INSTRUCTIONS FOR PART I ONLY:

1. Write your student I. D. on the Scantron card. Do not write your name.

2. Answer by completely filling in the appropriate blank. Use a #2 pencil. Press hard. Do not make estraneous marks on the Scantron card. Choose the best answer. There may be more than one correct answer. If you believe that there is an error or ambiguity or other matter on which you would like to comment, write your comments in a separate bluebook labeled “Part I” on the outside of the bluebook.

3. Circle the answer on the question sheet in addition to filling out the Scantron card. You must hand in both the questions and the Scantron card at the end of the exam.

4. In answering these questions, you are to assume: unless the question specifies otherwise, that you are in a mythical jurisdiction that has adopted:
   a. a statute of limitations of five (5) years for all property actions;
   b. a race-notice recording act;
   c. the majority rule or, if there is no clear majority rule, the cases in the textbook;
   d. the disclosure statute attached to this examination.

You should also assume that any reference to a title insurance policy is a reference to a standard policy with the exclusions and exceptions attached to this examination.
1. Unless you are typing the exam, please write your answers in the blue books provided. Write on every other line and on every other page. (I.e., do not write on the backs of the pages. The ink shows through.) Begin each question in a separate bluebook. Write your student I.D. on the exam and on the outside of each bluebook.

2. You are in the State of Misery, a mythical jurisdiction in which there is very little law and in which the courts are influenced by precedents from other states. The jurisdiction has, however, adopted the following statutes:
   a. a statute of limitations of five (5) years for all property actions;
   b. a race-notice recording act.

3. One fact pattern, three questions and two maps are set forth below.

ESSAY QUESTIONS

Kate Louver decides to develop a large tract. She divides the land into twenty lots and draws up a master plan, which she shows to prospective buyers, but does not record. The master plan, under the heading “Exclusive Residential Community,” depicts nineteen residential plots, and a twentieth lot, larger than the others, marked “Reserved for Developer.” (See Map 1). Kate constructs and sells single family homes on lots 1 to 5 without restrictions in their deeds. She then runs into financial difficulties and sells lots 10 to 15, which are undeveloped, with deed restrictions specifying “single family residential use only. Construction is permitted only with the approval of a neighborhood review committee to consist of the neighborhood homeowners.” The “neighborhood” is defined as lots 1 through 20. With the money from the sale of these lots, Kate builds and sells homes on lots 6 through 9. The houses are custom designed, and three include “bonus rooms” that have been used at various times for home offices and after-school care. The deeds to these lots contain no restrictions. Finally, Kate sells lots 16 through 19, which are still undeveloped, with restrictions identical to those imposed on lots 10 to 15. The deeds to lots 1 through 19 are recorded.

After the sale of the last of the lots, Kate builds a large home for herself on the remaining lot, adding a specially designed building in the back to house her numerous stray cats and dogs. Not long afterwards, Kate sells the property to Fred Fido, who occasionally rents space in the kennel to out-of-town pet owners. The general warranty deed, which is recorded, specifies that the property is to be used for single family residential use only.

Part A (52 min.): The owners of lots 1 to 19, many of whom are not the original owners, form a “neighborhood review committee” and object to both the presence of the kennel and Fred Fido’s rental of it to others. They have retained you as their attorney and tell you that the dogs are smelly, noisy, and sometimes escape into the neighborhood. Evaluate any basis they may have collectively or individually to enjoin Fred’s use of the property, and any defenses Fred may raise.
Part B (45 min.): Fred decides to sell the house and persuades the owners of lots 1-1 9 to dismiss their suit without prejudice. [“Without prejudice” means that the plaintiffs are free to reinstate the suit at a later date.] Fred then sells the house to Paula Perro, giving her a general warranty deed without mentioning the controversy. The deed, which Paula promptly records, contains no restrictions. Shortly after Paula moves in, she discovers that the kennel, which Kate Louver personally constructed, leaks badly when it rains and will cost over $10,000 to repair. She also discovers that the city repeatedly sent notices to Kate to clean up the unsanitary conditions in the kennel, which violate city ordinances, and that two days before she closed the deal on the property with Fred, the city filed a notice of intent to initiate enforcement proceedings in the county recorder’s office. Fred was unaware of these developments. Thirty days after Paula takes possession, the city sues her. Advise Paula of any recourse she may have against Kate or Fred.

Part C (45 min.): When Kate first bought the large tract in 1985, she created a fenced off dog exercise area along the side of what later became Lot 20. (See Map 2). The exercise area had gates at each end, and on the gates were signs that read: “Dog exercise area. Open to the public between sunrise and sunset. Please keep gates latched at all times.” The neighbors not only used the area to exercise their dogs, they also found that it constituted a convenient passageway from the subdivision to the city park on the other side of lot 20. In 1987, Kate became angry that the gates were routinely left open. She removed the signs and added locks, giving keys to all of the residents of the subdivision. Kate found that the gates were still routinely left open, however, and a couple of months later, she put the signs back up and replaced the locks with self-closing latches. When Kate sold the property to Fred in 1991, she included a provision in the recorded deed recognizing an easement in the fenced in area “for the benefit of those lots within the subdivision whose owners wish to exercise their pets.” Fred, however, quickly changed the signs on the gates to read: “Private property. Keep out.” The neighbors nonetheless continued to use the area on the same basis as before.

In 1993, Paula (who had bought the property from Fred) locked the west gate to the exercise area so that the only entrance was through the city park, and planted a flower garden in the area between the west gate and the road. (See Map 2). In 1999, the city closes the park and sells it to an industrial developer. The neighbors (including both some within the subdivision and some without) sue to compel Paula to allow them access to the dog exercise area through the west gate. Paula has asked you to evaluate any grounds they may raise, and any defenses she may have.

END OF EXAMINATION

HAVE A NICE SUMMER!
### MAP 1

**Exclusive Residential Community**

<table>
<thead>
<tr>
<th></th>
<th>1</th>
<th>2</th>
<th>3</th>
<th></th>
<th>4</th>
<th>5</th>
</tr>
</thead>
<tbody>
<tr>
<td>6</td>
<td>7</td>
<td>8</td>
<td></td>
<td></td>
<td>9</td>
<td>10</td>
</tr>
<tr>
<td>11</td>
<td>12</td>
<td>13</td>
<td></td>
<td></td>
<td>14</td>
<td>15</td>
</tr>
<tr>
<td></td>
<td>16</td>
<td>17</td>
<td>18</td>
<td>19</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Reserved for Grantee

### MAP 2

**Lot 20**

- **Flower garden**
- **Dog Exercise Area**
- **West Gate**
- **East Gate**
§ 1710.2. Disclosure of AIDS information in real property transfers; Preemption by state

(a) No cause of action arises against an owner of real property or his or her agent, or any agent of a transferee of real property, for the failure to disclose to the transferee the occurrence of an occupant’s death upon the real property or the manner of death where the death has occurred more than three years prior to the date the transferee offers to purchase, lease, or rent the real property, or that an occupant of that property was afflicted with, or died from, Human T-Lymphotropic Virus Type III/Lymphadenopathy-Associated Virus. As used in this section, “agent” includes any person licensed pursuant to Part 1 (commencing with Section 10000) of Division 4 of the Business and Professions Code. As used in this section, “transferee” includes a purchaser, lessee, or renter of real property.

(b) It is the intention of the Legislature to occupy the field of regulation of disclosure related to deaths occurring upon real property and of AIDS in situations affecting the transfer of real property or any estate or interest in real property.

(c) This section shall not construed to alter the law relating to disclosure pertaining to any other physical or mental condition or disease, and this section shall not relieve any owner or agent of any obligation to disclose the physical condition of the premises.

(d) Nothing in this section shall be construed to immunize an owner or his or her agent from making an intentional misrepresentation in response to a direct inquiry from a transferee or a prospective transferee of real property, concerning deaths on the real property.

AMERICAN LAND TITLE ASSOCIATION LEASEHOLD LOAN POLICY (10-17-92)
WITH ALTA ENDORSEMENT — FORM 1 COVERAGE

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees expenses which arise thereon:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting real estate usage or prohibiting or regulating the use of or enjoyment of any land or its improvements, or any lien record of the same or action, claim or suit, or any governmental action or proceeding thereon or affecting any part thereof, or any lien recorded on the land which has been recorded in the public records at Date of Policy;

(b) Any governmental police power not excluded by (a) above, excepting a record of a notice thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy;

2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but excluding for coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge of the taking;

3. Defects, liens, encumbrances, assessments, or other matters:

(a) Known to the Company at the time of issuance of this policy; or

(b) Not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing, and the Company by the insured claimant prior to the date the insured claimant became insured under this policy;

(c) Resulting in no loss or damage to the insured claimant;

(d) Assenting or created subsequent to Date of Policy (except to the extent that any lien or mortgage is created prior to Date of Policy, including any lien or mortgage which has been acquired after Date of Policy, by the insured claimant, assuming or creating a security interest in the mortgaged property); or

(e) Resulting in loss or damage which would have been avoided if the insured claimant had paid value for the insured mortgage and

4. Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at Date of Policy or the inability or failure of any subsequent owner of the property to comply with applicable doing business laws of the state in which the land is located;

5. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer protection or truth in lending law;

6. Any statutory lien for services, labor or materials (or the claim of priority of any statutory lien for services, labor or materials hereunder) on the land which is evidenced or recorded subsequent to Date of Policy, and in favor of the holder thereof.

The above policy form may be issued to afford either Standard Coverage or Extended Coverage. In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following general Exceptions:

EXCEPTIONS FROM COVERAGE

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. Taxes and assessments which are not shown as existing lien by the records of any taxing authority that levies taxes or assessments on real property or by the public records.

2. Proceeding by any public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such public agency or by the public records.

3. Assessments, liens or encumbrances, or claims thereof, which are not shown by the public records.

4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.

5. (a) The insured mortgage; (b) any lien, claim or interest; (c) any fee, rent, or other estate, or (d) in any Acts authorizing the issuance thereof; (e) water rights, claims or titles to water; and (f) any matters excepted under (a), (b), (c) or (d) are shown by the public records.

INITIAL

INITIAL

28