

## EOEA LAND ACQUISITION POLICY -- TITLE EXAMINATION REPORTS

September 1, 1995

Under the provisions of 301 CMR 51.05 (2), and subject to the provisions therein, the following shall be the policy of the Secretary of EOEA with respect to title examinations for acquisitions of Article 97 land or interests therein. This policy supersedes all previous EOEA land acquisition policies on title examination reports.

All contracts for title examination reports shall conform to "EOEA Specifications for Title Examinations," dated September 1, 1995, and shall include standard conditions pertaining to:

- 1) liquidated damages for title examination reports delivered after the contracted delivery date;
- 2) acceptance and authorization for payment of the title examination report upon determination by the contractor that the terms of the title examination contract have been met; and
- 3) rejection and return of the title examination report without payment to the contractor if the contractee determines that the terms of the title examination contract have not been met.

By signing the "EOEA Agency Article 97 Land Acquisition Transmittal Form," an EOEA agency head certifies compliance with the above policy.

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Affairs

Environmental

## EOEA SPECIFICATIONS FOR TITLE EXAMINATIONS

September 1, 1995

Land to be acquired by an EOEa agency has been identified as being important conservation land and open space with significant public value. As this land has been determined to be an essential component of this EOEa agency's mission, it is intended to be retained as a permanent part of the Commonwealth's conservation land base. A detailed history of the title to this land is a crucial element of the acquisition process to a) ensure the proper investment of public funds in land with good title, and b) properly manage the property in the future and protect it from trespass, encroachment, and adverse claims.

The number of projects which must be completed within the limitations of time and staff requires title examinations that are consistent in format, readily understandable, organized, and easy to use. The long-term nature of state ownership of the land acquired requires that the title examinations be in a format that can be quickly reviewed and understood by those not involved with the actual acquisition of this land. These title examination specifications have been designed to achieve these goals.

### I. FORMAT

The title examination must contain the following components:

- a) a Certificate of Title;
- b) a Narrative of Title;
- c) an Examiner's Sketch; and
- d) an Abstract of Title.

#### A. CERTIFICATE OF TITLE

- (1) Title must be certified by an Attorney admitted to the practice of law in the Commonwealth of Massachusetts and on a Certificate of Title form prepared or authorized by the EOEa AGENCY. If the contractor wishes to use his/her own form of Certificate, the Certificate must be approved as to form by the EOEa agency and must provide the same substantive information as set forth in the EOEa agency's Certificate. All information provided on the Certificate must be typewritten or printed legibly.
- (2) The Certificate of Title must certify to the Commonwealth good and clear record and marketable title in the identified record owners, subject to the listed encumbrances. If title cannot be so certified in the current record owners, the Certificate must briefly refer to the nature of the title defect(s) and refer to the Narrative of Title for a detailed discussion of

the defect(s). If record title is in a deceased individual, do not recite "Estate of (deceased individual)"; rather, all current record owners, whether heirs or devisees, must be identified. If there is more than one owner, and the interest of each owner is not equal, the Certificate must indicate the fractional interest of each owner, if ascertainable.

- (3) The Certificate of Title must list all encumbrances that adversely affect the quantity and/or quality of title. All other matters affecting title should be described either as a NOTE on the Certificate of Title or in the Narrative of Title.
- (4) The Certificate should also list all appurtenant rights such as rights-of-way and similar property interests that benefit the locus as discovered from information in the Registry of Deeds. Certification should include rights-of-way that provide access to the premises examined if so requested by the EOEa agency.
- (5) The Certificate must (a) state the dates on which the examination begins and ends, (b) expressly reference the deed which is the source of title for the identified owners in whom good and clear record and marketable title is found, and (c) expressly reference the Plan of Land, if any, on which the current legal description is based.
- (6) The following is a list of permissible exceptions to the Certificate of Title. These exceptions must not be listed as an encumbrance unless set forth in a recorded instrument or Plan:

forgery; rights or claims of tenants, lessees, occupants or parties in possession; appurtenant rights; ways or easements not of record; implied easements in other lands; fee and easements of others in ways; accuracy of surveys and of descriptions of buildings and lands; matters which would be disclosed by a personal inspection or accurate survey; requirements and violations of planning board regulations, of zoning or subdivision control laws, or of restrictions; any law, ordinance, or governmental regulation regarding environmental protection; or, except as appearing of record in the registry of deeds in the chain of title: liens or rights to liens for labor performed or materials furnished; municipal taxes, assessments, rates and charges; municipal lighting plant rates and charges; condominium common charges; leases for seven years or less; governmental takings or encumbrances not required by law to appear of record in the registries.

Any other exceptions to the Certificate of Title must be approved in

writing by the EOEa agency.

B. NARRATIVE OF TITLE

- (1) Each title examination must contain a narrative of title written in plain English which clearly discusses the history and current status of title to the premises examined. The narrative must trace each locus parcel through its chain of title from the date of beginning of the examination to the current ownership of record.
- (2) The narrative must identify all title problems and defects discovered and recommend solutions for each.
- (3) Where the impact on the quantity and quality of title of an encumbrance or Note shown on the Certificate of Title is not apparent or self-evident, the narrative must explain the effect of each.
- (4) Where not apparent, the location of easements, takings, and conveyances out must be commented upon to the extent possible from information available at the Registry of Deeds.
- (5) If the current record owner is a Trust, the narrative must discuss whether the Trustees are fully empowered to sell and convey real property of the Trust without needing to obtain the consent of the beneficiaries or whether the written consent of the beneficiaries thereunder is required. In addition, if applicable, the narrative must discuss the method of replacing or filling vacancies which is provided for in the instrument and the legal adequacy of any such changes of Trustee(s) of record.
- (6) If the current record owner is a corporation, the NARRATIVE must discuss whether it is a Massachusetts corporation or a foreign corporation which has qualified to do business in the Commonwealth, whether a vote will be required, who is authorized of record to sign on behalf of the corporation, whether a corporate excise tax waiver will be required, and whether certificates of merger, change of name, corporate existence, and/or good standing are necessary.
- (7) Each document described in the narrative must be cross-referenced to its corresponding page in the Abstract. The narrative shall be typewritten or printed legibly, with no abbreviations of words or terms.

C. EXAMINER'S SKETCH

- (1) A sketch must be provided which accurately describes the locus,

its relationship to other parcels examined and to conveyances out, and the locations of rights, easements, waterways, and so on pertinent to the locus. The exact nature of the sketch will be determined by the circumstances. For example, if the locus is defined by a recorded Plan of Land, the Plan is sufficient. If the locus is one parcel in a larger tract that has been surveyed, a recorded Plan showing the perimeter of the original parcel and the boundaries of the locus is sufficient. However, if the locus is a tract of land described only by a bounding or running description, the sketch should show the perimeter of the original parcel, the location and boundaries of the locus, the relationship of the locus to other parcels examined and to conveyances out of the original parcel, and the locations of rights, easements, waterways, and similar matters affecting the locus.

D. ABSTRACT OF TITLE

- (1) The Abstract, except in land registration cases, must cover a minimum of 50 years unless the EOEA agency approves a lesser period in writing. If the land is registered, the Abstract must cover the period of time from the date of the most recent registration Certificate.
- (2) Abstracts must cover all instruments of record related to the locus during the entire period of examination.
- (3) Every sheet of the Abstract must be bound together in the upper left hand corner. Each sheet must be given a page number clearly indicated in the upper right hand corner.
- (4) All information in the Abstract, including all photocopies of documents, must be legible.
- (5) Printed forms, if used, must be those commonly used by conveyancers, and all information required therein must be fully set forth.
- (6) All photocopies of documents of record included in the Abstract, whether deeds, encumbrances, or any other document affecting title, must be the complete document as recorded in the Registry of Deeds. The copy must include the full acknowledgment and all Registry notations such as book and page numbers, date of recording, marginal references, and so on. When information cannot be copied, accurate handwritten notations thereof should be made on the copies.
- (7) The Abstract must not begin with a probate, mortgage or tax deed. The earlier deed in the chain of title should be the starting point of examination, and then the subsequent proceedings should be shown and discussed.

- (8) A photocopy of the starting deed, which must contain at least a bounding description of the premises, must be provided. If the starting deed merely refers to a prior recorded instrument or otherwise fails to adequately describe the premises examined by a running or bounding description or by reference to a parcel shown on a recorded Plan, prior instruments in the chain of title must be researched for a sufficient legal description.
- (9) If the starting deed references prior recorded encumbrances, photocopies of the rights and easements and releases, if any, and abstracts of the liens and releases, if any, must be provided. If a prior recorded encumbrance cannot be located, the narrative must set forth what efforts were made to locate the encumbrance.
- (10) A photocopy of the most current deed of the parcel as recorded in the Registry of Deeds must be included.
- (11) If locus is registered land, a photocopy of the entire certificate of title, including the encumbrance sheet and any documents referred to therein, must be contained in the Abstract. In addition, a copy of the full Land Court Plan of Land, and not just a portion thereof, must be included.
- (12) A complete copy of the relevant sheets of every Plan of Land in the chain of title must be included in the Abstract. All descriptions in each instrument in the chain of title must be checked with the Plans, and any variation noted in the NARRATIVE with an opinion as to whether it affects the record title.
- (13) Copies of relevant Atlases must be included if essential to understanding the history of the title and/or the location of the premises examined.
- (14) Complete photocopies of any outstanding mortgages, liens, or other encumbrances of record such as utility easements, licenses, and rights-of-way affecting the title, together with any amendments, modifications, or extensions, must be included in the Abstract.
- (15) Flag by underlining in red ink in all appropriate documents in the Abstract (a) powers of Trustees and Executors, and (b) easements, encumbrances, restrictions, appurtenant rights, and other matters described therein that affect or benefit the locus.
- (16) Where the locus is subject to a right-of-way, reservation, or restriction, if possible the dominant estate should be determined, the current owner thereof identified, and a copy of the deed of the dominant estate included in the Abstract. All relevant facts regarding the effect thereof on the

premises being examined should be discussed in the narrative.

- (17) The Abstract must contain a grantor schedule for each owner of each interest in the chain of title.
- (18) Each owner of each interest must be run in the grantor index for an additional four years (since 1976) or 3 years (prior to 1976) beyond the date of termination of interest for possible takings for municipal taxes, liens, or assessments.
- (19) The grantee index for both registered and unregistered land must be examined from the date of acquisition of title by the current owner(s) for possible acquisition of appurtenant rights.
- (20) Instruments found on the grantor/grantee schedule must be checked and clearly identified as to whether locus or non-locus. This is particularly important in deeds describing more than one parcel of land. If non-locus, give brief description as to why, such as parcel is on opposite side of road, is a different lot on plan, and so on.
- (21) The Abstract must describe the domicile and marital status of grantor when apparent from Registry records. If the instrument fails to refer to marital status or domicile, so comment in the Abstract.
- (22) The Abstract must indicate the nature of any grantee tenancy (i.e., joint tenancy, tenancy in common, or tenancy by the entirety). If deed is silent or ambiguous, this matter must be discussed in the narrative.
- (23) Where the examination involves a large tract of land which includes the locus but from which portions have been conveyed out, photocopies of the deeds out and any Plans of Land connected therewith must be included. If no Plans are of record, the portion conveyed out and its location within the original tract should be shown on the Examiner's Sketch, if possible. However, if the locus is part of a subdivision or condominium from which a large number of lots or units have been conveyed out, abstracts in lieu of photocopies or a schedule sheet showing all coveyances out in lieu of abstracts are appropriate.
- (24) For titles out of a subdivision or condominium, every deed out of the subdivision up to the point at which the locus is conveyed out must be examined for possible appurtenant rights or restrictions that may form a common scheme or plan affecting the locus. Whether or not a common scheme or plan has been found from this investigation must be noted in the narrative.
- (25) Where title is complicated by a multiplicity of chains or

fractional interests, or if title extends over a long period of time with many owners, the chains must be diagrammed.

- (26) Outstanding mortgages should be run in the grantor index from the date of the mortgage to the end date of examination for all possible assignments, discharges, or changes of name. If the mortgagee is an individual, then probate, divorce, and bankruptcy records must be checked. If mortgagee is a private corporation, bankruptcy records must be checked.
- (27) Where a mortgage discharge is executed by a person in a fiduciary capacity, his/her authority to do so must be verified.
- (28) In cases of foreclosure of mortgages or tax titles, ascertain whether there is sufficient record evidence in the chain of title to establish evidence of compliance with the provisions of applicable state and federal law. The Abstract must contain photocopies of the foreclosure deed and affidavit, entry, tax taking or tax deed, any judgment, decree, or order authorizing or approving the foreclosure, and any additional affidavits, notices, and powers of attorney relating to the foreclosure.
- (29) If the chain of title includes a conveyance by a corporation, a copy of the vote authorizing the conveyance must be included in the Abstract along with the deed of conveyance. If no vote is on record, so note in the Abstract and comment thereon in the narrative if the same adversely affects title. The lack or presence of corporate tax waivers for corporate conveyances within the last three years should be similarly noted in the Abstract and discussed in the narrative.
- (30) If the chain of title indicates a joint tenancy, a tenancy by the entirety, or a life tenancy, and the subsequent death of a tenant, the record should be checked for satisfaction of state and federal estate tax liens. An inheritance tax waiver (Form L-8) or an estate tax waiver (Form M-792) for state taxes, a Federal Estate Tax Lien Release or an Estate Tax Closing Letter for federal taxes, and a death certificate or probate as record evidence of death, are appropriate. The lack of any of these documents should be discussed in the narrative.
- (31) If there is a deed into a husband or wife as tenants by the entirety and the property is conveyed by the surviving spouse, the divorce records must be checked to determine the existence of the marriage prior to the date of death of the deceased spouse. If the record indicates that there has been a divorce, give date, court, and summary of proceedings, including any effect on the locus being examined.
- (32) The date and place of death or date and place of last known residence of every owner in the chain of title not accounted for in a subsequent conveyance of his or her interest must be

indicated in the narrative if it can be determined from the records of the Registries of Deeds and Probate in the county in which the land is located.

- (33) Where title was held under a Declaration of Trust, a photocopy of the complete instrument creating the Trust and all amendments thereto must be included in the Abstract. The powers of the Trustee(s) must be underlined in full in red ink. Whether the Trustee(s) was fully empowered to sell real property of the Trust without needing to obtain the consent of the beneficiaries, or whether the written consent of the beneficiaries thereunder was required and the record contains adequate evidence of such consent, must be examined. The method for replacing or filling vacancies provided for in the instrument and the legal adequacy of any such changes of Trustee(s) of record must also be examined. Any defects adversely affecting title must be discussed in the narrative.
- (34) The name of each Trust and each separate Trustee thereof must be run for its and his respective term plus the usual three or four years for municipal taxes, liens, and assessments. Amendments to the trust document and resignations of trustees must be noted.
- (35) The Probate and Bankruptcy records and the Federal and State Tax Lien Index for every owner in the chain of title must be checked for his/her respective period of ownership. In addition, the Federal and State Tax Lien Index must be checked for all owners who owned the locus within the last ten years to determine if a lien attached to locus as after-acquired property.
- (36) Probate records must be abstracted and the whole or relevant portions of the Will photocopied and provided with the Abstract.
- (37) Where a sale has been made by a License To Sell granted by a Probate Court, a copy of the License To Sell must be included in the Abstract.
- (38) All municipal liens must be noted up to the date of certification of title. A municipal lien certificate should be provided with and attached to the Abstract if requested by the EOEA agency.
- (39) Appurtenant rights-of-way that provide access to the locus must be examined and certified if so requested by EOEA agency at the outset of the examination. Should the contractor during the course of examination of the chain of title to the locus discover any additional such appurtenant rights-of-way, contractor should immediately notify the EOEA agency to

ascertain whether the EOEA agency desires to amend the Notice to Proceed to include examination and certification of the additional appurtenant right(s).

## **II. GENERAL EXAMINATION STANDARDS**

- (1) In the event any of the specifications herein contained sets a standard less strict than the current standard contained in the Title Standards adopted by the Massachusetts Conveyancers Association (MCA), the MCA Title Standards shall be applicable.
- (2) Should any questions arise during the course of the title examination that could significantly affect the title examination, the contractor or his/her agent must contact the EOEA agency immediately for clarification. For example, if the contractor is uncertain as to whether a property is locus or non-locus, he/she should contact the EOEA agency. Any discussion and decision must be confirmed in writing by the contractor.
- (3) Where several titles are assigned to one contractor for examination and some of the titles have a common back title, each Abstract must have the whole record including the back title. Clearly legible photocopies of the common back title are permissible.
- (4) All work is to be done by the contractor and his/her agents or employees.
- (5) Information discovered during the title examination which may not be a reportable encumbrance may, however, raise an issue of applicability of one or more state or federal statutes or regulations affecting the use of or title to the land. In order to facilitate the EOEA agency's review, acquisition, and management of the land, the Contractor is requested to complete the attached Examiner's Supplemental Report form. This Report is for informational purposes only and not part of the certification of title.

The contractor hereby acknowledges that he/she has reviewed these Title Examination Specifications and understands the work product required hereunder. The contractor agrees to follow said specifications in performing all work pursuant to this Service Contract for Title Examination Services and to correct all deficiencies as identified by the EOEA agency at no additional cost to the EOEA agency.

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CONTRACTOR:

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**ATTORNEY'S CERTIFICATE OF TITLE**

To:       The Commonwealth of Massachusetts  
          (Agency under which the contract was awarded)

I hereby certify that I have examined the records as indexed in the registry of deeds or registry district in which the premises described herein lie and in the relevant registries of probate since \_\_\_\_\_ to the land located in \_\_\_\_\_, \_\_\_\_\_ County, Massachusetts, described as \_\_\_\_\_ in a deed from \_\_\_\_\_ to \_\_\_\_\_, dated \_\_\_\_\_ and recorded in the \_\_\_\_\_ Registry of Deeds in Book \_\_\_\_\_ at Page \_\_\_\_\_, or as Land Registration Document No. \_\_\_\_\_, and find good and clear record and marketable title in \_\_\_\_\_, free from all encumbrances except:

1. \_\_\_\_\_ Sheet No. \_\_\_\_\_ in Abstract
2. \_\_\_\_\_ Sheet No. \_\_\_\_\_ in Abstract
3. \_\_\_\_\_ Sheet No. \_\_\_\_\_ in Abstract
4. \_\_\_\_\_ Sheet No. \_\_\_\_\_ in Abstract
5. \_\_\_\_\_ Sheet No. \_\_\_\_\_ in Abstract
6. \_\_\_\_\_ Sheet No. \_\_\_\_\_ in Abstract

The premises are shown on Plan recorded with said Registry of Deeds in Plan Book \_\_\_\_\_ at Page \_\_\_\_\_ / in Book \_\_\_\_\_ at Page \_\_\_\_\_ / with Registration Certificate No. \_\_\_\_\_.

NOTES:

DATE of completion of examination:

SIGNED:

Attorney At Law

**EXAMINER'S SUPPLEMENTAL REPORT**

Based on the examination of the record title to the premises described on the attached Certificate of Title and of the Public Restriction Tract Index, Watershed Protection Maps, and Official Maps in the Registry of Deeds, I found reference to the following matters that may affect the title to and/or use of the land:

(Identify and note sheet in the Abstract in which they appear)

1. Party wall, boundary line agreement, or encroachment:  
\_\_\_\_\_ Sheet #
2. Ownership now or formerly by a railroad:  
\_\_\_\_\_ Sheet #
3. Proximity to an airport: \_\_\_\_\_ Sheet #
4. Existence of springs, steams, rivers, ponds, lakes, mills, or dams on, bordering on, or running through the premises:  
\_\_\_\_\_ Sheet #
5. Cemetery or family burying ground: \_\_\_\_\_ Sheet #
6. Old highways, abandoned or discontinued roads, or other ways:  
\_\_\_\_\_ Sheet #
7. Use or ownership by an entity that might result in storage or use of hazardous materials (e.g. dump, landfill, oil company, tannery, etc.):  
\_\_\_\_\_ Sheet #
8. Historic or Archeological Landmark: \_\_\_\_\_ Sheet #
9. Scenic Road, Historic District, or Agricultural Incentive Area:  
\_\_\_\_\_ Sheet #
10. Conservation, Preservation, Agricultural Preservation, Watershed Preservation, or Affordable Housing Restrictions:  
\_\_\_\_\_ Sheet #
11. Watershed Management or Protection Area:  
\_\_\_\_\_ Sheet #
12. Possible adverse claim to use, possession or ownership:  
\_\_\_\_\_ Sheet #

DATED: \_\_\_\_\_

SIGNED:

Attorney