Title Chat

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Just how far back does a title search have to go?



This has been debated for many years in the title insurance industry. Some states, one being Florida, have adopted marketable record title acts which, with few exceptions, place time limits within which persons holding record interests in real property must deal with their interest of record or their interest will be extinguished by these acts. Therefore, one need not search back to the earliest public records in these states. In states that do not have a marketable record title act, custom and usage have dictated how far back in time a title searcher has to go to be able to issue title insurance.

Well, every once in a while a case comes to our attention that reminds us that at least in the case of certain types of properties, it does pay to do a search back to the earliest public records.

The case being referred to involves property located in an older part of the city of Chicago, Illinois. It is described in the recent decision of the First District Appellate Court of Illinois, decided September 2, 2005, referred to as *Midland Properties Company v. Acme Refining Company*, presently cited as 2005 Ill. App. LEXIS 895.

The case involved a strip of land that was adjacent to a commercial tract of land that was purchased by a corporation in 1988. The corporation started using the strip of land at that time. Some years later another entity acquired a quitclaim deed to the strip of land and brought litigation seeking to stop the corporation from using it.

The Court of Appeal in its decision went back to 1865 as the time basis for determining ownership of this strip of land. It traced title, through a city ordinance passed in that year which condemned certain lands, including the strip of land; through the Chicago Fire of 1871 when most of the public records in Cook County, Illinois, were destroyed; through a partition of land that may have included the strip in 1870; to another city ordinance which gave certain persons the right to use the strip of land for railroad purposes; and through several more recent conveyances. The appellate court found that title to the strip had vested in the city of Chicago in 1865 and remained in the city.

The point of this Chat is not how the appellate court ruled in this case, but that when dealing with the title to real estate, we must always be aware that an Owner's Title Insurance Policy insures title is vested in the named insured. If title insurance had been written to the corporation when it purchased the commercial parcel in 1988 that would have included the strip of land, the title insurer would have had to pay a loss to its insured if it had failed to recognize the 1865 ordinance and insured title to the strip of land in the corporation.

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