

## Preliminary Title Report- What is searched?

### Property

#### County Recorder

- Abstract/chain of title- the compilation of documents recorded deeds & liens for a real property that may affect title. Abstracts are sometimes known as a chain of title, or title chain . Electronic versions of abstracts generally begin around 1980. Abstracted documents may or may not affect the property, so the documents are analyzed.
- Grantor/Grantee systems & books; including indexes for judgments & federal tax liens.
- Indexes for liens, leases, & mining claims.
- Property type- Subdivision, STR, Condo/PUD
- Maps, plats & surveys – Including county maps, section maps, city surveys, dedicated plats and aerial maps.

#### County Treasurer & Assessor

- Property taxes paid or due
- Tax & service districts for essential services

#### State Construction Registry

- State system for contractors, suppliers, property owners, bankers, & title companies providing for the establishment and release of lien rights and notice to interested parties [www.scr.utah.gov](http://www.scr.utah.gov)

### Parties

#### District Court

- Divorce proceedings
- Private civil judgments including judicial foreclosure, quiet title & lawsuits dealing with unpaid debt
- Criminal judgments, restitution & penalties
- Judgments from state entities including the tax commission and office of recovery services
- Civil proceedings for probate & competency

#### Federal & Bankruptcy Court

- Bankruptcy proceedings & federal court judgments

#### Office of Foreign Assets Control

- “The Office of Foreign Assets Control (OFAC) is of the US Department of the Treasury administers and enforces economic and trade sanctions based on US foreign policy and national security goals against targeted foreign countries and regimes, terrorists, international narcotics traffickers, those engaged in activities related to the proliferation of weapons of mass destruction, and other threats to the national security, foreign policy or economy of the United States.”  
<https://www.treasury.gov/about/organizational-structure/offices/pages/office-of-foreign-assets-control.aspx>

## Timeline for property encumbrances

1. Federal judgments- recorded against an individual name, attach in that county for 20 years.
2. Federal tax liens- recorded against an individual name, attach in that county for 10 years & 30 days
3. Judgments for restitution, from divorce decrees, delinquent child support/alimony do not expire
4. State tax liens and state judgments are filed in the Utah court system and attach to property for 10 years & 30 days
5. Civil judgments- must be recorded against and individual name and attach in that county for 8 years
6. Construction service liens- expire 180 days after completion (no SCR) or 90 days after notice of completion on SCR
7. Homeowner’s association lien- must be recorded and does not expire
8. Trust deed- recorded on real property and remains a lien until a reconveyance is recorded
9. Mortgage- recorded on real property and remains a lien until satisfaction of mortgage is recorded
10. UCC- If recorded, remains as a lien on real property until a release is recorded
11. Bankruptcy- for a chapter 7, case closed plus 14 days, or property abandoned by trustee. For chapter 13, court approval of refinance or sale, or successfully completed plan, with closure & discharge if appeals process has closed.
12. Property taxes- never expire and are the responsibility of the current property owner
13. Assessments from tax entities- never expire and are the responsibility of the current property owner

## The Office of the Property Rights Ombudsman defines the following terms

1. Access Rights
2. Boundary Disputes
3. Easements
4. Just Compensation
5. Prescriptive Easements
6. Adverse Possession
7. Eminent Domain
8. Nonconforming Use & Noncomplying Structures
9. Variances
10. Zoning Estoppel

<https://propertyrights.utah.gov/legal-topics/>

## Pre- Title Order

- Plats & Maps (Types)- DIY or from title
- Rate & fee quote tools
- Title Chain (Abstract)
- Assessor & Treasurer data (DIY or from Title)

## Placing the Title Order

- Property address & borrower information
- Loan amount & endorsement requirements
- Loan Type- Construction, SBA
- Closing Protection Letter
- Borrower Information
- Borrower Authorization

## The Title Search

### The Property

- The County Recorder (Chain/Abstract, FTL, Judgments, Grantor/Grantee index)
- Maps/Plats/Surveys
- County Treasurer- Tax & Service Districts
- State Construction Registry

### The Parties

- District Court (Civil Judgments, Divorce, Criminal, ORS, State Tax Liens, Probate/competency, Quiet Title/Lis Pendens)
- Bankruptcy Court
- OFAC

## Receipt of Preliminary Title Report (PR)- Reviewing the schedules

- Schedule "A" (Transaction Summary)
- Legal Description
- B1- Requirements
- B2- Exceptions

## Underwriting & Clearing Title

### Property/boundary issues

- Boundary Line, Gaps/Overlaps
- Survey requirements, ALTA Surveys & the SBA
- Taxes- Property/Service Districts

### Lien Priority & Judgments

- New Construction & the registry
- Authority- Business Entities, Estates, Trusts
- Judgments & clearing

## Preparing for Settlement & Closing

### Lender & Title Preparation

- Final Contract Review- Updated Title (PR)
- Entity/Authority documentation secured
- Construction complete- Inspection/Occupancy documentation

### Borrower Preparation

- Terms/Settlement Statement Review
- Fraud & Wiring Instruction review
- ID & Account Information
- Final Title Policy Information

### Corporate

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## Real Estate Division Websites

Public Notice Website:

<https://www.utah.gov/pmn/sitemap/publicbody/776.html>

Newsletters:

<https://realestate.utah.gov/newsletters/index.html>

Approved CE Class search:

<https://realestate.utah.gov/education.html>

Submit a Complaint:

<https://realestate.utah.gov/education.html>

License Lookup:

<https://secure.utah.gov/rer/relv/search.html>

## Mortgage Licensing

Public Notice Website:

<https://www.utah.gov/pmn/sitemap/publicbody/787.html>

Nationwide Multistate Licensing System Search:

<https://www.nmlsconsumeraccess.org/>

## Contractor/Professional Licensing

Utah Division of Occupational & Professional Licensing:

<https://dopl.utah.gov/>

Professional Licensing Search:

<https://secure.utah.gov/llv/search/index.html>

Disciplinary Action Search:

<https://dopl.utah.gov/orders/index.html>

Disciplinary Action Newsletter:

<https://dopl.utah.gov/discipline/index.html>

## Insurance Department Websites

Public Notice Website:

<https://www.utah.gov/pmn/sitemap/publicbody/1848.html>

Title & Escrow Commission:

<https://insurance.utah.gov/licensee/title/tec>

Licensing Search: <https://secure.utah.gov/agent-search/search.html#>

Fraud Division Contact:

<https://insurance.utah.gov/consumer/fraud>

Administrative Actions:

<https://insurance.utah.gov/consumer/legal-resources/enforcement>

## Securities Licensing

Public Notice Website:

<https://www.utah.gov/pmn/sitemap/notice/507021.html>

Licensing & Compliance:

<https://securities.utah.gov/industry/license.html>

Verify a license:

[https://securities.utah.gov/industry/license\\_verify.html](https://securities.utah.gov/industry/license_verify.html)

Filing a Complaint:

[https://securities.utah.gov/industry/enforce\\_complaint.html](https://securities.utah.gov/industry/enforce_complaint.html)

Tools for Checking out Investments:

[https://securities.utah.gov/industry/corpfin\\_checkitout.html](https://securities.utah.gov/industry/corpfin_checkitout.html)

## Appraiser Licensing

Public Notice Website:

<https://www.utah.gov/pmn/sitemap/publicbody/786.html>

License Lookup:

<https://secure.utah.gov/rer/relv/search.html>

## Utah Fraud Resources

- Stop Fraud Utah:** *Stop Fraud Utah is a joint initiative by Federal, State, and Local law enforcement to educate consumers about financial fraud and how to avoid it. Participating organizations include the U.S. Securities and Exchange Commission, U.S. Attorney's Office, Utah Attorney General's Office, Financial Industry Regulatory Authority (FINRA), Utah Division of Securities, U.S. Commodity Futures Trading Commission, Utah Division of Consumer Protection, FBI, IRS and Salt Lake County/Utah County Attorneys offices. (From <http://www.utfraud.com/>, accessed 4/15/2020)*
- White Collar Crime Registry:** <http://www.utfraud.com/RegistryLists>
- Utah Division of Consumer Protection:** <https://dcp.utah.gov/index.html>
- Utah Division of Securities:** <https://securities.utah.gov/investors/index.html>

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**Notary Public**

1. 4 year commission
2. \$5,000 Bond
3. Verifies identity of signer
4. Obtains Signatures
5. Verifies delivered documents are not manipulated or changed
6. Prohibited from explaining document content
7. Prohibited from handling settlement monies
8. Can courier documents, but is liable for their safe & timely return

**Escrow Officer**

1. Is also Notary Public
2. Insurance license required
3. Appointed agent of title company
4. Client protected by title company E&O (\$1,000,000), fidelity bond (\$500,000), & closing protection letter
5. Required continuing education- 12 hours every two years ( 3 hours of ethics)
6. Is a fiduciary / neutral party
7. Reads, interprets, & understands real estate and lending laws & customs
8. Follows written instructions from seller/buyer/agents/lender
9. Prepares settlement statement & closing documents
10. Verifies identity & authority/office of signer
11. Conducts settlement- Explain documents
12. Receives, verifies, and disburses funds
13. Delivers deeds (recording)

**Remote Online Notary (RON)**

**For the Remote Online Notary**

1. Everything above
2. \$10,000 Bond
3. Must operate within the boundaries of state where they are commissioned

**For the Vendor/Provider/Signer**

1. RON platform must be approved by State of Utah
2. All parties to transaction must approve the use of RON documents
3. RON vendor must be approved with title underwriter
4. County Recorder must accept RON documents
5. Each RON session is recorded
6. Each signor must pass multi-factor authentication
7. Each signor must present ID during session

Coverage		ALTA basic	ALTA Extended Owner's	ALTA Home-owner's
1	Someone else owns an interest in your title	X	X	X
2	A document is not properly signed	X	X	X
3	Forgery, Fraud, Duress	X	X	X
4	Defective recording of any document	X	X	X
5	There are restrictive covenants	X	X	X
6	There is a lien on your title because there is: a) a deed of trust, b) a judgment tax of special assessment, c) a charge by the Homeowners Association	X	X	X
7	Title is unmarketable	X	X	X
8	Mechanic's lien protection		X	X
9	Unrecorded liens by a homeowner's association		X	X
10	Unrecorded easements		X	X
11	Rights under unrecorded leases, contracts, or options		X	X
12	Forced removal of a structure because it: a) extends onto other land or onto an easement, b) violates a restriction in schedule B, c) violates existing zoning law*			X
13	Can't use land for SFD because the use violates a restriction in schedule B or Zoning			X
14	Pays rent for substitute land or facilities			X
15	Plain Language			X
16	Building permit violations*			X
17	Compliance with Subdivision Map Act*			X
18	Restrictive covenant violations			X
19	Post Policy forgery			X
20	Post Policy encroachment			X
21	Post Policy damage from mineral/water extraction			X
22	Post Policy living trust coverage			X
23	Enhanced Access- Vehicular & Pedestrian			X
24	Map not consistent with legal description			X
25	Post Policy automatic increase in value up to 150%			X
26	Post Policy adverse possession			X
27	Post Policy cloud on title			X
28	Post Policy prescriptive easement resulting in reversion			X
29	Covenant violation resulting in reversion			X
30	Boundary walls and fence encroachment*			X
31	Enhanced marketability			X
32	Violations of building setbacks			X
33	Discriminatory covenants			X
34	Insurance coverage forever			X

\*Subject to a deductible and a maximum indemnity liability, which may be less than the policy amount

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**All questions regarding authority or capacity should be referred to Backman's legal team for guidance**

### **Every signer must have valid identification**

- Passport, Driver's License, State ID from Government with the 3 following items- 1) Photograph 2) Signature 3) Physical Description
- **The following are not valid primary ID's:** Driver Privilege Card, Birth Certificate, Marriage License, Social Security Card

### **Post Probate/Conservatorship:**

- Letters Testamentary- Signed order from the court stating the name(s) of the personal representative(s) & indicating whether the administration of the estate is supervised or unsupervised.
- If the estate is supervised, or for any situation regarding determining heirs, consult Backman's legal team for guidance
- Conservator vs Guardian – Guardian manages care & day to day needs of minor/incapacitated person & the conservators manage their property (estate). A Conservator signs agreements, contracts & at settlement/closing. Always consult legal team when dealing with conservatorship.

### **Family Trust**

- Backman requires either: 1- A copy of the family trust (Best practice) or
- 2- A certification of trust containing the following elements – a. Statement that identifies the trust exists & has not been revoked, b. Date the trust instrument was created, c. Identity of Settlor(s), d. Identity & Address of the acting trustee(s), e. Powers of the trustee, f. How these powers relate to current transaction, 7. Revocable vs. Irrevocable trust "& the identity of any person holding a power to revoke the trust", g. The name in which title to the trust may be taken (We need enough information to ascertain the acting trustees & their powers, including applicable pages from the trust)
- If a trustee has passed away, we'll death certificates to prepare affidavit of surviving trustee or successor trustee
- Trustees are not allowed to grant power of attorney (unless granted by the trust, seek legal team help)
- Trustees may resign. Resignation form nominates a new trustee, & new trustee must accept nomination
- When vesting property into a trust: Name of trustees, complete & correct name of trust, date of trust

### **LLC & Series LLC**

- Copies of business entity documents from the State of Utah (minimum requirement).
- LLCs are either member led, or manager led (not both)
- Obtain copy of operating agreement (best practice). Operating agreements are mandatory for Series LLC
- Synch up operating agreement with what is filed with the State
- Prepare or obtain a statement of authority (DocuSign is generally ok)
- Signature of each member or manager. Statements of Authority, Use of unanimous consent of members / officers of LLC may be required

### **Corporation & S-Corps**

- Copies of business entity documents from the State of Utah (minimum requirement)
- Additional requirements may include 1) Board Resolutions, 2) Unanimous Consent of Directors of Corporation (Reference UCA §16-10a-821), 3) Officers/signing authority

### **Partnerships**

- Obtain copy of partnership agreement
- Download copies of business entity documents from the State of Utah (minimum requirement)
- All general partners must sign. Review agreement for other requirements.