Title Examination Roadblocks â?? What To Do?

Description

Title Examination is a lot like a puzzle. In order to see the big picture, one must first determine the order in which to place the pieces. The process of searching a title is a specific and detailed process. To be a good title examiner, it requires great attention to detail. Title examiners are taught to focus on the details of the property that they are searching.

The title search process involves a determination of the owners in the chain of title. Creating the chain of title is a great deal like drawing a flow chart of the people who have owned the property usually going back 60 years to a general warranty Deed. The job of the title examiner is to focus on the facts of title. The real work begins when the examiner hits a roadblock in the chain of title and canâ??t figure out how the prior owner acquired their interest. There are many reasons why a title examiner can reach a dead-end in the search:

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- There is no And Being reference for the prior Deed contained in the document.
- There is no recital as to how the prior owner acquired their interest in the property.
- The prior owner may have acquired under a different name and/or changed their name.
- The prior owner may have acquired their interest from an estate by Will or as an Heir.
- The prior owner may have acquired the property under their maiden name.

Tracking female ownership can be very difficult to find the links in the chain of title, especially from a historical perspective. The Virginia Married Womanâ??s Act of April 1887, as amended (VA Code 55.35 et. seq.) have determined how married women may acquire and sell property, once again this has changed over time. With the enactment of this law, it afforded a married woman the right to acquire, hold, use, control and dispose of property as if she were unmarried. Prior to that point in time, the common law gave her husband rights of control and disposition of her property making it impossible for a married woman to sell her property without her husband joining in the Deed of conveyance. It was a common practice back in time, to only index the manâ??s name and the wife may only be indexed as & Mrs., so the examiner would have to determine her husbandâ??s name. The womanâ??s name could have changed by marriage or she may have inherited the property under her maiden name from a family member. Often when searching titles, the examiner discovers many interesting documents that give clues as to what is happening to the people who owned the property in that specific point in time. These clues are like bits of history.

Part of the job of the title examiner is to become knowledgeable of the Virginia laws concerning real estate that are pertinent to each historical period. The examiner needs to have the ability to understand the impact that Virginia Statutes have on the property and how they have changed over time. Here is a helpful link to the Code of Virginia where you can search the Virginia Statutes https://law.lis.virginia.gov/vacode They are also required to become aware of how a difference in gender or tenancy can affect the ability to hold title or inherit property. It is important that the examiner be knowledgeable of how the laws have changed over time for the Course of Descent and Distribution for Intestate Estates, also how the laws have changed over time for Dower and Curtesy interests. Another roadblock can be the lack of documentation available during the period of the Civil War. When

examiners or the public ask the clerk about missing books or documents from the record room, usually the answer is the impact the Civil War had upon area courthouses. Often the courthouses were occupied, burned, and the books and documents were destroyed or disappeared.

One title search comes to mind when considering how history can impact property. I was asked to search the title to multiple parcels which today make-up a multi-use commercial site. Little did I know that I would be thrown back in time and learn so much about the people who were the owners. The property was formerly one of the many Virginia southern plantations impacted by the Civil War (note that the names have been changed). As I chained the title backwards, I soon ran into a dead end. The Deed stated that the Grantor, Isabella Ann Smith (widow), had acquired the property by Will of Margaret W. Hunter and then gave the Will Book and Page reference. Upon review of the Will, it stated that she died 6/11/1954 and that she Devised the property to her sister I. Ann Smith. The question was where did Margaret W. Hunter acquire the property? A review of the Grantee index did not reveal a Deed into Margaret W. Hunter. Fortunately, in this jurisdiction the Circuit Court Land Records still had all of the Commissioner of the Revenue Assessment books going back to the 1900â??s in the record room.

I ran the assessment books backwards in time from the 1954 Deed. The books are indexed by jurisdiction districts (which can change over time) and give information such as ownerâ??s name, who they acquired from, a brief description of the property, the property value at that time. These assessment books can be a valuable resource in solving title search dead-ends. I was looking for a specific tract of land containing 217 acres in Madison Magisterial District. Thankfully the tract had remained the same up until 1954. I finally found an entry in the 1930â??s assessment book that stated the property was owned by â??Hunter, E. Estelle & Margaret W., 217 Acres, from Swann, Sam Trustee (Trust)â?•. Using this information, I went back to the Grantee/Grantor and Will Indices but still hit a dead-end. Returning to the assessment book, I went back further in time back to 1923, where I found another entry. The entry stated that the owner at that time was â??Swann, Sam A., Trustee, for E. Hunter, Trust, from J. G. Durrettâ?• (note it was actually J. G. Durrett, Special Commissioner). Even though a married woman could hold title at this point in time, the property was still being held in Trust for her because she was a married woman.

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Owners who acquire title by Testate or Intestate succession make it difficult to piece together the chain of title. Differences in the use of names can be due to marriage, divorce, and abbreviations using initials or nicknames. Variations in owner names can create a roadblock when trying to track the chain of title. All the many name variations used, particularly in this title, combined with the lack of recitals in the documents in the chain of title, made it very difficult to track the ownership.

Some of the best resources about the area and the people can be found at any courthouse. The Clerk of the Circuit Court and their employees can be a valuable resource for historical and family information. In this jurisdiction, the Clerk was involved and available to talk with and it just so happened that he was in fact related to the family that had owned this 217 Acre plantation! I described the situation and he was able to fill in the gaps. He knew about people involved and how the property had changed hands over time. More importantly, he knew of the many akaâ??s for the owners in the chain of title. The Clerk then helped me to piece together the owners in the chain of title. I. Ann Smith was devised the property by Will of her sister Margaret W. Hunter. Prior to this, Margaret W. Hunter was devised a one-half interest in the property by Will of her sister E. Estelle Hunter. Both of their interests originated from their mother. Emma Estelle Hunter (a.k.a. E. Estell / Emma Estelle/ Estelle Hunter) and her sister Margaret W. Hunter (a.k.a. Peg W. / Peggy W. Hunter) were each devised one-half interest from their mother Emma H. Hunter (a.k.a. E. Campbell). However, this is not the end of the story of the

Hunter Plantationâ?¦

The Clerk continued to describe what had occurred to the people and their property during the Civil War. Emma H. Hunter (a.k.a. E. Hunter) owned in her own right another separate large parcel of land in the same County. The husband of Emma H. Hunter, Nanapeh Hunter (a.k.a. Nanasseh Hunter) had acquired the 217 Acre plantation that I was searching. As was the case for most southern plantation owners of that time, Nanapeh Campbell had gone off to fight in the Civil War, leaving Emma to run the plantation. Upon return of the soldiers at the end of the Civil War, most of the plantation farms and homes were destroyed and in a state of disarray. Many owners found themselves headed towards bankruptcy. In this situation, Emma sold her large parcel of land for the much-needed cash. Upon his return from the war, Nanapeh recorded a Homestead Deed indicating he was filing bankruptcy. The Deed of Trust of record encumbering the 217 Acre parcel was in default. The property was advertised for public auction. Emma H. Hunter had appointed a Trustee to purchase the property at the Foreclosure sale. Using the cash from the sale of her land, Emma authorized her Trust, Sam A. Swann, to attend the auction and purchase the 217 Acre parcel. The property was then purchased at public auction by Sam A. Swann, Trustee, for E. Hunter Trust (a.k.a. Emma Hunter). By using the cash proceeds for the sale of other property, Emma was able to purchase the 217 Acre Hunter Plantation and keep it in the family. The Plantation remained in the Hunter name up until 1962.

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This Title Examination was like a 10,000-piece puzzle. In this instance I was very fortunate to have the invaluable assistance of the Clerk of the Circuit Court to piece together this chain of title and also to learn so much about the people of the area and the impact of history on real property. Often title examination can be meticulous and repetitive, but it is titles such as the Hunter Plantation that make our job a rewarding experience.

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Treasurer. Julie has developed and is an instructor for the Virginia Certified Title Examiner (VCTE) classroom and online course.

From 1992-2006 Julie served on the Stafford County Board of Zoning Appeals (BZA), holding the elected position as Chairman of the Stafford County BZA for three years. She graduated from the Virginia Board of Zoning Appeals Certification Program conducted by VA Tech in 2000. After graduating, Julie was called upon to be an assistant instructor for the Virginia Board of Zoning Appeals Certification Program for three terms.

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Date Created
2019/07/17
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