

Title Search Training Webinar

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Purpose of Title Search Report (TSR):

1. Who owns the property in fee? Fee simple title holder
2. Who has rights to the use of the property? Encumbrance holders (easement/lien/mortgage/etc.).

Who gets notice? Encumbrance holders whose right to use the property overlaps/conflicts/interferes with the restriction in the institutional control (IC).

To determine who should be sent notice you need to review:

1. The TSR/Ownership and Encumbrance Report (O&E)
2. The restriction language in the IC (groundwater use, contaminated soil cap requirement, land use control requirement, stormwater management system, dewatering requirements)
3. Title deed

Legal Description (LD): Compare the LD in

1. the vesting deed (the deed conveying fee title to the present owner),
2. the IC (DRC, etc.), and
3. the TSR/O&E

Each LD might be different from the others. Need an explanation if that is the case.

Example: The vesting deed LD on a large parcel is different from the LD listed in the IC (DRC) because only a small portion of the large parcel will be restricted. The TSR/O&E might be either one of those LDs or a third LD that incorporates the IC LD, but includes more than that and is not as large as the entire parcel.

Locations of encumbrances and restrictions:

- If the IC restricted area LD does not physically (location) overlap/coincide with the encumbrance LD, then there is no conflict – **No Notice**
- If IC LD physically overlaps with encumbrance LD, but encumbrance is an access easement only, then there is no conflict – **No Notice**
- If IC LD physically overlaps with encumbrance LD, and encumbrance holder is granted the right to take groundwater, but IC prohibits the taking of groundwater, there is a conflict – **Notice Required**
- If IC LD physically overlaps with encumbrance LD, and encumbrance holder is granted the right to enter the soil (utility lines, pole placement, etc.), but IC requires a contaminated soil cap, there is a conflict – **Notice Required**
- If IC LD physically overlaps with encumbrance LD, and encumbrance holder is granted the right to enter the soil, and IC prohibits the taking of water, there is no conflict – **No Notice**
- Etc.

Legal TSR Review:

1. Date of search start. Is it old enough? Must be a 30 year search per MRTA. **When**

2. Date of search end. Is it new enough? Search must have been completed within 6 months of IC execution by DEP. **When**
3. Legal description. Check it against the LD in the IC and the Deed. **What**
4. Apparent Record Owner/Fee Simple Owner must be listed. Must match the Grantor in the IC/RC and on the deed. **Who**
5. Chain of Title listing. Not required, but if not, then the assumption is that the creator of the TSR has properly made all the connections conveyance to conveyance and not discovered any irregularities that would cause a defect in the title. If provided, the latest in time deed should match the apparent record owner/fee simple owner. **Who**
6. Encumbrance listing. Easements, liens, mortgages, leases, agreements, UCC filings, court orders, taxes paid, notices of tax liens, NOC (notices of commencement), covenants/restrictions/conditions, easements located in deeds, revised corrected plat, resolution by city/county, and more. **Also who. Only some of them will need Notice.**

Always Notice:

- County
- Water Management District
- City, if any
- Mortgage holders, if any
- Tenants, if any
- Encumbrances that coincide/conflict/overlap the IC restriction, if any
- Real property owners onto which the source contamination has migrated, if any

How to Notice:

1. "Mailed" Notice (not "actual" notice); or
2. "Published" Notice (not "constructive" notice) - for tenants in apartment complex or business tenants.

Sample/Template Notice Letters in ICPG Attachments:

- Attachment 9A: To send to real property owners, residents, lessees, encumbrance holders when the closure is not for state owned lands or ACTL.
- Attachment 9B: To send to local governments (city, county, water management district) when the closure is not for state owned lands or ACTL.
- Attachment 9C: To send to local governments and encumbrance holders when the closure is for state owned lands.
- Attachment 9D: To send to non-source contaminated property owners,.
- Attachment 9E: To send to real property owners, residents, lessees, and encumbrance holders when the closure is for ACTL.
- Attachment 9F: To send to local governments when the closure is for ACTL.

30 Day Comment Period:

- Certified mail/return receipt requested is no longer required.
- Copy of dated mailed notice letter should be provided to DEP.
- Count 30 days from the date on the letter and add days for mailing to the recipient and days for recipient to mail to DEP. (8 total maybe? = 38 days)