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BARRISTERS TITLE

— *services* —

A Division of Fidelity National Title

The Quill – March 2024



THE QUILL ARTICLE:

OOPS Switched Legals!

How a Failure of Title Can be Fixed

HELLO! Spring is in the air, and so is the pollen. I hope all of you are ready to stay inside and watch some basketball like I am! While you're waiting for the games to start please take a look at the fact pattern below on a failure of title. We've been seeing an increase in this type of chain of title problem recently, so we thought we'd revisit this fact pattern from a few years ago. I did tweak the names and some of the facts to keep it fresh, and for my own amusement.

Facts:

On June 1st, 1999, a developer obtained title to Lots 1-12 of Land of Oz Subdivision. On May 9, 2001, the developer intended to convey Lot 3, but mistakenly conveyed Lot 7, to Dorothy Gale.* On May 18, 2001, the developer conveyed Lot 7 to Glinda North. Lot 7 is the insured lot. Subsequently, on June 7, 2001, the closing attorney

attempted to resolve the legal description error in Ms. Gale's deed by recording a Statement of Explanation pursuant to GS 47-36.1 and a re-recorded deed to Ms. Gale. The legal description in the re-recorded deed was changed to Lot 3. The re-recorded deed was not re-executed by the developer/grantor.

On November 18, 2011, Ms. North conveyed Lot 7 to the current owner, Prof. Marvel. The Company issued an owner's policy to Prof. Marvel insuring Lot 7. On May 15, 2018, Prof. Marvel entered into a contract to sell Lot 7. The closing attorney conducted a 30-year title search and found the error in Ms. Gale's deed. The insured immediately filed a title claim asserting that Ms. Gale had a competing prior claim of title to Lot 7. The claim was received by the Company and handled accordingly.

Back to my initial question, "How could this "failure of title" claim have been prevented?" Since the developer owned Lot 7 at the time Lot 7 was conveyed to Dorothy Gale, she became the vested owner of Lot 7. To correct the legal description error, prior to the conveyance to Ms. North, Ms. Gale (and spouse (Scarecrow), if applicable) should have conveyed her interest in Lot 7 back to the developer.** As an aside, if Ms. Gale had encumbered Lot 7 with a loan secured by a recorded deed of trust (she did; however, the DT was satisfied prior to the initiation of the title claim), the beneficiary of the deed of trust would need to release Lot 7 from the deed of trust.

For this claim, it appears the closing attorney discovered the legal description error a few days after the deed to Ms. North was recorded. To correct the matter at that time, Ms. Gale should have conveyed her interest in Lot 7 to Ms. North. The beneficiary of the DT (for Ms. Gale's loan) should have released Lot 7 from the DT. Subsequent to the recording of the deed from Ms. Gale to Ms. North, the deed of trust executed by Ms. North, if applicable, should have been re-recorded to correct the chain of title. Finally, the search attorney should have performed an updated title search on Lot 7 to confirm there were no intervening liens or matters that needed to be dealt with prior to the remedial work.

Further, there are two rules of thumb to consider when thinking about using a "corrective or scrivener's" affidavit pursuant to NCGS 47-36.1:

- As clarified by the enactment of Session Law 2017-110, affidavits recorded pursuant to NCGS 47-36.1 serve only to provide notice of an error in a recorded instrument. Such an affidavit does not actually correct the recorded instrument; and
- The "typographical or other minor error" in a recorded instrument for which notice is being given must be "nonmaterial." An "error that would affect the respective rights of any party to the instrument is not a nonmaterial typographical or minor error." (See SL 2017-110 for further details.)

Should you have any questions regarding the use of a corrective or scrivener's affidavit to provide notice of an error in a recorded instrument, please do not hesitate to reach out to me at sarah.fuentes@barristerstitle.com or to our Branch Manager Noah Webster at noah.webster@barristerstitle.com.

* The names of the parties included in the summary are fictitious, but whimsical.

** The Company did not insure Lot 3. As such this summary does not address remedial work necessary to correct the conveyance of Lot 3.

MEET THE FAMILY

Noah Webster, Branch Manager & Title Counsel

Help us welcome Noah Webster to the Barristers Title family as Branch Manager & Title Counsel!

Noah is licensed to practice law in North and South Carolina and has spent almost 10 years in the real estate legal practice, handling all manner of commercial, residential, large-tract, development, complex lending transactions, general business, and specialized title and/or land suitability transactional needs.



While not working, Noah enjoys spending time with his family – wife, Lauren and two daughters, Stevie and Ruby. Noah really enjoys Clemson athletics and spending time outdoors.

Now, let's get to know Noah a little better...

1. Favorite Breakfast? **Tough question. Homemade country sausage, eggs over-medium, sliced garden tomatoes with salt, and rye toast with melted butter. Close seconds are any skillet breakfast, or huevos rancheros.**
2. Coffee vs Tea? **Black Coffee in the morning and Iced Tea in the afternoon. If made to choose, Coffee, no question.**
3. Do you prefer working from home or in an office? **Generally, I like being in an office, but having remote flexibility is nice, and I think it's a nice perk to be afforded a little work from home/remote time.**
4. Dinner at the table or on the couch? **At the table ... but have a cheat day every now-and-then, and binge watch something good.**
5. What is your favorite dessert? **Fresh fruit, or Cherry Delight.**
6. What are you currently watching? **"James May, Our Man in India" and the "Grand Tour."**
7. If you had one free hour in your day, what would you do? **Work out, read more (pray more), and rest.**
8. Are you a morning person or night owl? **Night owl.**
9. What is your bedtime? **Between 10pm and midnight.**
10. Tell us an interesting fact about yourself that we may not know. **I am a direct descendant of, and named after, the Noah Webster who wrote the American Speller, a.k.a. Webster's Dictionary. Perhaps, an affinity for the verbose, is as much inherited as learned? The Miriam family must get all the residuals, cause I still "ain't seen" a nickel of that dictionary money, haha.**

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Currently we are offering 8 total CLE/CPE's for on-demand viewing, including four new courses in 2024. **If you are in need of an ethics credit hour, we just added our Cybersecurity course back!

Click **HERE** to access the CLE library. This is where all of the on-demand courses will be stored so bookmark the link and check back periodically. We will also announce any new live or on-demand courses here in the newsletter.

****BARRISTER TITLE HAS MOVED****

A friendly reminder that our office has moved.

Our new address will is:

9300 Harris Corners Parkway

Suite 330, Charlotte, NC 28269

Please update your records with the new address. Thanks!

THE QUILL MEME

Who us? Never...



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Barristers Title Services underwrites for Fidelity National Title and First American Title.

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