

Torrens, Registration of Titles, and Proceedings Subsequent



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Torrens, Registration of Titles, and Proceedings Subsequent

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Introduction

The Torrens system in Minnesota is both technical and complex. It can be intimidating to those who do not use it frequently. That said, it offers many significant advantages over the abstract recording system. In this presentaion we will be covering the History and Evolution of the Torrens System, Initial Registrations, Certificates of Possessory Title, Certifications, Examiners Directives, Proceedings Subsequent, Boundary Registrations, and the Jurisdiction of the Torrens Court.

History and Evolution of the Torrens System

A. Minnesota History

Minnesota has two systems of land title records: abstract and Torrens. The two systems operate simultaneously and in parallel but have different enabling legislation and different rules.

Abstract – Minn. Stat. Chapter 386

Torrens – Minn. Stat. Chapters 508, 508A, Rules 200-222 Gen. R. Prac.

The Torrens or Registered Land system was created in Minnesota in 1901. The system is based on an Australian system developed by Sir Robert Torrens who modeled it after a system for registering ships. It is the primary land title system used in Australia, New Zealand and the majority of Canadian provinces. It is also the model for land title systems recently developed in the former Soviet republics and other developing nations. In the U.S. it is used in Minnesota and a handful of other states.

The Torrens system in Minnesota was expanded significantly by the registration of title to huge numbers of parcels of tax forfeited land during and after the Great Depression since land so forfeited was considered to have unmarketable title (the tax forfeiture statute in effect at the time did not provide for adequate notice to the record owners during the forfeiture process).

Also, thousands of parcels around Lake Minnetonka, White Bear Lake and other bodies of water were registered due to defective titles caused by changes in water levels, dredging and filling and poor early survey methods.

After World War II the building boom in the suburbs along with downtown commercial development in Minneapolis and St. Paul led to thousands of additional registration proceedings. The City of North Oaks was originally a gated community in which the property had been registered under the belief that restrictive covenants would survive the 30 year law. In certain counties, Such as St. Louis, common reasons for registration include boundary line disputes, termination of old railroad rights-of-way, and the severance of mineral rights.

Over the years the Torrens system has become less judicially administered and more administrative in nature. Requirements for court orders involving such issues as conveyances by a trustee, probate transfers of title, and adding vacated streets to descriptions on certificates which formerly required a court order now can usually be done by administrative acts of the examiner of titles known as "directives" and "certifications." The Minnesota Examiner of Titles Association has worked with the Real Property Section of the MSBA to advocate for statutory changes, including allowing the deletion of contracts for deed that were cancelled of record more than 5 years ago by directive, rather than through a proceeding subsequent.

The system has also become more "user friendly", by eliminating owners duplicate certificates of title which were required to be presented upon the filing with the registrar of voluntary instruments from the registered owner such as deeds and mortgages, and Affidavits of Purchaser of Registered Lands, which provided information on the new owner, which is no longer necessary due to statutory changes.

More recently, many counties have adopted Certificates of Possessory Title, which allow for the non-judicial registration of titles through an administrative process. A process that can be appropriate if there are no significant title defects.

B. Abstract vs. Torrens

Abstract land refers to parcels of land that have not been registered, or more commonly, land that is not “Torrens.” Prior to the enactment of the Torrens act (now *Minn. Stat. Chapter 508*) in 1901, all land was abstract land. The office of the county recorder accepts all instruments for recording which affect non-Torrens land. In order to determine the status of title to abstract land, private abstract companies prepare new, or continue already existing, “abstracts of title.” An abstract of title is a compilation of all of the instruments (beginning with the original grant or patent from the U.S. government) affecting the particular parcel of land under examination. The abstractor makes entries, in numerical order, of only the essential parts of each instrument shown, although sometimes the abstractor will photocopy the instrument and show it as an exhibit to the entry. In general, attorneys examine the abstract and from such an exam, issue a title opinion. Each time the title is transferred, the abstract must be continued to date and re-examined, again from the original grant or patent to the present date. Over time the abstract becomes longer, bulky and more difficult to examine.

By contrast, land which is registered or “**Torrens**” is governed by specific statutes, *Minn. Stat. Chapter 508*. One of the hallmarks of the registration proceeding is the issuance of a “certificate of title,” which effectively replaces the old “abstract of title.” In general, only those matters appearing on the certificate of title need to be examined. Immediately following the judicial hearing and signing of the decree of registration, the decree is filed with the registrar,

who then issues a certificate of title in the name of the owner, subject only to all adjudicated encumbrances (and statutory exceptions).

Usually title to abstract land is registered under chapter 508 because of title defects disclosed by an examination of the abstract. However, developers or others often desire to eliminate the abstract in favor of having the more **“user-friendly” certificate of title**, as compared to the cumbersome abstract of title. Under the Torrens system, it is no longer necessary to examine, over and over again with every transaction, each instrument dating back to the U.S. government. Instead, only an examination of those matters appearing on the certificate of title must be made.

Another unique feature of the Torrens system is that all instruments are reviewed by the Torrens clerk for accuracy prior to filing, and many instruments must be certified by the examiner (or deputy examiner) before the registrar of titles may accept them for filing. The requirements and process for obtaining Examiner’s certification will be discussed in greater detail later in the presentation. This aspect of the Torrens system **assures the accuracy** of certain conveyances or other matters, such as adding a street vacation to the body of the certificate of title.

The Examiner of Titles and Deputy Examiner are appointed by the judges of district court. They write Reports of Examiner to give judges their opinion in Torrens title cases, and act as the legal advisor to the Registrar of Titles on recording issues. In Anoka, Hennepin, and St. Louis Counties there are no fees for the services provided by the Examiner of Titles. In Ramsey and Washington Counties flat fees are charged for directives, certifications and issuing the report of examiner. In the remaining counties the examiner’s fees are established by the District Court on a fee for service basis.

Practitioners are encouraged to contact their local Examiner with questions regarding procedures, fees, and timelines. Particularly in complex matters, an early conference with the Examiner can save significant time, money and aggravation on both the Examiner's and attorney's part.

TITLE REGISTRATION UNDER MINNESOTA STATUTES CHAPTER 508

INTRODUCTION

"The process of transferring a title from the recording act system to the Torrens system is by a judicial proceeding in the nature of a suit to quiet title against all persons, both known and unknown who could by any possibility assert an adverse right."

from "Registration of Titles and Conveyancing applied to Registered Titles," printed in earlier editions of volume 29 of M.S.A. by R.G. PATTON and CARROLL G. PATTON who were Examiners of Title in Hennepin County from 1932 to 1957 and are also the authors of PATTON ON TITLES.

Much of these materials were prepared by David Meyers, an attorney at Rinke Noonan in St. Cloud. He serves as Examiner of Titles for Kittson, Marshall, Mille Lacs, Roseau, Sherburne and Wilkin Counties, and as Deputy Examiner for Benton, Koochiching and Stearns Counties.

FORMS

Up to date forms and additional information for use in a title registration are available at the Hennepin and Ramsey County Examiner of Titles websites, as well as others. Many of the forms referenced in this Chapter are also available at www.rinkenoonan.com. Click on the Examiner of Titles link.

- I. Reasons to Register Title, Minn. Stat. § 508.02
 - A. Absolute certainty of title.
 - B. A Torrens title protects against claims of adverse possession. Minn. Stat. § 508.02; Konantz v. Stein, 283 Minn. 33, 167 NW2d 1 (1969). This includes establishment of public roads by use and maintenance. Hebert v. City of Fifty Lakes, 744 NW2d 226 (Minn. 2008).

1. Title gained by adverse use prior to registration is not extinguished by registration where the boundary is not also registered. Petition of Building D, Inc., 502 NW2d 406 (Minn. App. 1993).
 - C. A title registration may permanently resolve complex boundary problems. Title Registration with placement of judicial landmarks (JLM) (Minn. Stat. § 559.25) establishes a permanent boundary.
 - D. A Common Interest Community Certificate of Title provides ease of title review and transfer. Minn. Stat. § 508.351.
 - E. A Registered Land Survey (RLS) is available only with Torrens title. An RLS may be used to simplify a complex legal description and sometimes is a substitute for a plat. An RLS may be horizontal or vertical. Minn. Stat. § 508.47.
- II. Title Registration vs. Quiet Title: which is best in your circumstances?
- A. Torrens or Registered Title
 1. At the completion certainty of title and ease of title review.
 2. Avoid using or updating an abstract, which may be costly and/or difficult to obtain, and can take significant time to update.
 3. Protection against claims of adverse use that arise after Registration.
 4. Establish the boundary with certainty by placement of Judicial Landmarks. Minn. Stat. § 559.25.
 5. Six month statute of limitations to challenge the registration.
 6. Examiner help in resolving difficult title questions.

a. There is no cost with a full time Examiner.

B. Quiet Title Action. Minn. Stat. §§ 559.01 and 559.23

1. In some areas of the state the Registrar of Titles and the Examiner of Titles have little experience with Torrens.
2. Save the cost of the abstract or other evidence of title, which is required for a Title Registration.
3. Quiet title action may cost less than a Title Registration. A quiet title action may be a band aid that does not provide a permanent fix. In cases where there are boundary issues the quiet title may be no better than one surveyor's opinion. It may not bind future surveyors.

III. Examiner of Titles

- A. The district court appoints a lawyer to be the Examiner of Titles. A Deputy Examiner may also be appointed. Minn. Stat. § 508.12.
- B. In counties with the larger population the Examiner is a full time county employee, and paid by the county. Minn. Stat. § 508.12.
- C. Outside of counties with a full time Examiner, the Examiner is paid by the Applicant. It is best to get an estimate of the cost of registration before you begin.

Practice Tip: In many parts of the state Examiners have little experience because there is little Torrens title. One factor in determining whether title should be registered is experience of the Examiner.

Practice Tip: There is a network of experienced Examiners to help any Examiner. Encourage your Examiner to ask for help.

Practice Tip: One way to keep the Examiner's cost down is to keep the case moving. When a case sits idle for six months it takes the Examiner time to remember what the matter was about and to get back up to where a question can be answered.

IV. Procedure to Register Title

A. The procedure to register title is set out in Minn. Stat. § 508.01, et seq., and Minn. General Rules of Practice, Title III.

Practice Tip: Chapter 508 is not up to date and in some cases it fails to take into account current practice in the district court. For example, filing an abstract with the court may not work with e-filing requirements. Check with the Examiner to see how to proceed. You will need to follow the substantive requirements in Chapter 508, but procedural matters may vary because they no longer work. Note that the MSBA Real Property Section and its subcommittees are presently undertaking proposed revisions to Chapters 508 and 508A and Title III of the General Rules.

1. The most common type of title registration is a fee interest. (Minn. Stat. § 508.04) It is possible to register an easement, but this is seldom done. You may register an appurtenant easement over abstract land as part of the registration of the benefitted parcel.
2. A holder of an unrecorded ownership interest may register title to establish ownership. National Bond & Sec. Co. v. Anderson, 99

Minn. 137, 108 NW 861 (1906). Minn. Stat. § 508.03 (7) –
(adverse possession is basis for registration).

Practice Tip: Hennepin, Ramsey and other counties have very good online forms that are generally accepted statewide. Prior to starting any registration you should contact the Examiner’s office to understand the procedure and forms to be used.

B. Application to Register Title, Minn. Stat. §§ 508.03 and 508.05.

1. Most types of ownership entities may register title.
 - a. Limited liability companies and trusts are not listed in Minn. Stat. § 508.03, but it is unlikely that any Examiner would reject an application from an LLC or trust.
2. Appointment of a Minnesota resident to accept service of process is required when the Applicant is a nonresident. Minn. Stat. § 508.07. The appointment is filed with the County Recorder.
3. The contents of the Application are spelled out in Minn. Stat. § 508.06.
 - a. Review and follow the statute. The online forms from Hennepin, Ramsey and other counties are useful.

See also: rinkenoonan.com, click on the “Examiner of Titles” link.

Practice Tip: Email a draft of the Application to the Examiner for comment prior to signing and filing it.

Practice Tip: Explain all defects and the reason for registration in the Application.

4. An Assent to Registration (Minn. Stat. § 508.06) by persons with an interest in the property and adjoining landowners in the case of a boundary registration is very helpful and a huge cost savings. Check with the local Examiner regarding the necessary formalities for executing an Assent.

Practice Tip: Anyone signing an Assent need not be made a party. Attach the signed Assent to the Application to assist the Examiner.

5. It is not necessary to name owners of adjoining parcels if you are not fixing boundaries. Marsh v. Carlson, 390 NW2d 897 (Minn. App. 1986).
6. But, it may be a good idea to name adjoining owners to avoid later claims of adverse rights that arose prior to registration. Petition of McGinnis, 536 NW2d 33 (Minn. App. 1995).

C. Application must be signed and verified. If an owner is married their spouse must join the Application or sign an Assent or they must be made a Defendant. Minn. Stat. § 508.05.

1. Failure to have the Application verified does not affect the court's jurisdiction. Dean v. Ross, 208 Minn. 38, 292 NW 765 (1940).

D. The Application must be filed with the district court. See: Minn. Stat. § 508.11. A certified copy is then filed with the County Recorder to act as a Notice of Lis Pendens.

Practice Tip: It is a good idea to have the Examiner sign as approving the form of the Application. Full time Examiners may file the Application with the district court.

Practice Tip: If the purpose of the registration is to fix boundaries list in the Application the names of adjacent owners with their legal descriptions. This allows the County Recorder to index the Application against adjacent parcels.

Practice Tip: The County Recorder tract index is by quarter-quarter section or platted lots. If your property and all the adjacent owners are within the same quarter-quarter section, nothing more needs to be done. If the Applicant's land is adjacent to a quarter-quarter section line include a reference to the adjacent quarter-quarter section so it is indexed. If your property is a platted lot make certain that the Application includes a reference to the adjacent lot so that the Recorder indexes the Application against those lots. Example: Applicant wishes to establish a boundary between the NE1/4 SE1/4 and SE1/4 SE1/4 of Section 6, Township 30, Range 29; or Applicant wishes to establish the boundary of Lots 1 and 2, Block 1, Pearl Addition. Name owners and legal descriptions of adjacent parcels in the Application. Check with the Examiner or County Recorder to see how this works in their county.

E. The Application may be amended at any time. Minn. Stat. § 508.09. The Amended Application should be verified. It must be filed with the district court. If the legal description is changed a certified copy of the Amended Application should be filed with the County Recorder.

1. The district court has broad jurisdiction to grant relief outside of the Application as in other civil cases. In Re Rood's Estate, 229 Minn. 73, 38 NW2d 70 (1949).
2. Court may allow amendments any time “upon terms that are just and reasonable.” In Re Sand, No. A14-0735 (Minn. App. March 16, 2015).

V. Title Evidence – Abstract?

- A. Section 508.11 requires the Applicant to update the abstract to include the Application, all in a manner satisfactory to the Examiner. The Abstract is then filed with the district court. The Court Administrator then sends the Abstract to the Examiner Minn. Stat. § 508.13. There are several practical problems with this Statute.

Practice Tip: Work directly with the Examiner of Titles on what is acceptable title evidence, and how that evidence is filed in the court file.

1. District courts only accept e-filing. You would have to take the abstract apart and e-file it page by page. Is the abstract certified once it is taken apart? The Court Administrator is supposed to provide the abstract to the Examiner. It is not clear how that is to be done with e-filing. In Ramsey County, the Examiner requires the Applicant to e-file the abstract and provide a hard copy to the Examiner for review.

2. Many owners do not have an abstract. If you strictly follow the Statute, you would need to create an abstract. This makes little sense since once title registered the abstract is of no further value.
3. Abstracts may contain mistakes and omissions. Torrens registration based upon a mistake in an abstract may only compound a title problem. An abstract is useful for older entries, but of questionable value for the time period in which the County Recorder maintains an online system.
4. Where an abstract is available it may take months for an update. This appears to be particularly true in the urban areas where abstracts are not routinely used or updated.

Practice Tip: The Examiner is required to search all public records and fully investigate all facts pertaining to the subject property. Minn. Stat. § 508.13. This may mean examining all county online resources such as real estate tax parcel mapping and GIS, plats, online surveys and Google Maps (or similar). An on-site inspection may be helpful.

Practice Tip: Utility easements and roads or driveways may not be shown in the abstract or public records. Ask the Applicant which utility provides power, electric, gas, telephone, and other utilities. Name the utility provider as a Defendant. Online aerial searches may also reveal roads or encroachments.

VI. Survey

- A. If requested by the Examiner, the Applicant must have the land surveyed, with the survey filed with the Court Administrator. Minn. Stat. §§ 508.11

and 508.14. Communicate with the Court Administrator and the Examiner to facilitate filing of necessary surveys

Practice Tip: Always provide a full size survey to the Examiner. Authorize the surveyor to communicate directly with the Examiner.

Practice Tip: It is best to require a survey for any legal description which is less than a quarter-quarter section. It does no one any good to register title to a bad legal description.

Practice Tip: The Examiner should submit all surveys to the county surveyor for comment if the Examiner is fortunate enough to have a full time county surveyor. Make certain the survey fits with the county coordinate monument system.

Practice Tip: The Applicant's attorney and the Examiner should always question the survey. Why does this surveyor believe that an historic boundary is wrong? What does this surveyor know that the last surveyor who set the boundary did not understand? Remember, surveying is an art and not strictly a science.

Practice Tip: Surveys should be tied to two known Government Corners. Outside of a plat, this usually means corners established by the Public Land Surveying System. Make certain that you agree that the location of the point of commencement and point of beginning and other corners in the survey are accurate.

Practice Tip: If you are registering title to a platted lot make certain that the lot corners can be located or referenced by their legal description based on the Public Land Survey System or by other found, lot corner monuments in the plat.

VII. Examiner's Report.

- A. The Examiner reviews title evidence and prepares a Report. Minn. Stat. §508.13 and Minn. Gen. R. Pract. 205 The Report is filed with the Court. The Report lists all defects and identifies who should be made a Defendant.

Practice Tip: Minn. Stat. § 508.13 provides in part: "The examiner shall search all public records, and fully investigate all facts pertaining to the title which may be brought to the examiner's notice, and shall file in the case a full report thereof, together with the examiner's opinion upon the title." This means that the examiner should review the abstract and consider the following public records:

1. Up to date abstract with all searches per current title standards;
AND
2. If available at a reasonable cost, check the tract and grantee, grantor on line indexes for the county recorder to insure the accuracy of the abstract; OR
3. If an abstract is not available, and if online county recorder/registrar records are available at a reasonable cost, check the tract and grantee/grantor online searches. Search must be at least 40 years per Marketable Title Act (Minn. Stat. § 541.051). This may require a stub abstract covering at least 40 years. Some Examiners may require longer searches due to the potential that certain persistent encumbrances may be missed in a 40 year search, (e.g. railroads, mineral rights, in place easements, interests of the

United States, and Indian Lands). Check the accuracy of the abstract with an online search of the tract and grantee/grantor indexes if available at a reasonable cost.

Practice Tip: Mineral interests forfeited to the State may require a search beyond 40 years.

4. If available, check the county online GIS or Tax Parcel aerial mapping for unrecorded roads, utilities, encroachments, etc.
NOTE: The County parcel mapping is usually close, but not exact.
5. If available on the county website, check plats and surveys for encroachments, driveways, utilities not shown in the county recorder/registrar records.
6. Check Google Maps or equivalent online aerial mapping for driveways, encroachments, utilities, etc. not shown in the county recorder/registrar records.
7. Check PACER, nationwide, for bankruptcies and judgments.
8. Check MNCIS for judgments and open civil cases.

Practice Tip: The Examiner's Report should list all defects even if the defect may be barred by the 40 year rule (Minn. Stat. § 541.023). It is a good idea to list the defect and name anyone involved with the defect as a Defendant. There is hardly any extra cost where the Applicant will need to publish the Summons.

9. Mineral rights. It is common in the northeastern part of the state for mineral rights to be registered on separate certificates of title.

Regardless, mineral rights may have forfeited to the state. Name all owners of mineral rights and order title subject to those rights.

- B. When setting boundaries the Examiner must review the owners and encumbrancers of adjoining parcels. Parties with an interest in the adjoining land must be named and served as Defendants to judicially set the boundary.
- C. The State of Minnesota should be named if they have any interest in the property. Common examples are lands along a lake or river, state tax liens and mineral rights.
 - 1. The State must be notified if property is adjacent to a meandered lake. Minn. Stat. § 508.15.

Practice Tip: Notify the State even if the lake is non-meandered. (Non-meandered – i.e. not shown in the original government survey).

Practice Tip: Name the State anytime you see even a small area of standing water. It may be classified as public waters.

- 2. The State should be made a party whenever there are tax liens. Minn. Stat. § 270C.63, Subd. 18; In Re: National Bond and Security Co., 96 Minn. 119 104 NW 678 (1905).
- 3. A medical assistance lien may be a problem. Minn. Stat. § 514.981.

Practice Tip: If the Applicant has received state benefits require a Clearance Certificate or name the county and state as Defendants.

D. Name all government units when the property abuts a public road right of way. The certificate of title is subject to the rights of the public roads.

Minn. Stat. § 508.25 (4). The width of the road may be in question.

Practice Tip: The Road Order or other evidence of the establishment of the road may not be in the County Recorder title records. See: State EX. REL. Com'r. of Transp. v. Carlson, (No. A15-0082) (Minn. Ct. App. August 10, 2015).

E. The Torrens Certificate is subject to claims under Federal Law. Minn. Stat. § 508.25 (1).

Practice Tip: Name and serve the Federal Government for federal tax liens and the Federal Government's interest in mortgages held by HUD or the Small Business Administration.

Practice Tip: It is a good idea **NOT** to set the boundary against Federal land. You may find yourself in Federal court on a Petition for Removal.

F. Whenever possible have a Defendant sign an Assent. Minn. Stat. § 508.06. Either attach the Assent to the Application, or provide a copy to the Examiner to be attached to the Examiner's Report, or file it with the court. Check with the Examiner for signature requirements.

Practice Tip: An Assent is a great tool to reduce costs and controversy.

Practice Tip: Upon request, the Examiner may send a draft of the Report to the Applicant's attorney for review and comment prior to filing it with the court.

VIII. The Summons – Minn. Stat. § 508.15 and § 508.16.

- A. After the Examiner issues the Report with the list of the parties to be notified, the Applicant's attorney must file with the court a Petition and Order for Summons. Minn. Stat. § 508.15. Minn. Gen. R. Prac. 205.

Practice Tip: Hennepin, Ramsey and some other counties have forms.

1. The Petition includes the names and addresses of the parties to be served.
2. The Court then signs the Order and the Court Administrator issues the Summons.

Practice Tip: Prepare the Summons for the Court Administrator. This is required in some counties.

Practice Tip: It is a good idea to have the Examiner sign the Petition and Order for Summons, and the Land Title Summons to approve the form.

3. Note: If the Federal Government is a party, you must give the Federal Government 60 days to respond. Fed. R. Civ. P. 4, and 28 U.S.C. § 2410.
4. The form of the Summons for registration does not follow the Summons form in Minnesota Rules of Practice. Minn. Stat. § 508.16.

B. Service of the Summons

1. The Summons is served in the same manner as in all civil actions. Minn. Stat. § 508.16.

2. If the State of Minnesota is a party, serve the Minnesota Attorney General.
3. If the Federal Government is a party, follow Fed. R. Civ. P. 4 and 28 U.S.C. § 2410. Serve the U.S. Attorney's Office for Minnesota **AND** send a copy of the Summons by certified mail to the Attorney General of the United States in Washington, D.C.

Practice Tip: It is sometimes helpful to serve the Application, Examiner's Report and survey with the Summons. This is especially true if you are serving the State of Minnesota, Federal Government, a large national mortgage company, utility company, or railroad. You may reduce the number of phone calls to your office asking for this information.

4. If a Defendant cannot be found, serve by publication. An Affidavit of Not Found or similar document setting out the attempts to locate the defendant may be required, so the Examiner can verify that a diligent search was performed.
5. Service on a non-resident of the State of Minnesota may be made in the same manner as a civil action. In addition, if you cannot locate a non-resident for service, the Court Administrator is required to serve the Summons by mail to the non-resident's last known address at the expense of the Applicant.

Practice Tip: Discuss how this is to be done with the Court Administrator, and verify what the Examiner will require.

6. Once served, the person is bound by the Decree of Registration no matter the nature of their interest in the land. Minn. Stat. § 508.16, Subd. 2.

C. Answer and Counter Application

1. Hopefully the Examiner and the Applicant's attorney know in advance of any contest.
2. Anyone claiming an interest in the property, whether named or not, may file an Answer. Minn. Stat. § 508.17.
3. If the property is sold or re-mortgaged during the registration proceeding, the new owner or mortgagee may intervene. Minn. Stat. § 508.27.

Practice Tip: Make a finding on any change of ownership or new mortgage filed after the filing of the Application.

4. In some cases, particularly with a boundary problem, the adjoining owner may join the action to fix their boundary. This may be done by an Answer and Counter Application. Or, the neighbor may file their own Application. In that case, consider consolidating the actions.

Practice Tip: A Counter Application should follow the same procedure as the underlying Application. It should also be handled by the Examiner as an Application.

IX. Court Action After Service

- A. Most cases proceed by default. Minn. Stat. § 508.19.

- B. If the matter is contested trial is handled as a regular civil case. Minn. Stat. § 508.20.
 - 1. There is no right to a jury trial in a Torrens proceeding. In Re Peters v. City of Duluth, 119 Minn. 96, 137 NW 390 (1912).
 - 2. The district court may refer the matter to the Examiner of Titles for a recommendation. Minn. Stat. § 508.20.
 - 3. Attorney fees may be awarded for acting in bad faith to oppose an Application to register title. Application of Mrosak, 415 NW2d 98 (Minn. App. 1987); Minn. Stat. § 549.211.
- C. If the action is to establish boundaries, the court will issue an Interlocutory Order. Minn. Gen. R. Prac. 211.
 - 1. The Interlocutory Order finds all Defendants in default or in agreement with the requested relief and instructs the surveyor to place judicial landmarks. Minn. Stat. § 559.25.
- D. After the judicial landmarks are placed and a survey showing their placement is filed with the court, the court will enter the final Order and Decree of Registration.
- X. Order and Decree of Registration, Minn. Stat. § 508.22.
 - A. If a matter is contested ask the judge to submit a draft of the final Order and Decree to the Examiner to make certain that it is clear to the Registrar what the judge is ordering to be done.
 - B. The Order and Decree of Registration binds everyone with any interest in the property. Minn. Stat. § 508.22.

C. In a default case the Order and Decree should be signed by the Examiner for approval as to all Torrens requirements.

1. The contents of the Decree are listed in Minn. Stat. § 508.23, Subd. 1.

Practice Tip: It is a good idea to email a draft of the proposed Order and Decree of Registration to the Registrar for review before it is signed by the Court. If there are problems fix them before the judge signs the Order.

Practice Tip: The Examiner should recheck title before submitting the Order and Decree to the Court. Check with the Applicant regarding any changes in title since the Application was filed and let the Examiner know if there are new encumbrances.

D. Once the Order and Decree of Registration is signed, a certified copy must be recorded with the County Recorder and the Registrar of Titles. This will require the payment of fees for each recording, and depending on county procedure may require two certified copies.

Practice Tip: Minn. Stat. § 580.23 requires the Court Administrator to file a certified copy with the County Registrar. In many counties, the Applicant's lawyer should file it. Check with the Examiner's office to determine who typically records the document.

Practice Tip: Be certain that a copy of the Order and Decree is given to the County Auditor to correct real estate tax records, particularly when record title has been changed by the registration, such as when title has transferred through adverse possession.

- E. If during the pendency of the registration title has changed hands, if there is a new mortgage, or for any other change in title make a finding in the Order on the current ownership and liens for memorials.
- F. Make a finding in the Order that the court has reviewed and decided all disputes.
- G. When there is land along a lake or river, the Minnesota DNR may require something similar to the following language:

“Subject to the proprietary and sovereign rights of the State of Minnesota in all that portion of the land lying below the natural ordinary high watermark of Lake _____; not intending, however, to deprive the fee owners of the usual riparian rights that attach to the land riparian to a navigable public body of water incident to the ownership thereof.”
- H. The Order and Decree of Registration should list all memorials, including document numbers to assist the Registrar.

Practice Tip: Think through what you want the Certificate of Title to look like when it is completed, and how it is to be administered. For example, if you place a restriction or other language on the face of the Certificate, it may require a Court Order to remove it. If it is a memorial it may later be removed by an Examiner’s Directive. Practice varies statewide as to how recitals can be removed.

Practice Tip: Record the Order and Decree of Registration with both the County Recorder and the Registrar of Titles. Minn. Stat. § 508.23. This is not required. While the Application should be sufficient notice that a Torrens action is pending,

it does not show that the process was completed. Recording the Final Order and Decree in the abstract records sends anyone searching title to the Torrens system.

XI. Post Decree

- A. A Decree of Registration may be reopened any time within 60 days after entry of the Decree by anyone not named or served with the Summons.

Minn. Stat. § 508.26

- B. There is a six month statute of limitations to challenge the Order and Decree of Registration. Minn. Stat. § 508.28.

1. The six month limitation does not apply to a boundary not adjudicated in the original proceeding. In Re Cummings A14-0737 (Minn. App. Feb. 2, 2015); In Re Haugh, 766 NW2d 50 (Minn. App. 2009).
2. The court lacks subject matter jurisdiction to adjudicate a boundary determined in original registration. Park Elm Homeowner's Assn. v. Mooney, 398 NW2d 643 (Minn. App. 1987).
3. An appeal of an Order and Decree of Registration may be taken per Minn. Stat. § 508.29 (for time limits).
 - a. See: Matter of Cummins, 906 NW2d 280 (Minn. App. 2017). For time to appeal and post-trial motions.
4. Anyone injured by the registration process or by the administration of the Torrens certificate, may make a claim on the State General Fund. Minn. Stat. § 508.79. There is a 6 year statute of limitations from the time the claim arose.

5. Land erroneously included in registration may be removed from registration. Koester's Estate v. Hale, 297 Minn. 387, 211 NW2d 778 (1973); See also: In Re Hauge, 766 NW2d 50 (Minn. App. 2009) for removal of land mistakenly included in an RLS.
6. A mechanic's lien holder should have its lien established in the registration proceeding, or risk losing the lien prior to the one year limitation. Doyle v. Wagner, 108 Minn. 443, 122 NW 316 (1909) and Minn. Stat. Chpt. 514.

Certificates of Possessory Title (CPT)

Minn. Stat. Chp. 508A

A Certificate of Possessory Title may be an option if there are no significant title defects to adjudicate and if the process has been adopted in the subject county. The process is administrative rather than judicial and is generally less expensive and quicker than a registration under Chapter 508.

FORMS

Up to date forms and additional information for use in a title registration are available at the Hennepin and Ramsey County Examiner of Titles websites. Forms referenced in these materials are also available at www.rinkenoonan.com. Click on the "Examiner of Titles" link.

I. Benefits

- A. Inexpensive method to cure uncontested title defects.

- B. Administrative, non-judicial, method to register title, which after five years has the same effect as a registration under Minn. Stat. Chapter 508.
- C. While you cannot solve a contested boundary with a CPT, with the written agreement or Assent of the adjacent owners you can establish and correct a boundary.

II. County Board Approval

- A. Unfortunately, CPTs are available only in a limited number of counties. Minn. Stat. § 508A.01 requires the County Board to adopt a resolution authorizing the CPT upon the written request of the County Registrar.

III. Procedure

If you are in Hennepin, Ramsey or other counties with full time County Examiners of Title and forms, contact the Examiner for assistance. This is an easy administrative process.

- A. An Application must be completed pursuant to Minn. Stat. §§ 508A.01, Subd. 3 and 508A.03.

Practice Tip: The owner of property or the person “in active or constructive possession” may file an Application for a CPT. This appears to allow someone who has less than fee ownership to use the CPT to clear title to property.

- B. The types of land to be registered are the same as those found in Chapter 508. See Minn. Stat. § 508A.04, which references Minn. Stat. § 508.04, Subd. 1.
- C. The Application must be signed and verified by the owner. Minn. Stat. § 508A.05.

- D. The contents of the Application are set out in Minn. Stat. § 508A.06.
 - 1. Minn. Stat. § 508A.06, Subd. 10 requires supporting facts that the Applicant is either the fee owner or an actual or constructive possession of the land claimed in the application.
- E. A non-resident must appoint an agent who is a resident of the state. Minn. Stat. § 508A.07.
- F. Applicant may combine all of its land in one application. Others may join in the Application. Minn. Stat. § 508A.08

Practice Tip: It may be awkward to have different owners join in a single Application. The only benefit is to save on the \$46.00 recording fee. It is generally best to have each owner file a separate Application. Reference Co-Applications if that assists with a common boundary determination.

- G. The Application may be amended by filing a verified Amended Application. If the land is sold while the CPT is pending the new owner may be substituted. Minn. Stat. § 508A.09.

IV. Examiner of Titles

- A. For the duties and powers of the Examiner. Minn. Stat. § 508A.10.
 - 1. The Examiner reviews and approves the Application.
 - 2. Title evidence. Minn. Stat. § 508A.10(2) references an abstract of title. The abstract requirement involves the same problems as with a regular title registration.
- B. The Application is filed with the County Recorder and acts as a notice of the CPT proceedings.

C. After the Application is filed, the Examiner issues a Report. Minn. Stat. § 508A.13, Subd. 2.

D. The Examiner mails a Notice of the Application of the CPT to all interested parties. Minn. Stat. § 508A.13, Subd. 4.

1. The statute requires the Applicant to provide the Examiner with pre-addressed envelopes and postage.

2. The Notice gives all interested parties 20 days to object or make other inquiry. Minn. Stat. § 508A.22.

Practice Tip: The CPT is not a judicial proceeding. It is good practice to serve the state or federal agency **AND** State Attorney General or U.S. Attorney.

E. Applicant may withdraw or convert a CPT proceeding to a Chapter 508 Registration. Minn. Stat. § 508A.21

V. Examiner's Directive to Issue a CPT Minn. Stat. § 508A.22

A. The Directive should list all the recitals and memorials.

Practice Tip: If you are an Examiner at a private law firm there will be no record of the CPT other than what is in the County Recorder and Registrar's Office. It is a good idea to attach the Examiner's Report, all notices and responses and any other pertinent information to the Directive. This will provide future landowners and the court, if it is ever challenged, with the information on why the Directive was issued.

B. The Directive is filed with the County Recorder and the Registrar. The Registrar then issues the CPT. Minn. Stat. § 508A.22.

C. There is a 5 year limitation to challenge a CPT. Minn. Stat. § 508A.17

- VI. Change over to Chapter 508 Registration. Minn. Stat. § 508A.85
- A. After 5 years the owner may request the Registrar to issue a certificate of title under Chapter 508 for the property.
 - B. The Registrar usually waits until there is a transfer after 5 years to issue the certificate of title.
 - C. The memorial of the CPT Directive must be carried forward over to the certificate of title unless and until otherwise directed by the district court.
- Minn. Stat. § 508A.85 Subd. 4.

EXAMINER CERTIFICATIONS

By statute, several types of transactions affecting Torrens land require that documents are reviewed and approved or certified by the Examiner. Some counties have also imposed policies requiring review and approval by the Examiner for certain types of transactions affecting Torrens land, despite certification not being statutorily required. This is because the Examiner serves as legal advisor to the Registrar. The specific requirements and the procedure for obtaining approval vary depending upon the county where the land is located.

PRACTICE TIP: the process for obtaining the certification of an Examiner varies from county to county depending on whether the Examiner is full-time or employed on a contract basis, where the Examiner is physically located in relation to the Registrar, and at what stage certification is granted (e.g. preapproval before documents are submitted for recording or approval at the time of submission for recording). This reinforces how important it is to determine the county-specific rules and policies to ensure the transaction is processed as smoothly as possible.

The following types of transactions either require or routinely include certification by the Examiner (note that the references to sections of Minnesota Statutes Chapter 508A apply only if the county has adopted the use of certificates of possessory title under that Chapter).

- A. Trust Conveyances; Minn. Stat. §§ 508.62 and 508A.62.** When land owned by a trust or trustees of a trust is conveyed or platted, generally the following documents must be provided:

1. Certificate of Trust.
 - a. UCB Form 90.1.1 (by individual trustee)
 - b. UCB Form 90.1.2 (by business entity trustee)
2. Affidavit of Trustee.
 - a. UCB Form 90.1.3 (inter vivos trust)
 - b. UCB Form 90.1.4 (testamentary trust)
3. Trustee's Deed (or Plat).
 - a. UCB Form 10.4.1 (by individual trustee)
 - b. UCB Form 10.4.3 (by business entity trustee)

The following are common errors or issues possibly resulting in rejection of trust conveyance documents:

1. The trust name is incorrect. Counties vary with respect to how strict they are about the trust name matching the certificate of title. Example: COT says "John Jones Revocable Living Trust" and the supporting trust documents state "John Jones Revocable Trust." The concern with a variance is whether a party is a stranger to title.
2. The date of execution of the Affidavit of Trustee is insufficient. Many counties require that the Affidavit of Trustee be executed on or after the later of the effective

or execution date of the conveyance instrument. The principle behind this position is that the Affidavit of Trustee needs to prove that the trustee actually had the authority to make the conveyance.

3. The description of the instrument of conveyance (as required by statute to connect the trust documents with the conveyance instrument) is incorrect. Paragraph 3 of the UCB Affidavit of Trustee links the supporting trust documents to the conveyance instrument (e.g. describes a deed running from trustees to grantee dated a certain date). This information must match the conveyance instrument in order for the Certificate of Trust and Affidavit of Trustee to support the conveyance.

PRACTICE TIP: a deed executed by a corporate trust as defined in Minn. Stat. § 501C.0102 need not be certified by the Examiner, although many Registrars require that the deed contain a statement that “Grantor is a Corporate Trust as defined in Minn. Stat. § 501C.0102,” or something similar.

B. Dissolution or other Decree; Minn. Stat. §§ 508.59 and 508A.59. In order for a dissolution or decree to support issuance of a new certificate of title, the following documents generally must be submitted:

1. SREDJ (Summary Real Estate Disposition Judgment).
 - a. UCB Form 80.1.2
 - b. This document may or may not exist (check the court file).

- c. If it does exist, it must be recorded instead of the decree. Minn. Stat. § 518.191, Subd. 3.

2. Decree.

- a. In a dissolution, the decree can be used to prove dissolution and/or make a disposition of the land.

3. Certificate of Dissolution.

- a. In a dissolution, this document may be submitted to prove dissolution. It does nothing to transfer the land, and some additional document (decree or deed) will be necessary.

4. Deed.

- a. A deed may be submitted to make the transfer of property to one of the ex-spouses or a third party. If a deed is submitted along with a decree or certificate of dissolution, no certification by the Examiner of Titles is necessary.

PRACTICE TIP: although not statutorily required, it is recommended that parties use a summary real estate disposition judgment (SREDJ) instead of a decree. Decrees contain extraneous -- and oftentimes sensitive or private -- information unrelated to the real property transfer.

The following are common errors or issues possibly resulting in rejection of dissolutions or other decrees:

1. A decree is submitted but the court file contains a SREDJ. By statute, a SREDJ must be recorded (instead of a decree) if one was obtained.
2. There are discrepancies between the names shown on the certificate of title and those contained in the dissolution or decree. These may be outright variances (e.g. COT says “John P. Jones” and decree says “John M. Jones,” or may be related to a change in name of one of the parties through the court proceeding (e.g. wife is petitioner and decree does not grant legal name change but the deed signed by ex-wife, single, uses her maiden name).
3. The decree originated out of state. A court outside of Minnesota does not have jurisdiction to adjudicate title to land located in Minnesota. A deed from the divested spouse is necessary.
4. The decree does not address the land at all, or does so incorrectly. Land may be omitted entirely, or there may be an omission of or error in a legal description. It is not uncommon for the decree to use a street address and no legal description. Most Examiners, if not all, would reject the decree for any purpose other than to prove divorce in this situation.

5. The decree does not include the “magic language.” Typically a decree states that the parties may obtain a SREDJ or one party may or should execute a deed to give effect to the disposition(s) in the decree, but absent doing so a certified copy of the decree may be recorded shall operate to transfer title. Sometimes the decree says that a SREDJ can transfer title, for example, but does not provide for the decree to do so in the absence of a SREDJ. In this case, most Examiners would say that the decree cannot serve to transfer title because it does not say it can do so, and a SREDJ (or deed) would be required.

C. Probate Proceedings; Minn. Stat. §§ 508.68, 508.69, 508A.68 and 508A.69. In order for a probate proceeding to properly transfer title to land and support issuance of a new certificate of title, certain documents must be submitted. The specific documents that must be submitted depend on the type of probate (e.g. formal unsupervised vs. supervised), whether the transaction is a sale or distribution, and whether the decedent dies testate or intestate. The White Pages (I-F-1 through I-F-14) set forth the specific documents that are required for each type of probate proceeding. Most Examiners follow the requirements set forth in the White Pages. Note that UCB Forms Series 10.5 are various deeds of distribution and sale for use in probate proceedings).

The following are common errors or issues related to probate proceedings possibly resulting in rejection of documents:

1. Certain necessary documents are missing. For example, with a distribution most Examiners require an Affidavit showing compliance with service of notice to the Commissioner of Human Services. Most Examiners follow the White Pages and if any of the documents are missing for the specific type of probate proceedings, the documents are likely to be rejected.
2. The certification date of the letters is insufficient. Many Examiners require the letters to be certified on or after the later of the effective or execution date of the conveyance instrument. For example, if a personal representative's deed of sale is dated October 1, 2018, and executed on October 10, 2018, the letters must be certified on October 10, 2018 or later. Not all counties follow this practice, however.
3. There are discrepancies between the name shown on the certificate of title and that contained in the dissolution or decree. These may be outright variances (e.g. COT says "John P. Jones" and probate was for "John M. Jones," or "John Jones" versus "Jack Jones." Whether the discrepancy will result in rejection depends upon whether the Title Standards (e.g. Title Standard No. 5 titled "Abbreviations and Nicknames") are applied prior to recording. We suggest including all name variances and getting a determination that they are the same person.
4. Land is omitted or erroneously described. Land may be omitted entirely, or there may be an omission of or error in a legal description. It is not uncommon for probate

documents to use a street address and no legal description. Most Examiners, if not all, would reject the probate documents in this situation.

D. Guardianship/Conservatorship; Minn. Stat. §§ 508.68, 508.69, 508A.68 and 508A.69. In order for a conveyance in a guardianship/conservatorship to support issuance of a new certificate of title, the following documents generally must be submitted:

1. Certified copy of Letters.
2. Certified copy of Order Directing Sale.
3. Certified copy of Order Confirming Sale.
4. Conservator's Deed.

a. UCB Form 10.6.1

The following are some common errors or issues possibly resulting in rejection of documents relating to a conveyance by a guardian/conservator:

1. Certain documents are missing. Sometimes only the certified copy of the letters and the original deed are submitted. The orders from the court directing and confirming the sale are also necessary.
2. The marital status/spousal consent is not provided. If a protected person is married, the spouse must consent to a conveyance.

E. Issuing a new COT or CPT following a taking by eminent domain. Minn. Stat. §§ 508.73, Subd. 1 and 508A.73, Subd. 1.

COMMENT:Minn. Stat. §§ 508..73, Subd. 1 and 508A.73, Subd. 1 provide that following a taking a new COT or CPT may be issued either by a court order in a proceeding subsequent or written certification by the Examiner of Titles as to the final certificate or court order.

F. Powers of Attorney (not required by statute and county-specific). Examiner certification is not statutorily required for transactions involving a conveyance supported by a power of attorney, although many Registrars request certification by their Examiners as legal counsel for the Registrar. This is because a determination of whether a power of attorney supports the actions of an attorney-in-fact is a legal determination.

The following documents must be provided in connection with a conveyance pursuant to a power of attorney:

1. Original or certified copy of Power of Attorney.
2. Affidavit by Attorney in Fact (pursuant to Minn. Stat. § 523.17), unless the principal is an entity.
 - a. UCB Form 100.2.1
3. Affidavit of Authority of Successor Attorney in Fact, if applicable (pursuant to Minn. Stat. § 523.16).
 - a. UCB Form 100.2.2

PRACTICE TIP: if the attorney in fact is a successor to the original AIF, **both** of the affidavits required by Minn. Stat. §§ 523.16 and 523.17 must be submitted.

The following are common errors or issues often leading to rejection of documents related to a conveyance pursuant to the authority granted in a power of attorney:

1. The specific power purported to be exercise is not granted in the power of attorney.
2. There are name discrepancies.
3. Supporting documentation, such as one or both affidavits, is missing.
4. The date of the affidavit(s) is insufficient. Many Examiners require that the affidavit by attorney-in-fact be executed on or after the effective date of the deed or the date the attorney-in-fact's signature was notarized, whichever is later.

EXAMPLE: If the face of deed is dated January 1, 2018, but the attorney-in-fact's signature was notarized on January 2, 2018, the affidavit by attorney in fact should be executed and notarized January 2, 2018 or later (not January 1, 2018). Not all Examiners take this position, but many do and the prudent approach would be to go with the later date.

G. Transfer on Death Deed Clearances (not required by statute and county-specific).

Similar to powers of attorney, transfer on death deeds (TODDs) do not statutorily require certification by the Examiner to determine their effect upon a death. Certain

counties, however, do seek Examiner input for these types of transactions. The documents necessary to pass title under a TODD include:

1. TODD recorded in at least one county where the land is located prior to the death of the last grantor-owner.
 - a. UCB Forms 10.8.1, 10.8.2, 10.8.3 and 10.8.4
2. Affidavit of Identity and Survivorship, which may or may not include a clearance certificate regarding medical assistance claims. The clearance certificate may be recorded separately, but no new COT will be issued until a clearance certificate is of record.
 - a. UCB Form 50.2.3 (Affidavit of Identity and Survivorship for TODD)
 - b. UCB Form 10.8.9 (Clearance Certificate)

PRACTICE TIP: a TODD need not be (and is not) reviewed or approved by the Examiner upon recording. It is important to remember that acceptance of the TODD for recording does not mean that the TODD will “work” the way the parties intend, or at all. Certification does not occur until the relevant grantor-owner has died, at which point it would be too late to correct any deficiencies in the TODD.

The following errors or issues may result in the rejection of documents seeking to adjudicate title under a TODD:

1. TODD is not recorded at all or is recorded in abstract but not Torrens. Minn. Stat. § 507.071, Subd. 8 provides that a TODD is valid if the deed is recorded in a county in which at least a part of the real property described in the deed is located and is recorded before the death of the grantor owner upon whose death the conveyance or transfer is effective. “Recorded,” however, is defined in Subd. 1(f) of 507.071 as “recorded in the office of the county recorder or registrar of titles, as appropriate for the real property described in the instrument to be recorded.” This could be interpreted to say that the TODD has to be recorded in Torrens before the last grantor-owner’s death to be effective.

PRACTICE TIP: be careful when recording; check Torrens first to see if there is a COT, and only record in Abstract after confirming that no COT exists for the property.

2. Omission of non-titled spouse’s signature. This should not result in rejection, but any new COT will be issued subject to the marital interest of the non-titled spouse.
3. The grantee beneficiary designation may require a probate (e.g. a class gift, such as “to my children”).

H. Religious Corporation Transfers (not required by statute and county-specific).

Examiner certification of conveyances made by religious corporations is not statutorily required, however many Registrars seek the input of their Examiners due to the

complexity of these types of transactions. The specific documents that must be submitted depend on the type of religious corporation (e.g. organization under Minn. Stats. Chapter 317A vs. 315). The White Pages (I-D-7) set forth the specific documents that are required for conveyance by each type of religious corporation. Most Examiners follow the requirements set forth in the White Pages.

The following are common errors or issues arising out of conveyances by religious corporations:

1. The records of the Secretary of State do not reflect whether a religious organization is governed by Minn. Stats. Chapter 317A, and the certificate of organization of the conveying religious body is not recorded in the office of the county recorder of the county where the place of worship of the religious corporation is located (contrary to the requirements of Minn. Stat. § 315.03).
2. Required documents are missing (e.g. affidavits of compliance with statutory requirements or other necessary documents).
3. The proper procedure for the applicable type of religious corporation was not followed in authorizing and making the conveyance.

I. Easements, Plats and Registered Land Surveys, and lot or parcel splits (not required by statute and county-specific). None of these types of transactions

statutorily require certification or review by the Examiner of Titles, and practice varies from county to county regarding Examiner involvement. Check with the county at issue to determine what additional approvals or review might be necessary and what the process is to obtain any required approvals or review.

PRACTICE TIP: practice varies from county to county as to whether an easement encumbering abstract property and benefiting Torrens property is recordable on the certificate of title for the Torrens property. The concern lies in the fact that title to the abstract property has not been adjudicated and the easement may not actually be valid.

EXAMINER'S DIRECTIVES

An Examiner's directive serves the purpose of directing the Registrar to perform some act. Minnesota Statutes expressly prescribe the situations for which an Examiner's directive shall be used.

The following matters statutorily require an Examiner's directive (note that the references to section of Minnesota Statutes Chapter 508A apply only if the county has adopted the use of certificates of possessory title under that Chapter):

- A. Amending or canceling a memorial relating to racial restrictions, rights which are barred by a statute or rights which have expired by the terms of the instrument creating the rights. Minn. Stat. §§ 508.71, Subd. 3(1) and 508A.71, Subd. 3(1).
- B. Correcting the name or designation of a party who is a registered owner or who has an interest registered on a COT or CPT. Minn. Stat. §§ 508.71, Subd. 3(2) and 508A.71, Subd. 3(2).
- C. Deleting easements or other non-fee interests which are terminated by their own terms or by written instrument satisfactory to the Examiner. Minn. Stat. §§ 508.71, Subd. 3(3) and 508A.71, Subd. 3(3).
- D. Accepting for filing previously rejected documents (commonly referred to as an "appeal" to the Examiner). Minn. Stat. §§ 508.321 and 508A.321.

- E. Issuing a new COT or CPT following a mortgage foreclosure by action. Minn. Stat. §§ 508.58, Subd. 2 and 508A.58, Subd. 2.
- F. Issuing a new COT following the termination of a contract for conveyance of a time share interest. Minn. Stat. § 508.58, Subd. 3.
- G. Issuing a new COT following the foreclosure of certain time share interests. Minn. Stat. § 508.58, Subd. 4.
- H. Issuing a new COT or CPT following the cancellation of a contract for deed if documents evidencing a legally sufficient cancellation under Minn. Stat. § 559.21 have been of record on the COT or CPT for at least 5 years. Minn. Stat. §§ 508.58, Subd. 5 and 508A.58, Subd. 3.
- I. Issuing a new COT following a forfeiture evidenced by a county auditor's certificate of forfeiture, auditor's certificate of sale, or state assignment certificate that has been memorialized upon a COT for at least 10 years. Minn. Stat. § 508.67, Subd. 2.
- J. Recording a declaration or bylaws for a condominium, or an amendment to the declaration or bylaws, or a supplemental declaration pursuant to Minn. Stat. § 515B.2-111. Minn. Stat. §§ 508.351, Subd. 1 and 508A.351, Subd. 1.

COMMENT: Minn. Stat. §§ 508.351, Subd. 1 and 508A.351, Subd. 1 provide that a determination that the documents comply with the requirements of the applicable condominium statutes be made either by a court order in a proceeding subsequent or a directive of the Examiner. Most Examiners do not require a court order and are willing to make the required determination via directive. While the statute makes reference to condominiums, most Examiners review these documents in relation to all CIC types.

- K. Adding vacated streets or alleys to the face of a COT or CPT. Minn. Stat. §§ 508.73, Subd. 2 and 508A.73, Subd. 2.

COMMENT: Minn. Stat. §§ 508.73, Subd. 2 and 508A.73, Subd. 2 provide that a vacated street or alley may be added to the face of a COT or CPT either by a court order in a proceeding subsequent or a directive of the Examiner. Most Examiners do not require a court order and are willing to make the required determination via directive.

- L. Dropping memorials or recitals on a COT or CPT not actually affecting the land contained within said certificate of title.

COMMENT: sometimes a recital or memorial will be carried onto a COT or CPT if the land included in the COT or CPT was originally part of a larger parcel and a split occurred, for example. An easement may affect only part of the land and be carried onto the COT or CPT for other part of the land. Some Registrars have the mentality that they would rather carry a memorial that ultimately does not affect the land in the new COT versus erroneously dropping something that should have been carried.

PRACTICE TIP: some of these matters may also be addressed by court order, although obtaining an Examiner's directive is likely more efficient both financially and timewise. Some counties charge for a directive, while others do not. Similarly, the method of obtaining a directive varies from county to county (e.g. Ramsey County allows parties to request a directive via its website). Again, it is important for practitioners to be familiar with, or at least inquire about, the processes utilized by the county in which the land is located.

PRACTICE TIP: the Registrar may also issue a written document correcting clerical errors or omissions made by the Registrar's staff in producing certificates of title. Minn. Stat. §§ 508.71, Subd. 1a and 508A.71, Subd. 1a.

PROCEEDINGS SUBSEQUENT TO INITIAL REGISTRATION

Proceedings subsequent to initial registration involve the commencement of a district court action and the resulting issuance of a court order directing some alteration to a COT or CPT.

Minnesota Statutes §§ 508.71, Subd. 2 and 508A.71, Subd. 2, provide a list of bases for a registered owner or other person in interest to commence a proceeding subsequent. Those bases include:

- A. That registered interests have terminated and ceased;
- B. That new interests not reflected on the COT or CPT exist;
- C. That an error or omission was made in entering a COT or CPT or a memorial;
- D. That the name of any person on the COT or CPT has been changed;
- E. That the registered owner has married or a marriage has been terminated;
- F. That a corporate owner that has been dissolved has not conveyed the land within 3 years after its dissolution; or
- G. Upon any reasonable ground that any other alteration or adjudication should be made.

There are also some situations in which a proceeding subsequent is statutorily required, including:

- A. Obtaining a new COT or CPT following a mortgage foreclosure by advertisement (this is common and is discussed in detail in § 12.3.1 below). Minn. Stat. §§ 508.58, Subd. 1 and 508A.58, Subd. 1.
- B. To obtain a new COT or CPT following foreclosure of a lien. Minn. Stat. §§ 508.58, Subd. 1, 508A.58, Subd. 1, 508.67, Subd. 1 and 508A.67, Subd. 1.

- C. To obtain a new certificate of title following a forfeiture evidence by a county auditor's certificate of forfeiture or auditor's certificate of sale or state assignment certificate that has been memorialized upon a certificate of title for less than 10 years. Minn. Stat. § 508.67, Subd. 2.
- D. To have some or all of the land's boundary lines judicially determined. Minn. Stat. § 508.67, Subd. 1.
- E. For determination of an adverse claim or claim of unregistered interest. Minn. Stat. §§ 508.70, Subd. 2 and 508.70A, Subd. 2.
- F. To reform a certificate of title or documents memorialized thereon.
- G. To transfer title under a contract for deed where a satisfying deed has been lost or cannot be obtained.
- H. To delete the memorial of a contract for deed and the cancellation documents before 5 years have passed.
- I. To obtain a new COT pursuant to a repurchase following a tax-forfeiture if the repurchase deed runs in favor of less than all record owner at the time of the tax-forfeiture.
- J. Any other change the Examiner does not feel comfortable in directing without a court hearing and notice to affected parties.

The procedure for a proceeding subsequent varies by county. Generally, however, the process includes the following procedural steps:

- A. A petition is filed. The petition should identify the COT or CPT at issue, include a legal description of the land, lay out the necessary assertions regarding the relief sought, and clearly state what the petitioner wants.

PRACTICE TIP: many counties have form samples of various types of petitions on their websites (as well as other helpful forms used in proceedings subsequent and other Torrens-related matters). As examples, see: Hennepin County (<https://www.hennepin.us/business/property/examiner-titles>); Ramsey County (<https://www.ramseycounty.us/residents/property-home/records/examiner-titles>); St. Louis County (<https://www.stlouiscountymn.gov/land-property/real-estate-recording/examiner-of-titles>) and the profile page for David Myers, Examiner of Titles for Sherburne, Mille Lacs, Roseau, Kittson, Marshall and Wilkin Counties and Deputy Examiner of Titles for Stearns, Benton and Koochiching Counties (<https://www.rinkenoonan.com/attorneys/david-j-meyers/>).

PRACTICE TIP: some counties require Examiner review and approval of the petition prior to e-filing the petition. The specific process to obtain the necessary approval (e.g. emailing the petition to the Examiner for review, obtaining the Examiner’s signature on the petition, etc.,) varies by county.

- B. An examiner’s report is issued. The examiner’s report is essentially the “roadmap” to the proceeding, identifying the parties who must be served with notice of the proceeding, as well as any other evidentiary proof that must be presented at the hearing

(e.g. proof regarding military status of the defendant, whether any party in interest has filed for bankruptcy protection, and the occupancy status of the land at issue).

The examiner's report will also identify any other issues or concerns that must be addressed prior to issuance of an order for the relief sought by the petitioner.

- C. An order to show cause is issued and served on the parties identified in the Examiner's Report. The petitioner's lawyer should draft the proposed order to show cause, which will then be provided to the Examiner's office for execution by the Examiner and/or Judge.

It is also possible that issuance of a land title summons may be appropriate instead of an order to show cause. The petitioner can request, and/or the Examiner can require, the use of a land title summons in a proceeding subsequent. Minn. Stat. § 508.71, Subd. 2.

PRACTICE TIP: the order to show cause form does vary slightly from county to county, as does the required method of service (e.g. some counties require publication for three weeks while others only require two weeks' publication). The method of providing the order to show cause to the Examiner for review and approval may also vary (e.g. some counties request that it be emailed to the Examiner in Microsoft Word form while other counties request that it be efiled).

- D. Proof required by the Examiner's Report, including proof/Affidavits of Service, is filed.
- E. A hearing is held and the matter is either continued if contested, or proceeds by default and an Order is issued.

PRACTICE TIP: the hearing is handled differently depending on the county and the subject matter of the hearing. Some counties have non-appearance initial hearings, some allow appearance by telephone, and some require in-person appearances. In some counties the Examiner presides over the hearing, while in others a district court Judge does so. The appearance method may vary depending upon the subject matter of the proceeding subsequent. Check with the county for county-specific policies and procedures.

PRACTICE TIP: in most counties, but not all, contested matters are referred to the district court for hearing.

PRACTICE TIP: many counties request that a proposed order be submitted, most often by email in Microsoft Word format so the Examiner can alter it as necessary. Specific instructions for the order's contents and how and when to submit the Order can be found on many Examiner's websites.

- F. A certified copy of the order is filed with the Registrar to be memorialized on the relevant COT(s) or CPT(s).

PRACTICE TIP: find out who is responsible for obtaining and recording the certified copy of the Final Order. Some counties prefer to handle it themselves to ensure the Final Order is memorialized as soon as possible to avoid the possibility of conflicting documents being memorialized between issuance and recording of the Final Order.

PRACTICE TIP: while each county has slightly varying requirements and procedures for proceedings subsequent, many Examiners have instruction manuals on their websites describing the process for proceedings subsequent in their counties. When in doubt, contact the Examiner's office.

ACTION TO DETERMINE BOUNDARY LINES

UNDER MINN. STAT. § 508.671

A. Statutory Authority.

1. Minn. Stat. § 508.02 was amended in 2008 to expressly provide that the common law doctrine of practical location of boundaries applies to Torrens land and that § 508.671 applies in a proceeding subsequent to establish a boundary by practical location for Torrens land.
2. Minn. Stat. § 508.671 sets forth the requirements for an owner of Torrens land (or an owner of abstract land with at least one boundary line abutting Torrens land) to register title to one or more boundary lines.
3. Minn. Stat. § 559.24 requires that any owner, lienholder, or person interested in any land at issue ought to be made a party to the proceeding.
4. Minn. Stat. § 559.25 describes the judicial landmarks required by Minn. Stat. § 508.671.

B. The Parties.

1. All owners, lienholders and other persons with an interest in the affected land should be identified in the petition and will be named as parties in the Examiner's report.
2. If the land affected is all Torrens, determination of interested parties is relatively simple. If any of the affected land is abstract, however, the Examiner may require an owners and encumbrancers report or other documentation to assist in identifying necessary parties.

C. The Documents/Process.

1. The petition: a petition containing the content required by Minn. Stat. § 508.671 is filed with the district court and a certified copy is then recorded as a memorial on the relevant COTs, and in the tract index if any of the land involved is abstract.

PRACTICE TIP: as with proceedings subsequent discussed above (see *supra* section 12.3), the Examiner may have specific review and approval requirements for a petition seeking relief under Minn. Stat. § 508.671.

PRACTICE TIP: again, practitioners should inquire who is responsible for obtaining and recording a certified copy of the petition on the affected COTs and the tract index for abstract land if applicable. In some counties, the Examiner's office handles these tasks.

2. The “initial” survey: a survey completed by a licensed land surveyor is required and should show the correct location of the boundary line(s) to be determined.
3. The Examiner’s report: the Examiner’s report will set forth any remaining procedural requirements and a discussion of the land affected and associated interested parties who must be served with a summons.
4. The summons: parties are to be served with a summons in the same manner they are served in an initial registration. An order to show cause, which is used in most proceedings subsequent, is not used for this type of claim.

PRACTICE TIP: the summons is generally drafted by the petitioner, as is a petition for summons and order for summons. Practitioners should discuss how to submit these documents (e.g. e-file versus email to Examiner) with the Examiner’s office.

5. The interlocutory order: in the registration of boundaries there are generally two hearings. At the first hearing all evidence is offered and at that time only an interlocutory order determining boundaries is entered. This order directs the surveyor to mark the boundaries by placing judicial landmarks.
6. The “second” survey: after the surveyor complies with the interlocutory order by setting the judicial landmarks, a second certificate of survey is prepared which

certifies that judicial landmarks were placed, depicts the location of the judicial landmarks set, and incorporates references to the judicial landmarks into the legal description.

PRACTICE TIP: after the final order is issued as discussed in the next subsection, a certified copy of the second or final survey should be recorded on the affected COTs and in the tract index for any affected abstract land.

7. The final order: after the second or final survey is filed, a second hearing is held and the final order is issued. The order has to contain certain required information identifying the land affected, which boundary lines were determined, that the boundaries were marked by judicial landmarks as shown by the second survey, and that the legal description makes appropriate reference to the judicial landmarks.

PRACTICE TIP: again, practitioners should inquire who is responsible for obtaining and recording a certified copy of the order on the affected COTs and the tract index for Abstract land if applicable. In some counties, the Examiner's office handles these tasks.

8. Contested matters: as in any civil suit, a defendant may file an Answer, contesting one or more of the claimed boundaries. In most counties boundary disputes are heard by a district court judge; however, the judges in some counties assign these matters to the Examiner for hearing. In Ramsey County the Examiner hears contested matters only if all of the parties who have appeared consent. The procedures for

handling contested matters vary significantly, but the Examiner must approve all orders that are to be recorded as to form.

PRACTICE TIP: Avoid boundary contests whenever possible. Explaining the significant costs involved can often help achieve a negotiated resolution.

JURISDICTION OF TORRENS COURT

When Minnesota Statutes Chapters 508 or 508A (where applicable) specify a procedure necessary to take some action regarding Torrens land -- such as the situations where proceedings subsequent are required as discussed in Section 12.3, supra--parties and district courts must follow that procedure.

In other words, if the requested relief ultimately alters a certificate of title or a document reflected thereon either by recital or memorial, the party seeking relief has to commence a proceeding subsequent. This is because proceedings subsequent provide statutory authority for a resulting order to require the Registrar to perform some act. Absent a proceeding subsequent where required, the district court lacks jurisdiction over the Registrar and the Registrar can ultimately refuse to give effect to a district court order if the required procedure was not followed.

This is because the Torrens system is designed to conclusively establish matters of ownership. The Examiner participates in proceedings and all interested parties, including mortgagees, are notified of proceedings and allowed to participate. This process ensures compliance with due process and statutory requirements.

COMMENT: it is critically important that a party follow the correct procedure when dealing with Torrens property. Presumably a lawyer would not want to have to tell a client that the \$20,000 he or she spent litigating a quiet title action, for example, was essentially wasted because the matter

should have been commenced as a proceeding subsequent but was not; or that necessary parties were omitted and therefore the Registrar is refusing to record the district court's order.

BONUS COMMENT: if a common title defect affects both Torrens and abstract land a proceeding subsequent will be necessary to address the Torrens issues, a separate quiet title could be brought or combined with the proceeding subsequent if the Examiner of Titles and the Court allow this. In such situations discuss appropriate procedure with the Examiner before commencing an action. There will be procedural quirks, such as the necessity of a summons rather than order to show cause.