
Section 2.1

LAND TITLE

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Section 2.1

LAND TITLE

PURPOSE

This section establishes the minimum quality and quantity of title required by the Guam Department of Public Works Office of Right of Way hereafter referred to as the Department when acquiring real property and real property rights. It also sets out the methods for achieving the minimum standards.

AUTHORITY

21 GCA Chapter 1, Property in General
21 GCA Chapter 4, Article 1, Mode of Transfer
21 GCA Chapter 29, Land Title Registration

SCOPE

The requirements or processes related to this section affect the Department the Department of Land Management Survey and Records Offices, Consultants employed by the Department for title work and the Office of Attorney General (OAG).

REFERENCES

7 GCA Chapter 11, Time for Commencing Actions
5 GCA Chapter 5, Article 5, Procurement of Construction, Architect-Engineer and Land Surveying services Procurement of Commodities and Contractual Services
5 GCA Chapter 32, Article 7, Social Security Number Confidentially Act
21 GCA §29101 Titles to Real Estate
21 GCA §29149 Transfer by Registered Owner
21 GCA §29150 Issuance of a New Certificate Where Only a Part of Land is transferred
21 GCA §29153 Forms of Deeds, Mortgages, Leases and Other Instruments
21 GCA Chapter 39, Marketable Title Act

FORMS

The conveyance instruments discussed in this section are contained in **Section 5.5, Legal Documents and Land Acquisition Closing**.

DEFINITIONS

Grant Deed: A deed containing standard recitations of consideration with words of conveyance but does not contain any of the common warranties or covenants. A grant deed is generally acceptable as a root of title and provides the protection of estoppel by deed.

Chain of Title: Successive conveyances, or other forms of alienation, affecting a particular parcel of land, arranged consecutively.

Easement: An easement is defined as an interest in land created by grant or agreement, express or implied, which confers on its owners a right to some profit or benefit, domination, or lawful use out of or over the estate on another.

Encumbrance: A claim, lien, charge, or liability attached to and binding real property, such as a mortgage, construction lien,

judgment lien, lease, security interest, easement or right of way and accrued and unpaid taxes.

Estoppel by Deed: A principal of law which prohibits one party to a deed from asserting against the other party any right or title in derogation of the deed or from denying the truth of any material facts asserted in the deed.

Fee (Simple) Title: Fee title is the largest estate and most extensive interest that can be enjoyed in land.

General Warranty Deed: A deed that contains a general warranty of title by which the grantor agrees to defend and protect the grantee against claims by all persons. The warranty is a covenant that passes with the land to the heirs and assigns of the grantee.

Marketable Title: Title that is free from reasonable doubt and will not expose the party who holds it to hazards of litigation.

Parcel: One or more lots or pieces of land under one ownership in which a real property interest, easement or license is to be acquired under any given Right of Way project.

Quitclaim Deed: A deed that operates to release any interest, claim or title by which the grantor may have in the premises but does not profess that the grantor has an interest or that such interest is valid.

Right of Way A right of way is the privilege of the immediate use of the highway, as set forth in 16 GCA § 1102(ee).

Special Warranty Deed: A deed containing a special limited warranty of title by which the grantor agrees to defend and protect the grantee against claims by persons claiming through the grantor.

Preliminary Title Report: A preliminary report as to the condition of a title and a commitment to issue a title insurance policy when the conditions and requirements have been met, all subject to the exceptions list.

Title Insurance Policy: Insurance against loss or damage resulting from defects or failure of title to a particular parcel of realty, or from the enforcement of liens existing against it at the time of the insurance.

Abstract of Title: A search of the public records for recorded instruments that create, or purport to create, an interest in, a lien against, or an encumbrance on the title to the parcel of land under search.

Abstract of Title Report: A written report of the findings resulting from a title search.

2.1.1 Quality and Quantity of Title

The Department requires marketable title, free of liens and encumbrances, to all fee, perpetual easement and temporary easement parcels. For parcels acquired by negotiation, all interests will be acquired or released via execution and delivery of an appropriate document of conveyance or release. For parcels acquired through condemnation, the owners or holders of all interests will be named in the condemnation suit. The following are exceptions to this requirement:

- (A) Severed mineral interests do not have to be acquired or released.
- (B) For temporary easements acquired by negotiation, at a minimum a subordination of encumbrance must be obtained for all leases and easements affecting the temporary easement. In most cases utility easements will not be affected by the temporary easement and will not require subordination.
- (C) The OAG may at the Department's request authorize exceptions on a parcel by parcel basis. Each exception granted pursuant to this subsection must be in writing and must be maintained by the Department in the

official parcel file.

2.1.2 Title Evidence

Title evidence in the form of an abstract of title or title insurance will be obtained for all parcels from which a real property interest will be acquired.

2.1.3 Abstract of Title Reports

2.1.3.1 Abstract of title reports will include copies of all documents that create, or purport to create, an interest, lien or encumbrance in the parcel. The caption page of the abstract of title report should contain:

- (A) The full name and address of the current record title holder;
- (B) The legal description of the parcel under search;
- (C) A tax summary including tax identification number; the name and address of the taxpayer, status of the current tax year, any delinquent taxes, a list of any outstanding tax certificates showing for each the certificate number and tax year and the status of homestead exemption;
- (D) The names and recording data of any recorded plats affecting the subject parcel including condominium plats;
- (E) A description of the conveyance to the current record title holder and all conveyances that occurred in at least the five years immediately preceding the completion date of the abstract of title search shall be included in the abstract of title search report. Each description must include the names of both the grantor(s) and grantee(s) with the date of execution; recording date, book, page, and the amount of the recording fees;
- (F) The period of time covered in the search and the Department of Land Management (DLM) or Consultants certification date of the search; and
- (G) Typed name and signature of the DLM Examiner of Titles or Consultant.

2.1.3.2 The abstract of title search shall include all unsatisfied liens affecting the property under search including but not limited to:

- (A) Every mortgage, lease, contract to sell or other instrument intended to create a lien, encumbrance or charge upon registered land or any interest therein including but not limited to the following;
- (B) Certified copies of judgment liens based on a name search of every record owner of the subject property for their respective period of ownership within at least the 5 years preceding the certification date of the search;
- (C) Mortgages and assignments of mortgages;
- (D) Income tax liens;
- (E) Territory of Guam tax liens and warrants for collection of taxes;
- (F) Improvement liens such as water and sewer liens;
- (G) Uniform Commercial Code (UCC) Financing Statements, and
- (H) Code Enforcement liens.

2.1.3.3 The abstract of title report should contain any additional title evidence affecting the property under search including but not limited to:

- (A) Possessory interest such as easements, leases and assignments of leases;
- (B) Lis Pendens indicating pending litigation;
- (C) Reservations for life estates;
- (D) Reversionary interests;
- (E) Quiet title or partition suits affecting the property under search;
- (F) Any contiguous lands owned by the record title holder and lying adjacent to the parcel under search;
- (G) Any suggestion of bankruptcy affecting the record title holder;
- (H) Public rights of way on or adjacent to the subject parcel other than Territory of Guam owned rights of way. This includes any maps filed by other governmental entities.
- (I) Any document creating or affecting a fiduciary or agency relationship, such as guardianships, power of attorney, or trusts;
- (J) Dissolution of Marriage including the Final Judgment, Property Settlement Agreement, or any order of the court that may affect title to the parcel;
- (K) Death certificates, if applicable;
- (L) Any applicable probate proceedings including the will and any codicils, the Petition for Administration, Letters of Administration, inventory if the subject property is included, Notice to Creditors with the proof of publication, any outstanding claims by creditors, receipt for Federal and Territorial estate taxes or the non-taxable certificate, and any Order of Distribution of the subject property;
- (M) Declaration of Condominium and name and address of condominium association;
- (N) Comments concerning the DLM or Consultant researcher's personal knowledge of matters not of record affecting the parcel under search;
- (O) Legible copies of all documents reported and copies of all instruments referenced except for documents evidencing liens that have been satisfied or a transcript if legible copies are not available. Full size copies of all maps and plats must be included, and
- (P) A Certification of Business License report from the Business License Division, Department of Revenue and Taxation for any business entity shown as current record owner registered with the Department of revenue and Taxation.

2.1.3.4 Abstract of title update reports will reflect only those matters as described in **Section 2.1.3.1** that arise subsequent to the last search or update. The update report will clearly indicate the beginning and ending search dates. If there have been no changes since the last search, the update report will clearly state that fact. The typed name and signature of the DLM or Consultant researcher will be included.

2.1.4 Title Insurance

2.1.4.1 Title insurance may be purchased when it is necessary to protect the public's investment in the property being acquired for transportation purposes. The following must be considered when purchasing title insurance:

2.1.4.2 The decision to purchase title insurance shall be made by the DDPW with input from the DPWRS and AGO. This decision must be clearly documented in the Department's official parcel file.

2.1.4.3 The purchase of title insurance may be considered for, but is not limited to, high value urban parcels, parcels affected by complex financing arrangements, cooperatively owned parcels and parcels within areas having known title defects.

2.1.4.4 Title insurance may also be purchased when trained personnel are temporarily unavailable to examine titles.

2.1.4.5 The Department may contract for title insurance through competitive bid in accordance with procedures described in **5 GCA, Chapter 5, Article 5 Guam Procurement Law**.

2.1.4.6 Title insurance commitments or binders issued by title companies shall be reviewed by the Department's Registered Land Surveyor or Chief Engineer. All matters that are set out as exceptions, other than exceptions for matters not of record, and current year taxes; must be removed prior to issuance of the policy unless such exceptions are approved in writing by the OAG.

2.1.4.7 If a parcel is being acquired by negotiation and is to be insured, the title company's closing services should be utilized.

2.1.4.8 Normally, title insurance should not be purchased for parcels acquired through condemnation. If a title insurance commitment has been issued for a parcel that is subsequently condemned, the commitment should be canceled and any cancellation fee should be paid. There may, however, be circumstances when title insurance is necessary to protect the public's investment in a condemned parcel. In these cases, the DPWRS should make the decision whether to purchase the insurance after consulting with the OAG.

2.1.4.9 A title insurance policy is a valuable document that must be permanently retained. The policy will be attached to the Department's executed deed or final judgment and will be kept with the deed or judgment.

2.1.5 Opinion of Title

The Department may use an attorney's title opinion if an attorney with experience in the field of real estate titles is available to render such an opinion. This may be provided by a OAG attorney.

2.1.6 Title Examination

2.1.6.1 Title examination will comply with the **21 GCA, Chapter 29, Land Title Registration**, and will conform to the accepted standards of care in the title industry.

2.1.6.2 Negotiations and field reviews often bring to light matters affecting title to real property not reflected in the public records. Unrecorded conveyances, leases, easements, etc. can be discovered only through discussions with property owners and by physical inspection of the premises. The fact that these matters do not appear in the public records does not lessen their impact on title.

2.1.6.3 Any information discovered during negotiations or field reviews that may affect the title to the parcel being acquired must be provided to the Department's Registered Land Surveyor or Chief Engineer. This information will be provided in writing

and will include copies of all pertinent documents if available. The Department's Registered Land Surveyor or Chief Engineer or designee will review the information and will make any necessary additions, deletions or modifications to the document package or parcel flag sheet.

2.1.7 Parcel Numbers

2.1.7.1 The Department's Registered Land Surveyor or Chief Engineer will assign parcel numbers to each parcel of property and to each property interest to be acquired by the Department as follows:

- (A) Existing recorded lot numbers will have a "G" suffix to identify these parcels as Government of Guam land.
- (B) Parcels without a lot number will be numbered sequentially with the roadway contract number as a basis.
- (C) All parcels within a specific roadway contract will be referenced to that contract number.

2.1.7.2 Once an assigned parcel number or suffix number is voided, it may not be reinstated nor may it be used again on the affected parcel or project.

2.1.8 Fee Title

The Department will seek to acquire fee title to all lands on which a permanent structure or improvement is to be placed and maintained. Parcels acquired for mitigation or exchange should also be acquired in fee. Land includes airspace, surface or subterranean areas that may be acquired independently. Acquisition of fee title to all parcels will be by **General Warranty Deed** except in the following situations:

- (A) **Special Warranty Deed:** When a grantor refuses to execute a **General Warranty Deed** and indicates that a **Special Warranty Deed** is preferred, the DPWRS may forward a written request for authorization to use a **Special Warranty Deed** to the OAG. This request will contain sufficient information to explain the reasons why a **Special Warranty Deed** is being requested. Once written authorization is obtained, the DPWRS will be notified and will assemble the **Special Warranty Deed**. This notification must be in writing.
- (B) **Personal Representative and Guardian Deeds:** When parcels are to be conveyed by personal representatives or guardians, special deeds are required. Care must be taken to ensure that the personal representative or guardian has been properly appointed and has been empowered to convey before preparing the deed.
- (C) **No Competent Grantor:** When a parcel is encountered for which no competent grantor can be identified from the record title, no deed can be provided. The DPWRS will forward a memo to the OAG that explains the circumstances of the parcel involved, together with an action plan to correct the defects. A legal description of the taking and copies of the abstract of title research should be attached.
- (D) **Condemnation:** When parcels are acquired through condemnation, no deeds are required.

2.1.9 A Quitclaim Deed as a Conveyance

A **Quitclaim Deed** will not be used for acquisition of fee title without prior written approval of the OAG except when parcels are being conveyed by Federal agencies. A **Quitclaim Deed** is generally not acceptable as a root of title nor does it provide the protection of estoppel by deed.

2.1.10 Perpetual Easement

A **Perpetual Easement** may be used when a permanent right of use is needed, usually when permanent improvements are to be constructed and maintained on parcels for which acquisition of fee title is impractical, for example, when green area or setback requirements will cause excess severance damages if fee title is taken or an underground structure is to be installed which will not preclude the owner's use of the parcel. The decision to use a **Perpetual Easement** should be made by the Department's Registered Land Surveyor or Chief Engineer in cooperation with the OAG.

2.1.11 Conservation Easement

Conservation easements may be acquired when it is necessary to protect natural, scenic, or open space values of real property; assure availability for agricultural, forest, recreational, open space use; protect natural resources; maintain or enhance air or water quality; and preserve sites or properties of historical, architectural, archaeological, or cultural significance.

2.1.12 Temporary Easement

A **Temporary Easement** will be used when it is necessary to temporarily occupy a parcel for a specific purpose. No improvement which is a permanent part of the transportation facility or which requires maintenance by the Department beyond the term of the easement will be constructed on a temporary easement.

2.1.13 License Agreement

A **License Agreement** will be used only when the work to be performed can be abandoned if the owner refuses to execute the agreement.

2.1.14 Recording

2.1.14.1 It is the responsibility of the DPWRS to ensure that all documents affecting the marketability of the Department's title are delivered to the Deputy Registrar, Records Division, DLM. This may include instruments that are ancillary to the documents prepared by or on behalf of the Department, e.g., death certificates, affidavits or mortgage and lien satisfactions.

2.1.14.2 In compliance with, **5 GCA, Chapter 32, Article 7, Social Security Number Confidentially Act**, any person preparing or filing a document for recordation in the official records may not include a social security number in such document, unless required by law.

HISTORY

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