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Abstract Problems and Concrete Solutions

The title industry relies on the skills of good abstractors. Like everyone, abstractors sometimes make mistakes. One common problem for abstractors is when a deed of trust is missed. It is best to start discussing this problem by taking a quick look at *Centreville Car Care v. N. AM. Mortg. Co.*, 263



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Va. 339 (2002). According to the case report, the abstractor, for whatever reason, simply missed the second deed of trust, which he should have found. The report does not have further details, so one might assume that this is a routine case in which the only practical advice for an abstractor is: don't miss prior deeds of trust that are there for you to find.

Not all of the cases are so routine. In *Mega Int'l Commerce Bank v. MCAP Capital, LLC*, 74 Va. Cir. 132 (Norfolk Cir. Ct. 2007), the abstractor's ability to locate a missing deed of trust was complicated by Norfolk's method of indexing land records. The Clerk required recorders to file an electronic cover sheet that contained the grantor's name. Upon receipt, the Clerk simply accepted the electronic cover sheet's information. In this case, the grantor's name was "Tseng," but the electronic cover sheet was incorrect, spelling the grantor's name as "Tsen." The abstractor simply typed in "Tseng" and missed the deed of trust. While the abstractor had no other way of finding the missing deed of trust, she might have found the misindexed deed of trust by performing a partial word search. For example, she might have searched for "Tse" or "Tsen." The practical advice here is that an abstractor should consider attempting partial word searches. Typing the first few letters is a good idea, especially for uncommon names.

As another example, in *Gold v. Old Republic*, 2010 Bankr. Lexis 4203 (E.D. Va. 2010), one of the subsidiary issues was whether an abstractor could be liable for failing to detect fraudulent releases. Vijay Taneja, who owned a mortgage company called Financial Mortgage, Inc. ("FMI"), had the company make loans to Taneja, personally. FMI promptly sold the loans on the secondary market,

but the purchasers did not record certificates of transfer. This meant that FMI still appeared to own the loans, even though it had sold them. Taneja then signed FMI's name to certificates of satisfaction, had FMI make more mortgage loans to himself, and then had FMI sell those loans to unsuspecting investors. Taneja's frauds resulted in multi-million dollar losses for title insurers. The question arises: could abstractors have helped to detect the frauds? Possible warning signs were that the mortgages were released soon after the closings, sometimes within a few days, and the land records disclosed no obvious source of repayment, such as a sale or refinancing. Generally, mortgage loans do not just pay themselves off. Although abstractors can't be expected to be detectives, they should report suspicious circumstances like those described.

Finally, in *Fidelity National v. Recordings Express, LLC*, 2011 U.S. Dist. Lexis 49194 (E.D. Va. 2011), a title insurance agent hired an abstractor to conduct a title examination. While the case report is a little vague, it appears that the settlement agent furnished the abstractor with information, obtained from the seller, of the possible existence of a certain deed of trust on the property. Not only did the abstractor miss the deed of trust, but it appears that the abstractor did not read the information provided by the settlement agent. The practical advice here is to read and take into account other information that might be provided to you when you are hired; don't just take down the property address. ☹

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