

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, St. Cloud October 24, 2017**

**Attendees: 36 people** recorders, surveyors (county and private) attorneys, paralegals, abstractors, title company, closers, GIS/county, MLTA President, ESRI account manager, examiner of titles, MN DOT.

**Committee members:** Robert Beutel, Susan Ledray

#### **Current Successes**

- Some counties have significant records online
- Cass has all torrens online
- Appreciate county efforts to digitize old records

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

- Counties have DIYers looking at land records, trying to handle real estate transactions without title insurance or attorney involvement.
- County Recorder: Our county has 7500 people and many are low income. You can buy a house for \$5,000-\$10,000. These people don't want to spend on title ins or attorneys. We can't offer legal advice. We do direct people to the Uniform Conveyancing Blank forms and encourage use of those. Encourage use of professionals.

- County Recorder: We give free copies of deeds to owners and educate them about using the deed description, not the tax legal (see that error often). They are our clientele and our taxpayers. We invest in these systems and ultimately the taxpayer is paying for that via recording fees. Subscriber fees for online look- up allows the costs to be spread to those using the service and benefiting from it. People walking in to record documents consume most of our time. Agricultural land mortgage satisfactions and easements are the biggest users of recording services. Private industry gets information by subscription. Should consider who the users are and what electronic services best help them.
- User fees vs. tax base to fund counties. Tax base spreads out the cost and includes people not using the land records.
- Privacy (see Technology also)
- Safe at Home 3 Counties reported there SAH filings. Each county has had one filing. One recorder advised the family to put the title in an LLC, and they did.
- Nosy neighbor: Comment that this is overstated. Most people don't care about their own records, much less the neighbor's records.
- Need a way to research things that affect land use, that aren't included in a title commitment; e.g. Use restrictions in place on a property meant the owner couldn't build. How can people find that type of information easily or be educated to know to look for it?
- Information that affects use of property or past problems of property should be searchable; e.g. slope failure, wells, structural problem with the building. Prior owners may fail to disclose.

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

- # of lawyers who practice real estate law is diminishing and there isn't a generation coming up and learning the title business, how to recognize title defects, correct them, and examine title. There isn't enough of this type of work either, given title insurance prevalence. When I'm done, I'll hang it up and quit. I'm not training a successor. It will become more difficult over time to find examiners and registrars.
- County Recorder comment: Fewer RE lawyers and less expertise. Lawyers in my county have to be very diversified to make a living. Our former torrens examiner didn't know he was the examiner, when contacted. We have 11 active parcels, and half owned by state.

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

- From a surveyor: Works in 10 counties. It is costly to go to each county to do research and get deeds and other documents affecting the survey work. Will hire a title co. to do research, but that raises costs and title cos have better things to do than pull documents. Would like to be able to view documents and plats online, and get copies. Scott has more records online than other counties and Scott is helpful when you call .
- More records are available online in the metro area, less to the north. It is difficult to research a project if the county office is 2-3 hours away
- Central Minnesota has multiple subscription services; Fidlar, Tyler, TriMinn, West Central Indexing, Land Shark, Beacon?
- If records are available online you have access after 4:30, which is helpful
- Subscription price seems so high in some counties that it must be subsidizing the county budget
- Counties are trying to get documents online. Cass has them back to the 40s. Sherburne and Douglas has scanned all the way back and tract book indexes 40 years back. LacQui Parle has scanned all the way back, and has indexes back to 1872.
- Sherburne has a great system. Keyed to the PID.
- Surveyors need to view the current deed, and sometimes we need older deeds to look at the continuity of the legal description. We also need to check deeds for adjoining properties
- Co. Recorder commented that scanning and making all historical records available is a monumental task
- Putting the tract indexes on line lets people see what records are at the county, even if all the documents are not available online
- County technology fee (part of the recording fee); counties have discretion on how to use it. County decides how accessible they want to be.
- Polk Co was an early adopter of technology

### **Problems/Issues/Concerns re: abstracting searches/title examination**

- Need to find the 40 year source deed, which may be older than 40 years; Stub abstracts don't necessarily have the source deed
- 30-40 year search is obsolete. Go back 2 deeds plus look for easements further back. But this varies. There are no set standards for underwriters.
- Can be difficult using the county records to find that deed
- Harder now to get an abstract
- Attorney: If records are online, they are accessible all the time and immediately, and there is a great benefit to that. We used to order an Abstract, and that involved cost and delay. I prefer to do my own title searching and not rely on someone else who may make a mistake. I can bill for my time. Other businesses may or may not be able to pass on the

cost of doing the title searching. One day subscription option is helpful to manage cost. E-subscriptions are cheaper than ordering abstracts.

- Abstracts gone away. Residential PA dropped the requirement to provide abstract
- What is the standard for title examination? Responses: A 30 yr. search back or 40 yr search back. Look for easements. Different practices. Not easy to do searches for old easements outstate. Not one set standard by underwriters. Consumers don't care about the safe side they just want it done fast.
- Things are being missed. Easements, deeds.
- Plats submitted to recorder. We require title commitments as proof of ownership. We see deeds and easements missed a lot. Time. It takes so long to get a plat done and it's expensive. Gov't needs to find ways to be more efficient. We try to condense timeline. We need technology to make connections between different departments, have metadata that lets us make connections to data, link title records, and speed up the process.
- Title company person on research done for platting. For a Plat we look for easements all the way back. Varies by co whether you can see that all the way back. We consider risk and how much we are willing to take on.
- Things missed: Pipeline easement from 1920. Lose sleep over interests only found in ancient records
- Title co. person: It would lower costs ultimately for users if searching was easier. When the information is at your fingertips, you are able to get work done. Having this would be a big deal. (Where is the time pressure coming from?) The Consumer is the pressure on time. There was a 60-90 day pipeline. Turn time is now down to 35-40 days.
- Disclosures lenders have to give weeks in advance contributes to a very short window for our search time.
- MERS discussion this allows mortgage assignments without recording them in the county records. This is problematic, per a surveyor and attorney. If you need the mortgagee to sign an easement, or to sign off on a neighbor dispute resolution, can't see who is the mortgagee.

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

- Time saving technologies are being developed but aren't perfect; e.g. OCR (optical character recognition) is a maturing technology. It reads scanned documents, but the scan may not come through clearly. Technology is still not a replacement for human input and keying of documentation
- Local government perspective: Having online services with subscription or use fees takes a lot of time for the local government to set up and manage; there is bank involvement for the fees. We spend a lot of time managing for a small amount of money collected; private sector is better at managing the cost of these systems.

- County person: Discussion about privacy, and managing subscriptions and having an audit trail to know who has access to records and when. Land records contain social security numbers, names, divorce decrees. Should this information be readily available online? Don't we have a responsibility to protect the public? Redaction is one approach, but how do we manage that? We need to re-think what information should be easy to access.
- Having records online and question about data mining. One participant received a solicitation from a data mining co. offering to sell information, including information from land records
- Germany restricts access to land records to persons with legitimate need to know, usually meaning a potential buyer, with a realtor; question asked: Should there be restricted access to land records? No hands in support of restricted. Some in favor of some limitations.
- Restrictions would affect ability to refinance.

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

- Time and expense involved in accessing records necessary to complete the survey work
- Michael Pooler, Stearns County GIS gave a short presentation on GIS. Some points:
- PID is important for GIS. To have standardization statewide, need the same approach to PIDs, and the retirement of PIDS. Counties potentially may resist standardization.
- Attribute standards, data standards very difficult. City to city varies. Everyone wants to click and get everything but the systems behind the scenes are catching up. 71,000 parcels in Stearns. General purpose map. Mobile friendly apps. Working to get more available.
- There is a need for public information and education about what maps represent. Aerial photos with property lines. The public thinks they are accurate. The lines represent the best available information at the time. Not perfect. People think they can find boundaries using the GIS mapping. If a property line is shown as running through a garage we get a call. We start looking at it, searching back deeds, to see if a correction is in order. It becomes a resource issue.
- Picture is just a guide, and we tell people to have it surveyed. Survey is first step. Doesn't necessarily clean up problems.
- Seeing "snips" from county GIS maps included in realtor ads.
- GIS how to configure a widget and get it online,
- Title company person: Very useful to have GIS available. Use it to get confirmation this is the correct parcel. GIS mapping helps discover problems.
- Title company: Mechanic liens were the biggest claim areas. Now it's survey and boundary issues.
- GIS maps Generate calls and business for us (surveyor)
- GIS can only represent what is in the descriptions, but the descriptions may be faulty

- Interest to capture easements in GIS too. Examples given of conservation easements and land trusts as restrictions on use of land. In Mille Lacs County the title company found and noted voluntary conservation easements, but the owners ignored them and built anyway. Now it is a high problem and expense due to the improvements built.
- Having corner monumentation is very important to being able to survey property
- Crow Wing County has surveys on line, including corner monumentation surveys
- President of MACS: We are trying to remonument the entire state. There are 321, 000 corners in MN. It's a big problem when corners aren't "set". All descriptions are based on section corners and surveys and maps aren't good if the basis for the description is unclear. We also support having a county surveyor in every county. That's not the case now.
- Wisconsin provides some money to each county to support land records modernization. Some of that money was used for monumentation work
- Discussion about how to get more survey information shared and public. State law requires private surveyors who have corner monumentation information to give it to the county to put of record. A lot of surveyors won't provide that information, regardless. Is there a way to require private survey information to be available on line? If a survey is attached to a deed, it becomes a public record. Desire to have more survey information public and online, from private and public survey work
- Survey produced by private surveyor is owned by our client. We don't give it out without client's permission.
- Might be statutes about county ability to take and show surveys
- Surveying is an art and a science. GPS is not necessarily showing the correct/best location of lines. Public doesn't understand that.
- Lines drawn on GIS may be based on interpretation of a deed and location of a gov't corner. One county says their policy is not to map "gaps" and "overlaps" even if they exist. It's a judgment call whether to show these issues or not. Concerned that showing gaps or overlaps will lead to lawsuits naming the county
- Trend is to map features, not just by PID. Capture the location of wellhead, drainage field, etc.

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

- Put all deeds, documents online without a subscription to access them
- Would like to have key-word search capability for land records (examples??)
- File SREDJ instead of Divorce Decree; this is an education issue.
- Title companies cannot draft the SREDJ; often the divorce is long past by the time the property is being sold; not easy to obtain a SREDJ long after the divorce. Many people do their own divorces using court forms. The court forms don't include a SREDJ and people don't know they can get a SREDJ. It should be mandatory as part of the court process to create a SREDJ at the time the divorce is entered.

- Consistency between counties would be much more efficient for users.
- Person works for ESRI software. Spoke about market expectation and user expectations for an interactive statewide web-map with land-use, value, description of properties. Wisconsin has an Interactive map of all parcels in WI. Access is free for whole state. MN GEO spatial office in MN has draft document to standardize PIDs statewide. This is coming. State DOT DNR works a lot with them. Look at a map to get CAD files and instantly find what need.
- Very feasible to put in an address and have all parcels from 1900 to 2017 and see parcels pop up from year to year. (Display of parcels chronologically.) Doable to click point on map and get all info you want. The expectations for this type of map centered information is only going to increase.
- In US we are behind in notion of multipurpose cadaster. Other countries think differently and include all info about land records.
- PID is critical to GIS. Wisconsin passed legislation to address PID to impose changes to PIDs. In WI the state aggregates the PID information, but the county is the authoritative source.
- Indexing PID with transfers.  $\frac{3}{4}$  do. Show of hands. This is key to organizing information. Most auditors don't retire PIDs, so when parcels shrink or change, there is ambiguity.
- Racine Co. Wisconsin has integrated tax information with GIS and displays information about properties by developing applications for the types of information
- There are valuable records and lots of information and buyers want to know as much as they can. Assessor, Auditor, Township etc. might all have valuable information. How can those be tapped and made available?
- Counties are housing all the data, why not make it connected and findable? That's the concept of a public cadaster.

## **Torrens Issues**

- ESRI person: Dakota has a GIS layer showing torrens property
- ESRI person asks: I would expect all new subdivisions to be torrens. Not necessarily the case. Why?
- In large counties, the examiner of titles is an employee. In other counties the property owner pays the examiner of titles fee, and that is a disincentive to register the property. So unless there is a title defect, registration is not done. Who should pay cost of reg. ESRI in Europe more registration.
- CPT is a less expensive option, but not as popular as it once was.
- Crow Wing. City of Crosby is all torrens. They wanted to register to protect mineral interests.

- Torrens depends on where you are in the state. Registration rate may have slowed because of title insurance taking over. Last policy on the hook, so they don't examine title before that.
- Examiner: I have 4 counties. Torrens is a unique system and it takes time and effort to learn it. In four counties this year I've gotten 2 questions. Not difficult questions but if don't know torrens, they are.
- Lac Q Parle county has 11 torrens parcels, ½ are owned by the state.
- Title expertise is dying and finding examiners and registrars will become more difficult
- Title companies do a happy dance when the property is torrens. We love torrens from the examination perspective. On the closing side, it can be more complicated because of the precision and need to get it right. Timing of deals is important it can take more time to get docs recorded in torrens. That's the down side. Examiner of titles review requires more planning ahead. But once it's preapproved it's a relief to know it's ready to record.
- Consumer turn time is quicker for Torrens, unless there are recording delays. Recording delays can cause priority issues.
- Surveyor: Dealing with Torrens property is great. Descriptions are straightforward. Generally have high level of confidence in the certificate of title but this summer I was involved with a subdivision from the 1980s; the certificate left off an access easement. Needed a proceeding subsequent to add it back on. There can be things missing on torrens certificates.
- Example of a torrens property with a bad legal description. \$10,000 and over a year to fix. When good, it's good, But with lack of people who know how to deal with real estate and torrens, can be hard.
- Assurance fund discussion: Now money goes into the State General Fund. Fee is collected. \$1.50 per document sent to State. Are very few claims. Some countries have a simpler method to submit and resolve a claim that doesn't require filing a lawsuit and is administrative with legal appeal available.
- Can be mistakes with Torrens property; example of 40 acres that wasn't registered, but a certificate of title had been issued for it. 40 years later we registered those lots.
- Boundary issues. Key is to get a good surveyor in there right away. Splits are when description issues come up. Should have a RLS. Registrars should require an RLS more often than they do.
- County Recorder: The more experience you have with torrens, the more you like it. This is true for recorders and the public/industry. Apprehension if have little torrens. I enjoy working with torrens property. Higher threshold. End result is a higher standard. Torrens is top of the line. The Cadillac of titles.
- Recordors were asked if they work with a county surveyor on registered property issues. Yes, if we have questions about the description. County surveyor can provide a lot of helpful assistance on torrens property.
- Comment regarding the Survey results: Many comments about inconsistency between counties, and with torrens regarding when an examiner's certification or directive is

required. One recorder stated: we have a comprehensive list on when examiner involvement is needed and posted it on our website, which helps reduce phone calls. Statute says I can't record it w/o directive. The website list is an effort to be proactive and provide information.

- Title co: Information about requirements benefits us a lot. More consistency in fees, processes, and knowledge of what to expect is beneficial for us and consumers.
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