## Section C.10: Title Report

* A Title Report (which may be in the form of an Ownership and Encumbrance Report, a title insurance commitment, or title insurance policy, so long as it provides all of the information described below) that reflects all parties having a recorded interest in the property, including owners, tenants under recorded leases, lienors, mortgage holders and easement holders, among others, should be submitted with the IC package to be reviewed.[[1]](#footnote-2) The search commences with the instrument constituting the root of title under the Marketable Record Title Act (MRTA) (i.e., evidence of title, such as a deed, that is at least 30 years old) and includes a review of all subsequently recorded instruments, a review of prior recorded instruments (to the extent required by MRTA), and a review of prior recorded instruments that are not eliminated by MRTA. If the Title Report was issued more than six (6) months prior to delivery to FDEP, or if it will be more than six (6) months old by the time the IC is to be approved, then the Owner should provide either an updated Title Report or an Affidavit of Title confirming that the status of title is unchanged from the Title Report provided (see [Attachment 8](https://floridadep.gov/waste/waste/documents/attachment-8-sample-affidavit-title), Sample Affidavit of Title) include complete copies of all existing encumbrances on the property as reported on the Title Report in the IC package sent to OGC. It is not unusual for only a “Memorandum of Lease” or “Notice of Lease”, rather than the entire lease, to be recorded in the public records. If there is such a recorded Memorandum or Notice, provide OGC with a complete copy of the lease along with the Memorandum or Notice. For properties with numerous easements or multiple partially restricted areas, in addition to the encumbrances, the assigned OGC attorney may also request a labeled map, diagram, or Survey showing the locations of all encumbrances in relation to the restricted area. See [Attachment 14](https://floridadep.gov/waste/waste/documents/attachment-14-example-encumbrance-map-list-easements-affecting-restricted-area), Sample Encumbrance Map and List of Encumbrances. If requested, the list of encumbrances should identify which encumbrance intersects with which restricted area. As discussed above, a title report (for the source and possibly for non-source properties) may or may not be required in evaluating an IC other than an RC.

1. When a title search is performed in the county property records, all recorded instruments with legal descriptions that overlap with the legal description of the property that is the subject of the title search will be identified. All such recorded instruments have an effect on the title to the property and will somehow affect or encumber the property rights of the property owner. Some previously recorded encumbrances will conflict with a prospective RC making it necessary for the owner to seek subordination or joinder and consent (as applicable) from the holders of those encumbrances. If those previously recorded instruments are not subordinated, or their holders do not join and consent, then those encumbrances take priority over a subsequently recorded RC and the RC could fail as to that encumbrance. However, if certain conditions exist, a notice to existing easement, mortgage or other lien holders is acceptable in lieu of a joinder and consent or subordination. For further guidance see next page. [↑](#footnote-ref-2)