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the title company for correction or for issuance of an intermediate certificate of title or interim binder. If a release will eliminate the objection, action will be taken to obtain an appropriate release from the person or persons holding the right of reverter. Should the title company hold that the title cannot be perfected by a release or if an acceptable release cannot be obtained, action will be taken to acquire the tract by condemnation.

(6) When the specifications require the title company to include any of the above information in the preliminary certificate of title or interim binder and it is necessary to obtain an intermediate certificate of title or interim binder due to the omission of such information from the preliminary report by the title company, the intermediate certificate of title or interim binder will be furnished without cost to the United States.

(c) *Question of law.* Any difficult or complicated question of law raised by an objection or exception in a preliminary or intermediate certificate of title or interim binder should be submitted to HQDA (DAEN-REA-P) WASH DC 20314 for review and transmittal to the Attorney General for an opinion. The letter of submittal shall contain a full statement of the facts and references to the provisions of applicable statutes and pertinent decisions of state courts on the question involved. This action should be taken before closing. This action should also be taken on questions involving the nature and extent of the liens of bonded indebtedness, assessments, or taxes to meet the bonded indebtedness of special improvement districts, or relating to restrictive covenants.

§ 644.69 Title Clearance—Easements.

(a) *Easements Costing in Excess of $1,000.* Curative action and clearance of title to easements costing in excess of $1,000 will be the same as in fee acquisitions, as outlined above, except as follows:

(1) Under an agreement with the Department of Justice, title to easements will be approved subject to outstanding encumbrances, such as mortgages, deeds of trust, judgments, and vendors' liens, where the tract is not encumbered in excess of 50 percent of the reasonable value of the remaining property, and the consideration being paid for the easement does not represent a sum in excess of ten percent of the value of the remaining property. (As to taxes, see § 644.70(k)(6).)

(2) For the purpose of making the determinations necessary to apply the formula set forth in paragraph (a)(1) of this section, resort may be had to the tract appraisal, provided it is based on a ''before and after'' approach, in which case the amount of the ''after'' appraisal will be used as the reasonable value of the remaining property. In the event no such appraisal has been made, a memorandum estimate by a qualified appraiser (staff or contract) will be obtained. Determination of the total encumbrances may be made on the basis of the face of the encumbering instruments. However, if it is necessary to determine that the total amount of the outstanding liens as of the date of closing has been reduced to an amount less than 50 percent of the reasonable value of the remaining property, such reduction must be evidenced by signed statements from the lienees or their authorized representatives. The appraisal or memorandum estimate and the lienee statements will be placed in the tract file.

(3) On the basis of the determinations described in paragraph (a)(2) of this section, the appropriate information will be inserted on ENG Form 3536, Statement Concerning Outstanding Encumbrances, which will be signed by the closing agent. The original will appear as a separate document in the Final Title Assembly submitted to HQDA (DAEN-REA-P) WASH DC 20314.

(b) *Easements Costing Not in Excess of $1,000.* (1) Requirements for the release or subordination to such easements of mortgages, deeds of trust, judgments, vendors' liens, taxes which are a lien, whether or not presently due and payable, and similar encumbrances will ordinarily be the same as for easements costing in excess of $1,000.

(2) In unusual circumstances, these requirements need not be applied if the purchase price of the easement is insufficient to satisfy the liens and interest, or the amount of such liens or interest is small in comparision with the value

of the land in which the easement is being acquired, and in comparison with the cost of condemnation proceedings to clear the title. In such cases, the Division or District Engineer (or the Chief, Real Estate Division, if delegated such authority) may waive such title infirmities as he determines will not interfere with the use of the easement by the Government or jeopardize the interests of the United States: *Provided:*

(i) The easement deed contains a general warranty covenant by the grantor to satisfy all such unpaid taxes and other liens and to warrant the title against any encumbrances or interests left outstanding.

(ii) The Division or District Engineer (or the Chief, Real Estate Division, if delegated the authority) has determined that such outstanding liens, encumbrances, or interest, if left outstanding, will not interfere with the Government's use of the easement, or will not jeopardize the interests of the United States, and in his opinion the title is sufficient. A certificate to this effect should be attached to the Final Title Assembly.

(c) *Curative action.* (1) Curative action will be initiated promptly in all cases to eliminate all title defects or encumbrances, except those which may be administratively waived, those which may be eliminated by the payment of money and cleared at the time of closing, and those which may be waived as hereinafter provided. Curative material need not be recorded, however, until the closing of the transaction.

(2) All encumbrances, defects, outstanding interests, and other matters shown in the preliminary certificates of title or interim binders, must be cured and eliminated before delivery of the purchase check, except those of a nature which have been waived as not interfering with the Government's use of the easement or as not jeopardizing the interest of the United States.

§ 644.70 Closing of cases.

(a) *Closing and Settlement Officers.* Payment and closing of cases will be initiated immediately upon completion of curative action, by qualified Closing Officers employed by the Corps of Engineers. To be qualified, a Closing Officer must be employed in the Real Estate Division of a Division or District Office, or in a Real Estate Project or Suboffice, in an Attorney-Advisor position, or in a Realty Officer position if he is a member in good standing of the Bar of a State, Possession, or the District of Columbia, and has been instructed in Federal procedure and in the requirements for closing land acquisition transactions by a Division or District Closing Officer and has been approved by the Division or District Engineer to close land acquisition transactions independently. It is no longer necessary for Closing Officers to be individually bonded. Contracting for closing services will require prior approval of HQDA (DAEN-REA-P).

(b) *Payment.* Payment for land, or interests therein, will be made from funds available to the Division or District Engineer.

(c) *General.* The details of the closing necessarily differ according to the number of vendors and the outstanding interests, the number and variety of the encumbrances and title objections to be met, and miscellaneous other details resulting from complications in the particular title. Upon receipt of the check and title papers, the Closing Officer will review the entire file relating to the acquisition, fully acquaint himself with the terms and conditions of the sale, and with the condition of the title, and will ascertain whether there are any special conditions to be performed, or requirements to be met, on the part of the landowner or the Government and what objections to the title are to be eliminated before valid title may vest in the United States.

(d) *Curative data.* The Closing Officer will determine the character and amount of all outstanding interests in, liens on, or claims against the land, which are to be satisfied out of the purchase price, and see that necessary curative action has been taken and curative data obtained to cure all defects in and meet all objections to the title. If the title evidence consists of a certificate of title of a title company, or a title guarantee policy, approval of the curative material, obtained to eliminate the title objections, must be obtained from the title company.