

ALABAMA

TITLE SEARCHES AND EXAMINATION:

In the State of Alabama, a title search generally covers the prior forty to sixty years, unless there is a reason to search beyond that time frame. This procedure has been established by trade practice. A title search is not required, but recommended. Title records are recorded with the Judge for Probate in the county where the land is situated. Ala. Code § 35-11-215.

Jefferson, Shelby, Mobile, and Tuscaloosa counties use title plants for searches, while Montgomery County uses abstracts. Most other counties search the records from the Probate office.

Search and examination fees are not included in the title insurance fee and are an additional charge. In Alabama, title insurance agents and rates are not regulated. Some fees may be negotiable.

VESTING:

The State of Alabama recognizes tenancy in common and joint tenancies. There is no right of survivorship for tenancies in common. Joint tenancies have a right of survivorship. If spouses hold title as joint tenants, there is a right of survivorship when one spouse dies so long as it is stated in the instrument creating such tenancy that such tenancy is with right of survivorship or other words used therein showing such intention. Id. § 35-4-7.

Alabama is not a community property state, and the principles of dower and curtesy have been abolished and thus not applicable.

Real property may be conveyed by (1) warranty deeds, (2) limited warranty deeds, (3) special warranty deeds, and (4) quitclaim deeds. A valid conveyance requires a legal description of the property, identified competent parties, marital status of the parties, and specific language showing the grantor's intent to convey. The requirements of acknowledging a conveyance are that it must be apparent, known, the parties must be informed of contents, and sign voluntarily. See Id. § 35-4-20—35-4-34.

Conveyance instruments must meet the common-law requirements of including legal description, competent parties, names of parties, marital status of parties, words of grant, and acknowledgment.

DECEDENTS' ESTATES:

When an individual dies without a will, one must look to the inheritance statutes in effect at the time of the decedent's death to find out where title to real estate is vested. It is prudent to require an administration of an intestate estate. It would be risky and negligence to take a self-serving affidavit from a spouse that the spouse had absolute authority to convey title without the children joining in.

The Probate Court would be the proper authority to determine if the entire estate was worth less than \$50,000.00, and that there was no need for anyone other than the spouse to convey title.

Additionally, if there is no administration of decedent's estate, creditors under Ala. Code § 6-2-41 have up to two years to file for an administration. Thus, we often refer to the fact that there is a two-year non-claims period where intestate succession is involved.

MORTGAGES, LIENS, AND FORECLOSURE:

Alabama is a title theory state, which means that the title is held in trust until the mortgage is paid

ARIZONA

For claims regarding deficiencies in construction and improvement to real property, there is a statute of limitations running 8 years, unless the defect was discovered on the 8th year, in which case the homeowner has an additional year to bring actions to recover damages. Ariz. Rev. Stat. § 12-552.

REAL ESTATE CLOSINGS:

Escrow agents who are title company employees usually conduct a residential closing. Then, escrow receives the contract from parties or their agents and the title commitment is ordered. Escrow requests payoffs, draws or receives documents, takes signatures, addresses commitment requirements, and completes the settlement statement. It then receives and disburses funds, and records documents (Arizona provides that companies may use their form closing protection letters pursuant Ariz. Rev. Stat. § 6-841.02). Escrow agents, lawyers, or real estate agents can prepare closing documents. The State Banking Department regulates escrow agents.

For commercial or industrial closings, the contract or escrow instructions are deposited. The title commitment is requested and distributed. The escrow agent draws standard documents supplied by attorneys. The conditions of escrow are performed, as in residential closings, funds are received, documents are recorded, and funds are disbursed.

Closing costs are usually split between the seller and buyer equally. The seller generally pays for the owner's title policy. It is highly uncommon to disburse a loan before recording. Escrow agents are licensed by the Department of Financial Institutions.

Closers may work from either contract or escrow instructions. The trend is moving toward using contract instructions (there has been a standard form promulgated by the realtor's association) with an Addendum containing escrow agents' specific instructions. Settlements are conducted in escrow. Funds are disbursed after recording. Escrow is considered closed at recordation and the resultant disbursement. Recordation is a primary factor.

Arizona has enacted a "good funds" law (id. § 6-843), effective August 22, 2002.

RECORDING REGULATIONS:

Arizona has a notice recording statute (id. § 33-411; id, § 33-412).

All instruments presented for recording must be in ten-point type font; contain a two-inch margin at the top of the page, and half-inch side and bottom margins.

For additional recording requirements, see id. § 33-411. For specific requirements of recording release documents, see id. § 33-707.

PROPERTY TAXES:

In Arizona, real property and personal property tax is due on October 1 for the first half, and on March 1 for the second half. Unpaid taxes become delinquent after November 1. Id. § 42-18052.

Property taxes are billed in September and are payable in two installments. The first installment is due on October 1 and delinquent after November 1 for tax bills over \$100. After 5:00pm on December 31, full year tax bills become delinquent. All tax bills under \$100 must be paid prior to that time. A lien on the property is filed on January 1 for all properties with delinquent taxes.

Pursuant to Ariz. Rev. Stat. § 42-18114, the county treasurer "sells" real estate tax liens. The lien expires ten years after the last day of the month in which the lien was acquired. The purchaser of a

DISTRICT OF COLUMBIA

TITLE SEARCHES AND EXAMINATIONS:

All land titles are checked back sixty years. A title examination would involve either a full 60-year search of the above-referenced records or a modified title search from a "starter" or "statement of early title" from a title plant. The District of Columbia does not have accepted title standards.

Until 2011, DC title insurance premiums and settlement fees were negotiable. Title underwriting companies published rates and title agents negotiated with consumers. The revised laws that took effect in 2011 regulated and licensed title insurance underwriters, agents, rates and affected continuing education requirements. Large real estate brokerage firms with affiliated business arrangements with title companies benefitted from the change, which resulted in increased costs to home buyers. These arrangements are typically between real estate brokers, mortgage lenders and/or title insurance companies.

The District of Columbia requires title insurers to file rates. A title insurer or title insurance producer may charge any rates regulated by the District of Columbia; provided, that in accordance with the premium rate schedule and manual filed by the title insurer with and approved by the Commissioner in accordance with applicable law and rules governing rate filings. D.C. Code § 31-5031.17.

On July 2, 2010, as part of the Fiscal Year 2011 Budget Support Act of 2010, the District of Columbia enacted the Title Insurance Insurer Act of 2010 and the Title Insurance Producer Act of 2010. The Acts subject title insurers and title insurance agents operating in the District of Columbia to comprehensive regulation by the D.C. Department of Insurance, Securities and Banking, effective January 1, 2011.

In the District of Columbia, a title examination would include a review of the records of the following offices: Office of the Recorder of Deeds (land records), Office of the Register of Wills, Office of the Surveyor, Superior Court of the District of Columbia Civil Division, Superior Court of the District of Columbia Family Division-Domestic Relations Branch, United States Bankruptcy Court for the District of Columbia, and the United States District Court for the District of Columbia.

Name and address of state agency from which certified copies of death certificates are secured:
Department of Health, Vital Records Division, 899 North Capitol Street, NE - First Floor, Washington, DC 20002.

VESTING:

The District of Columbia recognizes tenancies in common, joint tenancies, and tenancies by the entirety. D.C. Code § 42-516. The non-titled spouse is not required to sign the security instrument.

The District of Columbia is not a community property jurisdiction. In the District of Columbia, the homestead exemption applies to real property, including your home or condominium, or your interest or your dependents' interest in a co-op in which you or your dependents reside. See D.C. Code § 15-501.

When a conveyance is made to two or more persons a tenancy in common is construed, unless expressly declared to be a joint tenancy. D.C. Code § 42-516. A conveyance to husband and wife as joint tenants generally creates a tenancy by the entireties.

The District of Columbia follows the common law doctrine of the merger of contract into deed.

The District of Columbia abolished dower for all transfers on or subsequent to April 27, 2001, Id. § 19-102.

HAWAII

MORTGAGES, LIENS, AND FORECLOSURE:

Hawaii is a lien theory state, which means that a transfer of an interest in real property to secure the performance of an act creates a lien only; it does not pass title (HRS §-506-1(a)).

For adverse-possession requirements, see HRS § 657-31.5 ; twenty years limited to five or fewer acres; the person claiming adverse possession must have asserted no similar claim, in good faith, within the past twenty years, unless that claim was made before November 7, 1978.

A release of mortgage or satisfaction of mortgage is used to cancel a mortgage liens of record.

Builder warranties provided by statute: see HRS § 444-26; owners or lessees of private residences, including condominiums and cooperatives, may recover up to \$12,500.00 from the state-run "Contractor's Recovery Fund." Damages are limited to actions occurring from additions and improvements.

There is a two-year statute of limitations applicable to actions arising from deficiencies in construction, or improvements to real property (Id. § 657-8). This cause of action does not apply to owners and surveyors.

Foreclosure is usually by judicial means; non-judicial foreclosures are increasing in popularity. See HRS § 667 et seq. regarding the minimum time for the foreclosure process. There is no redemption period after sale.

Statute of Limitations for Liens	
Judgment Liens in Favor of United States	20 years
Judgments for Hawaii State Courts	10 years; 6 years if judgment
Hawaii Tax Liens	15 years
Mechanics Liens	45 days after the date of completion

REAL ESTATE CLOSINGS:

A closing is usually conducted by an escrow company or a title company. Escrow companies must be licensed by the Financial Institutions Division of the Department of Commerce and Consumer Affairs.

HRS § 449-16 provides that an escrow may not disburse funds until funds have been received and final settlement of the deposit has occurred.

Attorneys prepare conveyance and loan documents used in real estate transactions. Title and escrow companies prepare escrow instructions and closing statements. Escrow companies are prohibited by law from preparing any other transactional documents. Closing costs are usually split between the buyer and seller, or as set forth in the contract. The use of a power of attorney in a closing is permitted. The customary security agreement is a mortgage.

INDIANA

Statute of Limitations for Liens

Mortgages	21 years from maturity date
Judgment liens in favor of the United States	20 years
All other Judgment Liens	20 years
All State of Indiana Tax Liens	10 years
Federal Tax Liens	10 years
Mechanics Liens	60 Days (Residential); 90 Days (Commercial)
Estate Tax	10 years from date of death
Personal Property Tax Liens	10 years
Workers' Compensation Liens	10 years

REAL ESTATE CLOSINGS:

A title insurance representative or agent conducts most residential closings. Indiana is a "Wet Funding" state. Real estate closings can be conducted by anyone. Lawyers or the parties to the transaction can prepare documents. The lender's employees can prepare mortgages and other loan documents.

Closing costs are usually negotiable, unless the lender has specific requirements. A power of attorney is acceptable so long as it is recorded. The customary security agreement is a mortgage.

RECORDING REGULATIONS:

Indiana follows a race-notice recording statute. A valid recording must have the proper acknowledgments. The physical requirements for recording documents under Ind. Code Ann. § 36-2-11-16.5 are as follows: paper size no larger than 8.5 inches; white paper of at least 20 pounds weight only; minimum margins on first and last pages of 2 inches (top and bottom) and 2 inches (each side); minimum margins on each interior page of 2 inches on top, bottom, and sides. Documents must be typed, written, or computer generated in black ink in at least 10-point type, and permanently bound documents and continuous form paper is forbidden.

Non-conforming documents are still recordable, however, the recorder may attach additional pages as needed and collect \$1.00 additional fees for each non-conforming page. These requirements do not apply to judgment orders of court wills, death certificates, plats, or surveys.

Pursuant to Ind. Code Ann. § 6-1.1-5.5-5, a standard sales disclosure form must be filed with the auditor's office. A filing fee applies when filing instruments.

PROPERTY TAXES:

Property taxes are levied on March 1. Property taxes can be paid in installments, due and payable in two equal installments on May 10 and November 10 of the following year. There is currently no interest rate on installment tax payments.

MARYLAND

A judgment from the court is needed to confirm title to property purchased for taxes. Md. Code Ann., Tax-Prop. §§ 14-845, 14-847 (1994 & Supp. 1990).

DECEDENTS' ESTATES:

The state imposes inheritance taxes on estates. The inheritance tax rate is 10% of the clear value of the property that passes from a decedent. Clear value refers to the fair market value minus expenses (Md. Code Ann., Tax-Gen. § 7-204 (1994 & Supp. 1990) (LexisNexis, Lexis Advance through June 1, 2018)).

The inheritance tax does not apply to the receipt of property that passes from a decedent to or for the use of:

- a grandparent of the decedent;
- a parent of the decedent;
- a spouse of the decedent;
- a child of the decedent or a lineal descendant of a child of the decedent;
- a spouse of a child of the decedent or a spouse of a lineal descendant of a child of the decedent;
- a surviving spouse of a deceased child of the decedent or of a deceased lineal descendant of a child of the decedent who was married to the child or lineal descendant of the child at the time of the child's or lineal descendant death;
- a brother or sister of the decedent; or
- a corporation, partnership, or limited liability company if all of its stockholders, partners, or members consist of individuals specified in items (i) through (vii) of this paragraph.

(Md. Code Ann., Tax-Gen. § 7-203 (1994 & Supp. 1990) (LexisNexis, Lexis Advance through June 1, 2018)).

MORTGAGES, LIENS, AND FORECLOSURE:

Maryland is a title theory state. Judgment liens expire after twelve years, unless renewed by filing a notice of renewal before the expiration of the lien. See Md. Rule 3-625 (1986).

The requirements of adverse possession are the common law requirements of exclusive, continuous, open and hostile for 20 years (Md. Code Ann., Cts. & Jud. Proc. § 5-103 (LexisNexis, Lexis Advance through June 1, 2018)).

Sellers who finance part of the sale price for the buyer are entitled to a purchase-money mortgage; see Md. Code Ann., Real Prop. § 7-104 (1988).

To cancel mortgage liens of record, a release or certificate of satisfaction must be filed. If a lender fails to cancel a lien of record after secured debt is paid in full Md. Code Ann., Real Prop. § 7-106 (1988) prescribes penalties.

Builder warranties provided by statute. See Md. Code Ann., Real Prop. § 10-601 (1988) to 10-610 (1998).

MASSACHUSETTS

PREFACE:

Massachusetts does not require a license for title insurance agents or agencies. However, this does not mean that an applicant can simply get started by contracting with an underwriter. Because of a past incident in which an attorney sought to effectively monopolize the title insurance practice in the state, a lobbying effort was launched to impose stricter regulations on the industry. The Massachusetts Bar Association wrote an advisory opinion stating that closing a loan in the state of Massachusetts is the practice of law. Subsequently, real estate attorneys who were interested in issuing title insurance formed the Real Estate Bar Association of Massachusetts (REBA). REBA was known for sending cease and desist letters to title agencies, alleging that the agencies are engaging in the unauthorized practice of law.

In 2009, this influential association brought a massive lawsuit against National Real Estate Information Services (NREIS), a powerful national title agency. The case pitted Massachusetts real estate closing attorneys against out-of-state non-attorney settlement service providers that were attempting to perform "witness or notary" closings in the state of Massachusetts.

The Massachusetts Supreme Court ruled on The Real Estate Bar Association (REBA) v. National Estate Information Services (NREIS) in April of 2011. The Court's ruling essentially reaffirmed Massachusetts attorneys' long-standing role to oversee the closing process and conduct closings.

Massachusetts attorneys must be present for closings and take an active role in the transaction both before and after the closing; this requirement applies to purchases and refinances. Most significantly, the court's ruling forbade the use of "robo-attorneys." Previously, title agencies engaged the services of "robo-signing" attorneys, whose role was to be present at the closing (i.e., meeting clients for the first time, witnessing signatures, and blindly signing unfamiliar documents). However, because these attorneys were not meaningfully participating in the transaction from the start, and the rote functionality during the closing defeated the purpose of the attorney requirement according to the court's opinion, the practice was invalidated.

Secondly, the court held that attorneys are required to draft deeds as well as effectuate the transaction. This obligation includes ensuring the proper recordation of that deed and mortgage, the proper disbursement of funds to the appropriate parties, and the proper release of prior mortgages and liens.

On a positive note for title insurance agents, the court ruled that title abstracts, title insurance, and other administrative functions may be properly delegated to non-attorneys. The court also recognized that, consistent with modern practices, many functions in the real estate transaction need not be performed by an attorney, including the following: the preparation of title abstracts by title examiners at the registries of deeds; the issuance of title insurance policies; and the preparation of closing documents and the HUD Settlement Statement.

TITLE SEARCHES AND EXAMINATIONS:

All land titles are checked back fifty years (Mass. Ann. Laws ch. 93, § 70). Title examinations are conducted in the appropriate County Registry of Deeds of where the property is located. The attorney then reviews the title and makes a determination of title. The attorney then certifies the title to a buyer, lender, or title insurance company. The certification of title is determined to be the practice of law in Massachusetts.

MINNESOTA

REAL ESTATE CLOSINGS:

Real estate closing services may be provided by lawyers, real estate brokers, real estate salespersons, real estate closing agents, lenders, and title companies. Closing costs are usually not negotiated.

Title insurance companies generally conduct closings for Minnesota property. State law and local customs require good funds at settlement. The customary land security agreement is a mortgage.

A power of attorney is permitted for the closings. However, the preferred form is the Minnesota Statutory Short Form. A power of attorney between spouses created before January 1, 1996, remains invalid. A power of attorney between spouses created after January 1, 1996, is valid.

RECORDING REGULATIONS:

The Minnesota recording act is a race-notice act. Documents are recorded in the office of the county recorder or the registrar of titles.

REQUIREMENTS FOR RECORDINGS:

The document shall consist of one or more individual sheets measuring no larger than 8.5 inches by 14 inches.

The form of the document shall be printed, typewritten, or computer generated in black ink, and the form of the document shall not be smaller than 8-point type.

The document shall be on white paper of not less than 20-pound weight with no background color, images, or writing, and shall have a clear border of approximately one-half inch on the top, bottom, and each side.

The first page of the document shall contain a blank space at the top measuring three inches, as measured from the top of the page. The right half is to be used by the county recorder for recording information or registrar of titles for filing information; the left half is to be used by the county auditor or treasurer for certification.

The title of the document shall be prominently displayed at the top of the first page below the blank space referred to above.

A document presented for recording or filing must be sufficiently legible to reproduce a readable copy using the county recorder's or registrar of titles' current method of reproduction.

[Standards for Document Recording, see Minn. Stat. Ann. § 507.093]

PROPERTY TAXES:

Property taxes are levied on January 1 and are due the following year. Property taxes can be paid in two installments due on May 15 and October 15.

See Minn. Stat. Ann. § 510.01 et seq. for detailed treatment of homestead laws.

The homestead may include any quantity of land not exceeding 160 acres. The exemption per homestead, whether the exemption is claimed by one or more debtors, may not exceed \$ 390,000 or, if the homestead is used primarily for agricultural purposes, \$ 975,000, exclusive of the limitations set forth in section 510.05 (Minn. Stat. Ann. § 510.02).

NEW JERSEY

RECORDING REGULATIONS:

New Jersey's Recording Act is a race-notice act.

N.J. Stat. § 46:26A-3 provides that in order for an instrument to be recorded, the following prerequisites must be met: the instrument must be in English or accompanied by an English translation; the instrument must be signed (under id. § 46:14-4.2, a signature includes "any mark made on a document by a person who thereby intends to give legal effect to the document ...").

Seals are no longer required from any party including corporations: the instrument must be acknowledged; the names of the signatories and the officer taking the acknowledgment must be typed or printed underneath each respective signature; and the recording fee must be paid. The acknowledgment must be taken by a person authorized by law to take acknowledgments. Note: New Jersey lawyers have extraterritorial authority to take acknowledgments affecting New Jersey subjects.

Special deed recording requirements: a statement as to consideration for transfer tax purposes, the name and signature of the preparer on the first page, and the municipal tax lot and block designation of the property being conveyed. For deeds conveying real property on which there has been new construction, the words "NEW CONSTRUCTION" must be printed clearly at the top of the first page of the deed in upper case lettering (N.J. Stat. § 46:15-6).

The Realty Transfer Fee (RTF) (N.J. Stat. § 46:15-5, et seq.), which replaced the Federal Revenue Stamp Tax, is imposed on deeds conveying "freehold estates" (which include fee simple conveyances and life estates) and leases for a term of 99 years or more. Proprietary leases (and assignments thereof) of cooperative units are also included.

As a supplemental fee to the RTF, id. 46:15-7.2 imposes a fee on the recording of the deed for the sale of real property when the consideration paid is more than \$1,000,000. While the seller pays the RTF, the buyer pays this supplemental fee of one percent of the consideration recited in the deed. This additional fee applies to all deeds where the land conveyed is classified as follows: Class 2 residential; Class 3A where the property is a farm (but only if the farmland contains a building or structure intended or suited for residential use); Class 4A commercial (other than industrial or apartment); and Class 4C cooperative units. New Jersey recognizes certain exemptions from the supplemental fee. Information on the exemptions is in Box (2)(B) of the Form RTF-1EE.

RTF-1EE is the Affidavit of Consideration for Use by Buyers and must be annexed to every deed for consideration over \$1,000,000 and with every commercial property transfer.

PROPERTY TAXES:

Property taxes are payable in quarterly installments on February 1, May 1, August 1, and November 1. Tax bills for the first half of the year are estimated and based on the prior year's taxes. Actual bills are sent during the second quarter, affecting payments for the second half. Second half payments adjust for changes in rate. Prorations during the second half are customarily based on the bill for the full year. Delinquent tax payments are charged interest set by each municipality, not to exceed 8 percent on the first \$1,500.00 and 18 percent on any amount in excess of \$1,500.00. There are further penalties that can make the interest rate go past 24 percent if the total delinquency exceeds \$10,000 in a year.

Municipal real property taxes become a lien on the property as of January 1 of the tax year. Real estate taxes, as well as utility charges (water, sewer, electric, etc.), owed to a municipally or other governmental authority become paramount liens if they are unpaid (N.J. Stat. § 54:5-9 and N.J. Stat. § 40.62.79).

NEW YORK

TITLE SEARCHES AND EXAMINATIONS:

While there are no established statewide title standards, a 40-year search is the customary search period. The New York State Land Title Association has released "Recommended Practices" which most of the industry adheres to.

Title insurance policies and endorsements are American Land Title Association forms. Special rates are given in cases of refinances within ten years of last policy. New York requires insurance companies to file their rates with the New York State Insurance Department. No title insurance policy or endorsement may be issued until it has been filed with the Insurance Department. Title insurance rates (downstate only) include search and examination. Do not charge a search fee in the zones in which the fee is included in the premium. When reissuing title insurance, it is important to confirm the accuracy of the reissue rate on all applicable files.

In counties which have a Register (Bronx, Kings, New York, and Queens), deeds, mortgages, UCC-1s indexed against real property and federal liens are recorded/filed in the Register's Office of the county in which the property is located. In all other counties, deeds, mortgages, UCC-1s indexed against real property and Federal Liens, are recorded/filed in the County Clerk's Office of the county in which the property is located. In all counties, judgments, notices of pendency, mechanic's liens, and UCC-1s against personal property, are docketed/filed in the County Clerk's office.

VESTING:

New York State recognizes joint tenancies, tenancies in common, and tenancies by the entirety. The non-titled spouse is not required to join in the execution of the security instrument. Property, real or personal, may be held by spouses as tenants in common or as joint tenants.

Unless stated to the contrary, real property obtained by spouses is taken as tenants by the entirety. A tenancy by the entirety may be severed by the spouses by a conveyance to themselves as tenants in common or joint tenants. In addition, upon a divorce or annulment, the tenancy by the entirety is converted by operation of law into a tenancy in common. Dower and courtesy have been abolished.

Conveyance is by bargain-and-sale deed without covenant. Bargain-and-sale deeds with covenant are used for transferring ownership of real property. The conveyance instrument must include the names and addresses of parties, the legal description of the property, the tax designation of land, and an acknowledgment. See N.Y. Real Prop. Law § 258.

A conveyance made to two or more persons is construed as a tenancy in common. If the conveyance is to husband and wife, a tenancy by the entirety is presumed unless otherwise intended. See N.Y. Est. Powers & Trusts Law § 6-2.2.

If the contract includes minerals, they cannot be excluded from the transfer instrument.

The state's interpretation of the doctrine of merger, absent provision or clear language, looks to the intent of the parties.

Deed transfers must be submitted with an Equalization & Assessment Report (EA-5217 or RP-5217). The property transfer tax return (Form NYC-RPT) is used in the five counties in New York City. Transfer

Tax Affidavit (TP-584, TP-584.1) must be used to comply with the real estate transfer tax requirements. An estate tax affidavit may be required upon the death of a spouse should title be held as joint