

**Agency of Natural Resources
Standards for Title Work
For Land Acquisition Projects
December 2021**

Introduction

The Agency of Natural Resources (Agency) performs title review and due diligence for each of its acquisitions of land or any interest in land. This title review and due diligence are conducted to clearly understand the current state of the title to the property and whether there are any encumbrances or clouds on title that would be inconsistent with the purposes of the proposed acquisition. Title review and due diligence also enable the Agency to make informed decisions regarding risk associated with title issues; protect the Agency from liability; ensure the Agency acquires what it intends to acquire; and help the Agency consider future management implications. In general, the statutory Marketable Title standard is not sufficient for the Agency and its land acquisition programs. The Agency requires title searches to be conducted further back in time than the statutory time period of 40 years. However, there may be certain circumstances, as outlined below, where a title search conducted to Marketable Title standards may be sufficient.

Purpose

The purpose of this document is to provide guidance regarding the Agency standard for conducting title review for its acquisition of an interest in real property.¹ The primary purpose of title review and due diligence is to ensure that the title to the property interest proposed to be acquired by the Agency is free from encumbrances that conflict with, or are adverse to, the purposes of the acquisition and the Agency's interests.

Agency Title Review Standard

Title to real property acquired by the Agency of Natural Resources must be free and clear of all encumbrances that have the reasonable potential to interfere with the purpose for which the property is being acquired. The Department acquiring the property shall consider the purpose(s) of the proposed acquisition, as well as represent and communicate the purpose(s) throughout the acquisition and title review process. Title must also meet any requirements of an entity that provided funding to the Agency to acquire the property. Title work should complement and incorporate findings of other due diligence performed or required for land acquisitions.

Title Search Period

Agency land acquisition staff, in partnership with Agency legal and survey staff, will consider and determine the appropriate time period for the initial title search for each acquisition project based on the interest to be acquired, the purpose(s) of the proposed acquisition, and the known or perceived risks associated with the property. Based upon this initial title search and the purpose(s) of the proposed acquisition, Agency staff will then determine if further title research is needed. At a minimum, the title search must examine the land records for the past 40 years, as established by the Marketable Record Title Act (27 V.S.A., Ch 5). A 40-year marketable title search does not, per se, meet the Agency's title search standard. Agency staff will examine every property in person prior to acquisition.

¹ These standards are not generally applicable for situations where the Agency is acquiring an interest in property related to institutional controls for hazardous waste sites, though they may be helpful in providing guidelines for such acquisitions.

Option 1: 40-year title search

If the real property interest to be acquired is valued at less than \$50,000 and:

- Agency staff have reviewed, and approved for such purposes, an existing survey; and / or;
- A survey will be performed for the proposed acquisition that meets Agency survey guidelines,

Then the Agency may choose to conduct a 40-year title search.

Option 2: 80-year title search

If the real property interest to be acquired is valued at greater than \$50,000, and:

- Agency staff have reviewed, and approved for such purposes, an existing survey and / or;
- A survey will be performed for the proposed acquisition that meets Agency survey guidelines,

the Agency may choose to conduct an 80-year title search.

Option 3: 120-year title search

Regardless of the value of the real property interest to be acquired, if a survey is not available, not being performed, or not adequate for the purpose as determined by the Agency, research should be conducted back at least 120 years, or to the Key Deed (the deed which originally created the boundary), whichever is further in the title history.

Notwithstanding the guidelines identified in the *Options* above for an acceptable title search period, if the search, or the review of the search, identifies the need for further research, this research shall be conducted, as directed by the Agency. If easements, appurtenances, covenants, reserved rights (i.e. mineral or timber rights) or servitudes that encumber or benefit the subject property are identified in the search, or the review of the search, the title search should follow these interests to their Key Deed or entrance into the chain of title, and adequately determine how they impact the subject property and the purpose(s) of the proposed acquisition.

Title Search Inclusions

Regardless of the period of the search, title searches performed for the Agency should consider all encumbrances and interests impacting a property to be acquired, whether the encumbrance or interest is of record or not of record, may be insured by the title policy or typically excluded from a standard title search. This scope allows the Agency to determine whether existing encumbrances or interests affect the purposes of acquisition by the Agency. In general, title research should identify and address all forms of interests, including utility easements, governmental rights of way, third party rights of way, mineral or oil and gas rights, timber rights, leases, glebe lands, and the existence or discontinuance of roads including, town roads and trails. The title research should include the legal description of the subject property. If a survey for the subject property is not available, will not be performed, or is inadequate for the purpose as determined by the Agency, the title research shall include the legal description that originally created the subject property. The title research shall include copies of all pertinent documents related to the subject property and the interests described above, which shall be provided to the Agency.

Title Exceptions and Issues

- 1) The following encumbrances are generally not acceptable to the Agency:
 - a) Uses, Conditions and Deeded Rights:
 - i) The existence of any use, condition or deeded right that could materially interfere with the purpose(s) of the proposed acquisition. Rights that may interfere include timber rights, leases, glebe lots, mineral or oil and gas rights. These rights should be discharged, released, or determined by the Agency to not materially interfere with the purpose(s) of the proposed acquisition;
 - ii) The existence of any use, condition, or deeded right that poses a risk of liability or litigation;
 - iii) The existence of any use, condition, or deeded right that would potentially increase the costs of ownership or pose management challenges; or
 - iv) The existence of any use, condition, or deeded right that is inconsistent with the requirements of the funding source(s).
 - b) Liens and Mortgages:
 - i) For fee simple transactions liens and mortgages shall be discharged prior to the acquisition of the property; or
 - ii) For easement acquisitions liens and mortgages shall be subordinated.
 - c) Limited or Restricted Access:
 - i) Lack of clear access or ROW to the property, insofar as this lack of access may impact the marketability of the property's title or the use of the property for the purpose(s) for which it is to be acquired. The Agency may choose to accept limited or restricted access to a property.
- 2) When an unacceptable condition is identified under subsection 1), Agency land acquisition and Agency legal staff will work to resolve title issues, and will consider the purpose(s) of the proposed acquisition in doing so. Any contracted title attorney or conservation partner will work with the Agency to resolve title issues.
- 3) The Agency, in its sole discretion, may choose to accept any title to an interest in land, and any encumbrances therein, if it determines that the title and encumbrances do not have the reasonable potential to interfere with the purpose(s) of the proposed acquisition. A decision to acquire a property interest with an unacceptable condition identified in subsection 1) or that may interfere with the purpose(s) of the proposed acquisition may only be made with the approval of the appointing authority for the Department making the acquisition.

Associated Survey Work

The Agency does not require that a survey be completed for each of its acquisitions. Existing surveys and survey work should be used to complement and enhance the title search and review. Please refer to the *Specification of Work to be Performed* for Agency survey work and the Agency's *Boundary Line Blazing Procedures for Contracted Surveyors* for further information.

Title Insurance Requirement

The Agency will not acquire property without obtaining title insurance for the property for the full value of the interest being acquired by the Agency. Title insurance is not an alternative to acceptable title.

Supplemental Guidance

The following resources are not binding but may be used as guidance related to title requirements and to resolve issues:

- i. Regulations of the Attorney General Governing the Review and Approval of Title for Federal Land Acquisitions (2016), <https://www.justice.gov/enrd/page/file/922431/download>
- ii. For interests to be acquired through the federal Forest Legacy Program, the following document includes information related to title requirements: Forest Legacy Program Implementation Guidelines (May 2017), https://www.fs.usda.gov/sites/default/files/fs_media/fs_document/15541-forest-service-legacy-program-508.pdf