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### Researching and Keeping up to Date with Real Estate Law in Virginia

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# Researching and Keeping up to Date with Real Estate Law in Virginia

by Frederick W. Dingley

Most Virginians will encounter real estate law at some point. For some, the process of buying a home may be the first time in their life a person needs to hire an attorney. Homeowners might become embroiled in litigation over zoning, eminent domain, or boundary lines. Those who choose not to follow the path to homeownership may face a landlord-tenant dispute or one of the other myriad issues relating to renting property. Whether trying to get a basic orientation in this topic or keeping up with the latest developments, Virginia lawyers sorting through the “sticks” in their client’s particular “bundle of rights” have several resources upon which to call.

## Beginning Your Research — Treatises and Manuals

### Virginia CLE

The Virginia CLE website has several useful works available for purchase in print or as a searchable PDF. Each title includes numerous forms as appendixes.

*The Virginia Lawyer: A Deskbook for Practitioners*, a popular reference that many attorneys in the Commonwealth keep close at hand, has two chapters that provide a solid starting point. Chapter 11 of the 2018 edition discusses residential real estate settlements and residential leases, while Chapter 12 covers eminent domain. Virginia CLE also distributes Chapter 11 as a separate publication titled *A Guide to Real Estate Law in Virginia* that includes an additional section on foreclosure.

Perhaps the most thorough look at Virginia real estate law is offered by *Real Estate Transactions in Virginia*, edited by Neil S. Kessler and Paul H. Melnick. This two-volume set discusses all aspects of the real estate transaction from beginning to closing, including financing

and issues involving title. Kessler and Melnick’s work also covers special topics such as ethical considerations, commercial real estate contracts, condominiums and property owner associations, and foreign owners of Virginia real estate.

*Eminent Domain Law in Virginia*, edited by Paul B. Terpak, walks the reader through the condemnation process, including the trial, valuation and relocation assistance, and tax implications. Terpak’s book describes condemnation procedures under federal law, the Commonwealth’s general power of eminent domain set forth in Title 25.1 of the Code of Virginia, and the Commonwealth’s Title 33.2 power to use eminent domain for highways.

### Other Publishers

W. Wade Berryhill and Michael V. Hernandez’s *Real Estate Closings*, part of Thomson Reuters’ *Virginia Practice* series (available on Westlaw), describes the process involved in closing on a real estate purchase. Berryhill and Hernandez state in the introduction<sup>1</sup> that they intended this work to serve as a how-to book, not an academic analysis. A substantial portion of the publication is thus devoted to useful forms, but also cites and discusses relevant statutes and cases.

*A Virginia Title Examiner’s Manual* by Douglass W. Dewing covers everything relating to titles — from liens, restrictions, deeds, and title insurance to water and mineral rights, marital property rights, inheritance, subdivisions, and more. Dewing’s book is available in print and as a pdf from the website of its publisher, Juris Legal Information.

## Keeping Current

Both the Virginia State Bar and the Virginia Bar Association have sections

devoted to real estate law, and Virginia CLE offers two annual seminars on new developments.

### Bars

The Virginia State Bar’s Real Property Section publishes a semiannual newsletter, *The Fee Simple*, with articles discussing current issues in real property law. Past issues of *The Fee Simple* are available to the public on the section’s website, with the most recent issue accessible to members only.<sup>2</sup> The website of the Virginia Bar Association’s Real Estate Section offers online CLEs for purchase as well as a public archive of the section’s newsletter, *VBA REAL*, which includes updates on Virginia legislation.<sup>3</sup>

### Seminars

Virginia CLE sponsors two annual seminars on real estate law. The *Annual Real Estate Practice Seminar* has updates on new legislation and caselaw, along with discussion of basic topics such as easements. The *Annual Advanced Real Estate Seminar* addresses specialized topics such as proffers and homeowners’ associations. Seminar registration as well as purchase of the accompanying material is available on Virginia CLE’s website.

The cultural and economic significance of owning, conveying, and encumbering real property and improvements thereon make it likely that lawyers and clients alike will confront a real estate law question. Practitioners in the Commonwealth have a number of resources on which to rely, whether it involves building a foundational understanding or staying informed on the newest developments.

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Although ABA MR 1.10(a)(2) allows nonconsensual screening of the lateral hire to avoid disqualification of the new firm, Virginia did not adopt that provision. In Virginia, if there is a conflict under Rule 1.9, the conflict is imputed to the new firm and only client consent can cure conflict. The affected clients can agree to screen the lateral hire, but that would be part of an informed consent and waiver of the conflict. Only about half of the jurisdictions in the United States offer some version of non-consensual screening to avoid former client conflicts imputation when a lawyer moves in between firms. However, even if the jurisdiction has a non-consensual screening provision like ABA MR 1.10, the court may nonetheless disqualify the firm that the switching lawyer has joined, even though the new firm has implemented a screen.<sup>1</sup>

Endnotes

- 1 *Twenty-First Century Rail Corp. v. N.J. Transit Corp.*, 44 A.3d 592 (N.J. 2012) (no screen allowed without former client's consent in subsequent adverse representation in same matter); *Beltran v. Avon Products Inc.*, 2012 U.S. Dist. LEXIS 83060 (C.D. Cal.) (screen does not block firm's imputed disqualification when screened lawyer has key confidential information from substantially related cases); *Norfolk S. Ry. Co., v. Reading Blue Mountain & N. R.R. Co.*, 397 F. Supp. 2d 551 (M.D. Pa. 2005) (screen not adequate in side-switching case because no affidavit that firm will not share its fee with screened lawyer or indication of strong sanctions if screen is breached, as well as no time lapse between former and current representations, substantiality of former lawyer's involvement, and 10-lawyer size of new firm, despite timely implementation of screen and restrictions on new lawyer's access to case and prohibition on discussing case with new lawyer); *City Natl. Bank v. Adams*, 117 Cal. Rptr. 2d 125 (Cal. App. 2002) (collecting cases); *Kala v. Aluminum Smelting & Refining Co. Inc.*, 688 N.E.2d 258 (Ohio 1998)

(screens not allowed in side-switching cases despite availability of such a remedy in other former-client conflict situations); *See also, CSX Transp. Inc., v. Gilkison, Peirce, Raimond & Coulter, P.C.*, 2006 U.S. Dist. LEXIS 81019 (N.D. W. Va.) (overlap in parties, potential witnesses, and facts and circumstances from which alleged physical injuries or lack thereof arose created substantial relationship and warrant disqualification which cannot be cured by screening).

**Research** *continued from page 45*

Endnotes

- 1 W. WADE BERRYHILL & MICHAEL V. HERNANDEZ, *REAL ESTATE CLOSINGS* § 1:1 (Virginia Practice, Vol. 11, 2018-2019 ed.).
- 2 [www.vsb.org/site/sections/realproperty](http://www.vsb.org/site/sections/realproperty)
- 3 [www.vba.org/page/real\\_estate](http://www.vba.org/page/real_estate)



**Frederick W. Dingley** is a senior reference librarian at Wolf Law Library at William & Mary Law School. He is a former president of the Virginia Association of Law Libraries.

**Flood** *continued from page 10*

sibility has adopted Formal Rule 482 (9/18/2018) to guide lawyers on what their ethical responsibilities are in the event of a disaster. The committee's description of the opinion states: "By proper advance preparation and planning and taking advantage of available technology during recovery efforts, lawyers can reduce their risk of violating the Rules of Professional Conduct after a disaster." Lawyers would be well advised to become familiar with this opinion (<https://perma.cc/8S2Q-KHF3>).

No one intends to become a victim of a disaster. They are, by definition, sudden events that leave us with unforeseen damages. How you deal with it can be controlled, however, if you are prepared. Plan ahead to protect your clients, yourself, your coworkers, and your family. ☺

**Book** *continued from page 47*

predictable warning against the use of oral settlement agreements. An appendix offers four template agreements for different kinds of disputes.

At \$119.95, the book doesn't seem cheap; but in context, it is, especially if you frequently mediate disputes. If the book's sensible suggestions save the reader from even one exploded agreement, it will have paid for itself many times over.



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