



TESTIMONY IN SUPPORT, WITH MODIFICATION, OF PROPOSED AMENDMENTS OF THE RIGHT-TO-KNOW LAW, ASSESSMENT, AND RECORDING STATUTES

Good morning, Chairman Metcalfe, Chairman Cohen, and committee members. I am Brett Woodburn, Chair of the Pennsylvania Bar Association, Real Property, Probate and Trust Law Section. I represent approximately 1,900 attorneys who are members of the Real Property Probate and Trust Law Section, many of whom will be impacted by these proposed amendments. On behalf of the Real Property, Probate and Trust Law Section of the PBA, we support, with modification, the amendments to the Right-to-Know Law that would clarify that recorders' of deeds records, delinquent and current real estate tax records, real estate tax assessment, and county and municipal geographic information system ("GIS") records are public records. We also support amendments to the Right-to-Know Law that will ensure that searching by name and/or address for the above records will remain available, and that no advance notice to the property owners is required before information can be received from those records.

It is critical that the right to have practical access to property records, including owners' names and addresses, be protected. In 2015, the Commonwealth Court held that under the Right-to-Know Law, public school employees are entitled to notice before their names and home addresses are disclosed.¹ If this right to notice would be applied to assessment records, county and municipal GIS information, building records, and records maintained by the taxing authorities and recorders of deeds across the Commonwealth, the ability to efficiently access public real estate records will be placed in jeopardy. Searching these records by name and/or address is an essential function for, among other things, performing title searches, for economic development and redevelopment, to obtain real estate tax records and payment certifications, and to facilitate code enforcement to address blight and other municipal purposes. The list of cases and authorities establishing the public nature of these records is legion. While limitations on formatting and other aspects of providing this information to individuals and entities that request these records in bulk is appropriate, we must not limit the right of practical access to these records.

Part of ensuring practical access to property records includes ensuring that any costs associated with accessing those records is reasonable. Without placing parameters on what constitutes "reasonable," these fees for access can become abusive, operating as either a tax to raise revenue or as a way to block or limit access to these records. While the Municipalities Planning Code does permit imposing and enacting fees, such fees must be related to the costs of the services provided. Municipalities are not permitted to use this authority to implement fees at a rate designed to generate revenue, or to frustrate or impede other lawful acts such as filing for zoning applications. Amendments to the Right-to-Know Law should define reasonable costs to be limited to recovering the costs associated with accessing the records. Moreover, many individuals will need to access these records only on an occasional or sporadic basis. Therefore,

¹ Pennsylvania State Educ. Ass'n ex rel. Wilson v. Com., 110 A.3d 1076 (Pa. Cmwlth).

requiring a subscription fee should be *optional* at the discretion of the user, not mandated by any agency or office.

The Section is not opposed to provisions that allow for higher rates and fees to be charged to individuals and entities that seek to use such information for general solicitation, or that are reselling the information in bulk. However, the definition of what constitutes “commercial purpose” as currently proposed is too broad and encompasses individuals and professions that are not reselling the information in bulk and that are not using the data for solicitation. Attorneys, title abstractors, and real estate licensees, for example, all access these records on a regular basis for their clients. Additionally, all are doing so as part of their businesses or professions, which are being pursued with the ultimate goal of making a profit. However, the manner in which attorneys, title abstractors, real estate licensees, and others who access these records as part of their professions and jobs use this information is divergent from how those who intend to use such data for solicitation, or who are reselling the information at a profit are using the records. For attorneys and real estate licensees, these records provide information that is essential to our professions; it is information that we are collecting for the benefit of our clients. Title abstractors are accessing and collecting this data at the behest of attorneys, title agents, lenders, real estate agents, et cetera, in response to a specific request. The data provided by these records is not being used en masse, is not be resold solely as a means for generating revenue. The result of imposing “additional fees” on attorneys, on title abstractors, on real estate agents, will effectively act as a bar to the general public; it will impede the ability of the average person to buy and sell real estate. It will function as a tax assessed in instances for which, in part, these records are maintained. The Section, on behalf of the PBA, will support provisions of SB 411 under which pricing for attorneys, title abstractors, real estate agents, and others who are not reselling the information in bulk, and who are not retrieving or using the information for purposes of general solicitation is lower than that which is charged to those who *are* reselling the data, or those who *are* using the information for general solicitation purposes.

The Real Property, Probate and Trust Law Section of the Pennsylvania Bar Association is comprised of attorneys from a wide array of practice areas. In addition to what one might consider as a ‘typical’ real estate attorney or ‘typical’ estate attorney, our Section includes attorneys whose practice is primarily focused on commercial matters; we have a large number of family lawyers; our members include attorneys who represent associations and corporations; and, of course, we have many, many attorneys who are solo or small firm practitioners – or more colloquially known as ‘general practitioners.’ Our Section was unanimous in its concerns over some of the proposed amendments. However, it was also unanimous with its overall support of the Bill. The changes and clarifications contained herein are, from our perspective, intended to better hone the proposed amendments in pending Senate Bill No. 411, Printer’s No. 332, Session of 2015. They will continue to give effect to the principles behind the Right-to-Know Law, and will also balance the rights of the people of the Commonwealth to access public information.

Accordingly, the Real Property, Probate and Trust Law Section of the Pennsylvania Bar Association supports, with modification, SB 411 and any similar legislation that clarifies that recorders’ of deeds records, delinquent and current real estate tax records, real estate tax assessment, and county and municipal GIS records are public records, and that ensures searching by name and/or address for the above records will remain available at a reasonable cost, and that no advance notice to the property owners is required before information can be obtained.

Thank you.