

REBA Practice Standard No. 28

Scope of a Title Examination

1. A title examination requires a search of the records of the Registry of Deeds in the district where the land is located, if the land is recorded, or the Registry District of the Land Court, if the land is registered. A search of both systems is also required if the land is both registered and recorded land, or if the search discloses an appurtenant or burdening instrument in the other system that affects the land that is being searched. (See REBA Title Standard No. 1)

2. An examination of registered land also requires a search on the recorded side for tax and other liens that are not included in the registered land system by virtue of M.G. L. Chapter 185, Section 46. This search must cover a time period that goes back far enough to discover any liens that may have been brought forward against a prior owner or owners. (See REBA Title Standard No. 1)

3. An examination also requires a search of the Registry District where the land was previously registered and has been withdrawn from the registered land system. Such searches may be conducted in person or through the official website of the Registry of Deeds, provided that website has available the necessary information for the requisite period of the search (or a combination of in person and internet search may be required).

4. A title examination in either recorded land or registered land also requires a search of the relevant records of the Probate and Family Court within the county where the land lies, including probate, divorce and equity proceedings. Such a search may also be undertaken in person or, provided that adequate information for a sufficient time period is available, at the official website of the Registry or of the Probate and Family Court.

5. A title examination also requires a search of the records of other registries of deeds (or districts other than where the land lies), other probate and family courts, federal courts, including bankruptcy court, Land Court, superior and district courts, or places where UCC filings are made, if other records or information within the scope of the required search indicate a search of such records is necessary. Such indicators may include lis pendens, notices of pending registration or confirmation in the Land Court, or references to proceedings elsewhere in the Commonwealth contained within a recorded document.

6. A title examination does not include Internet Based Title Information Sources, as defined in Title Standard 76, but conveyancers are encouraged to avail themselves of the information available in such sources, and to incorporate that information in the records of the Registry of Deeds, as set forth in Title Standard 76.

Notes and Comments

1. The purpose of this Practice Standard is only to outline the resources and indices that need to be reviewed when performing a title examination. It is the conveyancer's responsibility to allocate these tasks. See Real Estate Bar Association for Massachusetts, Inc. v. National Real Estate Information Services, 459 Mass. 512 (2011).

2. See REBA Title Standard No. 1 for a discussion regarding the period of a title examination and M.G.L. c. 93 Section 70 for certification of title to mortgaged premises with regard to certain residential property.

3. M.G.L. c. 185, Section 46 provides a list of encumbrances that affect registered land regardless of whether those encumbrances appear on the Certificate of Title, as follows:

Every plaintiff receiving a certificate of title in pursuance of a judgment of registration, and every subsequent purchaser of registered land taking a certificate of title for value and in good faith, shall hold the same free from all encumbrances except those noted on the certificate, and any of the following encumbrances which may be existing:

First, Liens, claims or rights arising or existing under the laws or constitution of the United States or the statutes of this Commonwealth, which are not by law required to appear of record in the registry of deeds in order to be valid against subsequent purchasers or encumbrances of record.

Second, Taxes, within three years after they have been committed to the collector.

Third, Any highway, town way, or any private way laid out under section twenty-one of chapter eighty-two, if the certificate of title does not state that the boundary of such way has been determined.

Fourth, Any lease for a term not exceeding seven years.

Fifth, Any liability to assessment for betterments or other statutory liability, except for taxes payable to the Commonwealth, which attaches to land in the Commonwealth as a lien; but if there are easements or other rights appurtenant to a parcel of registered land which for any reason have failed to be registered, such easements or rights shall remain so appurtenant notwithstanding such failure, and shall be held to pass with the land until cut off or extinguished by the registration of the servient estate, or in any other manner.

Sixth, Liens in favor of the United States for unpaid taxes arising or existing under the Internal Revenue Code of 1954 as amended from time to time and any other federal lien which may be filed in the Commonwealth.

Seventh, Liens in favor of the Commonwealth for unpaid taxes arising or existing under the laws of the Commonwealth.

Adopted May 1, 2018