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The History and Purpose of Land Records in the United States

Adopted by the PRIA Board on January 15, 2025

http://www.pria.us

PROPERTY RECORDS INDUSTRY ASSOCIATION

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For
PRIA Completed Work Product

February 2025

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Executive Summary

This history of land records in the United States documents the efforts to establish and maintain systems for documenting land ownership, usage, and transfer across an expanding country. From colonial land grants to modern digital databases, the evolution of land records reflects the nation's growth and economic development.

Since the country was founded, land records have been open to the public. Information about who owned the land and who had an interest in it has always been accessible.

Land records were initially informal, with landowners relying on deeds, wills, and oral agreements to establish ownership. As settlements grew and land became a valuable commodity, colonial governments began to establish formal land registration systems to clarify property rights, which in turn facilitated economic growth.

While land records exist as far back as the 1600s, the Land Ordinance of 1785 and the Northwest Ordinance of 1787 laid the foundation for the orderly survey and sale of public lands in the newly formed United States. These ordinances introduced the rectangular survey system that divided land into townships and sections, as well as established the principle of public land disposition through auction or sale.

The 19th century brought a rapid expansion of land settlement as the population began to move westward. The General Land Office, established in 1812 by the federal government, played a central role in administering public lands and maintaining land records including patents, surveys, and cadastral maps.

The Homestead Act of 1862 granted free land to settlers who agreed to improve and cultivate the land. This legislation led to the distribution of millions of acres of public land and the creation of small family farms across the frontier.

Land record management advanced further in the 20th century with the introduction of modern cadastral surveys, title insurance, and standardized recording systems. The establishment of county-level recorders' offices facilitated the recording of and public access to deeds, mortgages, and other land-related documents.

Introduced in the late 20th century, digitalization of manual processes revolutionized land records management, with many jurisdictions transitioning from paper-based to electronic recording systems. Online databases and Geographic Information Systems (GIS) have improved the accuracy, efficiency, and accessibility of land records, which benefit property owners, real estate professionals, and government agencies.

Despite these advancements, challenges persist, such as fragmented land ownership, heirs' property, urban sprawl, property fraud, and land use conflicts. Addressing these challenges requires continued investment in technology, legal reforms, as well as government and business collaboration to ensure the integrity and sustainability of land administration systems for future generations.

The history of land records in the United States reflects the nation's commitment to the rule of law, private property rights, and economic opportunity. By embracing innovation and collaboration, the United States can continue to build upon its legacy of effective land governance and stewardship.

What Are Public Records?

The definition of "public record" varies from state to state. In general, a "public record" is a record that is required by law to be kept, filed, or recorded by a public official or office for the purpose of disseminating information or providing notice to the public.

What Are Land Records?

Land records are permanent public records that exist to provide constructive notice of interests in real property and include deeds and other instruments. The public records preserve evidence of facts which may not be known through actual (personal) knowledge. This means the records may be used as proof of the information they contain, regardless of a person's actual knowledge of their contents. These deeds and other instruments are created to convey rights or obligations between parties in a real estate transaction. After a real estate transaction is concluded, the documents are presented to the recorder for recording and indexing, making them available for public inspection and preservation.

For the majority of US recording jurisdictions, the land records include documents such as deeds, mortgages, assignments, liens, and satisfactions of mortgages and liens. These documents show who owns the land and who has an interest in that land. These records have always been permanent, meaning that the recorder has a responsibility to preserve them forever. Recorders do not change or interpret the content of documents; their responsibility is to keep and maintain a true and accurate copy. Additionally, these records have always been public, able to be searched, viewed, and copied in the recorder's office. Many recorders across the country also offer online access to indexes and images. Some states have laws that permit certain people to have their personal information redacted (covered over) or made confidential.

Due to the large volume of documents being recorded over the years, recorders created an index to help searchers find specific documents. You can think of the recorder's index as a library card catalog. It may be cross-referenced in several ways, but it leads you to the primary source: the recorded document. In most states, specific elements of the recorder's index are statutorily required such as grantor and grantee names. To improve the searchability of records, many recording jurisdictions have indexed additional data elements that go beyond the strict statutory indexing requirements.

Historically, the recorder physically copied by hand a deed or document about a tract of land into a large bound book and noted on the original or incoming document the book and page number where it was entered in the official land records. In the past, a trip to the county seat was required to inspect the book and to read the information. This practice is still in place in some jurisdictions today.

Technological advances have dramatically changed the way in which recorders operate their offices. Early handwritten transcriptions of document contents and their associated indexes were replaced by typewritten transcriptions of document contents and typewritten indexes. Microfilm became prevalent in the 1950s, taking a picture of the incoming document and keeping the image on a roll of film which could be viewed and printed using specialized film readers -printers. Microfiche, a small sheet of microfilm, became a popular form of storing large amounts of data in the 1960s and 70s. Photocopy machines appeared in the 1960s, along with the practice of pasting a photocopy of the document into the official record book. A significant number of recorders are now scanning incoming and historic documents, creating an electronic copy. What was in the past a heavily paper-based system with many manual steps and interventions has become increasingly more efficient as a result of these advancements. The industry continues to evolve as the majority of recorders across the country accept electronically submitted documents for recording.

The Value of Land Records

The value of open-to-the-public land records extends beyond the social and legal benefits provided by maintaining these records. Quoting Supreme Court Justice Louis Brandeis, from his book, *Other People's Money – and How Bankers Use It* (1914), "Publicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light the most efficient policeman." His belief in openness and transparency is as relevant today as it was in 1914.

The right to own real property was a key element of both the Declaration of Independence and the U.S. Constitution. Our founding fathers understood that constructive notice, through public recordation of real property records, was integral to the preservation of this right.

The recordation of instruments makes land title information available to interested persons, by giving notice to the public of the prior conveyances of, or encumbrances on, the property of a particular person.[1] State laws governing the recordation of land records are intended to prevent fraud in transactions by security certainty and publicity in such dealings.[2]

Land ownership and the ease of its transfer are commonly recognized as the roots of America's historic economic dominance. The certainty of ownership rights provided by public land record laws allows real estate to be used as collateral for credit, thus unlocking trillions of dollars of capital to fuel our economic engine.

[1] 76 C.J.S. Records §34
[2] 76 C.J.S. Records § 9

Who Owns and Provides Access to The Land Records?

The land records are owned by the public. The recorder, as custodian of the records, provides protection and public notice by recording, indexing, maintaining, and displaying land-related transactions. This makes it possible for the public to readily locate, review, and make copies of documents. Today it is common to print copies from microfilm or electronic images. It is also common for the recorder to provide access to the land records via the internet. Internet access offers a convenient alternative to going to the recorder's office.

Providing the land record information (indexes and images) online has been a valued service to the public, saving the customer time and money. Consumers of land records value the ability to search the recorder's records when and where they choose.

Some recorders are concerned about reactions from the citizens of their recording jurisdictions if land records images are made accessible online. These recorders prefer to have the public visit their offices to search their records and give the recorder an opportunity to connect with their customers.

Land Records, Personal Privacy, and Redaction

In the age of the internet, it is possible to find most anything on the web. There are those who believe that land records should not be available online, while others believe the land records should be available and open to everyone all the time. State legislatures and recorders have the means to weigh the risk versus the benefit of viewing certain information, whereas a portion of the public might denounce access to anything more detailed than a basic card catalogue-type index to the documents.

Concerns about personal privacy, fear of identity theft and other crimes may be escalated based on the perception that too much personal and private information is contained or available in the public land records. According to USA.gov, there are several ways that scammers can steal an individual's identity, including in person, online, through social media, and by phone. There will always be varying opinions on the issue of availability to the masses, but as custodian of the records, the recorder has a responsibility to abide by existing law or to propose new laws.

PRIA has previously studied and made recommendations on protecting the privacy of individuals in the area of the public land records. For additional information and commentary on privacy, redaction and record shielding, visit the PRIA website Resource Library.

At the federal level, access to and copies of public records are covered under the Freedom of Information Act (FOIA). Almost every state legislature has enacted its own version of this act; some states are more protective, while others are more liberal when it comes to accessing public records. A summary chart of the FOIA provisions by state is available here.

In many states, efforts have been undertaken to redact certain information such as social security numbers, financial institution/bank account numbers and addresses from the public records. For some jurisdictions the efforts were necessitated by statewide legislation. In other jurisdictions, the efforts were undertaken in response to public concerns about safety for certain at-risk parties and identity theft. The

compromise of removing specific data from public view allows the remaining record to be viewed by the public. The recorded document is viewable and printable; the specific personally identifiable information is removed from public view.

Business Use of Land Records

There are many business uses of land records. For example, the majority of transactions involving the transfer or financing of real estate require a search of the land records, and many creditors rely on land records to identify liens and judgments that may affect a consumer's or business's creditworthiness.

Perhaps the most prevalent business use of land records is the underwriting of title insurance. Title insurance provides the confidence necessary for private citizens, investors, lenders, and the secondary mortgage market to purchase or collateralize real property.

The system of recording land records is designed to provide notice to purchasers, mortgagors, lienholders and other interested parties of the prior conveyances of, or encumbrances on, the property of a particular person[3]; however, the notice provided by the land records only benefits one who has conducted a diligent search prior to purchasing or taking a security interest in a property.

A land records search is commonly performed by an individual with specialized training, such as a real estate attorney or title abstractor; however, even the most thorough search cannot provide absolute assurance that no title hazards are present. In 1876, the first title insurance company was formed to protect the investments of owners and lenders from these risks.

Title insurance is designed to protect owners and lenders against loss or damage incurred by reason of defective title, liens, or encumbrances that are not identified in the policy. A title insurance policy is underwritten, in part, by searching the land records to create or update an abstract identifying the current owner(s) of the land, the chain of title, and any liens or encumbrances. Title insurance companies and their agents depend upon quick and cost-effective access to land records and other public records, such as property tax and court records.

In some states, a title insurance underwriter or agent must own and maintain a title plant index to conduct the business of title insurance. Unlike the land record index maintained by the recorder, which is at a minimum a grantor/grantee index, states that require title plants typically require the title plant include both a general index (by grantor/grantee) and a tract or geographic index. The title plant indexes are created by acquiring images of the recorded land records over a time span and then indexing the images in accordance with state law and business requirements. Once the initial title plant is created, the indexes are maintained by acquiring images of the recorded land records on a go-forward basis, typically daily or weekly, and updating the indexes accordingly.

In counties where states do not require title plants, title companies have still found value in maintaining title plants. Title plants are designed to make the search and examination process as efficient and accurate as possible. This is accomplished through various methods, including:

[3] 76 C.J.S. Records § 9

- Use of standardized indexing procedures across multiple counties and states.
- Use of standardized, more comprehensive geographic indexing to ensure that any document affecting title to a parcel of real property is indexed to that property.
- Using court records and property tax records to supplement land record data and eliminate the need to search multiple databases.
- Integration with title policy production systems.
- Use of software specifically designed to simplify the title search process.

Title insurance companies have utilized title plants for decades. The technologies used have advanced accordingly over time, much like that of the recorders, evolving from handwritten ledgers and paper document copies to microfilm, advanced database technologies, and electronic document images.

Title insurance companies are not the only industry reliant upon the public land records. Oil and gas companies, utilities, land appraisers and surveyors, real estate agencies, credit bureaus, genealogists, and other government agencies, to name a few, rely upon the public land records to perform their services.

Conclusion

From ancient cadastral surveys to modern digital databases, land records have served as crucial tools for property ownership, legal disputes, and economic development. They provide valuable insights into past land use, ownership patterns, and societal structures. The ongoing evolution of land records offers enhanced transparency, accessibility, and accuracy, ensuring that these records continue to play a vital role in governance and economic planning. The journey of land records, rich in historical significance, also underscores the importance of maintaining and improving these systems to meet the needs of future generations. Land records have become part of the critical infrastructure of our information economy, contributing to the public good.

The Founding Fathers' preference for having land records managed by locally elected officials reflects their broader philosophy of decentralization and local governance. They believed that local control would ensure greater accountability and responsiveness to the needs of the community. By keeping land records at the local level, they aimed to protect property rights, prevent corruption, and maintain transparency in land ownership, which was foundational to individual liberty and economic development.[4]

[4] https://www.yalelawjournal.org/article/property-and-sovereignty-in-america-a-history-of-title-registries-jurisdictional-power