

Due Diligence & Survey Matters

Description

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Proactive Title Defense â?? Communication is the Key:

Errors in the Title Report and Commitment remain the top cause of claims in the title industry today. There are many factors that contribute to the problem of errors and omissions in Title Reports and Commitments. It is important for all parties to have open lines of communication. Along with the ability to have effective Communication, is the ability to know when to ask questions. There are many types of errors that can occur during the process leading up to settlement.

Some frequent errors that can occur:

- Error by omission by the Title Examiner or Title Agent.
- Error in the Circuit Court Land Records index.
- Items shown on adverse sheet but not brought forward to Front Sheet.
- Error due to misinterpretation of facts due to inexperience.
- Error of incorrect legal descriptions or omitted property descriptions.
- Not including all Less & Except references in the legal description.
- Error by omission, not including all requirements and exceptions.
- Error due to not reading the Deeds and documents for exceptions.
- Lack of time, rushing, lack of focus, not being meticulous.
- Not reviewing or proofing all final title products.

Some Fundamental Principles to Live By:

- Be Meticulous and Focused
- Read the Deeds â??word-for-wordâ??.
- Read the documents â??word-for-wordâ??.
- Prove the facts of title.
- Report all the facts of title.
- Do not make Assumptions.
- Avoid making legal determinations

Deed & Legal Description Mistakes:

Deed and legal description errors are a common source of defects in title. There are many human or other factors that contribute to these types of mistakes. It is important to note that a Tax Map number and / or property address is not enough, in order constitute a valid legal description.

Legal Description Types:

The Subdivision Lot legal description is derived from the written Dedication and Subdivision Plat that is filed of record. The legal descriptions should state the Lot #, Block or Phase #, Section # and Subdivision name correctly and the Dedication and/or Plat recorded reference. Such as Lot 5, Section 10, Ferry Farm, as Dedicated in instrument # 1200002543 and as shown on Plat PM12-65.

The Acreage legal description is derived by the survey, this creates the metes and bounds description and should be filed of record. The legal description should state the exact Acreage amount, the parcel name, the metes and bounds description, and the plat reference. Such as 4.52 Acres +/- (more or less) as shown on plat in Plat Book 5 Page 300.

Rule: In order for the Legal Description to be *VALID* it must *CLOSE*.

It is important to draw the M&B description to ensure accuracy and closure, especially when there is no recorded plat. This can be done manually or by using online mapping software programs. Error in the exact metes and bounds description or by omitting the description or calls of the metes and bounds description can invalidate the legal description.

Frequent Problems that can occur:

- Incorrect M&B calls in the legal descriptions in the Deeds in the Chain of Title.
- Boundary Adjustment Plat without jurisdictional approval.
- No Deed of Boundary Adjustment filed of record, most jurisdictions today require this.
- Not all owners sign the Dedication and/or Plat, and their signatures must be notarized.

Survey Errors and Review Oversights:

LOOK AT THE BIG PICTURE

It is important for the Title Examiner, the Title Agent and the Settlement Agent to view the property in relation to the surrounding parcels, this is what I like to call *The Big Picture Approach*. A review of current GIS Plats and prior Tax Maps, along with a comparison of the Plats of record, is essential in order to determine any title issues. Important characteristics for all parties to have is the ability to recognize potential problems and the ability to look for and detect any missing pieces.

Inaccurate legal descriptions due to human error can be problematic and create title problems. The legal description is derived from a land survey of the property and the metes and bounds description is developed by that survey. The boundaries of the property are described by using monuments; there are

natural monuments (trees or boulders) and man-made monuments (rods, pins, roads). The metes and bounds description is comprised of a combination of the following: the description of the location of the property starting at the point of beginning and going in a clockwise direction along the boundaries of the property; using the measurement and boundary calls (metes and bounds calls); and the direction of the line is described in relation to longitude and latitude and the north directional arrow. The metes and bounds calls are measured in degrees, minutes, and seconds. The distance along the line today is measured in feet. An example would be N 36° 23' 14" W 250 feet, which translates as North 36 degrees 23 minutes 14 seconds West, a distance of 250 feet.

As stated previously, in order for a Metes & Bounds Description to be *VALID* it must *CLOSE*. Inaccurate descriptions and/or omitted parts of the Metes & Bounds description can invalidate the legal description. The descriptions in each Deed and Plat must be exactly the same throughout the chain of title coming down through time. Inaccurate or incomplete descriptions can be indicative of a gap or gore between parcels.

Checklist when reviewing Dedication, Plats, Metes & Bounds Descriptions:

See VA Code § 15.2-2265. Recordation of approved plat as transfer of streets, termination of easements and rights-of-way, etc. ~ A subdivision plat acts as an effective transfer of property upon execution and approval.

- Read the written Dedication for the accuracy of information and any exceptions.
- Review and verify that the Dedication and the Plat have jurisdiction approval.
- Review the Owners Consent & Dedication paragraph on the Plat for information.
- Review the Plat for any notes, easements, restrictions or special exceptions.
- Read and Verify all pages and parts of the plat are of record.
- Review the Metes & Bounds description in all Deeds for accuracy.
- Review to ensure the Survey and the Metes & Bounds match the Legal Description.
- Compare the Metes & Bounds calls on the Plat with the other recorded plats.

Definition of Gap & Gore:

The term Gaps and gores as portions of land areas that do not conform to boundaries found in land surveys based upon imprecise measurements and other ambiguities of metes and bounds. A gap, also known as a hiatus, occurs where the descriptions in deeds describing adjacent properties (unintentionally) overlook a space or "gap" between them. A gore occurs where descriptions in larger administrative boundaries (towns, counties) of adjacent jurisdictions or, large parcels, all fail to include some portion of land between them, forming an unclaimed, triangular "sliver" of land. Disputes often arise regarding the ownership of gaps and gores when they are discovered, usually when developers detect sufficient value in the local land. (<https://en.wikipedia.org>)

DIVISION PLATS & ACCESS

RECORDATION OF DIVISION PLATS:

Â§15.2-2265. Recordation of approved plat as transfer of streets, termination of easements and rights-of-way, etc.

The recordation of an approved plat shall operate to transfer, in fee simple, to the respective localities in which the land lies the portion of the premises platted as is on the plat set apart for streets, alleys or other public use and to transfer to the locality any easement indicated on the plat to create a public right of passage over the land. The recordation of such plat shall operate to transfer to the locality, or to such association or public authority as the locality may provide, such easements shown on the plat for the conveyance of storm water, domestic water and sewage, including the installation and maintenance of any facilities utilized for such purposes, as the locality may require. Nothing contained in this article shall affect any right of a subdivider of land heretofore validly reserved. The clerk shall index in the name of all the owners of property affected by the recordation in the grantor's index any plat recorded under this section. Nothing in this section shall obligate the locality, association or authority to install or maintain such facilities unless otherwise agreed to by the locality, association or authority.

When the authorized officials of a locality within which land is located, approve in accordance with the subdivision ordinances of the locality a plat or replat of land therein, then upon the recording of the plat or replat in the circuit court clerk's office, all rights-of-way, easements or other interest of the locality in the land included on the plat or replat, except as shown thereon, shall be terminated and extinguished, except that an interest acquired by the locality by condemnation, by purchase for valuable consideration and evidenced by a separate instrument of record, or streets, alleys or easements for public passage subject to the provisions of Â§ [15.2-2271](#) or [15.2-2272](#) shall not be affected thereby. All public easements, except those for public passage, easements containing improvements, those that contain private utility facilities, common or shared easements for the use of franchised cable operators and public service corporations, may be relocated by recordation of plat or replat signed by the owner of the real property, approved by an authorized official of a locality, regardless of the manner of acquisition or the type of instrument used to dedicate the original easement. In the event the purpose of the easement is to convey stormwater drainage from a public roadway, the entity responsible for the operation of the roadway shall first determine that the relocation does not threaten either the integrity of the roadway or public passage. The clerk shall index the locality as grantor of any easement or portion thereof terminated and extinguished under this section. (<https://law.lis.virginia.gov/>

Right of Access:

Ingress is the right to enter one's property, and egress is the right to exit it. Usually, the right to enter or leave property involves access to a public road. Property with at least one boundary line touching the road can freely access the road without crossing over land belonging to another person, but appearances can be deceiving when dealing with ingress and egress issues. (<https://thelawdictionary.org>)

Land Locked Property:

The term landlocked property generally refers to a parcel of real property, which has no access of ingress and egress to a public street and cannot be reached except by crossing another parcel. As a

general rule, in such situations there is an implied easement over the adjoining land from which the property originated which is usually referred to as the parent tract.

Easement of Necessity:

An easement of necessity, also referred to as an implied easement, is an easement that derives from a common source of title. This would be the original parent acreage tract that it came from. Therefore, the property must have at one point in time been a part of a larger parcel that had access to a public road. Usually a title search is used to track and identify the chain of title of the land to determine access of the original parent tract.

In Conclusion:

The Title Settlement process has many moving parts. This requires professionals who are meticulous and focused with effective communication skills, because our goal is to protect the consumer. It is true that many errors can occur in this process, but with trained and experienced professionals, we have a



of determining errors beforehand.

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