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Re: Role of Abstracters with Title Guaranty

Matt White
Deputy Director
Title Guaranty
2015 Grand Avenue
Des Moines, IA 50312

Dear Matt:

Thank you for sending the materials concerning the roles of attorneys and abstracters in the guaranty of title process. My comments will be general in nature.

1. About forty years ago our office was state counsel for an organization then call Gulf Central Pipeline Company. Gulf Central built approximately 400 miles of pipeline. The line commenced in the southeasterly corner of the state, made a long half-circle up to the northern tier of counties, and exited on the western boundary in Harrison County, crossing the Missouri at that point. As I recall there were 1200-1400 separate parcels across which easements were purchased. No abstracts were purchased. We selected an abstracter in each county who furnished a title report covering title transactions for the last 20 or 21 years. The report included the last warranty deed of record at least 20 or 21 years.

   In one county, the sole abstracter refused to work for the fee paid the others. Gulf Central hired a crew of right-of-way agents to search the records in the county and produce the reports furnished by abstracters in the other counties. No consent to the easements were obtained from mortgagees or lien holders.

   This procedure was approved by attorneys for the indenture trustee. Our review of the records for the trustee consisted of reviewing the title reports and the recorded easements. We were also furnished a report by the abstracters that no change of title had occurred after the initial title report. To my knowledge, not a single easement was ever attacked by third parties. I should add that only as to one owner were we obligated to go to condemnation.

   I outline this experience not to suggest that prospective owners in Iowa of real property or their mortgagees should adopt a similar procedure. However, I believe the experience makes clear that relying on abstracters and attorneys is not the only means of achieving acceptable evidence of title in the marketplace.

2. The Iowa land title recording system was not enacted to provide employment for

abstracters, but was designed to produce evidence of title based on a grantor-grantee indexing system. Iowa has never had an official plat indexing system though in some counties I am told recorders maintain a private tract index system. An abstracter makes a record in a private tract index of every transaction affecting that tract. Today there is no reason why attorneys may not go into a recorder's office, review the indices, and prepare an opinion of title. This search would also have to include, for example, the Clerk and Treasurer. Parenthetically I would note that I have asked many abstracters if they know of any abstracter who checks the indexes to assure proper indexing and I have never found one who did, even though an improperly indexed instrument does not constitute constructive notice.

The first couple of years I practiced I worked for a firm in Ohio located in a county where there were no abstracters. We examined titles by an examination of the records in the various public offices. Often our title opinion was the basis for a title company issuing a policy. The process is laborious and was performed usually by either very old or very young lawyers. However, the system worked and there is no reason why Title Guaranty should not by statute be authorized to issue a guaranty using the same process.

3. The announced rationale for handicapping Title Guaranty with the "Forty year Title Plant" requirement was that the abstracters agreed not to support any proposals for Title insurance. That understanding was since rejected by the abstracters who now not only want to further cripple Title Guaranty, but are supporting Title Insurance in Iowa.

Abstracters support for title insurance is for the obvious reason that such will be highly profitable for abstracters. Title companies will pay a premium for abstract plants, particularly in counties where there are no other abstracters. South Dakota has enacted legislation, which produces a defacto monopoly for existing plants. The result is the existing plants have become extraordinarily valuable. Note the Iowa abstracters are promoting similar legislation, which is not in the public interest.

4. In my view Title Guaranty should strongly urge the Iowa Legislature to remove the restrictions presently imposed on it and permit Title Guaranty to issue policies on the basis it deems in the public interest. Today title companies are issuing policies in Iowa based on abstracters' "reports", which cost far less than an abstract. Why should Title Guaranty not be authorized to do the same? A simple question—if title insurance becomes legal in Iowa, and the title companies buy up most of the abstracters, how much do you think Title Guaranty will be charged for its abstracts?

The Iowa State Bar Association should support without qualification the effort of Title Guaranty to have removed the shackles the abstracters have imposed on it and are attempting to make tighter.

Very truly yours,

Cc J. Greer, D. Moore, A. Fredregill, J. Carney

To draft a satisfactory act will require skill of the highest order. Some remedy for the present situation is imperative and urgent. The growing needs of home owners and of commercial interests indicate that drastic remedies are going to be attempted, if not by qualified experts, then by laymen. The legal profession should certainly not repeat the mistakes, so frequently made in the past, of refusing to take the lead in devising reforms and permitting unskilled laymen to bungle the job.

IV. Conclusion

We have repeatedly admitted that thoroughgoing reforms are necessary. The organized bar has been calling for action for more than twenty years. The leading experts on real property law in our several schools have been urging the bar to take the lead. Our legislatures contain lawyer-members who certainly have the influence necessary to secure enactment of the required legislation.

The demand for meaningful change has been articulated by the Chief Justice of the United States Supreme Court in unpublished remarks by the Honorable Warren E. Burger to the opening session of the American Law Institute, May 21, 1974, at Washington, D. C.:

"When I began to practice law the newest associate in the firm was assigned the task of examining titles and closing real estate purchases, and he continued in that role until another new man came along. In that apprenticeship I examined many hundreds of land titles and closed an almost equal number of purchase and financing transactions.

"The cost at that time ranged from $15 to $30 for the purchase of the typical home. There is a growing practice of using title insurance either as a substitute for or in addition to the lawyer's title opinion.

"Today, we know that in many states the incidental costs of acquiring a new home, even in the $40,000 category, can run into a very large sum. We know that, in common with others, the operating costs of lawyers have skyrocketed in recent years, but the very cost of the procedure today dictates that we examine the whole business closely.

"* * * The basic system of real estate titles and transfers and the related matters concerning financing and purchase of homes cries out for reexamination and simplification. In a country that transfers not only expensive automobiles but multimillion dollar airplanes with a few relatively simple pieces of paper covering liens and all, I believe that if American lawyers

will put their ingenuity and inventiveness to work on this subject they will be able to devise simpler methods than we now have."[23]

The reforms accomplished to date fall far short of the "few relatively simple pieces of paper" described by Chief Justice Burger as the desideratum of a modern system of conveying interests in real property. Lawyers must recognize that the existing system is simply inadequate to serve the needs of modern society. It is incumbent on lawyers to utilize existing technology to not reform, but to replace our conveyancing procedures with "a simple piece of paper."

4.2 GRANTEES.

(A) CONVEYANCE TO ESTATE OF DECEASED PERSON.
(B) IDENTIFICATION AS HUSBAND AND WIFE.
(C) ALTERATION OF DEED BY GRANTEE.

(A) CONVEYANCE TO ESTATE OF DECEASED PERSON

I have your letter in which you inquire as to the effect of a deed conveying real estate in the year 1931 to "W. B. Beatie Estate." You also inquire whether such property after being conveyed to the "estate" would have to be inventoried for inheritance tax purposes.

The general rule is that a conveyance by deed to a fictitious or nonexistent person is a nullity. The "estate" of a person deceased is not a legal entity.[24]

As a practical problem you have to determine where title lies at the present time. There have doubtless been conveyances since the date of this deed, 1931; and if you have a chain of title conveying the **entire interest** which antedates the cutoff date under the statute, you can perhaps render title marketable by an affidavit of possession.[25]

[23] Quoted from Presbytery of Southeast Iowa v. Harris, 226 N. W. 2d 232, 236, 237 (Iowa, 1975).

[24] No Iowa authority has been found. It has been said: "... [T]he grantee listed must be capable of identification and one recognized as having legal entity. This excludes the name of a party deceased at the date of delivery, or a deed to inanimate objects such as the 'estate' of a deceased person." 3 American Law of Property § 12.40 (Casner ed. 1952) (footnote citations omitted).

[25] Iowa Code, § 614.17. The deed to the estate would qualify as a "root of title" and a "title transaction" under Iowa Code, § 614.29 (5),(6). Unless properly preserved, any interests created prior to the root of title would be barred. Iowa Code, § 614.33.