



*“General Index” and court
related matters:*

*Including the interaction of state and
federal courts with title to real property*

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This is more than just an introductory session...

- ▶ While this is an overview, it isn't just for newer staff. It is designed to heighten awareness of some of the issues of our industry, regardless of our prior experience.
- ▶ All of us in this industry received training from someone with experience, someone who likewise received their training in a similar manner. Laws continue to change or to be reinterpreted by the courts. Those of us with the most experience realize we are continuing learning and need to continue to stop and refresh our memory of issues we haven't thought in a while.

This session will cover:

- ▶ An overview of the different types of courts, their jurisdiction, and impacts on title & transactions.
- ▶ The types of information posted to title company “General Index” title plant records rather than “Property” records.
 - ▶ *“General Index” (G.I.) is the portion of a title company’s plant, indexed by name, for documents which do not contain legal descriptions.*
- ▶ What parties should you search in the G.I.?
 - ▶ There are more types than you might think.
- ▶ G.I. search timeframes relating to statutes of limitations and duration for judgments and lien, as they relate to.
- ▶ Issues about how we run names in our G.I. records, including understanding the effects of name variations.

Common types of courts & jurisdiction

- ▶ **County Superior Court** – jurisdiction over all real property in the state. We are only obligated to search the court in the county where the property is located (“local county”).
- ▶ **U.S. District Court** – jurisdiction over all real property nationally. We are only obligated to search the court if it is in the local county.
- ▶ **U.S. Bankruptcy Court** – jurisdiction over all real property nationally. We are only obligated to search the court if the court is in the local county.
- ▶ **Local District Courts of the state (county and municipal courts)** – no jurisdiction over real property.
- ▶ **Out of State Courts** – no jurisdiction over Washington real property even though there is jurisdiction over people and personal property (LLC membership interests, etc.). An out of state court can dissolve a marriage and can attempt to award title to Washington property, but the award is not effective without a deed or a Washington Superior Court order confirming the award.

What courts can create a judgment lien?

- ▶ **Superior Court in the same county as the land (“local county”)**
 - ▶ **Superior Court in a different county, ONLY IF:**
 - ▶ the judgment is abstracted into the local county Superior Court – OR
 - ▶ if the judgment or an abstract of it is recorded in the office of the Auditor of the local county (*relates specifically to homestead!*)
 - ▶ **US District Court and US Bankruptcy Court:**
 - ▶ upon entry in the court if the court is in the local county
 - ▶ upon filing an abstract in the local county Superior Court – OR
 - ▶ upon recording a federal lien for criminal and/or restitution obligations
 - ▶ **Local District Courts of the state (county and municipal courts):**
 - ▶ ONLY upon filing a transcript of the docket in the local county Superior Court
- Caution:** *Some attorneys record with the County Auditor without filing in the Superior Court – This is not supposed to create a lien but DOES create a risk that needs underwriter review.*

Caution: Court orders can sometimes exceed statutory powers of the court or be easily challenged and set aside. ***Consult an Underwriter!***

- ▶ **There are significant risks if notice is not adequately given.** Orders entered without notice to necessary parties are ineffective
- ▶ **Notice by publication is risky in many situations.** Did they use diligence in trying to locate the parties?
- ▶ **Default orders can often easily be set aside** - within the first year, or even longer
- ▶ **If the defendant does not appear**, the court might enter an order exceeding its authority, and will often grant what the plaintiff requested,
 - ▶ without considering the merits, and
 - ▶ without considering any statutory limitations
- ▶ **You have an order, but is there an appeal period?** Is it a “final, appealable order” or will the appeal period not even start at some future time after entry of another order?

Some courts have significant powers...

BUT consult an Underwriter!

- ▶ General Receivership sale pursuant to Superior Court order “free and clear of encumbrances” can remove monetary encumbrances
- ▶ Bankruptcy Court powers
 - ▶ Sale of property free and clear of encumbrances
 - ▶ Stripping the lien of a junior deed of trust
 - ▶ Avoiding a judgment lien
 - ▶ Voiding a deed of trust or deed conveying title
 - ▶ Selling property of co-owners and related entities if “jurisdiction” is obtained
- ▶ Federal & State criminal forfeiture actions can extinguish all interests
- ▶ Probate Court rarely has any power to remove an encumbrance
- ▶ Superior Court (domestic section) can award title but cannot remove an encumbrance held by a third party
- ▶ Superior Court (civil section) only impacts rights of those who are parties to the action

Court activities you might find in the G.I.

Some affect TITLE, some affect SIGNING AUTHORITY:

- ▶ Judgments and Liens (of course)
- ▶ Probate
- ▶ Community Property Survivorship Agreement (CPA)
- ▶ Guardianship - For the person or for the estate or both?
- ▶ Bankruptcy
- ▶ Quiet Title
- ▶ Dissolution of marriage or registered domestic partnership, legal separation
- ▶ Appointment of a court commissioner to sign for an uncooperative owner
- ▶ Receivership
- ▶ Partition or entity liquidation
- ▶ Order changing a person's name

Recorded documents you might find in the G.I.

Again, some affect TITLE, some affect SIGNING AUTHORITY:

- ▶ Power of Attorney (remember, they might not ever expire, but can be revoked)
- ▶ State liens, Federal Tax Liens, Federal Criminal Liens
- ▶ Community Property Agreement
 - ▶ *Sometimes with immediate conveyance language, effective prior to death!*
- ▶ Death Certificate
- ▶ Disclaimer of inheritance
- ▶ “Blanket” Appointment of Successor Trustee for Deeds of Trust
- ▶ Trust Agreement or Certificate of Trust
- ▶ Deeds of “all property” conveying railroad rights of way
- ▶ Mortgages of “all property” by railroads, private utility companies, even mining companies
- ▶ Certificates of merger or name change for corporations and other entities

Time to run a G.I. search.

But what names should you run?

- ▶ Owners
- ▶ Contract purchasers
- ▶ Lessees (consider them, even if not insuring a leasehold estate)
 - ▶ Bankruptcies, probates, liens and judgments that might somehow affect fee title if the lease is terminated early
- ▶ Non-institutional lenders, judgment creditors and lien claimants
 - ▶ Bankruptcies and receiverships might impact any statute of limitation and/or the ability to negotiate directly for a payoff
 - ▶ An Attorney's Lien against a judgment creditor would require the attorney to join in any payoff and release
- ▶ Trustees of trusts, as well as the name of the trust
- ▶ Trustors of trusts
 - ▶ Federal tax liens and judgments against trustors will generally attach to property held in a revocable trust

Time to run a G.I. search.

But what names should you run?

- ▶ Beneficiaries of trusts if the trust is a “land trust” with transferable beneficial interests or if the trust is in the nature of a “nominee” relationship
- ▶ Spouses and registered domestic partners, even though not in title
 - ▶ A judgment against the spouse “and the marital community”, or “and Jane Doe or John Doe, spouse”, or “et ux” or “et vir” (Latin for “and wife” or “and husband”) would be a lien against the title if the debt occurred while they were married when the debt arose – *CAUTION: There may still be risk if the party with title married the debtor after the debt arose – Consult your underwriter*
 - ▶ Judgments and liens against a spouse might attach to title of the other spouse if community funds were used to purchase the property – *Consult your underwriter*
- ▶ Other parties who were in the chain of title after the last cleanly insured transaction, usually your prior owner’s policy or an insured sale with financing. Your underwriter or manager would normally set guidelines.

Time to run a G.I. search.

But what names should you run?

▶ ***Buyers, unless your underwriter approves otherwise***

- ▶ There is a perception that matters against the buyers are not covered under the owners policy "Exclusions" for matters known, suffered and created by the "insured".
- ▶ But this does not always work. We had a claim where a husband and wife purchased and were insured. We failed to show a lien against the husband. The wife later received an award of title through a divorce. She was not aware of her husband's lien and filed a claim.
- ▶ A pending bankruptcy could affect the ability to insure a new loan.

Understand how to run names in the G.I.

Here's one of the risks:

- ▶ A judgment against a defendant is truly a judgment, regardless of any errors in identifying the name of the defendant in the court records.
- ▶ But is it binding and effective against a bona fide purchaser or lender without actual knowledge if the indexing of the judgment reflects errors or variations in the name?
 - ▶ Courts will generally interpret a judgment against a similarly spelled name as fully effective. They expect us to understand the issues and find judgments anyway.
 - ▶ Expect a judgment entered against Russel Patterson, Russell Petterson, Russell Pettersen or Russel Patterson to be enforceable if the real name on title is Russell Peterson
 - ▶ Many names have common (and uncommon) variations, like Nelson, Nilson, Nilsson, Neilson
 - ▶ It is quite **difficult** and **expensive** to try to argue our way out of paying a judgment if the name entered against is reasonably close

Understand how to run names in the G.I.

Look out for these issues:

- ▶ Misspellings and spelling variations
 - ▶ Michael appearing as Micheal, or Michel
 - ▶ Sean appearing as Shaun or Shawn
- ▶ First name variations and nicknames
 - ▶ Elizabeth could be Elisabeth, Liz, Lizzy, Beth, Betty, Elspeth, Elsbeth, etc.
 - ▶ John could be Jon, Johnny, Jack, Jonathan, etc.
- ▶ Hyphenated names should be run with each name as a possible last name and also as a single combined word
 - ▶ Run Lynn Smythe-Prescott as Lynn Smythe, Lynn Prescott and Lynn Smythprescott
- ▶ Run all known former names, too!

Understand how to run names in the G.I.

Be aware of certain naming traditions:

- ▶ Some Asian names are arranged by family name, followed by given name (without a comma), rather than the European tradition of given name followed by family name. But sometimes Asian names are rearranged like European names with the family name last.
 - ▶ Example: Zhou Chen Ying should be searched with “Zhou” as the “last name”, as well as with “Ying” as the “last name”.
- ▶ Some Hispanic traditions allow using either of two names as the “last name”.
 - ▶ Example: Carmelita Hernandez Perez might appear as either Carmelita Perez or as Carmelita Hernandez in certain types of records.
- ▶ Last names like Van Der Veer might be indexed under “Veer” or under “Van” or under “Vanderveer”. Similarly, St. Giles might appear under “Giles” or “St. Giles” or “Saint Giles”.

Understand how to run names in the G.I.

Entity names present unique problems:

- ▶ Entity names commonly appear with multiple variations and errors.
 - ▶ Is Behemoth LLC really Behemoth, L.L.C. or Behemoth Limited Liability Company?
- ▶ Run names without punctuation
- ▶ Run names with and without some of the common terms like Corporation, Co., Inc., LLC, Limited Liability Company, LP, Limited Partnership, LLP, etc.
 - ▶ Most G.I. systems focus on the first few words in the name. With long names you can just run it without those terms (Johnson Sieh Investment Enterprises Inc.)
 - ▶ With short names you might need to also run it with those terms (Lee, LLC)
- ▶ Some commonly ignored words like "The" & "and" might or might not appear in the indexing, so consider running names with and without those words.
- ▶ Some names with numbers should be run two ways (5 Star Homes & Five Star Homes)

Understand the time periods you need to run

- ▶ Consult with your underwriter for any shortcuts for searches based on evidence of recent insurance, but be aware of what risks lurk out there!
- ▶ Many title personnel were trained to not search back prior to an insured purchase with simultaneous first lien institutional lender financing.
 - ▶ There are commonly older judgments and liens against a buyer who has an insured purchase money loan.
 - ▶ Not all underwriters require clearing judgments and liens in that situation.
 - ▶ Some title companies don't run buyers' names at all

Understand the time periods you need to run

Statutes of limitation affect how far back in time must you search for judgments & liens.

Here are just a few of the expiration issues:

- ▶ Federal Criminal Liens – 20 years
- ▶ Federal Tax Liens – 10 years and 30 days after date of assessment (expiration date is stated in the lien)
- ▶ Washington Criminal Judgments –
 - ▶ Expires 10 years following release from total confinement if entered on or after 5-5-1985, unless the crime was committed after 7-1-2000
 - ▶ NO EXPIRATION if arising from a crime committed on or after 7-1-2000
- ▶ Child Support delinquency judgments & DSHS Child Support Liens – 28 years
- ▶ DSHS medical assistance recovery liens – 20 years
- ▶ Superior Court judgments can be renewed for an additional 10 year period if timely requested in the original Superior Court

Understand the time periods you need to run

Bankruptcies require special consideration.

- ▶ Caution, some types of bankruptcies can last 6 or more years. i recently saw one pending after 11 years.
- ▶ It's not always safe to ignore a bankruptcy after it is closed. Even a closed bankruptcy could have impacts on title by:
 - ▶ Tolling/extending the life of judgments and certain liens
 - ▶ Removing a junior deed of trust or judgment lien
 - ▶ Voiding a deed or deed of trust

Know your Title Plant, both the computerized plant and older records

- ▶ Computerized Title Plants normally use a system that allows a name search to automatically turn up common types of name variations. Be aware of any known limitations in your system.
- ▶ Pre-computer G.I. systems commonly used SOUNDDEX as a means of indexing names based on how they sound, using similarity in phonetics of certain consonants and ignoring all vowels . It was designed to allow finding name variations and misspellings, and was generally quite effective for last names, but not necessarily for first name variations and not for nicknames.
- ▶ You may need to research older records that are arranged by SOUNDDEX and therefore need to understand how the coding works.

Soundex – Here's how it works:

Basic Soundex Coding Rule

- ▶ Every soundex code consists of a letter and three numbers, such as W-252. The letter is always the first letter of the surname or entity first word. Numbers are assigned to the remaining letters of the surname according to the soundex guide shown below. Zeroes are added at the end if necessary to produce a four-character code. Additional letters are disregarded.
 - ▶ Examples: Washington is coded W-252 (W, 2 for the S, 5 for the N, 2 for the G, remaining letters disregarded). Lee is coded L-000 (L, 000 added).

Soundex Coding Guide - Numbers represent the Letters

- ▶ 1 = B, F, P, V
- ▶ 2 = C, G, J, K, Q, S, X, Z
- ▶ 3 = D, T
- ▶ 4 = L
- ▶ 5 = M, N
- ▶ 6 = R
- ▶ *Disregard the letters A, E, I, O, U, H, W, and Y.*

Soundex – Here's how it works:

Additional Soundex Coding Rules

1. Names with Double Letters

- ▶ If the surname has any double letters, they should be treated as one letter.
 - ▶ Example: Gutierrez is coded G-362 (G, 3 for T, 6 for first R, second R ignored, 2 for Z).

2. Names with Letters Side-by-Side that have the Same Soundex Code Number

- ▶ If the surname has different letters side-by-side that have the same number in the soundex coding guide, they should be treated as one letter.
 - ▶ Examples:
 - ▶ Pfister is coded as P-236 (P, F ignored as having the same numeric value as P, 2 for S, 3 for T, 6 for R).
 - ▶ Jackson is coded as J-250 (J, 2 for C, K ignored, S ignored, 5 for N, 0 added).
 - ▶ Tymczak is coded as T-522 (T, 5 for M, 2 for C, Z ignored, 2 for K). Since the vowel "A" separates the Z and K, the K is coded.

Soundex – Here's how it works:

3. Names with Prefixes

- ▶ If a surname has a prefix, such as Van, Con, De, Di, La, or Le, code both with and without the prefix because the surname might be listed under either code. Note, however, that Mc and Mac are not considered prefixes.
 - ▶ Example, VanDeusen might be coded two ways: V-532 (V, 5 for N, 3 for D, 2 for S), or D-250 (D, 2 for the S, 5 for the N, 0 added).

4. Consonant Separators

- ▶ If a vowel (A, E, I, O, U) separates two consonants that have the same soundex code, the consonant to the right of the vowel is also coded.
 - ▶ Example: Tymczak is coded as T-522 (T, 5 for the M, 2 for the C, Z ignored (see "Side-by-Side" rule above), 2 for the K). Since the vowel "A" separates the Z and K, the K is coded.
- ▶ If "H" or "W" separate two consonants that have the same soundex code, the consonant to the right of the vowel is not coded.
 - ▶ Example: Ashcraft is coded A-261 (A, 2 for S, C ignored, 6 for R, 1 for F). It is not coded A-226.