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MAR 5 1974

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The Honorable Henry S. Reuss
Chairman, Conservation and Natural Resources Subcommittee
Committee on Government Operations
House of Representatives

H1502

Dear Mr. Chairman:

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In accordance with your November 1, 1972, joint request with Congressman Guy Vander Jagt and subsequent agreements with the Committee, we have obtained information on (1) procedures and practices of certain Federal agencies for acquiring land title evidence, (2) procedures followed in approving abstracters and title companies to obtain land title evidence for the U.S. Government, (3) standards of the Department of Justice concerning the qualifications of abstracters and title companies, and (4) land title evidence data provided to you by certain agencies. We have also obtained information on the liability of the issuer of a certificate of record title. H1502 37

The enclosures contain our analysis of scheduled data on land title evidence which certain agencies were requested to provide. Enclosure I presents an analysis of agencies' costs for land title evidence. Enclosure II presents their average costs and their uses of title insurance and the certificate of title and the use of the other forms of evidence.

We conducted our review at the Corps of Engineers, U.S. Army; the Forest Service, Department of Agriculture; the National Park Service, the Bureau of Sport Fisheries and Wildlife, and the Bureau of Reclamation, Department of the Interior; and the Department of Justice.

PROCEDURES AND PRACTICES FOLLOWED
IN OBTAINING LAND TITLE EVIDENCE

The Department of Justice's "Standards for the Preparation of Title Evidence in Land Acquisitions by the United States" governs the preparation of title evidence for all lands acquired by the United States. It describes the types of land title evidence acceptable to the United States and the basic criteria for the content and format of evidence. The information contained in the Standards has been assembled to conform with the types of evidence made available by the land title industry.

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Representatives of the agencies we reviewed said that their procedures concerning the acquisition of title evidence were developed and maintained to conform with the procedures set forth in the Standards and that agency procedures served as a supplement to the Standards. As a result the procedures and practices of the agencies reviewed are substantially uniform. Agency representatives have expressed the view that their procedures for acquiring title evidence have been developed to guide acquisition activities toward obtaining the most efficient, economical, and timely evidence available.

Agency representatives and agency responses to your October 31, 1972, request indicate that land title insurance is most often used as title evidence. This is because the type of land title evidence acquired depends primarily on the type of evidence available and land title insurance is predominantly available to be used as evidence.

Agency officials advised us that a certificate of title can be used as evidence and can be obtained quickly; however, in recent years it has become increasingly unavailable. The basic difference between the certificate of title and title insurance is that the certificate of title only protects the purchaser against matters shown in public records but title insurance also protects him against items such as forged wills and deeds that would not show up in a search of public records.

The abstract of title can also be used as evidence but has drastically declined in availability over the past 10 to 15 years. When available it is difficult to obtain this type of evidence quickly because land records must be obtained and assembled.

Certain agency representatives stated that, aside from the availability of title insurance, there were other factors which enhanced its value. These factors included (1) the ability to acquire title insurance quickly, (2) the supplemental services, such as providing settlement services, providing escrow services, and undertaking any curative action necessary, which are usually part of title insurance, and (3) the title company's defense of the title.

The agencies have found that the certificate of title, when available, is sometimes nearly as costly as title insurance. Additionally, abstracts of title, when available, often cost as much as or more than certificates of title and title insurance.

As stated in our November 22, 1972, report to the Attorney General, B-176942, the Government generally follows a policy of self-insurance against loss or damage to Government-owned property. We recommended that

the Department of Justice revise its "Standards for the Preparation of Title Evidence in Land Acquisitions by the United States" to conform with this policy by specifically identifying the certificate of record title as an acceptable form of evidence and, with certain exceptions, precluding the use of certificates of title and title insurance policies.

The certificate of record title differs from the certificate of title in that the certificate of record title has no clause covering the limits of monetary liability. At the time of our review the certificate of record title had been approved by the Department for use in Florida on a Corps of Engineers project. Because our review showed apparent potential economies in the broader application of the certificate of record title concept, we suggested that the Department of Justice encourage all Federal agencies to use this form of title evidence in Florida and advocate its acceptance in other States.

Subsequently, the Department of Justice informed us that under the certificate of record title the issuer could be held liable up to the full value or the purchase price of the land. In addition, a Department representative advised us that the certificate of record title would probably have the same limited availability as the certificate of title. He said that some title insurance companies had refused to provide certificates of title because many State and local bar associations had been interpreting the issuance of certificates of title by title insurance companies to be an unauthorized practice of law by corporations.

Until agreement has been reached with the individual States and the title industry with regard to the acceptability of the certificate of record title as title evidence, it may be impractical to implement our recommendations and similar recommendations made by the Subcommittee on October 31, 1972.

The Department of Justice initiated a survey of State and local practices in the land title industry. A Department representative informed us that the survey was an effort to update information on forms of title evidence available throughout the country and on State and local Government regulations concerning land title evidence. At the conclusion of our review, the survey had not been completed. The survey results should provide a foundation for assessing the availability of various forms of title evidence.

PROCEDURES FOR APPROVAL OF
ABSTRACTERS AND TITLE COMPANIES

The agencies informed us that they had no procedures for approving title companies and abstracters; they relied on the Department of Justice to maintain information on approved title companies and abstracters and to notify

them when abstracters and title companies were approved. Department officials advised us that the Attorney General was responsible for investigating the qualifications of title companies and abstracters and for determining the acceptability of their providing land title evidence to the Federal Government. U.S. attorneys make these investigations.

Provisions in the Department's Standards identify basic measurable criteria for the attorneys to consider in their examinations and the basic professional qualifications to be met. Such criteria as organizational structure, financial position, experience, and reputation are considered with general business activity to determine a sound business enterprise. Other criteria, such as the system followed by the title company or abstracter in searching for, examining, and compiling the title evidence, are more specifically concerned with the ability to provide quality land title work.

After the investigation the attorneys recommend to the Attorney General, through the Division of Land and Natural Resources, whether the abstracter or title company should be approved. When the Attorney General approves a title company or an abstracter, the Federal agencies are informed in writing.

We reviewed the files of several approved abstracters to determine the extent of the examinations made by the attorneys. The files showed that the data obtained conformed with the criteria prescribed in the Standards. We believe that consideration of the basic criteria and the professional qualifications identified in the Standards provides a sound basis for determining the acceptability of a title company or abstracter.

Reexamination of approved abstracters
and title companies

Department of Justice representatives informed us that approved abstracters or title companies were not periodically reexamined to determine if they continued to meet qualifications for approval. The Department believes title evidence supplied by approved abstracters and title companies provides the best information to determine whether they continue to meet the qualifications. We believe this is a reasonable alternative to applying the additional resources necessary to make periodic reexaminations of abstracters and title companies.

The Department of Justice maintains data on approved abstracters and title companies; however, an official of the Department advised us that for many years the Department had not reviewed the data to delete any title companies or abstracters no longer doing title work. We believe that good management requires that the Attorney General maintain an updated list of approved title companies and abstracters.

Abstracter's interest in
or relation to the vendor

Although a provision in the Standards provides that the abstracter being contracted have no interest in the land to be acquired and not be related to the vendor of the land, there are no procedures for determining this.

Department of Justice representatives informed us that the Department had not required Federal agencies to follow any particular procedures or required agencies to obtain certification from abstracters that they had no interest in or relation to the vendor(s) of the land. Representatives of each of the agencies informed us that they did not have any procedures for obtaining such information nor did they require any certification from abstracters. Neither the Department of Justice nor the agencies, however, could recall any conflicts of interest involving an abstracter.

In-house abstracting

Representatives of the agencies were generally of the opinion that in-house title abstracting would be a more costly and a less timely method of obtaining title evidence than the present system of contracting for these services. They said that the delays that can occur when preparing voluminous abstracts could contribute to the development of backlogs in the overall land acquisition process.

A representative of the Corps of Engineers informed us that the Corps was gathering information at its field locations regarding the feasibility of an in-house operation. He stated that an in-house operation would require familiarity with local acquisition practices and with the type of public land title records maintained in each locality. He said that, although the Corps' field personnel had the capability, the Corps did not have sufficient staff to undertake in-house abstracting.

A representative of the Bureau of Sport Fisheries and Wildlife said that the Bureau had considered in-house abstracting but it believed that it did not have available resources to handle this task completely in-house. He also said that it would probably be less expensive to contract for title evidence services. Representatives of the other agencies informed us that in-house abstracting had not been considered.

COST AND USE DATA

The cost data provided to the Committee by the agencies showed that from fiscal year 1969 through fiscal year 1972 a total of \$3,687,969 had been spent for title evidence. Of the total, \$2,494,087, or about 67.6 percent, had been spent for title insurance; \$1,088,147, or about 29.5 percent, had been spent

for certificates of title; and \$105,735, or about 2.9 percent, had been spent for abstracts of title and other forms of title evidence. (See enc. I.) The Corps of Engineers spent the most for title evidence--\$2,192,882. The Bureau of Reclamation spent the least--\$148,448.

Enclosure II shows the frequency with which each agency used the various types of title evidence and the average cost of each type of title evidence. This data is shown for purchases and for easements.

The costs shown in enclosure I include purchases and easements. Except for the Bureau of Sport Fisheries and Wildlife, the agencies used title insurance more often than other forms of title evidence. The Bureau of Sport Fisheries and Wildlife acquired title insurance for most of its purchases, but it relied exclusively on certificates of title when purchasing easements. (See enc. II.)

As shown in enclosure II, three of the agencies relied heavily on certificates of title as evidence for easements. A representative of the Bureau of Sport Fisheries and Wildlife told us that certificates of title were frequently obtained for easement acquisitions because the period covered by the title search for easements only had to go back about 20 years rather than the 40 to 60 years required for a fee purchase. The title insurance companies were therefore more willing to issue certificates of title. A representative of the National Park Service told us that it tried to obtain certificates of title as frequently as it could in easement acquisitions since actual title to the land was not taken and the Park Service's primary concern was to see that the actual owner was paid. A representative of the Corps of Engineers told us that it was the policy of the Corps to obtain certificates of title as often as possible because they were less costly than title insurance.

Enclosure II also shows that the costs of title insurance and certificates of title for easements acquired by the National Park Service were substantially higher than for purchases. The average costs of easements, however, are inflated by a few high-cost tracts among the relatively few easements acquired by the National Park Service. A National Park Service representative said that the average cost of title insurance policies for purchases was somewhat lower than the average cost for easements because several large purchases had been made involving a large number of lots having one line of ownership over an extended time.

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At your request we did not obtain agency comments on this report. We will release this report only after you agree or publicly announce its contents.

B-168106

We are sending this report today to Congressman Guy Vander Jagt, Ranking
Minority Member, Conservation and Natural Resources Subcommittee, House
Committee on Government Operations.

Sincerely yours,

A handwritten signature in cursive script that reads "James P. Stacks". The signature is written in dark ink and is positioned above the typed name.

Comptroller General
of the United States

Enclosures - 2

LAND TITLE EVIDENCEAnalysis of Costs by Agency and Type of Evidence
Fiscal Years 1969-72

	<u>1969</u>	<u>1970</u>	<u>1971</u>	<u>1972</u>	<u>Total</u>
DEPARTMENT OF AGRICULTURE:					
Forest Service:					
Total title evidence costs	\$ 84,632	\$130,532	\$126,759	\$ 146,029	\$ 487,952
Title insurance costs	63,560	120,284	110,969	130,601	425,414
Percent of total	75.1	92.2	87.6	89.4	87.2
Certificate of title costs	17,868	8,910	12,724	12,424	51,926
Percent of total	21.1	6.8	10.0	8.5	10.6
Costs of other forms of evidence	3,204	1,338	3,066	3,004	10,612
Percent of total	3.8	1.0	2.4	2.1	2.2
DEPARTMENT OF THE INTERIOR:					
Bureau of Sport Fisheries and Wildlife:					
Total title evidence costs	53,025	76,718	113,113	119,311	362,167
Title insurance costs	14,030	11,572	54,624	65,563	145,789
Percent of total	26.5	15.1	48.3	54.9	40.3
Certificate of title costs	31,053	58,053	44,142	39,585	172,833
Percent of total	58.5	75.7	39.0	33.2	47.7
Costs of other forms of evidence	7,942	7,093	14,347	14,163	43,545
Percent of total	15.0	9.2	12.7	11.9	12.0
Bureau of Reclamation:					
Total title evidence costs	50,456	26,796	24,286	46,910	148,448
Title insurance costs	38,624	23,587	21,394	45,406	129,011
Percent of total	76.6	88.0	88.1	96.8	86.9
Certificate of title costs	102	1,198	187	268	1,755
Percent of total	0.2	4.5	0.8	0.6	1.2
Costs of other forms of evidence	11,730	2,011	2,705	1,236	17,682
Percent of total	23.2	7.5	11.1	2.6	11.9
National Park Service:					
Total title evidence costs	101,428	82,948	108,965	203,179	496,520
Title insurance costs	92,340	80,182	94,212	184,975	451,709
Percent of total	91.0	96.7	86.5	91.0	91.0
Certificate of title costs	9,088	2,766	14,753	18,204	44,811
Percent of total	9.0	3.3	13.5	9.0	9.0
Costs of other forms of evidence	-	-	-	-	-
Percent of total	-	-	-	-	-
DEPARTMENT OF THE ARMY:					
Corps of Engineers:					
Total title evidence costs	513,934	495,817	591,389	591,742	2,192,882
Title insurance costs	308,884	296,958	341,218	395,104	1,342,164
Percent of total	60.1	59.9	57.7	66.8	61.2
Certificate of title costs	204,828	184,810	232,751	194,433	816,822
Percent of total	39.9	37.3	39.4	32.8	37.2
Costs of other forms of evidence	222	14,049	17,420	2,205	33,896
Percent of total	-	2.8	2.9	.4	1.6
TOTAL TITLE EVIDENCE COSTS--ALL AGENCIES:					
Total title evidence costs	803,475	812,811	964,512	1,107,171	3,687,969
Title insurance costs	517,438	532,583	622,417	821,649	2,494,087
Percent of total	64.4	65.5	64.5	74.2	67.6
Certificate of title costs	262,939	255,737	304,557	264,914	1,088,147
Percent of total	32.7	31.5	31.6	23.9	29.5
Costs of other forms of evidence	23,098	24,491	37,538	20,608	105,735
Percent of total	2.9	3.0	3.9	1.9	2.9