

From: Gustave Seelig [gseelig@vhcb.org]
Sent: Thursday, October 18, 2012 10:21 AM
To: London, Sarah
Subject: Title Cost Memo - VLT 9-26-12
Attachments: Title Cost Memo - VLT 9-26-12.pdf

Sarah In advance of our call I had meant to send this memo to you from VLT on how they hope to induce savings on title searches. Gus



Vermont Land Trust

CONSERVING LAND FOR THE FUTURE OF VERMONT

Memo

To: Gil Livingston, President, Vermont Land Trust
Gus Seelig, Executive Director, Vermont Housing and Conservation Board

From: Julie Curtin, Staff Attorney, Vermont Land Trust

Date: September 26, 2012

Re: Title Costs for VLT Purchases of Development Rights on Farm Projects

Governor Shumlin has raised concerns about the title costs on VHCB funded easement purchase projects. This memo summarizes the research that Vermont Land Trust ("VLT") Project Counsel Rick Peterson, VLT Director of Conservation Programs Siobhan Smith and I have conducted in response to these concerns. In addition, I provide a possible explanation for why some projects result in higher title costs than others. Finally, I offer a proposal for achieving cost savings on title searches and insurance.

I. RESEARCH

We surveyed two title insurance underwriters working in the State of Vermont, Andy Mikell of Vermont Attorneys Title Corporation and Mark Schittina of Commonwealth Land Title Insurance Corporation. Specifically, we spoke with each of them separately and asked them what billing systems and cost savings measures they have observed. Both agreed that VLT's work is analogous to commercial transactions, which tend to be more complex and varied than routine residential real estate searches. In addition, they provided that other commercial real estate operations in Vermont use the same method for searching title and obtaining title insurance that we use – hiring local real estate attorneys to search the land records, write a title opinion, issue a title commitment and ultimately a final title policy.

We specifically asked them to reflect on (1) the receptivity in the market to a bidding process for title attorneys to do work for VLT on these projects, and (2) the availability of other title search services from non-attorney agents such as Becky Day. In response to item (1), both stated that they are not aware of other customers that use this approach, other than the federal government on a project-by-project basis, and agreed that attorneys would likely balk at the prospect of agreeing to a flat-fee arrangement given the uncertainty of how complicated a particular title search would be. With respect to (2), they are not aware of any non-attorney title searchers other than Becky Day.

In addition, Rick Peterson interviewed three attorneys with whom we regularly contract for title services: David Rath, Tad Powers and Joe Cahill. Joe Cahill said he would be willing to consider dropping his hourly rate from \$200 to \$170. David Rath said he would be willing to reinstate his prior practice of discounting his title search bill by 50% of the title premium he receives from the title insurance company for issuing a policy. Note that both title underwriters suggested that this is a potential avenue for cost savings. Tad Powers said would consider a lower hourly rate for VLT and/or a discount equal to 50% of his title commission. All three agreed that they would likely respond to a "request for proposals" for an exclusive contract to do VLT's title work. However, they would design their bids to account for complicated projects and the bid would match what they already charge.

In an effort to quantify the potential savings from discounting the title search bill by an amount equal to half the title attorney's title commission, VLT Director of Finance Rick Provost applied this approach to our title costs on VHCB farm projects that closed between April 2011 and March 2012. The resulting numbers are attached to this memo. The average savings is 13.3%, with savings on individual projects ranging from a high of 61.9% to a low of 5%.

II. ANALYSIS OF PROJECTS WITH ABOVE AVERAGE TITLE COSTS

Title bills for 2012 projects range from the \$100s to over \$9,000 in the case of the Johnson Farm. Generally, farms with complicated deed histories resulting from a combination of many in and out conveyances, multiple chains of title and searches in multiple towns result in higher title bills (e.g. Thibault N&R, O'Bryan and Johnson). A greater number of encumbrances can also result in a higher bill (e.g. DeVries). Essentially, anything that requires more time in the land records both tracking down documents and copying them results in higher costs.

Sometimes, VLT paralegals will find mistakes in or request corrections to a particular title opinion. Again, such requests result in higher bills because of the time the title attorney spends responding. Although the mistake was due to title attorney error, we are generally billed for the extra time it takes the title attorney to correct it.

III. PROPOSAL TO ACHIEVE 10-15% COST SAVINGS PER PROJECT

First, we believe that we could achieve an approximately 10% savings by persuading our title attorneys to discount their fees by an amount equal to 50% of the title premium that they are paid for issuing the title policy.

Second, we should negotiate lower hourly billing rates from those attorneys who appear to be charging on the high-side. For example, Joe Cahill offered to consider dropping his \$200/hour rate to \$170/hour - a 15% savings. Not all of the title attorneys that we work with charge such high rates. Angela Ross, for example, already bills at a very low rate based on a fixed price per chain of title searched. In addition, it is not clear from our conversations with our title attorneys to date that they would be willing to both reduce their hourly billing rate and apply the 50% title premium discount.

Finally, we should negotiate individual invoices for title searches and opinions. Our standard practice has been to approve a bill for payment upon receipt with little to no negotiation. However, when a title attorney makes a mistake, VLT should not be charged for the correction. A determination of when such discounts would be appropriate would be made on a case-by-case basis. Moreover, the potential savings from this approach is difficult to quantify since we have not analyzed past bills to determine how often such mistakes occur and how much they cost VLT.