of Insured in the form of policy or policies committed for and only for actual loss incurred in reliance hereon in undertaking in good faith (a) to comply with the requirements hereof, or (b) to eliminate exceptions shown in Schedule B, or (c) to acquire or create the estate or interest or mortgage thereon covered by this Commitment. In no event shall such liability exceed the amount stated in Schedule A for the policy or policies committed for and such liability is subject to the insuring provisions and Conditions and the Exclusions from Coverage of the form of policy or policies committed for in favor of the proposed Insured which are hereby incorporated by reference and are made a part of this Commitment except as expressly modified herein.
4. This Commitment is a contract to issue one or more title insurance policies and is not an abstract of title or a report of the condition of title. Any action or actions or rights of action that the proposed Insured may have or may bring against the Company arising out of the status of the title to the estate or interest or the status of the mortgage thereon covered by this Commitment must be based on and are subject to the provisions of this Commitment.
5. *The policy to be issued contains an arbitration clause. All arbitrable matters when the Amount of Insurance is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties. You may review a copy of the arbitration rules at <<http://www.alta.org>>.*

**FIRST AMERICAN TITLE INSURANCE COMPANY  
COMMITMENT FOR TITLE INSURANCE  
SCHEDULE A**

1. Effective Date: 02/17/17 @ 03:00 PM

2. Policy or Policies to be issued: Amount  
(a)  ALTA OWNER'S POLICY (REV 6/17/06): \$30,000.00

Proposed Insured:  
Squam Lakes Conservation Society

(b)  ALTA LOAN POLICY (REV 6/17/06): \* NONE \*


Proposed Insured:  
\*NONE\*

(c)  OTHER

Proposed Insured:

3. The estate or interest in the Land described or referred to in this Commitment is **Fee Simple** and title is at the Effective Date vested in **Cecilia T. Pedersen**

4. The Land referred to in this Commitment is described as follows: **MacDonald Farm Road**, in the City/Town of **Ashland**, County of **Grafton**, and State of **NH**; and is described as set forth in Exhibit "A" attached hereto and made a part hereof.

By:   
Authorized Agent:  
**John J. McCormack, Esq.**



**FIRST AMERICAN TITLE INSURANCE COMPANY  
COMMITMENT FOR TITLE INSURANCE  
SCHEDULE B, SECTION 1  
REQUIREMENTS**

The following are the requirements to be complied with:

Item (a) Payment to or for the account of the grantors or mortgagors of the full consideration for the estate or interest to be insured.

Item (b) Proper instrument(s) creating the estate or interest to be insured must be executed and duly filed for record, to wit:

1. The recording in the Grafton County Registry of Deeds of the Death Certificate of Carl R. Pedersen.
2. The recording in the Grafton County Registry of Deeds of the Warranty Deed from Cecilia T. Pedersen to New England Forestry Foundation.
3. The recording in the Grafton County Registry of Deeds of a Conservation Easement from New England Forestry Foundation to Squam Lakes Conservation Society.
4. Satisfactory assurances from the Tax Collector of the Town of Ashland, New Hampshire, that all real estate taxes have been paid in full through the most current billing period. [EXAMINER'S NOTE: Real Estate Taxes are outstanding with respect to Tax Years 2015 and 2016, together with interest and penalties accruing thereon in the current amount of \$7,342.82 through February 23, 2017 - see attached Exhibit A].

\* \* \*

**FIRST AMERICAN TITLE INSURANCE COMPANY  
COMMITMENT FOR TITLE INSURANCE  
SCHEDULE B, SECTION 2  
EXCEPTIONS**

Schedule B of the policy or policies to be issued will contain exceptions to the following matters unless the same are disposed of to the satisfaction of the Company:

1. Any facts, rights, interests, or claims that are not shown in the public records but that could be ascertained by an inspection of the Land or by making inquiry of persons in possession of the Land.
2. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the title, including discrepancies, conflicts in boundary lines, shortages in area, or any other facts that would be disclosed by an accurate and complete land survey of the Land, and that are not shown in the public records.
3. Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown in the public records.
4. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the Effective Date but prior to the date the proposed insured acquires for value of record the estate or interest or mortgage thereon covered by this Commitment.
5. IF THE INSURED PREMISES IS A CONDOMINIUM UNIT: Covenants, conditions, restrictions, reservations, easements, liens for assessments, options, powers of attorney, and limitations on title, created by the laws of the State of the insured premises or set forth in the Master Deed or Declaration of Condominium, in the related By-Laws, in the Declaration of Trust, or Site Plans and Floor Plans as duly recorded in the appropriate land records office and as the same may have been lawfully amended, and in any instrument creating the estate or interest insured by this policy.

6. Real estate taxes and municipal charges as follows:

**SEE ATTACHED EXHIBIT A.**

The next tax due date is on or about July 1, 2017.

For additional exceptions see attached Schedule B - Section II Continuation Page.

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**FIRST AMERICAN TITLE INSURANCE COMPANY**  
**SCHEDULE B - SECTION 2**  
**Continuation Page**

File No. 12777-A

7. Real Estate Taxes due and payable to the Town of Ashland, New Hampshire, from and after March 31, 2015.
8. The effect of a certain Right of Way in favor of Squam Lakes Conservation Society from the end of MacDonald Farm Road as noted on a certain plan entitled 'Plan Showing Boundary Lines Common to Lands of Cecilia Pedersen and Squam Lakes Conservation Society in the Town of Ashland, Surveyed July-November, 2015' by Sabourn and Tower, as recorded in the Grafton County Registry of Deeds as Plan No. 15217.
9. The effect of a Decree in the matter of Small v. MacDonald, dated July 13, 1962, as recorded in the Grafton County Registry of Deeds at Book 973, Page 184.
10. The effect of a certain Boundary Line Agreement dated December 6, 2016, recorded in the Grafton County Registry of Deeds at Book 4256, Page 726 by and between Cecilla T. Pedersen and Squam Lakes Conservation Society establishing a common boundary, as recorded in the Grafton County Registry of Deeds at Book 4256, Page 726, and as is set forth on Plan No. 15217.
11. Any and all matters as depicted or set forth upon a certain plan entitled 'Plan Showing Boundary Lines Common to Lands of Cecilia Pedersen and Squam Lakes Conservation Society in the Town of Ashland, Surveyed July-November, 2015' by Sabourn and Tower, as recorded in the Grafton County Registry of Deeds as Plan No. 15217.
12. This policy specifically does NOT insure boundaries or acreage of the insured premises.
13. This policy does NOT insure fee simple title in Squam Lakes Conservation Society, but, rather, it insures certain possessory rights pursuant to and subject to all of the terms, covenants and conditions of the Conservation Easement from New England Forestry Foundation to Squam Lakes Conservation Society, dated \_\_\_\_\_, 2017, and recorded in the Grafton County Registry of Deeds at Book \_\_\_\_\_, Page \_\_\_\_\_.

\*\*\*

Commitment - Schedule B - Section II Continuation Page

This commitment is invalid unless the Insuring Provisions and Schedules A and B are attached

RANSMEIER & SPELLMAN, P.C.  
P.O. BOX 600, ONE CAPITOL STREET  
CONCORD, NH 03302-0600

**AGREEMENT FOR CONVEYANCE OF  
CONSERVATION EASEMENT DEED**

AGREEMENT made this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by and between \_\_\_\_\_, with a mailing address of \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_ County, New Hampshire \_\_\_\_\_ (hereinafter collectively referred to as the "Grantors"); and \_\_\_\_\_, a New Hampshire not for profit corporation organized under the laws of the State of New Hampshire, situated in the County of \_\_\_\_\_, State of New Hampshire, with a mailing address of \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_ County, New Hampshire \_\_\_\_\_ (together with its employees, agents, contractors, successors and assigns hereinafter collectively referred to as the "Grantee").

WITNESSETH:

WHEREAS, Grantors are the owners of a parcel of land of approximately \_\_\_\_\_ acres located on the \_\_\_\_\_ side of \_\_\_\_\_ in \_\_\_\_\_, \_\_\_\_\_ County, New Hampshire, and identified in the \_\_\_\_\_ tax records as \_\_\_\_\_, and more particularly described in the \_\_\_\_\_ Deed of \_\_\_\_\_ to \_\_\_\_\_ dated \_\_\_\_\_ and recorded in the \_\_\_\_\_ County Registry of Deeds, Book \_\_\_\_\_, Page \_\_\_\_\_, and as shown on a plan of land entitled "[Plan]", dated \_\_\_\_\_ and prepared by \_\_\_\_\_, and recorded in said Registry of Deeds as Plan No. \_\_\_\_\_ (the "Property"); and

WHEREAS, in order to preserve and protect the conservation values of the Property, Grantors desire to place a conservation easement *[thereon] [on a portion thereof]* (hereinafter the "Protected Property") and Grantee has agreed to accept a Conservation Easement Deed describing the same, all in accordance with New Hampshire RSA 477:45-47; and

*"It's Not Just a Name: Title is Important!"*  
Douglas P. Hill, Esq. & Paul H. MacDonald, Esq.  
Squam Lakes Conservation Society, Holderness, NH • Ransmeier & Spellman P.C., Concord & Alton, NH  
National Land Conservation Conference – Rally 2018, Pittsburgh, PA

WHEREAS, the parties hereto are willing to enter into an easement, granted in perpetuity, for the purposes to be agreed upon and to be set forth therein; and

WHEREAS, the parties wish to enter into this Agreement in order to memorialize the terms and conditions under which said Conservation Easement Deed will be granted and accepted.

Page | 2

NOW THEREFORE, in consideration of the mutual covenants and promises herein contained, and other good and valuable consideration, the receipt and sufficiency of which both parties acknowledge, the parties hereto hereby agree as follows:

1. Easement Grant; General Description of Terms. The parties agree to negotiate, execute and record a *[warranty/quitclaim/fiduciary]* Conservation Easement Deed (hereinafter the "Easement Deed") upon the terms set forth herein for the purposes of protecting in perpetuity the conservation values, including open spaces, natural resources and scenic qualities, inherent in the Protected Property. The Easement Deed shall be in substantially the form *[previously used by the Grantee in prior transactions]/[attached hereto as Exhibit "A"]*. Notwithstanding the foregoing, the parties specifically acknowledge and agree that each shall have the right to negotiate in good faith the terms, provisions, and conditions of said Easement Deed in accordance with the parties' intentions in entering this Agreement and in consummating this transaction and always with an eye toward preserving the aforementioned conservation values inherent in the Protected Property to the maximum extent reasonably practicable under the circumstances. Grantee shall bear primary responsibility for *[and all costs of]* drafting the initial version of the Easement Deed. In the event the parties are unable to negotiate in good faith the terms of the Easement Deed, this Agreement shall thereupon become null and void, and the parties hereto shall not be bound by its terms *[and any deposit theretofore paid shall be returned]*. *[In addition, the parties agree that under such circumstances the Grantee shall be entitled to reimbursement by the Grantor of expenses incurred by the Grantee in connection with this Agreement, including without limitation appraisal fee, survey costs, and fees and costs incurred by the Grantee for title examination and tests and inspections.]*

2. Consideration. *[The transaction contemplated hereunder shall be in the nature of a donation.]/[The consideration to be paid at closing (defined below) by Grantee for the rights to be granted under the Easement Deed shall be determined with reference to the results of an appraisal performed by \_\_\_\_\_ dated \_\_\_\_\_, 20\_\_\_. The parties shall negotiate the consideration to be paid in good faith. In the event that the parties cannot arrive at an acceptable sales price by the time of closing, this Agreement may be terminated by further written agreement without further recourse to either party.]/ [The purchase price for the Easement Deed shall be \_\_\_\_\_, to be paid by certified check, electronic funds transfer, or other good and current funds acceptable to Grantor at Closing.] [DEPOSIT]*

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3. Timing and Closing. The Easement Deed shall be executed by the parties and recorded by Grantee by \_\_\_\_\_, 20\_\_\_\_, unless this date is extended by the mutual written consent of the parties.

4. Responsibility for Costs of Easement Transaction. The parties hereto agree that Grantor herein shall be responsible for any appraisal fee, survey costs, and the attorneys' fees and costs incurred by the Grantor in connection with this transaction, regardless of whether the parties reach agreement under Paragraph 2 and a closing occurs under Paragraph 3. ***Grantor also agrees to make a contribution of \$\_\_\_\_\_ to Grantee's stewardship fund to help defray the costs of Grantee's annual monitoring obligations with respect to the conservation easements it holds and to assist in maintaining a fund to be used in connection with any action(s) that Grantee may be required to undertake to enforce the terms of its Conservation Easement Deeds.***

5. Title. Grantee may cause the title of the Property to be examined. If, upon such examination of title to the Premises, Grantee finds that title to the Property is encumbered so as to adversely impact the values sought to be protected by the Easement Deed, in its sole discretion, then Grantee shall notify Grantor of that fact in writing at least \_\_\_\_\_ ( ) days prior to the Closing, and this Agreement shall be void and without recourse to any party unless the parties may agree that Grantor may attempt to remove any such encumbrances, in which event Grantor shall give written notice thereof to Grantee within \_\_\_\_\_ ( ) days of receipt of said notice. Thereupon the time of Closing shall be extended for a period designated by Grantor, not to exceed \_\_\_\_\_ ( ) days. If at the expiration of the extended time, Grantor shall have failed to remove such encumbrances(s), then at either parties' option, this Agreement shall be void and without recourse to any party ***[and any deposit theretofore paid shall be returned], [or Grantee shall have the election (at that time) to accept such title as Grantor can deliver and pay therefor the Purchase Price, without reduction, in which case Grantor shall deliver such title with proper reference in the Deed that title is delivered subject to the aforementioned encumbrance(s).]***

6. Tests and Inspections. Grantee shall have the right, at Grantee's sole cost and expense, at reasonable times, and upon notice to Grantor, but in any case by \_\_\_\_\_, 20\_\_\_\_, to perform such reasonable tests, studies, and surveys of the Property as it deems appropriate, including soil, water and subsurface investigation, and other environmental tests and inspections, with the requirement that they provide the results of all such tests, studies and surveys to Grantor within said time period; provided, however, Grantee ***(i)*** shall defend, indemnify, and hold Grantor harmless from and against all costs, damages, and liabilities arising out of such activities; and ***(ii)*** shall, in the event they do not accept the Easement Deed, reasonably repair all damage caused by such activities. If the results of these tests are unsatisfactory to Grantee, then Grantee, at its option, on or before said \_\_\_\_\_, 20\_\_\_\_, may rescind this Agreement with written notice to Grantor ***[and any deposit theretofore paid shall be returned].***

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7. **Closing Contingency.** *[This Agreement is contingent upon Grantee raising sufficient funds from public and private sources to meet its obligation under Paragraph 2 hereof by \_\_\_\_\_. If Grantee is unable to raise the funds, and so notifies Grantor in writing on or before \_\_\_\_\_, Grantee shall have the option of terminating this Agreement, or may extend this date with the written agreement of Grantor. If Grantee elects to terminate this Agreement, or if Grantor does not agree to such an extension, this Agreement shall thereupon become null and void, and the parties hereto shall not be bound by its terms (and any deposit theretofore paid shall be returned). In the event Grantee has not notified Grantor in writing of Grantee's inability to raise said total by the above-specified date, this contingency shall lapse.]*

8. **Eminent Domain.** In the event that the Protected Property or any part thereof shall be taken for any purpose by the exercise of the power of eminent domain or condemnation, then this Agreement shall terminate at the option of Grantee if the conservation values inherent in the Protected Property or the conservation purposes of the intended easement are substantially diminished.

9. **Grantor's Covenants and Representations.** During the term of this Agreement, Grantor covenants and agrees not to suffer any material change adversely affecting the conservation values inherent in the Protected Property or the conservation purposes of the Easement Deed contemplated hereby. Any such adverse material change suffered by Grantor shall afford Grantee the right, at its option, of terminating this Agreement without recourse to either party.

10. **Governing Law.** This Agreement shall be governed by the laws of the State of New Hampshire.

11. **Merger.** All prior negotiations, discussions, and agreements of or by and between the parties and/or their representatives are herein merged and there are and shall be no other agreements and/or other statements by the parties other than may be contained herein or in a subsequent amendment hereto executed by the parties with all the formalities hereof.

12. **Binding Effect.** This Agreement shall be binding upon the heirs, administrators, executors, successors and assigns of the parties hereto, and Grantee shall record the Easement Deed, but not this Agreement, in the \_\_\_\_\_ County Registry of Deeds.

13. **Liquidated Damages.** If the Grantee shall default in the performance of the Grantee's obligations under this Agreement, the amount of the Deposit shall become the property of the Grantor as reasonable liquidated damages in full discharge and satisfaction of the Grantee's obligations hereunder. If the Grantor shall default in the performance of the Grantor's obligations hereunder, the Grantee may receive back its Deposit and may also enforce its rights at law and in equity, which include, without limitation, the right of specific performance.

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14. Notices. All notices, requests, and other communications required or permitted to be given under this Agreement shall be in writing, except as otherwise provided herein, and shall be delivered by hand or sent by certified mail, postage prepaid, return receipt requested (in which event notice shall be deemed to have been given when so delivered or when deposited in the mail) to the appropriate address set forth above or at such other address as such party may hereafter designate by notice given in like fashion.

15. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

16. Assignment. Neither Grantors nor Grantee shall assign any of its interest in this Agreement or in the Property until after the Easement Deed shall have been executed, accepted and recorded consistently with the provisions of this Agreement.

The undersigned parties have each duly caused this Agreement to be executed by their respective officers or representatives thereunto duly authorized, as of the date(s) set forth below.

**GRANTORS:**

\_\_\_\_\_  
Date

\_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_

**GRANTEE:**

[Land Trust]

\_\_\_\_\_  
Date

By: \_\_\_\_\_  
Its \_\_\_\_\_,  
Hereunto Duly Authorized



[Empty box]

Inst. \_\_\_\_\_  
Date. \_\_\_\_\_



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Squam's Land Trust

Douglas P. Finn  
Land Protection

PO Box 696  
Holderness, NH 03245  
Phone: 603-968-7900  
Fax: 603-968-7903  
squamlakes.com  
doug@squamlakes.com



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P.O. BOX 600, ONE CAPITOL STREET  
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**SUBORDINATION OF MORTGAGE**

**FOR VALUE RECEIVED,** \_\_\_\_\_, [a banking institution organized and existing under the laws of the State of [New Hampshire],] having its principal place of business at \_\_\_\_\_, holder of a Mortgage Deed from [NAME OF GRANTOR] which mortgage secures loan number \_\_\_\_\_ and is dated \_\_\_\_\_ and recorded in the \_\_\_\_\_ County Registry of Deeds, Book \_\_\_\_\_ Page \_\_\_\_\_ (the "Mortgage"), does hereby for itself and its successors and assigns, subordinate and make said Mortgage subject in all respects to the terms and conditions of the conservation easement conveyed by \_\_\_\_\_ to \_\_\_\_\_ with respect to real property located in the Town of \_\_\_\_\_, County of \_\_\_\_\_, State of New Hampshire by Conservation Easement Deed of near or even date herewith and to be recorded herewith, so far as may be necessary to give \_\_\_\_\_ and its successors and assigns, the right to enforce the conservation purposes of said easement deed in perpetuity, and the full right and title to said conservation easement free and discharged of said Mortgage to the same extent as if the Mortgage had been recorded subsequent to the Conservation Easement Deed.

In all other respects said Mortgage shall remain in full force and effect. Nothing contained herein shall be deemed to release or discharge any of the indebtedness or other obligations of Grantor to [NAME OF MORTGAGEE] contained in or secured by said Mortgage.

IN WITNESS WHEREOF, [MORTGAGEE] has caused its name to be subscribed herein by its duly authorized officer this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

[MORTGAGEE]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Hereunto Duly Authorized

The State of \_\_\_\_\_  
County of \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_ 201\_\_, before me the undersigned officer, personally appeared \_\_\_\_\_, who acknowledged himself/herself to be the \_\_\_\_\_ of the \_\_\_\_\_ and, acting in said capacity and being

authorized so to do, executed the foregoing instrument on behalf of the said corporation as its voluntary act and deed for the purposes therein contained.

Before me, \_\_\_\_\_  
Justice of the Peace/Notary Public  
My commission expires:

4844-2574-4753, v. 1

**SQUAM LAKES CONSERVATION SOCIETY  
P.O. BOX 696, HOLDERNESS, NH 03245**

**LAND TRUST TITLE AND DUE DILIGENCE SEQUENCE: The road to Perpetuity and beyond.**

1. **INITIAL MEETING WITH LANDOWNER:** Preferably on the land. Preferably with all of the owners.
  - Obtain deed and survey plan copies and/or references to public records.
  - Ask for copies of prior Title Insurance policies, abstracts, title reports.
  - Ask about Mortgages-Deeds of Trust, and other encumbrances.
  - Obtain permission to inspect land and boundaries, review for possible environmental contamination, photograph, and GPS/measure.
  
2. **CURRENT OWNER PUBLIC RECORDS SEARCH:** (By Land Trust staff or legal counsel.)
  - Determine formal ownership. Trust? Corporation or LLC? Multiple owners? (The person you are dealing with may not have full authority to convey the interest in land.)
  - If owned in Trust, what kind of Trust? Who are all of the Trustees? Will beneficiary votes or consents be necessary for conveyance of an interest in the land? Minors? [Compare and contrast "Living" or "Family" Trust with Irrevocable Trust with professional or third-party fiduciaries.]
  - Search Deeds records for Mortgages/Deeds of Trust or other liens against current owner. If mortgage lien ask Landowner to contact mortgagee (bank or other lender) to determine procedure for subordination or discharge/release. S&P 9.
  - Check Real Property Tax records. (In some jurisdictions all real estate is subject to all liens for tax obligations outstanding against the same owner. Thus taxes on unrelated property could be a pre-existing lien against the conservation land impairing perpetuity.) Taxes to be paid at closing.
  - In some jurisdictions it is appropriate to also research municipal Zoning and Planning status for violations. Notices may not be in the deeds records.
  
3. **DETERMINATION BY LAND TRUST EXECUTIVE AUTHORITY OR LANDS COMMITTEE TO PROCEED.**
  - Initial conclusion as to conservation attributes of the land.
  - Does the Land Trust have the present capacity to finance and complete the project?
  - Estimate Stewardship cost. How will it be paid?
  - Prepare Purchase and Sale Agreement or Letter Agreement confirming and defining the deal? (Important to confirm that Landowner really means it before expending organizational resources or incurring professional fees.) This is appropriate even if a donation.
  - Put on agenda for Board of Directors approval of acquisition and assignment of authority to Executive Director, President or other Officer to execute project documents.

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- Send initial formal letter to Landowner saying “thank you for considering conservation and here is how it works”. Who pays which costs? Discuss appraisal and 8283 issues and process. Survey? Who gets the subordinations and discharges?
4. IN COOPERATION WITH LANDOWNER CONTACT MORTGAGEES OR OTHER LIENHOLDERS.
- Landowner must initiate. Bank will not talk without Landowner permission which often must be in writing.
  - Processing of Subordination or Discharge requests often takes months, especially when a large national banking institution is involved. Thus an early start is advisable.
  - Landowners are often unaware that liens remain of record. Example: HELOC or Home Equity Line of Credit that has not been used. HELOC holder is likely to request return of all unused checks or drafts which may be misplaced. Often cheaper and simpler to close it if no outstanding balance. Another common example is a paid mortgage or deed of trust, but release documents never recorded.
5. DETAILED SITE INSPECTION BY STAFF
- Are the boundaries well marked and consistent with deeds and plans? New boundary survey necessary? Photograph monuments for baseline.
  - Are there site features such as UST’s or metal drums, or historical evidence of commercial or industrial uses that compel a Level-1 Environmental Site inspection? Who pays for remediation? (Farms and Ranches are likely hot spots.)
  - Review available survey plans (record and off-record, site and abutting properties.)
  - How will non-easement reserved dwelling area be defined and monumented? New survey and plan needed? Natural monuments such as streams, fences, or stone walls are useful.
6. ASSIGN FULL TITLE SEARCH TO ATTORNEY, CONTRACT ABTRACTOR, OR TITLE INSURANCE COMPANY.
- Local search standards will differ.
  - Determine whether Title Insurance is appropriate. Generally advisable in purchase projects. Obtain a “Commitment” for Title Insurance.
  - If title insurance is appropriate, how will the policy amount be determined? (Will there be an appraisal? How to value donated interests?)
  - Title Insurance will not insure boundaries or acreage unless a current ATLA survey is provided and the Surveyor provides a Certificate on a form provided by the company. That can be very, very expensive.
7. CAREFULLY REVIEW TITLE ABSTRACT, REPORT, OPINION, OR TITLE INSURANCE COMMITMENT.
- Don’t just stick it in the file.

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- Determine steps needed to “Clear” title to ensure “Good” or “Marketable” title and “Perpetuity”. (Will recording of subordinations, discharges, releases, consents, corrective deeds, etc. be needed?)
- Determine amount of Title Insurance Premium and ensure funds included in project budget.
- Prepare internal project memorandum/checklist to ensure no steps are overlooked at closing.
- Make decisions whether a technical defect or historical glitch really matters. Will the Title Insurance Company cover or “insure over” a technical defect? Will there be an additional premium? Who pays it?
- Some types of defects may be technical “encumbrances”, but may not impair either the Landowner’s ability to convey, or the conservation attributes of the land. (NH Example “Current Use Assessment”. General example “Utility Easements” for lines to the excluded dwelling area.

Page | 3

**8. CLOSE THE DEAL!**

- Double check the internal memorandum to ensure all defects/encumbrances have been resolved.
- Perform update or gap title search to cover the time period from the date of the Abstract or Title Insurance Commitment to time of recording of new deed to the Land Trust. (New liens, tax notices, or other encumbrances may pop up during the gap period and bring the deal to a screeching halt.)

**9. HAVE A CELEBRATION OF YOUR SUCCESS.**

**10. POST-CLOSING:**

- Send handwritten TYN.
- Send formal CWA (contemporaneous written acknowledgement) letter.
- Add to Terra Firma insurance policy.
- Get it off your desk and send it to Stewardship.
- You did what?

4825-2095-5761, v. 1

## **The Basics of a Title Search**

A title search is a report of the state of Title according to the properly indexed documents in the Registries of Deeds and Probate, with reference as necessary to Court records.

The title search includes examination of the following elements of title:

- Proper execution and form of deeds. The deed essentials are a statement that A “grants” to B certain real property, signed and acknowledged before a Notary or Justice of the Peace.
- Adequate description of the land conveyed. Where is it? Deed must state town or towns involved.
- Description of conditions the land is subject to – easements, well rights, development restrictions, obligations to join association and pay dues, etc.
- Mortgages, attachments, unpaid taxes, and any other liens of record.
- Benefits belonging to the land – access easements over other land, restrictions imposed on other land, beach rights or other common areas.
- Approval by Planning Board and other municipal authorities for the creation of a new lot and its use for a particular purpose.
- Satisfaction of conditions or limitations in prior deeds – life estates, rights of first refusal.
- Prior owner obligations – proper discharges of prior owner mortgages or other liens. Dead banks. Old tax liens not discharged of record.

4837-4451-2881, v. 1