



Protect Judges Without Impacting Their Ability to Buy or Sell a Home



Background:

Information shielding and redaction laws protect individuals with recognized safety concerns (for example, law enforcement officers, judges or victims of domestic violence or abuse, etc.) by restricting access to, or limiting the publication of, certain personal information in government records or online databases.

Certain individual state laws allow for records containing the combination of personal information, such as legal name, home address, personal phone number, and email address, to be shielded or redacted from publication. This prevents access to this information to minimize the potential of bringing harm to an at-risk party.

The title and land records industries recognize shielding certain information in government agency records can help protect the safety of at-risk groups. The best way to shield sensitive information is to limit who has access to the protected data, without removing or altering vital public records.

These types of record shielding protections need to include provisions for companies doing business with at-risk individuals. This is especially true in real estate and mortgage markets, which rely on access to public property and tax records to complete a transaction.

Real Estate Transfers and Information Shielding:

When it comes to an individual's property rights, access to public land and tax records is essential. Land records prove ownership and indicate when the property is subject to a mortgage, judgment, or other encumbrance. These public records are accessed, reviewed, and used in every real estate transaction, including refinancing of home loans. Protected individuals may not be able to buy, sell, or take out loans on property if these records are inaccessible. By following a series of best practices, at-risk parties will be protected without impeding the transfer or financing of real estate or creating a risk for fraud.

Judicial Security and Privacy Act of 2020 Feedback:

At the state level, the responsibility to implement and adhere to information shielding laws often falls upon county property recorders. Lack of funding for new compliance obligations and

limitations in land records management software for many county offices leads to non-uniform implementation procedures and ultimately creates risk for fraud. The grant program outlined in the Judicial Security and Privacy Act of 2020 creates resources needed to implement uniform standards and processes that protect at-risk groups. We support this provision and believe it will positively impact the effective and efficient implementation of information shielding measures that follow best practices.

To Protect Judges Without Impacting Their Ability to Buy or Sell a Home, we recommend:

1. An exception in section 4(a) for access to records with the consent of the protected individual or court order.

(4)(a)(3) Exceptions: Nothing in this section shall prohibit a government agency from providing access to records containing judges' personally identifiable information to a third party if the third party possesses a signed release from the judge, a court order, the entity is already subject to the requirements of the Gramm-Leach-Bliley Act or the third party executes a confidentiality agreement with the government agency.

2. In a real estate transaction, shielded information is accessed at the request of the protected party and must be made available to certain participants, such as the title insurance company and/or the lender. This information access and use is subject to the protections of the Gramm-Leach-Bliley Act, which limits subsequent transfer and use. The Judicial Security and Privacy Act of 2020 should take into account necessities of transaction-based data transfers within the definition of "data broker".

We would recommend amending the definition of "data broker" to exclude businesses that do not sell data or provide the general public with data access. In approximately half the states, the law requires, as part of licensing, that title and other real estate professionals maintain separate replicas of property, court and tax records. The broad definition of "data broker" in section 3 would conflict with these requirements.

We recommend the following modifications to the definition of "data broker":

DATA BROKER.—The term "data broker" means a commercial entity that collects, assembles, or maintains personal information concerning an individual who is not a customer or an employee of that entity in order to sell the information or provide access to the information TO A NON AFFILIATED THIRD PARTY. A "DATA BROKER" DOES NOT INCLUDE A BUSINESS THAT UTILIZES PERSONAL INFORMATION INTERNALLY, PROVIDES ACCESS TO BUSINESSES UNDER COMMON OWNERSHIP OR AFFILIATED BY CORPORATE CONTROL OR SELLS OR PROVIDES DATA FOR A TRANSACTION OR SERVICE REQUESTED BY OR CONCERNING THE INDIVIDUAL WHOSE PERSONAL INFORMATION IS BEING TRANSFERRED.