



# UPPER PENINSULA LAND CONSERVANCY

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## **Policy 9F: Title Investigation and Recording** *Standard 9F, 2017 Land Trust Alliance Standards and Practices; 2021 Accreditation Requirements Manual*

Board Approved: **May 12, 2011**

*Board Approved Revision: May 9, 2016*

*Board Approved Revision: February 27, 2018*

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### **PURPOSE**

The purpose of this policy is to ensure the Upper Peninsula Land Conservancy (UPLC) obtains adequate title for property UPLC intends to protect through fee-simple acquisition or conservation easement. Obtaining a title investigation, including title search, and promptly recording transaction documents ensures the following:

1. that UPLC is negotiating with all of the legal owner(s) involved in the transaction
2. that any liens, mortgages, mineral or other leases, water rights and/or other encumbrances, deed restrictions, or other matters of record that may affect UPLC's ability to protect the conservation values of the property are uncovered and evaluated
3. that closing documents are compliant with state and local requirements for recordable documentation

This policy outlines requirements for accompanying procedures, so that they align with Land Trust Alliance **Standard 9F**:

1. *Prior to closing and preferably early in the process, have a title company, or attorney investigate title for each property or conservation easement the land trust intends to acquire.*
  - a. *Update the title at or just prior to closing*
2. *Evaluate the title exceptions and document how the land trust addressed mortgages, liens, severed mineral rights and other encumbrances prior to closing so that they will not result in extinguishment of the conservation easement or significantly undermine the property's important conservation values.*



3. *Promptly record land and conservation easement transaction documents at the appropriate records office.*

## DEFINITIONS

***Down-dated Title Commitment:*** The title insurance commitment that brings the preliminary title commitment current for closing by investigating title from the date of the preliminary title commitment to a date that is not more than ten days prior to closing.

***Gap-Coverage:*** Additional title insurance coverage purchased for an additional premium that covers the period of time from the down-dated commitment through recording of the documents required by that commitment to insure title.

## REFERENCES

***Please refer to the accompanying Procedure, Procedure 9F: , for guidelines regarding execution of this policy.***

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## POLICY

### ***Summary:***

It is the policy of the Upper Peninsula Land Conservancy (UPLC) to obtain title commitment, which, of necessity, includes a title search and investigation of title, for lands UPLC plans to acquire in fee or place into a conservation easement. All transaction documents are to be promptly recorded by UPLC staff at the Register of Deeds office for the county where the land is located.

1. Title Investigation
  - a. Conservation Easements
  - b. Fee Simple
2. Acceptable Documentation of Title Investigation
3. Encumbrances
4. Recording



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## **1. Title Investigation**

Except in exceptional circumstances, a preliminary title commitment, which of necessity includes a title search and investigation of title, shall be obtained for the project property not less than 90 days before the anticipated closing date to allow time to fix any title defects. A down-dated title commitment will be required no more than ten days prior to closing, if the project is to proceed to completion. If exceptional circumstances require an adjustment to the aforementioned deadlines, the passing of a Board Resolution with the details of the circumstance will be required to proceed with the project. The Board Resolution will be kept on permanent files along with other critical project documentation.

UPLC shall use the preliminary title commitment to determine who owns the property, evaluate the title exceptions, legal access and if appropriate, public access, mortgages, liens, severed mineral rights, and other encumbrances prior to closing to ensure none of those things will result in UPLC not fulfilling its mission with respect to the property, undermine the property's important conservation values, or extinguish any conservation easement placed on the property.

### **a. Conservation Easements**

If a conservation easement is to be acquired by UPLC, the landowner shall be responsible for paying the fees associated with acquiring acceptable title documentation, title insurance, or an attorney's opinion on title, at UPLC's sole discretion. Except in exceptional circumstances, such as time sensitive transactions, the landowner shall be made aware of the deadlines with ample time to meet the deadlines of the preliminary title commitment and down-dated title.

If warranted by the circumstances, the landowner may be required to obtain "gap coverage" between the down-dated commitment and closing.

### **b. Fee Title**

If a property is to be acquired in fee by UPLC, through donation or partial donation, the landowner, at the landowner's expense, shall obtain preliminary, down-dated and, if deemed appropriate by UPLC, gap coverage title insurance covering the full land value and naming UPLC as the insured.

If a property is to be acquired in fee by UPLC and no donor is involved, UPLC shall acquire at UPLC's expense, preliminary, down-dated and, if deemed appropriate, gap coverage title insurance covering the full land value with UPLC named as the insured.





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### **2. Acceptable Documentation of Title Investigation**

Acceptable documentation of title investigation is limited to a title insurance commitment (preliminary, down-dated, and if deemed appropriate, gap coverage) and subsequent title insurance policy provided by a professional title company, or a title opinion rendered by an attorney who is qualified to render such an opinion.

### **3. Encumbrances**

Properties under consideration that are found to have mortgages, liens, severed mineral interests, or other encumbrances that could undermine the conservation values of the property, jeopardize the conservation easement placed on the property, or jeopardize UPLC's mission with respect to the property shall be subject to further legal review or rejection. Conversely, those properties under consideration with encumbrances determined not to cause those concerns or if encumbrances causing concerns can be subordinated to UPLC's interest in the property, will be deemed ready for Board approval, assuming all other project selection criteria are met.

Examples of title encumbrances or title issues subject to further legal review include:

- Mineral leases or severed mineral rights
- Mortgage
- Agricultural leases
- Ingress and Egress easements
- Power transmission lines and pipeline distribution easements
- Ownership structure
- Deed restrictions
- Railroad, street or other rights-of-way
- Home equity lines of credit
- Legal and public access

### **4. Recording**

All documents required to satisfy requirements of the title insurance commitments, or all documents required to close in accord with the attorney's opinion on title, shall be recorded



immediately after the closing, preferably by the title insurance company or the attorney that closes the transaction. If a title insurance company or attorney is not involved, all those documents shall be recorded by UPLC immediately after the closing. All documents must be recorded at the Register of Deeds office for the county where the land closed upon is located.

## **REVISIONS**

This policy should be reviewed by the Board of Directors on an annual basis. Any amendments must be approved by vote of the Board of Directors and will require a simple majority to be changed.