

# **Table of Contents**

## **Volume 14**

### **CHAPTER 1. OVERVIEW OF REAL ESTATE TRANSACTIONS**

#### **I. OVERVIEW OF RESIDENTIAL TRANSACTIONS**

- § 1:1 Client's perspective
- § 1:2 Attorney's perspective
- § 1:3 Reasons attorneys do residential closings

#### **II. ATTORNEY'S ROLE**

- § 1:4 Differences between Cook County and downstate
- § 1:5 Attorney as legal counselor
- § 1:6 —Negotiator
- § 1:7 —Advisor
- § 1:8 —Coordinator

#### **III. OVERVIEW OF STAGES**

- § 1:9 Seller lists property
- § 1:10 Buyer views property
- § 1:11 Review of broker's agreement
- § 1:12 Buyer makes offer
- § 1:13 Date of contract
- § 1:14 Price set
- § 1:15 Earnest money
- § 1:16 Attorney approval obtained
- § 1:17 Inspection obtained
- § 1:18 Buyer obtains financing
- § 1:19 Seller's attorney arranges for closing
- § 1:20 Closing
- § 1:21 After closing

#### **IV. ENGAGEMENT LETTERS**

- § 1:22 Purchaser engagement letter
- § 1:23 Seller engagement letter
- § 1:24 General engagement letter

## **CHAPTER 2. BROKERS AND SALE BY OWNER**

### **I. INITIAL CONSIDERATIONS**

- § 2:1 Using a broker
- § 2:2 Sale by owner
- § 2:3 —Practical tips—Fair housing laws
- § 2:4 — —Negotiations
- § 2:5 — —Earnest money
- § 2:6 — — —Dispute over escrow funds

### **II. BROKER'S ACTIVITIES PRIOR TO ATTORNEY INVOLVEMENT**

- § 2:7 Usual procedure
- § 2:8 —Listing broker
- § 2:9 —Listing agent
- § 2:10 —Comparative market analysis
- § 2:11 —Publicizing the property
- § 2:12 —Multiple listing
- § 2:13 —Cooperating broker
- § 2:14 —Pre-approval of buyer
- § 2:15 Mortgage commitment
- § 2:16 Usual procedure—Offer made and contract prepared
- § 2:17 —Earnest money obtained
- § 2:18 —Presenting offer to seller
- § 2:19 —Contract signed
- § 2:20 —Attorney engaged

### **III. LICENSING OF BROKERS AND LEASING AGENTS**

- § 2:21 Real Estate License Act of 2000
- § 2:22 Regulatory system
- § 2:23 —Corporations, limited liability companies and partnerships
- § 2:24 Definition of broker
- § 2:25 Definition of compensation
- § 2:26 Definition of client, licensee and agency
- § 2:27 Definition of brokerage agreement
- § 2:28 Definition of broker—Exceptions to licensing requirement
- § 2:29 Designated agent and confidential information

### **IV. CLIENT-BROKER RELATIONSHIP**

- § 2:30 Nature of relationship

## TABLE OF CONTENTS

- § 2:31 —Establishment of relationship
- § 2:32 —Broker as agent
- § 2:33 — —Duty to keep principal informed
- § 2:34 — —Duty of seller's broker to exercise good faith towards buyer
- § 2:35 Duty of seller to refer prospects to broker
- § 2:36 Nature of relationship—Broker as agent—Duty to exercise good faith towards buyer—Purchase by broker
- § 2:37 — —No duty to procure documents for the closing
- § 2:38 —Dual agency
- § 2:39 —Limits on broker's authority
- § 2:40 —Duty to disclose
- § 2:41 — —Intentional misrepresentation
- § 2:42 — —Negligent misrepresentation
- § 2:43 — —Latent defects
- § 2:44 — —Exculpatory clauses
- § 2:45 — —Consumer fraud and deceptive trade practices liability
- § 2:46 Broker as buyer's agent
- § 2:47 —Establishment of agency
- § 2:48 "Finders"

## **V. BROKERAGE RELATIONS UNDER THE REAL ESTATE LICENSE ACT OF 2000**

- § 2:49 Intent of Brokerage Relations statute
- § 2:50 Intent of brokerage relations law—Replaces common law agency
- § 2:51 —Private right of action
- § 2:52 — —No right to jury trial
- § 2:53 —Law does not affect contractual relationships
- § 2:54 —Relationship between broker and affiliated licensees (brokers, real estate salespersons or leasing agents)
- § 2:55 —Agency relationship
- § 2:56 —Compensation does not determine relationship
- § 2:57 Brokerage agreement
- § 2:58 Intent of brokerage relations law—Agency relationship disclosures
- § 2:59 Attorney cannot also act as broker
- § 2:60 Timing of agency relationship disclosure
- § 2:61 Dual agency
- § 2:62 —Statutory presumption of informed written consent
- § 2:63 —Timing of presentation of dual agency disclosure form

- § 2:64 —Written confirmation
- § 2:65 —Disclosures
- § 2:66 —No imputed knowledge or information
- § 2:67 —Withdrawal of agent
- § 2:68 Duties of agent to client under Real Estate License Act of 2000
- § 2:69 Duties of agent who is representing client—Showing property to other buyers
- § 2:70 —Compensation based on selling price
- § 2:71 —Broker or agent's liability to client for false information
- § 2:72 —Duty to use care in designating an agent
- § 2:73 Duties of agent towards customer
- § 2:74 —Definition of "customer"
- § 2:75 —Broker's duties to customer
- § 2:76 —Disclosures by seller's broker to customers
- § 2:77 —Liability of broker to customer
- § 2:78 —Broker or agent's liability to customer for false information
- § 2:79 Termination of brokerage agreement
- § 2:80 Vicarious liability of consumer

## **VI. LISTING AGREEMENTS**

- § 2:81 Pre-signing concerns
- § 2:82 Listing (brokerage) agreement
- § 2:83 Listing agreement—Statute of Frauds
- § 2:84 —Oral brokerage agreement
- § 2:85 —Expiration date of brokerage agreement
- § 2:86 —Automatic extension prohibited
- § 2:87 —Grace period allowed
- § 2:88 —Revocation of listing (brokerage agreement)
- § 2:89 —Damages on termination of listing agreement
- § 2:90 —Liquidated damages
- § 2:91 —Termination by revocation—Revocation after broker has secured buyer
- § 2:92 — — —Damages
- § 2:93 Types of listing agreements
- § 2:94 —Exclusive right to sell

## **VII. BROKER'S RIGHT TO COMMISSION**

- § 2:95 Basis of right
- § 2:96 Contract right to commission
- § 2:97 —Listing agreement required
- § 2:98 —Express contract

## TABLE OF CONTENTS

§ 2:99	— —Ratification of brokerage agreement
§ 2:100	—Implied contract
§ 2:101	— —Unjust enrichment
§ 2:102	—Broker must be procuring cause
§ 2:103	— —Buyer ready, willing and able
§ 2:104	—Offer must conform to listing agreement
§ 2:105	— —Contingencies in offer
§ 2:106	— —Inconsistencies in mortgage commitment
§ 2:107	—Cooperating broker/agent
§ 2:108	—Default by seller
§ 2:109	—Default by buyer
§ 2:110	—Mutual cancellation or rescission of transaction by seller and buyer
§ 2:111	—Breach of fiduciary duty
§ 2:112	—Transfer between owners
§ 2:113	Quasi contract claim for commission
§ 2:114	—Basis for quantum meruit
§ 2:115	—Requirements
§ 2:116	—Difference between quantum meruit and unjust enrichment
§ 2:117	—Sale must occur on seller's terms
§ 2:118	—When only part of property sold
§ 2:119	—Quantum meruit relief if listing contract void
§ 2:120	—Expiration of grace period
§ 2:121	—Amount of recovery
§ 2:122	Statutory requirement of being licensed to have a right to a commission
§ 2:123	Incorrect buyer pre-qualification letter from lender

## **VIII. PRACTICAL TIPS IN REVIEWING LISTING AGREEMENT**

§ 2:124	Explanation to client of broker's exclusive right to sell
§ 2:125	Limitation on commission unless sale closes
§ 2:126	Limiting the commission in case of default by buyer
§ 2:127	Commission rate
§ 2:128	Right to commission
§ 2:129	—Seller's concern as to the timing of the liability for a commission
§ 2:130	—Buyer's broker to look to seller for commission
§ 2:131	—Purchases made after expiration of listing agreement
§ 2:132	—Amending the listing (brokerage) agreement
§ 2:133	Survey and title requirements in brokerage agreement

- § 2:134 Termination date of brokerage agreement
- § 2:135 Early termination

## **IX. RIGHT TO LIEN TO SECURE COMMISSION**

- § 2:136 Situations where lien arises
- § 2:137 Residential property
- § 2:138 Commercial property
- § 2:139 —Definition of commercial real estate
- § 2:140 —Establishment of lien
- § 2:141 —Escrow or release of lien in case of dispute
- § 2:142 Commercial Property—Statute of limitations to enforce lien

## **X. REAL ESTATE RECOVERY FUND**

- § 2:143 Real estate recovery fund
- § 2:144 —Amount of loss
- § 2:145 —Amount of recovery from the Real Estate Recovery Fund
- § 2:146 —Amount of recovery—Attorney's fees and costs
- § 2:147 — —Interest
- § 2:148 — —Procedure to effect recovery
- § 2:149 — —Punitive damages
- § 2:150 —Termination of license in case of payment of claim

## **XI. BROKER-ATTORNEY RELATIONSHIP**

- § 2:151 Completing form contracts
- § 2:152 —Lawyer-broker committees

## **XII. FORMS**

- § 2:153 Commercial Real Estate Broker's Lien Act Affidavit
- § 2:154 Waiver of lien under Commercial Real Estate Broker Lien Act
- § 2:155 Lien notice under Commercial Real Estate Broker Lien Act
- § 2:156 Release of claim for lien under Commercial Real Estate Broker Lien Act
- § 2:157 Owner's affidavit covering broker and payment

# **CHAPTER 3. ENTERING INTO A CONTRACT**

## **I. BUYER'S INVESTIGATION**

- § 3:1 Buyer beware

## TABLE OF CONTENTS

§ 3:2	Normal procedure
§ 3:3	Existing houses
§ 3:4	—Mechanical and structural elements
§ 3:5	—Real estate taxes
§ 3:6	— —Homeowner exemptions
§ 3:7	— — —“Senior Freeze” exemption
§ 3:8	—Personal property
§ 3:9	—Neighborhood
§ 3:10	Condominiums, townhouses, and cooperatives
§ 3:11	—Homeowners’ association
§ 3:12	— —Rules and regulations
§ 3:13	— —Rentals
§ 3:14	— —Parking spaces
§ 3:15	— —Budget for repairs
§ 3:16	— —Special assessments
§ 3:17	New construction
§ 3:18	Earnest money
§ 3:19	Professional inspector
§ 3:20	—Liability of inspector
§ 3:21	—Timing of inspection
§ 3:22	—Unsatisfactory inspection
§ 3:23	— —Definition of unsatisfactory report
§ 3:24	— —Gray areas

## II. NEGOTIATING THE SALES CONTRACT

§ 3:25	Written contract required
§ 3:26	Usual procedure
§ 3:27	—Sale by owner
§ 3:28	— —Both parties should be represented by attorneys
§ 3:29	— —Contract terms
§ 3:30	—Sale through a broker
§ 3:31	Attorney’s role in pre-contract negotiations

## III. DISCLOSURE

§ 3:32	Disclosure duties
§ 3:33	—Need for inspection
§ 3:34	Disclosure duties under common law
§ 3:35	—Common law standard of proof
§ 3:36	—Duty to disclose known material defects
§ 3:37	—Disclosure must be of whole truth
§ 3:38	—Affirmative falsehood
§ 3:39	—Silence versus active concealment
§ 3:40	—Fraudulent concealment

- § 3:41 —Fraud in the inducement
- § 3:42 Radon
- § 3:43 —State radon disclosure requirements
- § 3:44 — —Definition of residential property
- § 3:45 — —Exclusions from the Act
- § 3:46 — —Tenants
- § 3:47 Federal lead based paint disclosure requirements
- § 3:48 —Effective date of regulations
- § 3:49 —Excluded properties
- § 3:50 —Inspection period and acknowledgment
- § 3:51 —Effect of failure to disclose
- § 3:52 Lead-based paint requirements
- § 3:53 State lead-based paint disclosure requirement
- § 3:54 Federal lead-based paint disclosure cause of action
- § 3:55 Residential Real Property Disclosure Act
- § 3:56 —Delivery of disclosure report
- § 3:57 —Option contracts
- § 3:58 —Obligation of seller for completion of disclosure form
- § 3:59 — —Rights of buyer if seller delivers form after signing purchase agreement
- § 3:60 —Disclosures of all material defects not required
- § 3:61 —Obligation of seller for completion of disclosure form—Rights of buyer if seller fails to deliver disclosure form
- § 3:62 —Statutory and common law obligations
- § 3:63 — —Fraud
- § 3:64 —Applicability and definition of residential real property
- § 3:65 —Exceptions
- § 3:66 — —Transfers pursuant to court order
- § 3:67 — —Transfers pursuant to or lieu of foreclosure
- § 3:68 — —Transfers by fiduciary
- § 3:69 — —Transfers of newly constructed residence
- § 3:70 — —Other exceptions
- § 3:71 —Contents of the disclosure form
- § 3:72 —Definition of seller
- § 3:73 —Duties of seller
- § 3:74 — —Scope of disclosure
- § 3:75 — —Seller's knowledge of errors in disclosure
- § 3:76 — —Partial disclosure
- § 3:77 — —Disclosure—Causation
- § 3:78 — —Seller need not investigate
- § 3:79 — —Seller must update disclosure
- § 3:80 —Purchaser can rely on the disclosure report
- § 3:81 —Duties of seller—Buyer's knowledge of error



## TABLE OF CONTENTS

- § 3:82 —Buyer's right to terminate
- § 3:83 —Damages
- § 3:84 —Liability for damages does not require closing of the sale
- § 3:85 —Statute of limitations
- § 3:86 —Applicable statute if sale is not closed
- § 3:87 —Practical aspects of the disclosure report
- § 3:88 —Practical tips as to the disclosure report—Timeliness of information
- § 3:89 — —Advising seller of duty to fill out form
- § 3:90 — —Advising seller of duty to disclose
- § 3:91 — —Disclosure only covers actual knowledge
- § 3:92 — —As-Is contract
- § 3:93 — —Condominium common area disclosure
- § 3:94 — —Limited usefulness
- § 3:95 —No right to jury trial
- § 3:96 —Attorney fees
- § 3:97 —Obligation of seller for completion of disclosure form—Waiver
- § 3:98 — —Rights of buyer if seller delivers incomplete form or fails to deliver form before closing

## IV. POWERS OF ATTORNEY AFFECTING REAL PROPERTY

- § 3:99 In writing
- § 3:100 Witness and notary requirement
- § 3:101 Fiduciary relationship
- § 3:102 —Gift
- § 3:103 —Successor agent
- § 3:104 Limitation on power of attorney
- § 3:105 Term of power of attorney
- § 3:106 —Right of agent to act after court appointment of a guardian
- § 3:107 Agent's duty to keep records
- § 3:108 Statutory short form
- § 3:109 —Term of the power of attorney under the Act
- § 3:110 —Form to be used
- § 3:111 — —Forms comprising the statutory form
- § 3:112 —Agents, successor agents and co-agents
- § 3:113 Non statutory power of attorney—Co-agents
- § 3:114 Statutory short form—Powers of agent
- § 3:115 —Limitations on powers of the agent—Changing insurance beneficiary
- § 3:116 — —Gifts

- § 3:117 —Strict construction of power of attorney
- § 3:118 Practical limitations on power of attorney

## **V. LETTERS OF INTENT**

- § 3:119 Letters of intent
- § 3:120 —In general
- § 3:121 —Creation of contract
- § 3:122 —Omission of items
- § 3:123 —“Subject to” execution of contract
- § 3:124 —Disclaimer
- § 3:125 —Execution of formal contract

## **VI. CHECKLISTS**

- § 3:126 Preparatory steps
- § 3:127 Representation of seller with broker where listing contract has not yet been executed
- § 3:128 Representation of seller where sale contract has not previously been submitted—Preparation of contract
- § 3:129 Representation of seller after submission and prior to acceptance of real estate contract
- § 3:130 Representation of purchaser where sale contract has not previously been submitted—Preparation of contract

## **VII. FORMS AND PUBLICATIONS**

- § 3:131 Homeowner property tax exemptions information
- § 3:132 Guidance on the Lead-Based Paint Disclosure rule
- § 3:133 Sample form of seller’s disclosure of information on lead-based paint
- § 3:134 Sample form of lessor’s disclosure of information on lead-based paint
- § 3:135 Illinois Department of Public Health brochure entitled “Get the Lead Out”
- § 3:136 Residential real property disclosure report
- § 3:137 Sample of letter of intent
- § 3:138 Statutory short form of power of attorney for real property
- § 3:139 Notice to agent
- § 3:140 Notice to the individual signing the Illinois statutory short form power of attorney
- § 3:141 Agent’s certification and acceptance of authority
- § 3:142 Successor agent’s certification and acceptance of authority
- § 3:143 Co-agent’s certification and acceptance of authority

## TABLE OF CONTENTS

- § 3:144 Power of attorney with provisions pursuant to the  
Durable Power of Attorney Act

## CHAPTER 4. TYPES OF OWNERSHIP

### I. IN GENERAL

- § 4:1 Generally  
§ 4:2 Drafting issues  
§ 4:3 Failure to specify type of tenancy

### II. TYPE OF OWNERSHIP

- § 4:4 Tenants in common  
§ 4:5 —Mineral rights  
§ 4:6 Joint tenancy  
§ 4:7 —Conveyance by a grantor to himself or herself and  
another party as grantees  
§ 4:8 —Death of a joint tenancy contract purchaser before  
closing  
§ 4:9 —Right of one joint tenant to sell the entire parcel  
owned in joint tenancy  
§ 4:10 —Partition  
§ 4:11 —Severance of joint tenancy  
§ 4:12 — —No consent needed to sever joint tenancy  
§ 4:13 — —Transfer under the Illinois Real Property Transfer  
on Death Instrument Act  
§ 4:14 — —Severance by agreement  
§ 4:15 — —Divorce does not sever a joint tenancy  
§ 4:16 — —Conveyance by one of several joint tenants  
§ 4:17 — —Fraudulent transfer does not sever joint tenancy  
§ 4:18 — —Effect of severance  
§ 4:19 — —Mortgage by one joint tenant  
§ 4:20 — —Levy by creditor  
§ 4:21 —Mortgage by one joint tenant—Death of joint tenant  
mortgagor  
§ 4:22 —Bankruptcy of one joint tenant  
§ 4:23 —Joint tenancy ownership of the beneficial interest in  
a land trust  
§ 4:24 —Responsibilities of co-tenancy  
§ 4:25 Tenancy by the entirety  
§ 4:26 —Inclusion of civil unions  
§ 4:27 —Language to use to establish tenancy by the  
entireties  
§ 4:28 —Land trusts and co-ops  
§ 4:29 —Revocable inter vivos trust

- § 4:30 —Additional grantee(s) to tenants by the entirety
- § 4:31 —Mistaken attempt to create tenancy by the entirety
- § 4:32 —Homestead property
- § 4:33 —Comparison with homestead rules
- § 4:34 —Signatures of both spouses needed for property held as tenants by the entirety
- § 4:35 —Duration
- § 4:36 —Protection from creditors
- § 4:37 — —Inter vivos trust for estate planning purposes
- § 4:38 — —Land trust beneficial interest
- § 4:39 — —Establishing a consensual lien
- § 4:40 — —Protection from IRS seizure
- § 4:41 — —Non-IRS judgments against only one tenant
- § 4:42 — —Family expenses and tenancy by the entirety
- § 4:43 —Severance of tenancy by the entirety
- § 4:44 — —Transfer under the Illinois Real Property Transfer on Death Instrument Act
- § 4:45 —Responsibilities of co-tenancy in tenancy by the entirety
- § 4:46 —Ownership of multiple-unit building and tenancy by the entirety
- § 4:47 —Ownership prior to marriage

### III. LAND TRUST

- § 4:48 Definition
- § 4:49 Difference between a land trust and a common law trust
- § 4:50 Benefits of land trust
- § 4:51 —Secrecy of ownership
- § 4:52 Statutory definition of “land trust”
- § 4:53 Statutory definition of “beneficial interest”
- § 4:54 Distinctive characteristics of a land trust
- § 4:55 Right of beneficiary to assign beneficial interest
- § 4:56 No right in beneficiary to partition
- § 4:57 Responsibility of beneficiary for obligations of ownership
- § 4:58 Who may serve as trustee
- § 4:59 —Creditor as land trust trustee
- § 4:60 Setting up a land trust
- § 4:61 —Forms
- § 4:62 —Deed in trust
- § 4:63 — —Deed in trust distinguished from a trust deed
- § 4:64 —Trust agreement
- § 4:65 Definition—Setting up a land trust—Form of

## TABLE OF CONTENTS

	ownership by multiple owners of the beneficial interest
§ 4:66	Setting up a land trust—Power of direction
§ 4:67	—Due-on-sale clause in mortgage
§ 4:68	Land Trustee’s duties
§ 4:69	Trustee’s duties—Exculpation clause in contracts executed by trustee
§ 4:70	Right of third party to rely on documents executed by trustee
§ 4:71	Right of beneficiary to execute contracts as beneficiary
§ 4:72	Right of beneficiary to execute real estate sale contract
§ 4:73	Equitable conversion does not apply to installment contract executed by beneficiary
§ 4:74	Right of beneficiary to act instead of the land trustee
§ 4:75	—Beneficiary has no authority to execute contracts as agent of the trust, but may execute contracts as beneficiary with power of direction
§ 4:76	Proper parties in a dispute as to ownership of beneficial interest
§ 4:77	Collateral assignment of the beneficial interest
§ 4:78	—Foreclosure under a collateral assignment of the beneficial interest
§ 4:79	Assignments of beneficial interest—Recording and transfer tax requirements
§ 4:80	—Transfers of beneficial interest subject to collateral assignment
§ 4:81	—Statute of Frauds
§ 4:82	—Effect of assignment on due-on-sale clause
§ 4:83	—Due on sale clause—Effect of Garn-St. Germain
§ 4:84	Fees of trustee
§ 4:85	Homestead
§ 4:86	Real estate taxes
§ 4:87	Title insurance
§ 4:88	Installment contract for sale
§ 4:89	Terminating a land trust
§ 4:90	—Land trust with more than one property
§ 4:91	—Conveyance of property subject to collateral assignment
§ 4:92	Practical aspects

## IV. FORMS

§ 4:93	Surviving tenant affidavit
§ 4:94	Land trust—Letter of direction
§ 4:95	—Warranty deed in trust
§ 4:96	Land trust agreement

- § 4:97 Frequently used provisions in describing beneficial interest holders
- § 4:98 Land trust—Assignment of beneficial interest
- § 4:99 —Direction to convey

## **CHAPTER 5. CONTRACT PROVISIONS**

### **I. ATTORNEY DRAFTING/REVIEWING CONTRACT FOR SALE OF REAL PROPERTY**

- § 5:1 Preparing the contract
- § 5:2 Importance of contract review
- § 5:3 How to review a contract
- § 5:4 Out-of-state property
- § 5:5 Electronic contract

### **II. COMMON LAW PRINCIPLES**

- § 5:6 Common law principles
- § 5:7 Incorporation of existing law in contracts
- § 5:8 Parol evidence rule
- § 5:9 —Four corners rule
- § 5:10 —Exceptions to parol evidence rule
- § 5:11 —Scope of parol evidence rule

### **III. CONTRACT PROVISIONS**

- § 5:12 Date of contract
- § 5:13 Blank spaces in contract form
- § 5:14 Writing on contract after signature
- § 5:15 What constitutes a signature
- § 5:16 Title of contract
- § 5:17 —Formal counteroffer
- § 5:18 —Identification of document as offer
- § 5:19 —Time limit on offer
- § 5:20 Recitals
- § 5:21 Time and manner of acceptance
- § 5:22 —Deadline
- § 5:23 — — —Practical considerations as to time
- § 5:24 — — —Offeree's considerations as to timing
- § 5:25 — — —Offeror's considerations as to timing
- § 5:26 — — —Advising other party
- § 5:27 —Manner of acceptance
- § 5:28 —Manner of delivery of acceptance
- § 5:29 —Manifestation of acceptance
- § 5:30 —Compliance of acceptance with terms of offer

## TABLE OF CONTENTS

§ 5:31	—Oral acceptance
§ 5:32	—Counteroffers
§ 5:33	—Effect of contract formation
§ 5:34	Matters to which acceptance is subject
§ 5:35	—Acceptance subject to attorney approval
§ 5:36	Offer and acceptance
§ 5:37	Names of seller and purchaser
§ 5:38	—Ascertaining proper sellers and purchasers
§ 5:39	—“Owner of Record”
§ 5:40	— —Inquiries in connection with ownership
§ 5:41	—Signature by agent
§ 5:42	—Husband and wife
§ 5:43	—Spousal rights
§ 5:44	— —Homestead rights
§ 5:45	— —Other marital rights
§ 5:46	— — —Representation as to marital status of seller
§ 5:47	—Joint owners
§ 5:48	—Land trust
§ 5:49	—Trust other than a land trust
§ 5:50	—When owner did not sign contract
§ 5:51	—When purported seller does not own property
§ 5:52	—Unformed legal entity
§ 5:53	—Minor or incompetent
§ 5:54	— —Right of guardian to convey property
§ 5:55	— —Minor’s contract
§ 5:56	— —Contract of incompetent
§ 5:57	— —Contract contingent upon court approval
§ 5:58	— — —Certified copy of order to be furnished
§ 5:59	— —Limitation as to guardian’s liability
§ 5:60	— —Representation as to majority
§ 5:61	—Representation as to selling signatories
§ 5:62	—Deceased title holder
§ 5:63	— —Joint tenancy or tenant by the entirety
§ 5:64	— —Bond in lieu of probate
§ 5:65	— —Who owns real property during probate?
§ 5:66	— —Independent administration
§ 5:67	— —Intestate
§ 5:68	— —Supervised administration and no power to sell
§ 5:69	— —Sale to heirs/legatees
§ 5:70	— —Right of heir or legatee to disclaim property
§ 5:71	— —Title company requirements
§ 5:72	— —Other requirements in independent administration
§ 5:73	— —Out-of-state real estate

- § 5:74 — —Land trusts
- § 5:75 —Nominee of buyer
- § 5:76 —Form in which buyer is to take title
- § 5:77 — —Lender involvement in buyer's form of title
- § 5:78 Identification of real property
- § 5:79 —Property index number (PIN)
- § 5:80 —Street address
- § 5:81 —Condominiums, cooperatives and town homes
- § 5:82 —Size of property
- § 5:83 — —Survey
- § 5:84 — —Action for fraud
- § 5:85 —Designation of party to supply legal description
- § 5:86 —Zoning
- § 5:87 Chicago zoning certificate requirement
- § 5:88 Purchase price
- § 5:89 —Earnest money
- § 5:90 — —Form of earnest money
- § 5:91 Earnest money—Requirement for earnest money
- § 5:92 —Amount of earnest money
- § 5:93 Earnest money and down payment—Amount of  
earnest money—Holder of earnest money
- § 5:94 —Earnest money escrow account
- § 5:95 — —Attorney as escrowee
- § 5:96 — — —Setting up the escrow
- § 5:97 — —Uncollected funds
- § 5:98 — —Interest on escrow funds
- § 5:99 — —Timing of deposit of escrow money
- § 5:100 — —Sales agent or broker as seller or buyer
- § 5:101 — —Sale by owner
- § 5:102 —Seller's acceptance of earnest money
- § 5:103 —Refunding earnest money to buyer
- § 5:104 Purchase price—Balance of purchase price
- § 5:105 — —"All cash deal"
- § 5:106 — —Certified funds
- § 5:107 — — —Currency reporting requirements
- § 5:108 — —Mortgage assumption
- § 5:109 — —Contract for deed
- § 5:110 — —Sale at loss to seller
- § 5:111 Requirements as to deed and title
- § 5:112 —Conveyances Act
- § 5:113 —Types of deed
- § 5:114 — —Warranty deed
- § 5:115 — —Special warranty deed
- § 5:116 — —Quitclaim deed



## TABLE OF CONTENTS

§ 5:117	— — —Acceptable types of quitclaim deeds
§ 5:118	—Affidavit of title
§ 5:119	—Evidence of title
§ 5:120	— — —Reference to Torrens System
§ 5:121	— — —Deregistration
§ 5:122	— — —Title insurance
§ 5:123	— — —Exceptions to title
§ 5:124	— — —Normally acceptable “permitted exceptions”
§ 5:125	— — —Necessary “permitted exceptions” that require review
§ 5:126	— — —Restrictive covenants
§ 5:127	— — —Seller’s attorney’s considerations
§ 5:128	— — —Buyer’s attorney’s considerations
§ 5:129	—Selection of title company
§ 5:130	— — —Specification by lender
§ 5:131	—Abstract
§ 5:132	—Recordable title
§ 5:133	—Constructive notice of unrecorded interest
§ 5:134	Condominiums
§ 5:135	Closing
§ 5:136	—Within a “reasonable time”
§ 5:137	—Amount of time needed for closing
§ 5:138	—Amount of time needed—Buyer’s time constraints
§ 5:139	— — —Seller’s time constraints
§ 5:140	— — —Newly constructed residence of seller
§ 5:141	— — —Scheduling with title company for the closing
§ 5:142	— — —Condominiums
§ 5:143	— — —When closing date is essential
§ 5:144	—Place and method of closing
§ 5:145	— — —Place of closing
§ 5:146	— — —Closing agent
§ 5:147	— — —Services of closing agent
§ 5:148	— — —Who serves as closing agent
§ 5:149	— — —“All cash deal”
§ 5:150	— — —Seriatim closings
§ 5:151	“Time is of the essence” clause
§ 5:152	—Computation of time
§ 5:153	—Inclusion of “time is of the essence” clause
§ 5:154	—Enforcement of clause
§ 5:155	—Waiver
§ 5:156	Possession date
§ 5:157	—Possession defined
§ 5:158	—Possession “at closing” compared to possession on a specified date

- § 5:159 — Possession escrow for seller remaining in possession
- § 5:160 — — Mechanics of possession escrow
- § 5:161 — — Escrow agent for possession escrow
- § 5:162 — — — Indemnification of escrow agent
- § 5:163 — — — Escrow instructions for the possession escrow agent
- § 5:164 — Payment when seller to remain in possession for limited period
- § 5:165 — — Determination of time covered by possession escrow
- § 5:166 — Amount of per diem to be paid by seller
- § 5:167 — — Determination of the amount per day to be paid for seller's possession
- § 5:168 — — Not to be construed as landlord-tenant relationship
- § 5:169 — — Post-closing inspection
- § 5:170 — — Damage to premises during seller's possession after closing
- § 5:171 — Early possession by buyer
- § 5:172 Prorations
- § 5:173 — Real estate tax proration
- § 5:174 — Real estate taxes—Usual proration method
- § 5:175 — — Reproration
- § 5:176 — — Prorating based on current assessment and last known equalization factor and tax rate
- § 5:177 — — Homeowner's and senior citizen's allowances and tax freeze
- § 5:178 — — Selecting method of proration
- § 5:179 — Other prorations
- § 5:180 — Errors in proration
- § 5:181 Personal property
- § 5:182 — Fixtures
- § 5:183 — — Trade fixtures
- § 5:184 — Included in contract to sell
- § 5:185 — Factors to consider
- § 5:186 — Removability
- § 5:187 — Disputed fixtures
- § 5:188 — Listing of personal property in contract
- § 5:189 — — Seller's considerations
- § 5:190 — — Buyer's considerations
- § 5:191 — Separate price for personal property
- § 5:192 — Other personal property
- § 5:193 — Bill of sale
- § 5:194 — — Liens

## TABLE OF CONTENTS

§ 5:195	— — —Seller’s considerations
§ 5:196	— — —Buyer’s considerations
§ 5:197	— — —UCC search
§ 5:198	—Condition of personal property
§ 5:199	— —Definition of good working condition
§ 5:200	— —Contract silent as to condition
§ 5:201	— —Term “as is” used
§ 5:202	— —Representation of “working order”
§ 5:203	— —Purchase of third-party warranty as to personal property
§ 5:204	— —Removal of debris
§ 5:205	Survey
§ 5:206	—Contract provision
§ 5:207	Notice provisions
§ 5:208	—Transmission, mailing or receipt
§ 5:209	— —Mailbox rule
§ 5:210	—Mailbox rule—Certified mail
§ 5:211	—Fax or e-mail transmission
§ 5:212	—Futile notices
§ 5:213	Condition of premises
§ 5:214	“As is” provision

## IV. CONTINGENCIES AND RIDERS

§ 5:215	Contingencies and riders
§ 5:216	Attorney approval clause
§ 5:217	—Effect of attorney notice of disapproval of contract
§ 5:218	—Effect of attorney notice of modification
§ 5:219	—Good faith requirement
§ 5:220	—Deadline for attorney approval or modification
§ 5:221	—Deadline—Manner of notification of attorney modification
§ 5:222	— —Contents of notice of attorney modification
§ 5:223	—Identifying attorney for other side
§ 5:224	—Contact with client
§ 5:225	— —Unfavorable terms
§ 5:226	— —Oral understandings
§ 5:227	—Contact with client’s real estate agent
§ 5:228	—Contact with other agent or party
§ 5:229	—Effect of attorney’s request for modification
§ 5:230	—Out of state property
§ 5:231	Mortgage commitment contingency
§ 5:232	—Effect of mortgage contingency clause
§ 5:233	—Waiver
§ 5:234	—Notice under mortgage contingency clause

- § 5:235 —Option for seller to secure financing
- § 5:236 —Purchase money financing by seller
- § 5:237 —Buyer to apply for loan
- § 5:238 —Notice of inability to secure financing
- § 5:239 —Pre-qualification of buyer
- § 5:240 Inspection rider
- § 5:241 —Standards for inspection
- § 5:242 —Inspection issues
- § 5:243 —Radon
- § 5:244 —Radon testing
- § 5:245 —Mold and mildew
- § 5:246 —Other testing
- § 5:247 —Procedure upon unsatisfactory inspection report
- § 5:248 —Pre-closing inspection
- § 5:249 Contract contingent on sale of buyer's existing home
- § 5:250 —Issues to consider
- § 5:251 —Seller's protection
- § 5:252 — —Requiring a broker listing
- § 5:253 — —Time for sale by buyer
- § 5:254 — —“Kick-out” clause
- § 5:255 Zoning contingency
- § 5:256 —Nonconforming use
- § 5:257 Building Code Compliance
- § 5:258 —Review in light of planned use
- § 5:259 —Violations
- § 5:260 — —Failure to comply with the Dwelling Unit  
Installment Contract Act
- § 5:261 — —Waiver and estoppel
- § 5:262 — —Reformation or amendment
- § 5:263 — —Laches
- § 5:264 — —Damages
- § 5:265 Compliance with health codes
- § 5:266 —FHA and VA loans
- § 5:267 Survival of warranties
- § 5:268 Other clauses and contingencies
- § 5:269 Provisions relating to broker
- § 5:270 —Commission obligation if sale does not close
- § 5:271 —Payment of commission
- § 5:272 —Warranty as to other brokers
- § 5:273 Provisions relating to default
- § 5:274 Seller's attorney to furnish documents in advance
- § 5:275 Risk of loss between contract and closing
- § 5:276 —Risk of loss before closing
- § 5:277 —Risk of loss after transfer of title or possession

## TABLE OF CONTENTS

- § 5:278 —Form contracts regarding risk of loss
- § 5:279 Buyer to have reasonable access to premises
- § 5:280 Email or faxed documents
- § 5:281 —Use of rider
- § 5:282 —Title companies and commercial lenders
- § 5:283 Exculpatory clauses
- § 5:284 Other statutory requirements which accompany the contract
- § 5:285 —Residential Real Property Disclosure Act
- § 5:286 —Lead based paint disclosure requirement
- § 5:287 —Disclosure of insulation
- § 5:288 Other statutory requirements—Chicago energy cost disclosure requirement

## V. STATUTE OF FRAUDS

- § 5:289 Statute of Frauds—Liability under contract
- § 5:290 —Issues to be considered
- § 5:291 —Interests covered by the Statute of Frauds
- § 5:292 — —Joint venture or partnership interests
- § 5:293 —Beneficiary of land trust
- § 5:294 Statute of Frauds Compliance—Contract to sell real property
- § 5:295 — —Description of property
- § 5:296 — —Modification of contracts
- § 5:297 — —Escrow agreement as compliance
- § 5:298 —Multiple documents

## VI. ENFORCEMENT OF ORAL CONTRACT

- § 5:299 Enforcement of oral contract for sale of real property
- § 5:300 —Full performance by one party
- § 5:301 —Partial performance
- § 5:302 — —Examples of partial performance
- § 5:303 —Estoppel
- § 5:304 —Constructive trust

## VII. OPTION CONTRACTS

- § 5:305 Option contracts
- § 5:306 —Requirements for option
- § 5:307 — —Consideration
- § 5:308 —Exercise of option
- § 5:309 — —Form of notice to exercise options
- § 5:310 —Effect of exercise
- § 5:311 —Lease with option to buy

- § 5:312 —Lease with option to buy or extend lease—  
Consideration
- § 5:313 — —Strict compliance with option terms required
- § 5:314 —Lease with option to buy—Termination of lease

## **VIII. DEATH OF PARTY TO CONTRACT**

- § 5:315 Death while property is under contract
- § 5:316 —Contract to purchase
- § 5:317 —Contract to sell
- § 5:318 —Devise in will
- § 5:319 —Contingency clause as to death
- § 5:320 —Real Property Transfer on Death Instrument Act

## **IX. RIGHT OF FIRST REFUSAL**

- § 5:321 Right of first refusal
- § 5:322 —Different from option
- § 5:323 —Cancellation of third party offer
- § 5:324 —Notice
- § 5:325 —Notice requirements

## **X. AUCTIONS**

- § 5:326 Advance preparation
- § 5:327 Agency of auctioneer

## **XI. FORMS**

- § 5:328 Representation of sellers' ownership
- § 5:329 Signatures of all title holders required
- § 5:330 Certificate of trust
- § 5:331 Spouse of seller—Format for signature to sale  
contract to cover spouse's rights only
- § 5:332 Beneficiaries of land trustee seller—Beneficiaries'  
undertakings in sales contract
- § 5:333 Minor seller—Sale contract subject to court approval  
of execution of contract by representative of a minor  
seller
- § 5:334 Incompetent seller—Sales contract subject to court  
approval of execution of contract by representative  
of an incompetent seller
- § 5:335 Exculpatory clause covering execution of contract by  
minor's representative
- § 5:336 Exculpatory clause covering execution of contract by  
incompetent's representative
- § 5:337 Representations that seller is not a minor

## TABLE OF CONTENTS

§ 5:338	Sample disclaimer language for earnest money check
§ 5:339	Escrow agreement for earnest money
§ 5:340	Affidavit of death of joint tenant
§ 5:341	Requirements for acceptance of personal undertaking in lieu of probate
§ 5:342	Notice of probate
§ 5:343	Disclaimer of interest in property of decedent
§ 5:344	Exculpatory clause covering execution of contract by executor or administrator
§ 5:345	Executor's deed
§ 5:346	Release of estate's interest in real estate
§ 5:347	Naming of purchaser's nominee
§ 5:348	Nominee and trust agreement
§ 5:349	Earnest money by check
§ 5:350	Accepting title subject to existing financing
§ 5:351	—Consent of mortgagee required
§ 5:352	—Purchaser's right to cancel if mortgagee increases interest on transfer
§ 5:353	Purchaser's indemnity of seller if seller remains liable on mortgage and purchaser accepts title subject to existing financing
§ 5:354	Matters to which title is subject
§ 5:355	Limitation on general reference in contract to covenants, conditions and restrictions of record to which title is subject
§ 5:356	Requirement for Chicago certificate of zoning compliance
§ 5:357	Purchaser's right to review declaration of condominium and association bylaws
§ 5:358	Representations of seller regarding assessments
§ 5:359	Acknowledgments and waivers of board of managers
§ 5:360	Condominium insurance
§ 5:361	Special title exceptions for condominiums
§ 5:362	Delivery of possession
§ 5:363	Seller's payments for agreed use and occupancy after closing
§ 5:364	Escrow to guarantee delivery of possession by seller
§ 5:365	Seller's payments for delayed delivery of possession beyond agreed date
§ 5:366	Prorations and adjustments
§ 5:367	Escrow to cover prorations of real estate taxes
§ 5:368	Seller's representation of condition of personal property
§ 5:369	Personal property—Seller's warranty of title and bill of sale

- § 5:370 —Assignment of manufacturer’s warranties
- § 5:371 Survey requirement
- § 5:372 Description of property: Certified legal description  
order form
- § 5:373 Notices
- § 5:374 Mortgage contingency clause
- § 5:375 Mortgage contingency clause covering variable  
payment schedule
- § 5:376 Mortgage contingency clause covering variable  
interest
- § 5:377 Notice of failure to obtain mortgage pursuant to  
mortgage contingency clause
- § 5:378 —Request for extension of time
- § 5:379 Notice of inability to satisfy contingency and/or  
Mutual Cancellation Agreement
- § 5:380 Inspection of property
- § 5:381 Inspection clause for inclusion in contract
- § 5:382 Termite inspection
- § 5:383 Mold Disclosure
- § 5:384 Sample contract contingency language covering lead  
disclosure
- § 5:385 Water and septic system test
- § 5:386 Soil test
- § 5:387 Future sale of other property by purchaser
- § 5:388 Future refinancing of other property of purchaser
- § 5:389 Purchaser’s right of first refusal as to seller’s  
alternative sale offer prior to fulfillment of  
contingency of future sale or refinancing of other  
property by purchaser
- § 5:390 Right of seller to cancel if another offer is received  
prior to sale or refinancing of other property by  
purchaser
- § 5:391 Closing of pending sale of purchaser’s other property
- § 5:392 Contract representations—Building code  
representations
- § 5:393 Survival of representations and warranties
- § 5:394 Seller’s warranties or representations
- § 5:395 Purchaser’s agreements and representations
- § 5:396 Time of making warranties and representation
- § 5:397 Broker—Format for signature to sale contract
- § 5:398 Purchaser’s default—Seller reserves right to hold  
purchaser liable for damages
- § 5:399 —Earnest money as liquidated damages
- § 5:400 Seller’s default
- § 5:401 Material damage to the property prior to closing



## TABLE OF CONTENTS

- § 5:402 Sample language disclaiming intent to form contract
- § 5:403 Sample option contract
- § 5:404 Memorandum of option agreement
- § 5:405 Right of First Refusal Agreement

## CHAPTER 6. NEW CONSTRUCTION

### I. TYPES OF NEW CONSTRUCTION

- § 6:1 New construction issues
- § 6:2 Electric vehicle requirements
- § 6:3 Types of new construction—In general
- § 6:4 Custom-built home
  - Acquiring the lot
- § 6:6 —Acquiring the lot from an independent source
- § 6:7 —Acquiring the lot from the contractor
- § 6:8 —Risks of custom building a home
- § 6:9 —Design defects
- § 6:10 —Construction defects
- § 6:11 —Financial difficulties of builder
- § 6:12 —Cost overruns
- § 6:13 —Timing of completion
- § 6:14 —Supervision by owner
- § 6:15 —Liens
- § 6:16 Homes built “on spec”
- § 6:17 Pre-construction of semi-custom home
  - Floor plans
  - Upgrades
- § 6:20 —Types of upgrades
- § 6:21 —Costs of upgrades
- § 6:22 —Downgrades
- § 6:23 —Pre-construction risks
- § 6:24 Variations or substitutions in construction

### II. BUYER’S PRE-CONTRACT INVESTIGATION

- § 6:25 Architect and builder
- § 6:26 Oral representations of sales person
- § 6:27 Municipal matters
  - Zoning
  - Schools
  - Security
- § 6:31 Condominium, cooperative and townhouse developments
- § 6:32 Planned development

### III. NEW CONSTRUCTION CONTRACT

- § 6:33 Contract for custom built home
- § 6:34 Date of contract
- § 6:35 Contract for custom built home—Documents
- § 6:36 — —Definitions
- § 6:37 — —Owner's responsibility
- § 6:38 — —Contractor's responsibilities
- § 6:39 — —Architect's role
- § 6:40 — —Dispute resolution
- § 6:41 — — —Claims
- § 6:42 — — —Consequential damages
- § 6:43 — — —Time limit on claims
- § 6:44 — — —Performance to continue
- § 6:45 — — —Concealed or unknown conditions
- § 6:46 — — —Claims for additional cost
- § 6:47 — —Changes in the work
- § 6:48 — — —Change Order compared to a Request for Change
- § 6:49 — — —Execution of Request for Change
- § 6:50 — — —Minor changes
- § 6:51 — —Time
- § 6:52 — —Payment by owner
- § 6:53 — — —Application for payment
- § 6:54 — — —Concept of progress payments
- § 6:55 — — —Changes in the work
- § 6:56 — — —Materials and supplies
- § 6:57 — — —Architect's decision
- § 6:58 — — —Owner's payment
- § 6:59 — —Substantial completion
- § 6:60 — — —Punch list
- § 6:61 — — —Occupancy by owner
- § 6:62 — — —Warranties
- § 6:63 Waiver of warranties and implied warranty of habitability
- § 6:64 Contract for custom built home—Documents—Substantial completion—Inspection
- § 6:65 — —Final payment
- § 6:66 — — —Accompanying documents
- § 6:67 — — —Contractors' waiver of claims
- § 6:68 — — —Owner's claims
- § 6:69 — —Safety precautions
- § 6:70 — —Insurance
- § 6:71 — — —Contractor's insurance

## TABLE OF CONTENTS

§ 6:72	— — —Project Management Protective Liability Insurance (“PMPL”)
§ 6:73	— — —Owner’s insurance
§ 6:74	— — —Contractor’s performance bond
§ 6:75	— — —Correction and completion of the work
§ 6:76	— — —Correction of the work—Correction or completion by owner
§ 6:77	— — —Termination or suspension of contract
§ 6:78	— — —Work stoppage and termination by contractor
§ 6:79	— — —Contractor’s right to payment after work stoppage
§ 6:80	— — —Payment stoppage and termination by owner for cause
§ 6:81	— — —Owner’s rights on termination of the contract
§ 6:82	—Attorney review of contract for new construction
§ 6:83	— — —Plans, drawings and specifications
§ 6:84	— — —Responsibility for defects
§ 6:85	— — —Unusual physical conditions on site
§ 6:86	— — —Verification by contractor of location of utilities
§ 6:87	— — —Owner’s designation or approval of subcontractors
§ 6:88	— — —Contract warranties
§ 6:89	— — —Contractor’s insurance
§ 6:90	— — —Bonding
§ 6:91	— — —Use of bank or title company as escrowee for progress payments
§ 6:92	— — —Assurance of sufficient funds for completion
§ 6:93	— — —Certificate of occupancy
§ 6:94	Contract for semi-custom home
§ 6:95	—Negotiability of terms
§ 6:96	—Earnest money, down payment and payment for “extras”
§ 6:97	Construction contract provisions—Payment for extras
§ 6:98	—Forfeiture of cost of extras in case of buyer default
§ 6:99	—Delay damages
§ 6:100	—Real estate taxes
§ 6:101	— — —Proration
§ 6:102	—Contingencies
§ 6:103	—Specifications and substitutions
§ 6:104	—No oral representations
§ 6:105	— — —Four corners rule
§ 6:106	—Pre-closing walk through and punchlist
§ 6:107	—Multiple corrections
§ 6:108	—Closing date
§ 6:109	—Buyer’s right to cancel or assign the contract

- § 6:110 —Warranties
- § 6:111 — —Exclusions
- § 6:112 — —Warranty of habitability
- § 6:113 — — —Disclaimer
- § 6:114 — —Time period of warranty
- § 6:115 —Indemnity provisions
- § 6:116 Remedies after closing

#### **IV. NEW CONSTRUCTION FINANCING**

- § 6:117 Custom built home
- § 6:118 —Financing terms
- § 6:119 —Permanent financing after construction completed
- § 6:120 —Construction loan process
- § 6:121 Semi-custom home
- § 6:122 —Reasons for stricter mortgage standards
- § 6:123 — —Multi-unit development
- § 6:124 — —Timing of completion
- § 6:125 — —Quality of work
- § 6:126 —Financing arranged by builder

#### **V. HOME REMODELING**

- § 6:127 Home Repair and Remodeling Act
- § 6:128 —Definition of Contractor
- § 6:129 —Subcontractor excluded from the Act
- § 6:130 —Repairs following damaging weather
- § 6:131 — —Required notice
- § 6:132 —Written contract
- § 6:133 —Arbitration or jury waiver
- § 6:134 —Consumer rights brochure
- § 6:135 —Insurance requirements
- § 6:136 —Enforcement
- § 6:137 — —Contractor's right to recover on oral contract
- § 6:138 —Attorney's fees
- § 6:139 Adjacent Landowner Excavation Protection Act
- § 6:140 —Duties of landowners under the Act
- § 6:141 —Damages under the Act
- § 6:142 Contractor Prompt Payment Act
- § 6:143 —Owner obligation to pay contractor
- § 6:144 —Contractor obligation to pay subcontractor
- § 6:145 —Damages

#### **VI. FORMS**

- § 6:146 Construction contract

## TABLE OF CONTENTS

- § 6:147 Contract provision making contract subject to approval of recorded documents affecting use of property
- § 6:148 Contract provision for waiver of implied warranty of habitability
- § 6:149 Contractor's statement
- § 6:150 General contractor's sworn statement
- § 6:151 Partial waiver of lien
- § 6:152 Full waiver of lien

## CHAPTER 7. MORTGAGE FINANCING

### I. INSTITUTIONAL FINANCING

- § 7:1 Overview of mortgage market
- § 7:2 The "secondary market" for mortgage loans
- § 7:3 "Fannie Mae," "Freddie Mac," and "Ginnie Mae"
- § 7:4 Wholesale interest rates and lender's "mark up"
- § 7:5 "Yield spread premium"
- § 7:6 Nonconforming loans
- § 7:7 Insurance and guarantee programs for lenders
- § 7:8 Insurance requirements for borrowers under federally insured mortgages
- § 7:9 —Common law liability of lender or determiner

### II. APPLYING FOR A MORTGAGE LOAN

- § 7:10 Attorney's role
- § 7:11 Time to obtain financing
- § 7:12 Traps for borrowers
- § 7:13 Hidden fees
- § 7:14 Overage
- § 7:15 Lender's requirement of obtaining title through specific company is unlawful
- § 7:16 Underwriting standards
- § 7:17 Fair Credit Reporting Act
- § 7:18 Predatory lending database
- § 7:19 —Exempt entities
- § 7:20 Consumer credit scores
- § 7:21 Discrimination in lending—Federal provisions
- § 7:22 —Illinois provisions
- § 7:23 Mortgage as investment—Disclosure as to resale of mortgage
- § 7:24 Loan servicing
- § 7:25 —Problems with transfers
- § 7:26 Private mortgage insurance

- § 7:27 Private insurance—Mandatory disclosures
- § 7:28 Loan modifications

### III. TYPES OF MORTGAGES

- § 7:29 Types of mortgages
- § 7:30 —Conventional
- § 7:31 —FHA loans
- § 7:32 —VA loans
- § 7:33 —Adjustable Rate Mortgage (ARM)
- § 7:34 — —Features of an ARM
- § 7:35 — —Reasons for popularity
- § 7:36 — — —Complexity of calculations
- § 7:37 —Negative amortization mortgage
- § 7:38 —Reverse mortgages
- § 7:39 —Convertible fixed-rate mortgage
- § 7:40 —Growing equity mortgage (GEM)
- § 7:41 —Graduated payment mortgage (GPM)
- § 7:42 —Balloon payment loans
- § 7:43 —Construction loans
- § 7:44 —Bi-weekly mortgage
- § 7:45 —“Jumbo” loans
- § 7:46 —Equity sharing arrangements
- § 7:47 —Combination with seller’s carryback
- § 7:48 — —Lender’s viewpoint
- § 7:49 — —Typical combinations
- § 7:50 — —Lender requirements
- § 7:51 —Junior mortgage
- § 7:52 —Bridge loan
- § 7:53 —Wraparound mortgage
- § 7:54 —Buydown
- § 7:55 —Payment methods
- § 7:56 — —Interest only loans
- § 7:57 — —Balloon payment
- § 7:58 — —Principal plus interest
- § 7:59 — —Fixed payment ARM

### IV. THE MORTGAGE APPROVAL PROCESS

- § 7:60 Lender’s discretion
- § 7:61 Typical lender requirements
- § 7:62 Mortgage broker
- § 7:63 —Mortgage broker’s fees
- § 7:64 —Mortgage broker’s services
- § 7:65 —Mortgage broker’s relationship to borrower

## TABLE OF CONTENTS

§ 7:66	Amount of time
§ 7:67	Loan application
§ 7:68	—Notification of action
§ 7:69	—Application fee
§ 7:70	— —No refund if borrower turned down for loan
§ 7:71	—Required documents
§ 7:72	— —Regular loan documentation
§ 7:73	— —“No doc” loans
§ 7:74	— — —“Instant” loan approval
§ 7:75	—Electronic loan application procedures
§ 7:76	—Accuracy of application and documents
§ 7:77	— —Supplying tax returns
§ 7:78	Lender’s charges
§ 7:79	—Interest at closing to first full month after closing
§ 7:80	—Points
§ 7:81	—Prepaid points or origination fee
§ 7:82	—Private Mortgage Insurance (PMI)
§ 7:83	— —Payment
§ 7:84	—Private mortgage insurance (PMI)—Mortgage payment insurance for borrower
§ 7:85	—Private Mortgage Insurance (PMI)—Borrower’s right to cancel PMI—Federal provisions
§ 7:86	— — —Illinois provisions
§ 7:87	—Appraisal fee
§ 7:88	—Credit report, document processing fees and other mortgage costs
§ 7:89	Real Estate Settlement Procedures Act
§ 7:90	—General RESPA requirements
§ 7:91	—Requirements—Settlement costs to be disclosed
§ 7:92	—RESPA and the Consumer Fraud Act
§ 7:93	—Qualified written request
§ 7:94	Truth-in-Lending disclosure
§ 7:95	—Finance charge
§ 7:96	—Types of lender fees included in finance charges to compute APR
§ 7:97	—Right of rescission
§ 7:98	Lender’s tax and insurance escrow
§ 7:99	—How escrow accounts work
§ 7:100	—Illinois Mortgage Escrow Account Act
§ 7:101	— —Purposes of act
§ 7:102	— —Fees
§ 7:103	— —No fee for waiver
§ 7:104	—Choice to have interest bearing deposit instead of escrow account
§ 7:105	Loan commitment

- § 7:106 —Attorney review
- § 7:107 —Typical mortgage commitment conditions to be satisfied at closing
- § 7:108 —Additional requirements
- § 7:109 —Duration of commitment
- § 7:110 —Effect of material change in borrower's economic position prior to closing
- § 7:111 Scheduling closing
- § 7:112 —Timeliness of borrower
- § 7:113 —Contact from parties needed
- § 7:114 Consumer complaints

## **V. ASSUMING/TAKING SUBJECT TO EXISTING MORTGAGE**

- § 7:115 Assumption of existing mortgage
- § 7:116 Taking subject to existing mortgage
- § 7:117 Seller's considerations
- § 7:118 Buyer's considerations
- § 7:119 Due-on-sale clause
- § 7:120 —Enforceability
- § 7:121 —Reasonableness
- § 7:122 —Equitable defenses
- § 7:123 —Assignment of beneficial interest in land trust
- § 7:124 —Assignment to land trust
- § 7:125 —Federal law

## **VI. INTEREST, LATE CHARGES AND USURY**

- § 7:126 Residential mortgage loans
- § 7:127 Late charge
- § 7:128 Interest after default
- § 7:129 Determination of interest rate

## **VII. REQUIREMENTS FOR A MORTGAGE**

- § 7:130 Creation of a mortgage
- § 7:131 Mortgage as investment
- § 7:132 Assignment of note and mortgage by mortgagee
- § 7:133 —Recording assignment
- § 7:134 Consideration
- § 7:135 —Nature of underlying obligation
- § 7:136 —No necessity for note
- § 7:137 —Consideration need not be contemporaneous
- § 7:138 Equitable mortgage
- § 7:139 Conveyance



## TABLE OF CONTENTS

§ 7:140	—Requirements
§ 7:141	—Applicability of doctrines
§ 7:142	—Statutory language
§ 7:143	—Release of homestead rights
§ 7:144	—Acknowledgment
§ 7:145	Execution-Permanent Index Number (PIN)
§ 7:146	Notices
§ 7:147	—Proof of delivery
§ 7:148	Prepayment
§ 7:149	—Penalty
§ 7:150	—Purchase money mortgage
§ 7:151	—Form for junior mortgage
§ 7:152	—Subordination
§ 7:153	Recording
§ 7:154	—Removal of personal information
§ 7:155	—Effective date of the mortgage
§ 7:156	—Effect—Subsequent purchasers
§ 7:157	—Priority
§ 7:158	— —Electronic recording
§ 7:159	— —Conventional subrogation
§ 7:160	— — —Requirements
§ 7:161	— — —Refinancing by third party
§ 7:162	— —Equitable subrogation
§ 7:163	—Mechanics' liens
§ 7:164	Priority of purchase money mortgage generally
§ 7:165	—Crop lien
§ 7:166	Priority of mortgage over mechanic liens
§ 7:167	Priority of liens in case of sale of property
§ 7:168	Estoppel letter
§ 7:169	Note
§ 7:170	Trust deed
§ 7:171	—Procedures
§ 7:172	—Advantages
§ 7:173	Release of mortgage
§ 7:174	Mortgage Certificate of Release Act

## VIII. REFINANCING

§ 7:175	Definition
§ 7:176	When to refinance
§ 7:177	—Using existing lender
§ 7:178	—Prepayment costs on existing loan
§ 7:179	Title insurance
§ 7:180	Attorney involvement

## **IX. COLLATERAL ASSIGNMENT OF INTEREST IN A LAND TRUST IN LIEU OF OR IN ADDITION TO A MORTGAGE**

- § 7:181 Beneficial interest
- § 7:182 —Documentation
- § 7:183 —Multiple beneficiaries—Transfer of interest
- § 7:184 —Power of direction
- § 7:185 —Foreclosure of collateral assignment

## **X. REVERSE MORTGAGES**

- § 7:186 Reverse equity mortgage—Features
- § 7:187 —Who qualifies for a reverse mortgage
- § 7:188 —Borrower obligations
- § 7:189 —Balance due if repaid
- § 7:190 —Effect on heirs
- § 7:191 Types of reverse loans
- § 7:192 —Uninsured reverse mortgage
- § 7:193 —FHA-guaranteed reverse mortgage
- § 7:194 — —Requirement of maintaining a homestead in reverse mortgage property
- § 7:195 — —Terms of reverse mortgage loan
- § 7:196 — —Amount of loan
- § 7:197 —Single-purpose reverse mortgage
- § 7:198 Costs of reverse mortgage loans
- § 7:199 Reverse equity mortgage causes of action
- § 7:200 Illinois Reverse Mortgage Act
- § 7:201 Attorney counseling

## **XI. SELLER FINANCING**

- § 7:202 Reasons for seller financing
- § 7:203 Seller financing under mortgage contingency clause
- § 7:204 Sales contract provisions

## **XII. METHODS OF SELLER FINANCING**

- § 7:205 Types of seller financing
- § 7:206 Purchase money mortgage
- § 7:207 —Assignment of rents
- § 7:208 Sale Contract—Equitable conversion
- § 7:209 Articles of agreement—Contract for deed
- § 7:210 Articles of Agreement—Contract for deed—Date of contract
- § 7:211 Articles of agreement—Equitable conversion

## TABLE OF CONTENTS

§ 7:212	—Equitable conversion is enforceable only between the parties
§ 7:213	—Installment sale of beneficial interest in land trust
§ 7:214	—Due-on-sale clause in existing financing
§ 7:215	— —“Due-on-sale” language
§ 7:216	—“Silent assumption”
§ 7:217	—Default of buyer under an installment contract
§ 7:218	—Default of buyer—Reinstatement or redemption
§ 7:219	— —Application of foreclosure law
§ 7:220	— —If foreclosure law does not apply
§ 7:221	— —Defenses to forcible entry and detainer action
§ 7:222	— —Other avenues for relief
§ 7:223	—Acceleration clause
§ 7:224	—Condominiums
§ 7:225	—Recording
§ 7:226	— —Effect of recording
§ 7:227	— —Right to record contract
§ 7:228	—Use of land trust and escrow
§ 7:229	— —Exculpatory provision
§ 7:230	— —Changes in status of seller
§ 7:231	—Statutory requirements
§ 7:232	— —Property in existing land trust
§ 7:233	— —Disclosure of building violations
§ 7:234	— —Security deposits
§ 7:235	— —Internal Revenue Code reporting requirement
§ 7:236	—Buyer’s right to cure default on existing mortgage
§ 7:237	—Place of payment
§ 7:238	— —Payments to a neutral party
§ 7:239	—Interest rate considerations
§ 7:240	—Federal tax considerations regarding interest
§ 7:241	—Late charges
§ 7:242	—Prepayment
§ 7:243	—Risk of loss
§ 7:244	—Insurance
§ 7:245	— —Proof of payment of premiums
§ 7:246	— —Adjustment of loss and distribution of insurance proceeds
§ 7:247	—Tax and insurance escrow
§ 7:248	— —Underlying mortgage tax and insurance escrow
§ 7:249	— —No underlying mortgage tax and insurance escrow requirement
§ 7:250	— —Real estate tax proration
§ 7:251	—Mechanics’ liens
§ 7:252	—Evidence of merchantable title
§ 7:253	—Title insurance

- § 7:254 —Seller's right to increase or refinance mortgage
- § 7:255 — —Maximum amount of mortgage
- § 7:256 — —Monthly payments under new mortgage
- § 7:257 — —Term of mortgage
- § 7:258 — —Subordination of contract to new mortgage
- § 7:259 — — —Buyer's requirements to subordinate to new mortgage
- § 7:260 —Maintenance of property
- § 7:261 — —Notice to buyer
- § 7:262 — —Offset
- § 7:263 —Assignability of contract
- § 7:264 —Contract balance
- § 7:265 —Attorney's fees
- § 7:266 —Recording
- § 7:267 —Memorandum of Agreement
- § 7:268 —Broker's commissions

### **XIII. FORMS**

- § 7:269 Example of uniform residential loan application and accompanying documents given to borrower
- § 7:270 Example of federal Truth-in-Lending disclosure statement
- § 7:271 Example of tax escrow information and Escrow Account Act notice given to borrower
- § 7:272 Example of mortgage loan commitment
- § 7:273 Accepting title subject to existing financing—Consent of mortgagee required
- § 7:274 Contract subject to release of seller if purchaser takes title subject to existing financing
- § 7:275 Purchaser's indemnity of seller if seller remains liable on mortgage and purchaser accepts title subject to existing financing
- § 7:276 Restrictions on purchaser's right to transfer if seller remains liable on existing mortgage or seller gives a purchase money mortgage
- § 7:277 Clause prohibiting assignment by purchaser without consent
- § 7:278 Restriction on purchaser's use of property if seller remains liable on existing mortgage or seller gives a purchase money mortgage
- § 7:279 Accepting title subject to existing financing
- § 7:280 —Seller's representation that consent of mortgagee not required
- § 7:281 —Purchaser's right to cancel if mortgagee increases interest on transfer

## TABLE OF CONTENTS

§ 7:282	Assumption by purchaser of existing financing
§ 7:283	Example of mortgage—Fannie Mae/Freddie Mac form
§ 7:284	Loan prepayable
§ 7:285	Mortgage provision identifying purchase money mortgage
§ 7:286	Mortgage note provision identifying purchase money mortgage
§ 7:287	Mortgage subrogation agreement
§ 7:288	Example of Fannie Mae/Freddie Mac note
§ 7:289	Individual note—Interest semi-annually, one principal payment at maturity
§ 7:290	Assignment of beneficial interest
§ 7:291	Example of release deed
§ 7:292	Partial release (general)—Another form
§ 7:293	Satisfaction of mortgage
§ 7:294	Release of part of mortgaged premises
§ 7:295	Release of judgment lien
§ 7:296	Certificate of release
§ 7:297	Record of payment in lieu of release of mortgage
§ 7:298	Predatory lending database memorandum
§ 7:299	Requirements for recording under Illinois Anti-Predatory Lending Program
§ 7:300	Mortgage contingency clause
§ 7:301	Mortgage contingency clause prepayment
§ 7:302	Mortgage note provision identifying security as a purchase money mortgage
§ 7:303	Mortgage provision identifying mortgage as a purchase money mortgage
§ 7:304	Assignment of rents—Example
§ 7:305	—Land trust
§ 7:306	Articles of agreement (DuPage County Bar Association)
§ 7:307	Articles of agreement escrow (documents retained, title and collection)
§ 7:308	Articles of agreement escrow (documents retained, title, no collection)
§ 7:309	Articles of agreement escrow (documents retained)

## CHAPTER 8. MORTGAGE FORECLOSURE

### I. FEDERAL AND STATE BORROWER SUPPORT

§ 8:1	Federal response to foreclosure crisis
-------	--

### II. OVERVIEW OF MORTGAGE FORECLOSURE LAW

§ 8:2	Overview of Illinois mortgage foreclosure
-------	---

- § 8:3 Mortgage foreclosure—Deed in lieu of foreclosure
- § 8:4 —Federal non-judicial foreclosure
- § 8:5 Mortgage and mechanic lien foreclosure compared

### **III. MORTGAGE FORECLOSURE COMPLAINT**

- § 8:6 Mortgagee or agent as proper party plaintiff
- § 8:7 Assignment of note and mortgage by mortgagee
- § 8:8 Additional lender requirements in beginning foreclosure action
- § 8:9 Necessary parties—Right of junior mortgagee not listed as defendant in foreclosure
- § 8:10 —Deceased mortgagor
- § 8:11 — —Effect of failure to file claim against the estate
- § 8:12 Statute of limitations for action in foreclosure
- § 8:13 Mortgage foreclosure—Mortgagee failure to obtain Residential Mortgage License
- § 8:14 Defense to complaint—Defense of alteration
- § 8:15 Vacating default judgment for lack of standing

### **IV. SHORT SALE**

- § 8:16 Short sale in foreclosure
- § 8:17 —Profit on resale by mortgagee

### **V. REDEMPTION PERIOD**

- § 8:18 Right of junior mortgagee to redeem

### **VI. JUDGMENT OF FORECLOSURE**

- § 8:19 Deficiency judgment
- § 8:20 —Right of mortgagor to credit the profit on a sale by mortgagor/purchaser against a deficiency judgment
- § 8:21 Mortgagee possession rights—Residential cases
- § 8:22 —Non-residential cases
- § 8:23 —Assignment of rents

### **VII. JUDICIAL SALE**

- § 8:24 Mortgagor purchaser at foreclosure sale
- § 8:25 Sale by owner after foreclosure sale and before confirmation of sale

### **VIII. CONFIRMATION OF SALE**

- § 8:26 Confirmation of sale
- § 8:27 Permissible defenses at confirmation of sale

## TABLE OF CONTENTS

- § 8:28 —Unconscionable terms—Sale price
- § 8:29 Distribution of sale proceeds
- § 8:30 —Real estate taxes
- § 8:31 Tenant rights in foreclosed property
- § 8:32 —Chicago ordinance

## **IX. BONA FIDE PURCHASER**

- § 8:33 Bona fide purchaser before confirmation of sale
- § 8:34 Bona fide purchaser after confirmation of sale

## **X. ATTORNEY'S FEES**

- § 8:35 Mortgage foreclosure—Attorneys' fees—Borrower's right to fees
- § 8:36 — —Lender's right to fees

## **XI. ILLINOIS SUPREME COURT RULES ON MORTGAGE FORECLOSURE CASES**

- § 8:37 Mortgage foreclosure—Supreme Court Rules 113 and 114 on Mortgage Foreclosure Cases

# **Volume 15**

## **CHAPTER 9. PREPARING FOR CLOSING**

### **I. ATTORNEY'S PREPARATIONS FOR CLOSING**

- § 9:1 Blueprint for preparations
- § 9:2 Seller's attorney's responsibilities before closing
- § 9:3 Buyer's attorney's responsibilities before closing
- § 9:4 Attorney should avoid dual representation
- § 9:5 Order title insurance
- § 9:6 Order survey
  - § 9:7 —Practical aspects of ordering survey
  - § 9:8 —Time to order survey
  - § 9:9 —Older survey with affidavit of no change
  - § 9:10 —Affidavit of no change in survey—Form
  - § 9:11 —Information needed to give surveyor
- § 9:12 Condominium—Obtain paid assessment letter and waiver of right of first refusal letter
  - § 9:13 —Obtain paid assessment and right of first refusal—Definition
  - § 9:14 —Obtain paid assessment and homeowner's association forms and fees

- § 9:15 Obtain paid assessment—Timing
- § 9:16 Property insurance requirements
- § 9:17 —In the case of a free-standing home
- § 9:18 —For a condominium or townhouse or similar unit  
with a central association
- § 9:19 —General requirements
- § 9:20 Monitor status of contract contingency clauses
- § 9:21 —Sale of existing home contingency
- § 9:22 —Mortgage contingency
- § 9:23 — —Content of request for extension of mortgage  
contingency date
- § 9:24 — —Timing for giving notice of failure to get a  
mortgage
- § 9:25 Obtain release of prior mortgages
- § 9:26 Mortgage Certificate of Release Act
- § 9:27 Obtain payoff letter for existing mortgage
- § 9:28 —Contents of payoff letter
- § 9:29 —Contents—Sufficiency of payoff letter
- § 9:30 —Ordering the payoff letter
- § 9:31 —Accuracy of mortgage payoff payment
- § 9:32 —Mortgage payments
- § 9:33 —Real estate tax and insurance escrow balances
- § 9:34 —Fax payoff letters
- § 9:35 Obtain deed from land trust
- § 9:36 —Ordering a trustee's deed
- § 9:37 Evidence of payment of real estate taxes

## **II. TRANSFER TAXES AND REQUIREMENTS**

- § 9:38 In general—State and county transfer taxes
- § 9:39 —Municipal transfer taxes
- § 9:40 State transfer tax
- § 9:41 —State tax declaration
- § 9:42 — —Contents of declaration
- § 9:43 — —Sales information questions
- § 9:44 — —Financing information questions
- § 9:45 — —Land trust
- § 9:46 —Stamps
- § 9:47 —Value of personal property
- § 9:48 County tax
- § 9:49 —Declaration form
- § 9:50 Exemptions from transfer tax
- § 9:51 —Assignments of beneficial interest
- § 9:52 Municipal transfer taxes and other requirements
- § 9:53 —Constitutionality of municipal transfer taxes



## TABLE OF CONTENTS

§ 9:54	—City of Chicago
§ 9:55	— —Senior citizen refund
§ 9:56	—Chicago requirements—Summary
§ 9:57	— —Transfers included
§ 9:58	— —Chicago transfer tax—Penalty for late purchase of transfer stamps
§ 9:59	— —Exemptions
§ 9:60	— — —Burden of proof
§ 9:61	— —Chicago building registration certificate
§ 9:62	— — —Where to obtain copy of building registration certificate
§ 9:63	— —Chicago water certification
§ 9:64	— — —Form of water certification
§ 9:65	— — —Necessary information
§ 9:66	— — —Where to obtain water certification
§ 9:67	— — —Exempt transfers
§ 9:68	— — —Cost and time to order
§ 9:69	— —Chicago heating cost disclosure
§ 9:70	— —Chicago zoning certification
§ 9:71	— — —Application
§ 9:72	— — —Contest
§ 9:73	— — —Waiver
§ 9:74	—Vacant building ordinances
§ 9:75	— —Chicago Vacant Building Ordinance
§ 9:76	— — —Mortgagee requirements
§ 9:77	— — — —Affirmative defenses
§ 9:78	—Vacant building Ordinances—Chicago Vacant Building Ordinance—Hazardous vacant buildings
§ 9:79	—Vacant building ordinances—Cook County Vacant Building Ordinance
§ 9:80	—Municipal transfer taxes
§ 9:81	—Municipal codes
§ 9:82	—Assignments of beneficial interest in land trust
§ 9:83	—Other municipal requirements
§ 9:84	—Inspection
§ 9:85	—Evanston—Registration of rental residential buildings

## III. SELLER'S ATTORNEY'S DRAFTING RESPONSIBILITIES

§ 9:86	Documents needed
§ 9:87	—Seller-provided mortgage
§ 9:88	When sellers will not attend closing
§ 9:89	—Power of attorney

- § 9:90 —“Pay proceeds” letter
- § 9:91 —Special problems with pre-signature by sellers
- § 9:92 — —Need for signature of principal
- § 9:93 — —Signatures must be notarized
- § 9:94 — —Counterparts
- § 9:95 Forms
- § 9:96 Allowing advance review by buyer’s attorney
- § 9:97 Broker’s fees and earnest money
- § 9:98 Seller’s closing
- § 9:99 —Transmittal of closing statement
- § 9:100 —Difference between seller’s closing statement and the Closing Disclosure
- § 9:101 —Closing Disclosure—Party responsible for preparation
- § 9:102 — —Exemptions
- § 9:103 — —Timing
- § 9:104 — —Confidentiality requirements
- § 9:105 —Information in closing statement
- § 9:106 — —Operative principles
- § 9:107 — —Seller’s settlement
- § 9:108 — —Optional information
- § 9:109 — —Closing statement
- § 9:110 Scheduling the closing
- § 9:111 —Scheduling closing with the title company
- § 9:112 —Scheduling closing with the lender
- § 9:113 —With lender—Attorney contact with lender
- § 9:114 — —Necessity of contact with lender
- § 9:115 — —Lenders’ closing policies
- § 9:116 — — —General policies
- § 9:117 — —Relationship to underwriting
- § 9:118 —Seriatim closings

#### **IV. CHECKLISTS**

- § 9:119 Seller’s time docket and checklist
- § 9:120 Seller’s closing checklist
- § 9:121 Purchaser’s time docket and checklist
- § 9:122 Purchaser’s closing checklist

#### **V. FORMS AND EXAMPLES**

- § 9:123 Example of paid assessment right of first refusal letter
- § 9:124 Condominium /townhome section 22.1 resale disclosure requirements

## TABLE OF CONTENTS

§ 9:125	Request to condominium association for closing documentation
§ 9:126	Example of association questionnaire
§ 9:127	Example of insurance binder for condominium property
§ 9:128	Contract provision covering future sale of other property by purchaser
§ 9:129	Notice of failure to obtain mortgage pursuant to mortgage contingency clause
§ 9:130	Response to buyer's request to delay closing
§ 9:131	Request for possession prior to closing
§ 9:132	Possession and escrow agreement for possession prior to closing
§ 9:133	Buyer's pre-closing possession agreement
§ 9:134	Seller's post-closing possession agreement
§ 9:135	Request for extension of time
§ 9:136	Request for mortgage or lien pay-off statement
§ 9:137	Example of payoff letter
§ 9:138	Direction to convey
§ 9:139	State declaration form and instructions—Form PTAX-203
§ 9:140	PTAX-203-A: Supplemental Form A to the state declaration form and instructions
§ 9:141	PTAX-203-B: Supplemental Form B to the state declaration form and instructions
§ 9:142	PTAX-203-NR: State declaration form for nonrecorded transfers
§ 9:143	State of Illinois transfer tax exemption forms
§ 9:144	Memorandum regarding completion of declaration form
§ 9:145	MyDec Online Real Property Transfer Tax Declaration (website information)
§ 9:146	Memorandum from Cook County Recorder of Deeds entitled "Paper MyDec Forms No Longer Required by the CCRD"
§ 9:147	Allocation of personal property in contract
§ 9:148	Cook County transfer tax declaration form
§ 9:149	Chicago Revenue Procedures Ruling #2 regarding reasonable cause for late payment
§ 9:150	City of Evanston transfer declaration form and instruction sheet
§ 9:151	City of Evanston water billing affidavit
§ 9:152	Village of Skokie real estate transfer tax form and information sheet
§ 9:153	Chicago utilities full payment certificate application form

- § 9:154 Village of Wheeling application for real estate transfer certificate to cover payment of municipal utilities and services
- § 9:155 Chicago certificate of zoning compliance
- § 9:156 Chicago multiple dwelling registration
- § 9:157 Cook County zoning certificate application
- § 9:158 Cook County multi-dwelling unit registration requirements
- § 9:159 Closing statement
- § 9:160 Seller's settlement
- § 9:161 Buyer's settlement
- § 9:162 Insurance and rent schedules to be attached to closing statement
- § 9:163 Sample closing disclosure
- Appendix 9A. Municipal Code of Chicago, Chapter 13-10, Registration of Multiple Dwellings
- Appendix 9B. Summary of Transfer Taxes
- Appendix 9C. Illinois Statutory Provisions Relating to Real Property Transfers

## **CHAPTER 10. DEED, BILL OF SALE, AND AFFIDAVIT OF TITLE**

### **I. ATTORNEY'S DRAFTING RESPONSIBILITIES**

- § 10:1 Required documents
- § 10:2 General considerations
- § 10:3 —Legal requirements
- § 10:4 —Recordability of deed
- § 10:5 —Constructive notice of unrecorded interest
- § 10:6 —Coordination with title insurance company and lender
- § 10:7 — —Additional grantors (sellers)
- § 10:8 — — —Signature of spouse
- § 10:9 — — —Estates, partnerships, corporations, LLC's and trusts
- § 10:10 — —Customary forms

### **II. DRAFTING THE DEED**

- § 10:11 Information and items included in deed
- § 10:12 Interpretation of deed
- § 10:13 Requirements for valid deed—Conveyances Act
- § 10:14 Date of deed
- § 10:15 Types of deeds

## TABLE OF CONTENTS

§ 10:16	—Types of warranties and covenants
§ 10:17	Words of conveyance
§ 10:18	—“Grant”
§ 10:19	—Statutory forms
§ 10:20	Warranty deed
§ 10:21	—Warranties of title
§ 10:22	—Breach of warranty
§ 10:23	— —Buyer’s knowledge of breach
§ 10:24	—After-acquired title
§ 10:25	—Statutory form
§ 10:26	Special warranty deed
§ 10:27	—Statutory form
§ 10:28	—“Grant, bargain and sell”—Implied covenant of good title and quiet enjoyment
§ 10:29	Quitclaim deed
§ 10:30	—Language used
§ 10:31	—Corporate, trustee’s, executor’s deeds
§ 10:32	—Custom as to use of word “quitclaim”
§ 10:33	—If more than one quitclaim deed
§ 10:34	—After-acquired title
§ 10:35	—Statutory form
§ 10:36	Trustee’s deed
§ 10:37	—Signature by land trustee
§ 10:38	Conservator’s deed
§ 10:39	—Title held by minor
§ 10:40	Executor’s deed
§ 10:41	Deed issued under order of court
§ 10:42	Judicial sale
§ 10:43	—Equitable powers
§ 10:44	—Judgment lien
§ 10:45	—Statutory form—Sheriff’s deed
§ 10:46	Tax deed
§ 10:47	—In rem jurisdiction
§ 10:48	—Notice procedures for tax deed
§ 10:49	— —Chain of title—Constructive notice
§ 10:50	— —Constructive notice—Inquiry notice
§ 10:51	—Strict compliance requirement for tax deed
§ 10:52	—Procedures for obtaining tax deed
§ 10:53	—Persons entitled to redeem prior to issuance of tax deed
§ 10:54	—Redemption period prior to issuance of tax deed
§ 10:55	— —Extension of period of redemption
§ 10:56	—Redemption period after petition for tax deed has been filed—Extension of period of redemption
§ 10:57	—Redemption procedures after tax sale

- § 10:58 —Equitable redemption
- § 10:59 —Challenging a tax deed
- § 10:60 —Time limit to take tax deed
- § 10:61 —Prior liens
- § 10:62 —Indemnity fund in tax foreclosure
- § 10:63 —Existing easements and covenants
- § 10:64 Grantor and grantee
- § 10:65 —Variations in name
- § 10:66 —Fictitious or erroneous grantee
- § 10:67 —Conveyance to self
- § 10:68 —Names of grantors (sellers)
- § 10:69 —Marital status of grantor
- § 10:70 — —Civil unions
- § 10:71 —Entity as grantor or grantee
- § 10:72 —Unincorporated association
- § 10:73 —Corporate grantor
- § 10:74 — —Corporate certificate of good standing
- § 10:75 — —Approval by shareholders in corporate sale of  
all or substantially all of its assets
- § 10:76 — —Approval by board of directors for corporate  
sale in ordinary course of business
- § 10:77 — —Language to be used in corporate conveyance
- § 10:78 — —Who should sign corporate deed
- § 10:79 —Partnership grantor
- § 10:80 — —Who should sign partnership deed
- § 10:81 —Deed in trust
- § 10:82 — —Power of trustee
- § 10:83 — —Language to be used in deed in trust
- § 10:84 — —Conveyance from land trust to land trust
- § 10:85 — —Land trust—Contract provision covering  
trustee's power to convey to another trustee
- § 10:86 Consideration not needed
- § 10:87 Extent of estate conveyed
- § 10:88 —Mineral rights
- § 10:89 Description of property
- § 10:90 —Description to use
- § 10:91 Homestead
- § 10:92 —Entitlement to homestead
- § 10:93 —Types of ownership
- § 10:94 — —Inter vivos trust
- § 10:95 Exceptions from homestead exemption
- § 10:96 Homestead—Exemption
- § 10:97 —Not applicable in partition
- § 10:98 —Waiver of homestead rights
- § 10:99 — —Must be acknowledged

## TABLE OF CONTENTS

§ 10:100	— —Language to use if both spouses are grantors
§ 10:101	— —Language to use if only one spouse is grantor
§ 10:102	—Application to mortgages and trust conveyances
§ 10:103	—Effect of non-waiver
§ 10:104	—Where one spouse not owner
§ 10:105	— —Spouse’s “veto power”
§ 10:106	—Loss of homestead rights of spouse
§ 10:107	P.I.N. and common address
§ 10:108	—Requirement of P.I.N
§ 10:109	Exceptions to title
§ 10:110	Exceptions—Language used
§ 10:111	— —Special provisions for condominiums
§ 10:112	— — —Solar energy
§ 10:113	Restrictions
§ 10:114	Signature of grantor
§ 10:115	—Signature of corporate grantor
§ 10:116	—Signature of partnership grantor
§ 10:117	Signature of LLC grantor
§ 10:118	Signature of grantor—Signature by mark
§ 10:119	—Type or print name of grantor
§ 10:120	—Date
§ 10:121	—Seal
§ 10:122	—Witnesses
§ 10:123	Acknowledgment
§ 10:124	—Acknowledgment of signatures before a notary
§ 10:125	—Sample statutory form of acknowledgment— Individual acting in his or her own right
§ 10:126	— —Corporation
§ 10:127	— —Partnership
§ 10:128	— —Individual acting as principal by an attorney in fact
§ 10:129	— —By any public officer, trustee, or personal representative
§ 10:130	— —Conveyances Act form acknowledgment
§ 10:131	— —For person or spouse in military service by any commissioned officer
§ 10:132	—Acknowledgment of signatories in a foreign country
§ 10:133	—Certificate of acknowledgment
§ 10:134	— —Electronic acknowledgments
§ 10:135	—Electronic document certification
§ 10:136	—Electronic notarial certificate—Form
§ 10:137	—Remote and electronic notarization
§ 10:138	—Remote notarization
§ 10:139	— —Establishing the signature is that of the person

- § 10:140 — —Audio-video communication requirements
- § 10:141 —Electronic notary
- § 10:142 — —Residence of notary
- § 10:143 — —Electronic notary process
- § 10:144 —Presumption of validity
- § 10:145 —Proof of execution
- § 10:146 —Presumption of delivery
- § 10:147 —Not proof of mental capacity
- § 10:148 —Mechanics of acknowledgment
- § 10:149 —Effect of no acknowledgment

### III. DELIVERY AND ACCEPTANCE

- § 10:150 Delivery
- § 10:151 —What is delivery
- § 10:152 —Intent
- § 10:153 —Methods of delivery
- § 10:154 — —Manual delivery
- § 10:155 — —Escrow
- § 10:156 —Effect of delivery
- § 10:157 — —Relationship to recording
- § 10:158 —Lost deed
- § 10:159 — —Gift
- § 10:160 Presumption of delivery
- § 10:161 Acceptance
- § 10:162 —Where deed entails obligation
- § 10:163 —Possession of property
- § 10:164 —Presumption of acceptance

### IV. RECORDING REQUIREMENTS

- § 10:165 Non-Cook County
- § 10:166 Cook County
- § 10:167 Necessity that deed be recorded
- § 10:168 —Presumption of validity
- § 10:169 —Timing of recording
- § 10:170 — —Exceptions
- § 10:171 Subrogation
- § 10:172 Necessity that deed be recorded—Timing of  
recording—Exceptions—Conventional or equitable  
subrogation
- § 10:173 —Prohibition against recording void
- § 10:174 Requirements as to format
- § 10:175 —Failure to comply with standardization of forms
- § 10:176 —Standardization not applicable to older documents
- § 10:177 Where to record



## TABLE OF CONTENTS

§ 10:178	—Unorganized county
§ 10:179	Land trust facsimile assignment of beneficial interest
§ 10:180	Land trust facsimile—Preparing the facsimile
§ 10:181	—Recording the facsimile
§ 10:182	Special Cook County requirements
§ 10:183	—“Grantor-grantee statement” in exempt transactions
§ 10:184	—Tax billing information forms (“mapping form”)
§ 10:185	— —Applicability to mortgages and other recordable documents
§ 10:186	— —When tax billing name and address not changed
§ 10:187	Torrens system
§ 10:188	Payment of transfer taxes
§ 10:189	—Exempt transfers
§ 10:190	—Municipal taxes and requirements

## V. BILL OF SALE AND AFFIDAVIT OF TITLE

§ 10:191	Bill of sale
§ 10:192	—Seller’s warranties of title to personal property
§ 10:193	— —Uniform Commercial Code
§ 10:194	—Bulk transfers
§ 10:195	— —What is a bulk transfer
§ 10:196	— —Coordination with tax regulations
§ 10:197	— — —10-day notice to state required
§ 10:198	— — —State timing requirements
§ 10:199	— —Priority of state lien
§ 10:200	— —Illinois Department of Employment Security
§ 10:201	— — —Priority of lien
§ 10:202	—Drafting the bill of sale
§ 10:203	— —Condition of personal property
§ 10:204	— — —Inspection
§ 10:205	— — —Escrow to repair inspected items
§ 10:206	— — —Escrow to repair items which could not be inspected
§ 10:207	— — —Third-party warranty
§ 10:208	Affidavit of title
§ 10:209	—Purposes of affidavit of title
§ 10:210	—ALTA Statement

## VI. PROBLEMATIC TRANSFERS

§ 10:211	Fraudulent conveyances
§ 10:212	—Uniform Fraudulent Transfer Act

- § 10:213 — —Types of fraudulent transfers
- § 10:214 — —Intent to hinder, delay or defraud creditor(s)
- § 10:215 — —Definition of insolvency
- § 10:216 — —Creditor's claim arose before the transfer
- § 10:217 — —Valuation of assets
- § 10:218 — —Contingent assets or liabilities
- § 10:219 — —Applicability to obligations
- § 10:220 — —Penal damages
- § 10:221 —County property fraud alert systems
- § 10:222 —Transfer to tenancy by the entirety
- § 10:223 —Joint tenancy—Fraudulent transfer does not sever joint tenancy
- § 10:224 —Uniform Fraudulent Transfer Act—Remedies available to creditors
- § 10:225 — —Remedies available to creditor—Limitation
- § 10:226 Equitable mortgage
- § 10:227 —Factors taken into account
- § 10:228 —Existence of a debt
- § 10:229 —Clear and convincing evidence
- § 10:230 —Parol evidence
- § 10:231 —Foreclosure and redemption
- § 10:232 Undue influence
- § 10:233 —Confidential relationship
- § 10:234 — —Determination of existence of confidential relationship
- § 10:235 —Power of attorney
- § 10:236 — —Proving transaction was fair
- § 10:237 — —Gift from principal to agent
- § 10:238 Incompetent grantor
- § 10:239 —Determining capacity to convey property
- § 10:240 Forged deed
- § 10:241 Effect of marriage and divorce
- § 10:242 —Explanation on deed
- § 10:243 —Concept of "marital property"
- § 10:244 —Intent to defeat marital rights
- § 10:245 —Dissolution of marriage
- § 10:246 — —Wills
- § 10:247 — —Effect on pre-existing ownership—Court-directed transfer
- § 10:248 — — —Joint tenancy
- § 10:249 — —Effect on mortgage or pre-existent liens
- § 10:250 Parol Evidence Rule
- § 10:251 —Four corners rule
- § 10:252 Statute of Frauds
- § 10:253 Reformation of deed

## TABLE OF CONTENTS

- § 10:254 Resulting trust
- § 10:255 —Burden of proof
- § 10:256 —Presumption of gift between family members
- § 10:257 — —Presumption of gift between spouses
- § 10:258 Vendor's lien
- § 10:259 Prohibited transfer fees

## VII. CHECKLIST

- § 10:260 Items and information in deed
- § 10:261 Recording requirements—Non-Cook County
- § 10:262 —Cook County
- § 10:263 —Chicago

## VIII. FORMS

- § 10:264 Warranty deed—Individual to individual
- § 10:265 —Joint tenancy
- § 10:266 —Tenancy by the entireties
- § 10:267 Special warranty deed
- § 10:268 Quitclaim deed
- § 10:269 Trustee's deed
- § 10:270 Administrator's deed
- § 10:271 Executor's deed
- § 10:272 Guardian's deed
- § 10:273 Judge's deed and affidavit—Dissolution of marriage
- § 10:274 Judge's deed
- § 10:275 Affidavit of grantee to support issuance of judge's deed
- § 10:276 Sheriff's sale information sheet—Kendall County
- § 10:277 Sheriff's deed—Judicial sale
- § 10:278 Sheriff's certificate of sale
- § 10:279 Judicial sale deed
- § 10:280 Corporate resolution authorizing sale
- § 10:281 Contract clause—Provision for deed from corporate seller
- § 10:282 Naming of purchaser's nominee
- § 10:283 Special provision for deed (condominium)
- § 10:284 Special provision for deed regarding tenant's rights in conversion to condominium
- § 10:285 Special provision for description in mortgage (condominium)
- § 10:286 Illinois standardization of forms and Cook county recording requirements of documents to accompany conveyance

- § 10:287 Cook county clerk instructions to correct a  
previously recorded document
- § 10:288 Corrective recording affidavit
- § 10:289 Affidavit for recorder's labeling of signatures as  
copies
- § 10:290 Land trust recording information
- § 10:291 Land trust—Facsimile assignment of beneficial  
interest for recording
- § 10:292 Sample statement by grantor and grantee
- § 10:293 Bill of sale
- § 10:294 Chicago Title Insurance Company Customer News,  
new recording requirements in Cook County and  
sample "Mapping System"
- § 10:295 Bulk transfer notice letter to Dept. of Revenue and  
notice of sale
- § 10:296 City of Chicago ordinance and bulk sales notice form
- § 10:297 Seller's representation of condition of personal  
property
- § 10:298 Personal property—Assignment of manufacturer's  
warranties
- § 10:299 Affidavit of title
- § 10:300 ALTA statement

## **CHAPTER 11. DESCRIPTION AND SURVEY**

### **I. GENERAL APPROACH**

- § 11:1 Real property purchases

### **II. REAL PROPERTY DESCRIPTIONS**

- § 11:2 Purpose
- § 11:3 Description must be definite
- § 11:4 —Agreement between owners to establish borders
- § 11:5 —Mechanic Lien Act
- § 11:6 Legal description
- § 11:7 —Street address
- § 11:8 —City and state
- § 11:9 —Use of term "adjacent"
- § 11:10 Inconsistent descriptions
- § 11:11 Types of descriptions
- § 11:12 —Metes and bounds description
- § 11:13 — —How metes and bounds descriptions work
- § 11:14 — —Monuments
- § 11:15 — —Incorporation by reference not permitted
- § 11:16 — —Reviewing a metes and bounds description

## TABLE OF CONTENTS

- § 11:17 —Rectangular survey system
- § 11:18 — —Basis of rectangular system
- § 11:19 — —Townships
- § 11:20 — —Ranges
- § 11:21 — —Township squares
- § 11:22 — —Sections
- § 11:23 —Lot-and-block system
- § 11:24 — —How the lot-and-block system works
- § 11:25 — —Resubdivision
- § 11:26 Acreage
- § 11:27 Boundaries
- § 11:28 Re-establishing lost boundaries
- § 11:29 —Monuments and field notes
- § 11:30 —Boundary fence beyond property line
- § 11:31 —Fence on boundary line
- § 11:32 —Tree on boundary line
- § 11:33 —Waterfront property
- § 11:34 —Crops
- § 11:35 — —Doctrine of emblements

## III. SURVEYS

- § 11:36 Surveyor
- § 11:37 Contents of survey
- § 11:38 —Requirement of survey
- § 11:39 — —Contract provisions
- § 11:40 —Importance of survey
- § 11:41 Survey standards
- § 11:42 —Contract provisions
- § 11:43 —Types of surveys
- § 11:44 —Plat
- § 11:45 —Perimeter survey
- § 11:46 —Spotted survey
- § 11:47 —Staked survey
- § 11:48 —Survey for purposes of permit
- § 11:49 —ALTA/NSPS land title surveys
- § 11:50 Certification of surveyor
- § 11:51 —Liability for negligence
- § 11:52 —Affidavit of no new improvements
- § 11:53 Reviewing the survey

## IV. DIVISIONS AND CONSOLIDATIONS OF PARCELS

- § 11:54 Statutory purpose

- § 11:55 Terminology
- § 11:56 Plat Act
- § 11:57 —Requirements
- § 11:58 —Annexation by city
- § 11:59 —Statutory dedication of public streets and other public uses
- § 11:60 —Exemptions
- § 11:61 — —Recording
- § 11:62 — —Applicability of exemption
- § 11:63 — —Exemption form
- § 11:64 — —Violation of Plat Act
- § 11:65 —Contract requirements
- § 11:66 Need for survey
- § 11:67 —Statutory requirements
- § 11:68 Conformity with local ordinances
- § 11:69 —Planned development (“PUD”)
- § 11:70 Consolidation of parcels
- § 11:71 New P.I.N (Permanent Index Number)

## **V. STREETS AND ALLEYS**

- § 11:72 Conveyance
- § 11:73 —Use of platted streets and alleys
- § 11:74 Vacated roads and streets
- § 11:75 —Statutory plat
- § 11:76 —Common law plat
- § 11:77 —Unrecorded utility easements

## **VI. FORMS**

- § 11:78 Survey requirement in contract
  - § 11:79 Affidavit of no change
  - § 11:80 Affidavit appended to existing survey
  - § 11:81 Plat Act affidavit—General form
  - § 11:82 —County of Cook
  - § 11:83 —County of Shelby
  - § 11:84 —County of Boone
  - § 11:85 —County of Iroquois
  - § 11:86 Contract provision for closing documentation
  - § 11:87 Lake County form for consolidation or division of property
- Appendix 11A. Land Measurements Map (Showing Acreage and Distances)
- Appendix 11B. Minimum Standards of Practice for Surveys

TABLE OF CONTENTS

## **CHAPTER 12. TITLE AND TITLE INSURANCE**

### **I. EXCEPTIONS TO TITLE**

- § 12:1 General approach
- § 12:2 Definition of term “exception”
- § 12:3 Common exceptions
- § 12:4 Treatment in sales transactions—Title
- § 12:5 Treatment in sales transaction—Finding out about exceptions
- § 12:6 —Common sources of information about exceptions
- § 12:7 Handling title exceptions
- § 12:8 —Contract provisions
- § 12:9 —Prior title insurance over exception
- § 12:10 —Timing

### **II. EASEMENTS AND LICENSES**

- § 12:11 Easements
- § 12:12 —Different from licenses
- § 12:13 —Practical aspects
- § 12:14 —Preparing for closing
- § 12:15 —Creation of easement
- § 12:16 —Does not create ownership interest
- § 12:17 —Notice to purchasers
- § 12:18 — —Chain of title—Constructive notice
- § 12:19 — — —Inquiry notice
- § 12:20 —Ancient Document Rule
- § 12:21 —Easement in gross
- § 12:22 —Easement appurtenant
- § 12:23 — —Dominant and servient estate
- § 12:24 —Continuance of easement appurtenant
- § 12:25 —Run with the land
- § 12:26 —Use by owner of dominant estate
- § 12:27 — —Extension to accommodate additional land
- § 12:28 — —Right to repair or improve
- § 12:29 —Responsibilities of owner of easement
- § 12:30 —Improvement of servient estate
- § 12:31 —Obstruction
- § 12:32 — —Servient owner
- § 12:33 —Common usage by owners of servient and dominant estates
- § 12:34 —Location and modification of easement
- § 12:35 —Location—Floating easement

- § 12:36 —Non-use
- § 12:37 —Termination of an easement by abandonment
- § 12:38 —Termination of easement by merger
- § 12:39 —Revesting title in owner on termination of easement
- § 12:40 —Drainage easement
- § 12:41 — —Rights of owner
- § 12:42 — —Covered drain
- § 12:43 — —Rights of servient owner
- § 12:44 — — —Good husbandry exception
- § 12:45 — — —Damages
- § 12:46 —Drafting
- § 12:47 — —Between the parties
- § 12:48 — —Intent of the parties
- § 12:49 — —“Four corners rule”
- § 12:50 — —Ambiguity
- § 12:51 — —Language
- § 12:52 — — —Grant of “right” in property
- § 12:53 — — —Use of words “convey and warrant”
- § 12:54 — —Limitation to anticipated purpose
- § 12:55 —Mechanic liens
- § 12:56 —Drafting—Limitation to anticipated purpose—  
Easement for access
- § 12:57 — — —Pipelines
- § 12:58 — —Description
- § 12:59 — —Maintenance of easement
- § 12:60 —Easement by implication
- § 12:61 — —Easement based on pre-existing use
- § 12:62 — —Easement by necessity
- § 12:63 — — —Requirements for an easement by necessity
- § 12:64 — — —Continuous use of easement by necessity
- § 12:65 — —Applicability to grant and reservation of easement
- § 12:66 — —Time of determination
- § 12:67 — —Area covered by easement
- § 12:68 —Easement by prescription
- § 12:69 — —Adverse use
- § 12:70 —Acquiescence by servient owner
- § 12:71 —Easement by prescription—Adverse use—Consent of owner
- § 12:72 — —Requirement to show necessity
- § 12:73 —Acquiescence by servient owner—Exclusive use
- § 12:74 — —Continuous use
- § 12:75 — — —Seasonal use
- § 12:76 — —Uninterrupted use



## TABLE OF CONTENTS

§ 12:77	— —Under a claim of right
§ 12:78	— — —Permissive use
§ 12:79	— —For a 20-year period
§ 12:80	— — —Tacking
§ 12:81	— —Use by owner
§ 12:82	— —Maintenance and alterations by dominant owner
§ 12:83	—Easement by estoppel
§ 12:84	—Restrictions arising from general plan of development
§ 12:85	— —Requirements
§ 12:86	— —Omission from deed and plat
§ 12:87	—Intentional interference with an easement—Damages
§ 12:88	— —Balancing equities
§ 12:89	Covenants running with land
§ 12:90	—Original intent of parties
§ 12:91	—Touch and concern land
§ 12:92	—Privity of estate
§ 12:93	—Enforcement
§ 12:94	—Violations of restrictions in the subdivisions
§ 12:95	—Change in character of the area
§ 12:96	—Recording of the restrictive covenant
§ 12:97	—Variance procedure
§ 12:98	Licenses
§ 12:99	—Different from easements
§ 12:100	—Cannot give rise to prescriptive easement
§ 12:101	—Revocation
§ 12:102	— —Methods of revocation
§ 12:103	—Termination of license
§ 12:104	—Oral easement may be license
§ 12:105	—Trespass
§ 12:106	License—Trespass—Right to injunctive relief
§ 12:107	— —Roof encroachment

## III. ENCROACHMENTS

§ 12:108	Definition
§ 12:109	Unintentional encroachments
§ 12:110	Intentional encroachments
§ 12:111	Tree roots and similar issues
§ 12:112	Encroachment onto public street
§ 12:113	Title insurance for encroachment

## IV. PARTY WALLS, COMMON DRIVEWAYS OR COMMON PARKING AREAS

§ 12:114	Common ownership
----------	------------------

- § 12:115 —Party walls
- § 12:116 —Practical aspects
- § 12:117 Seller's considerations
- § 12:118 Buyer's considerations

## **V. ZONING ORDINANCES AND OTHER GOVERNMENTAL RESTRICTIONS**

- § 12:119 Title considerations regarding zoning
- § 12:120 Seller's considerations regarding zoning
- § 12:121 Buyer's considerations regarding zoning
- § 12:122 Buyer's considerations—Seller's representations  
regarding zoning
- § 12:123 —Non-conforming use
- § 12:124 — —equitable estoppel
- § 12:125 —Other governmental restrictions

## **VI. STREETS AND ROADS**

- § 12:126 Public highway
- § 12:127 —Definition of "highway"
- § 12:128 —Statutory dedication
- § 12:129 —Plat Act
- § 12:130 — —Intention
- § 12:131 — —Existence of grantee
- § 12:132 —Acceptance by municipality
- § 12:133 — —Timeliness
- § 12:134 — —Express acceptance
- § 12:135 —Implied acceptance by municipality
- § 12:136 —Termination by adverse possession
- § 12:137 —Effect on mortgage
- § 12:138 —Implied consent of mortgagee
- § 12:139 —Common law dedication
- § 12:140 — —Donative intent
- § 12:141 — —Created by plat reference
- § 12:142 — —Acceptance
- § 12:143 — —Death of owner before acceptance
- § 12:144 — —Easement for owners within subdivision
- § 12:145 —Prescription
- § 12:146 — —Requirements to establish a public way by  
prescription
- § 12:147 — —Maintenance by public authorities
- § 12:148 —Condemnation
- § 12:149 —Abandonment
- § 12:150 — —Estoppel

## TABLE OF CONTENTS

- § 12:151 —Foreclosure
- § 12:152 Rights of owners in platted subdivision to platted roads
- § 12:153 Vacating platted roads by owners of property
- § 12:154 Vacating platted roads by the municipality
- § 12:155 —Ownership of vacated road

## VII. ADVERSE POSSESSION

- § 12:156 Definition
- § 12:157 Presumptions
- § 12:158 Requirements
- § 12:159 Satisfying the requirements
- § 12:160 Start of 20-year period
- § 12:161 Continuous
- § 12:162 —Tacking
- § 12:163 Abandonment
- § 12:164 Hostile or adverse
- § 12:165 —Vacant land in urban area
- § 12:166 Actual possession
- § 12:167 Permissive possession
- § 12:168 Claim by tenant
- § 12:169 Open, notorious and exclusive
- § 12:170 —Knowledge by community
- § 12:171 —Exclusive
- § 12:172 Claim of title inconsistent with true owner
- § 12:173 Boundaries
- § 12:174 —Mistaken boundary cases
- § 12:175 Corporate officer claim to corporate property
- § 12:176 Adverse possession against government
- § 12:177 —Exception
- § 12:178 Adverse possession by payment of taxes and with color of title
- § 12:179 Good faith requirement for adverse possession under color of title
- § 12:180 Adverse possession by payment of taxes and with color of title—Document required for claim of adverse possession under color of title
- § 12:181 —Actual possession
- § 12:182 —Payment of property taxes
- § 12:183 —Good faith
- § 12:184 —Color of title distinguished from claim of title
- § 12:185 Title insurance for property claimed by adverse possession

## **VIII. REAL PROPERTY TRANSFER ON DEATH INSTRUMENT ACT**

- § 12:186 Real Property Transfer on Death Instrument Act
- § 12:187 —Form of ownership
- § 12:188 —Multiple beneficiaries
- § 12:189 —Requirements for execution of transfer instrument
- § 12:190 —Recording
- § 12:191 —Effectuating the transfer
- § 12:192 —Time limitation on contesting the transfer
- § 12:193 —Probate of estate
- § 12:194 —Creditors
- § 12:195 —Probate of estate—Beneficiary predeceases the owner
- § 12:196 —Revocation of transfer instrument

## **IX. RIPARIAN RIGHTS**

- § 12:197 Riparian rights
- § 12:198 —Abutting land owners
- § 12:199 —Navigable or non-navigable rivers and streams
- § 12:200 —Common law rule and civil law rule regarding lakes
- § 12:201 —Rights to private non-navigable lake
- § 12:202 —Accretion
- § 12:203 —Artificial bodies of water

## **X. GENERAL REAL ESTATE TAXES AND SPECIAL ASSESSMENTS**

- § 12:204 Lien for real estate taxes
- § 12:205 —Joint tenants
- § 12:206 —Priority of lien for real property taxes
- § 12:207 —Extinguishment of lien
- § 12:208 —Special assessments
- § 12:209 —Practical considerations
- § 12:210 — —Current taxes
- § 12:211 — — —Proration
- § 12:212 — —Taxes already billed
- § 12:213 — —Special assessments

## **XI. MORTGAGES, JUDGMENT LIENS, MECHANICS LIENS AND OTHER LIENS**

- § 12:214 Existing financing
- § 12:215 —Effect of recording

## TABLE OF CONTENTS

§ 12:216	Existing Financing—Effect of recording—Chain of title—Constructive notice
§ 12:217	Existing financing—Effect of recording—Constructive notice—Unrecorded interest
§ 12:218	Lawsuits and judgments
§ 12:219	—Ancient Document Rule on real estate claims
§ 12:220	—Common law lis pendens
§ 12:221	—Statutory lis pendens and constructive notice
§ 12:222	—Chain of title
§ 12:223	—When lis pendens may be filed
§ 12:224	—Binding effect
§ 12:225	—Effect only on subsequent parties
§ 12:226	—Judgment lien
§ 12:227	—Memorandum of judgment
§ 12:228	— — —Scrivener’s error
§ 12:229	—Revival of judgment
§ 12:230	—Land trust
§ 12:231	—Death of debtor
§ 12:232	—Partnership
§ 12:233	—Representative capacity
§ 12:234	—Constructive trust
§ 12:235	—Mechanics’ liens
§ 12:236	—Vendee’s lien
§ 12:237	—Mechanics’ liens—Requirements
§ 12:238	— — —Summary of notices to owner
§ 12:239	— — —Equipment added to property
§ 12:240	— — —Owner obligations in subcontractor claims
§ 12:241	—Federal tax liens
§ 12:242	—I.R.S.—Paying off an I.R.S. lien
§ 12:243	—Priorities between federal tax liens and other liens
§ 12:244	— —Perfection of lien
§ 12:245	—State tax liens
§ 12:246	—Municipal demolition lien
§ 12:247	—Other liens
§ 12:248	—Personal information affidavit
§ 12:249	Necessity of removing liens prior to closing
§ 12:250	—Practical procedures

## XII. TITLE EVIDENCE

§ 12:251	Liens—Knowledge of lienor of no legitimate basis for the lien
§ 12:252	Contract specification
§ 12:253	—References to Torrens system

- § 12:254 —Abstracts
- § 12:255 — —Abstract and merchantable title
- § 12:256 — —Standards for abstracts
- § 12:257 — —Use of abstracts
- § 12:258 — —Combination of abstract and title insurance
- § 12:259 —Merchantable title
- § 12:260 — —Determination of merchantability
- § 12:261 — —Environmental problems
- § 12:262 — —Restrictive covenants
- § 12:263 — —Effect of title insurance

### **XIII. TITLE INSURANCE**

- § 12:264 Purpose of title insurance
- § 12:265 —Construction of title insurance policy
- § 12:266 —Parties insured
- § 12:267 —Regulation of title insurance companies in Illinois
- § 12:268 —Prejudgment interest
- § 12:269 —Claims
- § 12:270 Allocation of costs of title insurance
- § 12:271 —Customary seller's costs
- § 12:272 —Customary buyer's costs
- § 12:273 —Negotiation of costs of title insurance
- § 12:274 Timing
- § 12:275 —Lender involvement
- § 12:276 Other contract provisions relating to title insurance
- § 12:277 Standardization of policies
- § 12:278 Elements of 2006 ALTA owner's title policy
- § 12:279 Schedule A
- § 12:280 —Attorney's review of Schedule A
- § 12:281 Basic policy coverage
- § 12:282 —Right of access
- § 12:283 — —Legal and other expenses of defending title
- § 12:284 —Landmark designation
- § 12:285 Exclusions in 2006 ALTA owner's title policy
- § 12:286 Exclusions—Endorsements over exclusions
- § 12:287 Schedule B
- § 12:288 —Special exceptions
- § 12:289 — —Attorney's review of special exceptions on  
Schedule B
- § 12:290 Endorsements
- § 12:291 —Encroachment
- § 12:292 —Access
- § 12:293 —Contiguity
- § 12:294 —Survey

## TABLE OF CONTENTS

§ 12:295	—Conformity
§ 12:296	—Zoning
§ 12:297	—Location
§ 12:298	—Plat Act
§ 12:299	—Comprehensive
§ 12:300	—Leaseholds
§ 12:301	—Contract purchaser
§ 12:302	—Option to purchase
§ 12:303	—Zoning
§ 12:304	—P.I.N. endorsement
§ 12:305	—Easement endorsement
§ 12:306	—Covenants, restrictions, and building lines
§ 12:307	—Transfers of interests in property
§ 12:308	—Condominium
§ 12:309	—Homeowner's association
§ 12:310	—ABI
§ 12:311	Mortgage policy
§ 12:312	Title indemnity agreements
§ 12:313	Other title company services

## XIV. CHECKLIST

§ 12:314	Common exceptions to title
----------	----------------------------

## XV. FORMS

§ 12:315	Time of purchaser to object to title evidence— Contract provision
§ 12:316	Reservation to seller of easement for ingress and egress
§ 12:317	Easement—General form
§ 12:318	—Creating right of way
§ 12:319	—For gas pipe line
§ 12:320	Example of common driveway cross easement agreement
§ 12:321	Seller's representations on zoning
§ 12:322	Matters to which title is subject
§ 12:323	Listing of leases and right to review leases
§ 12:324	Schedule of tenancies
§ 12:325	Memorandum of judgment
§ 12:326	Tenant's estoppel letter
§ 12:327	Representation of rental income
§ 12:328	Seller's agreement not to execute leases without purchaser's consent
§ 12:329	Seller's protection against loss of rents
§ 12:330	Allocation of rents received after closing

- § 12:331 Seller's right to sue tenant for rental arrearages
  - § 12:332 Security deposit indemnity
  - § 12:333 Affidavit of 20 years adverse possession
  - § 12:334 Transfer on Death Act—Transfer on death instrument (TODI)
  - § 12:335 —Transfer on death instrument (TODI) revocation
  - § 12:336 —Notice of death affidavit and acceptance of transfer on death instrument (TODI) deed
  - § 12:337 Example of lis pendens notice
  - § 12:338 Personal information affidavit
  - § 12:339 Special assessment affidavit
  - § 12:340 Internal Revenue Service Pub. 783
  - § 12:341 Delay in delivering title evidence caused by purchaser's mortgagee
  - § 12:342 2006 Owner's policy of title insurance
  - § 12:343 2006 Loan policy of title insurance
  - § 12:344 Chicago Title Insurance Company requirements for utility letters for extended coverage—Customer news
  - § 12:345 —General exceptions
  - § 12:346 Chicago Title Insurance Company—Extended coverage requirements—Chicago
  - § 12:347 — —Cook County (Non-Chicago)
  - § 12:348 Chicago Title Insurance Company requirements for utility letters for extended coverage—Extended coverage requirements
  - § 12:349 —Title insurance—Addresses for utility letters for extended coverage (Commonwealth Edison)
  - § 12:350 —Extended coverage affidavit
  - § 12:351 Deceased joint tenancy affidavit
  - § 12:352 Tenancy by the entirety judgment lien affidavit
  - § 12:353 Tenancy by the entirety affidavit (survivorship marital property affidavit)
  - § 12:354 Owner's statement of property manager and property manager waiver of lien
  - § 12:355 Owner's affidavit of no property manager
  - § 12:356 Surviving Tenant Affidavit
  - § 12:357 Scrivener's affidavit
  - § 12:358 Corrective recording affidavit
- Appendix 12A. Standards for Examination of Abstracts

## CHAPTER 13. CLOSING

### I. IMMEDIATELY BEFORE CLOSING

- § 13:1 Buyer's walk-through



## TABLE OF CONTENTS

§ 13:2	—Dealing with pre-closing walk-through problems
§ 13:3	— —Major repairs
§ 13:4	— —Minor repairs
§ 13:5	New construction—The “punchlist”
§ 13:6	—Pre-closing problems
§ 13:7	Title company’s preparation for closing
§ 13:8	What to bring to closing
§ 13:9	—Seller
§ 13:10	— —Buyer
§ 13:11	—Seller’s attorney
§ 13:12	—Buyer’s attorney

## II. PRORATIONS

§ 13:13	Contract specifications
§ 13:14	—Proration at closing
§ 13:15	—Proration at possession
§ 13:16	—Seller financing
§ 13:17	—Rents
§ 13:18	—Rents due after closing
§ 13:19	—Rents accrued before closing
§ 13:20	—Security deposits
§ 13:21	—Security Deposit Return Act
§ 13:22	— —Life Care Facilities Act
§ 13:23	— —Extended or continuing care facility
§ 13:24	—Attorneys’ fees for violation of Security Deposit Return Act
§ 13:25	—Attorneys’ fees—Liability for repayment of security deposits
§ 13:26	—Attorney’s fees—Interest on security deposits
§ 13:27	—Service contracts
§ 13:28	—Water and utility bills
§ 13:29	—Taking subject to existing mortgage
§ 13:30	Real estate taxes
§ 13:31	—Basis for proration
§ 13:32	— —Reproration
§ 13:33	—How to prorate real estate taxes
§ 13:34	—Ascertainable tax bill
§ 13:35	—Mistake in proration of real estate taxes
§ 13:36	Special assessments

## III. ISSUES RELATING TO POSSESSION

§ 13:37	Contract specifications
§ 13:38	—Possession at closing
§ 13:39	—Failure to deliver deed

- § 13:40 —Possession after closing
- § 13:41 —Payments for use and occupancy
- § 13:42 — —Agreed payments
- § 13:43 — —Unagreed holdover
- § 13:44 —Buyer's possession before closing

#### **IV. ESCROW**

- § 13:45 Closing escrows
- § 13:46 —Difference between trustee and escrowee
- § 13:47 —Escrow instructions
- § 13:48 —Effect of closing escrow on underlying contract
- § 13:49 —Deed and money escrow
- § 13:50 — —Money-lender's escrow or lender's instructions
- § 13:51 —Agency closing
- § 13:52 — —Cook County residential closing
- § 13:53 New York style closing
- § 13:54 Closing escrows—Agency closing—Cook County  
residential closing—Closing procedures for agency  
closing
- § 13:55 — — —Cost of agency closing
- § 13:56 — — —Use of escrow or agency closing
- § 13:57 —Other types of escrow
- § 13:58 —Disbursement of sale proceeds—Deposits of \$50,000  
or more from a single party
- § 13:59 — —Deposits of less than \$50,000 from a single party
- § 13:60 Statement regarding disbursement by escrow agents  
before escrow deposits have cleared

#### **V. DURING CLOSING**

- § 13:61 Closing and settlement
- § 13:62 —The role of the closer
- § 13:63 —“Dry closing”
- § 13:64 — —Personal undertaking
- § 13:65 — —Title indemnity agreement
- § 13:66 Steps for seller's attorney
- § 13:67 Steps for buyer's attorney
- § 13:68 Reviewing the Closing Disclosure
- § 13:69 —Applies to every federally related mortgage
- § 13:70 —Relation to good faith estimate—Bound to original  
good faith estimate
- § 13:71 — —Revised good faith estimate
- § 13:72 —Other requirements and prohibitions—Lender  
disclosures

## TABLE OF CONTENTS

§ 13:73	— —Kickback and unearned fee prohibition; attorney title agent safe harbor
§ 13:74	— —Escrow limit
§ 13:75	Reviewing the RESPA—Exceptions to RESPA
§ 13:76	—Enforcement
§ 13:77	Items not shown on the Closing Disclosure
§ 13:78	For seller
§ 13:79	Seller's settlement charges
§ 13:80	For buyer
§ 13:81	Buyer's settlement charges
§ 13:82	Borrower's three day right of rescission
§ 13:83	Foreign Investments in Real Property Tax Act (FIRPTA)

## VI. FORMS

§ 13:84	Prorations and adjustments
§ 13:85	Assignment of service contract
§ 13:86	Proration of real estate taxes based on last known amount plus a percentage
§ 13:87	Reproration of real estate taxes
§ 13:88	Reproration of real estate taxes if increase or decrease exceeds a certain amount
§ 13:89	Reproration of real estate taxes if improved property is assessed as vacant or partially improved property
§ 13:90	Escrow to cover reproration of real estate taxes
§ 13:91	Seller's warranties or representations
§ 13:92	Delivery of possession
§ 13:93	Seller's payments for agreed use and occupancy after closing
§ 13:94	Seller's payments for delayed delivery of possession beyond agreed date
§ 13:95	Escrow to guarantee delivery of possession
§ 13:96	Escrow
§ 13:97	Escrow trust instructions—Deed and money escrow
§ 13:98	Escrow Instructions—Deed and money escrow—Sale without gap coverage
§ 13:99	—Deed and money escrow with gap coverage
§ 13:100	Escrow instructions—Sale—New York style closing
§ 13:101	Escrow Instructions—Loan
§ 13:102	Settlement sheet
§ 13:103	Example of title company escrow disbursement agreement
§ 13:104	Example of personal undertaking
§ 13:105	—Another example

- § 13:106 Personal undertaking (assignment of beneficial interest endorsement)
- § 13:107 Personal undertaking with title indemnity deposit agreement
- § 13:108 Title insurance—Personal undertaking (GAP agreement)
- § 13:109 Indemnity agreement (construction—mechanics' liens)

## Volume 16

### CHAPTER 14. ACTIONS AND REMEDIES

#### I. DAMAGES

- § 14:1 Offer to perform
- § 14:2 —Anticipatory breach
- § 14:3 —Anticipatory repudiation—Repudiation of the contract
- § 14:4 Seller's inability to deliver title
- § 14:5 —Seller's default
- § 14:6 — —Measure of damages
- § 14:7 — —Foreseeable buyer's costs
- § 14:8 — —Fair market value
- § 14:9 — — —Evidence
- § 14:10 —Contract provisions
- § 14:11 Buyer's default
- § 14:12 —Conditional mortgage commitment
- § 14:13 —Default provisions
- § 14:14 —Contract review
- § 14:15 —Forfeiture of earnest money
- § 14:16 —Option to forfeit earnest money or sue for actual damages
- § 14:17 —Seller's option
- § 14:18 —Exclusive remedy
- § 14:19 —Liquidated damages
- § 14:20 —Return of earnest money as liquidated damages
- § 14:21 —Broker involvement
- § 14:22 Liquidated damages
- § 14:23 Damages for misrepresentation
- § 14:24 Seller's common law duty to disclose defects in property
- § 14:25 —Fraud—Damages
- § 14:26 Damages for defects found after conveyance

## TABLE OF CONTENTS

§ 14:27	Construction
§ 14:28	—Defective work
§ 14:29	— —Implied warranty of workmanlike performance
§ 14:30	—Uncompleted work
§ 14:31	—Recovery of contract price by contractor
§ 14:32	— —Duty of contractor
§ 14:33	— —Quasi contract
§ 14:34	— —Contractor may not lien property owned by contractor
§ 14:35	— —Member of LLC may lien property owned by same LLC
§ 14:36	—Extras outside the scope of the contract
§ 14:37	— —Quasi-contract or unjust enrichment
§ 14:38	Damage to real property
§ 14:39	Demolition of property
§ 14:40	—Notice requirements
§ 14:41	Farm crop losses
§ 14:42	—Evidence
§ 14:43	Wrongful tree cutting
§ 14:44	—Damages
§ 14:45	Snow and ice removal—Common law
§ 14:46	— —Actual or constructive knowledge
§ 14:47	— —Voluntary undertaking to remove snow or ice
§ 14:48	Snow and Ice Removal Act—Snow and ice removal from sidewalks—Immunity from liability
§ 14:49	—Snow and ice removal from walkways or driveways
§ 14:50	—Snow and ice accumulation due to design defects
§ 14:51	—Willful or wanton misconduct
§ 14:52	Attorney’s fees
§ 14:53	—Tender
§ 14:54	—Prevailing party
§ 14:55	— —To defendant
§ 14:56	— —To plaintiff
§ 14:57	— —Multiple claims
§ 14:58	—Statutory provisions—Mandatory
§ 14:59	—Contract provision
§ 14:60	—Rescission
§ 14:61	—Proof of fees
§ 14:62	— —Lease termination
§ 14:63	— —Contingent fee
§ 14:64	— —Reasonableness
§ 14:65	— —Time records
§ 14:66	—Trial judge discretion
§ 14:67	—Right to hearing

- § 14:68 —Pro se attorney
- § 14:69 — —Supreme Court Rule 137
- § 14:70 Discrimination
- § 14:71 Seller's contractual warranties or representations
- § 14:72 —“As is” provision
- § 14:73 —Contract representations
- § 14:74 — —Good faith
- § 14:75 — —Types of representations
- § 14:76 — —Representation that systems are in good working order
- § 14:77 — —Action for breach
- § 14:78 —Construction or repair
- § 14:79 —Strict liability in tort
- § 14:80 —Personal property
- § 14:81 —Seller's misrepresentations—Used home
- § 14:82 Implied warranty of habitability
- § 14:83 —Caveat emptor
- § 14:84 —Subsequent purchaser
- § 14:85 — —Privity
- § 14:86 —Basis
- § 14:87 —Parties liable
- § 14:88 —Exception to doctrine of merger
- § 14:89 —Elements of cause of action
- § 14:90 — —Defect must be substantial
- § 14:91 — —Definition of “latent defects”
- § 14:92 — —Reasonable time
- § 14:93 — —Covers new and rehabilitated property
- § 14:94 — —Covers improved land
- § 14:95 — —Covers condominiums and certain common elements
- § 14:96 — —Defendant must be builder
- § 14:97 — —Privity
- § 14:98 — —Standing to sue
- § 14:99 — — —Original owner
- § 14:100 — — —Subsequent owner
- § 14:101 — —Statute of limitations
- § 14:102 — —Contractor
- § 14:103 — —Subcontractor
- § 14:104 — —Insolvency of builder-vendor
- § 14:105 —Disclaimer
- § 14:106 — —Words “as-is” not effective
- § 14:107 — —Effective disclaimer
- § 14:108 — — —Purchaser's knowledge
- § 14:109 —Waiver of warranty by purchaser
- § 14:110 — —“As-is” purchase

## TABLE OF CONTENTS

§ 14:111	— —Subsequent purchaser
§ 14:112	—Remedies
§ 14:113	— —Rescission
§ 14:114	—Punitive damages
§ 14:115	Doctrine of merger
§ 14:116	—Misrepresentation or mutual mistake and the doctrine of merger
§ 14:117	—Warranty or representation of condition and the doctrine of merger
§ 14:118	—Effect of inspection and the doctrine of merger
§ 14:119	—Effect of inspection—Warranty of habitability
§ 14:120	— —Executory agreements in contract
§ 14:121	—Tax proration
§ 14:122	—Negotiations

## II. SPECIFIC PERFORMANCE AND TORTIOUS INTERFERENCE WITH A CONTRACT

§ 14:123	Damages
§ 14:124	Nature of remedy
§ 14:125	—Other equitable doctrines
§ 14:126	—Action by seller
§ 14:127	—Other damages
§ 14:128	— —Rents
§ 14:129	Requirements for specific performance
§ 14:130	—Valid contract
§ 14:131	— —Not all parties signatory
§ 14:132	—Essential contract terms
§ 14:133	— —Description of property
§ 14:134	— — —Ambiguity
§ 14:135	— — —Reference to ownership
§ 14:136	— —Price and method of payment
§ 14:137	— —Supplied by implication
§ 14:138	— — —Time of payment
§ 14:139	—Oral contract
§ 14:140	—Compliance with contract by plaintiff
§ 14:141	—Performance must be possible to effectuate
§ 14:142	—Equitable result
§ 14:143	— —Case by case basis
§ 14:144	— —Adverse effect on third party
§ 14:145	— —Change in circumstances
§ 14:146	— —Forfeiture not favored
§ 14:147	—Default by purchaser
§ 14:148	— —Liquidated damages clause and the right to specific performance

- § 14:149 — —Seller default and return of earnest money as liquidated damages
- § 14:150 — —Option to perform or pay damages
- § 14:151 — —Award of actual damages
- § 14:152 Tortious interference with a contract

### **III. MISTAKE, MISREPRESENTATION AND RESCISSION**

- § 14:153 Rescission generally
- § 14:154 Rescission—Timeliness of exercise
- § 14:155 —Impossibility of performance
- § 14:156 Mistake of fact
- § 14:157 —Materiality of mistake
- § 14:158 —Unilateral mistake
- § 14:159 —Difference between rescission and reformation
- § 14:160 Misrepresentation
- § 14:161 —Fraudulent misrepresentation and negligent misrepresentation
- § 14:162 —Fraudulent misrepresentation
- § 14:163 — —Reliance
- § 14:164 — —Standard of proof
- § 14:165 —Negligent misrepresentation
- § 14:166 —Statement of opinion
- § 14:167 —Statement of law
- § 14:168 —Concealment as misrepresentation
- § 14:169 —Justifiable reliance
- § 14:170 *[Reserved]*
- § 14:171 Unjust enrichment
- § 14:172 —Remedy for unlawful or improper conduct
- § 14:173 —Express contract
- § 14:174 Restoring status quo

### **IV. CONSUMER FRAUD ACT**

- § 14:175 Definition
- § 14:176 Legislative declaration
- § 14:177 Elements of cause of action
- § 14:178 —Illinois Attorney General or State's Attorney action
- § 14:179 —Standard of proof
- § 14:180 —Difference between common law fraud and fraud under the Consumer Fraud Act
- § 14:181 —Deceptive act or practice
- § 14:182 — —Unfair act or practice
- § 14:183 — — —Bait and switch



## TABLE OF CONTENTS

§ 14:184	—Unfair act or practice
§ 14:185	—Deceptive act or practice—Uniform Deceptive Trade Practices Act
§ 14:186	— —Federal Trade Commission Act
§ 14:187	— —Intent irrelevant under the Consumer Fraud Act
§ 14:188	— —Case by case test
§ 14:189	— —Incomplete disclosure or half truth included
§ 14:190	— —Active concealment included
§ 14:191	— —“Puffing” excluded
§ 14:192	— —Mere contract disputes excluded
§ 14:193	— —Broker liability for latent defects excluded
§ 14:194	— —Misrepresentations of law excluded
§ 14:195	— — —Zoning ordinances
§ 14:196	—Reliance
§ 14:197	—Damage to the plaintiff
§ 14:198	—Must involve trade or commerce
§ 14:199	—Single sale suffices if other than sale of home by owner
§ 14:200	—Must involve trade or commerce—Proximate cause
§ 14:201	—Real estate transactions included
§ 14:202	—Lenders included
§ 14:203	— —Requiring use of specific title insurer
§ 14:204	— —Truth-in-Lending Act claims
§ 14:205	—Real estate brokers included
§ 14:206	— —Innocent misrepresentations
§ 14:207	— —Self-dealing
§ 14:208	—Title insurance companies included
§ 14:209	—Landlords included
§ 14:210	—Home inspectors included
§ 14:211	—Sale by owner not included
§ 14:212	—Attorneys not included
§ 14:213	—Appraiser’s opinions not included
§ 14:214	No right to jury trial
§ 14:215	Types of remedies
§ 14:216	—Actual damages
§ 14:217	—Punitive damages
§ 14:218	Attorney’s fees
§ 14:219	—Standards for award
§ 14:220	Venue
§ 14:221	Statute of limitations
§ 14:222	—Discovery rule
§ 14:223	Predatory lending database cause of action under Consumer Fraud Act
§ 14:224	Investigation by Attorney General

- § 14:225 Mortgage Rescue Fraud Act
- § 14:226 —Required right to cancel contract clauses
- § 14:227 —Exemptions

## **V. TITLE INSURANCE CLAIMS**

- § 14:228 Contract claims
- § 14:229 —Claim must be by insured party
- § 14:230 —Rights of transferee of property
- § 14:231 —Transfer to entity transferor owns or controls
- § 14:232 —Claim must relate to insured land
- § 14:233 —Claim must relate to insured risk
- § 14:234 — —Applicability of special exception
- § 14:235 — —Applicability of exclusion
- § 14:236 —Alternative theories of liability
- § 14:237 Notifying insurance company
- § 14:238 Insurance company's duties
- § 14:239 —Effective date of policy
- § 14:240 — —Tortious act of party insured

## **VI. REFORMATION OF DOCUMENTS**

- § 14:241 Reformation of contract
- § 14:242 —Mutual mistake
- § 14:243 — —Scrivener's error
- § 14:244 —Unilateral mistake
- § 14:245 —Mistake as to law
- § 14:246 —Presumption
- § 14:247 —Mistake of fact—Difference between reformation and rescission
- § 14:248 —Damages for unjust enrichment
- § 14:249 —Evidence required
- § 14:250 Reformation of deed
- § 14:251 —Types of mistakes
- § 14:252 — —Difference between reformation and rescission
- § 14:253 —Mistake must exist at time of signing
- § 14:254 —Bona fide purchaser
- § 14:255 —Standard of proof

## **VII. PARTITION**

- § 14:256 Statutory remedy
- § 14:257 Venue for partition action
- § 14:258 Interests subject to partition
- § 14:259 —Tenancy by the entirety
- § 14:260 —Life estates and leaseholds

## TABLE OF CONTENTS

- § 14:261 —Mineral rights
- § 14:262 Statutory requirements for partition—Necessary parties to partition action
- § 14:263 —Determination if property is to be divided in kind or sold
- § 14:264 — —Division in kind
- § 14:265 — —Sale of property and division of proceeds
- § 14:266 —Limitations on partition
- § 14:267 — —Limited right in dissolution of marriage
- § 14:268 — —Owerty
- § 14:269 — —Land trust
- § 14:270 Attorney's fees

## VIII. WASTE

- § 14:271 Definition
- § 14:272 —Life tenant
- § 14:273 —Remedies

## IX. FLOODING

- § 14:274 Wrongful diversion
- § 14:275 —Limitations
- § 14:276 —Damages

## X. PRIVATE NUISANCE

- § 14:277 Definition
- § 14:278 Balancing
- § 14:279 No right of action by successor owner if prior owner had a judgment or settled

## XI. SLANDER OF TITLE AND QUIET TITLE ACTIONS

- § 14:280 Components of slander of title
- § 14:281 —Malice
- § 14:282 Slander of title—Punitive damages
- § 14:283 —Attorney's fees
- § 14:284 Action to quiet title
- § 14:285 —Requirement of title
- § 14:286 —Requirement of possession
- § 14:287 —Venue
- § 14:288 — —Probate
- § 14:289 —Owner of an easement
- § 14:290 —Forged deed
- § 14:291 —Attorney's fees

- § 14:292 —Probate citation to recover real estate
- § 14:293 —Constructive notice of unrecorded interest

## **XII. STATUTE OF LIMITATIONS ISSUES**

- § 14:294 General limitation period for real estate claims
- § 14:295 —Estoppel not applicable
- § 14:296 —“Wild deed”
- § 14:297 Written contract
- § 14:298 —Payable in installments
- § 14:299 —Definition
- § 14:300 Oral contract and miscellaneous
- § 14:301 Residential Real Property Disclosure Act
- § 14:302 Cases involving construction
- § 14:303 —Acts or omissions
- § 14:304 —Parties covered
- § 14:305 —Improvement to real property
- § 14:306 —Start of timing for four-year statute of limitations
- § 14:307 —Outside limit
- § 14:308 — —“Discovery rule”
- § 14:309 — —Repairs and investigation does not toll the statute
- § 14:310 —Third-party and counterclaims
- § 14:311 —Outside limit—Indemnity
- § 14:312 —Legislative intent
- § 14:313 —Precedence over other statutes
- § 14:314 —Applicability
- § 14:315 — —Must be construction-related
- § 14:316 —Definition of “improvement to real property”
- § 14:317 —Exception for fraudulent misrepresentations
- § 14:318 —Exception for express warranty or guarantee
- § 14:319 Laches

## **XIII. CHECKLISTS**

- § 14:320 Summary of statutes of limitations applicable to real estate

## **XIX. FORMS**

- § 14:321 Seller’s warranties or representations
- § 14:322 Time of making warranties and representations
- § 14:323 On purchaser’s default—Seller reserves right to hold purchaser liable for damages

## **CHAPTER 15. FEDERAL INCOME TAXATION**

### **I. PURCHASE OF RESIDENCE—TAX CONSEQUENCES**

- § 15:1 What a new owner should know
- § 15:2 Original basis of residence
- § 15:3 —Cash or other property paid to seller
- § 15:4 —Liabilities of seller assumed by buyer
- § 15:5 —Liabilities the residence is “subject to”
- § 15:6 —Expenses of purchase added to basis
- § 15:7 —Expenses of purchase not added to basis
- § 15:8 Original basis of home contracted to be built
- § 15:9 Original basis of home received as gift
- § 15:10 Original basis of home acquired by inheritance
- § 15:11 Income tax treatment of real estate taxes
- § 15:12 —Deductibility of real estate taxes
- § 15:13 —Proration of real estate taxes at closing
- § 15:14 —Basis adjustment for real estate taxes paid
- § 15:15 —Reproration of real estate taxes
- § 15:16 Income tax treatment of “points” paid at closing
- § 15:17 —Points generally
- § 15:18 —Points that may be deducted by buyer
- § 15:19 —Points paid on second residence
- § 15:20 —Seller-paid points
- § 15:21 —Points on high principal loans

### **II. OWNERSHIP OF RESIDENCE—TAX CONSEQUENCES**

- § 15:22 Home ownership benefits
- § 15:23 First-time homebuyer tax credit
- § 15:24 Residential energy property tax credit
- § 15:25 Deduction of real estate taxes
- § 15:26 —Sale of residence
- § 15:27 —Effect of escrow of property taxes
- § 15:28 —Deductibility of special assessments against the property
- § 15:29 Deduction of mortgage interest
- § 15:30 —Acquisition indebtedness
- § 15:31 — —Tracing
- § 15:32 —Home equity indebtedness
- § 15:33 —Qualified residence
- § 15:34 —Secured debt

- § 15:35 — —Debt incurred prior to completion
- § 15:36 — —Debt incurred after completion
- § 15:37 — —“Electing out” of Qualified Residence Interest [QRI]
- § 15:38 —Who may deduct mortgage interest
- § 15:39 —Coordination of mortgage interest deduction with alternative minimum tax
- § 15:40 —Mortgage interest credit for low-income taxpayers
- § 15:41 Home office deduction
- § 15:42 —Use of home for business
- § 15:43 — —Exclusive use test
- § 15:44 — —Regular use
- § 15:45 — —Trade or business use
- § 15:46 — —Use as principal place of business
- § 15:47 — — —Administrative and management activities
- § 15:48 — — —Use for more than one business
- § 15:49 —Place to meet patients, clients, or customers
- § 15:50 —Separate structure
- § 15:51 — —Storage of inventory or product samples
- § 15:52 — —Day-care facility
- § 15:53 —Use of home by employee for business
- § 15:54 —Where to deduct expenses for business use of the home
- § 15:55 —Figuring the amount of home office deduction
- § 15:56 —Qualifying home office expenses
- § 15:57 —Applicable business percentage
- § 15:58 —Limitations on home office deduction
- § 15:59 — —Gross income from the business use
- § 15:60 Qualified business income deduction—Rental real estate
- § 15:61 — —Ownership of business
- § 15:62 — —Operator of business
- § 15:63 — —Amount of deduction
- § 15:64 Casualty losses

### **III. SALE OF RESIDENCE—TAX CONSEQUENCES**

- § 15:65 Sales of residence—Tax consequences
- § 15:66 Calculation of gain on sale of residence
- § 15:67 —Amount realized
- § 15:68 — —Prorated property taxes
- § 15:69 — — —Option to buy
- § 15:70 — —Selling expenses
- § 15:71 — —Adjusted basis
- § 15:72 — —Increases to basis

## TABLE OF CONTENTS

§ 15:73	— — —Repair
§ 15:74	— —Decreases to basis
§ 15:75	Seller's report of sale on tax return
§ 15:76	—Commission when residence not sold
§ 15:77	—Forfeited earnest money
§ 15:78	—Real estate taxes in year of sale
§ 15:79	Exclusion of gain under Section 121
§ 15:80	—Prior law
§ 15:81	—Requirements of Section 121
§ 15:82	—Election out
§ 15:83	—Reduced exclusion
§ 15:84	—Qualifying principal residence
§ 15:85	—Portion of residence used for business or investment
§ 15:86	— —Gain attributable to depreciation
§ 15:87	—Limitation to one sale every two years
§ 15:88	—Ownership and use requirements
§ 15:89	— —Out-of-residence care
§ 15:90	— —Spouses
§ 15:91	— — —Married filing separately
§ 15:92	— — —Married filing jointly
§ 15:93	— — —Deceased spouse
§ 15:94	— —Property owned by spouse or former spouse
§ 15:95	— —Partnership
§ 15:96	— —Grantor trust
§ 15:97	— —Sale of remainder interest
§ 15:98	— —Expatriates
§ 15:99	— —Sale by Chapter 7 or Chapter 11 bankruptcy estate
§ 15:100	—Co-op apartments
§ 15:101	— —Involuntary conversions
§ 15:102	—Reporting by closing agent
§ 15:103	—Tax treatment of escrow accounts
§ 15:104	Installment sales
§ 15:105	—Effect of installment method
§ 15:106	—Installment sale method
§ 15:107	—Reporting installment sale income
§ 15:108	—Election not to report on the installment method
§ 15:109	—Coordination with Section 121
§ 15:110	Short Sale—Tax consequences to seller
§ 15:111	Shared equity finance agreements
§ 15:112	—Summary of requirements of qualified shared equity finance agreement
§ 15:113	— —Fair rental

#### **IV. TAX DEFERRED EXCHANGE OF BUSINESS OR RENTAL USE RESIDENCES**

- § 15:114 Tax deferred exchanges of investment or business property
- § 15:115 —Summary of requirements of Section 1031
- § 15:116 —Time limits
- § 15:117 —Tax free exchange using third party
- § 15:118 —“Qualified Exchange Accommodation Arrangements”
- § 15:119 —Qualified intermediary

#### **V. FORMS**

- § 15:120 Required Written Assurances—Rev. Proc. 2007-12, 2007 I.R.B. 354
- § 15:121 Sample form—Shared equity finance agreement

### **CHAPTER 16. CONDOMINIUMS, COOPERATIVES AND COMMON INTEREST COMMUNITY ASSOCIATIONS**

#### **I. CONDOMINIUMS AND MASTER ASSOCIATIONS**

- § 16:1 Illinois Condominium Property Act
- § 16:2 Determination of condominium law
- § 16:3 —Act governs over declaration and bylaws
- § 16:4 Distinguished from homeowner association
- § 16:5 —Applicability of Condominium Act
- § 16:6 Terminology
- § 16:7 —Common elements
- § 16:8 —Limited common elements
- § 16:9 —Majority of unit owners
- § 16:10 —Majority of board of managers
- § 16:11 —Meeting of board of managers
- § 16:12 —Conversion condominium
- § 16:13 —Add-on condominium
- § 16:14 —Condominium instruments
- § 16:15 —Common expenses
- § 16:16 —Reserves
- § 16:17 —Unit owners’ association
- § 16:18 —Master association
- § 16:19 —Property
- § 16:20 —Unit owner
- § 16:21 Establishment of condominium



## TABLE OF CONTENTS

§ 16:22	—Condominium established on leasehold
§ 16:23	—Leasehold—Definition of leasehold condominium
§ 16:24	— —Leasehold condominium declaration
§ 16:25	—Plat
§ 16:26	—Chicago required property report
§ 16:27	—Chicago required condominium disclosure summary
§ 16:28	Declaration
§ 16:29	—Contract rules govern
§ 16:30	—Limitation to age 55 and older
§ 16:31	—Zoning limitations
§ 16:32	—Leasing Restrictions
§ 16:33	—Change to declaration or bylaws must be recorded
§ 16:34	Restrictions run with the land
§ 16:35	Effect of recording
§ 16:36	—Timing
§ 16:37	—No deed needed
§ 16:38	—Percentage ownership
§ 16:39	—Changes to unit
§ 16:40	—Changes in percentage ownership
§ 16:41	—Action for partition of common elements prohibited
§ 16:42	Bylaws
§ 16:43	Amendment of condominium instruments
§ 16:44	—Limit on votes required
§ 16:45	—Changes to boundaries
§ 16:46	—Omissions and errors
§ 16:47	—Scrivener's error as to percentage of common elements
§ 16:48	—Meeting of unit owners
§ 16:49	—Consent required where rights substantially affected
§ 16:50	— —Procedure
§ 16:51	—Exception for federal mortgage compliance
§ 16:52	Pets
§ 16:53	Solar Energy
§ 16:54	Board of managers
§ 16:55	—Exercise of fiduciary care
§ 16:56	— —Business judgment rule
§ 16:57	— —Limitation of fiduciary duty in bylaws
§ 16:58	— —Constructive fraud
§ 16:59	—Representative capacity
§ 16:60	— —Non-board derivative claims
§ 16:61	— —Exclusive right to enforce condominium claims
§ 16:62	— —Other remedies

- § 16:63 —Repair of common elements
- § 16:64 — —Expenditures
- § 16:65 — —“Repair, replacement or restoration”
- § 16:66 — —Improvement
- § 16:67 —Budget
- § 16:68 —Assessments
- § 16:69 —Personnel
- § 16:70 —Insurance
- § 16:71 —Ownership of units
- § 16:72 —Rules and regulations
- § 16:73 — —Limits on rules
- § 16:74 — — —Restrictive Covenants
- § 16:75 — —Disciplinary action against unit owner
- § 16:76 —Financial records
- § 16:77 —Access to units
- § 16:78 —Taxes
- § 16:79 —Late payment charges
- § 16:80 —Fines
- § 16:81 —Rights in common assets
- § 16:82 —Exercising right of first refusal
- § 16:83 —Dedication for street or utility
- § 16:84 —Cable television
- § 16:85 —Relief from property taxes
- § 16:86 —Handicapped owner
- § 16:87 —Chicago bed bug ordinance
- § 16:88 — —Violation penalties
- § 16:89 —Chicago home sharing ordinance
- § 16:90 Unit owners’ association
- § 16:91 —Power to bring suit
- § 16:92 —Power to own property
- § 16:93 Common elements
- § 16:94 —Distinguishing limited common elements
- § 16:95 — —Limited common elements
- § 16:96 — —Condominium instruments
- § 16:97 — —Walls, floors, ceilings
- § 16:98 — —Ducts, wires, bearing walls
- § 16:99 — —Separate appurtenances included in limited  
common elements
- § 16:100 — —Transfer of limited common elements
- § 16:101 — —Residential Real Property Disclosure Act
- § 16:102 Attorneys’ fees
- § 16:103 Assessments
- § 16:104 —Expense prior to conveyance of first unit
- § 16:105 —Unit owner’s responsibility for his or her  
proportionate share

## TABLE OF CONTENTS

§ 16:106	—Developer’s responsibility for its proportionate share
§ 16:107	—No right to offset assessment based on dispute with association
§ 16:108	—Proportionate share—Exception for insurance
§ 16:109	—Budget
§ 16:110	—Reserves
§ 16:111	— —Election to waive reserve requirement
§ 16:112	— —Disclosure of waiver of reserve requirement
§ 16:113	—Limited common elements
§ 16:114	—Amount and time of assessment payments
§ 16:115	—“Special assessments”
§ 16:116	—Right of owners to nullify special assessment or budget
§ 16:117	—Collection of assessment debt pursuant to Fair Debt Collection Practices Act
§ 16:118	— —Bartlett Letter
§ 16:119	Lien for failure to pay assessment
§ 16:120	—Requirement of recording assessment lien
§ 16:121	—Additions to unpaid amount
§ 16:122	—Attorneys’ fees
§ 16:123	—Priority of lien
§ 16:124	—Action brought to extinguish lien
§ 16:125	—Notice to encumbrancer
§ 16:126	— —Type of mailing
§ 16:127	— —Effect of notice
§ 16:128	— —Exception
§ 16:129	—Purchaser at judicial foreclosure
§ 16:130	—Liability of mortgagee taking title through foreclosure or deed in lieu of foreclosure
§ 16:131	— —Partial payment of post foreclosure sale assessments
§ 16:132	—Liability of third party purchaser taking title through judicial foreclosure or from mortgagee
§ 16:133	— —Acceleration of an assessment payable in installments
§ 16:134	—Lien in favor of board
§ 16:135	— —Notice of lien
§ 16:136	— —Foreclosure
§ 16:137	— —Forcible entry and detainer
§ 16:138	—Lien in favor of the board—Forcible entry and detainer—Right of board to lease the unit to recover damages
§ 16:139	— — —Attorneys’ fees
§ 16:140	— — —Foreclosure controls

- § 16:141 —Lien in favor of board—Homestead as defense
- § 16:142 — —Bidding at foreclosure
- § 16:143 — —Request by encumbrancer for status
- § 16:144 — —Payment of assessments by encumbrancer
- § 16:145 Attachment of other liens
- § 16:146 —Liens incurred during development
- § 16:147 — —Developer to record release
- § 16:148 — —Liens caused by developer after sale of unit
- § 16:149 —Lien against more than one unit
- § 16:150 —Liens arising from action by board of managers
- § 16:151 —Notices to lienholder of eminent domain proceedings
- § 16:152 — —Application to townhouses
- § 16:153 Property taxes
- § 16:154 —Property owned by condominium association
- § 16:155 —Appeal of property taxes
- § 16:156 — —Associations
- § 16:157 Insurance
- § 16:158 Incorporation of not-for-profit corporation
- § 16:159 —Board of directors
- § 16:160 Sale of entire condominium property
- § 16:161 Alterations and combinations of units
- § 16:162 Removal from Condominium Act
- § 16:163 Distressed condominium property
- § 16:164 Records of association
- § 16:165 —Availability
- § 16:166 —Inspection
- § 16:167 — —General Not For Profit Corporation Act
- § 16:168 — —Chicago Condominium Ordinance
- § 16:169 — —Production and timing
- § 16:170 — —Proper purpose
- § 16:171 —Copying costs
- § 16:172 —Attorneys fees
- § 16:173 —Exceptions
- § 16:174 —Public policy
- § 16:175 Disapproval on resale
- § 16:176 Disclosure on resale
- § 16:177 —Time at which information to be furnished
- § 16:178 —Owner to furnish name of lender
- § 16:179 —Association may charge fee
- § 16:180 — —No private right of action
- § 16:181 —Buyer's right to terminate contract
- § 16:182 Disclosure upon initial sale
- § 16:183 —Conversion condominium

## TABLE OF CONTENTS

§ 16:184	—Time at which information to be furnished
§ 16:185	—Failure to disclose
§ 16:186	— —Liability of third party for condition report in the property report
§ 16:187	— —Liability under Chicago Municipal Code
§ 16:188	—Definition of “initial sale”
§ 16:189	Deposits by purchaser
§ 16:190	Administration of property prior to election of initial board of managers
§ 16:191	—Period prior to initial election
§ 16:192	—Initial election
§ 16:193	—Items to be delivered by developer to board
§ 16:194	Administration of Property prior to election of initial board of managers—Items to be delivered by developer to board—Detailed accounting
§ 16:195	— —Adequate reserves
§ 16:196	Administration of property prior to election of initial board of managers—Contract cancellation period
§ 16:197	— —Cancellation procedure
§ 16:198	—Statute of limitation on action by association
§ 16:199	Conversion condominium requirements
§ 16:200	—Notice of intent
§ 16:201	— —Timing of notice
§ 16:202	— —Owner liability for failure to provide notice
§ 16:203	— —Certificate of developer
§ 16:204	—Schedule of selling prices
§ 16:205	—Right of first refusal
§ 16:206	—Information to tenants as to lease
§ 16:207	— —Right to extend tenancy
§ 16:208	—Chicago Condominium Conversion Ordinance—Required filing and notice to purchaser
§ 16:209	— —Notice to tenants, tenant right of first refusal
§ 16:210	— —Landlord duty to tenant relocation assistance
§ 16:211	— —Violation of the ordinance
§ 16:212	Master (“umbrella”) associations
§ 16:213	—Relationship to unit owners’ association
§ 16:214	—Necessary provisions
§ 16:215	— —Copy of annual budget
§ 16:216	— —Itemized accounting of common expenses
§ 16:217	— —Written notice of meeting
§ 16:218	— —Open meetings
§ 16:219	— —Recording meetings
§ 16:220	— —Method of notification
§ 16:221	— —Posting of meeting notice
§ 16:222	— —Voting rights of installment sale buyer

- § 16:223 — —Collection of utility services
- § 16:224 — —Fines
- § 16:225 — —Record keeping
- § 16:226 — — —Declaration and other instruments
- § 16:227 — — —Expenditures affecting common area
- § 16:228 — — —Minutes of meetings
- § 16:229 — — —Ballots and proxies
- § 16:230 — — —Not-for-profit corporation records
- § 16:231 — — —Land trust voting rights
- § 16:232 — —Denial of request for records
- § 16:233 — —Record copying fees
- § 16:234 — —Remedy for records not provided
- § 16:235 — —Standing of board for common area matters
- § 16:236 — —Duties of developer
- § 16:237 — —Election of initial board
- § 16:238 — —Developer notice and note distribution  
information
- § 16:239 — —Failure to timely elect initial board
- § 16:240 — —Duty of developer post-election
- § 16:241 — —Cancellation of developer agreements
- § 16:242 — —Vote required for cancellation
- § 16:243 — —Statute of limitations for association actions
- § 16:244 — —Information provided to prospective buyers
- § 16:245 — —Fee for copying records
- § 16:246 — —30 days to provide information to buyer
- § 16:247 — —Provisions for corrections and amendments
- § 16:248 — —Corrections materially or adversely affecting  
property rights
- § 16:249 — —Applicability
- § 16:250 — —Common interest community associations
- § 16:251 — —Forcible entry and detainer
- § 16:252 Practical aspects of contract to sell or buy  
condominium unit
- § 16:253 Tax returns of condominium associations
- § 16:254 Gross income requirement
- § 16:255 —Taxable income
- § 16:256 —Filing of returns

## II. COOPERATIVES

- § 16:257 Background
- § 16:258 —Form of ownership of cooperative building
- § 16:259 Statutory requirements of corporate ownership
- § 16:260 Form of ownership interest of occupant
- § 16:261 Proprietary lease

## TABLE OF CONTENTS

- § 16:262 —Homestead and ownership as tenants by the entirety
- § 16:263 —Forcible detainer
- § 16:264 Right of first refusal
- § 16:265 Financing
- § 16:266 Real estate taxes
- § 16:267 Closing of sale
- § 16:268 Practical considerations

### **III. COMMON INTEREST COMMUNITY ASSOCIATIONS**

- § 16:269 Common Interest Community Associations
- § 16:270 Common Interest Community Association Act
- § 16:271 —Differences from Condominium Property Act
- § 16:272 —Small association exemption

### **IV. CHECKLIST**

- § 16:273 Required bylaws provisions in condominiums

### **V. FORMS**

- § 16:274 Clause for delivery of condominium documentation on resale
- § 16:275 Special provision for deed
- § 16:276 —Tenant's rights in conversion to condominium
- § 16:277 —Prorations and adjustments
- § 16:278 Representations of seller regarding assessments
- § 16:279 Adjustments and waivers of board of managers
- § 16:280 Prior options of condominium developer to purchase property
- § 16:281 Insurance
- § 16:282 Notice of intent forms

## **CHAPTER 17. LEASES AND PARTIES IN POSSESSION**

### **I. LEASES AND RIGHTS OF PARTIES IN POSSESSION**

- § 17:1 Recordation
- § 17:2 Parties in visible possession
- § 17:3 —Buyer's inspection
- § 17:4 Contractual considerations
- § 17:5 Rental concessions

- § 17:6 —Notice requirements
- § 17:7 Landlord Retaliation Act
- § 17:8 Tenant's possessory rights after foreclosure

## II. SECURITY DEPOSITS

- § 17:9 Payment by electronic funds transfer
- § 17:10 Security deposits
- § 17:11 Interest on security deposits
- § 17:12 Landlord's demand for rent and action in possession
- § 17:13 Landlord's right to personal property for rent
- § 17:14 Landlord's lien on personal property
- § 17:15 Landlord's duty to mitigate
- § 17:16 Exculpatory clauses

## III. LANDLORD TENANT ORDINANCES

- § 17:17 Landlord tenant ordinances
- § 17:18 —Chicago Landlord Tenant Ordinance
- § 17:19 — —Owner
- § 17:20 — —Owner occupied
- § 17:21 — —Dwelling units
- § 17:22 — —Building
- § 17:23 — —Rent
- § 17:24 — —Purpose
- § 17:25 — —Remedial and penal provisions
- § 17:26 — —Tenant's motives in evoking ordinance
- § 17:27 — —Willfulness
- § 17:28 — —Exculpatory clause
- § 17:29 — —Right of termination of lease for causes other than default
- § 17:30 — —Required disclosure of code violation
- § 17:31 — —Landlord required summaries with the lease
- § 17:32 — — —Security deposit
- § 17:33 — — —Security deposit—Commingling
- § 17:34 — — — —Deposit by attorney in IOLTA account
- § 17:35 — — —Interest
- § 17:36 — — —Disclosures
- § 17:37 — — —Willfulness
- § 17:38 — —Right to deduct damages from security deposit
- § 17:39 — —Tenant's damages
- § 17:40 — —Landlord's obligation to accept subtenant
- § 17:41 — —Transfer to new property owner
- § 17:42 — — —Requirement to disclose the financial institution holding the security deposit
- § 17:43 — —Right to withhold rent



## TABLE OF CONTENTS

§ 17:44	— —Right to terminate the lease
§ 17:45	— —Retaliatory conduct by landlord
§ 17:46	— —Private right of action by tenant for violation of municipal code
§ 17:47	— —Limitations
§ 17:48	— —Security deposit—Damages
§ 17:49	— —Attorney’s fees
§ 17:50	— — —Prevailing plaintiff
§ 17:51	— — — —Expanded meaning
§ 17:52	— — —Amount of fees
§ 17:53	— — — —Tender
§ 17:54	— — —Counterclaim or affirmative defense
§ 17:55	— —Properties not covered by the ordinance
§ 17:56	— —Effect of violation on enforceability of balance of the lease
§ 17:57	—Chicago Protecting Tenants in Foreclosed Rental Property Ordinance
§ 17:58	— —Exclusions
§ 17:59	— —Notice to tenants
§ 17:60	— —Registration of foreclosed rental property
§ 17:61	—Chicago bed bugs ordinance—Landlord obligations
§ 17:62	— —Tenant obligations
§ 17:63	— —Violation penalties
§ 17:64	Safe Homes Act
§ 17:65	—Right of tenant to vacate lease upon imminent threat
§ 17:66	—Tenant notice and support requirements if seeking to obtain new locks upon imminent threat
§ 17:67	—Confidentiality
§ 17:68	—Penalty and attorney’s fee
§ 17:69	—Landlord obligation to provide new locks upon imminent threat

## IV. SHORT-TERM HOUSING RENTALS

§ 17:70	Chicago home sharing ordinance
§ 17:71	—Terms and definitions
§ 17:72	—Size of building requirement
§ 17:73	—Registration requirements
§ 17:74	—Listing ineligibility
§ 17:75	—Unlawful acts
§ 17:76	—Disputing notice of ineligibility
§ 17:77	—Required listing content
§ 17:78	—Operating requirements
§ 17:79	—Shared housing unit disclosure in lease and in sale

§ 17:80 —Restricted rental zone

## **V. FORMS**

- § 17:81 Protecting tenants in foreclosed rental property ordinance—Notice to occupants form
- § 17:82 Landlord and tenant rights and laws—Summary from the office of the Illinois Attorney General
- § 17:83 Affidavit for inclusion in prohibited buildings list
- § 17:84 Affidavit for removal from prohibited buildings list
- § 17:85 Informational brochure on bed bug prevention
- § 17:86 Bed bug pest management plan
- § 17:87 Bed bug fact sheet
- § 17:88 Commissioner’s adjustment application for shared housing units and vacation rentals

Appendix 17A. City of Chicago Landlord and Tenant Ordinance and Protecting Tenants in Foreclosed Rental Properties

### **Table of Laws and Rules**

### **Table of Cases**

### **Index**