Title Investigation

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SOURCE
Land Trust Alliance

ABOUT THIS GUIDANCE
Ownership of land changes over time, and those purchasing land must have knowledge of who owned the land ("title") for a certain number of years to ensure that their purchase is valid and cannot be contested. This document provides an overview of title, various types of deeds and ownership, title insurance and its importance and legal descriptions. Included at the end are exercises to test your knowledge.

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Creating title

Ownership of land changes over time, and those purchasing land must have knowledge of who owned the land for a certain number of years in order to ensure that their purchase is valid and cannot be contested. A history of how title passed from one owner to the next owner is called a “chain.” The chain of title for every piece of land in this country begins with ownership by some country (the United States, England, France, Spain, Mexico or Russia). The first conveyance of title from a certain nation or state to another entity (including a private individual) begins a chain of title. How far back a land trust needs to look into a chain of title depends on many factors: the nature of the transaction, the likelihood of past uses affecting the conservation values of the land, state laws governing recording and re-recording (marketable title acts), title search custom and practice for your area, the degree of risk a land trust is willing assume, whether a fee or easement acquisition, and the land trust’s general knowledge of the area. In consultation with your attorney, follow general procedures, but each deal may require more investigation.

You may need to direct the title company to provide a chain of title along with the title commitment. In some areas of the country, it is common for a title company to go back a certain number of years, say 30, 40 or 50 (for example, in Michigan there is a 40-year marketable title act, so title companies tend to only go back 40 years). Also, if a land trust is completing a project cooperatively with a government agency, the agency may require a complete chain of title for its review or a 50-year chain of title. For example, the US Environmental Protection Agency’s All Appropriate Inquiries (AAI) rule requires an environmental professional’s review of the chain of title, often as far back as 40 years.
Sample Chain of Title

Special Warranty Deed from Piper J. Jones to Cottonwood Farms, a Colorado corporation, recorded May 1, 1990 in Book 83 at Page 312

Personal Representative’s Deed from Estate of Rebecca T. Jones to Piper F. Jones, recorded April 10, 1990 in Book 83 at Page 243

Quitclaim Deed from Ronald L. Jones to Ronald L. Jones and Rebecca T. Jones as joint tenants, recorded November 16, 1930 in Book 17 at Page 19

Warranty Deed from Charles Smith to Ronald L. Jones, recorded March 3, 1920 in Book 15 at Page 2

US Patent to Charles Smith, recorded July 8, 1898 in Book 4 at Page 10

Figure 3-1: Sample Chain of Title

<table>
<thead>
<tr>
<th>BOOK/PAGE</th>
<th>GRANTOR</th>
<th>GRANTEE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Book 4 at Page 10</td>
<td>US</td>
<td>Charles Smith</td>
</tr>
<tr>
<td>Book 15 at Page 2</td>
<td>Charles Smith</td>
<td>Ronald L. Jones</td>
</tr>
<tr>
<td>Book 17 at Page 19</td>
<td>Ronald L. Jones</td>
<td>Ronald L. Jones and Rebecca T. Jones</td>
</tr>
<tr>
<td>Book 83 at Page 243</td>
<td>Estate of Rebecca T. Jones</td>
<td>Piper F. Jones</td>
</tr>
<tr>
<td>Book 83 at Page 312</td>
<td>Piper F. Jones</td>
<td>Cottonwood Farms, a Colorado corporation</td>
</tr>
</tbody>
</table>

Figure 3-2: Sample Grantor/Grantee Index

Land trusts should go back as far as they deem necessary to satisfy themselves of good title. A title company may have a different rationale for how far back to research title than a land trust. Title companies are in the business of risk assessment, but land trusts are in the business of protecting land permanently. Land trusts should resist any pressure to limit the extent of a title search it deems necessary to protect land.

Figure 3-1 is a sample chain of title that was created from the chart of Grantor/Grantee Index (figure 3-2) that is similar to one found in a title company's records. Beginning with the earliest owner, the United States, the chain shows how title passed to many individuals. Each owner is
linked to the next so that a chain is formed. An unbroken chain of title can be traced through linking conveyances from the present owner, Cottonwood Farms, back to the earliest recorded owner.

Most of us think of title as passing from one person to another by deed, but title is created in a number of different ways. In addition to deeds of conveyance, title can be created by patents, land grants, wills, inheritance, court decrees or operation of law.

**Patents**

Patents can be created from United States patents, state patents or land grants. A patent is a conveyance of ownership from a nation or state to an individual, and begins the chain of title. A land patent should not be confused with a patent on intellectual property that grants the holder exclusive rights to make, sell and use an invention for a limited period of time. Awards of new land patents are theoretically possible (if unlikely) because vacant public lands still exist that are public domain lands, never having left federal ownership and not reserved, withdrawn, dedicated or set aside for a certain purpose. These lands are located mainly in 11 western states, although scattered parcels exist in some eastern states as well. The most commonly patented lands in recent times are those patented for mineral development; however, a moratorium on the issuance of new patents for mineral development has been in place since 1994.

**Deeds**

A deed is a written instrument that, when executed and delivered, conveys title to or an interest in real estate. A deed can take several forms, depending on the extent of the grantor’s pledges to the grantee. The most common types of deeds include warranty or general warranty deed, special warranty deed, bargain sale deed, quitclaim deed, deed executed pursuant to court order, deed in trust and trustee’s deed.

*Warranty deed or general warranty deed.* A general warranty deed provides the greatest protection of any deed. It is called a warranty deed because the grantor is legally bound by certain covenants or warranties. In all but the most unusual cases, land trusts should acquire interests in land through a general warranty deed, because it provides the greatest protection in case there is a challenge to title. Essentially the grantor of a general warranty deed agrees to guarantee good title to the property against any claimants. The basic warranties are as follows:

- The grantor warrants that he or she owns the property and has the right to convey title to it.
- The grantor warrants that the property is free from liens or encumbrances, except for any specifically stated in the deed.
- The grantor guarantees that the grantee’s title will be good against third parties who might bring court actions to establish superior title to the property.
- The grantor promises to obtain and deliver any instrument needed to make the title good.
- The grantor promises to compensate the grantee for the loss sustained if the title fails at any time in the future.

*Special warranty deed.* Special warranty deeds may be appropriate in those unique circumstances when a landowner acquired title to a property that may have clouds in the title that the landowner either could not or would not take action to clear up. For example, land trusts in the Rocky Mountains will sometimes agree to accept a special warranty deed for the conveyance of mining claims, because such claims often have a chain of title that is difficult or expensive to clear. A special warranty deed essentially means the grantor guarantees title to the land during his or her ownership only. A special warranty deed contains two basic warranties:
That the grantor received title

That the property was not encumbered during the time the grantor held title, except as otherwise noted in the deed

Bargain and sale deed. This deed contains no express warranties against encumbrances and therefore should only be accepted by land trusts in a situation where the risks of accepting title in such manner have been thoroughly examined by both the land trust’s attorney and its staff and board. A bargain and sale deed does, however, imply that the grantor holds title and possession of the property. In some areas, this deed is used in foreclosures and tax sales. Because the warranty is not specifically stated, the grantee has little legal recourse if title defects appear later. (This term is not to be confused with a bargain sale of property in which a landowner sells below fair market value and donates a portion of the value to the land trust. A bargain sale can be conveyed by any type of deed).

Quitclaim deed. A quitclaim deed provides the grantee with the least protection of any deed. It carries no covenants or warranties and generally conveys only whatever interest the grantor may have when the deed is delivered. If the grantor has no interest, the grantee will acquire nothing, nor will the grantee acquire any right of warranty claim against the grantor. Accepting land by quitclaim deed should rarely occur and requires additional attention and due diligence on the part of the grantee and thorough examination of the risk of accepting such a deed by the land trust’s attorney, staff, and board. These types of deeds are sometimes used to clear up clouds or defects in title, such as when a landowner is concerned that a neighbor may have acquired part of the landowner’s property through adverse possession and the neighbor agrees to resolve the dispute by conveying a quitclaim deed to the area of land in question. By using a quitclaim deed, the neighbor conveys any interest the neighbor may have acquired by operation of law to the landowner without warranting that the neighbor actually perfected title to the land.

Types of deeds do vary from state to state. For example, in Massachusetts a quitclaim deed includes warranties. Check with legal counsel for the specifics of your region.

Deed executed pursuant to court order. Executors’ and administrators’ deeds, masters’ deeds, sheriffs’ deeds and many other types are all deeds executed pursuant to a court order. These deeds are established by state statute and are used to convey title to property that is transferred by court order (such as through a partition suit where multiple owners of the same land sue to have the land apportioned among them) or by will.

Deed in trust. A deed in trust (or, more commonly, deed of trust) is the means by which a trustor (borrower) conveys real estate to a trustee for the benefit of a beneficiary (lender) as security for a loan. The real estate is held by the trustee to fulfill the purpose of the trust, but the trustor retains equitable title to and possession of the real estate. A deed of trust is similar to a mortgage, except for the presence of an independent third party that does not represent either the borrower or the lender (the trustee).

Trustee’s deed. A deed executed by a trustee is a trustee’s deed. It is used when a trustee conveys real estate held in the trust to anyone other than the trustor, such as in a land foreclosure action or sale of the land for failure to pay property taxes.

There are other (less common) types of deeds that vary from state to state.

Generally speaking, land trusts should be cautious about accepting a donation of the fee interest in land title assurance is not sufficient, and the land trust goes on to obtain title insurance. Some land trusts, however, when acquiring donated conservation easements, believe they can become sufficiently assured about the status of title and any exceptions to title by thoroughly reviewing a title report or title commitment (with the assistance of their attorney) that they can forego the additional expense of title insurance. There is a long and interesting history of how
title assurance evolved into title insurance. Suffice to say that as the land ownership histories in our country grew more complex, the practice of assuring title eventually led to the title insurance industry.

The importance of due diligence for gifts

A conservation-minded landowner in Texas wanted her land to become a nature preserve after her death, but she failed to designate an organization to which the land would be conveyed by her estate. The Texas Attorney General subsequently found a land trust willing to accept the real estate as a trustee of a trust created to hold the land and to manage it as the estate required. In the flurry of activity surrounding the donation, the land trust did not perform complete due diligence on the property. Two years later, the organization received a bill for $20,000 — past due property taxes plus accumulated interest and penalties dating from before the time the land trust agreed to accept the land. The land trust did not have the financial ability to pay this large sum, so it had to seek approval from the Attorney General to modify the trust and allow the organization to sell part of the land to pay the tax bill. Fortunately, one lot in the parcel fronted a highway and had more economic value and less conservation value, and that one lot was sold, while the trust retained the more ecologically important parcel. The parcel is now tax-exempt, but the land trust paid thousands of dollars in interest because it did not do its due diligence by conducting a thorough title investigation.

What is title insurance?

Title insurance refers to an insurance policy that indemnifies the insured against loss resulting from defects or liens upon the title. The title commitment is converted to a title insurance policy when the entity listed as the proposed insured (the buyer or donee) closes the transaction to acquire ownership and when all conditions listed in the title commitment have been fulfilled.

Coverage

Exactly which defects the title company will defend depends on the type of policy. A standard coverage policy normally insures the title as it is known from the public records. In addition, the standard policy insures against such hidden defects as forged documents, conveyances by incompetent grantors, incorrect marital statements and improperly delivered deeds.

Extended coverage, as provided by an American Land Title Association (ALTA) policy, includes the protections of a standard policy plus additional protections. An extended policy would protect an owner against defects that may be discovered by inspection of the property: rights of parties in possession, examination of a survey and certain unrecorded liens.

As discussed above, title insurance does not offer guaranteed protection against all defects. A title company will not insure a bad title or offer protection against defects that clearly appear in a title search. The policy generally names certain uninsurable losses, called exclusions or exceptions. These include zoning ordinances, restrictive covenants, easements, certain water rights and current taxes and assessments.
Importance of title insurance

Unlike other insurance policies that insure against future losses, title insurance protects the insured from an event that occurred before the policy was issued. Title insurance is considered the best defense of title: the title insurance company will defend any claim based on an insurable defect and pay claims if the title proves to be defective. The title company is required to either defend the title (help to cure the title problem) or pay the claim and can decide which course of action it wishes to take.

There are multiple benefits to obtaining a title insurance policy when acquiring land. For example, if a land trust acquired property without public access (and the title report did not have an exception for a right of access), the title company would be required to correct the access problem. The company would likely reexamine the records to determine if an alternate access existed or if there was an existing easement that had not previously been discovered. If the title company could not find evidence of access, it would be obligated to pay the land trust for its financial loss in value (presumably the amount the organization would need to create access to the property), up to the face value of the policy. Therefore, it is important to secure a title policy that is equal to the value of the asset.

For land trusts, the primary motivation for obtaining title insurance may be a bit different from that of other types of owners. Land trusts make promises to landowners, supporters, members and the public that they will protect parcels of land forever. It is therefore essential that the land trust receive good title. It is good business practice to have insurance to cover the financial loss in a case of a title problem, but primarily, the land trust must be confident that it owns the land (or holds the easement) and that there are no encumbrances that may damage its ownership and management.

In the case of purchases, land trusts are using donated dollars or government funds — money people have entrusted to them to protect land. As such, land trusts have a special responsibility to use this money wisely and defend their investment. Squandering these funds on property that has a defective title will not protect land and may jeopardize the land trust’s support in its community. While obtaining title insurance for all transactions is a good idea, at a minimum, land trusts should secure title insurance for all purchases of land or conservation easements. If a land trust acquires a conservation easement or fee interest in land that it proposes to later transfer or sell to another party, the land trust should secure title insurance in this instance too.

Choosing a title company

It is a good idea for land trusts to develop a good relationship with local title companies and seek out the best in their region. Get to know local providers. Find out who has been in business for several years and has a good reputation for thoroughness. Title companies keep their own records, called title plants, in their offices. When they investigate title, they use these records to produce an abstract of title and write a title commitment. Experienced local real estate attorneys will know who keeps the best records and provides the best service.

Amount of insurance coverage

Make sure that the amount of coverage is correct. The amount of title insurance should represent the fair market value of the property (fee land or conservation easement). There is usually a lower limit of $10,000.

A land trust may wish to lower its costs by buying a minimal amount of insurance, but it should be aware that such a strategy could prove costly in the end. For example, if a donated property has an estimated value of $100,000, a land trust may be tempted to purchase an insurance policy worth only $10,000. However, if there were a claim on the title, the damages paid under the insurance policy would likely only
be 10 percent of the cost of damages up to $10,000 (not the entire $10,000). The logic behind this payout being if the property was insured for one-tenth of its value, the title company will only pay one-tenth of the damages.

The industry standard for title insurance underwriters is that title insurance should be written for the value of the property — not more, not less. In practice, some title companies are willing to write a policy for a nominal amount (less than fair market value). However, this practice comes with financial risks and is not recommended. Ultimately, the amount of coverage a land trust should seek for an acquisition is guided by a risk-benefit analysis every land trust should perform in consultation with its attorney.

**Legal issues affecting title**

It is nearly unheard of for a parcel of real estate to be conveyed wholly, with no “defect” to title. A defect is any item affecting the fee title ownership of a property. So, although the term has a negative connotation in most contexts, not every title defect is problematic. Title defects are also known as “exceptions.” That is, the fee title being conveyed is the complete ownership of the bundle of rights, except for those defects identified in the deed or in the title policy (such as a utility easement, mortgage or mining lease). Title practitioners have identified somewhere between 30 and 60 different types of potential title defects. Nevertheless, all defects are not equal and not always fatal (cause a complete loss of title to the property). Title exceptions differ from title errors in that an error arises when the title examiner makes a mistake in reviewing a property’s chain of title (by listing an exception that does not apply to a particular property, for example), whereas an exception is an exception from title coverage because it relates to a defect in the title of the property that the title examiner has identified.

Some defects cause a complete break in the chain of title, while others, such as easements or rights-of-way, may simply affect an owner’s use and enjoyment of the property. Many defects are perfectly acceptable in real estate conveyances, but all title defects must be identified and evaluated. Every potential owner of property should look at the exceptions or defects to title to determine if they would prohibit the owner from using the property as intended.

**The impact of an exception depends on the land trust's mission**

If a landowner offers a donation of land to a land trust with a mission to protect high-quality natural habitat, the land trust may find certain exceptions unacceptable. For example, upon review of title, the land trust discovers that a neighbor has an easement giving the neighbor access to the property and the right to trim trees for a scenic view. If vegetation cutting prevents the land trust from managing the preserve as a natural area, this land trust may decide the right to trim so adversely affects its intended use of the property as a nature preserve that it cannot accept the gift. On the other hand, a different land trust with a mission of protecting open space and providing public recreation opportunities might make the decision to accept the property subject to the neighbor’s right to trim trees.

Every situation is unique, so land trusts must read the title commitment (or report) and all title documents, including all of the exceptions to title (those defects the title company won’t insure). Be aware that many of the documents are difficult to read. They may be decades old, in a
small font or handwritten, copied so many times it is difficult to make out the text. Although they may be difficult to read, it is important to determine exactly what the documents say. Unless you know the details of the exception to title, you cannot make an informed decision about whether your land trust will need to address the matter. Keep the back-up documentation for each exception, because they will not be reproduced in the title policy and store these documents in accordance with your land trust’s recordkeeping policy.

Have the documents reviewed by an attorney early in the transaction — definitely before closing — so that any problems can be addressed. Items listed in the title commitment (such as exceptions) will be in the title policy, so the time to fix any problems is during the title commitment phase (due diligence phase), before closing.

**Legal names**

Make sure the names of the current record owners shown in the commitment or report exactly match the names you have on any deed of conveyance (or conservation easement). Make sure the names of the people selling or donating are listed in the same way on the deed by which they acquired the property, the deed by which they are conveying the property and the title commitment or report. Also, make sure the name of your organization is listed correctly and exactly as the land trust is incorporated. If any of these names differ, it may result in a failure of the conveyance of a property interest, because interests in land can only be conveyed by the record owners of the interest. Sometimes, if there are minor differences (for example, the deed by which a landowner acquired one part of the property listed Mary Jane Smith as the grantee and the deed by which she acquired the second part of the property shows she took title as Mary J. Smith), the deed to the land trust listing both names and using an “a/k/a” between them may be sufficient to cure the discrepancy and ensure that title passes as intended.

Check that marital status is listed and is correct, if required by your state’s laws. This point is particularly important in states such as Michigan, which has one-sided dower rights in which a wife owns one-half of all real estate a husband owns, but not vice versa. Even if the husband has title to a property individually, his wife would have to sign as co-owner when conveying the property. It is important to know when a spouse needs to sign a deed or conservation easement, otherwise the conveyance may not be complete.

Make sure everyone listed on the title report as an owner is still alive, if the ownership is held by individuals. If a husband and wife are listed as owners, but the husband has passed away, this title defect must be cured (and it is usually easy to do so, generally by obtaining a death certificate for the deceased party). If this situation occurs, notify both the title company and the landowner, who should be obligated to clear the situation.

If someone other than who you expected is listed as the owner, investigate why. Did the individual inherit the land, and the devise was not properly documented? Did someone forget to record a deed? Was there a name change or conveyance into an entity? Is the legal description correct? Sometimes the answer is easy — a husband and wife formed a family limited partnership and placed the land in the partnership and forgot to tell you — but sometimes the answer may lead to a more difficult situation to address. This type of situation is precisely why due diligence on title work is so important!

**Even experts make mistakes**

National and regional land trusts had been working for more than a decade to purchase and protect an undeveloped island and learned, after finally going under contract, that even the experts make mistakes that cause delays. In this situation, the family’s representative was not only
an attorney specializing in real estate and estate law, but also owned the only title company in town. During negotiations of the purchase agreement, several family members' names were given as owners and, therefore, as signers to the contract. After the purchase contract was signed by the presumed owners, the title commitment revealed that some of the presumed owners did not, in fact, own the land, and some additional actual owners who had not been involved in the transaction up to that point were not listed as owners! Some owners shown on the deed had also passed away. Cleaning up the discrepancy in ownership included re-executing the purchase agreement with proper owners and making sure that the proper affidavits or certificates were filed with regard to deceased former owners. The closing was considerably delayed by the clean-up efforts. It is common for people to forget who exactly owns family property and how it is held (individuals, partnerships, trusts and so on). Remember, if an experienced real estate attorney and title agent can make this error, anyone can.

Entity ownership

Entity ownership may also complicate acquisitions. If the property is owned by an entity, land trusts must complete additional due diligence steps. If the owner is a business organization, the land trust should contact the appropriate government agency (often the Office of the Secretary of State) in the state where the property is located and determine the exact entity name on file. The land trust should establish whether the entity is in good standing and, if it is a foreign (out-of-state) organization, qualified to do business in the state where the property is located. If the entity is foreign, the land trust should contact the agency that governs it (the secretary of state) and verify its existence and good standing. A land trust can also ask the landowner or landowner's counsel to provide certificates from the requisite government offices and an opinion letter from landowner's counsel that the entity is in good standing in all jurisdictions where it conducts business or owns property.

Land trusts or their counsel should also review the business' organizational documents (partnership agreements, operating agreements) to verify who has the authority to execute documents such as contracts, deeds, purchase agreements, options and easements (see Table 3-1 for a list of required documents). Although these may be considered private documents by the landowner, thorough due diligence requires their review, or at least review of the sections of these documents that pertain to transfers of real estate interests and who is authorized to transfer such interests on behalf of the entity. If a landowner will not provide even relevant sections of these documents to a land trust for review, such matter should be considered during the land trust's risk-benefit analysis with respect to acquiring the property interest. The land trust should also review the organization's incumbency certificate, which identifies who is authorized to sign for the entity (this document serves a purpose similar to that of the signature cards on file with a bank for its account holders). All of this work is necessary to ensure that the person signing the documents conveying the property interest owned by the entity has the requisite authority to sign the documents on behalf of the entity and to bind the entity to the agreements and conveyance. Failure to do so may open the transaction to a lawsuit by the entity or its members, shareholders or partners attempting to reverse the transaction or claiming that the conveyance was not valid.

When the landowner is a trust, there are issues unique to trusts that must be addressed in any conservation acquisition. How a trustee signs a deed or conservation easement is a matter of state law, but generally there must be a trustee's certificate executed, which may be part of the deed or a separate document. The trustee signs the trustee's certificate and through this certificate confirms that the person signing swears that he or she has the authority to bind the trust to the transaction. In most situations, a trustee's certificate should be sufficient, but if there are doubts about whether a trust has the right to transfer land, it is best to review the trust documents. However, these are private documents and landowners may not be comfortable sharing them. If this is the case and depending upon the circumstances, the land trust may want to require an opinion from the attorney for the trust confirming that the trustee has authority to enter into the deed or conservation easement.
<table>
<thead>
<tr>
<th>Type of Ownership</th>
<th>Required Document</th>
</tr>
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</table>
| Corporation               | 1. Articles of Incorporation (may be called “Certificate of Formation” in some jurisdictions). These should be obtained from the Office of the Secretary of State or other government agency in charge of business entities.  
2. Bylaws                  |
| Limited Partnership*      | 1. Certificate of Limited Partnership. A copy should be obtained from the Office of the Secretary of State or other government agency in charge of business entities.  
2. Partnership Agreement   |
| Limited Liability Company | 1. Articles of Formation (may be called “Certificate of Formation” in some jurisdictions). A copy should be obtained from the Office of the Secretary of State or other government agency in charge of business entities.  
2. Operating Agreement     |
| Trust                     | Trust agreement (may be revocable, irrevocable, or testamentary)                  |

* In most states, general partnerships do not have to register with the state.

Table 3-1: Required Documents for Entity Ownership

Finally, before closing, land trusts should have on file a resolution from the entity that states:

- The transaction is authorized by the entity’s decision-makers
- The person signing the documents is authorized to sign on behalf of the entity (or perhaps naming more than one authorized signer in case the first is absent or incapacitated)
- Any actions taken up to the point of the resolution toward finalizing the transaction are ratified
- Nothing related to the transaction conflicts with any other agreement or law affecting the entity or the land

For transactions with pass-through entities of unrelated parties, the land trust must also follow the steps outlined in **Practice 10C4 (Avoiding Fraudulent or Abusive Transactions)** and the **Land Trust Alliance Tax Shelter Advisory**.
Legal descriptions

Make sure that the legal description in the title commitment or title report matches the legal description in the deed or conservation easement and, if it is not the same, you should investigate the difference. If there is a survey of the property, the legal descriptions in the title work and conveyance documents should also match the surveyed legal description. It is also a good idea to verify the legal description with the taxing jurisdiction (county or township). It is imperative to make sure that the correct legal description appears in any deed or conservation easement in order to ensure a complete transfer of the property interest the land trust wishes to acquire. Often a discrepancy may be no more than a typographical error that is easily corrected by a review of the descriptions by a surveyor, attorney or even a highly qualified title company employee.

The legal definition of properties may vary from state to state, area to area and property to property. It is important to know the custom in your region, because there are unsystematic and systematic ways to describe land. See Practice 9D1, Determining Property Boundaries.

Access

It is absolutely critical to make sure the property or land encumbered by an easement has both legal and physical access. You will not have the ability to adequately monitor the property or invite the public to the land if you do not have access to the property, and if you cannot monitor the property, your land trust cannot fulfill its promise of conserving the land forever. Access is also an important consideration in appraising the property or easement; lack of access will have a negative impact on the parcel’s fair market value. If there is an exception to title regarding access, the title company believes there is no recorded access to the property and that the property is not adjacent to a public road; the company will, therefore, not insure that there is access.

If there is an exception to title regarding access, the first step to take is to ask the landowner how they access the land. Often, you will find the answer is that an access easement exists across another property that provides legal access to the conservation project land. In most cases, such easements can also serve to provide access to a land trust (or can be amended to do so, sometimes for a price), but you must consult the land trust’s attorney about how best to achieve this result. Most states provide a process for acquiring access to landlocked property across adjacent lands whose owners will not grant access voluntarily, but such methods can take a long time and cost a great deal of money. If there is no other way to gain access to a conservation property than through a court action, the land trust should consider this factor when it weighs the risks and benefits of the conservation project.

Finding a solution for a landlocked easement

The Trust for Land Restoration in Colorado worked with an owner of a 2,000-acre ranch to conserve large portions of the ranch that provide valuable habitat for the Gunnison sage-grouse, a species of special concern to the Colorado Division of Wildlife. The owner placed a conservation easement on a large portion of the land, except for a portion of the ranch that did not contain habitat for the bird. This land happened to be located between the conserved land and the only public road in the area. As part of the easement transaction, the landowner granted an exclusive and perpetual access easement to TLR so that it (and any entity to which the easement might be transferred in the future) could enter the property at any time to exercise the land trust’s easement rights. Using this method to create access resulted in the title company deleting its exception for lack of access in the final title policy.
Explore related resources

ORGANIZATIONAL MANAGEMENT

Title Insurance
2018 ✔ REVIEWED FEBRUARY 8, 2018  •  LAND TRUST ALLIANCE

This is a set of Practical Pointers on title insurance. Use these pointers to help your organization avoid cloudy title and the high legal costs that can come with it.

Intermediate

VIEW PRACTICAL POINTER  (/resources/learn/explore/title-insurance#content)
PRACTICE 9F: TITLE INVESTIGATION AND RECORDING

Practice 9F: Title Investigation and Recording

2017  ✓ UPDATED DECEMBER 5, 2022  ➞ LAND TRUST ALLIANCE

This guidance covers Practice 9F: Title Investigation and Recording.

VIEW PRACTICE (resources/learn/explore/practice-9f-title-investigation-and-recording#content)
DUE DILIGENCE • EVALUATING AND SELECTING PROJECTS

Title Review: What Land Trusts Need to Know
MARCH 14, 2:00 P.M. – 3:30 P.M. EDT • LAND TRUST ALLIANCE • VIRTUAL • JOANNE DWOSKIN

Join conservation attorney Joannie Dwoskin as she provides an introduction to title for land trusts. She will cover the basics of title review with a practical, step by step approach to reviewing documents and solving common title problems.

基本

Registration for this webinar is closed.

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$70.00 for Alliance members
DUE DILIGENCE  •  PRACTICE 9F: TITLE INVESTIGATION AND RECORDING

Learn Practice Element 9F1: Title Investigation

2018  •  UPDATED MARCH 5, 2020  •  LAND TRUST ALLIANCE

Land Trust Standards and Practices, Practice 9F: Title Investigation and Recording, includes three elements. This module addresses the first element, 9F1.

VIEW COURSE (/resources/learn/explore/learn-practice-element-9f1-title-investigation#content)