

Module 3

TITLE TRAINING

Evidence of Title



Presenter:

Lands and Realty Title Training
BLM National Training Center
Phoenix Arizona



Module 3: Evidence of Title



Module 3 Learning Objectives



Module 3 covers various forms of acceptable title evidence as well as the statutory authority to review title. By the end of this module, you will be able to:

1. Explain how the agencies are delegated the [authority to review title](#).
2. List the qualities of [acceptable preliminary title evidence](#), according to *The Attorney General's Title Regulations (2016)*.
3. Name the main [categories of title evidence](#).
4. Describe the [four kinds of documentation](#) commonly used in title reviews.
5. Explain why the United States negotiated a [federal form of title insurance](#).
6. Demonstrate an awareness of the current [ALTA US Policy](#).



Statutory Authority for Title Review:

The United States has a long and rich history of reviewing title for land acquisitions. In 1841, Congress passed a law, *40 U.S. Code § 3111 - Approval of sufficiency of title prior to acquisition*, that states the United States **must** review the title of any property, or interest in property, acquired by the United States.

40 U.S.C. 3111(a) gave the responsibility for title review to the **Attorney General** of the United States, through the **Department of Justice (DOJ)**. Although the law originally contemplated only the purchase of lands or interest in lands, the Attorney General has broadly interpreted this law as applying to **all land transactions** where the United States acquires title to lands or interest in lands, by whatever means.

“Public money may not be expended to purchase land or any interest in land unless the Attorney General gives prior written approval of the sufficiency of the title to the land for the purpose for which the Federal Government is acquiring the property.”

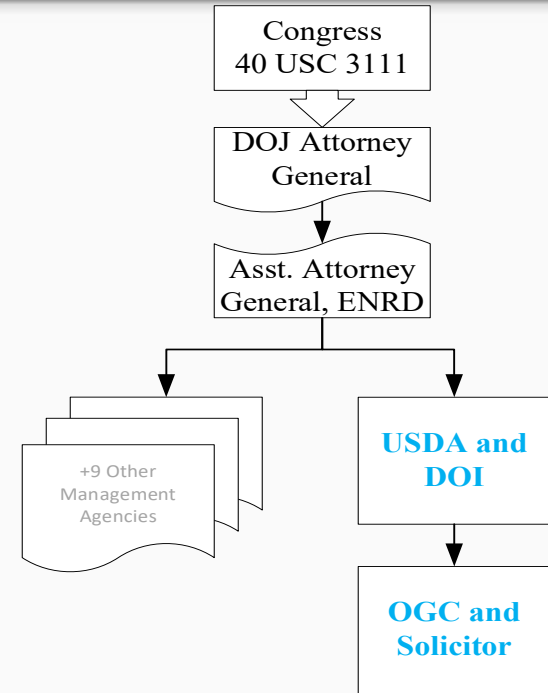


Module 3: Evidence of Title – Delegated Authority for Title Review

Delegated Authority:

Prior to 1970, all land acquisitions for all federal agencies were reviewed by the Attorney General. In 1970, the Attorney General delegated to the **Assistant Attorney General, Environment and Natural Resources Division (ENRD)**, the authority and responsibility to review titles and to delegate review authority to other agencies (40 U.S.C. 255).

The Assistant Attorney General then delegated that authority to ten land management agencies, including the **Department of Agriculture**, through its **Office of the General Counsel (OGC)**. (The remaining federal agencies, such as the Environmental Protection Agency, do not have delegated authority and must go through DOJ to obtain title reviews.)



Delegations of Title Review Authority from the Department of Justice



Attorney General's Title Regulations:

On December 20, 2016, the Attorney General issued *Regulations of the Attorney General Governing the Review and Approval of Title for Federal Land Acquisitions (2016)*. These regulations are commonly referred to as *The Attorney General's Title Regulations (2016)*.

These regulations replace all earlier title regulations of the Attorney General, including those adopted in Order No. 440-70, dated October 2, 1970, as amended in 1974 and 1990, and the *Department of Justice Title Standards (2001)*.

All federal agencies are required to follow these regulations.



[The Attorney General's Title Regulations \(2016\) is available from the Department of Justice](#)

Module 3: Evidence of Title – Delegated Authority for Title Review

Acceptable Preliminary Evidence of Title:

Commitments, binders, preliminary reports or other forms of preliminary title evidence are acceptable if:

- They are **customarily used** in the locality,
- Are acceptable to the **reviewing attorney**,
- Are generally members of the American Land Title Association (ALTA),
- Are based upon a **preliminary title search**, and
- They **commit the title company** to issue a **final certificate** of title or title insurance policy in the approved form.

There is no required format for the preliminary title evidence.

Placer Title Company
Preliminary Report

Issued By: Order No. 1415-14816

PLACER TITLE COMPANY
SPECIAL PROJECTS
2145 LARKSPUR LANE, SUITE A
REDDING, CA 96002
Escrow Officer: Scott Stanford
Phone: 530-244-2122
Fax: 530-244-1000
Escrow Officer Email: sstanford@placertitle.com
Email Loan Docs To: N/A

Customer Reference:
Property Address: 17811 AND 17715 CLEAR CREEK ROAD, REDDING, CA 96001

In response to the above referenced application for a policy of title insurance, Placer Title Company hereby reports that it is prepared to issue, or cause to be issued, as of the date hereof, a Policy or Policies of Title Insurance describing the land and the estate or interest therein hereinafter set forth, insuring against loss which may be sustained by reason of any defect, lien or encumbrance not shown or referred to as an Exception below or not excluded from coverage pursuant to the printed Schedules, Conditions and Stipulations of said Policy forms.

The printed Exceptions and Exclusions from the coverage and Limitations on Covered Risks of said Policy or Policies are set forth in Attachment One. The Policy to be issued may contain an arbitration clause. When the Amount of Insurance is less than that set forth in the arbitration clause, all arbitrable matters shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties. Limitations on Covered Risks applicable to the CLTA and ALTA Homeowner's Policies of Title Insurance which establish a Deductible Amount and a Maximum Dollar Limit of Liability for certain coverages are also set forth in Attachment One. Copies of the Policy forms should be read. They are available from the office which issued this report.

PLEASE READ THE EXCEPTIONS SHOWN OR REFERRED TO BELOW AND THE EXCEPTIONS AND EXCLUSIONS SET FORTH IN ATTACHMENT ONE OF THIS REPORT CAREFULLY. THE EXCEPTIONS AND EXCLUSIONS ARE MEANT TO PROVIDE YOU WITH NOTICE OF MATTERS WHICH ARE NOT COVERED UNDER THE TERMS OF THE TITLE INSURANCE POLICY AND SHOULD BE CAREFULLY CONSIDERED.

IT IS IMPORTANT TO NOTE THAT THIS PRELIMINARY REPORT IS NOT A WRITTEN REPRESENTATION AS TO THE CONDITION OF TITLE AND MAY NOT LIST ALL LIENS, DEFECTS AND ENCUMBRANCES AFFECTING TITLE TO THE LAND.

This report (and any supplements or amendments hereto) is issued solely for the purpose of facilitating the issuance of a policy of title insurance and no liability is assumed hereby. If it is desired that liability be assumed prior to the issuance of a policy of title insurance, a Binder or Commitment should be requested.

Dated as of June 29, 2015 at 7:30 a.m.
Title Officer: Scott Lumry

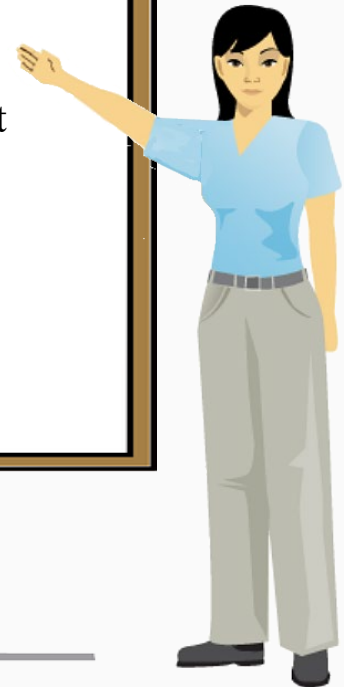
CLTA Preliminary Report

REDDING (Standard 2008)



Knowledge Check

Please see the following three review questions about **delegations of authority** and *The Attorney General's Title Regulations (2016)*.



Select True or False to indicate whether the statement is correct (true) or incorrect (false):

“The agency must obtain written approval from the Department of Justice (DOJ) before expending funds to purchase real property.”

- True
- False



Select True or False to indicate whether the statement is correct (true) or incorrect (false):

“The agency must obtain written approval from the Department of Justice (DOJ) before expending funds to purchase real property.”

- True
- False**





Select the best answer to complete the sentence:

“The agencies were delegated the authority to review title by _____”

- Congress
- DOJ Attorney General
- DOJ Assistant Attorney General, ENRD
- Chief, USDA





Select the best answer to complete the sentence:

“The agencies were delegated the authority to review title by _____”

- Congress
- DOJ Attorney General
- DOJ Assistant Attorney General, ENRD
- Chief, USDA



Select the best answer or answers to complete the sentence:

“According to The Attorney General’s Title Regulations (2016), various forms of title evidence are acceptable, provided they are _____”

- Customarily used in 95% of federal transactions
- Acceptable to the reviewing attorney
- Prepared by an agency Realty Specialist



Select the best answer or answers to complete the sentence:

“According to The Attorney General’s Title Regulations (2016), various forms of title evidence are acceptable, provided they are _____”

- ✓ Customarily used in 95% of federal transactions
- ✓ Acceptable to the reviewing attorney
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What is Evidence of Title?

Evidence of Title is the means by which ownership of property is satisfactorily demonstrated, within a given jurisdiction. In other words, **evidence of title tells us who owns a property and who may have any claims against the property.**

This documentation is found by:

- A review of the **public records**,
- A **property investigation**, and
- A review of other supplemental or **supporting documents**.

Cost of Title Evidence:

Public Law 91-646 states:

“The owner of the real property shall be reimbursed for all reasonable expenses the owner necessarily incurred for:

(1) Recording fees, transfer taxes, documentary stamps, evidence of title, boundary surveys, legal descriptions of the real property, and similar expenses incidental to conveying the real property to the Agency. However, the Agency is not required to pay costs solely required to perfect the owner’s title to the real property.”

These costs (including title evidence) can be negotiated with the landowner, provided negotiations are voluntary. The United States cannot condition the land transaction on the landowner paying these costs.



Knowledge Check

Can you answer the review question on the where documentation is found when reviewing evidence of title?





Select the best answer to complete the sentence:

“When reviewing evidence of title, documentation is found with the _____”.

- Review of the public records, property investigation, and other supporting documents
- Review of the public records, title insurance policy, and other supporting documents
- Review of the public records, certificate of title and other supporting documents





Select the best answer to complete the sentence:

“When reviewing evidence of title, documentation is found with _____,”

- ✓ **Review of the public records, property investigation, and other supporting documents**
- Review of the public records, title insurance policy, and other supporting documents
- Review of the public records, certificate of title and other supporting documents



Review of the Public Records:

Public records consist of any information, minutes, files, accounts or other documents which a governmental body is required to maintain, and which must be accessible to scrutiny by the public. These include:

- Recorded deeds
- Court records
- Land surveys

It would be too costly and time consuming for the federal government to conduct its own reviews of the public records, simply because of the sheer volume of records. Therefore, it is standard practice to obtain this documentation from a **title insurance company** or **abstracting attorney** who specializes in analyzing the content of the public records.



Four Types of Documentation:

There are four basic types of documentation that may be used to document the review of the public records:

- **Title Insurance Policy**
- **Title Commitment**
- **Preliminary Title Report**
- **Abstract**

Each of these forms of documentation are prepared by a title company or specialized abstracting attorney.

Read on to learn more about each of these documents.



Types of Documentation:

- **Title insurance**: Insurance which protects the buyer or landowner and their heirs or assigns against title defects, liens, and encumbrances to real property existing as of the date of the policy.
- **Title commitment**: Identifies **the current owner** of the property, **describes the property** being acquired, **lists all encumbrances** and/or outstanding rights of record, has a requirements page, and obligates the insurer to issue a policy for a specific **premium amount** (it is binding).
- **Preliminary title report**: A report prepared prior to issuing a policy of title insurance. It shows the ownership of a specific parcel of land, together with any liens and encumbrances thereon which would not be covered under a subsequent title insurance policy.
- **Abstract of title**: A concise statement, usually prepared for a Mortgagee or Purchaser of the history of a piece of land real property, summarizing the history of a piece of land.

Types of Documentation:

A [title insurance policy](#) is the **preferred form** of documentation and is used in over 95% of all federal land acquisitions.

The title insurance policy:

- Protects against loss or damage resulting from defects or failure of a title, or the enforcement of liens against it, and
- Confirms that the title is vested properly in the United States

It's important to note that the federal government is self-insured and has **no authority to delegate insurance to a third party**, such as a title insurance company. Therefore, the insurance aspect is incidental to the government's needs, but is a part of the package offered by the title insurance industry.



Types of Documentation:

A [title commitment](#) is issued prior to the issuance of a title insurance policy. It obligates the insurer to issue a title insurance policy for a **specified price**, or *premium*. Nearly always, the commitment contains the conditions that must be met for the insurance to go into and remain in effect.

The title commitment:

- Identifies **the current owner** of the property
- **Describes the property** being acquired
- **Lists all encumbrances** and/or outstanding rights of record,
- Has a requirements page, and
- Obligates the insurer to issue a policy for a specific **premium amount (it is binding)**.



Obtain a title commitment **early** in the land acquisition process

Types of Documentation:

A [preliminary title report](#) is similar to a title commitment; however, it is non-binding and **does not** commit the title company to issue a title insurance policy. The preliminary title report is one of the most common forms of documentation and is used exclusively in some regions of the United States.

Like the title commitment, the preliminary title report:

- Identifies the **current owner** of the property
- Lists all **encumbrances** and outstanding rights of record, and
- **Describes the property** being acquired.



 While not preferred, a preliminary title report may be used where customary, and upon prior approval of the reviewing attorney.

Types of Documentation:


An **abstract** is a condensed history of title to a particular parcel of real estate, consisting of a summary of the original grant or patent and all subsequent conveyances and encumbrances. **The abstract is also referred to as an *abstract of title* or *chain of title*.**

The abstract:

- Identifies the **current owner** of record,
- Describes any **encumbrances** on the property.
- Contains **no guarantee of title or current ownership**
- **Does not provide title insurance**



Abstracts were commonly used by the agencies through the 1950s and are still occasionally used for property acquisitions with outstanding mineral interests or water rights, or other situations where the title company is unwilling to issue title insurance.

 The use of an abstract must be approved by the reviewing attorney prior to the start of the acquisition process.

Knowledge Check

Review questions about **title evidence** and the **review of the public records**.

Key Terms

- Abstract
- Preliminary title report
- Title commitment
- Title insurance policy





Select True or False to indicate whether the statement is correct (true) or incorrect (false):

“The BLM State Office or Forest Service Regional Office Lands staff conducts its own reviews of the public records.”

- True
- False



Select True or False to indicate whether the statement is correct (true) or incorrect (false):

“The BLM State Office or Forest Service Regional Office Lands staff conducts its own reviews of the public records.”

- True
- False**



The BLM and Forest Service hire a title insurance company or abstracting attorney to do this work.



Select the best answer to indicate the main difference between a preliminary title report and a title commitment.

“Unlike the preliminary report, the title commitment _____.”

- Identifies the current property owner
- Describes the property
- Lists all encumbrances and outstanding rights
- Requires a title insurance policy be issued for a stated premium



Select the best answer to indicate the main difference between a preliminary title report and a title commitment.

“Unlike the preliminary report, the title commitment _____.”

- Identifies the current property owner
- Describes the property
- Lists all encumbrances and outstanding rights
- Requires a title insurance policy be issued for a stated premium**





Select the best answer:

What is the preferred form of title evidence in federal land acquisitions?

- Abstract
- Preliminary title report
- Title commitment
- Title insurance policy



Select the best answer:

What is the preferred form of title evidence in federal land acquisitions?

- Abstract
- Preliminary title report
- Title commitment
- Title insurance policy

Title insurance is preferred because it provides the best protection.





Federal Form of Title Insurance:

The following pages describe the history of the ALTA US Policy, the federal form of title insurance adopted by the United States and negotiated with the American Land Title Association (ALTA). It was first negotiated in 1963 and most recently revised in 2012.

(ALTA U.S. Policy 9-28-91 (Revised 12-3-12))



download now



Background: ALTA US Policy:

Prior to 1963, the federal government usually used abstracts in land acquisitions. However, abstracts are costly and time-consuming. Title insurance is generally the most convenient, reliable and cost-effective form of title documentation available.

So, in 1963, to streamline the land acquisition process, the United States negotiated a special form of title insurance policy with the American Land Title Association (ALTA) that was named the **ALTA-US Policy – 1963**. In this form of policy, the title insurance policy was issued up-front instead of a title report or title commitment.

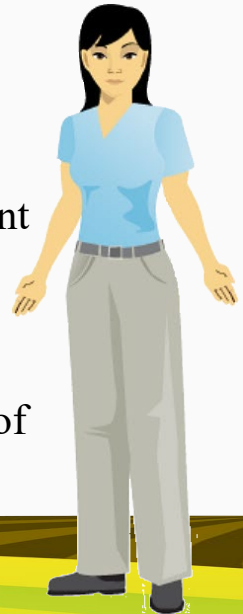
Once title transferred to the United States, the title company would issue an endorsement to the policy as of the date of recording the deed, showing title vested in the United States.



The 1963 process caused a great deal of confusion because it was so different from real estate industry standards. The government would order a title policy (which acted like a title commitment), then request that it be endorsed (amended) once the deed was recorded. This process was confusing and unfamiliar to title companies, whose dealings with the federal government comprised only about one percent of their overall business.

So, In 1991, the Department of Justice and ALTA negotiated a **revised form of policy that aligns with the industry standard**, meaning that the federal government first purchases a title commitment, followed by a title insurance policy.

That version of title insurance policy was identified as the **ALTA US Policy – 9/28/91**. The old 1963 form of title policy was phased out and was discontinued as of December 31, 1995.



Background: ALTA US Policy:

In 2012, the Department of Justice negotiated with ALTA and approved a **change** to the 1991 policy, which excludes creditor's rights coverage.


The revised policy is referred to as either the **ALTA US Policy 9/28/91 (Revised 12/3/12)** or as the ALTA US Policy Revised 12/3/12.

As with the old 1963 form, the 1991 form of policy was phased out and was discontinued as of **January 31, 2015**.



Background: ALTA US Policy

Because Texas strictly regulates the title insurance industry, the ALTA U.S. Policy 9/28/91 (Revised 12/3/12) form of title policy has **not** been adopted for use in that state.

 For this reason, in Texas, the federal government is using the TLTA T-11 and T-12 forms. See *The Attorney General's Title Regulations (2016)* for instructions on the use of this form of title insurance.



Knowledge Check

Following are a couple of review questions on the **ALTA US Policy**.





Select the best answer to complete the sentence:

“The ALTA US Policy was first negotiated because ____.”

- Title insurance is the most reliable form of title documentation.
- The federal government wanted to negotiate industry-standard rates on title insurance.
- The pre-1963 title review process was too confusing for federal employees.
- Previously, the government was required by law to exclude creditor’s rights.





Select the best answer to complete the sentence:

“The ALTA US Policy was first negotiated because _____.”

- ✓ **Title insurance is the most reliable form of title documentation.**
- The federal government wanted to negotiate industry-standard rates on title insurance.
- The pre-1963 title review process was too confusing for federal employees.
- Previously, the government was required by law to exclude creditor’s rights.

Select the best answer to complete the sentence:

“The most recently revised ALTA US Policy is referred to as ____.”

- ALTA US Policy 9/28/91 (Revised 12/3/12)
- ALTA US Policy 9/28/91 (Revised 1/30/15)
- ALTA US Policy 1/30/95 (Revised 1/30/15)
- ALTA US Policy 1963 (Revised 12/3/12)



Select the best answer to complete the sentence:

“The most recently revised ALTA US Policy is referred to as ____.”

- ✓ **ALTA US Policy 9/28/91 (Revised 12/3/12)**
- ALTA US Policy 9/28/91 (Revised 1/30/15)
- ALTA US Policy 1/30/95 (Revised 1/30/15)
- ALTA US Policy 1963 (Revised 12/3/12)



Module 3: Title Evidence – Property Inspections

Property Inspections:

Property inspections include **interviews** with the landowner and **physical inspections** of the property. The inspection must be conducted to determine if there are any potential claims against the property that do not appear in the public record.

These may include:

- Encroachments
- Licenses
- Leases and Permits, or
- Adverse possession claims

The physical inspection is generally conducted by an employee who is familiar with the requirements. This could be the **Realty Specialist** in charge of the transaction, or another employee familiar with the property.



Physical inspection
of the property





Knowledge Check

Let us review questions about
property inspections



Select True or False to indicate whether the statement is correct (true) or incorrect (false):

“Physical inspections are normally conducted by a qualified title company.”

- True
- False



Select True or False to indicate whether the statement is correct (true) or incorrect (false):

“Physical inspections are normally conducted by a qualified title company.”

- True
- False**



Other Supplemental and Supporting Documents:

Occasionally, the reviewing attorney will need other supplemental and supporting documents to clarify uncommon situations such as deaths, corporations, or trusts.

Supporting documents may include:

- Wills
- Trust documents
- Corporate authority documents, or
- Death certificates



This concludes the learning content for Module 3.

Module 3: Title Evidence – Summary

Title Evidence Summary:

Module 3 focused on title evidence used in the title review process, as well as the statutory and delegated authority to do so. The information covered in this module will be helpful to you when you are asked to:

- Explain how the agencies are [delegated the authority to review title](#), from Congress to the Department of Justice, and finally to the DOI and USDA.
- Name the **main categories of title evidence**: [review of the public records](#), [property inspections](#) and [other supplemental and supporting documents](#).
- Describe the four kinds of [documentation](#) typically used in title reviews: [abstracts](#), [preliminary title reports](#), [title commitments](#), and [title insurance policies](#).
- Explain that the United States negotiated a [federal form of title insurance](#) because title insurance is the most convenient, reliable and economical form of documentation available.
- Demonstrate an awareness of the [ALTA US Policy 9/28/91 \(Revised 12/3/12\)](#).

