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UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

GENERAL GOVERNMENT
DIVISION

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Dear Mr. Attorney General:

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1 We reviewed the Department of Justice's standards and instructions for preparing acceptable title evidence for land acquisitions and examined the different types of land title
 2 evidence purchased by selected offices of the Corps of Engineers, U.S. Army; the Forest Service, Department of Agriculture; the Bureau of Sport Fisheries and Wildlife, Department of the Interior; and the General Services Administration
 3 (GSA). 17 305
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In recent years most of the land title evidence approved by the Department was in the form of title insurance--title insurance policies and certificates of title.

Relatively few claims requiring payment by the insurer have been made in recent years for defects in Government land titles. We believe that the Government could realize substantial savings if it adhered to its general policy of self-insurance by using a certificate of record title as an acceptable form of title evidence and by discontinuing the purchase of title insurance, except when a statute such as the Military Construction Act of 1959 (42 U.S.C. 1594(d)) provides otherwise.

STANDARDS FOR TITLE EVIDENCE

In October 1970 the Attorney General issued standards governing the approval of title to lands to be acquired for Federal purposes. The Attorney General delegated the responsibility for title approval, with some limitations, to several departments and agencies.

The Department's "Standards for the Preparation of Title Evidence in Land Acquisitions by the United States" govern the preparation of title evidence when the title is to be approved by the Attorney General or his designee or when condemnation proceedings are to be instituted.

The standards provide that title evidence acceptable to "prudent attorneys and title examiners" where the land is located will ordinarily be acceptable to the Department. The standards identify the following items as acceptable title

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evidence: (1) abstracts of title, (2) certificates of title in prescribed form and content issued by title companies, (3) owners' duplicate certificates of title, (4) copies of public title records, (5) title insurance policies in prescribed form issued by insurance companies, or (6) any other satisfactory title evidence.

PURCHASE OF TITLE INSURANCE ON
LAND ACQUIRED BY THE UNITED STATES

In 1969 the Department reported to the Congress that in recent years more than 93 percent of its land title approvals had been based on certificates of title or title insurance policies. Our review of the records for 370 land acquisitions by the U.S. Government at a total cost of about \$11 million showed that certificates of title or title insurance policies had been obtained for most of these acquisitions.

Some agencies' regulations specify the use of certificates of title or title insurance policies. The Corps of Engineers' regulations, for example, require the use of certificates of title or title insurance policies, whenever available, on the theory that the Government buys title searching service as well as title evidence, and therefore the Corps does not have to examine abstracts of title which are generally voluminous.

In most States premiums charged by title insurance companies must be approved by a State regulatory body. Some of the insurance companies' rate schedules and most of the charges we reviewed did not separate the insurance premium from the charge for title search and examination. For 123 of the 370 acquisitions, however, the cost of the title insurance was shown. These costs ranged from \$10 to \$963 and totaled \$9,726. We also found instances where the Corps of Engineers bought title insurance costing more than the purchase price of the property.

LIMITATIONS ON COVERAGE
OF TITLE INSURANCE POLICIES

The Department has prescribed forms for a certificate of title and a title insurance policy which provide for the issuer to assume financial responsibility.

The Department's form for a title insurance policy provides for the insurance company to insure the Government against loss or damage which the Government may sustain, not exceeding the amount of the policy, except for

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The Department's form for a title insurance policy provides for the insurance company to insure the Government against loss or damage which the Government may sustain, not exceeding the amount of the policy, except for

- defects disclosed by title search and listed in the policy;
- special exceptions, such as certain recorded easements, liens, etc.;
- general exceptions, such as limitations imposed by law on ownership and use of property; and
- matters not of record at the date of the policy.

Therefore a title insurance policy does not unconditionally guarantee a valid title.

The Department's form for a certificate of title provides for the company to certify that it has made a thorough search of the title to the property and that, except for infirmities disclosed by the search and listed in the certificate, the owner holds fee simple title to the property, free and clear of all matters, either of record or otherwise known to the company, which may impair or adversely affect title to the property. The company assumes liability only for want of care, skill, or diligence in making the title search and its maximum monetary liability is limited to the amount stated in the certificate. The company does not guarantee to defend the title, nor to protect the Government against claims not of record at the time the certificate was prepared.

When a Federal agency buys a title insurance policy or a certificate of title which limits the company's liability to less than the reasonable value of the property, the Government assumes the risk of loss for the difference between the company's liability limit and the reasonable value of the property. To this extent the Government is a self-insurer.

The Attorney General has approved the acceptance of certificates of title and title insurance policies containing a limitation of liability. The Department's standards provide, in part, that:

"Generally, certificates of title or title insurance policies shall not limit the liability of the title company to a sum less than 50 percent of the reasonable value of the property; however, as to acquisitions valued at more than \$50,000, the limitation of liability of the issuing title company under the certificate of

title or title insurance policy may be limited to 50 percent of the first \$50,000 and 25 percent of that portion of the value in excess of that amount. Certificates of title and title insurance policies which provide that the United States is required as co-insurer or otherwise to assume any portion of the limited liability are not acceptable."

Although the Department advised us that this reduced coverage had effected some savings in title insurance costs, Federal agencies were not uniformly exercising the option to limit their liability. The Forest Service, for example, normally bought title insurance equal to the purchase price of the property, whereas GSA normally bought title insurance containing a limitation of liability. In addition, title insurance companies in some localities will not issue a title insurance policy or a certificate of title for less than the full purchase price of the property.

CLAIMS AGAINST GOVERNMENT LAND TITLES

Relatively few claims requiring payment by the insurer have been made in recent years for defects in Government land titles. In the Atlanta region, officials of the Forest Service, the Bureau of Sport Fisheries and Wildlife, and GSA could not identify any claims which resulted in monetary recovery from a title insurance company. An official of the Corps of Engineers advised us that he could recall only one claim due to a defect in the Government land title for which recovery was made from the title insurance company. In this instance, the company, in 1971, paid the Government \$11,000 because of the title defect.

In the Denver region, Forest Service and GSA officials said that they did not know of any claims against title insurance companies. Corps of Engineers officials stated that some claims had been made against firms providing title evidence but that none had been made in the last 3 years.

A Department official told us that the Department had no records from which claims resulting from defects in Government land titles could be readily identified.

CERTIFICATE OF RECORD TITLE ADOPTED IN FLORIDA

Because of the high cost of title evidence in Florida, the Corps of Engineers requested the Department of Justice to

approve a revised form of the certificate of title known as the certificate of record title. This certificate, approved by the Department in July 1969 for use in Florida, provides for the title company to certify that it has made or has obtained a report showing a thorough search of the title to the property and that the title is free and clear of all encumbrances, defects, interests, and all other matters whatsoever, either recorded or known to the company, impairing or adversely affecting the title to the property, except as shown on the certificate. The certificate does not provide for the company to be monetarily liable for title defects.

Before the certificate of record title was approved, the Corps used the certificate of title form prescribed by the Department. The Florida State Treasurer's office considered the certificate of title to be a form of title insurance requiring payment of the prescribed insurance premium; however, the office agreed with the Corps of Engineers that the certificate of record title was not a form of title insurance and that the insurance premium rates did not apply. A Corps official estimated that Florida had saved about \$2 million by purchasing certificates of record title instead of title insurance on land for a barge canal to be built by the Corps.

At the time of our review, a Corps of Engineers official advised us that the Corps had not used the certificate of record title because no land had been acquired on the Florida mainland after the certificate was approved. The official said that, although land was being purchased in the Florida Keys, abstracts of title were being bought because they were ordinarily used in that area.

Although the Department approved the certificate of record title for use in Florida, it has not revised its standards to specifically identify the certificate as an acceptable form of title evidence. A Department official informed us that to his knowledge a notice of approval of the certificate had not been sent to Government agencies other than the Corps of Engineers. In November 1971 a GSA official told us that the agency was buying title insurance on land purchases in Florida and that he had never heard of the certificate of record title.

CONCLUSIONS AND RECOMMENDATIONS

The Government has generally followed a policy of self-insurance and is currently insuring itself in almost all cases, against the risks of loss or damage to its property. The

Government's policy of self-insurance does not involve a statement of positive law but is evidenced in decisions of the Comptroller General of the United States and in the conduct of official business by the various departments and agencies of the Government. (See our report to the Congress entitled "Study to Evaluate the Government's Policy on Self-Insurance" B-168106, Mar. 23, 1972).

We believe that the Government could realize substantial savings in its land acquisitions if it adhered to its general policy of self-insurance for risk of loss by using the certificate of record title as an acceptable form of title evidence and by discontinuing the purchase of title insurance except where otherwise provided for by statute.

The certificate of record title approved by the Department for use in Florida would better serve the purpose of all Federal agencies and would be compatible with the Government's general policy of self-insurance. We believe that the Department should encourage all Federal agencies to use this form of title evidence in Florida and should advocate its acceptance in other States.

Recommendations

We recommend that the Department of Justice revise its standards for preparing acceptable title evidence to specifically identify the certificate of record title as an acceptable form of title evidence and, except as previously mentioned, to preclude the use of certificates of title and title insurance policies.

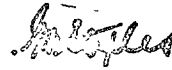
We will be pleased to discuss these matters with you or your representatives. We wish to acknowledge the courtesies and cooperation extended to our representatives during the review. We shall appreciate receiving your comments regarding the action taken or planned with respect to the matters discussed in this report.

Copies of this report are being sent to the Chairmen, U. S. Senate and House Committees on Government Operations; the 21500

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C3-4 Chairmen, Senate and House Committees on Appropriations; the ³⁰⁰ Director, Office of Management and Budget; and the Assistant Attorney General for Administration.

Sincerely yours,



'For' Director, General Government
Division

The Honorable
The Attorney General 37