

## MacGregor Cuts a Mortgage Down to Size<sup>©</sup>

By Elmer E. White

General Counsel Walter Runciford leaned back in his leather chair and gazed at a freighter sliding down past Belle Isle. High in his office in the top-most stories of the 400 tower of the Renaissance, his eyes glazed over as the afternoon sun glinted off the water of the passageway between the lakes known as the Detroit River. On his leather-topped desk was the letter that his employer, The Regal National Bank, had received from Lansing. As chair of the sub-committee on legal forms of the state bankers' association, it was Runciford's task to formulate a reply strategy. The association's lobbyists were keen on this point.

Runciford wondered: "Who is this MacGregor and why is he writing demanding letters to bankers over the silly matter of the size of mortgage documents?"

Starting with the first premise of the business lawyer, Runciford resolved to put nothing in writing to this rustic MacGregor, the eternal David to many of Michigan's Goliath corporations. "No," he thought, "that would play right into MacGregor's game plan. Surely the man has a game plan with this 'short mortgage form' letter. He has it laid out and is waiting for my clients to walk into the trap."

Buzzing Miss Henderson on the intercom, he put into play his instinctive deci-

sion: to visit MacGregor in his lair. "Get this MacGregor fellow out in Brisket on the phone." Moments later he was talking with Mary Campbell at the MacG offices.

"MacGregor isna available to speak with you, Mr. Runciford."

"What's he doing? Is he 'in conference' or 'in court'?" Runciford asked. He knew the ploys that private-practice lawyers used with someone they wished to avoid.

"Well, really, Mr. Runciford, I donna know where he might be. MacGregor never informs me of his comings and goings. He says it isna anyone's business to know what he is about at any particular time."

What is this? Runciford thought. He's got a secretary with a Scots accent. How does he get clients with that kind of set-up? "Well, Miss Campbell, I thought I might drop by to review this short-mortgage letter. My son's fraternity over at the university is having a father-and-son dinner, and I'll be in Brisket next Thursday. I had hoped we could get together in the late afternoon."

It transpired there was no problem in making the appointment. "MacGregor will be glad to meet with you at 4:15 p.m. on Thursday next," Miss Campbell replied.

And so it was the next week that the general counsel located Doug's Place and, after asking directions of the bartender, found the small sign indicating the MacGregor Law Offices upstairs. Climbing the stairs, he remembered a story about a rooftop garden. Entering the offices and glancing to the left, he saw the "heath garden" arrayed on the next-door rooftop, something that Americans would call a "rock garden." He had been told by a Cadillac Square Building plaintiff's litigator that MacGregor preferred the Scottish usage.

"That's quite a heath garden you have there MacGregor," Runciford said cheerfully as he shook the man's hand.

"Aye," replied MacGregor, "a heath garden it is, as bonnie as ony in Scotland. But it isna mine; on that you must be clear. It is owned by my neighbor Schwartz, the hardware dealer, and it is he that must pay

the taxes upon it. That is ta say, if the assessor should think ta look on the tap o' the structure!"

And with that they were at MacGregor's desk, and the jousting over the long-form mortgage began.

"Why is it, MacGregor, you're so worked up over the fact that my clients and, indeed, bankers all over the state, use the long-form mortgage?"

"Aye," replied MacGregor, "you mean the one with the fourteen-inch paper that used ta be called the 'legal form'? It's no longer used amongst civilized lawyers. Hear my short history lesson upon how the form came to be used in the first place. The lawyers of England paid their scribes by the page. They had others do the work o' writing for them. And the cheap English, you know, they got the most for the mile by requiring their poor scribes, the Bob Cratchitts 'o London toon, to write it all out on long sheets of 'foolscap,' for only a fool would labor so long over a pleading to be paid the pittance the English advocate might part with, so that long form came ta be known as 'legal size.' Thereby the English lawyer shaved a shilling or two from the amount due his laborer!"

"So why this English history, MacGregor? Why do you write my clients with threats to take them to court for violating the Federal Trade Commission Act, for God's sake?"

"Aye," replied MacGregor, "it's just as Harry Truman said about the mule. I had to hit them over the head to get their attention, and see what it's brought me: a fine visit from a \$250-an-hour lawyer. I'll no be wanting the banker laddies to be scrimping on your fee for this visit..."

"Well, MacGregor, I don't see what that's got to do with the solution to this problem..."

"Now don't ye be getting huffy-wuffy with me, Wally," MacGregor intoned. "There's no need there be blood between us o'er this wee matter. It's just that I desire to apply good Scots reasoning to it all. You see, the pow'rs that be in the State Bar asked me

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several years ago to serve on their Plain English Committee, and I told them my heritage required I decline the assignment. My granny would turn o're in her grave were she to receive word that I was in any way, shape, or form involved with a Plain 'English' Committee! You maun say it would be ethnically offensive to me to be identified with such a committee. In fact, I've given thought to filing a complaint with the Civil Rights Commission over its very name. Furthermore, I wonder if the Supreme Court, with its new-found concern for sensitivity, might be petitioned to look into the unfair allocation of a portion of my State Bar dues to this 'Sassenach' [Gaelic for the English] conspiracy."

"I certainly understand," said Runciford, burying his head in his hands.

"You're so right, my banker advocate. It's nae that I ha'e anything against the English, you understand. Whilst some of my best friends are English, most o' them are not. The Scots' approach to this long form versus short form controversy is both histori-

cal and practical. Let me first give you the historical. When the King o' Scotland sent forth his judges from Holyrood Palace in Edinburgh to supply the benches o' the counties and burghs o' Scotland, they hadna with them what we today would call a 'lawyer.' They had with them assistants who could read and write. These men, trained by the Holy Church, were lay 'clericals,' as the English would call them. The Scots, however, referred to the judges' assistants as 'writers' because they would write doon what the judge decided about a particular controversy that was before the court. Now, Wally, it is interesting that in the auld Scots language the word 'clerkit' refers to a legal writing. Even though these law clerks were called 'writers,' the law they recorded with their writings was 'clerkit.'"

"I'm a bit rusty on my history, but what in the name of all that is holy has this got to do with the long-form mortgage?" Runciford interjected in an irritated tone.

"Aye," replied MacGregor, "you're wanting me to shorten it up so your clients

can save some of that hourly fee of yours. That is very noble of you. Very well, here is the point. The poor Scots lawyers had to be their own 'writers,' for they didna hae scribes in the manner of the English advocates. So when they charged 'by the page,' they naturally inclined toward the shorter form!"

"You mean the squabble has to do with the amount of money a lawyer makes for his work?" Runciford asked.

"Of course, of course," replied MacGregor. "It's the auld conundrum of the English lawyer with his long pages, shaving his expense to the scrivener, versus the Scots lawyer with his short pages doing his own writing and charging more for the extra pages! But, Wally, this becomes a moot point now that we all have word processors to pump out the pages. There is more to consider than merely what the lawyer might earn. I'll relate the rest o' the story, that is ta say, the second and the practical part.

Those o' us that hae come o'er the water and are in practice here in America brought with us the standard and accepted Scots attributes of thrift and economy. There is an auld Scots saying: 'Guid Gear Gangs in Sma' Buk,' which translates 'good gear is found in small bulk.' A lad may be small, yet still be brawny. Economy in the expenditure of resources is a trait to highly prize, praise, admire and celebrate. When



Elmer E. White graduated the University of Michigan Law School in 1964 and practices in Ann Arbor. On a recent visit to one of the town's famed restaurants, this story was related to him by Runciford, an alias for a law school buddy employed by

a major Michigan bank. Since MacGregor would not return phone inquiries, no claim is made for the accuracy of the legal historiography. The author's collection includes a power of attorney dated July 1, 1766, drafted by an English solicitor in Jamaica to assist a Scotsman in selling land in Scotland. It is the long-form document, and the English loyalty of its drafter cannot be doubted inasmuch as the document refers to land "in the County of Angus in that part of Great Britain called Scotland." The watermark presents a variation on foolscap with an image of a grinning, crowned monarch, the shape of whose face resembles Mr. Potatohead. The paper maker must have been a Scot.

we discovered that file cabinets and copy machines were, shall we say, less expensive in the letter size, we quite naturally desired to save a shilling here and there on this gear. Of course letter-size paper is less expensive by the ream and requires less storage space than does legal size. On tap o' that, it costs more to purchase and store both sizes. Now with the invasion of the FAX machine it is obvious to all that ha'e eyes that the letter size is the only intelligent, economical, and efficient manner with which to equip a modern law office. The FAX machine is expensive and it adds to the cost if you must buy one that pumps out both letter and so-called legal-size messages. The laserprinter on your computer? Why should ye have to buy both a legal-size tray and a letter-size tray? For a large banking organization, that means dozens of extra trays to keep track of. Don't you see the irony of it—to purchase legal-size trays when the state and federal courts have outlawed the legal size? Don't you get it? Legal size isna legal any more!"

"I see all that," Runciford said. "But permit me to suggest a very simple solution to what you're trying to make into a federal case. Why don't you merely flick the little 'reduce to 78% button' on your copy machine, and you can turn out the letter-size copies you prefer by using the legal-size blank form as a master."

"Aye, Wally! I've given thought to that ploy. Before I could put it into effect, it helped me win a very nice lawsuit that one of our rapacious Brisket landlords had brought against an apartment building full of university students. It seems that he did the same thing with a lease form, and you know what it did? It reduced all the print to mouse-size print. The students retained me, and when I pointed out to Judge Klein that the Truth in Renting Act of 1979 mandates that lease print be at least 12-point type, why, it was all over for the landlord. The judge threw the case out of court because the lease didna have large enough print!"

"That's an interesting war story," Runciford interjected. "But your letter mentions federal regulations on banking."

"Must we, must we," MacGregor continued, "stoop to the level of requesting federal intervention to get your laddies to see the light on this issue?" MacGregor asked.

"Well, I have you on that, MacGregor. The federal banking and real estate regulations don't say anything about outlawing the big legal-size documents. My clients

deal with Sales Agreements, Deeds, Mortgages, Construction Liens and Leases, and they are all the long ones. It is only the title insurance companies, run by lawyers, that have gone over to the 'shorty' forms for their documents. But, at the same time, they give away 'free' blank forms that are legal size. The bankers, MacGregor, are between a rock and a hard place. They would like to go along with the lawyers and save all that money on equipment, but the real estate association opposes going to letter size. In their communications to the Legislature they have said that they need the legal size 'on the grounds that the delicacy and precision of certain terms expressed in a certain order spell out definitely what is required of both parties to a contract,' and the longer-size paper gives them more room to say it."

"I donna for a moment believe their sincerity. Here is probably the case: They believe long size gives the trappings of legitimacy to the document, so the consumer is less likely to question it. Since the document, by its size, conveys the aura of a lawyer-prepared document, the consumer may think it is fine and should not be questioned."

"You're saying that bankers stick with the long form because it lulls customers into thinking their legal rights are protected when that might not be the fact?" asked Runciford.

"That I am, Mr. General Counsel. The Federal Trade Commission Act prohibits such a gambit, because it acts as a restraint of trade. Please convey to your clients the information that I have a panel of psychologists from the university lined up as expert witnesses. We're going to bring the

biggest class-action lawsuit you've ever seen on these outmoded legal-size form papers. In the face of the fact that the entire state and federal court systems and all practicing lawyers have rejected so-called legal size, your clients persist in using it merely because it lullabies consumers into sleeping on their right to an independent review of the document."

"You're all wrong on this, MacGregor," Runciford declared as he moved to the door.

"Of that you canna be sure until I've litigated it," MacGregor replied. "Why don't you ask your son what he thinks of this dispute? You could use the fresh view of a thinking person who isna tied directly to the banking industry."

This idea stopped Runciford in his tracks. The great computer between his ears spun its hard disk in record time, sifting data so quickly that Runciford was surprised that it computed down to this: the need to defuse MacGregor. There was no other way to win the joust.

Runciford spoke now in a conciliatory tone. "That's not a bad idea, MacGregor. Say, do you have time to go over to the fraternity with me? Several of the brothers in the pre-law program always ask me about the real-world practice of law. I'm afraid I haven't been much help to them. Possibly you could provide some insight into what the practice of law is really like."

"Well, I've got an hour or so. I'll take you up on the invitation. But don't expect me to encourage the lads to go into the law. You know, with all the lassies in law school these days, the competition is pretty keen." MacGregor chuckled at his observation as he lifted his vinyl briefcase and the two walked to the stair. ■

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