

Access to Deeds and Land Records in Virginia Part 1 – The Ghost of Title Search Past

Description

As we enter the holiday season in 2023, several versions or adaptations of the famous Charles Dickens's 1843 novel, A Christmas Carol, broadcast on television or various streaming channels. As we approach the end of 2023, the Ghost of Title Searches Past has visited me and I recall the process for completing title searches in circuit court clerks' offices in Virginia prior to the deployment of various technology systems used for title searches today. It seems proper to reflect on the past 30 years and how circuit court clerks, title companies, attorneys, and other stakeholder entities developed a common goal of making access to deeds and land records easier, more efficient, more cost-effective and more convenient.

It is difficult to comprehend that three decades have passed since clerks, title companies and other professionals who research deeds and land records in Virginia were reviewing an assortment of grantor/grantee indexes organized by date ranges. Furthermore, three decades ago these index books were retained in paper format, in books or in microfiche format. The process to find a reference to a grantor or grantee was grueling, cumbersome and time-consuming as one would review a series of references, moving from book to book or index to index in the traditional "record room" in an effort to locate the proper deed, deed of trust, certificate of satisfaction, lien or many other instruments lodged among the local Clerk's deed and land records.

Upon identifying the proper deed book and page reference in the slew of indexes in the record room, the title search continued by locating heavy, bound books or microfilm cassettes. The heavy, bound books were organized by a book number and stored in a series of book racks dispersed throughout the record room. One would pull the relevant book out of the slot (hopefully the heavy book was stored near the top of the rack otherwise you would have to use your legs to avoid back strain lifting the book) and place the book on the waist-high or chest-high (depending upon one's height) on a slanted table-top to open the book. Books that were used more frequently or the older books had to be handled very gingerly to avoid tearing pages or bindings. While clerks took note of books that required some repair to pages or bindings, many clerks lacked sufficient financial resources to pay for the necessary repairs. While grants to repair books were available from the Library of Virginia, there was stiff competition around Virginia for this funding as all 120 clerks were competing for the same pot of money to finance preservation or conservation of these books. Clerks who had the financial resources via their local Board of Supervisors could often make the case for local funding as denying title examiners access to damaged books could impact the local economy if the real estate market stalled as a result of title companies being unable to certify clear title for their clients. The most significant challenge to gaining efficient access to these books was based on the economic principle of supply and demand. There was only one such book with a series of records organized by book and page in the record room so if there was significant demand for that one single book, one's access could be compromised. The other challenge was finding the book if an inexperienced, uncaring or lazy title examiner did not return the book to its proper location by inserting the book in the proper slot in the proper book storage cabinet. Time could be wasted searching the record room for a book that was inserted in the wrong slot or simply left laying on a countertop in the clerk's office. Individuals who

infrequently visited the clerk's office to search deeds who were not title examiners and who were not familiar with record room protocols only compounded the challenges as they did not follow the recognized book handling decorum that "regulars" in the record room honored. There was a sacred bond among title examiners, that you take care of the books because they take care of you. When I was a paralegal visiting some record rooms in Northern Virginia to conduct some quick bringdowns, I was provided with an orientation from veteran and respected title examiners such as Luis Pages, Pete Kavaljian and Bruce Robertson in Fairfax County and Jeff Ball, Mike Breen, John Clancy and Jim Snare in Loudoun County. There were other countless record room veterans who shared the local record room protocols with me in Alexandria, Arlington, Prince William and other counties in the Northwestern part of Virginia. However, many infrequent visitors to record rooms either did not receive an orientation for these jurisdictions during their visit or did not care to listen. Failure to "attend" the orientation or failure to following local protocols caused delays for the regulars when something was misplaced.

If the deeds were retained in microfilm format, one would traverse the record room to large cylinder stacks of plastic stacked on top of a metal base with wheels to find a cassette with the proper deed book number. With the proper cassette in hand, the researcher would locate an unoccupied microfilm reviewing station where the cassette was inserted to permit viewing of images of deeds and other instruments. In larger jurisdictions such as Fairfax County, Virginia Beach, Chesterfield County and others, one may have had to wait for a microfilm viewing station to become available. Some of the larger jurisdictions actually had to implement time limits so title examiners could not "camp out" and occupy a microfilm workstation for an extended period of time.

Once the cassette was inserted, one would hope and pray that the machine was working properly because these machines endured a lot of wear and tear. In fact, the microfilm machine manufacturers had a team of repair personnel who often frequented record rooms throughout the Commonwealth. Upon visiting some record rooms, it was not uncommon to see hand-written signs on some machines indicating the machine was out of order. Assuming the machine was working properly and the microfilm did not have any tears or damage from constant use, one would push the proper buttons and turn the proper dials to find the exact page number on the roll of film to find the deed or instrument. On some occasions, the reel of film would jam or unravel in or outside of the machine resulting in further delay of one's research efforts.

Once the researcher successfully found the proper deed or instrument, there was likely another reference to a previous instrument relevant to the title search that provided another deed book and page number reference in the "And Being" clause of the instrument that would require a deeper dive in the deed books to continue the search process. Once the researcher returned the cassette to the proper location in the tall storage cylinders, often referred to as the "carousels" in most record rooms, the researcher searched for the next carousel to find another microfilm cassette. Repeat process. This process continued and continued and continued until the holy grail of the full chain of title was established.

There were many challenges, dangers, toils and snares when searching deed books retained on microfilm. Carousels that were top-heavy could fall like a skyscraper being imploded for demolition. Carousels that were spun around too rapidly by eager title examiners could topple. While I never witnessed a carousel crashing on title examiners, deputy clerks or others in the record room, I have heard of some accidents. Other hazards included improperly maintained microfilm readers that would over-heat or otherwise crash from a lack of tender loving maintenance. As stated earlier,

microfilm would tear upon frequent use sometimes resulting in the film dislodging from the special cassette cartridge or the film getting jammed inside the machine rendering both the machine and the film useless for the rest of the business day. Or longer. Clerks of circuit court usually had a team of deputy clerks (for larger offices) who did their best to repair machines to get them back online. However, they frequently had to contact one of the many companies that provided microfilm machine repairs. Since most of the 120 clerks statewide were using microfilm machines, there could be a reasonable delay in achieving a remedy or repair for the broken machines. Repairing the damaged film could be resolved by deputy clerks as they had the equipment and training to repair damaged film, often by splicing the film and adding a new section of film using the "master roll" retained by the Clerk's team to address this situation. However, pausing to repair damaged film resulted in deputy clerks temporarily ceasing microfilm production using large microfilm cameras present in most clerks' office. Any pause in filming operations resulted in delays in making newer deed books available for inspection and research. It was truly a Catch-22 scenario when damaged film required repair or replacement. Any delay in filming the paper deed records inevitably caused delays in gaining access to deeds that had been recorded earlier in the day, the previous day or sometimes within the previous week. This brings up another major challenge or issue with the microfilm retention of deeds thirty years ago.

In larger Clerks' offices that experienced a high volume of deed recordings, title examiners typically had to wait a few days, or longer, to gain access to microfilmed deeds. I recall hearing from some attorneys in some jurisdictions that some clerks were backed up several weeks with filming the deed records in the mid-1990s. Obviously, the filming process, along with large volumes of recordings and insufficient staffing in some offices created a perfect storm of inefficiency for title searches. While the deputy clerks who conducted the filming operations worked diligently and did their best to keep pace with the high volume of recordings, this process inherently resulted in delays in providing access to current deeds. In some jurisdictions, title examiners were offered access to the paper deed records before these records were filmed if they could make case that there was an urgent need. Most of the time, the need was urgent. Title examiners would lodge a request for the paper deed records and the deputy clerks would search stacks of deeds awaiting the filming process to find these records. The deputy clerks who conducted this search were often the ones who were preparing the documents for filming of the deeds resulting in more delays in the filming process. This vicious cycle continued day after day after day throughout Virginia. Fortunately, there were visionaries among clerks of circuit court, title companies, attorneys and other stakeholders who envisioned a new approach for the future. This new approach promised a more effective, efficient and convenient access to public information and records.

The concept of remote access to deeds originated in the early-1990s as a group of circuit court clerks collaborated and pursued the new frontier with legislators, title companies, and other professional organizations. The Virginia General Assembly assembled a team of clerks, title companies and other stakeholders to serve on a task force and considerable review and collaboration commenced in 1993. Several newly elected clerks in 1993 worked with many other professional groups to lobby legislators to study the feasibility of digitizing deeds statewide. This digitization effort would lead to easier access to deeds by permitting access remotely from one's office, home or other location as long as the user had internet access. All parties realized there was one large hurdle to pursuing this undertaking: money. While there was a will, there was no financial way to finance the costs of digitization deed records throughout Virginia. The task force realized that a special and unique funding source was essential. By 1995, the Virginia General Assembly commissioned a study to assess the feasibility of implementing advanced technology solutions in clerks' offices. In the 1997 General

Assembly Session, the Joint Legislative Audit and Review Commission released its official report entitled “The Feasibility of Modernizing Land Records in Virginia.” After years of review, deliberation, study and analysis, the Technology Trust Fund was created which established the financial vehicle to permit clerks throughout Virginia to finance the technology solutions needed to digitize deeds and eventually offer remote access. This fee would require the payment of a \$5 fee for each deed and land records instrument admitted to record in Virginia.

When the Technology Trust Fund emerged and clerks commenced the journey to digitizing deeds, I was working as a deputy clerk in the Fairfax County Circuit Court Clerks’ Office for Clerk John T. Frey. Little did I know in 1995 how powerful and impactful my experience with John Frey would be later as I commenced my role as the elected Clerk of Circuit Court in Loudoun County. With the funding in place to finance the conversion of paper and filmed records to digital format, John Frey and his Fairfax County team along with several other Clerks’ Offices such as Wise County Clerk Jack Kennedy, developed strategic plans, assembled teams, assessed various technology solutions and commenced procurement to select firms to assist them with the advent of remote access technologies in Virginia.

In my next article, we will be visited by the Ghost of Title Searches Present as we examine how clerks are currently utilizing remote access tools to offer improved access to public information and records and the benefits of providing remote access to all residents of Virginia.



Gary M. Clemens

Gary M. Clemens has served as the Clerk of the Circuit Court in Loudoun County for the past 24 years. He is dedicated to implementing customer service programs that provide premium service to Loudoun

residents and clients from the Northern Virginia region. Gary has received numerous awards for Government Best Practices from the National Association of Counties and the Virginia Association of Counties for customer service programs, technology solutions, creative local government innovations and virtual educational programs. He has served as the president for the Virginia Association of Constitutional Officers and as the president of the Virginia Court Clerks's Association. Gary serves on the Board of Directors for the Morven Park Foundation and on the Board of Directors for the Visit Loudoun Foundation. He previously served on the Board of Directors of the Loudoun Free Clinic for 10 years.

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Author

vltaexaminer

VLTA Examiner