



Title Examination Process: *The Changing Face of Public Land Records*

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I. **Title Examination Process**

A. The Changing Face of Public Land Records

1. Biographical information

Traditionally, a search of the public land records necessary to produce a composite of the title required a search of not one, but several public offices: The office in which conveyances are recorded (register of deeds, county recorder etc.), probate court, courts in which title may have been disputed or involved in judicial proceedings (including divorce, foreclosure, partition, quiet title etc.), property taxes (treasurer, auditor, assessor etc.), and the United States bankruptcy court and federal district court, if any, in the county where the land is located. Laypersons unfamiliar with applicable real estate title laws occasionally express dismay about what they regard as the intrusive nature of the information about them that is gleaned from the public records. In their defense, title searchers are motivated not by lurid motives, but by a need for information that has a direct bearing on real estate ownership. So long as laws provide that tax liens, delinquent child support, civil judgments, divorce and other intrusive events mar the title of a debtor party, title opinions and title insurance will continue to delve into and reveal such matters, sensibilities or no.

2. Limits of public records search

Of equal importance are the public and quasi-public informational sources that, however valuable or instructive, do not have an impact upon the real estate title: Birth, death

and marriage records, non-fixture filings under Article 9 of the Uniform Commercial Code, credit reporting sources, public records offices located outside the county where the land is located, United States Department of Interior Bureau of Land Management, United States Forest Service, Environmental Protection Agency, Army Corps of Engineers, railroad company proprietary title record plants, and an on site inspection of the real estate. The records pertinent to title, though vast, are regarded as finite, a concept that remains of particular importance insofar as determining the extent to which prospective purchasers are deemed to have been charged with actual or constructive knowledge of the rights or claims of others.

3. Policy definition of public records

From the vantage of the title insurance provider, a bright-line test, regardless of the information's desirability, inevitably defines the scope of the title search, separating pertinent records from those not pertinent. Title insurance does not provide coverage against loss occasioned by governmental regulations regarding the real estate, unless such regulations are recorded in the public land records where deeds, mortgages and other conveyances are recorded, an occurrence though not unheard of which is unusual in most locales. Thus, Covered Risk 5 of the ALTA Owner's Policy (6-17-06) provides coverage against loss or damage sustained or incurred by reason of the violation or enforcement of any law, ordinance, permit, or governmental regulation restricting, regulating, prohibiting, or relating to the

occupancy, use or enjoyment of the land, if a notice is recorded in the "Public Records" and only to the extent of the violation or enforcement referred to in the notice. The policy defines public records as: "Records established under state statutes at Date of Policy *for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge*. With respect to Covered Risk 5(d), 'Public Records' shall also include environmental protection liens filed in the records of the clerk of the United States District Court for the district where the Land is located (emphasis added)."

4. Technology, public policy

Information technology and expanding applications made by public and private records custodians requires that real estate title professionals continually evaluate the extent to which new records sources and databases shall be examined for possible relevance to title. Increasingly, information that title researchers could obtain only by visiting the courthouse edifice is now available on-line. Remote access to electronic records is appealing to records administrators, who can lower the cost of maintaining physical records and office space. Government administrative agencies and departments are not immune to the public pressure to expand by statute or administrative law change, an ever growing number of information sources, so that unpaid taxes, fines or forfeitures are collected when real estate of the debtor is sold, or that real estate improvements be brought into compliance with ordinances and regulations at point of ownership transfer.

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