ARTU Q&A Fall Edition 2022

Description

You are claims counsel for a title company and receive the following claim:

In 2008, John and Mary Igor purchased Dark Shadows, a 300 acre parcel in rural Goochland County, Virginia for $400,000.00 from Garrison Ghoul, and obtained an ownerâ??s title insurance policy. In 2013 the Igors contracted to sell Dark Shadows to Frank N. Stein. Two weeks prior to closing, Stein was walking his dog on a remote area of the property and stumbled over a fallen headstone which was almost completely covered with dirt. A physical search located a total of 18 graves, all with buried headstones. Stein thought the idea of owning real estate with human remains interred thereon was totally ghastly, and advised the Igors that he would not close. The Igors have filed a claim alleging unmarketability of title. Although you are an experienced claims counsel, you have never had a claim involving a cemetery, and you investigate.

Your investigation reveals that there is an old cemetery on the property, that the cemetery is not reserved, nor does it appear in any recorded document, and could not have been discovered by a title examiner. You also note that the Igors had the property surveyed when they purchased the property in 2008, and the cemetery was not and could not have been discovered by the surveyor. Your research further indicates that by statute, â??owners of private property on which a cemetery or graves are located shall have a duty to allow ingress and egress to the cemetery or graves by family members and descendantsâ?•. However, in a discussion with Mr. Ghoul, Ghoul notes â??Dark Shadows had been in my family since 1870 â?? we heard rumors that there might be a cemetery on the property, but we never saw evidence of one and no one ever visited.â?• How do you handle the claim?

a. This is not a valid claim because the cemetery has nothing to do with the title to the real estate.
b. This is not a valid claim because no one has visited the cemetery in many years.
c. Both a and b.
d. This is a valid claim.

Answer: d

This cemetery would most likely be considered a condition of the property as opposed to a defect in title. However, the easement complicates the matter in that a statutory right of way to the cemetery is an encumbrance on title. In the personal opinion of claims counsel, the cemetery coupled with the easement makes the title unmarketable, but an effective argument can be made to the contraryâ?¦.a 300 acre parcel with the cemetery being located in a remote area, and the evidence is that no one has visited the property in over 140 years. Either well-reasoned answer is acceptable. Cemeteries do give rights to a certain class of people (57-27.1), and as noted in Dewingâ??s Virginia Title Examinerâ??s Manual, a graveyard is an encumbrance in the nature of a permanent easement.

Category

1. Uncategorized
2. Underwriting

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