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Access to and Sale of Bulk Records

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PROPERTY RECORDS INDUSTRY ASSOCIATION

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Executive Summary

This paper examines the practices of providing access to, and the sale in bulk of, land records in the United States. Land records are considered a subset of public records.

The majority of the nation's recording jurisdictions now have legislation or standard practices already in place for handling the sale of paper, microfilm, and microfiche copies of the land records, whether as single copies or a sale of a bulk quantity. What is less established is the pricing mechanism and terms around the sale in bulk of land records in an electronic format.

Electronic land records are defined in this paper to include digitized and digital versions of documents which may or may not have previously existed in a paper format, as well as the electronic indexes to assist in finding the documents. Increasingly, recorders[1] across the country are creating electronic images and indexes of recorded documents. If a recorder sells land records in a digital format, they are selling electronic images and indexes.

Some jurisdictions do not yet have electronic images. It is not the purpose of this paper to discuss the creation of electronic images, but only the access and sale to third parties.

The aim of this paper is to explain why access to, and the sale in bulk of, land records is important. It also sets forth costs of goods and services to be considered when determining pricing for sale in bulk of electronic records (indexes and images). As technology changes the world we live in, there are many important factors to take into consideration in the discussion of access to, and sale in bulk of, land records.

[1] In the United States, land document recording may take place at the State, County, City, Town, Borough, or Parish level. Depending on the jurisdiction, the Office of the Recorder may also be known as Recorder of Deeds, Registrar-General, Register of Deeds, Registrar of Deeds, Registrar of Titles, Deeds Registry, Auditor, or Deeds Office. In some states, the recording function is part of the County Clerk's responsibilities. Throughout this paper, the term utilized for this role will simply be "recorder."

Section 1: Defining Sale in Bulk and Data Sets

Definition of Sale in Bulk of Land Records

The definition of sale in bulk of land records is the transfer to buyers of either historical or ongoing recorded indexed data, images or both. The transfer not only includes a copy of the existing data requested by the buyer but may also provide regularly scheduled updates of information, so the buyer can continually update records with modified and new information. The transfer of data from the recorder to the buyer may involve paper-based data, microfilm-based data, electronic data, or any combination of these.

Request Variables

Depending on the capabilities of the recording jurisdiction, requests for a sale in bulk are typically bound by, but not limited to:

- Time Boundaries:
  Data is requested from within a specified period of time, e.g., one day to multiple years.

- Geography Boundaries:
  Data is requested for a certain geographical area, e.g., a town, a particular section-township-range, or a specific condominium building.

- Document Type Boundaries:
  Data of only certain document(s) is requested, e.g., deeds, liens (including mortgages), or lien satisfactions.

- Name Boundaries:
  Data indexed under specified name(s) is requested, e.g., IRS, Samuel Jones, or ABC Construction Company.

Land Records Data

Recorders maintain both index data (data elements helping to pinpoint a specific document) and document images (in paper form, on microfilm, or in electronic form).

Recorder Index Data

For most counties, a recorder's index is a name-based index, including the names of the parties to the document:

- Buyer and seller
- Grantor and grantee
- Mortgagor and mortgagee
- Lienor and lienee

Additional data points most frequently used:

- Date and time the document was recorded
- Document number/official record number/instrument number
- Type of document
  - Deed
  - Mortgage
  - Lien
  - Easement or other land records documents
- Book and page/liber folio/reel/volume reference number
- Parcel Identification Number (PIN)/assessor parcel number (APN)
- Notary information
- Abbreviated or short legal description
- Cross references and/or related documents

A few jurisdictions, primarily concentrated in the mid-west, also maintain a Torrens registry, or land title registration system. A full explanation of the Torrens system is beyond the scope of this paper. Information explaining the Torrens land registration system can be found here.[2]

Recorder Document Images

Reproducible copies of recorded documents are permanently retained and stored. Typically, recorders keep the incoming (a.k.a. "original") documents for a short period of time until they can verify the accuracy of the images of those documents which they have created. After image quality verification, the incoming document is returned to the submitter, or the person designated by the submitter. While minor variations to this rule exist across the country, a broad exception is the state of Louisiana where the recorder, by law, retains the incoming document.

Recorders have significantly invested in the modernization of public land records. In many cases, recorders have been allowed to charge a technology fee, in addition to the standard recording fee, to aid in paying for technology projects. Generally, the goal of these projects has been to improve efficiency and broaden access to the land records for all stakeholders.

District Clerk / Superior Court / Circuit Court Data

Court data contains records that are not generally in the recorder's name-based land record index, and typically references court cases such as probate, family, and civil, which may affect real estate or personal property. These records can generally be accessed through Judicial Districts; however, any documents that affect ownership often get recorded in the recorder's office.

[2] https://pria.us/wp-content/uploads/Torrens-Registration-System-Explained_07_09_2024_CLEAN.pdf

While these records may not be available electronically, a variety of court case records is needed for property ownership and transfer tasks and thus are typically included in a title plant.[3]

This paper focuses on access to and sale in bulk of land records only and does not address court records. Despite the traditional separation between court filings and land records, their similarities mean that some points discussed here may also apply to court records, given that court proceedings can impact property transfer and title.

Assessment Data

Assessment data, such as ownership, valuation, and property details are typically requested through local jurisdictional offices. Assessment, tax, and other property information are often accessible through a GIS land information portal or similar mechanism. As with court data, there are similarities between land records and tax records, so some of the same considerations discussed in this paper may also apply to tax records.

[3] https://www.stewart.com/en/real-estate-dictionary/title-plant

Section 2: Ownership of Land Records

Land records are owned by the public, and the recorder is the legal custodian. These records are available to the public for searching and sale, either in the office or online. As a matter of law, the public land records exist to provide constructive notice to all interested parties, regardless of the location of those parties.

The public land registry provides notice about current property ownership, the consideration paid, what mortgages, liens or encumbrances are outstanding, and the order in which they are satisfied. Purchasing land quickly and securely is a cornerstone of the U.S. economy. Using land or property as collateral is a key factor enabling property owners to borrow money.

The recorder's responsibilities include:

- Record documents in a timely manner in accordance with local and state regulations and laws.
- Collect appropriate fees and distribute as required by law.
- Provide reports to various internal and external agencies, as required.
- Provide permanent storage and maintenance of records to ensure integrity.
- Ensure open access to the records to any requester in accordance with local, state, and federal laws.
- Leverage technology in accordance with state laws; this includes redaction tools, digitization of records, and ensuring there is an appropriate business continuity plan in place.

Access to Land Records

Early in American history, colonists set up a system of easy and open access to land records, unlike the English system where the records were closely held by the government. Later, some states adopted a Torrens Registry[4] which also provides access to ownership information. The colonists believed that no government should restrict access to land records, and anyone should be able to search and view the records, although there would be a government custodian representing the people.

The availability of and access to these land records directly impacts the real estate, title insurance, and mortgage lending industries. However, private citizens, news media, academia, and other interested parties often require access to land records for a variety of purposes.

Originally, bulk records were sold as photocopies but evolved to duplicate microfilm or microfiche. As technology advanced, recorders began using other methods to provide bulk records to purchasers, such as File Transfer Protocol (FTP), thumb drives and external hard drives.

[4] https://pria.us/wp-content/uploads/Torrens-Registration-System-Explained_07_09_2024_CLEAN.pdf

Some recorders believe that they do not need to also provide documents or indexes for sale in bulk since they provide internet access. Typically, internet access is used to research and view records for individual properties, but not for bulk purchases.

With the evolution of technology and the availability of the internet, more data has become readily available to the public. The ease with which personal information can be accessed on-line is now being weighed against individual concerns related to privacy and safety. For example, from the early 1970s until the mid-1900s, a number of documents were recorded with Social Security numbers, bank account numbers, and other sensitive data. The definition of personal information has expanded, and recorders may be required to redact or shield sensitive information from public view. Presently, at-risk parties such as judges, law enforcement, and domestic violence victims are increasingly subjected to acts of violence. Many states have sought to further restrict the on-line access of public records to better protect these at-risk parties by requiring recorders to limit the personal information that is available on-line. These types of redactions and shielding laws often require the concealment of personal information from the public record.

When personally identifiable information (PII) is redacted or shielded from the public view on any document, the unredacted document must be maintained by the recorder. Accordingly, the document may exist in two different forms: redacted (used by the public) and un-redacted (retained by the recorder's office, for certified copies of the official record, in accordance with state laws). If a recorder decides or is required to redact or shield sensitive data, only the redacted version of the image should be delivered to the public when searching the recorder's records.

PRIA has previously published a paper on Redaction Best Practices found here[5].

Adhering to laws requiring shielding certain information from public records is an important component of the recorder's responsibilities. At the same time, the real estate industry relies on accurate, complete, and readily accessible public records to efficiently complete land title transactions. Recorders control who can access complete records, while still complying with applicable laws. Recorders may be required to implement new processes for the in-take of redaction or shielding requests and to perform the actual task of removing the information from public view. Compliance with these laws, the processing and maintenance of the records, and the balancing of access for the real estate industry and others has resulted in complex issues for the property records industry.

[5] https://member.pria.us/i4a/doclibrary/getfile.cfm?doc_id=211

Section 3: Storage and Distribution/Transfer Media

Technology innovation has transformed recorder offices, streamlining data management and dissemination. A visit to a recorder's office reveals the evolution from books to microfilm, computer workstations, and now cloud-based systems. This progression has enhanced databases, indexes, and image handling, leading to greater accessibility and manageability. These benefits are only realized when recorders have the means to invest in such innovations.

Paper

Paper stands as the most familiar form of storage and distribution medium in historical context. Records were traditionally preserved in book format, as indexes and transcriptions of documents. Initially, document data was transcribed by hand into official records books, later replaced by typewriting, and eventually by photocopying the original documents for inclusion in physical books.

As these books represent the oldest medium in recorders' offices, some have undergone conversion to enhance accessibility in alternative media formats. Because the lifespan of paper varies, some recorders have chosen to rebind or restrict public access to preserve and prevent deterioration of the original materials. Typically, to distribute data from recorders' books, photocopies of pages are made, or individuals may take notes on the content of paper media.

Film

Film has traditionally served as the prevailing method for storing land records, typically in the form of microfilm rolls, microfiche, or aperture cards, all collectively referred to as microforms. These records were captured through photographs of the index page(s) and the documents themselves, which were then processed into microfilm.

- Microfilm comes in two primary widths: 16 mm and 35 mm. A roll of 16 mm microfilm can accommodate more images than its 35 mm counterpart, often doubling the image capacity. A microfilm jacket contains strips of 16 mm or 35 mm film encased in a clear plastic jacket.
- Microfiche, on the other hand, is a card of 105 mm wide microfilm containing a grid of reduced size images. The number of images on each microfiche card may vary.
- An aperture card is a type of punched card that has a rectangular cutout containing a microfilm image, typically maps or other large-format documents. The card itself often includes metadata in the form of punched holes or printed text, allowing it to be indexed and retrieved using automated systems. Aperture cards were commonly used for archiving and retrieving technical documents before the advent of digital storage.

The longevity of microforms depends on factors such as the type of chemical process used to create the film, as well as storage and usage conditions. Historically, recorders have relied on microforms to fulfill the requirement for permanent archival media, with an expected lifespan ranging from 50 to 500 years. To distribute the data stored on microfilm or microfiche, duplicates are made from the master roll or individual microfiche. For smaller requests, paper copies are produced using a microform reader/printer.

Despite the transition to electronic databases, many recorders' offices nationwide are still mandated to create and maintain microfilm records. Microfilm remains a recognized long-term archival medium, favored for its established reliability.

Additional information on the use of film can be found in PRIA's Resource Library[6].

Digital/Online Storage

The rise in digitization has enabled recorders to easily organize, search and retrieve information to streamline workflows and enhance productivity. Digital storage of land records documents has become increasingly prevalent in managing records, offering efficient and versatile options for distribution. Some jurisdictions are in a day-forward digitization process where all new records begin as digital, while historical records are digitized in batches. Digital records can be stored on-premise in Content Management Systems (CMS) for access control, or in Document Management Systems (DMS) for long term archiving. The most common digital storage file types are .TIFF and .PDF, which are often scanned or digital conversions of documents.

Cloud-based storage services (online storage) provide scalable and secure storage and access to land records. This is particularly useful for disaster recovery purposes or for remote access and distribution needs. It's cost-effective and eliminates hardware dependencies.

Both on-premise and cloud storage services may provide the following benefits:

- Remote access and retrieval of files and folders from anywhere.
- Automatic synchronization across devices and platforms.
- Real-time updates for uploads and downloads.
- Large file sharing without email size restrictions.
- Organization through sub-accounts and customizable web pages.
- Storage of digital images in archival file formats.

Storing documents digitally elevates the importance of ensuring data security, integrity and long-term preservation. Implementing robust back-up strategies and adhering to industry standards for data protection are essential to safeguarding digital records against loss or

[6] https://pria.us/resources/

unauthorized access and require continuous updating to keep pace with evolving technologies.

Looking Ahead

- Digital storage also may enable the use of archival file formats such as PDF/A, which not only preserves the digital copy of the image but also maintains its metadata to future-proof the file and ensure any discontinued image formats will display as originally captured.
- There are prototype blockchain[7] applications in the marketplace which attempt to enhance the land registry using tokenization.
- Storing the hash value (a long string of letters and numbers created by a mathematical operation) of a document is another method of securing the authenticity and integrity of the document.

Distribution

Digital media, typically consisting of document images and indexes, provides a foundation for simplified electronic access and transfer. Over the last decade, transferring large amounts of data has been made simple with cloud computing and commonplace file transfer software/services.

The following matrix outlines technology options and usage requirements to be reviewed with IT professionals and LRMS (Land Records Management System) vendors.

File Transfers

One common approach to transferring data from one computer to another over the internet is Secure File Transfer Protocol (SFTP), preferred over the earlier method using File Transfer Protocol (FTP) which is much less secure. Files are stored on a central server computer and then downloaded by computers which have been granted access to the server (clients). The SFTP approach is generally less expensive than other electronic methods because the software is typically free (or built-in to most servers), the labor to initiate a transfer is typically minimal, easily repeatable and no extra hardware (disks/storage devices) is needed. File transfers can also be scheduled for automated delivery, or transfers can be ad hoc. Typically, the host of the data files initiates a transfer, by selecting specific folders and files of image and index data, choosing which remote computer/server will receive them, then the transfer initiates. Depending on the size of the files being transferred, the delivery can take between a few seconds and several hours to complete. Both the host server and client are required to have a stable internet connection. While there is no upper limit data size for SFTP, the best practice is to bundle the delivery into several gigabytes over multiple transfers.

[7] https://member.pria.us/i4a/doclibrary/getfile.cfm?doc_id=228

Security is an important consideration when using this method. The security used for an internet connection is determined by both parties involved in the transfer. Although username and password credentials are commonly used, this is less secure than using public/private keys which only allow the two parties to access the data.

Some challenges include Firewall and IP address (allow-list) access limitations and restrictions on some servers. IT staff typically manages these settings. Once authentication and security settings are confirmed by both parties, transfers are easy to initiate.

Cloud Server Transfers

Similar to SFTP, cloud-based storage, e.g. Amazon S3 or Microsoft Azure, provides alternative ways for two parties to transfer large data sets. There are a few methods to accomplish this:

- Direct Cloud Transfer: When both parties use the same cloud service, files can be transferred directly within the platform.
- Managed File Transfer (MFT): Uses cloud servers to facilitate secure and automated file transfers, often using SFTP.
- Cloud Storage Management Tools: User interfaces for manually uploading and downloading files to and from cloud platforms.

These transfers are ideal for large data, high speed requirements but require an existing foundation of cloud-based storage.

API Transfers

Application Programming Interfaces (APIs) are becoming increasingly popular for requesting and transferring county record information. These tools require integration between computer systems. Once set up, users can automatically retrieve records from the county's databases as needed, without any additional work required by the county.

APIs have limitations on the amount of data they can deliver in a single request. This means users typically need to make several requests to the server and then combine the data they receive. While this might not be ideal for transferring large amounts of historical data, it offers a simple solution for ongoing receipt of documents and index data.

External Hard Drives

These drives offer high storage capacity for transferring large datasets. The drive connects to the source computer or server where the files are copied and is physically delivered to the recipient (via shipping or local pickup).

CDs and DVDs

While less common due to limited storage capacity and the declining use of CD and DVD drives, they can still be an option for smaller datasets. However, keep in mind that not all devices have built-in CD/DVD readers anymore.

Methods	Stable Internet	Large Data Capacity	Automation	Transfer Speed	Technical Complexity	Security
SFTP	Required	High	Limited, e.g., Scripting	Moderate	Moderate	Encryption
Cloud Transfer	Required	High	High, e.g., Scheduling, Automated File Transfers	High	Moderate	User Authentication, Encryption
API	Required (varies)	Moderate (varies)	High, Customizable	High	High	Depends on implementation
Hard Drive	Not Required	High	Limited, e.g., Manual	Slow	Low	Physical Security
CD/DVD	Not Required	Low	Limited, e.g., Manual	Slow	Moderate	Physical Security

The evolution of storage and distribution of media in recorders' offices has significantly transformed over the past several decades. While traditional methods such as paper and microfilm continue to be utilized for their reliability and archival quality, the shift towards digital solutions represents an advancement in efficiency, accessibility, and security. Digital storage offers streamlined workflow and enhanced productivity, as well as robust back-up strategies and data protection, to safeguard against loss and unauthorized access. The growing use of APIs and cloud services for data transfer further underscores the trend towards more dynamic, scalable, and secure methods to manage and distribute land records. As recorders' offices continue to navigate the balance between preserving historical records and embracing technological innovations, the emphasis remains on ensuring the integrity, accessibility, and long-term preservation of land records.

Section 4: Charge for Producing Records

There are significant costs associated with creating and maintaining land records. These include operating costs, salaries, and supplies as well as capital investments for modernizing technical infrastructure. Many people assume that these costs are covered by fees collected when documents are recorded, and that these recording fees are set at a rate sufficient to fund these costs. In many states, however, recording fees are set by legislative statute and may go unchanged for years or even decades, making them diverge significantly from increasing operational costs. Passing legislation to increase fees can be politically difficult, as this can be viewed as a *de facto* tax increase.

As a result, jurisdictions may use additional revenue sources outside of the standard budgetary process to defray the recorder's operating expenses. One way to cover increasing costs is to charge for the purchase of bulk records by those private entities who benefit most from technology investments, and for whom access to public records generates business revenue. Most jurisdictions have statutes that set fees for individual document copy requests; however, fees for bulk record requests are often not addressed in the law. The consumers of bulk records are generally businesses, e.g., title insurers, mortgage lenders, industry service providers, and data aggregators, therefore, many business partners conclude that it is fair and reasonable for them to help cover any expense gaps.

Revenue collected by the recorder's office is historically intended to cover operating expenses to create and maintain the land records. The cost of upgrading and maintaining its processes and systems is generally covered by recording office revenue. If the recording fee is sufficient to cover its operating expenses, the recorder can fulfill bulk record requests at near actual cost of producing and transferring the records.

If the cost of acquiring bulk land record data and images is prohibitively expensive, it may restrict trade and competition by creating a relatively high marketplace barrier to entry.

Technology advances have made it easier to create, archive, and duplicate land records. The material cost of the hard media is reduced and sometimes eliminated with these technological advances. However, recorders are continually investing in equipment and software, including maintenance and service costs, to improve access and delivery of the official records.

Another challenge, especially in the smaller jurisdictions, is the initial cost of technology related to digitization, storage, and transfer of historic documents along with the ongoing costs to maintain and keep the technology current. However, once the technology is in place, it is relatively quick and inexpensive to copy electronic files (be they indexes or images or both) from a server or database to another medium. In many cases, these

processes require minimal human involvement and can be automated for sending out regularly scheduled updates of the records.

There is general public policy consensus that recorders should not profit from or subsidize the sale of land record copies. Recorders must comply with all applicable federal, state, and local laws and associated regulations. Interpretation, application, and sometimes lack of state and local laws remain among the challenges recorders and industry partners face.

Contract for Sale or MOU (Memorandum of Understanding)

Land records are made available for public inspection in the recorder's office or over the internet. To protect the privacy of the consumer, some recorders may ask about the buyer's intended use of bulk records.

Recorders are encouraged to create a contract with each buyer to spell out the specifics of the agreement to access or purchase data in bulk. State laws should be reviewed as they relate to accessing government data, and agreements should be reviewed by legal counsel.

Some recorders set limits on the purchaser's ability to resell or redistribute purchased information; however, limitations should be based on the intent of use. These restrictions may be designed to prevent erosion of recorder revenue streams used to maintain and enhance document imaging and recording systems, prevent fraud, or protect individuals' personally identifiable information (PII) in accordance with state or local law. It is important to note that restrictions on post-sale use are not legal in all recording jurisdictions. Recorders should consult with their attorneys to discuss the legal options for post-sale restrictions on a buyer.

The following points should be considered when drafting a contract for sale of bulk records:

- Description of system
- Term of service
- Images and data to be provided
    - Clarify the terms such as production, reproduction, and archived images
- License Use Terms
    - Non-exclusive
    - Non-transferable
    - Non-assignable
    - Limited use
    - Bulk image distribution limitations
    - Property rights to images
    - Payment terms
    - Hold harmless agreement

    - Assignment
    - Breach of contract
- Vendor (LRMS) managed bulk delivery
    - Consider whether different contract terms are needed between vendors and recorders when developing contract terms.

Some jurisdictions prefer a MOU, in lieu of formal contracts, which might simplify the purchase agreement process while still clarifying expectations. MOUs should include, at a minimum, statements such as:

- What is being purchased
- For what date ranges
- Expected delivery format
- Billing and cost related information
- Limitations on use

Recorders may elect to reach out to their professional networks to obtain examples of contracts or MOUs for the sale of bulk records.

Conclusion

Access to bulk records provides benefits to the recorder's constituents (the public) by creating efficiencies in the market resulting in lower cost and more timely and secure transfers of real estate. With the increasing demand for the title and escrow industry to help reduce overall cost of homeownership, access to bulk records, along with technological innovation, allows for a more efficient title research process.