

Why Do We Have a Recorder?

Since the United States free enterprise system rests on the concept of private property, the role of the government in land ownership issues is very restricted compared to "state ownership" countries where the government holds title to the land and citizens have no rights of ownership. In California as in most other states, private property oversight is assigned to local counties and cities and is limited to health, safety and welfare impacts through zoning and building regulations. In the area of private property ownership, the two main functions of government are to provide a court system where disputes between private owners can be settled and a recorder's office to track ownership of and other acts which affect private property.

One of the legislature's first acts in 1850 was to adopt a statewide recording system to provide a convenient and safe place for evidence of land ownership to be maintained and accessed. While not a requirement that land ownership documents be recorded, the legislature decided it was in the public interest that private parties should have access to most information concerning private property to protect against secret conveyances and liens. California's recording system is modeled on those of the original American colonies and other eastern states. The responsibility for recording and indexing at least 21 types of documents was assigned to county recorders. Document types initially had to be indexed separately, but by 1921 when that process became too cumbersome, recorders were allowed to create a General Index in which to maintain most records. Separate registries of births, deaths and marriages are still maintained.

Since title companies, law firms, other private firms, government agencies and individuals use the recorder's index and the documents referenced therein, safety of retention and accuracy of indexing are prime responsibilities of California's 58 county recorders. Each document presented for recording is examined to ensure that it is permitted by law and for completeness, but the recorder does not decide whether the document is correct or legal. As an example, a deed must have a grantor and a grantee, describe the property, be properly executed, and acknowledged (such as by a notary). If the person preparing the deed misspelled the name of either party, used an incorrect legal description or if one of the parties had no interest in the property, the recorder has no way to check that information and would accept the document for recording if properly executed. Once a substantive error is discovered, either the original document is rerecorded with the correction noted or a correction document is recorded referencing the corrected information on the original document.

Once recorded, the recorder must index the document accurately since an incorrect entry can make it difficult to find that document again and can cause a cloud on title. Each document is indexed twice by different staff members before the index is finalized. The original document is microfilmed with the original film stored off-site in case of disaster.