



Office of the Secretary of State

Task Force to Study the Recording of Deeds for Victims of Domestic Violence
Wednesday, June 21, 2017
10 a.m. to 11:30 a.m.
Fred L. Wineland Building, 16 Francis Street, Annapolis, Maryland 21401

Members in Attendance

Secretary of State John Wobensmith

Delegate Anne Healey

Tim Baker, Maryland State Archives

James Cosgrove, Maryland Land Title Association

Brett Dieck, the Law Office of Brett M. Dieck, LLC and Old Line Title Company, Inc.

Anne Hoyer, Director of the Address Confidentiality Program

Dorothy Lennig, Attorney at House of Ruth Domestic Violence Legal Clinic

Michael Lore, Chief of Staff for Senator Lee

April Morton, Legislative Services

David Rawle, for the Secretary of Commerce

Frederick Smalls, Maryland Municipal League

Kevin Swanson, Maryland State Archives

Corbett Webb, Maryland Department of Assessments and Taxation

Josaphine Yuzuik, Assistant Attorney General

Other Attendees

Kelley Mitchell

Brittany Luzader

Sarah Smalt

Emma Craig

Garrett Haslinger

Logan Haarz



Opening Remarks

The Secretary welcomed everyone back and thanked them for their time and expertise. He acknowledged that last time we left off with many questions for Minnesota's Safe at Home program, so Ms. Yuzuik would provide a recap of the conference call from May 4. He highlighted that, according to the Minnesota Safe at Home Program, since the inception of changes to Minnesota's deed recording system in 2014, sixty Safe at Home participants have successfully purchased a home and kept their identity off public record. He encouraged the group to voice any concerns during the round table discussion today as they would later be hearing from April Morton regarding the next steps to take as a work group moving towards introducing legislation. He expressed his desire to put pen to paper and have something ready for review by the next meeting.

Address Shielding for Judges

Delegate Healey apologized for missing past meetings, citing a communication issue. Prior to this meeting, she read all the minutes and wondered if Maryland has a witness protection program, but was told that was only a federal program. She still questions a system in place for protecting the addresses of judges. She believes the address of the courthouse is the only address listed with their name. Ms. Hoyer said that a judge did try to join the ACP until he was told that he needed to move to a new location in order for the program to offer any protection. Delegate Healey continued to say that she believes judges are provided with these safety options when they become judges. Mr. Webb said he had never heard that. He thinks their names are still listed with their residential address on land records. The Secretary thought it would be interesting to see if there is something legislated for the protection of judges.

Conference Call Recap

Ms. Yuzuik provided an overview of the call with Minnesota addressing concerns mostly related to creditor's rights and judgment. Participants in the ACP who purchase a home with their deed recording system lose the right to be notified publicly if process cannot be served by mail since the address of the Secretary of State is what is shown in the paper. During the call, Dianna Umidon and Julie Strother of Minnesota's ACP outlined the process well, emphasizing the importance of timing and starting the notification process before the participant closes on the house since the process is not retroactive. The real property notice goes to the recorders and all government and private entities involved. She also mentioned that no one has been charged for disclosing the address though Wells Fargo is currently investigating a circumstance in which a notice was provided, but the address was inadvertently disclosed. Dianna also explained that, upon leaving the ACP, a participant has 90 days to notify the recorder's office before the ACP will do so. Ms. Yuzuik said the call was productive, addressing all of the group's concerns.

Criminal vs. Civil Penalty

Mr. Lore suggested floating both criminal and civil penalty to see if there is any resistance. Delegate Healey responded that it would be a committee assignment issue. Ms. Morton said not to worry about going after criminal penalty, as that would not necessarily impact the committee assignment.

Burden on the ACP

Delegate Healey asked if the office of the Secretary of State had analyzed the burden placed on the SOS especially regarding the collection of local taxes. Ms. Yuzuik explained that if a participant defaults on taxes, the county assessor, just like any other entity, can subpoena the ACP for the participant's address. Ms. Lennig explained that once a tax collector or bank has access to a participant's address through a court order, the Address Confidentiality Program/Secretary of State is no longer involved, so the burden on them is not overbearing. Ms. Hoyer explained that the



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process would be the same as when one of the participants breaks the law. Process is served to the Secretary of State's office, signed by the ACP and considered served at that time to the participant since the ACP is the participant's designated agent for receiving mail. Mr. Dieck asked if the ACP signed for certified mail since some judges will reject service if it was not signed by the actual person. Ms. Hoyer explained that we do sign for certified mail, and make a copy of it, then notify the participant and forward it to him or her, unless he or she prefers to pick it up at the office. Mr. Lore said that ought to be enough for creditors to show that there was effective service.

Minnesota Law

Ms. Yuzuik broke down Minnesota's deed recording law for ACP participants into three parts: notification requirement, real property records, and duties of the Secretary of State/service of process; so the task force could use it as a guide to begin drafting legislation. The group agreed to the provisions in part one regarding notification requirement, but Mr. Dieck suggested that the tax id be included on the real property notice provided by participants to the county recorder.

Recording Process

Mr. Cosgrove stated that in Maryland the county recorder is the circuit court and any recording is done with an intake sheet universal to all 24 jurisdictions. From the preparer's standpoint, to simplify the process, he suggested an intake sheet specific to ACP participants. Delegate Healey asked about how this process might affect various tax credits. Mr. Cosgrove replied that there have been special provisions in certain circumstances, such as when people buy their home through a trust, that allow tax credits. Mr. Cosgrove asked how the clerk should preserve the notice especially since everything is done electronically. Should it be in a separate index to which only the clerks have access? Ms. Yuzuik suggested a private server. Mr. Swanson asked if this wasn't, by default, meant to be for relatively short-term conditions. Would it be necessary to demonstrate 20 years from now whether or not someone had been in the program? Ms. Lennig replied that the Secretary of State keeps records of that. Mr. Swanson asked what the clerk would be recording, what would be put in the line sequence. Ms. Yuzuik said it would show blank pages. Mr. Rawle said there is a step missing. The idea is that the notice would go to the clerk and the document would be masked. In that case, the notice does not need to be recorded. Only a masking document is needed. Mr. Baker connected this issue to when some lenders required a written social security number under a person's signature. This is now problematic as it is protected personal information, so they began masking the social security number, but preserving the original document. The masked document is available to the public. While this scenario is a little different, he said that theoretically we could keep both documents and not worry about a separate piece of paper saying that the document is masked. He continued to say that the process needs to be worked out in the courts themselves. Mr. Swanson added that there are lots of moving parts and chance for error. Mr. Cosgrove asked about assigning liber and folio numbers to the masked document or to the real property notice. The group discussed whether this was necessary and concluded that the real property notice does not require a liber folio number because it is not a public document, but since the masked documents may become public record upon the participant's termination or cancellation from the program, they should get assigned the liber and folio numbers.

Minnesota Law, continued.

Ms. Yuzuik brought the conversation back to the next part of Minnesota law which addresses time limit- every four years a participant must sent a new notice to keep their information masked. The group looked at subdivision 4a and 4b, real property records and title examination. The first subdivision instructs each county recorder to establish a process to comply with the requirements. The second states that procedures must provide public notice of the existence of recorded documents and certificates of title that are not publicly viewable and the provisions for viewing them. In Minnesota, they put a county with the name of the participant for a creditor or title examiner. Mr. Dieck said that in Maryland, you must



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go through every county and each county has a different process in place. Mr. Cosgrove claimed this is what we would like to avoid; uniformity is necessary. Mr. Baker expounded upon that saying that the courts used to have discretion with how they created records, but now there have been efforts to consolidate. Ms. Lennig suggested providing model practices and procedures. Mr. Baker suggested we sketch out the process then go to the clerks. Ms. Lennig agreed, adding that we need to work with Kathleen and her group to establish procedures or best practices so land records offices do not have to reinvent the wheel 24 times.

Ms. Yuzuik brought up the last piece under Subdivision 4a; the Secretary of State has 90 days to alert the county recorder to a person no longer being a participant in the program. Mr. Dieck asked if the obligation falls on the participant or the Secretary of State. Ms. Yuzuik answered that it falls on the Secretary if a participant is cancelled, but if a participant withdraws, then the participant is responsible. Mr. Cosgrove asked about what happens if a participant dies. Ms. Yuzuik said that perhaps there should be a separate provision if a participant dies. Mr. Smalls asked if the ACP receives returned mail. He asked if that wouldn't alert the ACP to investigate a bit further and therefore discover whether or not a participant had died. Ms. Hoyer said that anytime mail is returned, the ACP seeks to discover the reason. Mr. Cosgrove stated that the process would not be limited to primary residence, but rather to any real property. Mr. Lore mentioned that there had only been 60 people in Minnesota who bought a home with this process. Ms. Hoyer added that we are not talking about tons of people. Mr. Dieck wondered what would be the risk of someone leaving the program but their information still remaining masked. It seems like a harmless error. Mr. Cosgrove asked how long it would take SDAT to update the record after receiving notice. Mr. Baker said that, presuming the original instrument is already in archives, it would simply be a change to the database; it would not take much time at all. He continued explaining that the main frame was updated every night in Annapolis. It does not make sense for only the archives to change. It must be updated from the source. The current process allows clerks to reprocess an item they send to archives for inclusion. Mr. Swanson agreed that making a change in the index data would not do any good if it was not also changed in the clerk's office. Delegate Healey asked if Minnesota law addresses victims of domestic violence who are landlords who may be trying to hide where they live. Ms. Yuzuik replied that she does not believe commercial interests were discussed. Ms. Hoyer thinks that may be a little too detailed and an unlikely scenario. Ms. Yuzuik refocused the group on Minnesota law as it is written; adding that she thinks everyone agrees that 90 days is more than enough time to alert the county recorders that a participant is no longer in the program. Their law allows 2 business days to get back to a searcher; Ms. Yuzuik asked if that was enough time for the title folks. Mr. Dieck said that it was too much time; it should not take that much time to get a title search completed. Mr. Cosgrove asked what would be given- in Minnesota it is just a written affirmation that a participant is in the program. Once you take this to the clerk, how soon can one obtain the information needed, then from archives? There is currently no process. Mr. Baker said that once an original deed is recorded, it is generally returned. How should information be provided from archives? Ms. Lennig asked if a copy could be printed out and handed over. Mr. Swanson said it could. Ms. Yuzuik said that Subdivision 5 addressing duties of Governmental Entities would be a good provision for our bill as well. Looking at the next subdivision, service of process, if service by publication is necessary, it is valid if the name of the participant is omitted and the Secretary of State is included in the published notice. Ms. Lennig said this seems fine since the participant would have signed an agreement to the Secretary of State's accepting service. Mr. Dieck said that sometimes you cannot get good service; a provision should be added regarding good faith efforts to serve. Ms. Yuzuik moved on to Subdivision 7, saying that it was good for Maryland to have as well because one agency might get a call from another agency who knows the participant and is helping keep records private, and this provision will reinforce the interagency cooperation required to ensure participants' data is kept from becoming public record where possible.



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Role of Legislative Services

Ms. Morton introduced legislative services as a professional, nonpartisan staffing agency. She explained her role with bill drafting and helping legislators take their idea and fit it in with the code. They are responsible for ensuring the language of the law is consistent. She offered herself as a resource to the task force, willing to take their ideas and put it into language that works. She suggested that one next step might be taking the provisions from Minnesota law and seeing where they fit in with Maryland Annotated Code. She will flag what needs clarification and help iron out any inconsistencies. She explained that procedurally, the next steps then would be up to Delegate Healey and Senator Lee to introduce the bill on behalf of the task force; then it will go through the whole committee process.

Delegate Healey asked if the judiciary had participated in any of the work group discussions and suggested that the draft goes through the judiciary conference. Ms. Lennig recommended that since the clerks are independently elected, not falling under any administrative judge, it would be even more important to involve the clerks. She suggests getting a group together to walk it out and see how it works. Mr. Baker agreed that theoretically it may seem simple, but it may not prove so easy mechanically. Ms. Morton said to consider the effective dates and make sure the courts are on board.

Next Step: Working Groups

The Secretary asked to form two working groups, the first headed by Ms. Morton taking a lead on drafting legislation. Mr. Cosgrove, Ms. Lennig, Mr. Dieck, Mr. Rawle, Ms. Yuzuik and Senator Lee's office volunteered to participate. Ms. Blough, in her absence, was volunteered to lead the second group focusing on the clerks and the recording process. Mr. Cosgrove, Mr. Baker and Mr. Swanson offered to serve on that work group.

Mr. Cosgrove asked if any other states are currently working on this issue. Mr. Lore offered to do some research. The Secretary said he would ask the other Secretaries of State at their national conference.

Mr. Lore asked if criminal liability was being considered since Judicial Proceedings Committee was trying to get rid of criminal penalty. Delegate Healey said she would like to consider some sort of criminal penalty, particularly if the disclosure was malicious, to put someone in danger.

The Secretary thanked everyone and closed the meeting at 11:27 am.