

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, Redwood Falls October 16, 2017**

Attendees: 35 people. Attorneys, surveyors, county recorders, title companies, examiner of titles, vendors (Fidlar, TriMinn, Tyler) County representatives from: Redwood, Brown, Cottonwood, Renville, Martin, Watonwan, Blue Earth, Nicollet, Jackson, Steele, Scott

Committee members: Susan Ledray, Bob Beutel, Stacy Woods

#### **Current successes**

- GIS has done a lot for counties
  - Can include owner, boundaries, taxes
  - Limitations include: not precise boundaries, can be gap parcels “no man’s land” that have no apparent owner
  - Steele County can show deeds in GIS using Tapestry. Once they started linking and displaying deeds, the use of Tapestry went up substantially (Does this generate revenue for the county?)
  - To link recorded documents to GIS mapping, the PID is needed on the documents. Steele and other counties do not put the PID on all documents, e.g. not on mortgage, satisfaction.
  - Anoka County looked at using PID #s in lieu of legal description
  - PID/PIN is the only uniform language between the recorder, treasurer, auditor
  - Issue with using PIDs to replace legal description: Parcels are split, land is redeveloped, and PIDs change. How would that be tracked over time?

- E-recording has been a big success and is great customer service
  - Ex. if a Wells Fargo document isn't acceptable it can be rejected...impossible to actually reach the drafter directly so this facilitates correction of documents so that they're recordable.
- -Technology fee has helped
  - Important for acquiring new software
- Technology fund has allowed smaller counties to add GIS and more online resources
- Technology fee use is dictated by statute; may be shared with Treasurer/Auditor but not for general county use
- Is the fee sufficient in counties with lower filing volume? The recorders who answered said yes, it has allowed them 2 system upgrades which are costly, and has funded GIS and aerial photography for GIS.
- Critical this technology fee remain as demands for increased tech will grow and County Recorder has more technology than any other county department
- Recorder's office was dependent on the County Board/Commissioners for funding allocations and could never have implemented e recording without the tech fee
- Uniform conveyancing blanks are great; well researched and drafted. Recorders wish everyone would use them but people still draft or use other documents and those are often deficient.
- Fraud Alerts; available in some systems, like Fidlar

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

- Name and address on the tax site is not necessarily the owner, but people think so
- Use forms online and taxpayer screen information but don't understand what the information means
- People don't use attorneys- The availability of standard forms to the public has contributed to people attempting to "do-it-yourself"
- They use legal from property tax site which often is incomplete or abbreviated
- Ag land – tax parcel splits quite often – another reason why you can't rely on owner information on property tax statement
- Don't want to pay for an attorney
- Attorneys send clients in to ask for a deed
  - So frustrating that people don't update their abstracts
  - They don't really understand what they are asking for

- Clients and attorneys who only get a deed may not realize that after receiving the deed, the owner conveyed off 5 acres and the deed does not show what is currently owned, or there may be a second deed and the owner has more property
- Don't want to pay to update abstracts
- Homeowner has the most to lose
- Farm Service Agency sends farmers into County to get copy of deeds
- Attorney has success persuading clients to have title work done by quoting a fee (typically \$150-250) and with this modest amount and the certainty of the cost, they usually will agree.
- County Recorders indicated they are not able to persuade customers to seek professional advice

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

- Used to be many attorneys skilled in real estate; Fewer and fewer attorneys doing real estate in smaller counties; attorneys and county recorders made this point
- Real estate is precise—younger attorneys not good at this or not interested
- Fewer attorneys are practicing in greater Minnesota now
- Millennial attorneys not perfectionists
- Attorneys in general are swamped and that contributes to lack of attention to detail
- Attorneys cannot find anyone to learn real estate and take over their practice
- Attorneys asking clients to get copy of deed instead of updating the abstract
- Title insurance is required for residential and secondary market loans

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

- Each county has a different way of doing things—big hindrance
- Lack of uniformity/every county is different
- Being able to view the tract index on-line would help; extent of document imaging varies
- Actual systems that counties use are different
- Different fee structures
- Different search structures
- Expensive to subscribe to each
- Difference in how counties maintain records
- Wish there was more information online

- Supposed to indicate abstract or torrens when document is submitted, but they forget to check the box and it gets indexed in the wrong place
  - One of the problems with having 2 systems
- County is the last line of defense
- Someone commented that it's ridiculous to consider reducing recording fees.
- The technology fund has greatly enhanced technological modernization.
- Issues regarding complicated legal descriptions relating to wind tower easements and ditch liens...many parcel numbers.
- There is a cost to maintaining the land records - Someone commented that land records have historically just been given away. (ex. Title Companies have profited from this land record information at little cost.)
- Submissions have gotten sloppier, submitters don't seem to care, but the errors aren't rejection reasons
- Why are people recording long divorce decrees? Summary Real Estate Disposition Judgment should be mandated
- Recorders feel they are criticized for being too picky, and criticized for taking "garbage"; cannot win Stakeholders don't understand the role of the recorder

### **Problems/Issues/Concerns re: abstracting/searches/40 year exam**

- Some counties don't have anyone who updates abstracts (e.g. Blue Earth)
- In Blue Earth they will do manual searches (research the county records)
- Banks only want an O&E for a loan- attorney comments this is shocking
- 40 year tract searches miss drain tile easements often created in the 1920s,, easements reserved in deeds, mineral rights, mineral rights from tax forfeit properties not picked up, and may not be reserved in the state deed when they should have been
- Searches are being done thousands of miles away
- Easements and other interests that do not terminate are not being disclosed to the buyer, "If I were the buyer, I would want to know."
- Different standards for what should be in an O&E.
- County Recorder commented: If we do an O&E we pick up easements and look for prior unsatisfied mortgages and liens. Many O&Es don't look beyond the last deed and mortgage.
- Residential and secondary market loans: require title insurance
- If there is title insurance, the issue may be an exception, or you have to sue to get compensated, and the company may be out of business; best to disclose the issue up front. "I don't want fire insurance I want the wiring done properly."

- Title work and searches are increasingly being done from many miles away. Local expertise and knowledge is not valued, or is disappearing.
- One attorney looks behind the Certificate of Title
- Wind Turbine easements can be complex; example given of one Wind Turbine easement containing 320 legal descriptions

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

- Character spaces on the computer to enter info (i.e. no room to enter full legal descriptions on tax statement screen or sometime the full name of owners) Even realtors will use the tax screen information in drafting documents, resulting in errors
- ATPs (automated title plants)—have access to different streams of data available online (not necessarily reliable or complete). Underwriter allows them to base on these records because the savings is offset by the risk. Used with refinances and helocks (?) These are very abbreviated searches. Cavalier attitude about title search.
- Systems are expensive to maintain
- User-based fees are appropriate; Title cos use the information and then charge their customers; counties historically pay the cost of creating and maintaining the records and give it away for free; but land records are public information
- John Doe doesn't understand what he is seeing online and what that information means
  - Creates problems w/customers for the county
  - Increase in phone calls/customers who are misinterpreting the online information
- Electronic closings starting to happen around the county
- Electronic notaries
  - Becoming more national/online model of real estate transactions
- Block chain technology—way to prevent fraud; Cook County pilot
- Ontario system provides protection against fraud. They limit the people who can record deeds (ex. only attorneys, banks)
- Would a statewide database for land records be slow to respond to a search query? Vendor: Speed would not be an issue.
- One county got hacked w/ransomware
  - Recorder concern with not having paper documents anymore
  - Is a saying: Technology breeds crime

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

- Very little torrens in SW Minnesota
- Not a lot of re-monumentation in SW Minnesota
- Most counties don't have a private surveyor in SW MN. If the county surveyor is private, they don't have time to do remonumentation. A recorder noted their surveyor does virtually all work from a desk and how can that be accurate if not out in the field?
- Survey monumentation ebbs and flow; In the 1950s when crop prices were high, some surveying was done.
- GPS helps
- Bad legal descriptions hurt surveying efforts; to the right of way (centerline or other, right of way when description was first used in a deed in 1940 or right of way today after road was widened? Acreage description in a section with a shortage.)
- County Surveyor's association wants to fund out-state counties to re-monument; surveyor gave example of 3 monuments found within 20 feet of corner; which is correct, if any?
- Comments about description on paper or by PID, vs. what is actually on the ground and how does that get reconciled
- Comments about dangers of doing surveys which trigger a domino effect when the survey shows a line in a location not expected
- Lines move over time, occupation lines seem to work out over time
- Concern about surveyor methods or shortcuts; works from his desk and doesn't go out in the field
- Suggest that the state should pay for all survey information to be scanned and made available on line, statewide
- The recording technology fee helps pay for new software and imaging; a lot of it goes into GIS software updates and aerial flights and photos. This funded is needed for the future too; there will only be greater demands for tech and tech spending; are some concerns about how the tech fees are used and what complies with the statute; GIS is now web-based and the cost has come down; Cities use our GIS and it is a boon to land records.

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

- Tax ID/PID is a unique number
  - However, what to do with parcel splits?
  - PID's aren't in an entirely uniform format across the state
- Something like a vehicle title would be nice

- Torrens or torrens lite
- Larger industry is looking for convenience
- Government needs to take over the detail work to ensure good titles
- Real estate records should be free
- All county survey records should be scanned and made available free of charge, on-line. State should fund the scanning. Making information available saves time and money.
- Court systems went to a uniform statewide system and all electronic; you can access every county; done with funding from the state
- With court e-filing, some of the court processing work shifts to the attorney
- Courts are consolidating functions; you may e-file a document into a case in county “x”, but someone in county “y” processes it. This helps smaller counties; can have specialization in outstate areas and increase efficiency. Guardianship is specialized for multiple SW counties. With electronic business, county lines are not limitations; there needs to be a state court document certification; currently there are limits on which staff can certify which documents.
- Iowa has free online records statewide and it has opened up the whole state to attorneys who previously had a more local practice
- Iowa; Middleware converts the county data into the statewide standard e.g. do you index with punctuation, Jr. Sr. The middleware application slows down the availability of information at the state portal. Most up-to-date is at the county level; check there on closing day; Iowa also does redaction and that is tricky
- GIS integration movement
  - Want to have a common identifier for properties
- Have a map where you can click on the property to see:
  - Birdseye view of the property
  - Boundary lines
  - Owner
  - Real estate records
  - Assessments
  - Parcel ID #
  - Tax statements
  - Well/septic information
  - Zoning
  - CUPs
- Anoka looked at a system by PID #
- Could there be safeguards in the technology? E.g. when making an on-line purchase, if you make an error in entering the credit card number, it shows as an error.

- Someone wondered, if there is a statewide system (like Iowa) does that influence the number of real estate attorneys? Neighbor (Iowa attorney) of attendee: the state of Iowa opened up to me when the portal was created.
- In Iowa, there is middleware between the county system and the portal and uniform rules are applied at the middleware; e.g. redaction methods, indexing rules like whether you index with punctuation, use Jr./Sr.. This can delay availability of the records in the portal. For a closing, go to the county courthouse to confirm status of title.
- Marriage record uniformity has been helpful. County Recorders were behind MOMs

### **Torrens issues**

- Very little Torrens in SW except Redwood Falls and Blue Earth Co.
- Drawback is the “double cost”. Paying the Examiner of Titles fee is a hindrance
- Certainty of ownership and don’t have to look back
- Examiner certification requirements may cost something but then you know the documents (e.g. probate documents) are correct. In abstract the wrong things get filed, or supporting docs are not filed, and years later someone has to fix it.
- Attorney commented that with torrens property she still looks in the abstract records due to the court decision that a mortgage filed in abstract affected a torrens parcel despite not being on the certificate of title
- With two systems (abstract and torrens) a document can get recorded in abstract when it should have been in torrens, and not get discovered for years
- Torrens addresses the issue of sloppiness and incompetence, and forces accuracy and clean title

Is there a better way to identify property that people would understand?

Yes, a title, like a vehicle title.

Use PID. See issues with that above.

What would you tell the legislature you want?

Attorney – a torrens-like system; it forces accuracy and clean title. Would need to define acceptable level of risk and not require perfection

### **Miscellaneous**

Comments made after the session: An attorney who formerly worked in northern MN commented that minerals and wetlands are important issues in the north. A lot

of mineral rights in the north have been “reserved” and deeds state include that mineral rights are reserved, but generally no one attempts to figure out who owns the mineral rights. There is no easy way to determine ownership of mineral rights. The Federal Land Bank (?) did foreclosures and reserved mineral rights. The state may own them.

Wetlands are another big issue in the north. DNR is required to issue a permit before wetlands can be drained. Getting a permit is not easy.

Agricultural lands in Southern MN include a lot of drained wetlands. The practice is to assume the farmer owns the drained wetlands. Do not try to analyze whether the water was navigable and therefore the bed is owned by the state. The DNR apparently isn't concerned about lands drained prior to when permitting started.

Farms: There are probably lots of boundary issues that surveying would uncover, due to missing corner monumentation, acreage descriptions, and use of roads as boundary lines.

It was suggested that a state solution forced on farmers would be resisted. Allowing farmers to reach agreement with neighbors on boundary issues and fixing descriptions would probably work. A boundary commission could resolve any issues left. There is currently a Boundary Commission in MN statutes.