

**Forest Service Manual  
National Headquarters - Washington Office  
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**Forest Service Manual 5409.13 – Land Acquisition Handbook**

**Chapter 50 - Title Evidence**

**Amendment:** 5409.13-1991-1

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**Duration:** This amendment is effective until superseded or removed.

**Superseded Directive:** 2, November 17, 1989; 1, January 1988; Entire handbook issued April 1987

**Approved by:** F. Dale Robertson, Chief

**Date approved:**

**Responsible Staff:**

**Explanation of changes:** Following is an explanation of the changes throughout the directive by section.

This amendment is a reissuance of FSH 5409.13 to conform the format and structure of the Handbook to the requirements of electronic directive issuance.

This amendment makes no substantive changes to the text. The only changes made are those necessary to meet new format requirements or to correct spelling, punctuation, or unit names.

This Handbook is now available electronically in the National Information Center in the same format as the paper copy. Henceforth, amendments to this Handbook will be issued to Forest Service units electronically on a document basis.

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### **50.3 - Policy**

Follow the Department of Justice standards for the preparation of title evidence in all land acquisitions.

Use funds available for the administration of land purchases and land exchanges to pay for all obligations incurred in purchasing title evidence for the acquisition of land.

### **50.4 - Responsibility**

With the assistance of the Regional Attorney, Regional Foresters shall supplement this chapter to describe local procedures. Regional Foresters shall prescribe who should furnish title evidence, but the Forest Service shall pay for the title evidence in land purchases.

All Forest Service personnel responsible for the administration of land adjustment functions shall be familiar with and have a copy of the most recent issue of the Department of Justice standards.

### **50.8 - References**

1. The Department of Justice publication, "Standards for the Preparation of Title Evidence in Land Acquisitions by the United States."
2. "The Appraisal Terminology and Handbook" published by the American Institute of Real Estate Appraisers.

### **51 - General**

Title evidence may take the form of:

1. A policy of title insurance or certificate of title issued by a title company whose standing the Attorney General recognizes and approves.
2. An abstract of title prepared in accordance with the requirements of the Attorney General or the Office of the General Counsel.
3. A certificate of title under one of the so-called Torrens Acts.

Evidence of title shall include: (1) conditions, outstanding rights, and exceptions not otherwise disclosed that may require consideration in negotiations; (2) easements, leases, or occupancies not disclosed by field examinations; and (3) tax liens, mortgages, deeds of trust, and other encumbrances, and attachments that may affect price negotiations. The Forest Service or the Office of the General Counsel may contract for title evidence, as agreed in each Region, locality, or case.

## **52 - Title Insurance**

The Office of the General Counsel prefers insurance policies to other forms of title evidence because they simplify title review. Use title insurance in all cases where it is obtainable locally at a reasonable price, especially for land on which the United States is likely to construct improvements. However, you should consider title insurance in relation to its cost which is based on the specified amount of liability, and such cost may be greater than for other types of acceptable title evidence. Also, consider that insurance policies do not always clearly define specific details, reservations, or outstanding rights in the title chain; or unconditionally guarantee valid title. When there are conditions in the title record against which the title company does not guarantee, obtain curative data to overcome the objectionable conditions.

Follow the Attorney General standards for limits of liability for certificates of title and title insurance policies.

1. Certificates or policies must not limit the liability of the title company to a sum less than 50 percent of the reasonable value of the property up to a value of \$50,000.

2. For acquisition valued at more than \$50,000, the limitation of liability of the issuing title company may be 50 percent of the first \$50,000, and 25 percent of that portion of the value in excess of that amount.

In land exchanges, the basis of the title company's liability is the value of the non-Federal land. Titles based on quitclaim or special warranty deeds must be for the full value of the land.

## **53 - Curative Action on Land Titles**

### **53.1 - Evidence of Adverse Possession**

Where evidence of adverse possession is necessary to establish or strengthen a title, it must include satisfactory affidavits of possession that shall:

1. Be executed by three or more reputable persons living in the vicinity of the land who have no interest in the sale of the property.

2. Identify the land and show the character, extent, and duration of possession for a period of time that is at least as long as the local statutory period of limitations, prescription, or adverse possession.

3. Fully set out all necessary facts and furnish convincing proof of the establishment of title by adverse possession under local law.

When the Forest Service is acquiring large properties that include smaller tracts that the vendor acquired separately the affidavits of adverse possession must relate specifically

to the component parts of such tracts and contain sufficient facts to establish adverse possession to each part. Establish similar evidence where the parcel being acquired was, or is, part of a larger tract upon which there was adverse possession for the requisite statutory period before severance of the parcel.

When two or more grants, patents, or transfers affect the same land, show the exact locations of the possession relied upon on a map and by the affidavits.

### **53.2 - Unrecorded Title Papers**

Submit any unrecorded title papers and copies of title opinions available to the vendor.

### **53.3 - Tenancy Agreement**

Whenever a third party, who may be a tenant or lessee of the vendor or a squatter, possesses or occupies any portion of an optioned or approved tract, secure a disclaimer of title. Use the tenancy agreement as shown in exhibit 01, or some other form the Regional Attorney outlines. Transmit this disclaimer to the Regional Attorney for placement in the title file.

After the occupancy term has expired and if a disclaimer has been obtained, the Forest Supervisor may allow the disclaimant to continue to occupy the land under special-use permit, if warranted by the circumstances and if in accordance with policy governing such use.

If the occupant refuses to disclaim, but asserts title to the property, request the non-Federal owner to eject the occupant. If peaceable ejection proves impracticable, the Forest Service may elect to drop the parcel occupied and claimed from the purchase. If it appears that the occupant's claim of adverse possession is insufficient to establish title to the land through prescription, the occupant may be made party to condemnation proceedings and the claim extinguished in that manner.

53.3 - Exhibit 01

Sample Tenancy Agreement

Forest Service  
United States Forest Service

Dear Sir:

I hereby certify that I am occupying a portion of the land located in Rocky County, SW1/4 Sec. 16, T. 4 W., R. 7 E., Eagle Meridian which is owned by John Doe. I am occupying this land as a tenant of John Doe for 12 months and at the expiration of such term I shall vacate said land, as I claim no interest therein.

Witness: \_\_\_\_\_ (Name) \_\_\_\_\_

\_\_\_\_ (Name) \_\_\_\_\_

#### **53.4 - Certificate of Possession**

Make reports on possession on Form FS-5400-37, Certificate of Possession, prepared and executed at the time the tract is examined, and submitted as part of the title docket to the Regional Attorney.

At the time of closing, the title evidence must include evidence that no adverse claimants are occupying the land and that no labor or material have been used or placed on the lands that might contribute to a mechanic's lien. Use Form FS-5400-38, supplemental Certificate of Possession, to meet these requirements. In every case, execute a supplemental certificate reflecting an examination, investigation, or inquiry as to possession, furnishing of materials or labor, at or subsequent to the date of recordation of the deed to the United States.

#### **53.5 - Certificate of Use and Consent**

Title is frequently acquired subject to outstanding mineral rights, water rights, ditches, road rights-of-way, telephone line or powerline rights-of-way, or other uses. Document that such outstanding rights have been administratively considered and found unobjectionable in the file, using Form FS-5400-29, Certificate of Use and Consent, signed by the Forest Supervisor or Acting. Support the documented decision with a thorough analysis.

#### **54 - Acceptable Deeds of Conveyance**

The Regional Attorney prepares deeds conveying title to the United States. When the Office of the General Counsel agrees, the Forest Service may expedite this transaction by preparing this instrument following previously approved formats.

##### **54.1 - General Warranty Deeds**

Conveyances to the United States should be a general warranty deed in which the grantor warrants or guarantees quiet possession and the title against defects. See Section 54.2 for those special circumstances where parties either lack authority or refuse to convey a warranty deed.

##### **54.2 - Quitclaim Deed, Special Warranty Deeds, and Deeds Without Warranties**

Quitclaim deeds, special warranty deeds, or deeds without warranties may be accepted from public authorities and others when approved by the Office of the General Counsel. Where such a deed is used, obtain an owner's title insurance policy indemnifying the Government to the full value of the land being acquired and the policy must not include a reservation because of the type of deed.