

The Minnesota State Bar Association (MSBA) Real Property Section Legislative Committee formed a subcommittee to gather information about changes in technology, the practice of law, surveying, title examination, title industry business practices and the effects on ownership and marketability of real property in Minnesota. The Subcommittee is guided by an interest in having a land records system that is timely, reliable and accurate, affordable to maintain and to access, and responsive to rapidly changing technology and business practices. To launch this effort, subcommittee members held eight “Listening Sessions” and invited participation through professional association channels, and other outreach. The Sessions were held in October 2017 at the following communities: Winona, Redwood Falls, St. Cloud, Bemidji, Duluth, Minneapolis; and in St. Paul in November 2017 at the Real Estate Institute.

Sessions lasted two hours, with the exception of the St. Paul session of 1 hour. The facilitators posed topics for discussion, and recorded participant comments. To preserve any regional differences, Session notes were not consolidated.

### **Reimagine Land Records Listening Session, Minneapolis, October 20, 2017**

Attendees: 31 from County Recorder, County Attorney, Law Firms, Educators, Title Companies, Examiner of Titles, Vendors, Underwriter, MnDOT(GIS). County legislative liaison, City (Mapping/records), Surveyor

Subcommittee members: Susan Ledray, Stacy Woods

### **Current successes**

- UCBs Provide similarities from doc to doc
- Use of PINs with parcels is great. Should be uniform statewide 37 states have public land survey and in any section map in those states, you can find the land right away using a PIN. PIN ties to FEMA maps and other nationwide items.
- Where do you find good information now?
- Google Earth is free, it has a history ruler so you can see pictures from back in time; useful to see paths, whether there is access to a road, get a street view.
- MNCIS Court records in one statewide system. “I go there 20 times a day doing judgment searches, looking for pending family and civil cases, divorce, probate and condemnations. It is easy to use and good information and all at your fingertips.” But if the debtor’s name isn’t as entered in the court case, you don’t find the case. Good example of the need for more flexible/smart searching capabilities, like Google searches.

- MN MOMs MN is one of a few states with a statewide marriage database. Helpful in piecing together name changes and searches. Free. Vital Records group.
- PACER is great. Don't have to go to the courthouse
- SOS website

### **Problems/Issues/Concerns re: general public**

- Don't know how to use the publically available information e.g. use the tax legal description on a deed.

### **Problems/Issues/Concerns re: real estate attorneys**

### **Problems/Issues/Concerns re: counties/county records**

- Practice varies (negative)
- Practice varies – positive because it encourages use of local expertise
- Standardizing is good, but we don't want a standardized crummy system. Some of the vendor systems are better than others
- Go to the county less and less; expect that if it's not online, it's probably not there
- Tract indexing systems matter. How do you enter metes and bounds descriptions, plats, RLS, Auditor's Subdivision. Different vendors and system have different practices on how to enter those, whether words are abbreviated, apostrophe's important etc. You shouldn't have to do a big tutorial to do searching of the tract index. Each county has a different way to search for an Aud. Subd and an RLS. A state style book and requirement to follow it would be helpful. Should be able to enter part of the information and have options pop up (on the name of the plat, for example.)
- Title cos can use tract index because we are building off of prior opinion and search; just updating
- Land title educator: MISMO and PRIA have standards to address this. People are working on this on a national level.
- Title co.: being able to search by grantor/grantee as one search is also helpful.
- Likes Iowa's system. No charge to search and view documents in Iowa. You can search a number of different ways. Polk Co.
- Title: Iowa counties, two run on COTT system. COTT systems not as user friendly as Iowa land records system. Accessing all 99 counties is great. Doesn't go all the way back in the past. Can't do a full search at your desk. Only goes back 10-20 years.
- Vendor: IA normalizes data and keeps things consistent. From county side, MN has their own subscriber agreements. In IA, that's not happening. You

don't have to subscribe to individual counties, but you take revenue away from individual counties.

- GA and ND also have a statewide portal for land records
- Portal system would be a fight with the counties; there would be concerns about jurisdiction and fees; could structure it to return revenue back to the counties; wouldn't have to cost counties jobs; with retirements, it could be a good thing for counties; counties may have trouble filling recorder staff positions; a statewide portal would allow sharing of resources and personnel and we could work on documents filed anywhere in the state
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### **Problems/Issues/Concerns re: abstracting/searches/title examination**

- Too many places you must look for information (County, SOS, etc.)
- At a national level it is a casualty product. Get a letter of undertaking
- With abstracts going away and reliance on scanned images and reading the documents, the quality of the image has become more important. Fewer abstractors will find and summarize information for you. Also, the ease of doing a search is more critical because abstractors aren't doing that for you.
- Abstracting is a dying art. A lot of abstracts were lost during the foreclosure years. Very few typed abstracts now and the thoroughness of abstracts is not the same as it was. Very few companies have licensed abstractors on staff now.
- Title insurance doesn't require an abstract to issue a title commitment. Time consuming to prepare an abstract and there are time constraints. Lenders give you an order and want it done immediately
- We look at the last deeds
- USDA insists on getting an abstract for water, easements, lands
- Customers who need a title report have trouble getting one. A commitment is not a title report. They need to know about easements on the land.
- Discussion about need for a title opinion or report detailing owners and encumbrancers, and difficulties in getting that. A title commitment is not a title opinion, a commitment is issued only if insurance will be obtained, need an abstract to do a title opinion but can't get abstracts or it's difficult to get abstract or an update; Western States title cos offer a different product – a preliminary title report, without a commitment. Example given of a city that wanted a commitment before approving a plat, so they had to buy title insurance to get the commitment.
- Nationally, there has been a 10-20% increase in claims on title insurance in the last 20 years, as a result of less stringent examination practices. People get payouts, generally minor economic events. Typically getting a quit claim deed or a nominal amount 10-20k.

- Title problems are insured over. They go away over time.
- Facilitator question: Easements or restrictive covenants can be buried in any type of document. If we had requirements (day forward) for the type of instrument they could be created in, would that help?
- Everyone: it would be fabulous.
- Underwriting: when does the system control the private interests rather than the system serving them as a way to memorialize private interest? It would make it simpler, but people have their right to do stuff with their property and there's some real tension when we put restrictions on people. People have a right to do what they want.
- Title: what if there was a way to flag those deeds? Metadata.
- Title: would require serious training for reviewers.
- Title insurance: we don't carry these forward on deeds b/c we don't want to insure them. When I think about future exam though, are they going to know? Conundrum of insuring or disclosing.
- Could metadata be used to flag some documents and allow you to search by that? E.g. flag all deeds
- Problem finding interests that are created by deed, but not repeated and carried forward in subsequent deeds
- Title insurance comment: We drop them off and put easements on an exception page so we aren't insuring the easement
- Title: abstracts from family farm type situations are the only time we are asked for abstracts.
- Underwriting: Winona County, everyone wants to update abstracts.
- Educator: thoroughness of abstracts used to be much better, now we just look at an old commitment and move forward.
- Educator: commercial properties need to know everything.
- Title: surveyors doing lot splits need abstracts. Some cities require commitment to do lot split.

### **Problems/Issues/Concerns re: technology/software systems**

- E-notary is on the rise. Remote web cam is happening now. MN should be proactive with statutory changes to protect integrity of the process and land records. Documents are electronically moved to different signatories. Hackers and fraud concerns expressed with e-notary.
- Educator: companies advertise it e-notary, showing videos of how it works. Signor and notary view each other, docs are all electronically moved, no paper. Look at faces, look at DL, no thumbprints or anything. Fraud can happen in person or electronically.

- As a county recorder, we probably don't know it's a remote/electronic notarization. We accept e-notary now if the document is e-recorded, but not if the document is printed out and the paper is being recorded.
- Customers want e-recording systems to have a way for the county to state the rejection reason; that is coming in Hennepin; should also get deputy name and phone number with a reject
- Maricopa Co: you can get a certified copy of a document online. They apply a digital stamp. Easy and cheap and convenient
- Recorder: we are looking at this as an option. Some other states have a verification tool where you have to go into a site to type a number to verify it's actually a certified copy. That's an extra step for the county staff to do before accepting the document for recording.
- Paper is going away
- Technology advances are great
- Zoning linked to GIS? Hasn't been. Zoning is through the cities, not the county, but it could be. Cities have to use an official map (?)
- Special assessments from cities: difficult to get the information from the cities and they have different definitions by city for pending, pre pending, levied, (it's a mess); would be helpful to have assessments linked to property tax information
- Vendor systems are all "open" and vendors will work with each other and tie systems together; e.g. tax and land records may have different vendor systems, but can be integrated

### **Problems/Issues/Concerns re: legal descriptions/surveying/GIS**

- Hennepin GIS maps are accurate within 2 feet or less; outstate they are off 20 to 50 feet. 50 feet is a big deal. Don't know the level of accuracy by looking at the website.
- Tying documents to a PID and relying on a PID; if the parcel is split, must update the GIS and that is time consuming and has a cost
- GIS map can get overloaded; which documents and information is most important?
- Is zoning linked through GIS?
- No, b/c it's usually through the cities. Technically possible, but we haven't got that.
- GIS is not a legal zoning map, the minute you put info in, it's out of date.
- Maybe there could be a link from the GIS to the city's ordinance or webpage or zoning information
- Hennepin Co. GIS map can include surveys, or a not that a survey exists and name of surveyor so you can contact that surveyor to get the information

- There are many potential collaborators for GIS data sharing, which means many potential entities to cost-share
- Accurate GIS maps are very helpful for finding encroachments, for drawing out the legal description, making measurements using the measuring tools; it makes exams easier
- Title: The add-on recording fee for technology can't be sufficient for technology modernization. GIS alone is expensive. Requires aerial photos, which need to be done frequently to stay relevant. May need to find another way to fund this project.
- Educator: With Google maps we don't know the date of the photo. Counties will tell you exactly when the photo was taken. Know the sun angle, etc. He comes from GIS background, and it's only as good as the info that goes into it. Need to keep it up to keep it useful. To do research and make decisions, you must pull plats, can't rely on GIS. "Get it sort of"
- Educator: we are just looking at maps, this is not what a surveyor does. It's a rough representation, doesn't go to the depths of having a surveyor go put a stake in the ground. But if complete accuracy isn't needed, the GIS mapping is useful.

### **Torrens vs Abstract**

- Make it all torrens and make all examiners and registrars have the same requirements. Have a torrens school.
- At least put the requirements on every county website so we can look them up and learn them. E.g. What needs to be preapproved, what needs to happen for interests to be dropped. Henn. Co "deletion table" is very helpful.
- If the examiner is not full-time in the county, they may not want to do the work of creating materials for the county – it would be a lot of extra work.
- If there were local examiners but also a statewide examiner, maybe the decision of the local examiner could be "appealed" to the statewide examiner.
- Underwriting: Having both Abstract/Torrens can we avoid some of the craziness? Mortgages and sats get messed up so much and filed in the wrong office.
- Title: Certificate of Release by title agent is sufficient if it is filed in one office and not the other, not sure if that's statutory.
- Co. Recorder: One system would be easier. With mortgages and satisfactions, we need to make certified copy and have it filed in the other office, if it was recorded in the wrong office initially.
- Examiners that are contract and not county employees is a challenge
- Massachusetts has a land court. Might help with consistency.
- With Torrens, the state is on the hook; lets title co off the hook. Others, said, not sure that's true.

- How many payouts are there from the state fund?
- A certificate of title is something you can give a customer. Like that.
- County Recorder: If it's torrens, we can tell a customer "X" is the owner. When they want to know the owner name of abstract property, we can't do that. We can only say "this is the last deed recorded." Better service when it's torrens.
- Title/Underwriter: When people need a title report and need to know owners and encumbrancers, we can give them the certificate of title. This fills that void of a title report without the need to have a commitment or to purchase insurance.
- Title: certificate of title carries forward and shows all of these issues we care about, easements, etc. that get buried in an abstract or lost if there is no abstract.
- Underwriter: technology has made Torrens more useful. You can get the certificate of title right away, they are updated, etc. Hennepin system where you can click on the document and see the document image is great.
- IF get commitment digitally can click on doc number. Abst. is more a library than the state of title.
- Easier for county recorder at county to help customer who wants information, if the property is torrens
- Hidden issues, easements etc. are more transparent on torrens properties
- Use of "Purports to": with torrens. What does that mean? Signals we need to think about it. Like it!
- Torrens is even more appealing now that you can click on a document from the certificate of title and view it.
- Elimination of owner's duplicate was good.
- Torrens legislative and tech changes have made torrens easier.
- A land registration action is expensive compared to declaratory judgment. Registration provides a better outcome but customers don't always see the value of the greater certainty going forward.
- There is significant variation in expertise and timeliness of examiners of title. Fees charged also vary widely. Suggest regional examiner. Have 5 or 6 statewide, full-time. Uniformity, timeliness and quality are important. That exists now, informally, as some examiners have multiple counties. Could have cost sharing among the counties or have the examiners work for the state. It may be even more useful in greater MN where there might be more unusual legal descriptions.
- Should find new ways to fund outstate counties
- Met Council does a flyover every 5 years
- Met Council and many cities have invested in GIS. It's a tool, only as good as the information that goes into it. Need expertise it build it well.

- Prof at the U teaches GIS. GIS is only a digital representation, must go to the county for definitive information and the actual documents
- Private surveyor: Access to land records is the biggest challenge we face. Metro have digital access to records before you get out in the field. Outstate, it's very difficult. Making multiple trips to the county to research records increases costs significantly.

### **Ideas/Suggestions for positive change**

- Tie information together through GIS; tax liens, bankruptcy, judgments etc. all from GIS map
- Municipal records are sometimes filed with the county, but not always; easements, reservations, might be in a cabinet and not in the county records. Govt to Govt agreements that were signed but not filed. A lot of digging. Hard to read old records. Scanning now is high quality but older scans are often difficult to read. How to address?
- Add more search capabilities; e.g. Hispanic names difficult to search
- Add DOT and 911 maps
- Standardize online searching across the state
- All documents should be e recorded and born digital. Never a piece of paper
- Sweden has a lot of integration features