Title Tips by Tute

Description

April 2018

TUTE: *The Unknown Title Examiner*



TUTE

VLTA Examiner

Poor Little Lambs That Have Lost Their Wayâ?¦

Dear Tute:

Iâ??m at a loss for what to do next. Well, that doesnâ??t help much, let me back up and start at the beginning. I was asked to examine title to a ten acre parcel of land in a rural jurisdiction. According to the tax assessor, title was vested in ABâ??s Estate. No source deed information provided. Curiously, the tax bills are being sent to XY.

I granteed AB and the Deed did not appear in the current indices, which ran back to 1980. Nor in those that ran back to 1920. I finally found the Deed to AB recorded in the 1890s. Iâ??m pretty confident the Commissionerâ??s addition of â??Estateâ?• is accurate.

I then ran AB in the grantor indices. Nothing. I looked in the will indices. Nothing.

So I switched gears to the person to whom the tax bills were being sent. It turns out XY died three years ago. That explains the three years of delinquent taxes. Checked the grantee index for XY, her father WY, Jr, and grandfather, WY. No ten acre parcels referencing AB. No ten acre parcels at all. Not even any parcels in the same section of the county.

Any ideas on where to look next?

DD

Dear DD:

That does not sound good. A couple of threads, but they donâ??t seem to come together in any meaningful way. What can we think of? Any evidence of a spouse for AB? You mentioned no deeds appeared in the grantor indices. Was there an entry in the marriage license index?

Going outside the land records sounds like it may be a necessity. Affidavits from family members would not only be self-serving, but you canâ??t find any references to identify (verify) who they might be. The most likely source of objective information may be the United States Census. Conducted every ten years, the census (theoretically) identifies every resident of every property. There are ways to access the data, either through the federal government (try https://1940census.archives.gov for the 1940 census), or, through private sources (most are subscription based; a list of free and subscription sites can be found at https://www.familysearch.org/wiki/en/United_States_Census_Online). Check with your local library to see if they provide access to the Ancestry.com data. As is the case with title examination in general, access to the data is only as good as the indexing. The Ancestry.com data can be accessed by a name search; the federal records require the searcher to find the proper enumeration file data (geographically sorted) before the pages can be reviewed for the name. The National Archives wait 72 years to release the data, so only data through 1940 is available (with the exception of the 1890 Census, the records for which were tragically burned in 1921, well before photocopies, microfilm and digital imaging). That census data might provide more information about ABâ??s family composition â?? at least at 10 year intervals. That might permit someone to go to the Department of Vital Statistics to obtain a death certificate (http://www.vdh.virginia.gov/vital-records/).

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That may provide enough information to identify some?/more? parties whose interest in the land would need to be accounted for and perhaps lay a foundation for a suit to quiet title brought by XYâ??s family, which I doubt was paying the taxes on property in which they had no interest (Me, a cynic? Iâ??m shocked!). If they lay out the details we are missing, it would then be up to the judicial system to make the necessary findings that would allow you to complete the examination â??in the ordinary courseâ?•.

Happy hunting!

Tute

Dear TUTE:

Iâ??m dealing with real estate acquired by a non-profit group, The Red Headed League. The 1968 deed vests title in trustees but is silent as to the nature of the organization. Iâ??m told the chapter constitution and bylaws explicitly state that the real estate is held to further the purposes of the League, which are â??rehabilitating the reputation of red headed persons by giving aid to those in need and pursuing projects for the benefit of mankindâ?•. Iâ??ve been told that this chapter of the League has been terminated by its National Office (perhaps because there are no natural red-heads in our town? Or at least none willing to join?). I was also told that pursuant to the organizationâ??s constitution and bylaws, title automatically transferred to the national organization upon termination of the charter, but the deed does not contain that information.

The national organization wants to simply record a deed from the national organization, reciting the bylaws provision. Will that work?

JW

Dear JW:

There is â??workingâ?• and then there is â??working without the next examiner asking â??w*hat were they thinking?â??* â?• I suspect your customer has failed to take into account the possibility the next

examiner might have a tendency toward flyspecking. That also smells like a â??legalâ?• question for which your humble correspondent is without training, credential or authority.

The general proposition to be remembered is that unincorporated associations are not entities the common law recognized as being capable of holding title to real estate. The Virginia General Assembly modified that principle in Title 57, by setting out a method by which church congregations could hold title to real estate. These statutes came into being while the Virginia constitution prohibited churches from incorporating, Thomas Jefferson believing that the power to charter (create) also gave the State the power to destroy, which ran counter to his thoughts on religious freedom, but I digress.

Within Title 57, Article 3 is devoted to â??benevolent associationsâ?•, groups such as the Freemasons, Odd Fellows, Sons of Temperance, Veterans of Foreign Wars, just to name a few and â??any other benevolent or literary associations, or school league, or other groups organized for rural community civic purposes or improvement of farm life or operation of like purposes and not for profit. . . â?? Va. Code Â§ 57-19 bestows upon such groups the ability to take advantage of some of the same statutes that were enacted to allow churches to buy, sell and operate real estate (not the Catholic Church version â?? 57-16); and it may take a court case to decide if the â??free passâ?• to the corporate church entity if it did incorporate (do not pass go, do not collect circuit court order) was intended to be applicable (Judges always say the General Assembly knew what they were saying when they wrote the statute mostly when they want a startling, but literal, reading of the statute), but sometimes, you just have to wonder?

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If the named trustees are no longer alive or in the area, new trustees can be appointed to replace those named in the deed. Va. Code Â§ 57-8. The proper parties to petition for new trustees are probably identified in the organizational documents. It may well be that is the national organization, and documentation, in the form of charters, bylaws, meeting minutes and the like, will probably be their primary evidence.

Under the heading of â??do we want to do this again next weekâ?• comes a question not typically asked of examiners, so you may want to suggest your boss ask. . . Is the national organization also an unincorporated association? If so, it needs to get its paperwork in order to appoint trustees to hold title, and should the court be willing to entertain a â??twoferâ?• petition, make the conveyance to an ultimate purchaser. If it is a corporation, then further judicial review should be unnecessary, and the typical corporate authority review would be conducted by your underwriters.

This is way too much fun . . . *letâ??s all be careful out there.*

Tute



Category

1. Columns

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