vantage point

No Title

When surveyors receive a title commitment document stating the identity of the current owners, we generally imagine that the title company has been thorough in its research and report. "Imagine" may be read here with both of its usual meanings, one being 'to believe" and one relating to a more creative process. In my reviews of title commitments for open space acquisition and floodplain buyout programs, I come across some interesting complications. Some of them warrant status as warnings to surveyors who rely on the most current deed of record, and some as cautions against believing everything we read in a title report.

Certainly we must also research the adjoining property documents as well, but the title report can be a helpful starting point. When a title company includes a recitation of the chain of title leading to the current owner and includes the relevant deeds, our own examination is made a little easier, allowing us to see where some sources of confusion might be hiding or where additional research is critical.

Cautionary Tale Number 1:

Recitations such as "Being the same lands as acquired by the grantor from So And So as per Deed Book and Page."

Buzby, the current owner of record, obtained title from Mr. and Mrs. Johnson by a deed that supposedly conveyed the premises in question (PQ) and other lands. The Johnsons relied on their deed from an investment company that had described the lands being conveyed only as the lands that the investment company had acquired by a particular deed (identified by book and page).

Therein lays the problem. That particular cited deed was from Mr. and Mrs. Gross, who owned only 18.75% interest in PQ. Therefore the remaining 81.25% was never conveyed to the Johnsons, even though the investment company owned it by a recorded deed from Mrs. Waters. Of course, that means that Buzby only acquired 18.75% interest (but guess who has been paying 100% of the taxes). While all the relevant deeds were included in the title package, this little detail somehow never caught the title company's attention.

Cautionary Tale Number 2:

Identification of a parcel in relation both to a recorded subdivision plat and to a tax map.

The deed identified PQ as being Lots 2 and 3 on a subdivision map filed in the county in 1943. It also cited the premises as being Tax Lot 2.01 in Block 85 on the municipal tax map. In comparing current Tax Lot 2.01 to the recorded plat, it is clear that Tax Lot 2.01 covers Filed Map Lots 1, 2, and 3.

The chain of title did not indicate that Filed Map Lot 1 had ever been owned by whoever owned Filed Map Lots 2 and 3 (that is, beyond the original developer who created and filed the subdivision). Title company staff have not found any records that would explain how that extra bit of land had ever been consolidated into a single tax map parcel. Their immediate resolution was to except one third of the current Tax Lot from title insurance coverage until "someone" figures it out; while they are going to go back to do a little more intensive research, they are apparently counting on the eventual surveyor for this proposed floodplain buyout to magically resolve the situation for them. Until this discrepancy was pointed out, the title company was perfectly willing to insure title for the entire Tax Lot. Commenting on that, I was told, "We can't unring the bell."

Cautionary Tale Number 3:

Recitations in a deed of Tax Block and Lot as the sole means of identifying the lands being conveyed.

This is a common situation with tax foreclosures. The most expedient method for municipalities to describe the many properties listed in a mass judgment against delinquent property taxpayers is by the taxation identification. Such judgments, at least where I practice, contain several tables regarding the foreclosed properties. The first generally is sequenced by tax block and lot and identify the purported owner of record (although sometimes this is listed as "unknown"). Later tables identify the deed by which the purported owner acquired title.

The township in question claims title to Tax Block 3500, Lots 5, 7, and 9 by a recorded foreclosure proceeding. The tax map has been updated to show these three parcels as exempt from taxation and owned by the township. However, in examining the foreclosure, it is clear that the township only acquired Lots 5 and 7 because Lot 9 is not listed in any of the schedules or tables in that document. Therefore the Parks still own Lot 9.

Here is a complication related to equity, or fairness. If the township believes it owns Lot 9 and therefore hasn't billed the Parks for taxes, are the Parks now delinquent once again? ■

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