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# The 10 Scariest Things in Arkansas Real Estate Law

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Every attorney had Property I and II in law school. I am going out on a limb and guessing that at least one in four attorneys did not sleep through Property I and II. A select few may even have been crazy enough to like the Rule Against Perpetuities and the Rule in Shelley's Case. That being said, very few attorneys grow up to become full-time real estate attorneys. Nevertheless, many attorneys feel qualified to dabble in real estate from time to time, emboldened by those vague law school memories of fee tails and habendum clauses. While such dabbling can be dangerous in the increasingly complicated world of real estate, there are many traps for the unwary that are particularly dangerous. This short paper will outline ten common pitfalls—common issues that dabbling attorneys (or even full-time real estate attorneys) should carefully avoid.

## I. The Pitfalls of Magic Language

Abracadabra! Open Sesame! Expecto Patronum! Please! There are a host of "magic" words—spells and incantations used to bring about desired results. Most people, though, do not realize that real estate law has its own magic phrase worthy of inclusion in the next J.K. Rowling novel. In Arkansas, the magic words are, "Grant, Bargain and Sell!" Use of these four words magically implies most of the common law covenants of title: (1) covenant of seisin, (2) covenant of the right to convey, (3) special covenant against encumbrances, (4) covenant of quiet enjoyment and (5) warranty. Or, as stated in the statute:

> (b) The words, "grant, bargain and sell" shall be an express covenant to the grantee, his or her heirs, and assigns that the grantor is seized of an indefeasible estate in fee simple, free from encumbrance done or suffered from the grantor, except rents or services that may be

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expressly reserved by the deed, as also for the quiet enjoyment thereof against the grantor, his or her heirs, and assigns and from the claim and demand of all other persons whatever, unless limited by express words in the deed.[2]

To the dismay of some attorneys who rely on the title of a deed (i.e., General Warranty Deed or Special Warranty Deed) to determine what type of covenants their clients are making or receiving, the title of a deed is completely irrelevant to the interpretation of the deed. A deed can be titled "General Warranty Deed" but be nothing more than a quitclaim deed because it omits the magic phrase. Also, unlike horseshoes and hand grenades, close definitely does not count. The words "grant, bargain and sell" must be present to create the implied warranties. Other words like "convey" or "set over" sound impressive but really do not add anything.

Even if the magic language is used, the Arkansas statute also has a nasty little surprise for people thinking that they are getting a general warranty deed because, as noted above, the magic language creates only a special covenant against encumbrances. Furthermore, the magic language omits the common law covenants of warranty and further assurances. Thus, without expressly including the desired warranties of title, a purchaser of real property may be getting far fewer warranties than he or she may think.

For a much more detailed discussion of this issue, I will humbly refer you to the article that Professor Lynn Foster and I wrote, *Deed Covenants of Title and the Preparation of Deeds: Theory, Law, and Practice in Arkansas*, 34 U. Ark. Little Rock L. Rev. 53 (2011).

## II. The Silence of the Mineral Rights

Perhaps nothing (except Anthony Hopkins with a can a fava beans and a bottle of chianti) is as frightening as drafting a deed wrong when it comes to mineral rights. Unfortunately, far too many attorneys think of mineral rights and surface rights as separate issues. As demonstrated by an unfortunate number of lawsuits, many people forget that a deed that is silent as to mineral rights is interpreted as conveying 100% of all mineral rights with the same warranties of title as made with regard to the surface estate, even if the grantor does not own any of the mineral rights.

In other words, if A sells his farm to B but says nothing about mineral rights, A is deemed to have sold the mineral rights to B. If A does not own the mineral rights, B might be entitled to sue A for the diminished value of the estate. It is, therefore, critical to consider mineral rights in drafting any deed and decide whether the rights should convey. If the mineral rights are conveying, a grantor should never assume that he or she actually owns the rights since most title searches do not necessarily determine this. The grantor should consider adding a disclaimer to the deed along the lines of:

> Notwithstanding anything contained herein to the contrary, Grantor makes no warranties or representations whatsoever regarding any mineral rights associated with the Property. To the extent Grantor owns any mineral rights associated with the Property, the same are

[2] Ark. Code Ann. § 18-12-102 (West)

conveyed to Grantee by quitclaim and without any warranty of title. The Property is expressly subject to any prior or existing mineral rights or reservations owned or enjoyed by third parties.

Again, humbly, I refer you to the article cited above that Professor Foster and I wrote on this and other deed drafting issues.

As a bonus tip, a real estate attorney should always be able to identify a potential *Duhig Doctrine* situation when drafting a deed with a mineral reservation. Arkansas case law follows the *Duhig Doctrine*, which holds that if the grantor of a warranty deed does not own enough mineral interests to fill both the grant and the reservation, the grant must be filled first, which is known as the "allocation of shortage rule."[3] Therefore, a party can be sued for breach of warranty if there has been actual or constructive eviction regarding mineral rights and the vesting deed did not specify that mineral rights were not being conveyed or that the conveyance was subject to all valid mineral interests.[4] To quote from the aforementioned article:

> [If] a warranty deed is drafted carelessly or in ignorance of the Duhig Rule, the grantor may lose mineral rights she intended to reserve. The Duhig Rule essentially allows covenants of title in a deed to trump words of reservation in the deed.[234] It operates when a grantor purports to reserve a mineral interest in a conveyance by warranty deed (this usually happens as part of the conveyance of surface rights as well) and when there *84 has been a partial reservation of mineral rights by someone up the chain of title from the grantor. To illustrate, assume that Grantor only owns one-half of the mineral rights to Blackacre; Railroad originally reserved the other half at some point during the nineteenth century. Grantor now wishes to reserve half of the mineral rights for himself, as he conveys Blackacre to Grantee. The deed states "subject to a reservation of one-half of the mineral rights in Grantor, his heirs and assigns." However, the deed is also a warranty deed, and there is no exception of mineral rights from the warranty. Under the Duhig Rule, the deed first reserves half of the minerals in Grantor, leaving none to be conveyed to Grantee, but the warranty deed operates to convey them to Grantee, so that Grantor will not breach the covenants of title.[5]

## III. *Riddle* Me This, Batman!

I would like every reader to make this solemn pledge, "I do solemnly swear or affirm that I shall not draft another deed without first reading the case, *Riddle v. Udouj*, 371 Ark. 452, 267 S.W.3d 586 (2007)."

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[3] *Peterson v. Simpson*, 286 Ark. 177 (Ark. 1985) *citing Duhig v. Peavy-Moore Lumber Co.*, 135 Tex. 503, 144 S.W.2d 878 (1940).

[4] *See Deupree v. Steed*, 174 Ark. 1179 (Ark. 1927).

[5] Lynn Foster & J. Cliff McKinney, II, Deed Covenants of Title and the Preparation of Deeds: Theory, Law, and Practice in Arkansas, 34 U. Ark. Little Rock L. Rev. 53, 83-84 (2011)

In *Riddle*, Mr. and Mrs. Riddle purchased a home from the Olivia K. Udouj Trust. Prior to closing, the Riddles obtained a survey showing that the true surveyed description of the property lay several feet outside of two fence lines, fences that had been in place for forty years. The Riddles began messing with the fence and related landscaping, drawing the ire of their neighbors. The Riddles ultimately lost what was surely an expensive boundary by acquiescence fight with their neighbors resulting in a decree that the fence line was the boundary. The Riddles then proceeded to sue their predecessor in title for breach of the warranty of title, the warranty of quiet enjoyment and the warranty to defend title. The Riddles likely would have prevailed in their suit but for a statute of limitations issue.

The *Riddle* case represents a very common problem given that many properties, particularly in residential neighborhoods, have fences that do not align perfectly with the true boundary lines and may be subject to boundary by acquiescence claims. Grantors that do not take this into account run the risk of being dragged into a future suit between their grantee and former neighbors, possibly holding the bag on a very expensive suit that likely would not be covered by title insurance. Correspondingly, attorneys representing parties in a boundary by acquiescence suit might be missing a great opportunity to add a previous grantor in the chain of title to the litigation as a possible source to cover attorneys' fees, costs and potential loses. Grantors may wish to include something along the lines of this language in deeds to prevent the *Riddle* situation:

> Notwithstanding anything contained herein to the contrary, Grantor makes no warranties or representations regarding claims of adverse possession, boundary by acquiescence, boundary by agreement or otherwise by third-parties that may exist as a result in any variation or deviation of any existing fences or other boundary markers that may not be located precisely on the boundary line of the Property. Furthermore, Grantor makes no warranties or representations regarding the rights of third-parties to assert easements of necessity to any portion of the Property.

I promise that this is probably the last time in this paper that I will refer you to the article that Professor Foster and I wrote, *Deed Covenants of Title and the Preparation of Deeds: Theory, Law, and Practice in Arkansas*, 34 U. Ark. Little Rock L. Rev. 53 (2011). The article discusses the *Riddle* problem in much greater detail.

## IV. Like Three Day Old Fish...Phase I's Have an Expiration Date

I hope anyone even dabbling in the field of real estate realizes how absolutely essential it is to get a Phase I environmental site assessment of property *before* closing. If a Phase I is not performed, and the property is contaminated, the new buyer could be in for an extremely nasty surprise in the form of being compelled to clean up the contamination. Under federal environmental laws, the excuse "that's not my contamination" does not go very far.

What may not be as well known is that Phase I inspections have an expiration date. A Phase I must be completed less than 180 days prior to closing. In other words, a Phase I has a six month expiration date. After six months, the Phase I is rendered useless. It is possible to extend

the life of a Phase I for up to a year by reconducting parts of the inspection. For those interested in the details, the applicable section of the ASTM standards for the viability of Phase I's is attached to this paper as an exhibit.

## V. Other People Are Totally Unreliable

One of the most common mistakes that I have witnessed time and time again boils down to buyers being too cheap for their own good. Please do not get me wrong—I have no problem with trying to save some money, but buying real estate is usually a huge investment and it is very easy to cross into the realm of being penny wise and pound foolish. This often happens when a buyer tries to rely on the seller's existing due diligence materials, particularly environmental inspections, surveys and title policies.

Without even getting into the aforementioned expiration dates on Phase I environmental inspections, there is a critical principal to remember: You Cannot Rely on Someone Else's Due Diligence. For nearly all types of due diligence, there is no legal right to rely on due diligence prepared for a different person. In other words, if the Phase I, survey or title policy is not issued in the name of the buyer, then the buyer cannot sue the consultant who prepared the report if it turns out to be wrong. Simply put, the buyer is not in privity of contract with the consultant, so the consultant does not owe a duty to the buyer.

Consider, for instance, the case of *Ridge Seneca Plaza, LLC v. BP Products N. Am. Inc.* In that case, an environmental consultant prepared a report for Sylvan Enterprises that allegedly missed contamination caused by a nearby gas station.[6] At a later date, Ridge Seneca Plaza, LLC acquired the property and tried to rely on Sylvan Enterprises' report from the environmental consultant. Ridge Seneca tried to sue the consultant after the contamination was discovered. However, since Ridge Seneca was too cheap to get its own environmental report, the court found that there was no privity between Ridge Seneca and the consultant so the consultant could not be held liable.

There is a bit of good news. Often, the consultant who prepared the original report will provide a discount to prepare an updated report for the buyer. In some cases, the consultant may charge a minimal fee to simply add the buyer's name to the certification list, though this is not typically the case for title policies and it may not be possible for an expired Phase I.

## VI. What To Do When There Is No One to Trust

I will start this section out by telling you how to do it right, then I will explore some of the myriad of ways that people do it wrong. So, what is the right way to list the name of a trust? There is only one perfectly right way:

> Jane Smith, Trustee of the Jane Smith Revocable Trust, under trust dated (u/t/d) January 1, 2016

[6] Ridge Seneca Plaza, LLC v. BP Products N. Am. Inc., 545 F. App'x 44, 46 (2d Cir. 2013)

This example has all of the correct elements to vest title the right way. This example lists the name of the trustee (Jane Smith), her capacity with the trust (Trustee), the name of the trust (the Jane Smith Revocable Trust) and the date of the trust (January 1, 2016). The problem is that one or more of these elements is often omitted leading to different consequences.

What happens if you omit the name of the trustee (Jane Smith)? That's a good question, but not one I ever care to have to answer. Ark. Code Ann. § 28-73-401 indicates that failure to name the trustee might result in an invalid conveyance. Section 4.7 of the *Standards for Examination of Real Estate Titles in Arkansas* notes this ambiguity in what might happen by omitting the trustee's name and identifies the safest practice as including the name of the trustee. You never want to be a test case and omitting the name of the trustee is an invitation to becoming such.

What happens if you omit the name of the trust (the Jane Smith Revocable Trust) and just say something like "Jane Smith, Trustee." To put it mildly, this is very, very, very, very, very bad if you were hoping to vest title in the trust. Ark. Code Ann. § 18-12-604, a statute dating back to 1919, says that failure to identify the name of the trust results in nothing being conveyed to the trust and, instead, title vesting in the name of Jane Smith individually.

What happens if you omit the date of the trust? To my knowledge, nothing bad usually happens. While it is a best practice and eliminates any doubt about the trust in question, I am not aware of any law that would invalidate the conveyance to the trust or cause the problems that the other omissions may create. This might be different if the same individual has multiple trusts and the trust date is necessary to distinguish the different trusts. Usually, though, this is not going to be a fatal omission.

## VII. Trust No One

It is an all too common problem: you have a seller or borrower that is the trustee of a trust...or at least you think the person you are dealing with is the trustee...but you have a suspicious mind and are devoid of a trusting personality. So questions begin to enter your mind: What if the person you are dealing with does not really have authority under the trust to act on behalf of the trust? What if the person you are dealing with is an imposter? Of course, you can have the same misgivings with a corporation or partnership, but that is easily enough dealt with by looking at the corporation's articles and bylaws. To be on the safe-side, a wise practitioner will typically require a resolution from the corporation attesting to the authority of the person you are dealing with. So how do you deal with the same situation for trusts?

Unfortunately, trusts are much trickier than corporations or other types of entities. Until 2005, the typical method was to require the trustee to furnish a copy of the trust for inspection to verify the proper trustees and the authority of the trustees. In 2005, the Arkansas General Assembly adopted the Arkansas Trust Code, which was based on the Uniform Trust Code. The drafters of the Uniform Trust Code were particularly concerned with the privacy. As stated in the Uniform Law Comment appended to the annotated version of Ark. Code Ann. § 28-73-1013,

"This section, derived from California Probate Code Section 18100.5, is designed to protect the privacy of a trust instrument by discouraging requests from persons other than beneficiaries for complete copies of the instrument in order to verify a trustee's authority."[7]

Ark. Code Ann. § 28-73-1013 allows the trustee to refuse to furnish a copy of the trust instrument and instead provide a "certification of trust" that contains the following information:

> (1) a statement that the trust exists and the date the trust instrument was executed;
> (2) the identity of the settlor;
> (3) the identity and address of the currently acting trustee;
> (4) the powers of the trustee;
> (5) the revocability or irrevocability of the trust and the identity of any person holding a power to revoke the trust;
> (6) the authority of cotrustees to sign or otherwise authenticate and whether all or less than all are required in order to exercise powers of the trustee; and
> (7) the manner of taking title to trust property.[8]

The recipient of the certificate may still require the trustee to "furnish copies of those excerpts from the original trust instrument and later amendments which designate the trustee and confer upon the trustee the power to act in the pending transaction."[9] The statute provides some benefits to the recipient of the certificate, namely:

> (f)(1) A person who acts in reliance upon a certification of trust without knowledge that the representations contained therein are incorrect is not liable to any person for so acting and may assume without inquiry the existence of the facts contained in the certification.
> (2) Knowledge of the terms of the trust may not be inferred solely from the fact that a copy of all or part of the trust instrument is held by the person relying upon the certification.
> (g) A person who in good faith enters into a transaction in reliance upon a certification of trust may enforce the transaction against the trust property as if the representations contained in the certification were correct.[10]

The statute, though, provides a potentially harsh remedy against anyone that demands a copy of the trust in addition to the certificate. Such a person "is liable for damages if a court determines that the person did not act in good faith in demanding the trust instrument."[11] As of the writing of this paper, there are no reported decisions in Arkansas where someone sought or received damages under this statute, so it is difficult to say what the measure or limits of damages may be. The best advice is once again to avoid being the test case.

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[7] Ark. Code Ann. § 28-73-1013 (West)
[8] Ark. Code Ann. § 28-73-1013 (West)
[9] Ark. Code Ann. § 28-73-1013 (West)
[10] Ark. Code Ann. § 28-73-1013 (West)
[11] Ark. Code Ann. § 28-73-1013 (West)

## VIII. Forget Me Not: Often Forgotten Laws

Some real estate laws are hard to forget. For instance, if you forget to rezone the property, the city will gently remind you by denying a building permit until you comply with the law. Other laws are easier to forget. In particular, the Clean Water Act (the "CWA") and the National Historic Preservation Act (the "NHPA") are easy to forget because there is relatively little enforcement action that occurs to compel real estate developers to follow the law or punish those that fail to do so. Furthermore, situations where the CWA and NHPA arise are not always apparent to attorneys or developers who do not frequently deal with these laws.

The CWA requires any developer disturbing "waters of the United States," including wetlands, to hold a valid 404 Permit issued by the United States Army Corps of Engineers (the "Corps").[12] The Corps utilizes a broad definition to waters of the United States, in spite of the United States Supreme Court case of *Rapanos v. US* where the Justices at least attempted to limit the Corps' discretion.[13] The Corps' very broad definition leads to the problem of people mistakenly thinking land is not classified as a wetland just because it does not look wet.

It is necessary to perform a "wetlands delineation" to determine if the property is impacted by wetlands, which can be conducted by a variety of engineers and environmental consultants. The wetlands delineation is a map showing the portions of the property impacted by regulated waters of the United States. This delineation is then submitted to the Corps for its concurrence.

If wetlands (or other waters of the United States such as creeks) are present on the property, then the Corps and the project engineers must work together to determine the extent of any disturbance to the wetlands (if the project avoids the wetlands, then there are no problems). The Corps issues a "404 Nationwide Permit" for projects resulting in minimal disturbance to waters of the United States.[14] The Corps issues "404 Individual Permits" for projects resulting in more significant disturbance. A 404 Nationwide Permit is relatively easy to get and comes with relatively minor mitigation requirements (for example, the developer may be required to build a new wetland to replace what was destroyed plus a little extra). The 404 Individual Permits are harder to get, take considerably more time (a year is not unusual) and require significantly more mitigation requirements. Failure to follow this process could result in severe penalties.

Another often ignored law is the NHPA. Congress passed the NHPA (a/k/a "Section 106")[15] in 1966 to preserve America's historic resources and to "administer federally owned, administered, or controlled historic resources in a spirit of stewardship for the inspiration and

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[12] 33 U.S.C.A. § 1362(7). *See also* 33 U.S.C.A. § 1344(a) *and Pye v. U.S.*, 269 F.3d 459, 463 (4th Cir. 2001).

[13] *Rapanos v. US*, 547 US 715 (2006).

[14] PRACTITIONER'S TIP: Technically, a 404 Nationwide Permit is not issued to an individual. Instead, the Corps certifies certain 404 Nationwide Permits and then allows developers to avoid obtaining a 404 Permit by complying with the terms of the existing 404 Nationwide Permit.

[15] PRACTITIONER'S TIP: Before NHPA was codified as Section 16 U.S.C.A. §§ 470 *et seq.*, the key provision of NHPA was Section 106. Consequently, compliance with NHPA is commonly referred to as "Section 106 Compliance" or "Section 106".

benefit of present and future generations."[16] NHPA jurisdiction extends to all federal "undertakings".[17] A federal undertaking occurs any time there is: (i) direct federal involvement; (ii) federal dollars (even one dollar makes the project an undertaking); or (iii) a federal permit. This last point is the catchall because many projects require a federal permit in one form or another, such as the 404 permits discussed above.

The NHPA requires a thorough determination of the historic impacts and a consideration of alternatives that can minimize impacts on historic properties before an undertaking can be commenced. The NHPA requires analysis of any property that is potentially eligible for inclusion on the National Register of Historic Places, not just those sites that are already on the Register. The NHPA imposes stricter scrutiny for potential impacts to sites recognized as National Historic Landmarks.

The NHPA does not prohibit the disturbance or destruction of historic properties. Instead, the NHPA only requires the responsible federal agency (*i.e.*, the Corps) to consider the historic impacts. Nevertheless, the time and expense of going through the NHPA process can be a substantial block to development.

The NHPA created the Advisory Council on Historic Preservation (the "ACHP") to oversee the implementation and regulation of the NHPA. The ACHP has promulgated rather complicated procedures to comply with the NHPA. Other federal agencies, such as the Corps have created arguably competing regulations for applying the ACHP. This has led to cases where developers are caught in the middle between two federal agencies and run the risk of misapplying the regulatory requirements.[18]

The best way to comply with the NHPA is to engage a consultant familiar with the Section 106 Compliance process. At minimum, the developer must contact the State Historic Preservation Officer ("SHPO") to request a clearance letter on the property. In Arkansas, the SHPO is affiliated with the Department of Arkansas Heritage ("DAH"), so the letter usually comes from DAH. If DAH is not sure about the possible historic effect, DAH can deny the clearance letter, which will force the developer to obtain a full historical site assessment. Further, there are situations where even getting the clearance letter from DAH does not mean that further analysis is not necessary under the NHPA. Failure to follow the NHPA can also have very serious consequences.

## IX. The Ten Deadly Counties

Many people do not know that Arkansas has ten "special" counties. I call them the "Ten Deadly Counties" because not knowing about them can really ruin your day. These Ten Deadly Counties, listed below, have two county seats instead of the usual one. This means that Arkansas

[16] 16 U.S.C.A. § 470-1.

[17] 16 U.S.C.A. § 470f.

[18] *See, e.g., Colo. River Indian Tribes v. Marsh*, 605 F. Supp. 1425, 1434-35 (C.D. Cal. 1985) *and Committee to Save Cleveland's Huletts v. U.S. Army Corps of Engineers*, 163 F. Supp. 2d 776, 780 (N.D. Ohio 2001).

has seventy-five counties but eighty-five real estate recorders. Recording in the wrong division of one of the Ten Deadly Counties is as bad as recording in the entirely wrong county. The history of these counties date back to the times when transportation between different parts of the counties was difficult. Though modern transportation has seemingly ended this problem, this historic relic remains poised to torment the unknowing.

It is advisable to keep a list of the Ten Deadly Counties in your desk drawer to quickly check before sending a document to be recorded in an unfamiliar county. If you have to record in one of the Ten Deadly Counties, it is imperative to determine the proper division in which to record. This is usually shown on the recording information for other recorded instruments including the same land or often the surveyor may include it in the legal description of the property. The Ten Deadly Counties are:

1. Arkansas County—DeWitt and Stuttgart
2. Carroll County—Berryville and Eureka Springs
3. Clay County—Corning and Piggott
4. Craighead County—Jonesboro and Lake City
5. Franklin County—Charleston and Ozark
6. Logan County—Paris and Booneville
7. Mississippi County—Blytheville and Osceola
8. Prairie County—Des Arc and Devalls Bluff
9. Sebastian County—Fort Smith and Greenwood
10. Yell County—Danville and Dardanelle

## X. With All My Worldly Goods I Thee Endow

I saved one of the biggest and most dangerous area for mistakes for last: dower and curtesy. Dower and curtesy extend to all property of an estate of inheritance owned during a marriage.[19] Under Arkansas law, no act, deed or conveyance by one spouse without the assent of the other spouse, evidenced by an acknowledgment, escapes dower or curtesy.[20] A conveyance by one spouse, without the signature of the other spouse, does not extinguish dower or curtesy.[21] Similarly, a conveyance, mortgage or other instrument executed by one spouse, without the joinder or acknowledgment of the other spouse, is invalid as to homestead property (with some allowances for purchase money creditors).[22] A spouse can waive dower or curtesy either by joining the deed as a co-grantor or by merely acknowledging a release of the interest, with the latter choice typically being safer from the spouse's point of view because it avoids the spouse giving warranties of title.

Transactions frequently occur without the signature of the spouse despite the risk of dower and curtesy. Thankfully, Arkansas law bars dower and curtesy when a conveyance has been of record for a period of seven (7) years or more and dower or curtesy has not vested (i.e., because the

[19] Ark. Code Ann. § 28-11-301 (West)
[20] Ark. Code Ann. § 28-11-201(a) (West)
[21] Ark. Code Ann. § 28-11-301 (West)
[22] Ark. Code Ann. § 18-12-403 (West)

grantor has not died).[23] Regardless, though, it is very important to always ask your client about his or her marital status. Also, remember that even a pending divorce does not eliminate dower and curtesy. Only a properly entered divorce decree terminates dower or curtesy, even if the parties think they are divorced.[24]

The question of dower and curtesy should come up anytime an individual is granting title to real estate. Additionally, the question should be raised about any conveyances during the previous seven years since dower and curtesy can be retroactive. In other words, if the grantor is a limited liability company, then there are no immediate dower and curtesy concerns. However, dower and curtesy could still arise if the grantor took title to the property fewer than seven years ago from a grantor that did not properly waive dower and curtesy. It is best to always state the grantor's marital status (single or married) in every conveyance so that there is no question later about the status.

Breaking with my earlier promise, I am going to give one more humble plug for a new article that I authored set to come out sometime in late 2016 or 2017 in the University of Arkansas Law Review tentatively titled: *With All My Worldly Goods I Thee Endow: The Law and Statistics of Dower and Curtesy in Arkansas* that will explore the issue of dower and curtesy in mind-numbing detail along with some surprising results from an empirical study exploring occurrences of dower and curtesy in practice.

*Conclusion*

I hope this list of ten things everyone should know about real estate helps you avoid common pitfalls and problems. As I noted at the outset, dabbling can be dangerous since it can be so hard to keep up with the myriad of issues. This paper presents just a small fraction of the possible issues, and real estate law is only getting more complicated with new federal and state regulations and changing economic conditions. Hopefully, though, this short guide gives at least some useful assistance to avoiding major problems.

Of course, feel free to contact me if you have questions:

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[23] Ark. Code Ann. § 28-11-203 (West)

[24] *See, e.g.,* Grober v. Clements, 71 Ark. 565, 76 S.W. 555 (1903) and Hamilton v. Hamilton, 317 Ark. 572, 879 S.W.2d 416 (1994)