

Common Research Mistakes Surveyors Make (Probate Records)

by

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In previous articles I have explained four of the five common mistakes made by surveyors in researching the records. In the first article I discussed mistakes made in determining senior title often required when assessing the boundaries resulting from an overlap. In the second article I explained the deficiency existing when a forward search is omitted. In the third of five common mistakes I explained the necessity for researching the road records. In the fourth article I discussed the deficiency in researching and identifying easements. In the final article, I will discuss probate records.

Some surveyors have gone their entire career without ever researching property records that may be found in the office of the probate court (also known as “family,” “surrogate” or “orphans” court).

Probate records will often contain maps of the decedent’s property and descriptions of the property that are not found in the deeds. In some states, partition maps dividing up a decedent’s property among the heirs or devisees are filed in the probate records and are found no where else.

Also, it is not uncommon for boundary surveys of the decedent’s property to be among the decedent’s estate documents and can now be found in the probate records. As a consequence, many surveyors have overlooked valuable boundary information that is only available in the probate office.

In defense of those surveyors that have avoided performing research in the probate office, pertinent records are often extremely difficult to identify from the indices in the probate office.

For example, if the deed recites: “*Being the same property Christina Small inherited from her father,*” the researcher faces a difficult time finding the appropriate probate records for Christina’s father (assuming the father’s property passed through probate).

Probate records are typically indexed by the decedent’s name. Consequently, if Christina Small is her married name, the researcher would not know the decedent’s last name needed to enter the probate index.

Another problem that often arises with probate records is the difficulty in looking at the decedent’s documents. While most registry of deeds attempt to make all records available for viewing, the probate office lacks that same goal. The chances are that the probate records will never be examined once they are filed and the estate closed. Accordingly, why attempt to store the records as if these records were to be examined frequently.

Describing typical weaknesses in the surveyor's record search will not necessarily convince surveyors to undertake the tedious and time consuming research necessary to overcome the limitations that were explained. At the very least, the surveyor should inform the client of the deficiency in the research so the client can pay to have the deficiency eliminated or understand the potential deficiency in the research.

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