

HANDBOOK
FOR
SOUTH CAROLINA
DIRT LAWYERS
SECOND EDITION

by
Claire T. Manning, Esquire



CHAPTER 2

Searching Titles

Caveat: The author knows how to search titles only in theory. In practice, the various computer systems at the various recorders' offices may stump the author! If these materials are inaccurate in any way because of the differences in computer systems, please forgive me and please send an e-mail to me at claire.manning@ctt.com to point out my mistakes!

A. Introduction

A dirt lawyer must know how to search titles. This statement is true for at least three reasons. First, our Supreme Court has made it crystal clear that searching titles is the practice of law. *Ex Parte Watson*, 356 S.C. 432, 589 S.E.2d 760 (2003); *Doe v. McMaster*, 355 S.C. 306, 585 S.E.2d 773 (2003); *State v. Buyers Service Co., Inc.*, 292 S.C. 426, 357 S.E.2d 15 (1987). For every real estate closing, an attorney should either perform or supervise the title search. It is impossible to supervise a title examination without the knowledge and skill to perform it! It is impossible to know whether an employee of the firm or an outside abstractor has checked the necessary items unless the attorney who supervises the abstractor knows which items to check.

The second reason is that legal knowledge is needed for title examinations. A seasoned abstractor may have infinitely more knowledge about titles than a young, inexperienced lawyer. I have the highest respect for excellent title examiners. They have rescued me in many difficult situations. But lawyers have spent three years in law school being taught how to recognize issues. The combination of a seasoned abstractor and a lawyer who is attempting to filter through the details to spot the legal issues in a chain of title is necessary for the protection of clients.

Third, searching titles is an excellent background for practicing real estate law. A dirt lawyer who knows how to search titles will understand how each document he or she prepares will affect the chain of title. That lawyer will also know how the document should be prepared to make sure it is properly indexed so that it gets into the chain of title. That lawyer will be able to envision how the next lawyer who searches the title will react to the documents he or she prepares and records.

Conducting a title examination can be a fascinating, frustrating experience. The process is fascinating because it is like piecing together a multi-dimensional, history-filled puzzle. You may learn facts about your community's history not found in history books. For example, the title to any lot behind the Veteran's Hospital in Columbia contains a history lesson on Confederate General Wade Hampton and his family's plantation property. The title to any lot in Gregg Park in Columbia reveals how the properties were put together to form Fort Jackson for World War II. If you spend any concentrated amount of time searching titles, you will learn the names of the major landowners in your community's history as well as the attorneys who represented them. History buffs are sometimes unable to efficiently search titles because they become mired in the history minutia.

The process can be frustrating for many reasons. First, it is often not possible to estimate the time to complete the task. Some titles are simple and clean enough to be searched in a matter of hours, even minutes. Others may require days. It becomes difficult to plan your time. Second, legal descriptions often change as the examiner moves back through the chain of title, and old legal descriptions can be extremely vague. The old legal description for a tract I once searched in Lexington County indicated only that the property was bounded by properties now or formerly owned by Taylor to the north, Taylor to the south, Taylor to the east, and Taylor to the west. Third, chains of title may seem to disappear at some point or there may be several possible sources of the title. Fourth, chains of title may include developers who are notoriously difficult to search because of extensive activity. An example in Richland County is South Carolina Electric and Gas Company whose deeds may require days to search.

These frustrating situations require additional digging into the records, checking probate records for deaths of individuals in the chain, reviewing old maps and plats, asking the oldest, most-respected real estate lawyer in the county for advice, and other sleuthing methods. The pieces of the puzzle do not always fit together with ease. At some point, the title examiner (or the title insurance company at the dirt lawyer's request) may have to take a "leap of faith" that the proper chain of title has been pieced together.

The best way to learn to search titles is to ask for hands-on instruction from an experienced title examiner. Shadowing more than one title examiner is helpful. Different individuals have different methods and shortcuts. I learned to search titles as a young law clerk by accompanying every lawyer from my office that went to the courthouse. Title examiners who spend their days in courthouses are usually friendly and willing to share the secrets of the trade. Ask questions.

Once you learn the process in one county, you should be able to repeat the process in any county, with a little help. You should have the list of the items that should be checked in your head or on a checklist in your hand. You need only to know where all those items are indexed and maintained. It is also wise to ask

wheth
was to
all th
assist
to co
B.

Sherr
searc
comr
Code
concl
As a
the a

may
have
more
Ask

the t
Carc
pres

pers
was
laws
deec
whe
if ty
the
subc
doe:
Fina
exte

poli
bac
date

Searching Titles

whether any additional lien indexes are maintained. My practice at a new courthouse was to ask a courthouse employee or local lawyer or title examiner to tell me where all the records were maintained. In this age of computers, you may have to ask for assistance in running computer searches since this process varies greatly from county to county and sometimes even from office to office within a county.

B. Search Periods

Except for those counties where records have been destroyed (by General Sherman's march, Hurricane Hugo, or other disaster), titles can generally be searched backed to the King's Grant. Traditionally in South Carolina, titles for commercial and residential properties were searched for 60 years. South Carolina Code Section 15-3-380 establishes 40-year statute of limitations for actions concerning the title to real property. The 40-year period can be extended for minors. As a result, 58 to 61 years is a logical search period—the statute of limitations plus the age of majority. This time period was traditionally rounded to 60 years.

In some parts of the state, the community standard for residential properties may have been shortened to 40 years for quite some time. Title insurance companies have relaxed their standards in recent years in the face of competition. More and more, a 40-year search is the standard for both residential and commercial properties. Ask your title insurance company for its search standards.

If you are dealing with navigable or tidal areas, it will be necessary to search the title back to the original land grant to determine whether the State of South Carolina has an interest in the property. Absent a land grant, there is a rebuttable presumption that the State owns all navigable and tidal properties.

Care should be taken when a reduced time period is used to find the deed of the person who owned the property 40 or 60 years ago. If you determine that the title was vested 40 or 60 years ago as a result of an estate, partition, foreclosure or other lawsuit or forced sale, it is a good idea to go back a link in the chain to find the prior deed that conveyed fee simple title. In so doing, you should be able to determine whether the estate or lawsuit took care of all the outstanding interests. In addition, if typical restrictions and easements are not located within a reduced search period, the search should be extended to find those items. For example, a residential subdivision should have restrictive covenants and easements. If a 40-year search does not reveal those items, the search should be extended to attempt to find them. Finally, if questions are raised by the short search period, it may be necessary to extend the length of the search to answer those questions.

Title insurance companies will often authorize "tacking onto" previous policies. That means updating the title from the date of the previous policy or going back one or more links in the chain from the policy and coming forward from that date. Again, ask the title insurance company.

Some title insurance companies in South Carolina are issuing products based on "single-owner searches" or very short search periods (such as ten years). The fact that title companies are taking those positions does not relieve the attorney of the necessity to search titles for their purchaser and lender clients. Allowing a title insurance company to relax an attorney's standards does not comply with the Supreme Court edict that searching titles is the practice of law.

In my opinion, a lawyer should explain and obtain consent from the client for any short search including a 40-year search, a search limited by "tacking onto" a prior policy, and a search limited by a title company's underwriting standards.

Always remember Rule of Professional Responsibility 1.1: "A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation." If closings are to be maintained as the practice of law, attorneys should practice law!

C. Getting started-establishing the chain of title

You most likely will have only limited information when you begin a title search — the name of the seller, the property address, and possibly the tax map number. Obtaining as much information as possible before you begin will save time in the long run. If your office has searched the title previously, pull the prior file before you begin.

A title is searched in the county where the real estate is located. The first task is to determine how the seller obtained title to the property. Start at the office in that county where deeds are recorded, the Clerk of Court's Office, the Registry of Deeds (ROD) or the Register of Mesne Conveyances (RMC) Office. Locate the deed indexes among all the indexes maintained in that office. Deeds are indexed in several volumes, both by grantor and grantee. The grantor is the seller; the grantee is the buyer. These indexes are called "direct" for grantor and "cross" for grantee in some counties. Locate the most recent grantee or cross index.

Check the seller's name in the grantee indexes, beginning with the most recent and working back, until you find the index of the deed where the seller obtained title to the property. The grantee index is divided chronologically and alphabetically into volumes. Divider sheets, which precede each alphabetical section listing, are contained in each volume. Corporations, partnerships, other business entities, and churches are listed on separate divider sheets. These deeds are located on separate pages in the volume from the deeds of individuals.

Remember that the seller may own more than one tract, particularly if the seller is a developer or builder. You must locate the deed that describes your property. The index will contain a brief legal description, but be careful about relying on this information. The person who indexed the deeds wrote it. It may or may not contain