

Searching Recorded Documents, Judgments, and Liens

Recorded documents, judgments and liens are among the most popular types of public records sought. This data can show proof of ownership (deed to your house) or show when an asset is used as collateral for a loan (mortgage on your house). Finding recorded documents and lien notices is a necessity to making informed business-related decisions and these documents lead to a virtual treasure trove of data. Private investigators and attorneys research liens and recorded documents when doing an *Asset Lien* search. Since liens are part of an information trail in the public record, finding liens will lead to finding assets or to other liens which could lead to other assets.

The function of searching liens and recorded documents in the U.S. public record is truly an art because there are over 3,600 locations in the U.S. where one may file a lien notice or record a document. The locations can be at any of three levels: local municipality, county or parish, or state agency. These jurisdictions maintain indexes to these recorded documents. Some government agencies maintain an overall index of all recorded documents and liens notices, while others maintain a series of separate indices within the same office. In other words, a researcher must know the particular index to search for a particular record. A good searcher knows to search ALL the indices.

The publicly recorded documents most often accessed are generally related to:

- Real Estate Transactions
- Uniform Commercial Code (UCC) Filings
- Judgments
- Other Liens (including federal and state tax liens, mechanics liens, etc.)

That does not imply that other records such as vital records, voter registration rolls, and fictitious names are inconsequential – far from it. Before examining each of the key documents types, let's look at some essential facts related to searching these documents.

The Difference Between Personal Property and Real Property

An important first distinction when searching recorded public records is to know the difference between personal property and real property. This is because documents related to real property generally are recorded in different locations from personal property records.

Personal property includes items such as bank accounts, vehicles, jewelry, computers, etc. It can be collateral or 'consumer goods.' Often when personal property is given as collateral, the lender will secure the loan by filing a UCC financing statement on the asset.

Real property involves real estate related assets such as homes, apartment building, land, etc. A mortgage is an example of a recorded document that secures the associated loan to finance real property.

Personal property includes items such as bank accounts, vehicles, jewelry, computers, etc. Often when personal property is given as collateral for a business, the lender will secure the loan by filing a UCC financing statement on the asset.

Types of Liens and Security Interests

Liens - With or Without Consent

A lien is a lawful claim or right against property or funds for payment of a debt or for services rendered. There are two types of liens that are recorded: those **with consent (voluntary)** or **without consent (involuntary)**.

Examples of liens placed with the consent of an asset holder include mortgages, loans on car and vessels, and Uniform Commercial Code filings on business assets such as equipment or accounts receivable.

Examples of liens placed without the consent of an asset holder include federal and state tax liens, mechanic's liens, and liens filed on assets as the result of judgments issued by courts.

The Grantor-Grantee Index

Perhaps the most commonly used term to describe an index of recorded documents at a county/parish/city/town recorder's office is the **Grantor-Grantee Index**.

The Grantor is the party that is transferring title or some type of interest that involves a recording. The Grantee is the party that is the recipient of the title, interest or document. For example, if you purchase or re-finance real estate and borrow money from a bank, an instrument called a mortgage or deed of trust is generally involved. You, the borrower, are the Grantor since you giving a lien on the property to the bank. The bank is recorded as the Grantee since it is the recipient of the interest in the property as collateral for the loan. Sometimes the Grantor-Grantee Index is known as the Forward-Reverse or Direct-Indirect Index.

About Judgments

When a judgment is rendered in court, the winning party usually files and records a lien notice (called an *Abstract of Judgment* in many states) against real estate owned by the defendant or party against whom the judgment is given. Sometimes judgments can be used to garnish wages or can be placed on bank accounts.

Judgments can be searched at the local or county level usually in the same index as real estate records. Many times judgments are bought and sold as commodities. An *Assignment of Judgment* is the transfer of the title and interest in a judgment from one person to another person.

The Search Location Problem

Keeping state laws variations and filing locations straight is a major challenge to the professional public record searching specialist. Where to search for recorded documents and property liens can be a perplexing puzzle. Just because a mailing address is Schenectady NY doesn't mean the property is located in Schenectady County. The property could be physically located in neighboring Albany County. **The fact is over 8,000 of the 45,000 or so ZIP Codes cross county lines.** Having access to an enhanced ZIP Code/place name/county locator product is a must. Finding involuntary liens—such as federal and state tax liens—and UCC filings can be even harder.

So, unless you know exactly where the real or personal property is located, and you are certain that everyone else who has filed or recorded liens also knows where to go, you may have a problem. You may have to search more than one county, town, city (or even state) to find the property or liens you need to know about. But knowing about the County Rule helps.

In most states, transactions are recorded at one designated recording office in the county where the property is located. But the key word in the last sentence is most. One of the most important searching tips to have in hand when searching for liens and recorded documents is the County Rule. The text to follow was written by Mr. Carl R. Ernst of Ernst Publishing.¹ We sincerely thank Mr. Ernst for allowing us to reproduce this article.

The County Rule by Carl R. Ernst

Where to search for recorded documents usually isn't a difficult problem to overcome in everyday practice. In most states, these transactions are recorded at one designated recording office in the county where the property is located.

We call this the "County Rule." It applies to types of public records such as real estate recordings, tax liens, Uniform Commercial Code (UCC) filings, vital records, and voter registration records. However, as with most government rules, there are a variety of exceptions which are summarized here.

The Exceptions

The five categories of exceptions to the County Rule (or Parish Rule, if searching in Louisiana) are listed below [Editor's Note: details for each state are listed in the State Profiles Section which follows.]—

Special Recording Districts (AK, HI)

Multiple Recording Offices (AL, AR, IA, KY, ME, MA, MS, TN)

¹ Ernst Publishing publishes two extensive industry manuals - *The UCC Filing Guide* and *The Real Estate Recording Guide*. Visit www.ernstpublishing.com for more information.

Independent Cities (MD, MO, NV, VA)

Recording at the Municipal Level (CT, RI, VT)

Identical Names—Different Place (CT, IL, MA, NE, NH, PA, RI, VT, VA)

The Personal Property Problem and the Fifth Exception

The real estate recording system in the U.S. is self-auditing to the extent that you generally cannot record a document in the wrong recording office. However, many documents are rejected for recording because they are submitted to the wrong recording office. There are a number of reasons why this occurs, one of which is the overlap of filing locations for real estate and UCC.

Finding the right location of a related UCC filing is a different and much more difficult problem from finding a real estate recording. In the majority of states, the usual place to file a UCC financing statement is at the Secretary of States office—these are called central filing states. In the dual and local filing states, the place to file, in addition to the central filing office, is usually at the same office where your real estate documents are recorded. However, where there are identical place names referring to two different places, it becomes quite confusing, so hence, the fifth exemption.

Searching Real Estate Records

Every local entity (i.e. county, parish or town recorder of Deeds) records documents that transfer or encumber title. Many county, city, and parish government jurisdictions provide online access to indices of real estate records and recorded documents. Most sites are free if viewing an index, but an increasing number of government agencies will charge a fee to view or print an image or copy of a page within the file.

As with other types of public records, many investigators and researchers use these online resources as a pre-search or preliminary search, especially if dealing with an uncommon name.

Keep in mind there are a number of private companies who compile and maintain these records. Some offer free searching on the web as a way to drive users to their web pages. Some vendors offer bulk data for resale. Vendors are a very comprehensive resource to obtain electronic records.

There are a number of web pages that information on the property of specific homes (addresses). Check www.zillow.com and www.trulia.com. For interactive map information, check out <http://nationalmap.gov>.

Types of Real Estate Recorded Documents

There many types of lien notices and recorded documents related to real estate files. Below are common names for documents that a public record researcher may find when searching real estate records. This list is certainly not all inclusive; there are many, many more. Also keep in mind that name variations will occur from state to state.

- **Deed of Trust or Mortgage of Deed of Trust** Generally a mortgage that secures a debt, and names three parties - the borrower (trustor), the beneficiary (lender), and the trustee who holds title to real property under the terms of a deed of trust.
- **Bill of Sale** A Bill of Sale will be recorded to show the transfer of most any kind of personal property.
- **Assignment of Deed of Trust** A transfer or sale of a Deed of Trust from the current lender (beneficiary) to a new beneficiary.
- **Abstract of Judgment** A court issued money judgment to secure payment to the creditor, usually creates a general lien on real property of the judgment debtor.
- **Declaration of Homestead** A document recorded by either a homeowner or head of household on their primary residence to protect his home from forced sale in satisfaction of certain types of creditors' claims.
- **Mechanic's Lien** A document recorded to create a lien in favor of persons contributing labor, material, supplies, etc., to a work of improvement upon real property.
- **Notice of Default** A notice to show that the borrower under a mortgage or deed of trust is behind in payments.

- **Notice of Lis Pendens** A notice that litigation is pending in court which may affect the title of the real estate involved.
- **Notice of Trustee's Sale** This document is recorded to notify the public of pending the foreclosure sale by the trust for non-payment or non-performance of the conditions of the deed of trust.
- **Power of Attorney** This document delegates the authority of an entity to an agent (attorney-in-fact) to allow this agent to act behalf of the entity in a designated capacity.
- **Quitclaim Deed** A form of deed that conveys or releases any interest that the grantor may have acquired in real property. Many times this type of deed is issued without title insurance.
- **Reconveyance** The instrument releases the loan that was a lien against real property. Can also be called a satisfaction of the loan or a release of lien or a release of mortgage.
- **Satisfaction of Mortgage** Release of the loan that was a lien against real property. This document may also be called a release of mortgage.
- **Subordination Agreement** This document is recorded when a current lender agrees to makes their encumbrance deed of trust beneath or junior to another loan. These loans are sometimes called seconds.
- **Trustee Deed in Lieu of Foreclosure** Document indicates the transfer of real property from the defaulting borrower to the beneficiary (lender) in lieu of foreclosure.
- **Trustee's Deed** A deed given by the trustee when the real property is sold under the power of sale in a deed of trust in a foreclosure proceeding.
- **Writ or Notice of Levy** A document to notify a party served with writ of execution that specific property is being taken to satisfy a debt.

Real Estate Records and the County Rule

Remember the earlier section on the County Rule? The second, third and fourth County Rules are very important to observe when searching real estate records in the states listed below.

- **Multiple Recording Offices.** In these states, some counties have more than one recording office; AL, AR, IA, KY, LA, ME, MA, MS, and TN.
- **Independent Cities.** Four states (MD, MO, NV, and VA) have independent cities that should be treated just as if they are counties. For example, St Louis City and St. Louis County are separate jurisdictions with separate sets of data.
- **Recording at the Municipal Level.** In CT, RI, and VT the recording jurisdiction is the town, not the county. The county clerk's office does not record documents.

Uniform Commercial Code

Uniform Commercial Code (UCC) filings are to personal property what mortgages are to real estate property. UCCs indicate where personal property, usually business related, is secured as collateral. A UCC recording allows potential lenders to be notified that certain assets of a debtor are already pledged to secure a loan or lease. Therefore, examining UCC filings is an excellent way to find many types of assets, security interests, and financiers.

Most state UCC websites provide a free search of the index. A few will permit free access to images, but most states charge a fee to access the full records, which usually involves a subscription service and registration, login, and password. Delaware is the only state that does not offer online access to an index of UCC records, except through certain contracted firms.

Chapter 6 gives the searchable web address for each state's central repository. Also, for specific links and updated information, visit the free public record searching sites found at www.brbpublications.com.

A number of private companies compile their own proprietary database of UCC and tax lien records or offer real time online services. Vendors are a very comprehensive resource to obtain electronic records over multiple jurisdictions, see Chapter 5.

UCC Searching Tips

Most UCC filings against businesses are found at the state where a business is organized, not where the collateral or chief executive offices are located. Most UCCs files against individuals are files in the state where the person resides.

Therefore, you will need to know where a company is organized in order to know where to find recent UCC filings against it. (However federal tax liens are still generally filed where the chief executive office is located.)

The location to search UCC records changed dramatically in many states in July 2001 with the enactment of **Revised Article 9**. Prior to that date UCC documents were recorded either at a centralized state agency or at a local recording office. Since July 2001 all UCC documents are filed recorded at a state level agency with the exception of certain real estate filings such as farm-related real estate (see Searching Real Estate Related UCC Collateral to follow).

Until June 30, 2001, liens on certain types of companies required dual filing (must file at BOTH locations) in some states, and records could be searched at BOTH locations. As of July 1, 2001, UCC filings other than those that go into real estate records were no longer filed at the local filing offices. According to the UCC Filing Guide (see www.ernstpublishing.com) less than 3% of UCC filings are done so at the local level.

Although there are significant variations among state statutes, the state level is now the best starting place to uncover liens filed against an individual or business, but it is not the only place to search. Strict due diligence may require a local search also, depending on the state, how many years back you wish to search, and the type of collateral. The best technique is to check both locales of records.

As a result of Revised Article 9, **the general rules for searching of UCC records** are as follows:

- Except in former local filing states, a search at the state level is adequate to locate all legally valid UCC records on a subject.
- Credit due diligence searching requires use of flexible search logic provided either by the state agency or private database vendors.
- Mortgage record searches will include any real estate related UCC filings.

Searching Real Estate Related UCC Collateral

UCC financing statements applicable to real estate related collateral must be filed where real estate and mortgage records are kept, which is generally at the county level — except in Connecticut, Rhode Island, and Vermont where the Town/City Clerk maintains these records.

In general, the definition of real estate related UCC collateral is any property that in one form is attached to land, but that in another form is not attached. For the sake of simplicity, we can define the characteristics of two broad types of property that meet this definition:

1. Property that is initially attached to real property, but then is separated. Three specific types of collateral have this characteristic: minerals (including oil and gas), timber, and crops. These things are grown on or extracted from land. While they are on or in the ground they are thought of as real property, but once they are harvested or extracted they become personal property. Some states have a separate central filing system for crops.
2. Property that is initially personal property, but then is attached to land, is generally called fixtures. Equipment such as telephone systems or heavy industrial equipment permanently affixed to a building are examples of fixtures. It is important to realize that what is a fixture, like beauty, is in the eye of the beholder, since it is a somewhat vague definition.

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Tax Liens

Tax liens are non-consensual liens placed by a government agency for non-payment of taxes. The federal government and every state have some sort of taxes, such as sales, income, withholding, unemployment, and/or personal property. When these taxes go unpaid, the appropriate state agency can file a lien on the real or personal property of the subject.

Tax liens filed against individuals are frequently maintained at separate locations from those liens filed against businesses. For example, many number of states require liens filed against businesses to be filed at a central state location (i.e., Secretary of State's office) and liens against individuals to be filed at the county level (i.e., Recorder, Registrar of Deeds, Clerk of Court, etc.).

Where to Search for Tax Liens

Generally, the state agency that maintains UCCs records also maintains the tax liens filed at the state level but this is not true in all states.

Liens on a company may not all be filed in the same location as those filed on individuals. A **federal tax lien** will not necessarily be filed (recorded) at the same location/jurisdiction as a state tax lien. Plus there can be different filing locations when these liens are filed against individuals versus filed against businesses. In general, **state tax liens** on personal property will be found where UCCs are filed and tax liens on real property will be found where real property deeds are recorded, with few exceptions.

Unsatisfied state and federal tax liens may be renewed if prescribed by individual state statutes. However, once satisfied, the time the record will remain in the repository before removal varies by jurisdiction. Many states will show a release of lien filing rather than deleting the original recording of the lien.

Other Types of Recorded Documents

There are numerous types of documents that can be recorded and are not related to real estate or personal property. Many of these documents are found at the same recording office that records real estate liens, and often times they appear in the same index. Mentioned below are several significant types.

Fictitious Names or Assumed Names

If a person operates a business not organized as a corporation, partnership, LLC, etc., under a name other his own, then it has a fictitious name. For example if Joe Cool is doing business as Costabunch General Store, that business name must be registered. Depending on the state, this registration can take place at municipal, county or state. A fictitious name is also known as a **DBA** – meaning *Doing Business As*.

Forcible Detainer

A Forcible Detainer is a landlord's lien against a tenant's property for unpaid rent or damages. Sometimes the document is filed to essentially 'give notice.' If the tenant does not comply within a designated time period, the landlord can forcibly move the tenant's belongings off the property, usually with the assistance of local law enforcement.

Searching for evidence of a Forcible Detainer is part of the tenant screening process, which is governed by the federal Fair Credit Reporting Act.

Vital Records

Births, deaths, marriages, and divorces may be recorded at the local level or state level, with copies of the documents found at both the state and local agencies. See the *Vital Records Section* later in this chapter.

Wills

Many people record their Last Will and Testament at the local recorder's office. Some people confuse a probate court with this function. A probate court is not a recording office, but has records concerning decedents which include their wills (if any) and lists of assets.