



51 RARE BUT IMPORTANT REAL  
PROPERTY LAWS & PRACTICES IN  
51 JURISDICTIONS

by Punctual Abstract

# Introduction

Over the past 25 years, Punctual Abstract has become a market leader in the land title industry, providing title insurance underwriters, title agents, and foreclosure law firms with one point of contact for local searches nationwide.

Our abstractors have performed millions of abstracts and gained deep domain experience in the complex and always changing laws and customs in each and every jurisdiction in the United States. This white paper provides examples of some of the rare but important real property laws and practices that govern real estate transactions in all 51 jurisdictions.

The information contained herein, derives from the encyclopedic real estate transaction manual containing all the laws, customs and regulations related to Vesting, Decedents' Estates, Mortgages, Liens and Foreclosures, Real Estate Closings, Recording Regulations and Property Taxes in all 51 jurisdictions, cited in *The Ultimate Real Estate Transaction Compliance Manual*, which was co-authored by Steve P. Daigle, Sr., Chairman and Founder of Punctual Abstract Co., Inc. [www.compliancemanual.com](http://www.compliancemanual.com).

## DISCLAIMER

The information in this white paper is not intended to be an exhaustive compilation of state regulatory or other requirements. The content by its nature is subject to change. The information in this white paper is not intended to be, nor should it be construed as legal advice. Please consult an attorney for legal advice and remedies.

**AL** Alabama's Jefferson, Shelby, Mobile and Tuscaloosa counties use title plants for searches, while Montgomery County uses abstracts. Most other counties search the records from the Probate office.

**AK** Alaska has a community property act that is a unique "opt-in" statute. There is no community property estate unless the spouses collectively create one (Alaska Stat. § 34.77.010). With respect to marital transfers, the property may be conveyed to husband and wife as tenants by the entirety with the right of survivorship. The property may also be transferred to a community property trust (id. § 34.77.100) or a community property agreement where the property will pass without probate to a designated person, trust, or other entity by non-testamentary disposition (id. § 34.77.090). A form of community property exists for estate planning, provided by id. § 34.77.010.

**AZ** Under Arizona law, a person must occupy property that is otherwise neglected for at least two years before he or she makes a right of possession adverse possession claim. The person must occupy the property publicly, which includes paying property taxes and acting as if he or she has the right to possess the property.

**AR** Arkansas has ten "special" counties that have two county seats instead of the usual one. Recording with the wrong real estate recorder in one of these counties is tantamount to recording in the wrong county.

**CA** California has a community property law. Except as otherwise provided by statute, all property, real or personal, wherever situated, acquired by a married person during the marriage while domiciled in this state is community property (Cal. Fam. Code § 760). Upon the death of a spouse, one half of the community property belongs to the surviving spouse, and the other half goes to the heirs or devisees of the deceased spouse unless the property was held as community property with right of survivorship. Community property with right of survivorship passes to the surviving spouse upon the death of the other spouse (Cal Civ Code § 682.1).

**CO** In Colorado, checking of land titles varies with usage of property (that is, whether residential subdivided, metes and bounds). Title examinations are conducted from a search of the company's title plant. Custom appears to dictate that a complete title search is one that commences with the original patent from the government.

**CT** Under Connecticut law, a title insurance agent must be a practicing attorney, unless he or she held a valid title insurance license on or before June 12, 1984. Non-resident title agencies cannot compliantly conduct title operations in Connecticut. Mortgage companies utilizing the services of a national title agency must be assured that the business model is compliant with Connecticut law.

**DE** The Seminole Delaware Supreme Court decision in 2000 (see *In re Mid-Atl. Settlement Servs.*, 755 A.2d 389 (Del. 2000)) mandates that an attorney licensed to practice law in Delaware is required to be involved in a direct or supervisory capacity in drafting or reviewing all documents affecting transfers of title to Delaware real property or where Delaware real property is used as security for the repayment of a debt or the performance of an obligation, with the exception of home equity loans where no evaluation of exceptions to title is required.

**DC** In the District of Columbia, deeds conveying title to real property are generally subject to both recordation tax and transfer tax. Both taxes are computed as a percentage of the total consideration for the deed (D.C. Code § 42- 1103 (recordation tax); D.C. Code § 47-903 (transfer tax)). In addition to recordation and transfer taxes, there is a “per document” surcharge and a “per page” filing fee charged by the Recorder of Deeds. D.C. Code Section 47-1431(a) requires that all documents by which legal title to real property or an estate for life or a lease for a term of at least 30 years is transferred, or by which a security interest in real property is conveyed, be recorded with the Recorder of Deeds within 30 days of its execution. D.C. Code Section 47-1433(c) further provides for up to \$250 in penalties for failure to record within the 30- day period.

**FL** In Florida, judgment liens expire after ten years, unless renewed by rerecording certified copy of judgment prior to expiration (Fla. Stat. Ann. § 55.10). In no event will a lien exceed twenty years (*id.* § 55.081). Judgments recorded between July 1, 1987, and June 30, 1994, expire after seven years from the date of the recording.

**GA** Georgia uses a security deed, sometimes referred to as a deed to secure debt. The security deed is neither a mortgage nor a deed of trust, but is an instrument unique to Georgia. It conveys the title to the land to the grantee to secure the indebtedness of the grantor.

**HI** Hawaii has a dual recording system. Documents affecting real property can be recorded in the Land Court System, the Regular System, or both depending on which system was originally used for the property.

**ID** In Idaho, the non-titled spouse must sign the security instrument regardless if he/she holds title. A husband and wife each have the right to manage and control community property, but neither may convey or encumber community real estate unless the other joins in the execution and acknowledgment of the deed or encumbrance (Idaho Code 32-912). A homestead cannot be conveyed or encumbered without the execution and acknowledgment of both spouses, whether the property is community property or separate property (Idaho Code § 55- 1007). A separate waiver is insufficient.

**IL** In Illinois, conveyance is by warranty or quitclaim deed. All conveyance instruments should use the terms “convey and warrant.” A conveyance made to two or more persons is construed as a tenancy in common, absent clear language conveying property to joint tenants with the right of survivorship.

**IN** Real estate closings in Indiana can be conducted by anyone. Lawyers or the parties to the transaction can prepare documents. The lender's employees can prepare mortgages and other loan documents.

**IA** Iowa is the only state that does not allow title insurance. Iowa's state-run system, Iowa Title Guaranty, issues a title guaranty policy providing much of the same coverage as title insurance does in other states. The fees associated are reinvested in the state. Title searches are conducted through the Iowa Land Title Association.

**KS** Kansas recognizes tenancies in common and joint tenancies. Tenancy by the entirety is not recognized in Kansas. Real or personal property granted or devised to two or more persons, including husband and wife, shall be construed as a tenancy in common, unless language is included making it clear that joint tenancy was intended (see Kan. Stat. Ann. § 58-501). Exceptions to the aforementioned are included within the statutory language.

**KY** Kentucky recognizes tenancies in common, joint tenancies, and tenancies by the entirety, as well as dower and curtesy rights (Ky. Rev. Stat. § 392.010 et seq). Unless a right by survivorship is expressly provided for, there shall be no mutual right to the entirety by survivorship between husband and wife (Ky. Rev. Stat. § 381.050). Kentucky is a homestead state. Both spouses must sign conveyances and mortgages even if only one spouse holds title. Release of Waiver of Dower Rights may be signed for relief of this requirement.

**LA** Public records in Louisiana are recorded in each Parish in the Clerk of Court's office. A parish is the equivalent of a county. Parishes utilize a single registry for conveyances and encumbrances (however, they are indexed separately). Most recently in Orleans Parish, a consolidation of the three offices formally known as Recorder of Mortgages, Custodian of Notarial Archives, and Register of Conveyances was completed and brought under the Land Records Division of the Offices of the Clerk of Civil District Court. All parishes impose recording fees, but only Orleans Parish charges recording taxes known as the "Documentary Transaction Tax."

**ME** Maine requires form and rate filing. Special title insurance rates are given in cases of transactions in excess of \$1 million. A valid conveyance is made by warranty deed for residential property and quitclaim deed for commercial property. A Declaration of Value must be filed with the deed (as of July 1, 2019, please refer to 36 M.R.S. § 4641-D).

**MD** In Maryland, deeds recorded in Montgomery County must state the following: Parcel id number (this is the tax account number); The street address of the property; The mailing address of the Grantor and Grantee; and the name of the title insurer, if any. Deeds recorded in Prince George's County must state the election district in which the property described in the deed is located. No deed granting property lying within the boundaries of any sanitary district operated by the Worcester County Sanitary Commission may be accepted by the Clerk of the Circuit Court for recording unless the deed is marked by the Commission indicated that every assessment or charge currently due and owed to the Commission has been paid.

## MA

The Massachusetts Supreme Court ruled on *The Real Estate Bar Association (REBA) v. National Estate Information Services (NREIS)* in April of 2011. The court's ruling essentially reaffirmed Massachusetts attorneys' long standing role to oversee the closing process and conduct closings. Massachusetts attorneys must be present for closings and take an active role in the transaction both before and after the closing; this requirement applies to purchases and refinances. Most significantly, the court's ruling forbade the use of "robo-attorneys." Previously, title agencies engaged the services of "robo-signing" attorneys, whose role was to be present at the closing (i.e., meeting clients for the first time, witnessing signatures, and blindly signing unfamiliar documents). However, because these attorneys were not meaningfully participating in the transaction from the start, and the rote functionality during the closing defeated the purpose of the attorney requirement according to the court's opinion, the practice was invalidated.

## MI

In Michigan, a title search is conducted, depending on the locale, in the county courthouse. There are various title search standards depending on the property. All land titles are checked back at least forty years (Mich. Comp. Laws § 565.101). The State Bar of Michigan publishes a volume known as the Michigan Land Title Standards.

## MN

Generally, title examinations in Minnesota are conducted from an updated abstract or a search of the courthouse records. However, some title companies do have title plants. Currently, some of the counties are becoming computerized and the tract information may soon be available to the public directly from the courthouse. Registered property requires either a registered property abstract or a courthouse search at the registrar of titles' office.

## MS

All land titles in Mississippi are checked back at least thirty-two years, to cover a possible gestation period, twenty-one years of minority; plus ten years for potential adverse-possession claims (Miss. Code Ann. § 15- 1-13). Minority is waived for an eighteen-year-old married individual for the purpose of purchasing a homestead (Miss. Code Ann. § 93-3-11). In suits to confirm title, title is checked back seventy-five years (see Miss. Code Ann. § 11-17-35).

## MO

In Missouri, a deed to a married couple as "husband and wife" creates a tenancy by the entirety. Every interest in real estate granted or devised to two or more persons, other than executors and trustees and husband and wife, shall be a tenancy in common, unless expressly declared, in such grant or devise, to be in joint tenancy (Mo. Rev. Stat. § 442.450).

## MT

In Montana, adverse possession claims are outlined by Mont. Code Ann. §§ 70-19-401 to 70-19-421; which requires five years of open, hostile, continuous, and exclusive possession and payment of all taxes. It is critical to be aware of the Montana Subdivision and Platting Act when attempting to transfer title to any parcel of land less than 160 acres in size. See Mont. Code Ann. § 76-3-101 et. seq. (*Rocky Mountain Timberlands Inc. v. Lund*, 877 P.2d 1018 (Mont. 1994). *Elk Park Ranch. Inc. v Park County*, 935 P.2d 1131 (Mont. 1997)).

## NE

Nebraska title searches are conducted by an examination of the courthouse records. • Nebraska does not use title plants. All land titles are checked back to patent. Traditionally, Nebraska required its agents to search a minimum of 40 years unless there existed a prior owner's policy to search from.

NV

In the larger Nevada counties, title companies have title plants which are adequate for most title searches. In the smaller counties, searches are done at the county recorder's office. Generally, a complete search would be from the patent to date of search.

NH

In New Hampshire, under N.H. Rev. Stat. Ann. 477:3-a and N.H. Rev. Stat. Ann. 477:7, all purchasers or creditors are held to be constructively notified of any properly recorded interest, whether or not the purchaser or creditor actually performs a title search. Even if no recording of a prior interest is made, a subsequent purchaser or creditor cannot have a claim to the real estate if he or she has actual notice of the prior interest at the time the subsequent claim is recorded.

NJ

In New Jersey, special deed recording requirements include: a statement as to consideration for transfer tax purposes, the name and signature of the preparer on the first page, and the municipal tax lot and block designation of the property being conveyed. For deeds conveying real property on which there has been new construction, the words "NEW CONSTRUCTION" must be printed clearly at the top of the first page of the deed in upper case lettering (N.J. Stat. § 46:15-6).

NM

New Mexico title companies and escrow officers are required to have in escrow what is considered to be good funds (N.M. Stat. Ann. § 59A-30-5.1). That is, funds that can be immediately disbursed by cash or cashier's check.

NY

Under New York's homestead protection law, the amount property owners may declare exempt varies based on county location and range from \$75,000 to \$150,000. The exemption amount is doubled for married couples, which can be as much as \$300,000 for a couple in Suffolk County, for example.

NC

North Carolina real property taxes are superior to all other liens, even pre-existing liens, including deeds of trust (N.C. Gen. Stat. § 105-356(a)). This lien is a claim against the real property, not just the named person, and is thus, not affected by transferring title (N.C. Gen. Stat. § 105-356(a)(3)). Real property taxes are a lien like any other judgment. Personal property taxes are a lien on all real property of the owner in the city or in the county where the personal property is located. NOTE: In North Carolina, town tax records are often not in the same location as the county tax records.

ND

North Dakota records and conveyances are recorded in the office of the Register of Deeds of the county in which the property is located (N.D. Cent. Code § 47-19.1-06). All land titles are checked back to patent or congressional grant, as required by North Dakota Title Standard (NDTS) 1-01. There are no transfer taxes or fees in North Dakota. There are also no mortgage taxes in North Dakota.

- OH** Ohio does not require a license for those conducting closings, escrows, or settlements. Closings may be conducted by banks, attorneys, and title insurance companies. Documents are usually prepared by attorneys or grantors. All deeds, mortgages, powers of attorney, and other instruments of writing for the conveyance or encumbrance of real property, executed and acknowledged or proved in any other state, territory or country in conformity with the laws of that state, territory, or country, are as valid as if executed within Ohio.
- OK** Although Oklahoma statutes provide for the use of a power of attorney for the sale of real property, customary practice avoids using powers of attorney. If it is used, it must give full authority to the attorney-in-fact to convey the property. It must also be executed pursuant to statute Okla. Stat. tit. 16, § 20, and the durable power of attorney form is preferred.
- OR** In Oregon, encumbrances affecting the property could appear in any document subsequent to the patent in the chain of title. Although title companies may use some shortcuts in their examinations, at least in theory, that examination will try to cover all matters affecting the title subsequent to the issuance of the patent. State law does not require collected funds at settlement, however, disbursement from escrow customarily occurs after recording. The Oregon Escrow Law precludes disbursement of funds from an escrow until that escrow has “a sufficient credit balance” to cover the disbursement.
- PA** In Pennsylvania conveyance is most often made by special warranty deed but, in some areas of the state, general warranty deeds are used. The conveyance instrument must identify the grantor and grantee; actual consideration, nominal in cases of gifts; description sufficient to identify and locate real estate, usually metes and bounds or courses and distances are used (many recorders’ offices also require the inclusion of a property or tax parcel identifier); operative words “grant” and/or “convey” in the granting clause; language for special or general warranty; and execution by grantor; and acknowledgement to a notary public; subsidence notice in those counties where bituminous coal has been and/or is found.
- RI** Several Rhode Island state statutes affect nonresident sellers, including 44 R.I. Gen. Laws § 30-71.3, which provides for withholding of proceeds by nonresident sellers. Also, when tangible, personal, and realty are sold by a nonresident, the buyer must deduct 6 percent of the total amount paid or gain to the seller if the seller is a nonresident individual, estate, partnership, or trust. If the nonresident seller is a corporation, the buyer must deduct 9 percent. The buyer is responsible for paying the withheld amount to the Department of Taxation.
- SC** In South Carolina, a title search consists of identifying applicable title documents and excerpting pertinent information. An examination of the information is deemed the practice of law and is generally performed by lawyers. Abstract companies furnish title information to law firms in a wide variety of forms, and the law firm then performs the examination of the reported documents. Lawyers conduct closings, and by bar ethics advisory opinions, collected funds must be available at or before closing. Law firms cannot use trust funds belonging to other clients to fund a closing. Title insurance companies are prohibited from closing transactions, preparing title documents, furnishing legal advice of any type to anyone, or providing title services to one who is not a licensed South Carolina lawyer. A title insurer can record a document only upon direction of a licensed South Carolina attorney. Case law strongly suggests that a title insurer (or an independent abstractor) can furnish a title report only to a licensed South Carolina lawyer. There is no state regulation of “closing protection letters.”



**SD** In South Dakota, all land titles are checked back to patent. Title companies handle all aspects of the closing transaction; from receiving the order, to producing the title commitment, to performing the closing. South Dakota homestead laws allow creation of homestead without a recorded declaration.

**TN** All Tennessee land titles are checked back until the examiner is satisfied that the seller has good title, or to a prior title. This is done to determine whether there are unreleased deeds of trust. The traditional search standard is 30 years. A claim for adverse possession requires the common law elements of exclusive, continuous, hostile and open for a period of seven years with color of title (Tenn. Code Ann. § 28-2-101).

**TX** All Texas land titles are checked back to the sovereign due to oil, gas, and mineral reservations in deeds. Subject to the period of time covered by the title plant of the issuing entity, a generally accepted period for title search in Texas is to the warranty deed or at a minimum, thirty years prior to the effective date of the title plant. A claim for adverse possession requires the common law elements of exclusive, continuous, open and hostile for a period of ten years (Tex. Civ. Prac. & Rem. Code § 16.026). If the adverse possessor has a deed and proof of paid property taxes, the period is reduced to five years.

**UT** In addition to including the names and addresses of grantor and grantees, a valid conveyance must include words of conveyance. Section 57-1-12 UCA provides acceptable form language for a warranty deed and the effect thereof. Section 57-1-13 UCA provides acceptable form language for a quitclaim deed and the effect thereof. A claim for adverse possession requires the common law elements of exclusive, continuous, hostile and open for a period of seven years with payment of taxes. See Utah Code Ann. § 78B-2-208.

**VT** A married woman in Vermont can hold title to real property free of any marital rights of her husband if the granting clause in the deed into her contains the magic words of exclusion, "... to her sole and separate use..." She can convey or mortgage property held this way without having the husband join in the conveyance. If the property is the homestead, however, both the husband and wife must convey (Vt. Stat. Ann. tit. 15, § 64). A typical title search in Vermont entails a trip to the Town Clerk's Office, which may have limited business hours and a remote location. Records must be searched manually.

**VA** By Virginia statute, title companies, title agents, attorneys, real estate brokers, and financial institutions may close residential real estate transactions. Virginia Consumer Real Estate Settlement Protection Act (CRESPA) allows certain non-lawyers who are licensed title agents or real estate brokers, as well as title insurance companies and financial institutions, to conduct residential real estate closings for members of the public. This requires all real estate settlement agents conducting residential closings, lawyers and non-lawyers alike, to register with the Virginia State Bar; establishes certain public protection measures which must be put into place by non-institutional settlement agents to the satisfaction of their regulatory agencies; makes it clear that legal advice in connection with a real estate settlement can only be provided by a licensed Virginia attorney.

## WA

In Washington State, title examinations are primarily conducted from the title company's title plants. It is not uncommon for a title plant to be comprised of more than one physical index (i.e., computer-based index microfiche records, geographic folders, or tract book plant). In many counties, the examiner uses a computer-based plant to search back to the 1980s, then uses a microfiche plant for searches back to the 1940s or 1950s, and finally uses a tract book plant to search back to the patent. In most residential transactions and in many commercial transactions, the title insurer's limited practice officer (also known as an LPO) prepares documents. The title insurance company escrow operations include Limited Practice Officers (LPOs), who may prepare 46 "standard" documents approved by the Limited Practice Board, plus Excise Tax Affidavit forms, Department of Licensing forms, and the Auditor's Cover Sheet in Washington State. The most commonly used form of security instrument is the deed of trust.

## WV

In West Virginia, the parties to a transaction may prepare their own documents. Loan documents are typically prepared by lenders or their counsel. Deeds, easements and other instruments are prepared by attorneys. It is the unauthorized practice of law for non-attorneys to prepare documents for third parties.

## WI

All Wisconsin land titles are checked back sixty years, due to statute of limitations for easements and restrictions. Note: Wis. Stat. Ann. § 893.33(6) shortens the time to 40 years for documents recorded after July 1, 1980. Wisconsin became a community property state when it enacted the Marital Property Act. Chapter 766, effective January 1, 1986. Under the Marital Property Act, although the titleholder acting alone continues to hold the power to convey land as before, property rights in other contexts depend upon the potentially arduous task of classifying disputed property item by item.

## WY

A Wyoming title policy may not be written unless it is based on adequate evidence certified by a person authorized to act as a title abstractor, or unless it is based on the opinion of an attorney who is authorized to practice law. Since one may not engage in the business of making or furnishing abstracts without first having a complete set of abstract records of real estate in the county, a hull title plant is required when policies are based on the certification of a person authorized to act as a title abstractor (Wyo. Stat. Ann. §§ 26-23-308 and 33-2-101).



THANK YOU