

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 30, 2017

Attendees 24 from: title companies, army corps of engineers, nonprofit attorney, employees of Wright/Carver/Ramsey/Hennepin counties, private surveyors, private attorneys, search company, software company, professors

Subcommittee Members: Susan Ledray, Stacy Woods, Bob Beutel, Scott Lucas, Greta Bjerkness

Current successes

- Some counties have plats online that can be accessed for free (Carver does, Hennepin does not)
- Dane County, WI—all records were digitized, open access laws mean anyone can get the documents for free (cost of reproduction)
 - Title companies went from 4 to 12
 - Saved people millions a year in title insurance
- Surveying has become much more accurate with advances in technology and GPS
- Society has accepted and wants online technology
- Documents can be instantly recorded with e-recording, used to sit in piles and sometimes takes weeks/months to record
- Title insurance insured risk in transactions
- National survey was done and showed that attorney involved transactions had the lowest transaction cost to the consumer and the and lowest demonstrable error rate
 - However, you lose speed if attorneys are involved

- New Brunswick—poor province went to a title registration system in one day in 2003
- Most people commented that there is a noticeable difference in quality with the torrens system and most preferred the torrens systems
- Boundary commissions can be used to determine boundaries—created by local governing bodies, include surveyors, attorneys and cost is assessed to all benefitted owners

Problems/Issues/Concerns re: general public

- People are using what is available online and they don't know what the information means
 - People think taxpayer is the owner
- Industry is driven towards speed
 - But people want speed AND accuracy
- People don't want to pay money—what is their risk tolerance?
 - i.e. put in a fence w/o a survey
- If there is a problem/mistake/something missed—you end up in court
- How is there still title insurance that people must pay for even if they have torrens property?
 - English cadastral system—registered property is part of government operated system and insured by the government
- Private information vs. public information
 - Have to build in exceptions if there is something you don't want to be public information
 - Safe at Home Act
- Seniors may be targeted for fraud
 - Login system to see who has accessed documents?

Problems/Issues/Concerns re: real estate attorneys

- The practice is getting faster
 - Loan company deadlines
 - Government loan deadlines
 - Customers' expectations
- In Iowa, they compelled attorney participation in transactions by requiring a local attorney to be involved if you want to get title insurance in Iowa
- Lay people, not attorneys are examining title
- Some states require attorney involvement in real estate transactions; per Joel Holstad a survey (which he will send to Beutel) found that consumer costs are lowest when an attorney is required, and there is a lower error rate
- In Iowa, attorneys are required if you want title insurance issued. Iowa has a state-run title insurance system.

Problems/Issues/Concerns re: counties/county records

- The different county systems are a barrier to practice
 - Someone who practices in many counties has to learn/re-learn each system
- Need consistency in every county—that's what trips people up
- Difficult for the general public to learn what is available online because it differs county by county
- The recorders (the government) should make a judgment as to how much trouble 2 deed searches will be for the public
- There are too many issues with typos by county staff inputting names incorrectly
 - People then have to search by legal description and name and synonym because they can't rely on the county records to be accurate
- Problems arise with having 2 systems—abstract and torrens—with different rules for each system
 - Duplicate recording fees if property is both
- People want a reduction in fees that counties are charging for RecordEase, etc.
 - City of Minnetonka spends \$200-\$300/month on search fees per employee doing research for highway, easement, resolutions purposes; Expense is high enough that we might hold off on doing research; but also doesn't have the time to go downtown to research the records for free
 - Local government paying county government
- MN only one of a few states without open information laws
 - We charge fees for our documents/data—these public records should be free to the public and are free in most other states
- Federal freedom of information act and open records laws—if info is used by the government, it should be available to everyone (for free)
- If there is a charge, should it be to cover the cost to provide the data access, or also to cover the technology development costs?
- If data is available for free or low free, there may be more companies trying to resell it and commit a form of fraud on the public
- There should be a user fee for the person benefitted unless it benefits everyone and then the funding should be from the general fund
- We don't mind paying a add on tech fee (such as exists in the county recorder fee now) as long as the money is being used appropriately; in some counties, we don't know where that money is going. Some counties have collected hundreds of thousands of dollars and haven't moved forward with technology

- Other models like S Dakota and N Dakota: Collect fee, some goes to the state and some is reallocated from the state back to the counties; WI raised fees 30 years ago for GIS development and the fees go part to the state and part to the counties
- Comment from person who does searches in 30 different states: No system stands out as the best. He is seeing a trend of more documents misfiled because of typos, and more input errors. This means searchers miss documents because they are not indexed properly
- Discussion about time stamp on recorded documents if you e-record vs go to the recording counter in person; different rules by county; when doing a closing you want to know that a judgment or lien didn't get filed ahead of you without your knowledge due to time-stamping protocols and availability of records

Problems/Issues/Concerns re: abstracting/searches

- Belief that the Bar was in agreement with doing away with abstracts, by dropping the requirement to provide an abstract from the purchase agreement form; a lot of attorneys dispute that the Bar agreed to no abstract
- The third party market led to speed and the need for title work to be produced very quickly; there isn't time to wait for the abstract to be updated
- What is an adequate title exam? It depends on the nature of the property; are old party wall easements downtown still relevant? If the buildings are gone?
- Title insurance is taking on risk; problems can be in the lap of the owner who really only owns ½ their property and cannot finance it
- Properties are often sold without getting issues fixed; example of a house that was built across the property line, transferred 10 times without a survey being done or the problem addressed
- Loan deadlines are very tight; if you can't get the information online or if the title co. makes mistakes you could miss the loan deadlines
- Metro area generally uses a 2 deed approach for title insurance
 - This is because accelerated transactions (3rd party market)—title work must be done quickly, so standards went down and people don't ask for abstracts anymore
- Local abstractors only handle overflow work
- It's difficult/expensive/timely to find someone to do and to get an abstract
- It is hard to dig up the old records at the counties, to make an abstract; existing abstracts back to the 1880s are not being preserved
- Searchers will be eliminated if everything digitized—will become a national business
- Proliferation of online records drives unemployment
- No demand for fully trained abstractors

- Is a lack of competent abstractors; if changes were made increasing need for abstractors, there will be a skill shortage
- What is being missed in 2 deed searches?
 - Easements, party wall agreements
 - What is the impact? If a undisclosed easement becomes an issue, how long does it take to resolve through the title company?
- Maybe acceptable risk should be different depending on the property type
 - Who should be taking the risk? Title insurance or legislative solution?
 - Consideration to protecting the public

Problems/Issues/Concerns re: technology/software systems

- Think it's a waste of \$ to digitize old records—industry moving forward not back; 40 year search is old-fashioned
- \$ should be spent on improving the current posting system and closing the gap period (one person's opinion); Contrary opinion also expressed. Important to digitize all records; for a fractional lot conveyance person needed to look back to records in 1886.
- Digitizing records takes business away from local companies and allows out-of-state and offshore companies to do the searching
- Digitization quality; red ink on plats doesn't show up
- Human element is lost if title process digitized
- If documents are available for free, companies will try to take advantage of people by trying to sell them those free documents
- Speed is the driver
- Professor: Wisconsin digitized historical and current records and made them available free, online. What happened? Pre-digitization WI had 4 title companies. Post-digitization WI had 12 title cos and the cost of title insurance declined
- Any software is fine, but we need the same in every county; all the different systems is what trips people up
- Professor: There has been debate regarding GIS. One point of view is that GIS is so expensive, the only way to fund it is to charge for the data. MN was not following the open data law, one of few states that changed laws around 1990 to make it possible for agencies to charge for their data
- Technology fee that is collected must be used properly
 - \$10 of the recording fee for each document adds up to a lot and some counties have not been using this fee for new technology
 - In other states (SD) the fee goes to a state fund and once a year gets distributed to counties to split
- Security/fraud concerns
 - Will backup hard copies of documents be kept?

- E-recording gap
 - What does the timestamp mean? Not all counties operate the same

Problems/Issues/Concerns re: legal descriptions/surveying

- Not all counties have plats online (county specific ordinances require)
 - Have to drive hours to get plat information for time sensitive matters, huge cost that gets passed on to the client
 - Carver Co has plats free on line. Hennepin does not
 - Customers expect very fast turn-around
- Surveys would be helpful to have access to surveys and old surveys online
- Old surveys should be digitized
- There used to be 4 people in a survey crew in the past, now there are 2 or sometimes 1 because of technology; every profession is changing due to technology pressures
- Corners in old plats are not maintained
- Not all counties maintain section corners
- Surveys are not required in transactions
 - People don't know their boundaries
- Corps of engineers (newer employee) feels way behind in process of digitizing records (tracts)
 - There are old (1897) use permits/flowage rights out there from Dept of Interior to us; are they still valid? Are they proof of ownership and title? May be missed in searches. The corps was asked to release flowage easements on land they previously sold.
- The PLS (public land survey) is what the GIS system is built on and those section corners need to be maintained but are not in some counties
 - MACS (Minnesota association of county surveyors) is trying to get re-monumentation going
 - There is an increased demand for accuracy and there are many downstream users of the information
 - If the starting point (corner) is not good, lots of problems result
- Metro GIS started about 20 years working on consistency for spatial attribution. In the 7 county metro area METRO GIS provides some funding (approx. 4k/yr to counties) to help maintain the information
- Wright county has an ordinance requiring surveyors to submit surveys to the county; Hennepin does not
- Boundary Commission- created by a local government body. Appoint a surveyor, attorney, etc. to solve a neighborhood problem. Cost is accessed to all who benefit from the solution.

- Professor: In European cadastral system, a boundary commission concept is essential. The Commission is part of the government operated system.

Torrens vs Abstract

- In torrens, you sometimes have to convince a deputy to take a document
- Wish we would get rid of torrens; we lose our independent judgment and are subject to the clerks' judgment
- Recorder office being behind creates problems
- Western Canadian provinces never adopted an abstract system; just torrens
- In 2003 poverty stricken New Brunswick province switch to a title registration/torrens system
- Having a Certificate of Title is better for certainty
- There are differences in administration and implementation of the torrens system in MN

Ideas/Suggestions for positive change

- We have a passive recorder system; recorder takes what is filed;
- Levels of change: torrens documents have a higher level of screening
- A further shift away from passive could be to have the recorder use technology to push records out to people who want them, on a regular basis.
 - Ex. St. Croix Wildlife Scenic River Program—they want to know when transactions are recorded so they can let the new owners know about rules—one person spends 50% of her time driving to counties to stay up to date on records. With an active recorder, the documents could be automatically sent out as soon as recorded
- Torrens and GIS can be integrated
- Think about a new system in the framework of “Who has what power to decide what happens with real property?” not just “Who owns it?”
- There should be an assurance of priority in e-recording
- Consistency in each county, want to be able to cross county lines and be able to practice the same in each one
- Consistency in training of county employees
- Documents available in one place for free for everyone
- Statewide recording of surveys

Wish List What would you like to see?

- A system that make clear the priority of documents (no gap period or uncertainty)
- Consistency from county to county and within the county
- Consistency from county employee to employee
- Iowa portal - file and view documents statewide through a single portal
- Security. A way to track who is retrieving data. Seniors are targeted for fraud.
- Survey information on-line, statewide, including private surveys
 - TX requires surveys to be recorded. How is it enforced?
 - Ontario has online data bank and companies scan their survey files at their own expense. They can get fees for people who download the survey and they can come out ahead financially.

Miscellaneous

- The surveys the subcommittee did of attorneys and county recorders have lots of different shades of opinion. Might need to re-interview respondents to better understand the responses and comments.
- Commend the committee for doing the listening sessions and this work
- Safe at home, privacy concerns mentioned; Not a new concept to have open information but exceptions to the general rule
- Allowing real estate data to be non-public affects judgment creditors
- Encouraged to think of property not just as who owns it, but who has what rights over it? Layers of property rights, including who has authority/power over use of the property
- Fraud and hacking concerns. Any system can be hacked. Back up with hard copy records.
- GPS coordinates have no standing in a boundary dispute. It's an issue that perhaps should be considered.
- From the municipal perspective, a survey submitted with a building permit is now public record and the city can give it out.