

## KEY POINT REVIEW

**Constructive notice** of a document is assumed when **due diligence** (such as a search of public records and inspection of the property) would reveal its existence. **Actual notice** means that an individual has **direct knowledge** of documents in the public records and facts revealed by an inspection of the property.

To serve as **constructive notice**, and provide **priority** over subsequent documents, a **written document** that affects an **estate, right, title, or interest in land** must be **drafted** and **executed** according to state law (**recording acts**) and must be **recorded** in the **public records** that are maintained by the designated **official**, such as the recorder of deeds, county clerk, or city clerk, in the **county** (or city) in which the **property is located**.

Public records are typically **searched** by **title companies** that provide **title insurance** to prospective purchasers based on what the search reveals.

**Unrecorded documents** that may affect title, such as a tax lien, may not be recorded immediately, yet are still given priority by law and require a search of tax records and other sources.

The **chain of title** is a record of property ownership, but it does not include liens and other encumbrances. A **gap** in the chain or other dispute of ownership creates a **cloud on the title**, which is resolved by a **suit to quiet title**.

An **abstract of title**, prepared by an **abstractor** or an **attorney**, is a **summary** report of what the title search reveals. It includes all **recorded liens and encumbrances** and lists **records searched** but does not indicate forgeries and interests that are unrecorded or could be discovered by property inspection.

A **marketable title** is one that a reasonably well-informed and prudent purchaser would accept because it does **not have serious defects** and does not rely on doubtful questions of law or fact to prove its validity, so that it does not expose the purchaser to litigation or threaten the purchaser's **quiet enjoyment** of the property.

**Title insurance** is issued as an **owner's policy** or **mortgagee's policy** and protects the insured from losses arising from defects in title and hidden defects, but it also identifies **exclusions** from coverage that typically include readily apparent title defects, zoning, and others.

The **Torrens system** provides a **certificate of title** issued by the county clerk that requires no further search to validate.