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Privacy in the Land Records

Today's ALTA Insights Featured Sponsor



Speakers

Elizabeth Reilly

Senior Privacy Counsel
Fidelity National Financial

- **Steve Tjaden**

Chief Privacy Officer
Old Republic National Title Insurance Co.

- **Elizabeth Blosser**

VP of Government Affairs
American Land Title Association



Agenda

- Redaction and Record Shielding 411
- Business Impact
- Effective Solutions
- Legislative Initiatives





Redaction and Record Shielding

- Growing Privacy Concerns
- History of Redaction in Land Records
- Industry Approach

The title industry recognizes limiting access to certain personal information in government records can help protect the safety of at-risk groups.

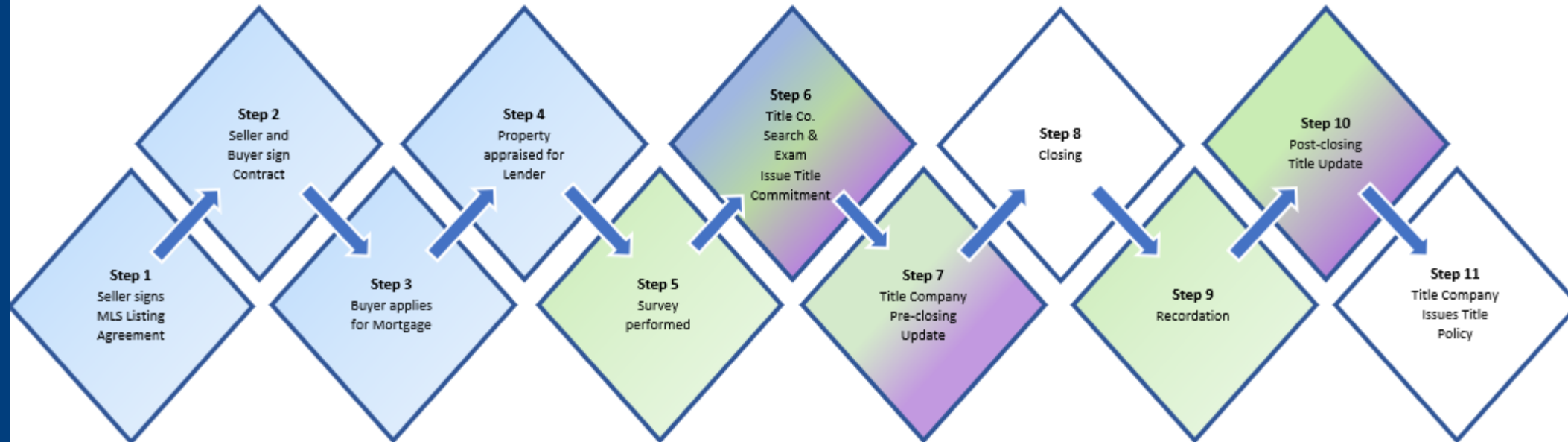


Real Estate Workflow



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Parties Involved: Buyers, Sellers, Real Estate Agents, Lenders, Surveyors, Appraisers, Title Agents, Title Insurers, Attorneys



GOVERNMENT RECORDS REQUIRED THROUGHOUT THE CLOSING PROCESS:

PROPERTY APPRAISER'S RECORDS

Owner Name, Sales History, Property
Details, Maps, Aerial Photos,
Homestead Exemption

OFFICIAL RECORDS

Deeds, Mortgages, Judgments/Liens,
Bankruptcies, Foreclosures, Divorces,
Guardianships, Probates, Litigation

TAX COLLECTOR'S RECORDS
Taxes and Assessments





Redaction Survey Question

Question:

Have you seen examples of redaction in your local land records?

1. Yes
2. No



Redaction Example 1



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CFN 20200017074
OR BK 31158 PG 0258
RECORDED 01/14/2020 12:37:33
Palm Beach County, Florida
Sharon R. Beck, CLERK & COMPTROLLER
Pgs 0258 - 260 (3pgs)

Prepared By and Return To:
Eastern National Title Agency Florida, LLC
20830 North Tatum Blvd., Suite 250
Phoenix, AZ 85050
File No. FL5662

Recorded/Commenced Parcel L.D. (folio) Number(s)
[REDACTED]

NOTICE OF TERMINATION

STATE OF FLORIDA
COUNTY OF PALM BEACH

Tax Folio No. [REDACTED]
Building Permit No.:

THE UNDERSIGNED, K. Hovnanian at Boca Dunes, LLC, a Florida limited liability company, as fee simple owner, pursuant to Section 713.132, Florida Statutes, hereby gives Notice of Termination of the Notice of Commencement recorded November 19, 2019 in OR Book 31037, Page 136 of the Public Records of Palm Beach County, Florida.

I. Said Notice of Commencement contains the following information:

A. Description of Property: (Legal description of the property and street address if available)
[REDACTED]

B. General description of improvements:
Constructed Single Family Residence

C. Owner Information:
(1) Name and address:
K. Hovnanian at Boca Dunes, LLC, a Florida limited liability company
3601 Quantum Blvd., Boynton Beach, FL 33426
(2) Interest in property: Fee Simple
(3) Name and address of fee simple title holder (if other than owner):

D. Contractor: (Name and address)
K. Hovnanian J.V. Services Company, LLC
1245 W. Fairbanks Avenue, Suite 350, Winter Park, FL 32789
Attention: Tim Graney, Vice President; and
Cara L. Chieffallo, Esq., Florida Division Counsel



Redaction Example 2



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THIS INSTRUMENT PREPARED BY AND RETURN TO:

PamToner

Enterprise Title Partners of New Tampa, LTD.

5303 Technology Drive

Tampa, FL 33647

File No.: 27922

Property Appraisers Parcel Identification (Folio) Nos.:



_____ Space Above This Line For Recording Data _____

THIS WARRANTY DEED, made the 28th day of **February, 2020** by **Julia E Howell-Cortelli, unmarried**, hereinafter called the Grantor, to **Garry Elser and Julia Elser, husband and wife**, whose post office address is [REDACTED] hereinafter called the Grantees.
(Wherever used herein the terms "grantor" and "grantee" include all the parties to this instrument and the heirs, legal representatives and assigns of individuals, and the successors and assigns of corporations)

WITNESSETH: That the Grantor for and in consideration of the sum of TEN AND 00/100'S (\$10.00) Dollars and other valuable considerations, receipt whereof is hereby acknowledged, hereby grants, bargains, sells, aliens, remises, releases, conveys and confirms unto the Grantees all that certain land situate in Hillsborough County, State of Florida, viz:



Subject to easements, restrictions and reservations of record and to taxes for the year 2020 and thereafter.

TOGETHER, with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.



Redaction Example 3



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Quit Claim Deed

This Quit Claim Deed made this 13 day of July, 2020 between [REDACTED]
[REDACTED] Michelle N. Maglione, whose post office address is [REDACTED]
[REDACTED] grantor, and Michelle N. Maglione, a married woman, whose post office address is [REDACTED]
[REDACTED], grantee:

(Whenever used herein the terms "grantor" and "grantee" include all the parties to this instrument and the heirs, legal representatives, and assigns of individuals, and the successors and assigns of corporations, trusts and trustees)

Witnesseth, that said grantor, for and in consideration of the sum TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration to said grantor in hand paid by said grantee, the receipt whereof is hereby acknowledged, does hereby remise, release, and quitclaim to the said grantee, and grantee's heirs and assigns forever, all the right, title, interest, claim and demand which grantor has in and to the following described land, situate, lying and being in Broward County, Florida to-wit:

[REDACTED]
Parcel Identification Number: [REDACTED]

This Quit Claim Deed is prepared without benefit of a title search.

By execution of this Quit Claim Deed, the Grantor also hereby warrants and certifies that the terms, covenants, and conditions related to the subject property described herein and contained in that certain Dissolution of Marriage action between Grantor and Grantee in Case No FMCE 19-002871 (35), in the Circuit Court in and for Broward County, Florida and the Marital Settlement Agreement dated June 24, 2020 incorporated therein, along with any and all judgments and final judgments entered or to be entered, have been fully satisfied and complied with by Grantee, and Grantor hereby releases the subject property described herein from any and all liens, operation, force and effect of said judgments and Final Judgment of Dissolution of Marriage to be entered and the Marital Settlement Agreement dated June 24, 2020. That Grantee is conveyed full legal and equitable right and title to the subject property described herein.





Potential Issues Caused by Redaction

- Inability to verify ownership, property boundaries, legal access, rights of others, homestead, property taxes, assessments, liens, or judgements.
- Delays in real estate transactions affecting loan rate locks and approvals.
- A surveyor must have an unredacted legal description to perform a survey.
- Redacted documents indexed under a common name create difficulties for common name seller in proving redacted documents do not apply to seller's property.
- Redaction could result in the total failure of a real estate transaction.
- Inconsistent application of state redaction laws by clears, recorders and other government agencies can lead to inconsistent protections for consumers and inefficiencies for title professionals.





Identifying Effective Solutions

The best way to shield sensitive information is to limit who has access to the protected data, without removing or altering vital public records.

Effective state programs have taken one of two approaches:

1. In Arizona, an eligible person files an affidavit with the court to prohibit the general public from accessing personal information. If approved by the court, an order is issued directing the clerk to prohibit public access to the information. The prohibition on public access expires after a period of time, generally 4-6 years. Access for real estate/title professionals is available.
2. In Minnesota, an eligible person files an application with a state agency, usually the Attorney General or Secretary of State, to certify eligibility for the program. Once certified, a participant may file a notice to prohibit public access to government records containing personal information. Access for real estate/title professionals is available.



Best Practices for Implementation



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- Permissioned access should be available to:
 - Someone with a signed release from the protected individual or court order;
 - Licensed professionals with existing consumer privacy/confidentiality requirements (attorneys, title professionals, assessors, etc.);
 - Licensed entities with a signed confidentiality agreement with a government entity.
- State-wide uniform standards and processes must be followed to ensure all records pertaining to an individual are properly shielded.
- The general index must not shield or redact the full combination of name and address. Records must be discoverable within the public records index, which should include a flag indicating that the document has been shielded.



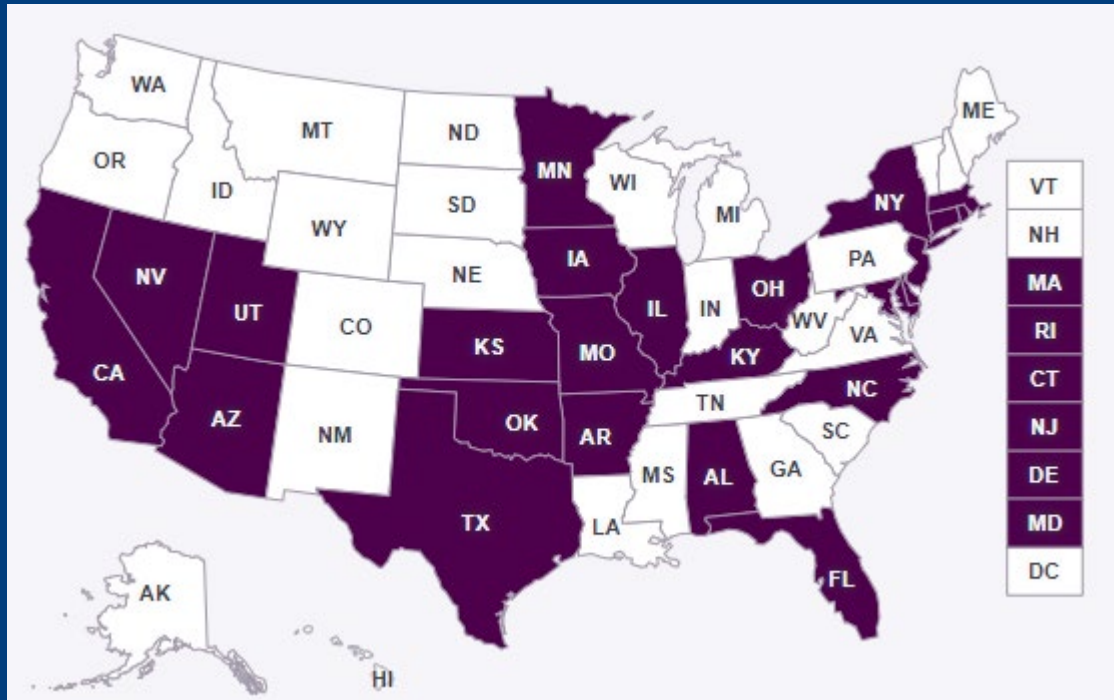


Best Practices for Implementation

- Shielding requests should be time limited to minimize long-term impact on the real estate conveyancing system and ensure the continued accuracy of the public records. A renewal request can be submitted every four to six years.
- A process for record restoration must exist to facilitate real estate transactions and transfers, or administration of a will.
- Authorized access to shielded government records should be available electronically, as well as in-person, to allow for social distancing measures and, absent a public health necessity, to accommodate access for non-local authorized parties.
- Government entities and third parties should maintain robust records to track and log access of shielded records.



2021 State Legislative Activity



Over 75 bills related to record shielding or redaction were introduced in 24 states. Bills passed in New Jersey, Nevada, Oklahoma, and Texas. Updates to current laws or existing record shielding programs were made in Arizona, Ohio, Maryland, and Florida. A bill also passed in Kentucky but was subsequently vetoed by the Governor.





Legislation Survey Question

Question:

Has your state considered privacy legislation that would impact the local land records?

1. Yes
2. No





Federal Legislative Activity

- At the end of 2020, New Jersey Senators Booker and Menendez introduced legislation in the US Senate (S. 4711) regarding record shielding for judges and their families.
- A companion bill was filed in the House (H.R. 8591).
- This legislation was named in honor of Judge Salas's son Daniel, who was tragically shot by a perpetrator who had obtained information regarding the judge's home address.
- The bill is designed shield information about federal judges from federal governmental records, like tax records.



Engaging in Effective Advocacy

- Advocating for the status quo is not an effective approach
- Get a seat at the table so legislation:
 1. Protects at-risk parties
 2. Allows for the continued sale, purchase and financing of real estate
- Identify interested parties and coalition support
 - Recorders
 - PRIA
 - Technology Providers
 - Lenders
 - Real Estate Section of the Bar Association



Q&A



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Contact Us



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- **Elizabeth Reilly** | elizabeth.reilly@fnf.com
- **Steve Tjaden** | stjaden@ortc.com
- **Elizabeth Blosser** | eblosser@alta.org

