

Recorded Documents in California

Access vs. Privacy

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County Recordors' Association of California

Access vs. Privacy

How do you ensure that citizens have access to real estate property records while ensuring privacy for those very same citizens in this ever-increasing digital age? This question has been brought up more frequently as online access to individual's information has increased. Where do you draw that line, if you draw it at all, to balance out individual privacy and not impact the real estate recording system in California? After all, this system's primary goal is to provide people with information about real property by providing constructive notice of these assets which can be turned into capital. Respecting privacy is something that everyone wants, however we also need to be able to have information available for other purposes, such as verifying ownership of property for credit and obtaining a clear chain of title to property for refinancing, selling, or purchasing property. Balancing between access and privacy has become a more difficult process in this information age. There is a thin line between balancing the two without jeopardizing the purpose of which recording systems were established to inform the public who gains interest into land about the ownership and condition of the title. Recording systems public records protect innocent lenders and purchasers against secret sales, transfers, or conveyances and from undisclosed encumbrances/liens.

The Real Estate Recording System

One of the first acts of the legislature was the adoption of a recording system to collect and preserve proof of title or interests in land in a convenient, accessible and safe public place. When the ownership of a piece of property transfers, a document is recorded in the county Recorder's office, pursuant to California Civil Code Section 1213. Recording is the act of recording a real estate or legal transaction into the official records at the Recorder's office in the county where the real estate is located; these records are archived in perpetuity. The recorded document then secures a valid claim to the property and its ownership, and provides constructive notice to anyone who is interested in the property. The purpose of recording a document is to provide a traceable chain of title to the property, passed down through the years from one owner to the next.

Every parcel of land represented in a property document represents proof of ownership and can be used as collateral for raising capital. According to Hernando De Soto, author of *The Mystery of Capital*, "In the West, every parcel of land, every building, every piece of equipment, or store of inventories is represented in a property document that is the visible sign of a vast hidden process that connects all these assets to the rest of the economy." Thanks to this representational process, assets can be used as collateral for credit.

The single most important source of funds for new businesses in the United States is a mortgage on the entrepreneur's house. By this process the West injects life into assets and makes them generate capital. ”

Recording systems are key to locating all documents which show interest in a parcel and is relied upon by various industry partners. These partners include title and escrow organizations, Government agencies, Banking institutions, appraisers, mortgage brokers, surveyors, abstractors, credit bureaus, and trust services. **The documents maintained, secured, and preserved by the County Recorder are vital to the economy as capital is transferred based on the reliability and availability of these records.**

One could argue that this broad access to recorded documents hinders an individual's right to privacy. **However, California is one of the few states that does not post recorded documents on the internet.** Obtaining a recorded document takes interaction with the Recorder's office, either by viewing the document in their office or by purchasing a copy. Indices of documents archived in a California Recorder's possession are listed online – the images are not to ensure compliance with Government Code section 7928.205.

Several private industries purchase data from California Recorders and use these recordings to build private databases so businesses can conduct searches and provide information that is published on the internet. This allows for the free reign of distribution after purchase with no regards to personal identifiable information (PII) or The CA Privacy Act.

The current law restricting the online posting of documents by California Recorders does **not** extend to entities that purchase and resell images of these documents. Purchasing entities are free to post this information online and do so with no repercussion or oversight. These agencies should be held accountable and to the same standards as government agencies in terms of posting PII and complying with CA Privacy requirements to broaden the span of compliance to GC 7928.205.

Attempts to Balance

Some states have recently looked at this issue. In 2019, Florida changed its law allowing qualifying individuals to redact all property descriptions from public records. While increasing privacy, it created unintended consequences regarding constructive notice and chain of title, increased the possibility of fraud, provided protected parties a false sense of safety, caused problems accurately surveying property, and delayed property transactions.¹

As of 2020, 42 US states have an address confidentiality program (ACP) to keep eligible individuals' address information confidential yet still grant limited access to land records. Maryland and Minnesota have modified their ACPs to include real property transactions.

¹ A Review of Home Address Redaction Processes and Real Property Interests, Report 20-06 December 2020 from the Office of Program Policy Analysis and Government Accountability

These programs require enrollment before completing a property transaction, which allows for a placeholder document, require renewal by the individual, and are monitored by the Secretary of State in each of those states. **California has an existing “Safe at Home” address confidentiality program designed to protect eligible individuals from having their home addresses listed on property records.** More information can be found at <https://www.sos.ca.gov/registries/safe-home>.

Removing or limiting public access to official land records held by California Recorders would hinder industries that rely on this information. Some of these are industries not generally thought of as being related to the Recorder. One such industry is Identity Authenticators, such as ID.me, who rely on property records to validate a person's identity. According to ID.me's website, their technology is used by millions of individuals and hundreds of partners, including federal and state agencies, healthcare organizations, financial institutions, retailers, and nonprofits. Federal entities such as the Internal Revenue Service and Social Security Administration use ID.me.

Conclusion

While the debate of public access vs. privacy concerns will continue, all stakeholders should work together for a solution that does the least harm to the citizens it is trying to protect. At a minimum, all stakeholders and public should be held to the same regulatory standards as to what they can and cannot do with public information after obtained. Proposed solutions should not hinder real estate ownership--the core of capital in the United States; nor the industries that rely on access to this information.

For more information on the history and role of California Recorders, please visit the County Recorders' Association of California website at: www.craonline.org.