

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, Winona October 9, 2017**

**Attendees: 21 people;** county recorders/treasurer, vendors, examiners, attorneys, paralegal, abstractor, title company, county GIS, court administrator, Note: The County Recorders Association Board was meeting in Winona, and members from around the state attended.

**Subcommittee Members:** Susan Ledray

#### **Current Successes:**

- Some counties have integrated with GIS, you can look up address on GIS and then view documents associated with address. If you did have your system integrated you could have live updates.
- Our tax systems shows prior sale information; integration of information is good
- I use the Olmstead county site. We have clients come in and say who owns it and how much did they pay for it, we go to GIS first, find the address, we use that information and find property transfer history, we can go to land system and pull up copy of deed. It is very helpful in GIS system to see the outline of the parcels.
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#### **Issues re: the general public**

- Zoning and land splits; farms are split into parcels as part of estate planning, people assume they can build if they have 40 acres, but zoning may not allow it. This reduces the value and transferability of land.
- County Recorder: We make every effort possible to ensure they have talked to planning before they document a split. We always need to identify if the

split that will occur through deeds is possible under bi-county ordinances, If they aren't able, they have choices. There are a high number of variances, they can present to variance board, move forward with that, or they can make necessary changes and not go through variance. We should be checking for requirements, rules, and statutes. We will certainly work with them on county ordinances. There are very informed people working in planning department.

**Issues re: real estate attorneys**

- Fewer real estate attorneys now

**Issues re: counties/county records**

- It would help recorders if documents coming in were correct the first time.
- Sloppy documents, missing notary information, there should be a standard MN form used. It feels like some law firms or title places use us as their proof reader.
- Counties all have staffing issues and there is a huge learning curve. It is struggle getting good people and keeping them. That is a big issue for recorders offices.
- Assessment offices have more defined statues and it is much clearer whereas in the recording end it is much more up for interpretation.

**Issues re: abstracting/searches/title examination**

- With abbreviated title searches and using county websites without getting complete information, there are a lot of things dropping off of searches that are pertinent to ownership. In Mower County we have thousands of invisible easements that have dropped off searches. If someone is just doing a 40-year search they won't find them. If they go to the county they cannot search records way, way back. Property owners are short-changed and they have invested most of their wealth in their land.
- Blanket easements are common for power lines (or phone lines?) and flowage easements are common. These shouldn't terminate or be ignored after 40 years.
- The change to the purchase agreement form, removing the requirement to provide an abstract of title, ended the use of abstracts. You can ask a seller for an abstract, but you have no remedy if the seller doesn't have the abstract.
- We get requests from other title companies asking for 30-year title searches, O and E. We do it for them that's what they request. We have our records in office so it is easier and less expensive for us. Consumers do not understand

the limitations of a title search based on an O and E. They are trusting the title companies, but it is scary for the consumer.

- If title underwriters knew some of the shallow searches they would never let the policies be written. You don't know if there is a life tenant out there.
  - Iowa title insurance system, all abstractors and lawyers are in the state system and private title insurance is not allowed. An abstract should have the patent, all easements, and a 40 year search and in Iowa, those are included. In MN you get far less information and don't know what easements are on the property. Title policies should not be allowed to exclude easements. Easements should be noted on all documents.
  - Where are these policies coming from? I'm not aware of an underwriter excluding easements? I'm not familiar with these exemptions? These examples seem very extreme
  - Title insurance doesn't necessarily protect the owner; there are policy limits and transfer limitations; don't understand the exceptions; insurer may go out of business or need to sue them to be paid; consumer doesn't understand that insured title isn't necessarily good title
  - Title insurance example: claim denied for owner whose house was half on the lot next door, and another issue where a neighbor had their house on someone else's lot. There is an educational disconnect for what the insurance policy covers and protects.
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### **Issues re: technology/software systems**

- We did a contracted package to develop our GIS, in that process we identified thousands of property deeds; we still have 6500 parcels that need work done on them. The public is coming in wanting GIS to reflect their parcel as it is but GIS is listed as reference only. We have countless numbers of people coming in asking about their parcel accuracy. We do keep making changes but it is not practical or possible at present to have complete accuracy. Not a survey.
- Making data available can be a problem; e.g. showing foreclosed properties makes those a target for criminal activity
- We are seeing more tighter integration. A software program called IS World, more counties are looking at tying a recording package to that. Getting away from duplicate data. Working towards compressing and getting everything into the system.
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### **Issues re: legal descriptions/surveying**

- Less than half have a county surveyor and many have a part time surveyor
- The difficult part is many counties are in different places with their survey system, all are using different systems, which make it difficult to research across county lines. There is a fluctuation for what is available, how accurate

it is, how close it represents what is on the ground, we are trying to accurately reflect what is of record.

- Even if the boundary lines aren't completely accurate, the GIS mapping helps you get a visual of the legal descriptions and is valuable
- Counties with GIS have basic information on it, with environmental layers, flood plains etc. The county has a lot of data but you have to organize how to maintain and update it. Rural counties would have a development company come in with categories but the information was never maintained by the county and couldn't be put in.
- Who will provide the data and how often would it be updated? GIS is not mandated, but if there is a topic that attorneys or others would like to have, it could be developed and added to database.
- Comment by an attorney that GIS should show tax parcels, not try to show actual property boundaries; want to know what the county is including in your tax parcel and what you are being assessed on; GIS in the attorney's county has gaps, no-man's land, other areas that don't clearly show who is being taxed on that land.

### **Torrens**

- Certificate of title, ownership to a property is far superior to sorting through other documents. Easements are shown on the Certificate and not lost. It would be easy to link a certificate of title to other records (GIS, tax). ownership is easy to have and identify. Easy to know who owns the property. There is a lot of merit in looking at making all land torrens.
- It is easier to do plat checking when it is Torrens but just because you registered title doesn't mean you registered boundaries. Right now it is a costly process.
- Need to transition to all Torrens or something similar. Searching is already difficult for old stuff and it is just going to be worse.
- The court processing would cost money. Comment that it could be handled like other improvements; e.g. street or sewer assessment.
- I am one of three counties of 87 that has 0 Torrens. I know very little about Torrens because we have 0. It would not be an easy transformation for a multitude of places.
- There is some confusion on part of homeowner- there is no title I can give you, I can make you an abstract. The public wants a car title, something they can hang on to. There is some benefit to creating an actual title. Should a Torrens title have a state guarantee against fraud? Suggestion made that the state should require by law that there is an insurance policy out there covering fraud. That puts the risk of the fraud in the hands of the people doing the transactions and closings.

### **Ideas/suggestions for positive change**

- Eliminate requirement to publish foreclosure notices in the newspaper, and substitute publication via county website. Waste of money. Newspapers have fought this in the past.
- Add additional information to GIS layers
- Figure out how to continue to show easements and pre-40 year interests in an economical way
- Restructuring county websites to make information easier to find and to tie it together
- The general public is much more willing to use GIS than land records because if you access GIS through address and land records are by parcel id and legal.
- GIS is tied to PID and those change with a property split.
- Regarding a statewide portal like Iowa; issues to work out; if you send all data to the state, there may be a lag time and the data would not be up to date; better to have the portal link into the county records in real time; staffing and cost concerns; would counties follow the state rules;

### **Miscellaneous**

- There was a question about Blockchain Blockchain is the technology behind Bitcoin being explored for real estate transactions. The first deed was recorded using Blockchain in Texas and Cook County experimented with it was that it has a lot of potential but it isn't ready yet. It is a secure key encrypted process so everything is through the technology and you don't need paper and printing and you have the process to know who people are throughout the process of the transaction.