



## Industry in tussle to access, protect public records

### Privacy concerns may temporarily direct work back to local examiners in certain markets

Over the past decade, title searches have become easier and faster to produce as more counties provide public records online. Privacy issues in many states, however, are thwarting the online movement, making it more difficult for title plants to access records essential to closing real estate transactions. Local title examiners and abstractors may temporarily benefit from this push to protect sensitive data and restrict access because business is being pushed their way.

Several events at the state level and a recently released report by the Government Accountability Office examining Social Security numbers in public records paint a blurry picture in how accessible this information will be in the future.

In August, a New Jersey state court ruled companies who want data from the counties should be required to pay the county the necessary redaction fees to make sure personal information is removed from the documents before handing them over to the data company. In this instance, **Fred Burnett** requested an estimated eight million pages of documents stored on an estimated 2,559 rolls of archival microfilm. According to the Bergen County clerk's office, providing the documents would cost in excess of \$460,000. Because the clerk's office did not have record-imaging technology to redact Social Security numbers, each microfilm document would have to be copied to paper or an electronic format.

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#### WE NEED YOUR HELP

Tired of all the negative news swirling around the industry? We've heard enough of consolidation, office closures and layoffs. *The Title Report* wants to hear uplifting stories driving the industry forward. One new feature we are developing will profile agents who have helped prevent a claim or aided in preventing a fraudulent deal from closing. We can't write about the good things if we don't hear about them. You can share your stories with Jeremy Yohe at [jyohe@octoberresearch.com](mailto:jyohe@octoberresearch.com).

#### KEY STATS

#### Existing home sales through October

	U.S.	Northeast	Midwest	South	West
Jan.	4,890,000	800,000	1,210,000	1,950,000	930,000
Feb.	5,030,000	890,000	1,240,000	1,990,000	920,000
March	4,940,000	910,000	1,170,000	1,920,000	940,000
April	4,890,000	870,000	1,100,000	1,920,000	1,000,000
May	4,990,000	910,000	1,160,000	1,910,000	1,020,000
June	4,850,000	850,000	1,110,000	1,860,000	1,030,000
July	5,020,000	910,000	1,130,000	1,850,000	1,130,000
Aug.	4,910,000	840,000	1,140,000	1,860,000	1,070,000
Sept.	5,140,000	840,000	1,170,000	1,900,000	1,230,000
Oct.	4,980,000	830,000	1,100,000	1,840,000	1,210,000
vs. last year:	-1.6%	-9.8%	-9.1%	-10.2%	37.5%

Source: National Association of Realtors

#### QUOTABLE

We're going to be very aggressive about pushing for higher prices and also emphasizing higher agency splits. In other words, we need to retain more of the dollars that our agents are generating.

**Bill Foley**, chairman Fidelity National Financial  
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## ABOUTUS

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## EDITOR'S NOTE

Dear Readers,

With a month to go until the end of the year, this is normally the time when news starts to slow down. Not this holiday season, however, As the calendar spins toward 2009, several items are keeping us busy here at *The Title Report*.

The first is Fidelity National Financial's decision to terminate its proposed acquisition of LandAmerica Financial Group. The move leaves the future of financially distressed LandAmerica in limbo. For more on the future of LandAmerica and the possibilities of bankruptcy, see page 13.

Also, HUD released its finalized RESPA rule. We will be speaking to industry experts and title agents over the next couple of weeks to get their take on how the new rule will impact the title insurance and settlement services industry. In conjunction with the release, we also will be airing a live audio seminar Dec. 4 to shed light on compliance issues to the new rule.

It's not just about the breaking news around here, either. Our team has been busy putting together a star-studded panel of legal and regulatory business experts and title business professionals for the 2009 National Compliance Summit being held Feb. 19-20 in Las Vegas. For more information, go to [www.octoberstore.com](http://www.octoberstore.com).

We also will be presenting two free Webinars this month to help title agents learn how to capture new markets and how to turn their agency into a lean, mean title machine. The first Webinar, "Title Operations Tune-Up: Cutting costs and capturing untapped markets," will air Dec. 11, while "Niche markets: Agents find lifeline with short sales," will air Dec. 18. Both will run from 2-3 p.m. EST.

For more information on any of our audio or Webinar events, go to [www.octoberradio.com](http://www.octoberradio.com).

*Jeremy Yohe*

Editor

## WHO'S INSIDE

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# COVERSTORY

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The court ruled that a public agency has a responsibility and an obligation to safeguard public access to personal information.

In its amicus brief, the New Jersey State Land Title Association argued that its interest in SSNs lies in the fact that when there is a search in the context of property transfers for judgments against an individual with the same name as another, the inclusion of the Social Security number in the judgment record is the only way to confirm that the judgments are against a person of a similar name. The court disagreed with the contentions in the amicus that there was a need to disclose the SSNs on the requested records.

“When we undertake a Doe analysis in balancing the interest in disclosure against the privacy interest, we find that the significant privacy interest clearly outweighs the negligible public interest in disclosure of an individual’s SSN to a commercial entity gathering information to compile a database for sale to other commercial entities for profit,” the court concluded.

Meanwhile in Connecticut, the Department of Insurance issued a bulletin in September detailing the rules under a new state law governing the protection of Social Security numbers and other personal information.

The law, which went into effect Oct. 1, requires all persons and entities that hold a license, registration or certificate issued by a Connecticut state agency, including the Insurance Department, to meet the following requirements:

■ Any person in possession of personal information of another person shall safeguard the data, computer files and documents containing the information from misuse by third parties, and shall destroy, erase or make unreadable such data, computer files and documents prior to disposal.

■ As defined in the law, “personal information” means information capable of being associated with a particular individual through one or more identifiers, including, but not limited to, a Social Security number, a driver’s license number, a state identification card number, an account number, a credit or debit card number, a passport number, an alien registration number or a health insurance identification number; By definition, public information does not include publicly available information that is lawfully made available to the general public from federal, state or local government records or widely distributed media.

■ Any person who collects Social Security numbers in the

course of business shall create a privacy protection policy that shall be published or publicly displayed. As defined in the law, “publicly displayed” includes, but is not limited to, posting on an Internet Web page. Such policy shall: (1) protect the confidentiality of Social Security numbers, (2) prohibit unlawful disclosure of Social Security numbers and (3) limit access to Social Security numbers.

The GAO concluded in its study that although recent government actions implemented to limit the display of Social Security numbers from the public record are positive steps, they do not do enough to protect American citizens’ privacy. The GAO stated that the actions only protect future transactions and fail to acknowledge the millions of records already obtained in either bulk or online format that contain Social Security numbers.

“Additional concerns remain about the security of Social Security numbers in these records,” the report stated. “In particular, because many record keepers cannot or do not restrict what entities can obtain public records with Social Security numbers or control how they are used, and some businesses are sending records with Social Security numbers offshore where little is known about how they are used or protected, ensuring the security of Social Security numbers is an ongoing challenge.”

The GAO distributed the survey to a sample of 247 counties, including the nation’s 97 largest counties, as determined by population and a random sample of 150 of the remaining counties. Of those that received the survey, the GAO indicated that approximately 89 percent, or approximately 220 counties, responded to the office’s request.

The GAO’s survey examined operations in 45 of the nation’s states and only excluded those states that do not collect documents at a county level. This list includes Alaska, Connecticut, Hawaii, Rhode Island and Vermont. In addition to the counties that were surveyed, the GAO also interviewed a select group of private businesses that obtain records in bulk format or via the Internet. These businesses were located in Washington, D.C., California, Texas and Illinois.

After reviewing the information gathered from the surveys and from interviews with private businesses, the GAO examined existing federal privacy and records laws and recently proposed laws. The auditing group from the GAO reviewed state laws on the matter and select foreign protection laws. The analysis was performed over one year and concluded September 2008.

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Based on its survey, the GAO estimates 85 percent of the nation's largest counties provide records with either full or partial Social Security numbers to those seeking the records in a bulk or online format. However, smaller counties, approximately 41 percent of those surveyed, indicated that they provided records to private businesses with the numbers either partially or fully viewable.

When asked by the GAO why they provided these records to private businesses without redacting the Social Security numbers, many of the counties responded that either they were required to provide the records based on existing state law, or companies specifically requested access to this information. Many of the respondents also stated that they rely upon the private companies' relationships in order to support their "business models."

The survey also found that, of those counties that place the records online, only 16 percent, roughly 40 counties of those surveyed, indicate that they don't place any type of restrictions on the types of entities that can obtain these records. Yet, the majority of the counties indicated that the businesses most frequently requesting the information are title companies and mortgage companies. Data resellers also collect and aggregate personal information often contained in these records, based on the information the GAO collected.

"Businesses we contacted told us that they have various safeguards in place to secure information they obtain from public records, including computer systems that restrict employees' access to records," wrote **Daniel Bertoni**, the director of the GAO's division of Education, Workforce and Income Security Issues, in the report. "In some cases, information from these public records is sent overseas for processing, a practice referred to as offshoring."

While the GAO was unable to determine what percentage of information was sent overseas, the report stated sending the records overseas is a common practice for both county officials and the companies that buy the records in bulk format. The GAO concluded that these records are often sent to offices in at least two countries — India and the Philippines.

In recent years, state and local governments, as well as the federal government, have implemented steps to safeguard Social Security numbers in public records. Based on its survey, the GAO estimated about 12 percent of counties has completed the redaction or truncation of Social Security numbers in the public record. Additionally, the report found that another 26 percent are currently implementing the process.

In recent years, the GAO noted that 25 states have enacted some form of statutory restriction on displaying Social Security numbers in public records, but this still leaves 25 states that have failed to protect their constituents.

The report stated that some states have also enacted laws allowing individuals to request that their Social Security numbers be removed from certain records such as military discharge papers. At the federal level, the GAO found that some federal agencies, like the Internal Revenue Service, have taken action by truncating Social Security numbers they place in the public record at the local level, such as tax liens filed with local clerks and recorders. The Department of Justice initiated a similar practice for some liens and other records in response to previous recommendations from the GAO.

"However, we did not identify any federal laws restricting state or local governments from making public records available in bulk or governing how private entities may use Social Security numbers obtained from public records, including the offshoring of records with Social Security numbers," Bertoni wrote. "Although their governments have enacted measures that may address data security in the two countries where we were told public records data are sent, the extent to which those measures protect Social Security numbers from inappropriate use is unclear."

The GAO indicated that there are currently several bills pending in Congress that would limit both private and government entities' ability to sell or display Social Security numbers to other parties. Yet, these laws, if enacted, would only apply to the ways Social Security numbers are handled in the future and would not address how Social Security numbers or personal information from public records that has been sent offshore should be handled.

In early September, IowaLandRecords.org shut down access to images on its site after receiving complaints from Gov. **Chet Culver** that sensitive information belonging to him and other state lawmakers was published online. The indexing information is still available and can be accessed, according to **Phil Dunshee**, a project manager for the site.

Dunshee said title companies were not happy that access to images has been restricted. They had grown accustomed to accessing the information online and are now being forced to change how they get the data.

**Jill Kissell**, a title examiner who operates A-1 Abstracting and Research in Norwalk, Iowa, said that she received more orders from title companies since the images were

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removed. In August, she received eight orders from one client, but received eight orders for current residential searches from the same company the first two days after the images were taken offline.

“The single biggest thing that I think restricting access will do for title examiners is require our clients to direct work back to the local abstractors because the companies they have been outsourcing work to can no longer access counties’ records. This will invigorate local businesses,” she said.

Dunshee said once the sensitive information is redacted from the county records, the site will once again offer the images. He also said that a subscription service is one of the methods being examined for future use, but stressed that the 10 million records maintained on the site will still need to be cleansed prior to their restoration.

“At that point, I’d imagine the title companies sending me current ownership searches will send them back to their offshore sources,” Kissel said.

In Arkansas, Pulaski County also recently restricted online access to its real estate records. **Scott Price**, the chief deputy for the county clerk’s office, said the county intends to restore access to its online records once sensitive information is redacted. The county had offered access to all of its land records dating back to 1999.

Price said the county removed the records at the request of the state attorney general. The site has been down for approximately two months, but Price expects it to be back online within the next several weeks, once its 975,000 records have been cleansed.

**Brian Twibell**, chief executive officer of RedVision, an independent provider of real property research solutions, said making public records available to everyone is not a black and white issue. He said there needs to be a balance, and recorders need to cooperate with reputable organizations that are contracted to establish privacy guidelines.

“One of the primary functions of the public records clerk is to protect public information but to also make information available to the public,” Twibell said. “This is a good thing because it has tremendous value to both the consumer and the business constituents.”

Despite the push for more privacy, Twibell said his company is noticing more county clerks being proactive in protecting sensitive information, while providing access to public records. He said government agencies are more

## Real Estate Fraud Prevention Alliance summit

The Property Records Industry Association (PRIA) will host a Real Estate Fraud Prevention Fraud Summit to bring together various associations representing all sectors of the real estate industry, public and private, to coordinate efforts to combat land fraud. The meeting will be held March 4 at the Marriott, Wardman Park, in Washington, D.C.

### Goals are to:

- Improve/enhance communication regarding land fraud issues between industry segments;
- Discuss latest trends and information regarding land fraud;
- Increase awareness regarding tools that are available to combat land fraud; and
- Discuss and brainstorm ideas regarding a more coordinated industry response to land fraud.

For more information, contact Mark Ladd, PRIA consultant, at 919-459-2081.

willing to work with companies such as RedVision that follow guidelines for obtaining and storing public information and not making it available to the general public in bulk.

“If the company is a legitimate and reputable organization that disseminates this information responsibly — following the same restrictions as a public recorder — then county officials are quite willing to work with them for the good of commerce,” he said. “We also notice counties that have not considered partnerships with companies like RedVision are more willing to work with us as long as privacy protections for their citizens are present in contracts.”

While some counties have pulled online access to public records while information is redacted, Twibell said he doesn’t see a trend of more work being pushed back to local abstractors and title examiners.

Rather, he’s noticing more counties taking measures to move from a manual paper-based transaction to an automated digital transaction so public data is accessed faster.

“These counties also take redaction measures to remove sensitive data from records and to provide public data access via subscription services that limit random public access to data,” Twibell said. “Because more and more counties are moving to digital technology, we see the trend toward making information more readily available as opposed to work being pushed back to local abstractors.”

*Feedback? Contact **Jeremy Yohe** at [jyohe@octoberresearch.com](mailto:jyohe@octoberresearch.com).*