

# **ALTA Real Property Records Committee Report**

Chair: David A. Floyd

Vice Chair: Patrick T. Roe

Staff Liaisons: Kelly Lyn Romeo, Justin Ailes

**Recent Meetings:** July 30, 2019, Virtual Meeting

**Future Meetings:** October 22, 2019, Austin, TX

## **Recent/Current Projects:**

The Real Property Records Committee met in July and finalized the product, “Privacy, Redaction, and Public Records” (see pages 2 and 3 of this Report). This product is intended to be used by title professionals and public officials in conversations with policy makers and others to foster better understanding of the impact of redaction on the public land record and real estate transactions.

Members of the committee socialized the product in several sessions held during the PRIA Annual Conference (August 26-29, 2019, Colorado Springs, CO), and we anticipate a PRIA development project to continue the conversation about alternatives to redaction.

# Privacy, Redaction, and Public Land Records

*Redaction is intended to shield the location and other personal information of individuals with recognized safety concerns from being accessible through documents contained in the public land records. While there is a need to shield protected classes with recognized privacy concerns, that need must be addressed in a way that does not impede normal business activities.*

*One of the cornerstones of our country's wealth and economy is the safe and efficient transfer of real property. The public land record is critical to this process. Redacting specific parts of a document or expunging/removing an entire recorded document can prevent access to information and documents that are necessary for providing constructive notice, protecting land rights, and preventing fraud.*

*Redaction can create unintended consequences including severely restricting or even prohibiting people from buying and selling real estate. Even worse, redaction can create a false sense of security for the people who are intended to be protected and can increase the risk of fraud.*

## **Where privacy is a recognized concern and Redaction of public land records works:**

- To comply with federal requirements under Gramm-Leach-Bliley (GLB) to protect Non-Public Personal Information (NPPI or NPI), specifically an individual name in conjunction with:
  - Social Security Numbers
  - Credit or debit card numbers
  - State identification card numbers
  - Driver's license numbers
  - Bank and financial account numbers
  - Login and password credentials

## **Where privacy is a recognized concern, but Redaction of public land records is not an effective solution:**

- To accommodate citizens' concerns for safety and security by redacting names and addresses of:
  - Victims of domestic violence
  - Peace Officers, Military Servicemembers, and other First Responders
  - Legislators and Judges
  - Regulators and Code Enforcement Personnel
  - Medical Professionals
  - Other Public Figures

## **The potential impact of Redaction of public land records on Consumers:**

- Homeowners and prospective purchasers may experience significant delays, burdensome work, and extra steps to complete real estate transactions because documented ownership cannot be established through intended use of the public land record
- Consumers may be unable to lock in the lowest interest rate for mortgages and refinances
- Redaction can create a gap in the record of ownership which presents opportunities for fraudulent land transactions

**The potential impact of Redaction of public land records on Businesses:**

- Lenders can't lend without the ability to document and prove land ownership
- Construction businesses may have a difficult time successfully filing mechanics' liens
- Title Insurers may be unable to determine lien priority using the public record

**The potential impact of Redaction of public land records on Local Government:**

- Creation of unfunded mandates for the Recorder/Clerk to:
  - Acquire or upgrade Land Record Management Software (LRMS)
  - Increase staff or staff time to do the redaction or review/correct automatic software-applied redaction
- Creation of responsibility for policy and processes to store and restore unredacted versions of records to make them available to support property owners and real estate transactions
- Potential for inconsistent interpretation and implementation of requirements across counties
- Challenges to correctly and efficiently send tax bills to land owners
- Potential for liability created by unintended disclosure:
  - What happens when information which should have been redacted is not?
  - What happens when redaction policies are applied in error?
    - How will information and documents be restored in an un-redacted state?
  - What happens when documents filed prior to the redaction policy effective date continue to display information which would have been redacted after the redaction policy's effective date?

**Additional unintended consequences of Redaction of public land records:**

- Erosion of public confidence in the public land record – the biggest driver of wealth creation in our economy
- Benefits and protections will be outweighed by the costs and burdens placed on the people who are intended to be protected
- Conflicts with Freedom of Information Act laws
- Increased potential for fraud through gaps in the chain of title and lack of transparency
- Creates a false sense of security for those who are intended to be protected

**Recommendations for effective solutions to protect privacy in the public land records:**

- Limit anonymous access to public land records and/or require system access controls and account credentials for access to the details of protected records
- Encourage individuals and protected groups to use LLCs, trusts, or alternative address information (e.g., attorney or bank) to address privacy or security concerns when purchasing land
- Limit redaction to preserve constructive notice; redaction of name in conjunction with address or legal description eliminates constructive notice