

ACTIONS INVOLVING TORRENS PROPERTY

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THE TORRENS SYSTEM

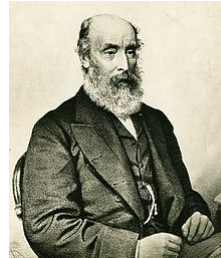
- 2 systems of land records
 - Torrens or registered land
 - Chapters 508/508A, Rules 200-222 General Practice
 - Abstract or unregistered land
 - Chapter 386



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TORRENS HISTORY

- Based on an Australian system developed by Sir Robert Torrens



- Modeled after a system for registering ships
- Primary land title system used in Australia, New Zealand and the majority of Canada
- Used in Minnesota and a handful of other States
 - Developed in Minnesota in 1901

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EXPANSION OF TORRENS SYSTEM

- System expanded significantly by:
 - Registration of tax-forfeited land during and following the Great Depression
 - Registration of parcels around Lake Minnetonka, White Bear Lake and other bodies of water
 - Registration of commercial parcels in downtown Minneapolis and St. Paul after World War II
 - Registration of parcels in the City of North Oaks

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CHANGES IN TORRENS SYSTEM

- Has become less judicially administered and more administrative in nature
 - Many things can now be done by directive or certification that would have previously required a proceeding subsequent
- Has become more “user friendly”
 - Elimination of owners duplicates and Affidavits of Purchaser of Registered Lands
 - Adoption of Chapter 508A Certificates of Possessory Title

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ABSTRACT VS. TORRENS

- “**Abstract land**” is all land not registered
- County Recorder (as opposed to Registrar of Titles)
- Abstract of Title exists
 - Compilation of all instruments affecting the land, all the way back to the patent from the US Government
- Abstract is (theoretically) updated when title is transferred
- Abstract can become lengthy, bulky and difficult to examine



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ABSTRACT VS. TORRENS

- “Torrens land” (also referred to as “registered land”) is court adjudicated title
- Governed by specific statutes (Minn. Stat. Chpt. 508/508A)
- Certificate of Title replaces abstract of title
- COT should reflect all interests and matters affecting title
- All instruments are reviewed for accuracy/effectiveness prior to filing (versus reviewed only for recordability with abstract)
- Examiner involvement

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TITLE REGISTRATION

“A JUDICIAL PROCEEDING IN THE NATURE OF A QUIET TITLE AGAINST ALL PERSONS, BOTH KNOWN AND UNKNOWN”

R.G. PATTON
Hennepin County Examiner of Titles

- Minnesota Statutes Chapter 508

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FORMS

- Hennepin County
- Ramsey County
- Other counties
- www.rinkenoonan.com

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WHY REGISTER TITLE?

- Absolute certainty of title
- No Adverse Possession
- Address Boundary Issues
- Common Interest Community Certificate of Title
 - Cannot have Condominium on mixed abstract and Torrens land
- Registered Land Surveys

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TITLE REGISTRATION VS. QUIET TITLE

- Consider both options
- Think Long Term



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ADVANTAGES OF REGISTRATION

- Certainty of Title
- Abstracting/Title Evidence determined by Examiner
- Future protection against adverse possession
- Establish Boundary with Certainty using Judicial Landmarks
- 6 Month statute of limitation
- Examiner's expertise

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QUIET TITLE ADVANTAGES

- In certain areas the Examiner and Registrar may have limited experience
- No abstract required
- Costs



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EXAMINER OF TITLES

- Appointed by District Court Judges
- More populous counties have salaried examiners
 - Hennepin, Anoka and St. Louis counties = no fees
 - Ramsey and Washington fee of \$300
- Other counties use fee based examiners

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PRACTICE TIPS

- Check with the Examiner prior to commencing a registration
- Examiners throughout the state are willing to assist each other
- Limit costs by keeping the case moving

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PROCEDURE TO REGISTER

- Minnesota Statutes §508.01, et seq.
- Minnesota General Rules of Practice, Title III

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THE APPLICATION

- **What may be registered**
 - Fee title
 - Separate tracts
 - Appurtenant easement
 - Unrecorded interest/adverse interest
- **Who may register**
 - Individuals
 - Entities
- **NOTE:** if the applicant is NOT a Minnesota resident an appointment of an agent is required

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PRACTICE TIPS

- **Examiner is required to search public records**
 - County online records
 - GIS
 - Aerial photography
 - Google Maps
 - On site inspection
- **Ask applicant about utility providers and easements**
 - Gas, Electric, Telephone, Cable
 - Shared driveways and access agreements

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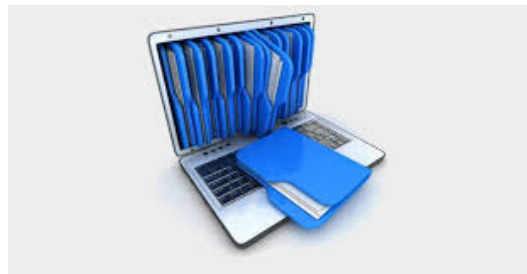
CONTENTS OF THE APPLICATION

- **Minnesota Statutes 508.06**
 - Name and address of applicant (marital status)
 - Description of property
 - Estate to be registered and whether it is homestead
 - Occupancy
 - Acknowledged liens and encumbrances
 - Disputed interests
- **Review a draft with the Examiner before execution**
- **Assents to Registration**

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SIGNING AND FILING

- **Must be signed and verified**
- **Spouse must join, assent or be served with summons**
- **Filed with District Court**
 - E-filing is required
 - Examiner of Titles approval
- **Record certified copy**



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AMENDMENTS

- Application may be amended
- New Owner- no new fee required
- Dismiss land
- Record the amendment

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TITLE EVIDENCE

- Abstract of title “satisfactory to the examiner”
- Statute is being amended
- E-filed abstract
- Check with the examiner regarding necessary title evidence
 - Obtain title evidence from nearby properties previously registered
 - Review title evidence for accuracy
 - Abstract creation and updating is expensive and time consuming
- Survey
 - Examiner may require
 - Provide a full sized copy
 - E-filed survey

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REPORT OF EXAMINER

- Examiner reviews title evidence and prepares a Report
- Report is based on “all public records...all facts pertaining to title”
 - Up to date abstract with required searches
 - Tract index, grantor/grantee
 - 40 year? What about:
 - Railroads, mineral rights, easements, United States, Indian lands
 - Online GIS, Aerial parcel maps, Google Maps
 - Plats and surveys
 - PACER
 - MNCIS
 - Owners and Encumbrancers report

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MINERAL RIGHTS

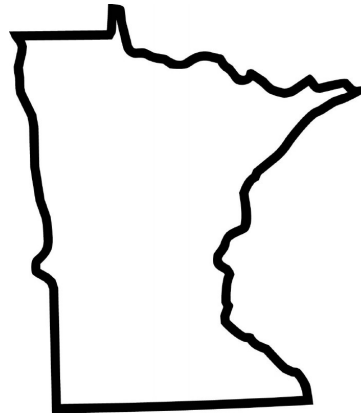
- May have separate chain of title
- May be registered on a separate COT
- Tax forfeitures result in mineral rights being held by State



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STATE OF MINNESOTA

- Mineral rights
- Meandered lakes
- Tax liens
- State highways
- Wetlands



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GOVERNMENT CLAIMS

- **United States**
 - Identify interest specifically in application
 - 60 days to answer
 - Not subject to some Torrens rules
 - Federal tax liens, HUD mortgages, SBA loans
- **Local governments**
 - Public roads are a standard exception
 - Name local governments with adjacent right of way

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PRACTICE TIPS

- Obtain Assents from cooperative defendants to reduce service costs
 - Verify with examiner execution requirements
- Examiner may provide a draft report for review and comment before filing

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THE SUMMONS

- Applicant submits a Petition for Summons and Order for Summons
 - Petition includes names and addresses of all defendants from report
 - If a defendant has changed its name provide evidence
 - If a defendant is deceased search for heirs may be required
 - United States gets 60 days to answer
 - Summons always includes unknown heirs of deceased defendants
- Court issues the Summons
 - The summons is not the standard civil summons

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SERVICE

- Served in the same manner as other civil actions
- Special service rules apply to government entities
 - United States: U. S Attorney in Minnesota and Attorney General of the United States in Washington, D.C.
 - State of Minnesota: Attorney General
 - City, County, Water Board, HRA – many examiners provide service notes
- Not found are served by publication
- Non-Residents may be served by mail by the Court Administrator

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PRACTICE TIPS

- Consider including a copy of the Application, Report of Examiner and survey in service packet to minimize questions
- Discuss service requirements and the mechanics with the Examiner and Court Administrator

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ANSWERS

- Only the Court may extend the time to answer
- Any person claiming an interest in the property may answer
- Filing fee required

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COURT ACTIONS

- Most cases proceed by default
- Contested matters are treated like other civil matters
- May be referred to Examiner for hearing
- Attorneys fees may be awarded
- Boundary registration will have an interlocutory order
 - Instructs surveyor to set JLMs
 - Final order completes the registration

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ORDER AND DECREE

- Order and Decree should be approved by Examiner so it provides clear instruction to the Registrar
- Binds all persons with an interest in the property
- Specifically list all encumbrances
 - Recitals
 - Memorials
- Contents of the Decree are in Minnesota Statutes §508.23
 - Should follow the report of examiner
 - Include necessary jurisdictional finding
 - Include required findings of fact
- Record certified copy with Recorder and Registrar

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SOVEREIGN AND PROPRIETARY

- The State may require certificates for property on lakes or rivers to include a statement preserving the State's rights
- The registration may omit riparian rights
- At least one county does not add the State's recital as it is not a matter of title

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POST DECREE

- Decree may be reopened up to 60 days after entry by anyone not named or served
- 6 month statute of limitations
- Appeals are taken per §508.29
- Persons injured by the Registration process may make a claim against the State general fund
- Land erroneously included in a registration may be removed from registration
- Mechanic's lienholders should have their liens entered on the COT

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CERTIFICATES OF POSSESSORY TITLE

Minnesota Statutes Chapter 508A

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BACKGROUND

- Administrative proceeding
- Must be adopted by the County Board
 - County Registrar of Titles must request the Board to authorize CPTs
- Less expensive
- Faster than a court proceeding

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BENEFITS

- Inexpensive method to address uncontested titles
- Administrative process
- After 5 years has same effect as judicial registration
- Possible to establish and correct a boundary with agreement

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PROCEDURE

- Contact the Examiner
- Complete Application
- Obtain Examiner's approval
- Record Application

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EXAMINATION OF TITLE

- Examiner reviews the Application
- Examiner reviews title evidence
- Report of Examiner is issued
- Notice is mailed to interested parties
 - Applicant provides stamped and addressed envelopes
 - Notice provides 20 days to object
- Directive is issued to create a CPT

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THE DIRECTIVE

- List all recitals and memorials for new CPT
- Consider attaching Examiner's Report, notice and responses to serve as a lasting record of the proceeding
- Recorded with County Recorder and Registrar of Titles
- 5 year limitation to challenge a CPT

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CONVERSION TO CHAPTER 508

- Prior to issuance of Directive Applicant may instead apply for judicial registration
- After 5 years owner may request Registrar to issue a 508 Certificate of Title
- Memorial of CPT directive is carried forward until removal is directed by the Examiner or court
- May bring a Proceeding Subsequent to convert a CPT to a COT

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EXAMINER'S CERTIFICATIONS

- What is it?
- Most are required by statute
- Some are requested/required by a Registrar as a matter of policy
- How do you get them?
 - "It depends"



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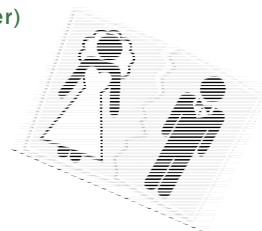
TRUST CONVEYANCE

- Trust conveyance, including platting
 - Minn. Stat. Section 508.62 and 508A.62
 - Note: does not apply to corporate trusts
- What documents are necessary?
 - Generally:
 - 1. Certificate of Trust;
 - 2. Affidavit of Trustee; and
 - 3. Trustee's Deed
- Common errors/issues
 - Date of execution of Affidavit of Trustee
 - Trust name variance between trust documents and COT
 - Description of instrument of conveyance

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DISSOLUTION OR OTHER DECREE

- Minn. Stat. Section 508.59 and 508A.59
- What documents are necessary?
 - SREDJ (if exists)
 - Decree (can prove dissolution and/or make transfer)
 - Certificate of Dissolution (can provide dissolution)
 - Deed (sometimes)
- Common errors/issues
 - Decree is submitted but court file contains SREDJ
 - Name issues
 - Out of state dissolution
 - Decree does not address land at all or does so incorrectly
 - Decree does not include “magic language”



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PROBATE PROCEEDINGS

- Minn. Stat. Section 508.68, 508.69, 508A.68 and 508A.69
- What documents are necessary?
 - Depends on the type of probate
 - Determine whether sale or distribution
 - Determine whether formal or informal
 - Determine whether testate or intestate
 - Look to the White Pages
- Common errors/issues
 - Missing documents
 - Certification date of letters
 - Name discrepancies
 - Omitted or erroneously described property



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GUARDIANSHIP/CONSERVATORSHIP

- Minn. Stat. Section 508.68, 508.69, 508A.68 and 508A.69
- What documents are necessary?
 - Generally:
 - CC of Letters
 - CC of Order Directing Sale
 - CC of Order Confirming Sale
 - Conservator's Deed
- Common errors/issues
 - Omission of marital status/spousal consent to deed

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POWERS OF ATTORNEY

- Not statutorily required
- What documents are necessary?
 - POA
 - Affidavit by Attorney-in-Fact
 - Affidavit of Authority of Successor Attorney-in-Fact (if applicable)
 - Deed
- Common errors/issues
 - Specific power not actually granted
 - Name discrepancies
 - Missing supporting documentation
 - Dates of Affidavit(s)

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TRANSFER ON DEATH DEEDS

- Not statutorily required
- What documents are necessary?
 - Recorded TODD
 - Affidavit of Identity and Survivorship
 - Clearance Certificate (may be part of Aff)
- Common errors/issues
 - TODD is not recorded at all or is only recorded in abstract
 - Omission of non-titled spouse's signature



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TRANSFER BY RELIGIOUS CORPORATION

- Not statutorily required
- What documents are necessary?
 - Depends on type of entity
 - Minn. Stats. Chapter 317A vs. 315
 - Need to know where to look
 - Need to know what you're looking for
- Common errors/issues:
 - Required documents are missing
 - Records of the Secretary of the State and/or County Recorder do not contain the required information
 - Proper procedure was not followed

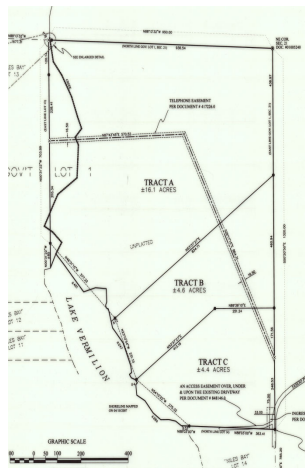


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OTHER MISCELLANEOUS “STUFF”

- Easements
- Plats and Registered Land Surveys
- Lot or Parcel Splits

- None of these are statutorily required but counties vary on whether the Examiner is involved in review and approval of these types of transactions.



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EXAMINER'S DIRECTIVES

- What is it?
- Some situations statutorily require a Directive
- Other situations allow a Directive
 - Minn. Stat. Section 508.71, Subd. 3
 - At request of registered owner (most common):
 - Rights which are barred by a statute
 - Rights which have expired by their terms
 - Correction of name or designation of registered owner or party in interest (upon submission of evidence satisfactory to the Examiner)
 - Deletion of easements or other nonfee interests which are terminated by their own terms or by written instrument satisfactory to the Examiner



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WHEN IS A DIRECTIVE REQUIRED?

- **Most common:**
 - To issue a new COT or CPT after cancellation of a contract for deed IF proper cancellation has been of record on the COT or CPT for at least 5 years
 - Otherwise a court order is necessary
 - 508.58, Subd. 5 and 508A.58, Subd. 3
 - To issue a new COT after a tax-forfeiture IF the auditor's certificate has been of record on the COT for at least 10 years
 - Otherwise a court order is necessary
 - Minn. Stat. 508.67, Subd. 2

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(CONT.)

- To record a declaration or bylaws for a condo, or an amendment to the declaration or bylaws, or a supplemental declaration
 - Note the statute does not require this for planned communities, although in practice some counties require it
 - 508.351, Subd. 1 and 508A.351, Subd. 1
- To add vacated streets or alleys to the face of a COT or CPT
 - 508.73, Subd. 2 and 508A.73, Subd. 2

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REGISTRAR'S CORRECTIVE INSTRUMENT

- Authorized by Minn. Stat. 508.71, Subd. 1a where there is a clerical error in producing a COT
 - Error may be in COT itself or memorials
 - Examples include:
 - correcting a name that does not match the deed creating the COT
 - Correcting a document number in a second line of a memorial
- Cannot cancel and issue a new COT; can only be memorialized
- In my opinion, should not charge for a RCI since it's correcting an error made by the Registrar's staff



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PROCEEDINGS SUBSEQUENT TO INITIAL REGISTRATION

- Action in District Court to Alter an existing Certificate



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ACTIONS UNDER 508.71 OR 508A.71

- Interest has terminated
- New interest not shown on COT
- Error on the COT or CPT or in a memorial
- Name of interest holder has changed
- Marriage or Divorce of registered owner
- Corporate Dissolution
- Any Reasonable Ground

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ACTIONS REQUIRED BY STATUTE

- Mortgage foreclosure by advertisement
 - Minn. Stat. §§ 508.58 & 508A.58
- Foreclosure of a lien
 - Minn. Stat. §§ 508.58 & 508A.58
- Tax forfeiture (Auditor's Certificate recorded < 10 years)
 - Minn. Stat. § 508.67 subd. 2
- Judicially determine boundary lines
 - Minn. Stat. § 508.671
- Determine an Unregistered Interest/Adverse Claim
 - Minn. Stat. §§ 508.70 subd. 2 and 508A.70 subd. 2

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ACTIONS REQUIRED BY STATUTE (CONT.)

- Reformation of COT or document
- Transfer pursuant to Contract for Deed without the deed
- Delete a Contract for Deed and Cancellation
- Repurchase by less than all record owners following tax forfeiture

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EXAMINER'S DISCRETION

- Any change the Examiner is not comfortable making without providing notice and an opportunity to be heard
- If you believe a directive might work ask your Examiner



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BASIC STEPS

- Varies by county
- Generally:
 - Action is commenced by filing a Petition
 - Examiner of Titles issues a Report setting out necessary parties, items to be proved and a proposed order
 - Order to Show cause is issued and served
 - Necessary Evidence and proofs of service are filed

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THE HEARING

- Anoka, Hennepin, Ramsey and St. Louis County Examiners conduct the hearings and recommend the Order
- Other counties hearing is before a District Court Judge
- Default hearings are most common
- If an appearance is made to object the matter becomes contested
- Contested matters are heard by a Judge or Examiner and treated as other contested civil matters

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THE ORDER

- The Order should follow the Report of Examiner
- Use the proposed order paragraph from the report
- Requires Examiner approval
- Certified copy is recorded with the Registrar of Titles

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ACTION TO DETERMINE BOUNDARY LINES

- Minnesota Statutes 508.671
- Practical location of boundaries applies to Torrens property
- Must use this procedure if the property is Torrens or if any abutting property is Torrens
- “Judicial Landmark” - Stone or iron landmark 559.25



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PARTIES

- Owners of adjoining lands
- Lienholders of subject property and adjoining land
- Any person with an interest in the affected land (tenants, easement holders)
- All affected land is Torrens – review COTs
- Some affected land is abstract O&E or other title evidence will be required

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THE PROCESS

- Consult the Examiner prior to drafting and filing the Petition
- Petition complying with 508.671 is filed with District Court
- Certified copy of petition is recorded on each COT affected and with the County Recorder if any abstract property is affected
- Initial survey showing proposed boundaries
- Examiner's Report setting out procedural requirements and parties
- Service on all defendants is by Summons
- Interlocutory Order directing surveyor to place JLMs
- Final Survey is prepared pursuant to interlocutory order
- Certified copies of final order and survey are recorded

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A NOTE ON JURISDICTION

- If it affects Torrens land it has to be in Torrens court
- The court is entitled to the benefit of an Examiner's Report



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