

THE COUNTY RECORDER

The need for a precise and consistent accounting of the public's business is as old as civilized society. Recognizing its importance to our emerging republic, the custody of land records was woven into the early fabric of our government with the appointment of one of the first public officials in the colony of Plymouth Massachusetts—the County Clerk. The duties of the County Clerk included keeping accurate documentation of all the important records of grants of land, collection of taxes and expenditures of town funds.¹ The County Recorder became the official registrar of land titles when Congress passed the Torrens Land Registration Act in 1897.

When California became a state in 1850, one of the Legislature's first acts was to establish a statewide land records system. The Legislature extolled the importance of land ownership by inscribing the inalienable rights of its citizens to acquire, possess and protect property in Article 1, Section 1 of the California Constitution.

While technology has drastically evolved over the past century, the custodial duties of the County Recorder have changed little over time. A public official, known as the County Recorder, would transcribe a record of each land transaction into an official ledger, known as the Official Record. The County Recorder, as the custodian of the Official Record, would be obligated to preserve this information permanently. While recording land ownership documents was not a legal requirement, the many benefits of maintaining those records in a centralized public repository were obvious. Recording documents into the Official Record would establish a permanent record of land transactions even if the original documents were lost or stolen. It would create a mechanism to give notice and awareness to all interested parties that a transaction had occurred, thereby assuring transparency and preventing deception and confusion when verifying property ownership. Guaranteeing unrestricted access also would ensure that any member of the public could prove ownership to their own property, one of the mainstays of our free enterprise system.

Since 1850, California's County Recorders have managed and protected the Official Record while preserving and defending the right of public access to the information in their care. With the advent of new technologies in the digital age, issues surrounding privacy and public access to land records have been the subject of continual and evolving debate. This document attempts to explain some of the operational and philosophical realities inherent when considering regulations that would restrict access to and the completeness of the Official Record.

¹ Oregon Association of Municipal Recorders, City Recorder's Procedural Manual:– Title I – page 2 Rev. 2008 Section 1.02.010

THE NECESSITY OF CONSTRUCTIVE NOTICE

Purchasing a home is often one of the biggest financial decisions that people make in their lifetime. Most of us are only willing to trade our hard-earned money for property that we know *for certain* will belong to us after purchase. So how does someone know whether the person representing themselves as the owner has legal title to the property?

The process of recording begins when an individual delivers to the County Recorder a document intended to confirm interest or claim in a piece of property. The County Recorder examines the document to ensure that it conforms to California law and that the appropriate fees are paid. When the Recorder determines that the document complies with all statutory requirements, the process of copying the document into the Official Record begins. The exact process of recording each document into the permanent Official Record varies by county.

By definition and statute, the Recorder's office is a repository of documents created by others. With the exception of indices of recorded documents, Recorders do not create original information nor are Recorders allowed to add or remove anything from documents submitted for recording.

Once the document is recorded, it is indexed and reproduced in the public record in a manner so it may be located by all and open to public examination. This transparency provides notice to the world that a transaction has occurred. This type of notification is known as the legal principle of *constructive notice*. The constructive notice doctrine puts subsequent purchasers and lenders on notice that specific events have taken place.

To prove property ownership in California, any member of the public may research the records of the County Recorder, Assessor and other government taxing agencies. The potential buyer or lender will review all of the documents impacting the property since it first came into private ownership. Every document recorded against a piece of property is inspected for authenticity and relevance by those involved in the transaction. This process is known as tracing *the chain of title*. Every buyer's and seller's name and every document recorded against the property are examined and interpreted to determine its legal effect on the property. Ownership can be proved if throughout history rightful owners properly sold their land and the transactions are reflected in the Official Record.

For this critical system of real-property ownership to work, all documents that have ever been recorded must remain open to public inspection. If even one document was removed from the records, the entire system is compromised. Shielding certain documents for unknown time periods would abolish the concept of constructive notice and erode the public's confidence in the reliability of the Official Record.

SECURING THE PERMANENT RECORD

County Recorders are one of the very few government offices that must keep information forever. Offices around the state exhibit a blend of old and new when it comes to retention of these critical records: using books, pages and microfiche; tools ranging from large computers to small; preserving on polyester microfilm to using optical storage and ultra-fast and reliable storage area networks. Recorders today enlist parallel systems to minimize downtime and provide redundant systems that assure records can be accessed and available in perpetuity.

This is no trifling exercise. The Recorder, as the custodian of the Official Records, has an obligation to preserve this information permanently. The State of California assumes “permanent” to mean 500 years.²

In 2012, the California Secretary of State’s office concluded a three-year process by adopting regulations requiring governments to maintain a “trusted system” for the long-term preservation of documents either born digitally or for which digital copies were the official copies. A trusted system is defined as one that employs a combination of “techniques, policies and procedures for which there is no plausible scenario in which a document retrieved from or reproduced by the system could differ substantially from the document that is originally stored.”³

A key element of securing the public record is assuring that its integrity is protected. Documents in the Official Record contain elements of personal information that must be protected from abuse. While Social Security numbers were seen in the 1930s as a revolutionary way to keep track of individual Americans, that information today can be used to hijack someone’s identity and property. With the help of Recorders, state law was changed in the mid-2000s to protect personal privacy by requiring that only a portion of a Social Security number can be displayed on public documents. Additionally, only those authorized to do so can request certified copies of vital records used to establish identity.

Several attempts have been made in recent years to create a shielded Official Record that removes the names and addresses of those vulnerable deemed to identification. Doing so would critically undermine constructive notice. Multiple strategies already are available to ensure that the Official Record remains secure while preserving its critical role: the determination of property title upon which the very foundation of society rests.

² Local Government Records Management Guidelines, California Secretary of State, Feb 2006 page 8
<http://www.sos.ca.gov/archives/local-gov-program/pdf/records-management-8.pdf>