

ARTU Q&A Summer 2023

Description

Question:

In 1926, the Builders and Subdividers Corporation submitted a plat to the County of Henrico for the Plan of Shirley. The plat contained 20 lots and contained alleys and roads. The Corporation granted an easement to the County in the alleys, but "reserved unto itself the fee in the streets and alleys for the purpose of erecting, putting down, and maintaining gas, water, and sewer." All of the lots in Shirley were subsequently sold but the subdivision was never developed and remained a "paper subdivision" (lots on a platted subdivision, but no infrastructure ever created "no streets, utilities, etc."). In 2013 Temple Developers purchased all the lots in the subdivision and initiated proceedings with the County to commence development.

You are underwriting counsel for a title company, and counsel for Temple Developers has asked you to insure the lots, and informs you that the County is expected to vacate its interest in the alleys. Counsel also advises that Builders and Subdividers Corporation was dissolved in 1929, no one has any idea who the principals, stockholders, or directors might have been, and this case is the classic case for title insurance, which would allow development to proceed, there are no adverse parties, and the matter will fix itself over the passage of time. How do you opine?

- a. This is not ok to insure.
- b. This is ok to insure because the title issue is most likely solved by adverse possession.
- c. This is ok to insure because the owners of the fee could probably never be found.
- d. Both b and c.

Answer:

a. Title company would not insure this. The problem was that the fee ownership to the roads and alleys was still vested in Builders and Subdividers Corporation, and that title could only be obtained by adverse possession or via a Court order. Additionally, it was likely that the individual lots would be examined many times and the title issue would continue to surface. Ergo, a marketability problem. Post Script: The project was subsequently opposed by "The Friends for Bryan Park", a neighboring subdivision who were interested in negotiating for the acquisition of Shirley. Title company underwriting counsel later commented, "I'm glad we didn't do that".

Category

- 1. Uncategorized

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