

Session Outline  
Intro to Title Review for Conservation Easement Transactions

Saturday, September 9 | 10:30 a.m. - noon

Session Description:

This session will provide some basics about reviewing a preliminary title insurance commitment and related documents during a conservation easement transaction. It will focus on a number of real-life title issues the presenter has experienced, and will include some pointers on how to identify and resolve such title issues.

Outline

I. Introduction

II. Title products

- A. What is a title commitment?
- B. What is a title insurance policy and what protection does it offer?
- C. Why should land trusts obtain title insurance?
  - 1. A railroad runs through it: Quick example of issue that might be resolved in reviewing a title product
  - 2. Recommendation to resolve the issue

III. The different parts of a title commitment

- A. Schedule A
- B. Legal Description
- C. Schedule B-1 (Requirements)
- D. Schedule B-2 (General and special exceptions)
- E. Sample title review memorandum

IV. Case studies of real-life title issues and their resolutions

- A. The phantom fractional interest
  - 1. Issue: An unexpected fractional owner of a property, who died decades ago, and the heirs needed to be tracked down
  - 2. Resolution: Research; quit claim deed(s)
- B. George and his siblings
  - 1. Issue: Apparent property owner was actually one of several property owners, all of the others long-since dead
  - 2. Resolution: Multiple probates
- C. The pushy mineral company
  - 1. Issue: Mineral rights company that held mineral rights to a property, and wanted to explore those rights (and was skeptical of Conservation Easements)

2. Resolution: Mineral Ownership Report; Mineral Remoteness Test; Negotiated surface use agreements
- D. Access across the railroad
1. Issue: Road access across a railroad track, and potential appraisal issues
  2. Resolution: Neogitation of a new permit with the railroad
- E. Whistling past the graveyard
1. Issue: A property that included a cemetery plot, and potential access by extended family members
  2. Resolution: Understand scope of family members' access—who, when, etc.
- F. The cell tower speculator
1. Issue: A cell tower site the lease for which included a concerning right of first refusal
  2. Resolution: Need to negotiate a subordination with cell tower company
- G. The illusory patent
1. Issue: A property some of which was wrongly patented because it lay inside the boundaries of a federal Indian reservation
  2. Resolution: Long, drawn-out process involving survey and quit claim deed

Document List:

1. Sample title insurance commitment from Montana
2. Sample title insurance commitment from Washington
3. Sample title insurance policy from Montana
4. Sample title memorandum from attorney to land trust client
5. LTA article “Closing the Transaction”
6. LTA article “Title Investigation”
7. LTA Practice document 9F “Title Investigation and Recording”
8. LTA Practical Pointer “Lien and Mortgage Subordination”