

# MEMORANDUM

# State of Alaska

Department of Transportation & Public Facilities  
Engineering and Operations Standards


TO: Richard L. Odsather  
Chief Right of Way Agent  
Northern Region

DATE: April 5, 1990

FILE NO:

TELEPHONE NO: 465-2985

FAX NUMBER: 586-8365

FROM: Milton H. Lentz, Chief   
Right of Way & Land Acquisitions  
Engineering & Operations Standards

SUBJECT: Clearing Land Titles  
Procedure

The purpose of this procedure based on Northern Region's recommendations, is to allow an alternate, cost effective method to resolve obscure encumbrances that pose an insignificant liability risk to the State. The procedure is as follows:

1. The negotiator must make a good faith effort to clear all encumbrances as noted on the title report. In the process, the negotiator may discover that some encumbrances cannot be cleared due to missing documentation such as reconveyances for deeds of trust, satisfaction of judgements or liens, or deeds which caused breaks in the chain of title. If the negotiator believes that the encumbrances are insignificant or that due to subsequent transactions, they were most likely satisfied, a review by the title examiner can be requested through the Negotiations supervisor.
2. The title examiner must make a written statement of the problem, along with an analysis of the potential liability to the State if the encumbrance is not cleared. The examiner will also write a recommendation of action. The recommendations will be to:
  - a. Return to the negotiator to continue the process, with recommended instructions for clearance of specific items.
  - b. Recommend condemnation for title purposes.
  - c. Recommend that no further action be taken due to limited potential liability to the State.
3. If the recommendation is that no further action be taken, written concurrence must be added to the title examiner's review by the Negotiations supervisor and the Engineering supervisor with final approval of the Regional Chief Right of Way agent. When both supervisors have concurred, and final approval given by the Regional Chief, the item is considered to have been cleared. The clearance document is to be made a part of the parcel file.

# MEMORANDUM

# State of Alaska

Department of Transportation and Public Facilities  
Engineering and Operations Standards

TO: Richard L. Odsather  
Chief Right of Way Agent  
Northern Region

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DATE: December 27, 1989

FILE NO:

TELEPHONE NO: 465-2985

FAX NUMBER: 586-8365

FROM: Milton H. Lentz, Chief  
Right of Way and Land Acquisition  
Headquarters

SUBJECT: Clearing Land Titles

Over the past year we have received several questions regarding the clearing of land title. These questions have been in regards to minor takes from larger parcels where it is obvious that there is adequate value in the remainder to satisfy any encumbrances on the property such as mortgages, liens, etc. and possibly an undivided interest. This office has been rather lax on this issue, realizing the problems encountered by the region in getting their projects completed on a very tight schedule this last year. It is now, however, time to rethink this issue and take a close look at the problem.

The Right of Way Manual, Negotiations chapter under VI., F., 7., states that: "Title must be cleared. The Negotiator must secure any necessary reconveyances, releases, or take whatever action is necessary to secure clear title to closing." Black's Law Dictionary, forth edition, defines Clear Title as: "Good title, Marketable title, and one free from encumbrance, obstructions, burden, or limitation." It further states that Clear Title of Record is freedom from apparent defects, grave doubts, and litigious uncertainties; such title as a reasonable prudent person, with full knowledge would accept. When the department accepts either a Warranty Deed or Quitclaim Deed on property, paid for in fee interest, we have an obligation to clear title.

Providing that we do not clear title, it is our opinion that, as remote as it may be, the words litigious uncertainties in the above definitions have a serious meaning on our responsibilities. We also must consider our obligations to the Federal Highway Administration on Federal-aid projects as to adequacy of right of way. This issue was discussed with John Athens, Assistant Attorney General and he concurred that we should be clearing all title to the extent and including quiet title action. Therefore, it is recommend that all necessary steps be taken by the Negotiators to clear title, regardless of its appearance of minor consequences.

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