

Researching the Records – The Basics (1 of 6)

by
Knud E. Hermansen¹

Researching the records is a necessary task in performing boundary retracement services. Experience has shown that many surveyors do an inadequate job of research. In many cases, the surveyor has had little or no formal training on performing record research.

A few surveyors will rely on a title opinion, title abstract, or research done by some other person such as the client or a title abstractor. As a general rule, a title search of the records is seldom adequate for a boundary survey for four reasons. First, a title search does not examine the title of adjoining properties where the adjoining boundary description can be examined. Second, a title search does not ordinarily seek or examine road information. Third, a title search is often constrained to a limited period of time without regard to the quality of the boundary description within that period. Finally, the title search focuses on title information rather than spatial information. (A bad description is often undetected.)

This article will discuss the basics of researching the records for the purpose of providing the client with an opinion on the location of the boundary.

Tax Records – Starting the Research

Ordinarily, the boundary research commences at the tax office or the tax assessor’s web site, since many tax records are now available on-line.² The researcher needs the landowner’s name (usually the client’s name) and the general location of the property to begin the research using the tax records.

Using the tax records, the researcher begins the research by looking up the landowner’s name (e.g., “Wanda & John Smith”) in the alphabetized list of property owners maintained by the tax office. Where the tax records are in digital form, the landowner’s name can be entered into the portal query set for a name. The owner listing-information usually includes the address of the owner, land and building assessment values, zoning, tax parcel number, and the deed book and page number of the most recent transfer.

Landowner	Owner’s Address	Zone	Parcel	Reference	Land	Improvements
Smith, Eugene	1839 Wilshire St. Old Town, ME 04468	R-2	13-23	Bk. 3443, p. 344	\$121,000	\$45,000
Smith, John & Wanda	43 Oak Street Old Town, ME 04468	R-1	04-06	Bk. 2874, p. 002	\$40,000	\$0.00
Smith, Linda	18 Maple Avenue Boston, MA 02114	R-2	08-01	Bk. 3884, p. 322	\$211,000	\$56,000

The next step in the research at the tax office is to use the tax parcel number obtained in the previous step (e.g. “04-06”) and locate the landowner’s parcel on the tax map. Many tax maps

¹ Knud is a licensed surveyor, engineer, and attorney at law. He is licensed as a surveyor in five states. He teaches in the Surveying Engineering Technology program at the University of Maine and operates a consulting firm specializing in surveyor liability, boundary disputes, land development, and title.

² E.g., <http://data.visionappraisal.com/barharborme/DEFAULT.asp>

are now on-line.³ Many tax parcel numbers are composed of two numbers. The first number is the map sheet. The second is the parcel number on the tax sheet. As an example, tax parcel number 04-06 can be found by locating parcel number six on tax map four.



Once the landowner's parcel is located on the tax map, the tax parcel numbers for the adjoining parcels are obtained (e.g., "04-05" and "04-07").

Most tax offices have a listing set up by the numerical order of the tax parcel numbers. For digital records, there is usually a query portal that will allow the tax parcel number to be entered as a basis for a query. This listing is used to assess property information when the tax parcel number is known. The tax parcel number of the adjoining parcels provides a gateway to retrieve the neighbor's name, address, and the deed book and page number of the most recent record of transfer.

Parcel	Landowner	Owner's Address	Zone	Reference	Land	Improvements
04-05	Yost, Timothy	40 Oak Street Old Town, ME 04468	R-1	Bk. 3443, p. 344	\$121,000	\$45,000
04-06	Smith, John Smith, Wanda	43 Oak Street Old Town, ME 04468	R-1	Bk. 2874, p. 002	\$40,000	\$0.00
04-07	Bette, Julian Bette, Kevin	48 Oak Street Old Town, ME 04468	R-1	Bk. 3884, p. 322	\$211,000	\$56,000

The adjoining neighbor's name and deed information will be used in the registry of deeds to obtain the neighbor's boundary information. The neighbor's name and address can be used to notify the neighbor by mail of the pending surveying services that are to be performed.

³ <http://www.barharbormaine.gov/assessment/taxmaps/taxmapindex.html>

Often within the tax office there is other information that may be useful when performing surveying services. Useful information includes zoning set back distances and other spatial restrictions applicable to the zoning, designated agricultural or tree growth land (obstructing development), flood plain information, and protected environmental areas (e.g., wetlands, vernal pools, eagles' nests, deer yards, etc.).

Research at the Registry of Deeds

After gathering information at the tax office, the next step is to continue the research of the records at the registry of deeds. Many of these records are now on-line.⁴ Using the deed book and page number obtained at the tax office, the relevant deeds and the associated boundary descriptions can be obtained and examined. Where the deed book and page were not provided in the tax records, the landowner's name can be used to locate the deed book and page number using the grantee index (sometimes known as the indirect index). Using the indices will be discussed in more detail in a later article.

Previous, historical deeds are often identified using the recital within the later deed (when a recital was included). Otherwise, the indices must be used to locate historical deeds. The recital is often called the "Being Clause" since the recital often begins with the word "Being the same property..." The recital usually gives the name of the earlier owner to the property and the previous deed book and page number where the previous owner received their title.

Being the same property conveyed to the grantor herein by Jeremiah Prang by deed dated the 23rd day of June in the year Anno Domino 1903, as recorded in deed book 923, page 84.

During the research process, the researcher should keep track of the previous descriptions, previous owners, dates of deed execution, dates of recording, and types of instruments. In some cases, researchers will compile the boundary information on forms designed by the researcher that prompt the researcher for the relevant information. Other researchers make a copy of the deed description (despite the high cost of copying often imposed at the registry). When allowed at the registry, some researchers use their digital camera to record the information on the deeds.

Organizing the Chain of Records

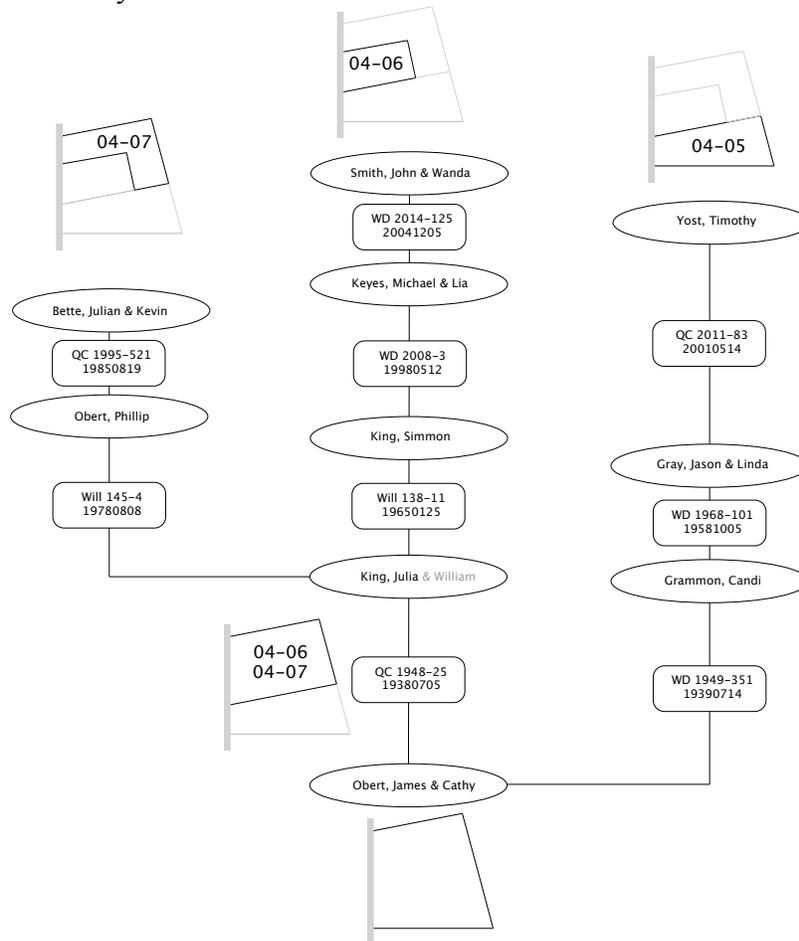
The extensive chain of records should be organized for easy access and later use and reporting. Some researchers compile the chain of records using a table listing the conveyances.

04-06 (Client)						
Execution	Recording	Grantor	Grantee	Instrument	Book	Page
20041205	20041207	Keyes, Michael & Lia	Smith, John & Wanda	Warranty Deed	2014	125
19980512	19980612	King, Simmon	Keyes, Michael & Lia	Warranty Deed	2008	3
19650125		King, Julia	King, Simmon	Will	138	11
19380705	19380815	Obert, James & Catherine	King, William & Julia	Quit Claim	1948	25
04-05						

⁴ See e.g., <http://deeds.alamance-nc.com/>

20010514	20010528	Gray, Jason & Linda	Yost, Timothy	Quit Claim	2011	83
19581005	19581111	Grammon, Candi	Gray, Jason & Linda	Warranty Deed	1968	101
19390714	19390718	Obert, James & Catherine	Grammon, Candi	Warranty Deed	1949	351
04-07						
19850819	19750825	Obert, Phillip	Bette, Julian & Kevin	Quit Claim	1995	521
19780808		King, Julia	Obert, Phillip	Will	145	4

Sometimes researchers will employ a flow chart to organize and compile the relevant conveyances. In the following example flow chart, the owner's name, record citation, date of execution, and property configuration are shown. The layout and sequencing of the records in the flow chart are governed by the date of the deed's execution.



Researchers are encouraged to keep legible and organized notes of the extent and scope of their research. All too often, poor notes do not faithfully serve a surveyor preparing a report or years later when a dispute arises and the surveyor has to testify about their research procedures and results.

Organizing the Boundary Information

The boundary information within the deeds, compiled from the search of the chain of records, must be identified and organized so the analysis can be made for the purpose of arriving at a defensible opinion on the location of the boundaries. Collecting the relevant information but

failing to organize it to allow for a proper analysis will often lead to the same results as an incomplete research.

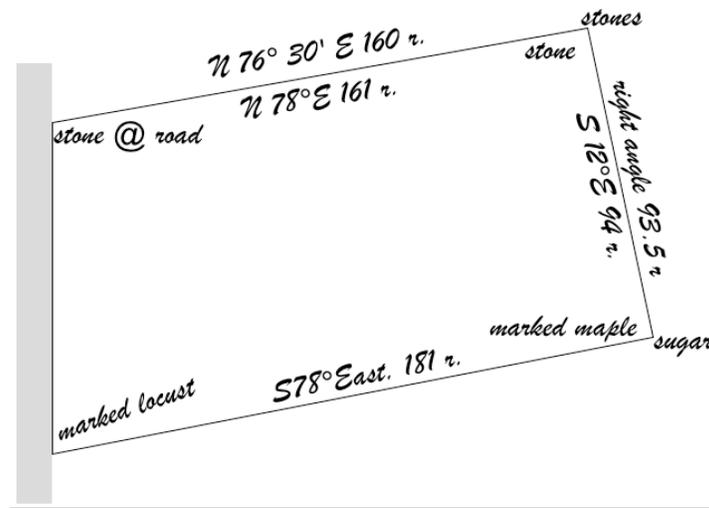
In compiling the boundary information, some researchers simply make some handwritten notes on a deed copy as the following example illustrates.

Adjoiner N76 1/2 E 160 r. *Adjoiner says "Sugar"*
 Beginning at a stone at the road; thence North 78 degrees East, 161 rods to stones;
 thence South 12 degrees East, 94 rods to a marked maple; thence South 78
 degrees East, 181 rods to a marked locust at the road; thence northerly along the
 road to the point of beginning. Containing 100 acres more or less.
Adjoiner "stones & stake" *Adjoiner "At right angle" 93 1/2 r.* *DB 1948-25 says stone*

Other researchers will compile the boundary information that was obtained during the research by organizing the information in a table or organized listing.

Boundary 1-2					
Citation	Monument	Direction	Dist. (rods)	Dist. (ft.)	Monument
DB 2014-125 (Client)	Stone @ road	N78E	161 rods	2656.5 ft.	stones
DB 1948-25 (Client)	"	"	"	"	stone
DB 1995-521 (04-07)	Stones & Stake	N76 1/2 E	160 rods	2640.0 ft.	Sugar

Notes on a plot of the deed or copy of the tax map are also employed to organize the boundary information. This form of compilation is a useful format to take the information to the field during the field reconnaissance to look for boundary evidence.



Conclusion

This article covers the basic procedure for researching, gathering, and organizing boundary information from the public records. Subsequent articles will deal with research standards, using the indices, shortcuts and shortcomings, conflicting conveyances, and ancillary record research.

Boundary Research Standards (2 of 6)

by
Knud E. Hermansen¹

Record research has two components that comprise the standards for boundary record research. These two components are: 1) scope (extent) of the research and 2) depth of the research.

Minimum standards promulgated by various licensing boards or state legislatures often deal with the scope of research and depth of research. In cases where published standards do not exist or fail to deal with one or both components, the common law establishes standards for both the scope and depth of the research. The common law would require a scope and depth of research that a reasonably prudent surveyor would perform in the locality of the survey for the same or similar surveying services.

Scope of the Research

The scope of research deals with the extent of the records examined such as adjoining records, utilities records, department of transportation plans, private records, etc.

Boundary and spatial information obtained using only the client's records (limited scope) seldom provide the best, correct, or most complete information necessary for retracing a common boundary and meeting the client's expectations. The scope of research reveals boundary information but also identifies easements, gaps, overlaps, restrictions to development, and environmental spatial information.

The extent of the records examined depends on the needs of the client, mandatory standards, and likelihood of finding information within reasonable cost constraints. Minimum published mandatory standards often require, as a minimum, the examination of adjoining property records, easement records, and public road records. Depending on the situation, standards may also require a search of utility records, historical archives (e.g., historical societies), private records, municipal records, state archives, Department of Agriculture aerial photograph holdings, on-line GIS databases, etc.

Depth of the Research

The depth of research deals with the records encompassed within a historical time period. Consequently, the depth of research ordinarily involves historical research of both the client's and adjoining records back to an earlier time period.

Researching the records of the client's and neighbor's property is done to locate missing boundary information, identify and correct errors in boundary descriptions, identify omitted or overlapping conveyances, and determine the time period when the previous survey occurred. It is often the case that practitioners discover that the descriptions used in the current deeds are

¹ Knud is a licensed surveyor, engineer, and attorney at law. He is licensed as a surveyor in five states. He teaches in the Surveying Engineering Technology program at the University of Maine and operates a consulting firm specializing in surveyor liability, boundary disputes, land development, and title.

actually of ancient origins. Descriptions were frequently copied from one deed to the next. Oversight and careful scrutiny were often lacking during the transcribing process. Out conveyances and easements were omitted from subsequent descriptions. Ancient surveyors may not have reconciled their results with the records at the time.

The depth (historical reach) where the research is terminated is a function of the needs of the client, mandatory standards, liability risk, obstacles to research, and time constraints. The most cursory depth of research is to simply compare the client's current deed description with the neighbor's current description. If no differences are apparent, some researchers terminate further research. Terminating research at this level often fails to reveal critical information, errors, or omissions.² Critical information that might not be discovered would include easements, out-conveyances, in-conveyances, boundary line agreements, previous surveys, etc.

A safe depth to terminate research is to research both the client's and adjoiner's respective chain of records back to a common grantor. Once a common grantor is reached, further research will seldom reveal additional information on the boundary location since the boundaries in all but rare cases did not exist prior to the time of the common grantor. Nevertheless, terminating research at a common grantor runs some risk to the surveyor. For example, easements burdening or benefiting the property created prior to the common grantor, may not have been mentioned in deeds prepared after the common grantor.

The most conservative depth of research is to research back to the initial land grants from the government. Terminating research using this criteria is time consuming and therefore expensive. Often the likelihood of discovering additional, pertinent information at a time period prior to a common grantor is not always worth the cost of further historical research (absent some evidence of missing record information that must be recovered).

Conclusion

At the very least, research for boundary retracement services should include the client's and adjoining property records. The scope and depth of research should comply with other competent surveyors performing the same or similar services if there are no mandatory standards more restrictive. The client and adjoining property records should be researched back to a common grantor whenever possible. Any easements on or along the property should also be identified and examined.

The next article will discuss the basics of using the grantor (direct) and grantee (indirect) index to look up deeds.

² In the past, the author had students test the theory that mistakes are inherent in deed descriptions that are copied repeatedly over time. In one state, 48% of the current descriptions had some error or omission. In another state, 38% of the current descriptions had some error or omission.

Indices (3 of 6)
by
Knud E. Hermansen¹

It is often the case that the appropriate deed book and page of the record must be identified using the indices. The widespread use of digital indices has made retrieving recently recorded documents relatively easy. Unfortunately, much if not most research for boundary information still requires knowledge and expertise in using the “paper” indices to retrieve historical records at the registry of deeds.

Category of Indices

Looking up a name in the paper indices requires the researcher first determine what category of indices should be used. If the researcher is looking up a name to see what liens were filed against certain personal property in the possession of a person, the researcher should use the set of indices for the Uniform Commercial Code (UCC). If the researcher wanted to determine if the person received a warrant to be Justice of the Peace, the researcher may have to use a miscellaneous index. In the past, some registry of deeds indexed mortgages and liens in a different set of subject indices. In other cases, pending legal actions involving title to real property were placed in a lis pendens set of indices.

Some registry of deeds in the past and most registry of deeds at the present have combined the various indices into one set of indices or a digital database.

Grantor or Grantee Indices

Deeds and mortgages (or deeds of trust in some states) are ordinarily indexed in the general or deed indices. In most cases, paper indices are divided into separate sets of grantor and grantee indices.

The grantor indices are sometimes referred to as the direct index. The grantor index allows access to the property records using the name of the grantor or mortgagor. The grantor is the person who is selling or conveying the property. The mortgagor is the person (typically the borrower) that executes the mortgage (or deed of trust) to the lender.

The grantee indices are sometimes referred to as the indirect index. The grantee index allows access to the property records using the name of the grantee or mortgagee. The grantee is the person who is buying or receiving the property. The mortgagee is the person the mortgage is made to (usually the lender).

While the information available in the grantor and grantee indices are the same, the

¹ Knud is a licensed surveyor, engineer, and attorney at law. He is licensed as a surveyor in five states. He teaches in the Surveying Engineering Technology program at the University of Maine and operates a consulting firm specializing in surveyor liability, boundary disputes, land development, and title.

order of listing the grantor and grantee names differs between the indices. In the grantor set of indices, the grantor's name is the name listed first. Likewise in the grantee set of indices, the grantee name is the name listed first. Therefore, if the purpose is to find a deed for a particular conveyance and the name of the person who conveyed the property is known, the grantor set of indices would be used. On the other hand, if the person who obtained title to the land is known, the grantee set of indices would be used.

Some registry of deeds combined the two indices into one set of index books using the left hand pages of the index for the grantors and the right hand pages of the index for the grantees (or vice versa).

Relevant Time Span

Once either the grantor or grantee set of indices are chosen, the period of search must be chosen in order to refine the search among the various sets of grantor and grantee indices.

As a result of the large number of conveyances over time, separate grantor and grantee indices were set up for different time periods. In other words, there may be a set of grantor and grantee indices for the period 1795-1810; another set of indices for 1811-1830; another set of indices for 1831-1860, and so on. Each registry of deeds chose a span of time for a set of indices independent of other registry of deeds so the researcher cannot rely on their knowledge gained at one registry of deeds and apply that knowledge to a different registry of deeds.

It should be noted that one of the first indices used in most registry of deeds was merely an index at the back of the deed book itself. When settlers were few and land transactions fewer, the deed was recorded and the name added to a partially alphabetized index in the back of the deed book itself. With only a few dozen settlers in the entire county and a span of a decade or more required to complete one deed book, there were only a few books to look through and a separate index not necessarily needed. Fortunately, most registry of deeds copied the information found in the back of the early deed books into general indices when it became apparent that separate indices were needed.

Choose an Index by First Letter of the Surname

At this point in the research process, the researcher will have chosen the general or deed set of indices, chosen either the grantor or grantee set of indices, and finally chosen a set of indices covering a particular period of time. The next step is to pick one of the index books within the set of grantor or grantee indices that cover a given time period. The grantor or grantee books within a time period are organized using the first letter of an individual's last name (surname). There is often a separate book for each letter of the alphabet. However, certain letters were not often used to begin surnames. These letters were combined with other sequential letters in one book (e.g., X, Y, Z). Therefore, a researcher looking for an 1819 deed from John Smith to William Hanson

would begin the research in the grantor “S” index or the grantee “H-I” index in the 1800-1820 period of indices.

Find the Name

The researcher has at this point in the research now focused on a particular index book containing entries for all persons that have a last name (surname) starting with a common letter who filed documents in the registry of deeds during a particular period of time. The next step is to locate a particular name within the index. The process of locating a name in a paper index book is often confusing because the names were seldom placed in the index in alphabetical order beyond the first letter of the last name. This situation may seem absurd now but not to a person creating an index without benefit of a computer and with no knowledge on how many people with various last names would eventually record documents during the time period of the index. In other words, if Jeremiah Simpson records his deed first in 1919, his name appears before John Sampson who recorded his deed after Simpson. There was no way the registrar could anticipate that John Sampson would be recording his deed after Jeremiah Simpson.

To help organize an index book and ease the burden of finding a particular name, various systems were utilized without resorting to alphabetizing the entire name. Two prevalent systems were employed in the past. One system was to divide the book into sections using the letter following the first letter of the last name. Therefore, last names such as Smith, Smyth, Smedly, Small, etc. would all be found in one section of the “S” index with the names beginning with the same first two letters randomly mixed within this section of the book.

A second commonly employed system sectioned each index book according to key letters following the first letter in the surname. This system is known as the Russell Index System.

The Russell System utilizes an organizational table ordinarily found on the inside front cover of the index book. The Russell Index System organization table employs columns, one for each key letter (L, M, N, R, T, Misc.). If there is no key letter, then the “Misc.” column is used. For the surname of Smedly, the key letter is “m.” For a surname of Sabee, there is no key letter and the “Misc.” column is used. The rows in the Russell Index System organization table use letters meant to be matched to the first letter in the given name.

The page in the index where the researcher can begin looking for any entry under the name of James Smedley is identified by finding the intersection of the row beginning with the first letter of the given name (“J” for James) and the column of the key letter following the first letter in the surname (“m” in Smedley). The intersection of the row “J” and the column of the key letter “m” is page 92 in the following Russell Index organizational chart. The researcher would open to page 92 within the “S” index to look for entries under the name James Semdley.

Given Name Initials	l	m	n	r	t	Misc.
A	11	12	13	14	15	16
B	21	22	23	24	25	26
C	31	32	33	34	35	36
D	41	42	43	44	45	46
E	51	52	53	54	55	56
F	61	62	63	64	65	66
G	71	72	73	74	75	76
HI	81	82	83	84	85	86
J ----->	91	92	93	94	95	96
KL	101	102	103	104	105	106
M	111	112	113	114	115	116
NO	121	122	123	124	125	126
PQ	131	132	133	134	135	136
R	141	142	143	144	145	146
S	151	152	153	154	155	156
TUV	161	162	163	164	165	166
WXYZ	171	172	173	174	175	176
Corp., Etc.	181	182	183	184	185	186

In attempting to find a name, the researcher must keep in mind that a person's name may have been spelled differently between various index entries or from one deed to the next. In the past, many people did not know how to read or write. Persons that were unable to spell because they had no formal education, often had to rely on clerks and attorneys to spell their name based entirely how the person pronounced their name. Illiterates were left with no ability to check the manner and consistency in which their name was spelled by others.

Oftentimes, corporations presented unique problems in indexing the corporate name. For example, a conveyance involving the John Smith Company may be found under "J" for John Smith, "S" for Smith, or under the index specifically set up for corporations in some registry of deeds. Entries for the Beth David Synagogue may be found under "B," "D," "S," or "CH" for church. The manner for indexing corporations was left to the ingenuity and creativity of the registrar. As registrars changed so did the system employed to index corporations.

Other name problems abound causing confusion in searching the name within the paper indices. A name like MacDonald may be indexed as "MacDonald" or "McDonald."² Saint Louis may appear where "Saint Louis" would be found or "St. Louis" would be found. Given names such as William (Wm.), Ezekial (Zeke), Elijah (Eli), Ebenezer (Eb), Joshua (Josh), Elizabeth (Liz), Rebecca (Becky), and other names were often indexed by the nickname rather than using their proper name.

² Name such as this example illustrate the benefit of the Russell Index System that use a key letter rather than the letter following the first letter of the surname.

Looking up a name in the index has been simplified considerably with the use of computers in the registry of deeds. Software allows a researcher to type in a name and within seconds every book and page where that person was a party is displayed on the screen (be the person a grantor or grantee). Unfortunately, because of the labor-intensive task of entering earlier paper indices into the computer, the use of the computer to find a document involving a particular individual is ordinarily limited to recent transactions.

One drawback to a computer is that the computer will only give those names that match the spelling of the name as entered by the researcher. Therefore, a researcher that is interested in records for Becky Smyth may not see any names in the computer display if the name on the document was indexed in Becky Smyth's legal name (Rebecca Smythe) or her married name (Rebecca Smythe-Hampden). Using an earlier paper index, there is a good chance the researcher would have seen the other forms of her name looking through the index and investigating the documents cited.

The primary rule to remember when looking up a name in the index is that no matter what the official rules were, a name was actually indexed in a manner the person working at the registry felt inclined to employ at the time of indexing. Each registrar often had their own peculiarities in the manner of indexing the records.

Checking the Name

Unfortunately, the information provided in the index seldom contains enough assistance to determine if the entry in the index pertains to the property that is being researched. A typical index entry simply contains the grantor's name, grantee's name, instrument, volume, page, date of execution, date of recording, and the municipality where the property is located.

Grantor	Grantee	Location	Recorded		Date Executed	Date Recorded
			Vol.	Page		
Grandle, Carl	Jorden, Mary	Hopewell	1221	221	May 5, 1919	Oct. 18, 1921
Granson, Donald	Eckert, James	Mt. Jewett	1221	845	June 13, 1920	Nov. 22, 1921

This limited index information leads to the next and final step in locating a document using the indices — determining if the entry pertains to the property being researched. If the name is a common name in the county (e.g. father, son, grandson) or the person frequently purchased or sold numerous parcels in the county there will be numerous entries for that name in an index or in several different indices. (e.g., Imagine a property that was owned, even for a short time, by the local bank.) The number of entries of interest adds to the burden of research considerably since each entry requires the researcher examine the record indexed to see if the document is relevant to the property being researched. Where several hundred possible entrees appear, the researcher may spend hours of tedious work opening deed books, reading parts of the deed, and going to the next possibility listed in the index. Even where the appropriate

document is found, the cautious researcher will examine all documents cited under the name in the index to make sure there are no corrective deeds, straw party deeds, affidavits expanding the record, or conveyances in or out of the parcel of interest. Couple this burdensome task with the fact that each set of indices, starting from the time of possible ownership to the most recent set of indices, should be examined (forward search). It does not take long to understand, sympathize, and quickly adopt short cuts or willingly take chances to skip tedious research steps.

Conclusion

The difficulties of locating a relevant deed using the index is caused in part by the widespread system adopted in the United States where the name of the landowner is used to index the property rather than a unique parcel identification number. Some states are taking steps to change the system by incorporating a parcel identification number to supplement or replace the landowner based index system.

The next article will discuss shortcomings and shortcuts in researching the records.

Research - Shortcomings and Shortcuts (4 of 6)

by
Knud E. Hermansen¹

Seldom can research be conducted without encountering problems or attempting to overcome the tedium inherent in researching the records.

A major source of most problems encountered in the researching of records at the registry of deeds is the method and manner of indexing property records that goes back to the earliest of times; that is, using the landowner's name rather than using a parcel number or name. Imagine the problems that would attend the transfer of an automobile title if the security of the title depended on finding previous owners of the vehicle rather than relying upon the vehicle identification number (VIN) or license plate to determine the strength of the seller's title. Partly as a consequence of the system, a deed is merely evidence of ownership while a vehicle's title is proof of ownership.

Some blame for the difficulty in researching the records at the registry of deeds also lies with the condition of the records and the lack of attention paid by previous landowners to the recording of their deed and other documents of title. It would be hard to imagine other places in the United States where members of the public can still go into a public building and handle public documents that are older than the Constitution of the United States. Of course, it is necessary for researchers to look at the ancient deeds and for the contents of these documents to be freely available; yet, the cost to care for these old documents is often prohibitive. As a result, care, protection, and maintenance of the documents are often put aside by local governments and the old deeds and documents go unprotected and are allowed to deteriorate to a condition beyond recovery.

As a consequence of these circumstances and others, researchers often employ shortcuts and cause shortcomings in their research by the procedures and methods employed to perform the record research.

Stopping a Search Short

Once information is found that appears to provide for the reasonable location of the client's boundaries, many researchers opt to terminate the research, not look at other indices, not continue to examine other entries for a particular person, or fail to perform a forward search. This behavior assumes there do not exist corrective deeds, out-conveyances, in-conveyances, liens, mortgages, easements, etc. that could affect the property boundary or spatial limitations on the property.

In defense of the researcher opting to shortcut or terminate research, performing extensive additional research is more often than not fruitless and seldom worth the cost to the client.

¹ Knud is a licensed surveyor, engineer, and attorney at law. He is licensed as a surveyor in five states. He teaches in the Surveying Engineering Technology program at the University of Maine and operates a consulting firm specializing in surveyor liability, boundary disputes, land development, and title.

Forward Search

An 1862 deed that is brought into the courthouse to be recorded today is indexed in the present indices, not the indices covering the 1862 date of execution. In other words, a deed or other document brought to the registry for recording was indexed in the set of indices open at the time of recording and not when the document was executed. This manner of indexing the records markedly increases the number of indices that must be searched to discover a particular document, since the document may appear in any time span of indices after the date the document was executed.

Accordingly, if a researcher wishes to insure that there are no recorded out-conveyances by Eliza Everett who owned the property from 1898 to 1920, the researcher is obligated to search every index from the period covering 1898 to the present.²

Eliminating Constraints on the Research

Researchers often utilize the “type of instrument” and “location” information found in the index headings to avoid looking up all the documents indexed under a particular name. Ordinarily, the location of the parcel by municipality and type of instrument (e.g., warranty deed, affidavit, mortgage, release, etc.) is given in an index entry in addition to the book and page number where a document is recorded. When a researcher is attempting to locate a deed involving a parcel in a particular municipality, the tedious step of examining each document indexed under a previous owner’s name is often limited to those entries under the person’s name that involve deeds within that municipality. This methodology assumes the registrar did not make a mistake in the entry information. This method often overlooks the fact that a deed conveying multiple parcels in different municipalities will usually list the name of the municipality for the first parcel in the index. Also, this shortcut ignores the fact that documents other than deeds that are identified under “type of instrument” such as mortgages and affidavits will often contain relevant property information that could be important to locating the boundary.

Index by Person

A tactic that is often employed by skilled researchers to reduce tedious efforts in the future is to carefully compile and preserve all the various entries for the name of a person. Detailed notes are taken as each entry is investigated, examined, rejected, or accepted. Information preserved includes the size of the parcel and nearby physical features such as roads and streams, to name a few. The notes are later organized on a computer database. If the researcher encounters that person’s name again during a future research project, the tedious determination of which documents are appropriate to the research is alleviated considerably by the use of the stored information in the

² The doctrine of Estoppel by Deed would recognize that a warranty deed executed and recorded prior to the period when the person actually owned the property is effective at the time of the earlier deed’s execution and recording (even though the grantor had not as yet owned the property). As a consequence, even a deed executed prior to when a person owned the property may be effective in conveying title to later acquired property.

researcher's computer database.

Break in the Chain of Records

Despite a researcher's best efforts, research on historical records pertaining to a particular parcel must be halted (at least temporarily) because the name of a previous owner is not known or, if known, a relevant entry under the name within the indices cannot be found. This causes a break in what should be an unbroken chain of owners leading from the present owner back to the original conveyance from the government or proprietors.

There are several reasons for a break in the chain of records (owners). The seizure and sale of the property for unpaid taxes often result in the municipality or sheriff being listed as the grantor rather than the delinquent taxpayer. Foreclosures will often list the lending institution as the grantor rather than the defaulting person. Title that passes by intestacy (without a will) will often leave no trace in the registry of deeds of the name of the previous owner (decedent).

Another common cause for a break in the chain of records is the situation where a person who purchased the property simply failed to record the deed. In the days where travel to the courthouse was difficult or recording expenses appeared prohibitive, recording a deed was often omitted to avoid the onerous trip or expenses.³ Even at the present time, most states do not impose any penalties (or act on the penalty) for failing to record a deed.

Compounding the problem of the break in the chain of records is that the description was often changed after the break in the chain. It must be expected that where an attorney does not have a reference or access to a previous deed and the description in the earlier deed, the description was rewritten – many times with less care and attention to detail than the description in a previous deed. As a consequence, there are often benefits for a researcher to go around the break in the chain of records.

The solution to any break in the chain of records is to find the name of a previous owner of the property in order to discover a previous "link" in the chain of records. With previous owner's name, the researcher can resume the research in the indices and recovery of earlier records.

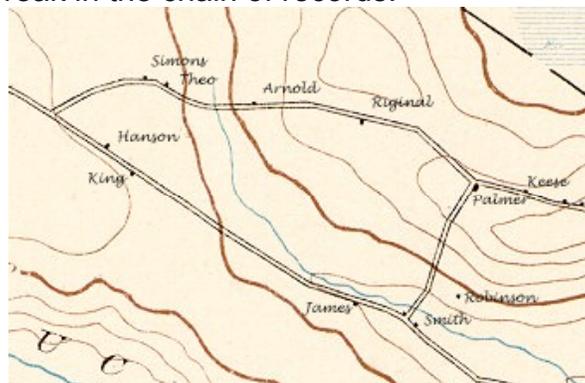
Starting From The Parent Tract - One tactic employed by skilled researchers to overcome a break in the chain of records is to trace records back to certain designated parent tracts (common owners) in the county. For example, a researcher may spend considerable time investigating the transactions involving a person who owned several thousand contiguous acres in 1878. This large tract represents the parent tract to several hundred independent parcels existing at the present time. Consequently, once a

³ The author is aware of one courthouse that had several hundred unrecorded deeds in a box that were placed in the box because they were mailed to the registry with insufficient recording fees, lacked a valid acknowledgement, or contained some other defect causing their rejection of the deed before being recorded.

parent tract is identified and its owner identified, breaks in the chain of records for parcels that evolve from the parent tract are overcome by starting at the owner of the parent track and researching forward using the grantor indices.

Similar results can be achieved if the researcher has access to the original subdivision plan that contains the names of the original lot owners or knows the name of the original owner-developer.

Historical Ancillary Land Records - Old wall maps, municipal maps, census records, historical tax records, road maps, etc. often contain the name of landowners and their homestead or property location. Using these records, the researcher can often identify the current property location on the historical map and determine the name of the historical owner. Using the historical name, the researcher can enter the grantee index and search back in time to a common grantor or enter the grantor index and search forward in time to the break in the chain of records.



Adjoining Record Information - Often the most accessible source for finding the name of a previous owner is to look for the names of adjoining owners within the neighboring property descriptions. Research of the adjoining records should extend back to a time prior to the break in the chain of records for the client's parcel. The researcher can use the name that the neighbor's deed description cites as its adjoiner along the common boundary with the client's parcel.

“...Thence along the lands of William Kern, South....”

In other cases, the researcher can trace an adjoiner's records back to a grantor that is common to the present client's parcel. Once the name of the common grantor is determined, it can be used to search in the grantor index for the relevant period and doing a forward search to identify previous owners to the client's parcel.

Cemeteries - In some cases, old, family cemeteries in the immediate area may contain the names of inhabitants that lived in the area and may have owned the property in question. The names on the gravestone can be used in the index while the dates on the gravestones would provide an idea of the time periods of ownership.

Conclusion

It is clear from constraints on time and money, coupled with conditions at the registry, that the researcher will not always be able to do a comprehensive and thorough search of the records. It should be part of professional practice to make the client aware of the shortcomings and shortcuts that are present or were employed and the risks that are inherent in these shortcomings and shortcuts. Clients can either accept the shortcomings and shortcuts and the associated risk or adequately compensate the surveyor to avoid the risks.

Conflicting Conveyances (Junior v. Senior) Title¹ (5 of 6)
by
Knud E. Hermansen²

The primary goal of the surveyor performing record research is to locate boundary information. Nevertheless, in the case of overlapping title and similar situations, the surveyor often feels compelled to give an opinion – if not on the title at least on which boundary among competing boundaries is superior based on junior versus senior conveyances.

This topic is one area that many surveyors, without a formal education in the area of title, often give erroneous opinions. Contrary to what many surveyors believe, a grantor can convey good title to property that the grantor had previously and properly conveyed to another person. As the reader will discover, the perfection and protection of the title conveyed is the responsibility of the grantee.³ Hence, the failure of the grantee to safeguard their title (usually by immediately recording the deed) allows their title to be set aside in favor of other grantees through subsequent conveyances between the grantor and other grantees. This should not be presumed to let the grantor off the hook. Rather, as between grantees where only one can have the title, the title goes to the most innocent or most responsible grantee depending upon the statute. The grantees that were shortchanged may seek legal retribution from the grantor.

Much to the chagrin of many surveyors, senior title is NOT determined by the first conveyance out of a common grantor. In fact, senior title is never determined solely based on the first person to be conveyed the property. Senior title is determined according to the recording act adopted by the state. All recording acts fall within one of three categories or types: Race, Notice, and Race-Notice.⁴

All three types of recording acts recognize the possibility that a common grantor can convey good title to property that the grantor has conveyed previously to some other person. (If the grantor does so knowingly, the grantor may be liable under criminal law for fraud. If the grantor does so negligently, the grantor may be liable under civil law for breach of one or more warranties of title.)

Categories of Recording Acts

Race – Under a Race statute, the bona-fide (for value) purchaser (grantee) to first record a deed from a common grantor has senior title. Senior title is determined by the grantee who wins the race to the courthouse. Under a Race statute, a subsequent

¹ Parts of this article were previously published by the author in state professional publications under the title: *Senior Title*.

² Knud is a licensed surveyor, engineer, and attorney at law. He is licensed as a surveyor in five states. He teaches in the Surveying Engineering Technology program at the University of Maine and operates a consulting firm specializing in surveyor liability, boundary disputes, land development, and title.

³ Though the grantor makes some indemnification under warranty or special warranty deeds.

⁴ An excellent article on what category of recording acts each state has adopted can be found in the following article: Ray E. Sweat, *Race, Race-Notice And Notice Statutes: The American Recording System*, 3 Prob. and Prop. 27 (1989)

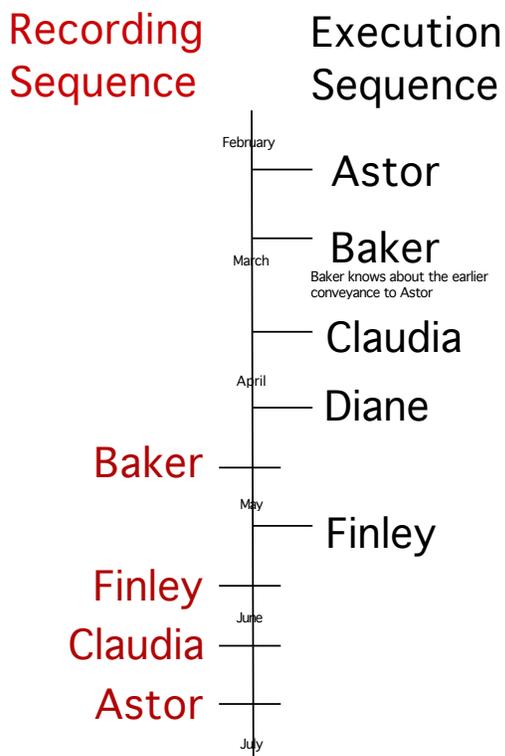
grantee can take a deed for property that the subsequent grantee already knows has been conveyed to an earlier grantee and still obtain senior title so long as the subsequent grantee records their deed prior to the earlier grantee.

Notice — Under a Notice statute, the last bona-fide purchaser to be conveyed the property from a common grantor without notice of an earlier conveyance has senior title. Under a Notice statute, the later conveyance takes seniority over the previous conveyance until such time as there is effective notice to a potential purchaser of an earlier conveyance. Recording provides effective notice and terminates further claims of a senior title from subsequent purchasers. However, recording does not fix the senior title among several conveyances already made. The last person to have been conveyed the property without effective notice of an earlier conveyance has the senior title regardless whether that last person taking title without notice ever records their deed.

Race-Notice — The bona-fide purchaser to first record their deed after being conveyed the property without notice of an earlier conveyance has senior title under a Race-Notice statute. Race-Notice gives the senior title to the first innocent purchaser to record their deed.

Application of the Statutes

The following example is used to illustrate the different results that would occur using the same fact pattern by applying the different types of recording statutes.



In the example illustrated by the diagram, a person conveys the same property to five different people in the sequence shown (from top to bottom - Astor, Baker, Claudia, Diane and Finley). Baker knew about the earlier conveyance to Astor before he was conveyed the property because Astor told him that he had purchased the property.

Without considering the applicable recording statute, many people would believe Astor has senior title. Astor was the first person to be conveyed the property. Logic would suggest there was nothing left for the grantor to convey to Baker, Claudia, Diane or Finley after the grantor has properly conveyed the property to Astor.

However, under the recording statutes, the sequence of the conveyances is not solely determinative. Under a Race statute, the

first person to record their deed has senior title. The first person to record was Baker. A

Race statute does not penalize Baker because he knew about the earlier conveyance to Astor when he purchased the same property that had been previously conveyed to Astor.

Under a Notice statute, the last person to be conveyed the property without notice of an earlier conveyance has the senior title. Put in other words, the determination of senior title under a Notice statute is to resolve which among several deeds from a common grantor was executed last but prior to the first deed recorded (or notice given). Consequently, Diane has senior title to the property even though she is the fourth person to be conveyed the same property from a common grantor. She was the last person to be conveyed the property without notice of an earlier conveyance. Whether Diane eventually records her deed is irrelevant to the seniority of her title.

Under a Race-Notice statute, Claudia has senior title. She was unaware of an earlier conveyance when she purchased the property and she was the first person to record her deed from the group of purchasers who had no knowledge of an earlier conveyance. (Both Baker and Finley had notice of earlier conveyances before they were conveyed the property.) From the example, a general rule of thumb for the resolution of senior title under Race-Notice is to determine which among several uninformed (innocent) purchasers from a common grantor recorded their deed first.

Types of Notice

Both the Notice recording statute and Race-Notice recording statute hinge, in part, on whether the purchaser had notice of an earlier conveyance at the time the property was conveyed to the purchaser. Notice may be in the form of constructive notice, actual notice, implied notice, or inquiry notice.

Constructive Notice — Constructive notice arises when a deed has been properly recorded (not necessarily properly indexed). Once a deed is properly recorded, there arises an unshakable presumption that all people have knowledge of the deed's contents. In most states, the deed does not have to be properly indexed, only recorded in the proper registry of deeds in order to be accorded a presumption that the contents of the deed provide notice to the world.

Actual Notice — Actual notice arises from personal knowledge that an event has occurred. In many cases, actual notice results from one person informing another person that an event has occurred. It is the knowledge of the event and not the manner the event was communicated that determines actual knowledge.

Implied Notice — Implied notice is knowledge that would have caused a reasonable person to become aware (gain actual knowledge) of the event. For example, when a person moves into possession of the property, they are said to provide, through implication, notice to all people of their ownership — possession of real property being presumed to be founded on legal title.

Inquiry Notice — Inquiry notice arises where a person has a duty to investigate and the investigation would have provided implied notice or actual notice of the occurrence of the event. People have a duty to investigate property before purchasing it. As a consequence, building a fence around the property or moving into a residence on the property (implied notice) would provide notice as effective as recording the deed (constructive notice) since a prospective purchaser had a duty to inquire of a person in possession by what right that person had to possess the property they intend to purchase.

Notice can arise from many sources. Notice of an earlier conveyance may be provided in the description found in a later deed (e.g., “thence along lands previously conveyed to Samuel Wilkins...”). The common law also infers knowledge where there is close kinship between the competing purchasers (such as siblings).

Bona-fide Purchaser

The recording act only protects a person that purchases the property. Consequently, a contest over the superiority of title between a purchaser and donee (e.g., property conveyed by will) where the purchaser took without notice of the devise will result in the purchaser having senior title regardless of the sequence of conveyances and recording (though only for acts not amounting to fraud) involving the donee. This limitation is why many conveyances among family members continue to recite “one dollar and other valuable consideration” (or similar words) when conveying property where no money was actually transferred.

Research Requirements to Determine Senior Title

Determining senior title requires research of the competing title records back to a common source or grantor. An analysis is made of the deeds and situation surrounding the conveyances from the common grantor. As a general rule, senior title under Race and Race-Notice categories of statutes will be determined by the grantee having recorded their deed first. Under a Notice category of statute, the determination of senior title will hinge on identifying the last deed executed and delivered by the common grantor before the first recording by any grantee was made.

Conclusion

Much of the explanation that was provided for determining junior and senior rights have focused or used as examples entire parcels conveyed more than once by a common grantor. Of course, surveyors deal with the more common situation where only a part of a parcel is conveyed to two different persons by a common grantor (causing an overlap). The determination of the senior title (or senior boundary) is the same whether dealing with an entire parcel or a portion of a parcel (overlap).

It should also be noted that the same explanation involving the determination of superior title among parcels or portions of a parcel would apply if there is a conflict between easements or an easement on the property and the title to the property.

Ancillary Record Research
by
Knud E. Hermansen¹

The vast majority of boundary information is found among the records at the registry of deeds. Nevertheless, useful and often critical information can be found at other locations. Identification of sources and recovery of important boundary information from these sources can be tedious, time consuming, and expensive. In some cases, even when pertinent private records have been identified, located, and retrieved, these records may not be admissible in court for use in retracing boundaries. Nevertheless, contract obligations, client expectations, or reasonable practice require that the surveyor often perform supplemental or ancillary research beyond the registry of deeds records.

Private Records

Private record holdings comprise a large source of boundary information, second only to boundary information found at the registry. Private records include records at survey firms, utility companies, historical societies, heirs of survey practitioners, former landowners, etc. The difficulty in researching private records generally focuses on the identification of records, locating the records, and obtaining access to the records. The difficulty varies considerably between sources and the localities where the records are found.

Identification of Records — The ability to determine if private records containing relevant boundary information exist is often the first hurdle. Retracement surveys, performed long ago, leave little trace or evidence of their existence. The modern day practice of having the surveyor's name and license number as part of the parcel monumentation was unknown in all but the most recent past.

Of course, the identification of utility records is somewhat easier due to the existence of railroad tracks, power lines, gas lines, etc. existing along or across the property. It must be admitted that the existence of obvious use of the property such as evidenced by railroad tracks does not necessarily ease the burden of identification of those persons who possess the utility records.

Location of the Information — It is often the case that a surveyor has good cause to believe that relevant records were created in the past and that there is a good chance they exist, yet have no idea where the records can be found. Stories abound of surveyors tracking down a deceased surveyor's records to finally discover a surveyor's granddaughter has boxes of old maps in her attic or basement. Many are the difficulties experienced by surveyors trying to track canal records or railroad records from one defunct company to the next company in order to determine what entity has the records at the present time.

¹ Knud is a licensed surveyor, engineer, and attorney at law. He is licensed as a surveyor in five states. He teaches in the Surveying Engineering Technology program at the University of Maine and operates a consulting firm specializing in surveyor liability, boundary disputes, land development, and title.

Some surveying professional societies have appointed committees and gone to some length to compile or index historical record locations for members. In some cases, the professional societies have located private records, copied the records, and made the records available to members.

Access to the Information — Once the survey information has been identified and located, some surveyors have been stymied due to the owner's refusal to share the information. Private records do not have to be provided upon demand no matter how valuable their contents may appear. Some owners do not have the time or want to expend the effort and cost entailed to provide the records or information on the records to others. Other owners believe the information is or could be confidential and will not disclose it. Finally, some owners do not want to give away a competitive edge by opening their private records to the competition. Overcoming at least one obstacle would be possible if surveyors would provide adequate compensation to the owner of the records to reimburse the owner for the time, effort, and storage costs of the records.

Even some utility companies are reluctant to provide information on the location and boundaries of their utility right of ways. There are numerous reasons for their reluctance to provide information. In some cases, company bureaucracy prevents the efficient retrieval of information. In other cases, the company benefits from the lack of knowledge by the landowners (e.g., utilities may have violated some terms or location restrictions that are evidenced in the company records).

Historical Societies/Archives

Historical societies and record archives such as libraries often have records containing boundary information. These records have often been retained for their historical and cultural value. Similar to other private records, the difficulty involved in accessing these records is focused on their identification. Many historical societies and archives lack the means or capability to organize and index the records. This deficiency is often compounded by a real concern that improper handling of these ancient records could harm them. Consequently, many surveyors are frustrated knowing an archive has pertinent records but are unable to identify which of the voluminous records are pertinent and further denied permission to peruse the ancient records for fear that perusing the records could harm them.

Probate Records

The probate office retains records that pertain to the estates of decedents. In most cases, there is little boundary information in these archival records. However, many surveyors have the experience of discovering ancient maps and critical boundary information among the probate records. It was not unusual for people preparing their estate plans to include detailed property information, including plats, with their testate documents.

Unfortunately for the researcher, it is often difficult to identify the relevant probate records unless the decedent's name is known. The probate records are indexed by the decedent's name not the devisee's name. Most of the time the researcher knows only the devisee's name. As a consequence, it would be almost impossible for the researcher to identify the probate records where Margreth Hilden (her married name) got title to property by devise (under her maiden name) from a parent unless the researcher knew her maiden name.

Where the devisee's surname is the same as a decedent's surname, it may be possible to check all the decedent's with that surname that died within a certain time period. In some case, the decedent's name (e.g. John Miller, Sr.) is the same as the devisee's name (John Miller, Jr.).

The modern practice in many jurisdictions is to prepare an abstract of those portions of the probate records bequeathing real property and recording the abstract within the registry of deeds. The abstract is indexed under both the decedent's and devisee's names in the grantor and grantee indices.

Prothonotary and Chancery Records

The prothonotary (clerk of courts) and chancery (equity court) records often contain property information and boundary information in particular.

The most obvious boundary information that would be found in these courthouse offices is boundary dispute decisions fixing the location of disputed boundaries. Most surveyors are not aware that municipal and county boundary information are often recorded in the prothonotary's office. Eminent domain takings involving roads and other government lands and easements are also commonly recorded with the court records. Finally, the court with equity jurisdiction also handles partition actions. Often detailed partition maps are found in court archives.

The difficulty with court records involves determining if important boundary information exists and then locating the records. While the registry of deeds and the probate office are open and organized in a manner that permits ready public access to the records, the clerks of the various courts seldom provide open access to the court records. While records of current litigation are usually available upon a request made to the clerk, historical litigation records are as likely to be stored in boxes in the attic of the courthouse then to be found properly indexed and located on the shelves in a publicly accessible location of the courthouse. Many clerks have simply run out of room for the storage of the court's records and have sent them off to inconvenient storage locations or simply destroyed them. Even when historical records are available in the clerk's office, they may not allow members of the public to peruse them for boundary information. Rather, a tedious process of requesting information and having it copied must often be followed. The indexing of this information and the process for retrieval of the information often discourage many researchers from pursuing historical court records that may provide relevant boundary information.

Municipal Records

Municipal offices often have boundary information. In the Northeast, property tax information is located in municipal offices. In a few states, deeds are also located at the municipal offices. In most states, municipal offices will have information on roads, fence viewer opinions, public utility easements, and of course municipal zoning restrictions.

The ease of identifying and retrieving municipal records depends on the conscientiousness of the municipal clerk in organizing and indexing the records. One problem often arising with municipal records is the lack of an index for the voluminous records. For example, a researcher attempting to find the official records detailing the opening, location, and width of a municipal road that was opened in the 1860s may have to wade through bonus payments for soldiers enlisting to fight the civil war, election results, oaths taken, costs approved for building a school house, placement of citizens in a poorhouse, a fence viewers report, and bounty payment to a citizen for three sets of bear ears, to name but a few of the town's business during this historical period.

State Archives

Most states maintain an archive of state records to include the first surveys performed that were part of the conveyance of property from the government or proprietors to private individuals. Access to these records is often hampered by vague indices, inconvenient hours, short staffing, and restrictions on handling or copying these ancient records. Many archives have made progress in placing indices and even many of the records on line.

Conclusion

In conclusion, ancillary research of records must often be done and can provide considerably important boundary information. The difficulty of locating, identifying, and retrieving the information can be time consuming and costly. As a result, much boundary information available in ancillary records is overlooked or ignored.