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Note

Address Confidentiality and Real Property Records: Safeguarding Interests in Land While Protecting Battered Women

Jonathan Grant*

Unable to sleep, Jane Doe, a Connecticut woman, left the bedroom she shared with her husband to sleep on the couch in their living room.¹ Later that night, her husband came out to the living room and said to his pregnant wife, “I should just take both of you out right now.”² The beating he delivered after those words sent Jane to the hospital.³ Years after the incident, Jane still feared her ex-husband, who continued to stalk her and even appear at her house periodically.⁴ After receiving help from a domestic violence center, Jane left her home to stay at a shelter and enrolled in her state’s Safe at Home Program.⁵ Through this program, designed to benefit victims of domestic violence and abuse, she was able to keep her address confidential and hide her location from her ex-husband.⁶ Jane later claimed this program “saved [her] life.”⁷

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1. Evan Lips, *Decisive Action Key After Domestic Violence; Connecticut Victim Urges Others To Seek Help*, MIDDLETOWN PRESS (Sept. 12, 2014), <http://www.middletownpress.com/general-news/20140912/decisive-action-key-after-domestic-violence-connecticut-victim-urges-others-to-seek-help>.

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*; see also CONN. GEN. STAT. §§ 54-240(e), (g)–(h) (2013) (providing program participants with an alternate mailing address through the secretary

Jane Doe's situation is by no means unique,⁸ and many states have recognized the value of providing battered women a way to keep their personal information private. Washington, in 1991, was the first state to enact an address confidentiality program,⁹ and the movement has continued to this day, with Kentucky passing legislation as recently as 2013.¹⁰ To date, over thirty states have instituted address confidentiality programs to protect victims of sexual assault, domestic abuse, and other crimes from perpetrators who track them through public records.¹¹ The programs vary from state to state, not only in their participation requirements but also in the degree of protection each state offers.¹²

Some states have given participants very broad protections, even extending to real property records.¹³ The expansion to include property records offers a great benefit to victims. Often victims must leave their homes to escape abusive situations, but under most statutes the confidentiality of a victim's address is not protected when the victim buys or sells real estate and records the conveyance documents in the county land records.¹⁴

of state and the ability to avoid listing an address on voter registry lists).

7. Lips, *supra* note 1.

8. See NAT'L CTR. FOR INJURY PREVENTION & CONTROLS, NATIONAL DATA ON INTIMATE PARTNER VIOLENCE, SEXUAL VIOLENCE, AND STALKING (2014), <http://www.cdc.gov/violenceprevention/pdf/nisvs-fact-sheet-2014.pdf> ("One in 4 women (22.3%) have been the victim of severe physical violence by an intimate partner . . .").

9. Jeffrey T. Even, *Washington's Address Confidentiality Program: Relocation Assistance for Victims of Domestic Violence*, 31 GONZ. L. REV. 523, 524 (1995–1996) ("In 1991, the Washington State Legislature created a unique program designed to assist victims of domestic abuse.").

10. 2013 Ky. Acts 462 (effective June 25, 2013) (codified at KY. REV. STAT. ANN. §§ 14.300–.318 (LexisNexis 2013)).

11. See Rebecca E. Shiemke, *Domestic Violence Legal Remedies in Other States*, MICH. B.J., Sept. 2011, at 36, 37 (describing protection options available for victims of domestic violence); *Address Confidentiality Programs*, NAT'L CTR. FOR VICTIMS OF CRIME, <http://victimsofcrime.org/our-programs/stalking-resource-center/help-for-victims/address-confidentiality-programs> (last visited Apr. 17, 2016) (listing each state that has an address confidentiality program).

12. See *Address Confidentiality Laws, by State*, NAT'L NETWORK TO END DOMESTIC VIOLENCE (July 2013), http://nnedv.org/downloads/SafetyNet/NNEDV_ACPCChart_2013.pdf.

13. See ARIZ. REV. STAT. ANN. § 11-483 (2012); MINN. STAT. §§ 5B.01–12, 13.045 (Supp. 2015); MINN. R. 8290.0100–.1500 (2015).

14. See, e.g., COLO. REV. STAT. § 24-30-2108(8) (2015); N.C. GEN. STAT. § 15C-8(h) (2015).

At the same time, however, the expansion to include real property records introduces significant concerns. Suppressing documents or even just certain information in documents detracts from an important goal of the country's land recording systems: to provide the public with notice of matters affecting property.¹⁵ The inability to know who owns a property and view all relevant documents represents a substantial defect or at least potential defect in title—a cloud on title—making it less attractive for parties to enter into transactions involving affected properties.¹⁶ The lack of notice presents an additional problem for these transactions, because notice determines the priority of conveyances and liens in most states.¹⁷

This Note argues that current statutory attempts to extend address confidentiality to real estate records are inadequate. Legislatures must find a solution that properly balances the interests of real estate recording systems and victims of domestic violence and that protects both interests as fully as possible. Part I of this Note presents a brief overview of the United States' property recording systems and describes the development of state address confidentiality programs. Part II analyzes state statutes extending confidentiality programs to real property records and discusses the tension between protecting victims of abuse and maintaining the integrity of land records. Part III suggests a legislative approach that will better protect victims whose abusers use public records to track them and that will also minimize the impact of these protections on the public notice provided by real estate records. This Note proposes an approach based on Minnesota's Safe at Home program,¹⁸ but suggests expanding the program's protections to other property-related records and recommends increased access to protected records for authorized parties.

15. See Chad J. Pomeroy, *A Theoretical Case for Standardized Vesting Documents*, 38 OHIO N.U. L. REV. 957, 969 (2012); John H. Scheid, *Down Labyrinthine Ways: A Recording Acts Guide for First Year Law Students*, 80 U. DET. MERCY L. REV. 91, 101–02 (2002); Charles Szypszak, *North Carolina's Real Estate Recording Laws: The Ghost of 1885*, 28 N.C. CENT. L.J. 199, 200 (2006) [hereinafter Szypszak, *North Carolina*].

16. A "cloud on title" is "a defect or potential defect in the owner's title to a piece of land arising from some claim or encumbrance." *Cloud on Title*, BLACK'S LAW DICTIONARY 311 (10th ed. 2014).

17. See 11 THOMPSON ON REAL PROPERTY § 92.08(b)–(c) (David A. Thomas ed., 3d Thomas ed. 2015) (explaining that nearly all states have notice requirements in their recording acts and that notice affects whether a subsequent purchaser can have priority).

18. MINN. STAT. §§ 5B.01–.12, 13.045; MINN. R. 8290.0100–.1500.

I. EXAMINING THE APPLICATION OF ADDRESS CONFIDENTIALITY PROGRAMS TO REAL ESTATE RECORDS

While recording statutes and real property records have a history reaching back several centuries, address confidentiality programs have been in effect for only a few decades. And it is only in the past several years that any state has taken the step of including real property records within the coverage of its address confidentiality program. This Part presents the current legal context of real property records and address confidentiality programs. Section A describes the development of recording acts and the purpose of the land records system in providing information about real property. Section B provides an overview of address confidentiality programs and the protections they provide for victims of domestic violence. Section C reviews the history and effect of state statutes that have extended the protections of address confidentiality programs to include real property records.

A. HISTORY AND PURPOSE OF RECORDING ACTS

The roots of modern recording acts reach back to the early days of English common law. Under English common law, parties transferred land through an “enfeoffment ceremony.”¹⁹ This process required that the grantor and grantee perform a ceremony on the land being transferred.²⁰ The grantor would make a symbolic transfer of the property through the “delivery of a twig, clod of dirt, or other token of seisin.”²¹ Title to the property transferred immediately upon completion of the ceremony.²² As a result, any later attempt to transfer an interest in the land was invalid, because the grantor no longer had any interest in the land.²³ From this legal conclusion, English courts developed the common law principle that the first grantee holds title free of any claims of the grantor’s later grantees.²⁴ This common law rule governing priority of transfers is often expressed by the maxim “first in time, first in right.”²⁵

19. 14 RICHARD R. POWELL, POWELL ON REAL PROPERTY § 82.01[1][a], LEXIS (Michael Allan Wolf ed., 2015).

20. *Id.*

21. *Id.*

22. *Id.*

23. *Id.*

24. *See id.*

25. *Id.*

This principle worked well for small communities in which land was rarely transferred.²⁶ Because of the significance of land in providing status and the tendency of people to live in the same location for generations, members of the local community knew who held title to what property.²⁷

Over time, statutes permitted sellers to convey property without performing the enfeoffment ceremony.²⁸ In addition, after the enactment of the Statute of Frauds in 1677, written documents were required to convey most property interests.²⁹ The ability to convey property without public knowledge, combined with an increasingly mobile population and the rising use of mortgages, rendered the "first in time, first in right" approach an ineffective tool for determining the priority of property interests.³⁰ Realizing that a public record would provide a better method to determine property ownership, England enacted the Statute of Enrollments in 1536.³¹ The statute required all conveyances of freehold interests to be transferred by a sealed writing enrolled in one of the King's courts.³² Grantors quickly discovered a way to circumvent this requirement, and the statute was largely ineffective.³³

The American colonies furthered England's attempts to establish a public record of land transfers by enacting recording statutes that encouraged the registration of land conveyances. Massachusetts instituted the first modern recording statute in 1640.³⁴ Unlike the English Statute of Enrollments, these acts

26. See Scheid, *supra* note 15, at 93–94.

27. See 14 POWELL, *supra* note 19.

28. The Statute of Uses, enacted in 1535, allowed owners to convey land in writing without the enfeoffment ceremony. See *id.*

29. *Id.* The Statute of Frauds established that certain oral promises would not be enforced; thus written contracts were needed to effectively transfer interests in land, enter leases, or grant trusts of land. Statute of Frauds 1677, 29 Car. 2, c. 3, §§ 1–9.

30. See 14 POWELL, *supra* note 19; see also Carol M. Rose, *Crystals and Mud in Property Law*, 40 STAN. L. REV. 577, 586 (1988) (noting that the "doctrine does little to put people on notice of who owns what, and the opportunities for conflicting claims are endless").

31. See Scheid, *supra* note 15, at 98.

32. *Id.*

33. See 14 POWELL, *supra* note 19. Generally parties would convey a one-year lease, followed by a release of the reversion to the lessee. Scheid, *supra* note 15, at 99. Through this two-step process, parties were able to transfer fee estates without needing to enroll the conveyance. *Id.*

34. See 14 POWELL, *supra* note 19, § 82.01[1][b]; Ray E. Sweat, *Race, Race-Notice and Notice Statutes: The American Recording System*, PROB. & PROP., May/June 1989, at 27, 27.

were successful, leading to extensive use of recording systems to catalogue conveyances of property.³⁵ Every state now has recording acts that govern the priority of transfers.³⁶

The British Statute of Enrollments and colonial recording laws appear to be what are now referred to as “race” statutes.³⁷ Under “race” statutes, the first purchaser to record a conveyance holds it against any others claiming title.³⁸ There are still a small number of states that employ “race”-style statutes.³⁹ A disadvantage of “race” recording acts is that they allow no room for error if a grantee forgets to record his interest or if a conveyance is lost or recorded in the wrong location.⁴⁰ The implication of such situations was “too much for the [British] courts of equity and too much for American legislatures as well.”⁴¹ To address this perceived problem, British courts introduced an idea of “notice” into their analysis of priority as early as the nineteenth century.⁴²

If there are prior conveyances, the requirement of “notice” allows a later purchaser to take free of those conveyances only if he had no knowledge of them.⁴³ Under this doctrine, knowledge can come from facts, in the property records as well as outside, that would put the purchaser “on notice” of the prior transfers.⁴⁴ This approach to evaluating the priority of land transfers has been widely accepted, and the vast majority of American states now employ recording acts that include a “notice” requirement.⁴⁵ Roughly half of the states employ recording acts characterized as pure “notice” statutes.⁴⁶ The remaining half of the states have “race-notice” recording acts.⁴⁷ Under

35. See Chad J. Pomeroy, *Ending Surprise Liens on Real Property*, 11 NEV. L.J. 139, 141 (2010).

36. *Id.* at 141 & n.5.

37. See Rose, *supra* note 30 (“Their literal language suggests they were versions of what has come to be called a ‘race’ statute . . .”).

38. 11 THOMPSON ON REAL PROPERTY, *supra* note 17, § 92.08(a) (“This type of recording act is called ‘race’ because it involves a race to record. The purchaser who wins the race prevails.”).

39. *Id.* (“Race recording acts of general application are found in only . . . Delaware, Louisiana, and North Carolina.”).

40. See Rose, *supra* note 30, at 586–87.

41. *Id.* at 587.

42. *Id.*

43. 11 THOMPSON ON REAL PROPERTY, *supra* note 17, § 92.08(b).

44. *Id.*

45. See *id.*

46. *Id.*

47. *Id.* § 92.08(c).

“race-notice” acts, just as with “notice” acts, the person seeking protection must be a “purchaser for value without knowledge or notice of the prior unrecorded claim.”⁴⁸ In addition, the purchaser must record the conveyance before a previous grantee.⁴⁹ While it is sometimes difficult to determine whether a statute is a “race-notice” act or a pure “notice” act, notice is an essential element in both.⁵⁰

Parties seeking the protection of “race-notice” or “notice” recording statutes are subject to several types of notice. A purchaser can be “put on notice” through actual notice or constructive notice.⁵¹ Actual notice is notice from personal knowledge of the existence of a prior claim.⁵² Constructive notice, in contrast, exists when a party is deemed to have notice of a prior interest regardless of any actual knowledge he may have.⁵³ Because a purchaser of property has a duty to search the real estate records, he is held to have notice of all facts “a reasonable title search of the public real estate records would have revealed.”⁵⁴ In addition, purchasers in many jurisdictions have a duty to inspect the property itself and will be deemed to have notice of anything such an examination would reveal.⁵⁵

The notice requirement illustrates a primary goal of recording systems: to provide people with information about property.⁵⁶ Scholars have noted that the “*raison d’être* of [recording] systems is to clarify and perfectly specify landed property rights for the sake of easy and smooth transfers of land.”⁵⁷ By specifying what claims parties may have to a property, recording systems decrease fraud and increase the marketability of properties.⁵⁸

48. *Id.*

49. *Id.*

50. *See id.* § 92.08(d) (“Although a statute on its face may appear to be one type or the other, judicial gloss may make appearances misleading.”).

51. *Id.* § 92.09(c).

52. *Id.* § 92.09(c)(1).

53. *See id.* § 92.09(c)(2).

54. *Id.* § 92.09(c).

55. *Id.* § 92.09(c)(3)(A).

56. Pomeroy, *supra* note 15.

57. *See* Rose, *supra* note 30.

58. *See* Szypszak, *North Carolina*, *supra* note 15, at 211 (“By making the public records a more reliable indication of ownership rights, the law unquestionably improved the marketability of North Carolina real estate in general.”).

Recording acts, however, do not perfectly achieve their goal of clarifying what interests affect property.⁵⁹ The American system of land records, unlike those of many other developed countries, does not provide comprehensive or guaranteed information about title to land.⁶⁰ Instead, it accepts and indexes documents and “relies on searchers to analyze what they find in the recorded documents and to reach conclusions about the status of the title.”⁶¹ The one exception to this principle is the Torrens system of property records, which only a handful of states currently use.⁶² Under the Torrens system, the government maintains official certificates—Torrens certificates—that definitively establish the state of title for a property.⁶³ A Torrens certificate typically includes a legal description, the names of the property’s owners, and a list of all documents affecting the property.⁶⁴ There are also many interests outside of property recording systems that affect real estate: notably judgment liens, mechanics liens, and probate proceedings.⁶⁵

B. ADDRESS CONFIDENTIALITY PROGRAMS

The first address confidentiality program designed to protect victims of domestic abuse was enacted by the Washington State Legislature in 1991.⁶⁶ Recognizing that victims of domestic violence often leave their homes to escape their attackers, the Washington Legislature developed a program that would

59. See Rose, *supra* note 30 (“[T]he Anglo-American recording system in fact has been a saga of frustrated efforts to make clear who has what in land transfers.”); Szypszak, *North Carolina*, *supra* note 15, at 207–11.

60. Dale A. Whitman, *Digital Recording of Real Estate Conveyances*, 32 J. MARSHALL L. REV. 227, 228 (1999).

61. *Id.*

62. Charles Szypszak, *Public Registries and Private Solutions: An Evolving American Real Estate Conveyance Regime*, 24 WHITTIER L. REV. 663, 673 (2003) [hereinafter Szypszak, *Public Registries*] (noting that while twenty states instituted a Torrens system of land registration, half have now repealed their statutes).

63. *Id.* at 670–72.

64. See, e.g., MINN. STAT. § 508.35 (2013) (specifying the form of the Minnesota Torrens certificate); *In re Morgeson*, 371 B.R. 798, 802 (B.A.P. 6th Cir. 2007) (“Under the Torrens system, the owners of registered land are issued a certificate of title, which contains a description of the registered parcel, along with memorials noting all liens, encumbrances and charges that bind the land.”).

65. See Szypszak, *North Carolina*, *supra* note 15, at 210 (explaining the effect of judgment liens, mechanics liens, tax liens, environmental liens, and probate proceedings on real property).

66. See 1991 Wash. Sess. Laws 228–35; Even, *supra* note 9.

provide participants a substitute address.⁶⁷ The Secretary of State maintains the substitute address and forwards mail to the participant, thus keeping his or her location confidential.⁶⁸ Initially the protections were only available to victims of domestic violence,⁶⁹ but the program now accepts victims of sexual assault, trafficking, and stalking as well.⁷⁰

Domestic violence and stalking continue to be a major problem for communities across the country.⁷¹ The CDC estimates that nearly a quarter of women “experienced at least one act of severe physical violence by an intimate partner during their lifetimes,” with significant numbers of women reporting that they had been hit or thrown against something.⁷² Tragically, nearly 9% of women are estimated to have been raped by an intimate partner and over 15% subjected to other forms of sexual violence.⁷³ In addition, nearly half of female victims “experienced at least one act of psychological aggression by an intimate partner during their lifetimes.”⁷⁴ While fewer women have been affected by stalking than domestic violence, “an estimated 15.2% of women . . . have experienced stalking during their lifetimes that made them feel very fearful or made them believe that they or someone close to them would be harmed or killed.”⁷⁵

67. See 1991 Wash. Sess. Laws 228–35 (“The legislature finds that persons attempting to escape from actual or threatened domestic violence frequently establish new addresses in order to prevent their assailants . . . from finding them.”); Even, *supra* note 9 (describing the mechanism by which the program protects participants’ addresses). The substitute addresses were used for “drivers’ licenses, library cards, public utility billings, birth records, traffic tickets, parking tickets, motor vehicle registrations, . . . employment security, worker’s compensation, . . . school/college records, state loans/grants, court actions against their abuser, and other court and governmental records.” *Id.* at 529.

68. Even, *supra* note 9. The protections of the Washington statute also provided confidentiality for otherwise public voting and marriage records. See *id.* at 537–39.

69. WASH. REV. CODE § 40.24.30(1)(a) (1991).

70. WASH. REV. CODE § 40.24.30(1)(a)(i) (2014).

71. See generally Matthew J. Breiding et al., Ctrs. For Disease Control & Prevention, *Prevalence and Characteristics of Sexual Violence, Stalking, and Intimate Partner Violence Victimization—National Intimate Partner and Sexual Violence Survey, United States, 2011*, MORBIDITY & MORTALITY WKLY. REP., 2014, at 1, <http://www.cdc.gov/mmwr/pdf/ss/ss6308.pdf>.

72. *Id.* at 9 (estimating the number of women who had experienced at least one act of severe physical violence to be 22.3%).

73. *Id.*

74. *Id.* at 10 (estimating the number to be 47.1% of women).

75. *Id.* at 6. Stalkers engage in a wide range of concerning activity, but

While there are several courses of action available to women who are victims of domestic violence or stalking, in some cases the only way to end the abuse or stalking is to escape.⁷⁶ In 1995, Joan Zorza, the founding editor of *Domestic Violence Report*⁷⁷ and *Sexual Assault Report*,⁷⁸ wrote that “most of battered women’s attempts to extricate themselves from abusive relationships are not adequately supported by police, courts, or legislators.”⁷⁹ Since 1991, over thirty state legislatures have recognized that need and adopted address confidentiality programs to help victims of domestic violence escape their abusive situations.⁸⁰ Since their adoption, address confidentiality programs across the country have served and continue to serve thousands of individuals, including over 7,000 in California since 1999,⁸¹ and currently around 2,000 in Minnesota,⁸² 990 in North Carolina,⁸³ and 2,500 in Colorado.⁸⁴

Unfortunately, abusers who are determined to track their victims have a number of resources at their disposal, including

the most prevalent actions include: approaching their victims at the victims’ home or work, leaving text and voice messages, videotaping their victims, and even tracking them through the use of GPS. *Id.* at 8.

76. Kristen M. Driskell, *Identity Confidentiality for Women Fleeing Domestic Violence*, 20 HASTINGS WOMEN’S L.J. 129, 130 (2009).

77. See 1 DOMESTIC VIOLENCE REP. 2 (1995) (listing Joan Zorza as editor of the first volume).

78. *Sexual Assault Report*, CIVIC RESEARCH INST., <http://www.civicrosearchinstitute.com/sar.html> (last visited Apr. 17, 2016).

79. Joan Zorza, *Recognizing and Protecting the Privacy and Confidentiality Needs of Battered Women*, 29 FAM. L.Q. 273, 280 (1995).

80. See Shiemke, *supra* note 11, at 37 (writing in 2011 that “[t]hirty-two states have passed laws establishing address confidentiality programs to help domestic violence victims who need to relocate and keep their location confidential”); *Address Confidentiality Programs*, *supra* note 11 (providing a list of each state with an address confidentiality program). On January 1, 2016, Iowa became the thirty-fourth state to institute an address confidentiality program. Press Release, Office of the Iowa Sec’y of State, Applications Now Accepted for Safe at Home; Statewide Program Launches Jan. 1 (Dec. 21, 2015), https://sos.iowa.gov/news/2015_12_21.html.

81. *Safe at Home*, CAL. SEC’Y OF STATE, <http://www.sos.ca.gov/registries/safe-home> (last visited Apr. 17, 2016).

82. See Joni Astrup, *Secretary of State Simon Talks with Local Chamber*, STAR NEWS (June 25, 2015, 10:48 AM), <http://erstarnews.com/2015/06/25/secretary-of-state-talks-with-local-chamber>.

83. *Address Confidentiality Program*, N.C. DEPT OF JUST., <http://www.ncdoj.gov/Help-for-Victims/Domestic-Violence-Victims/Address-Confidentiality-Program.aspx> (last visited Apr. 17, 2016).

84. *Address Confidentiality Program*, COLO. DIV. OF CENT. SERVS. (Aug. 2015), <http://www.colorado.gov/pacific/sites/default/files/ACP-Fact%20Sheet-2015-Final.pdf>.

school, medical, postal service, department of motor vehicle, and voter registration records.⁸⁵ Not all states with address confidentiality programs offer the same degree of protection against such dangers.⁸⁶ Moreover, under many statutes a victim's address is not protected when the victim transfers real estate and records documents in the county land records.⁸⁷ The lack of confidentiality for county land records in most address protection statutes exposes program participants to a great risk of being discovered. Often victims of domestic violence are forced to leave their homes to escape abuse and have to find another place to live.⁸⁸ Yet, under most address confidentiality statutes, victims cannot purchase real estate without exposing their information in the county land records.⁸⁹

Even in states where address confidentiality programs may be limited in scope, the programs complement a number of other resources available to victims of domestic violence.⁹⁰ States often have domestic violence shelters where victims of domestic abuse can stay, and these shelters will often keep their locations confidential.⁹¹ In addition, non-profit organizations often have programs that provide counseling, 24-hour hotlines, and advocacy for victims of domestic violence.⁹²

85. See Zorza, *supra* note 79, at 283–89.

86. See *Address Confidentiality Laws, by State*, *supra* note 12 (providing an overview of the programs offered by each state). Rhode Island only provides confidential voter registration, 17 R.I. GEN. LAWS § 17-28-1 (2013), and requires a restraining order or no contact order to qualify, *id.* § 17-28-2(c). In contrast, Arizona provides a substitute address, confidential motor registration and voter registration, county assessor and treasurer confidentiality and county recorder confidentiality. *Address Confidentiality Laws, by State*, *supra* note 12.

87. See, e.g., COLO. REV. STAT. § 24-30-2108 (2015); N.C. GEN. STAT. § 15C-8(h) (2015).

88. Driskell, *supra* note 76 (“[E]scape and establishment of a new identity may be the only way for some victims of domestic violence to break free from the cycle of abuse.”).

89. If the victim wishes to receive the protections of the recording act in her state, she must record, but most states do not include real property records within the protections of their address confidentiality programs. See, e.g., COLO. REV. STAT. § 24-30-2108; N.C. GEN. STAT. § 15C-8(h).

90. See, e.g., Kellie Wingate Campell, *Victim Confidentiality Laws Promote Safety and Dignity*, 69 J. MO. B. 76, 77–81 (2013) (explaining resources available to victims in Missouri: redaction of information from court records, confidentiality for domestic violence shelters and rape centers, and an address confidentiality program).

91. See, e.g., Zorza, *supra* note 79, at 282 (discussing the importance of keeping addresses of shelters for battered women confidential).

92. See Lips, *supra* note 1.

C. HOW DO ADDRESS CONFIDENTIALITY PROGRAMS APPLY TO REAL ESTATE RECORDS?

Most address confidentiality programs across the United States stop short of protecting real estate conveyances involving victims of domestic abuse.⁹³ Minnesota's Safe at Home program, however, illustrates how address confidentiality programs can protect the real property records of program participants.⁹⁴ The Minnesota State Legislature established its Safe at Home program in 2006 to protect victims of domestic violence, sexual assault, and stalking from being found by their assailants.⁹⁵ The program initially provided participants with voter registration confidentiality and a substitute address, which they can present to "any person."⁹⁶ The legislation was very successful, serving over 2,000 people in the first six years of the program.⁹⁷ As of 2012, the participants were largely children and adult women.⁹⁸

In 2013, the Minnesota Legislature voted to increase the program's protections.⁹⁹ The amendment allows a participant to submit a notice that the individual is certified in the program to any government entity.¹⁰⁰ Consequently, any of that individual's "identity and location data" held by the entity cannot "be shared with any other government entity, or disseminated to any person."¹⁰¹ Though no one considered it at the time, this provision had serious ramifications for Minnesota's recording system.¹⁰² If a program participant were to submit a notice to a county recorder, the recorder would not be able to disclose the name, legal description, or address information on a recorded document that involved the individual.

93. See, e.g., COLO. REV. STAT. § 24-30-2108; N.C. GEN. STAT. § 15C-8(h).

94. MINN. STAT. §§ 5B.01–13, 13.045 (Supp. 2015); MINN. R. 8290.0100–1500 (2015).

95. 2006 Minn. Laws ch. 242.

96. *Id.* § 5 (use of substitute address), § 6 (voter registration confidentiality).

97. See Ruben Rosario, *To Keep These Victims at Home, Keep Their Homes Secret*, PIONEER PRESS (Mar. 30, 2013), <http://www.twincities.com/2013/03/30/ruben-rosario-to-keep-these-victims-at-home-keep-their-homes-secret>.

98. *Id.*

99. 2013 Minn. Laws ch. 76.

100. *Id.* § 6.

101. *Id.* "[I]dentity and location data' means any data that may be used to identify or physically locate a program participant" *Id.*

102. Audio Recording: Committee Hearing of the Committee on Civil Law, held by the Minn. House of Representatives (Mar. 26, 2014), <http://www.house.leg.state.mn.us/audio/mp3ls88/civil032614.mp3>.

To address this problem, individuals from the office of the Secretary of State, the Hennepin County Examiner of Titles, the Minnesota Land Title Association, the Minnesota County Recorders Association, and the Hennepin County Bar Association worked to develop a new amendment, which they presented in early 2014.¹⁰³ The new amendment added a special notice requirement specifically for participants who want their confidentiality to extend to real property records.¹⁰⁴ In addition, the amendment allows county recorders to include name information alone in the grantor-grantee index for property records, and the property information alone in the tract index.¹⁰⁵ As a result, parties searching either index will find documents involving the protected individual, but they will have to request the complete documents directly from the secretary of state.¹⁰⁶ Significantly, the new amendment provides, “[n]otice that a document or certificate is private and viewable only” upon request from the secretary of state “is deemed constructive notice of the document or [Torrens] certificate.”¹⁰⁷

The Minnesota Safe at Home statute represents a positive step toward protections that will allow victims of domestic violence and stalking to gain new independence by purchasing property. The series of amendments to the statute, however, show the problems involved in expanding address confidentiality programs to include real property. As the next Part of this Note will demonstrate, Minnesota’s recently expanded Safe at Home program offers a helpful template for other states that wish to better protect vulnerable individuals. Before any state applies that template, its legislature should modify the statute to include more thorough protections for program participants and more effective access for authorized parties.

103. See *Meeting Minutes of Committee on Civil Law*, MINN. HOUSE OF REPRESENTATIVES (Mar. 26, 2014), http://www.house.leg.state.mn.us/cmte/minutes/minutes.aspx?comm=88003&id=5555&ls_year=88.

104. 2014 Minn. Laws ch. 173, § 2, subdiv. 2.

105. *Id.* at subdiv. 4a.

106. *Id.*

107. *Id.*

II. CURRENT ADDRESS CONFIDENTIALITY STATUTES DO NOT ADEQUATELY PROTECT AT-RISK INDIVIDUALS AND IMPOSE UNNECESSARILY SEVERE BURDENS ON REAL PROPERTY RECORDS SYSTEMS

Both real estate records systems and address confidentiality programs protect important public interests. Because the inclusion of real estate records in the protections of address confidentiality programs is a very recent development, it is important to evaluate whether current legislative schemes adequately protect these two interests and what steps can be taken to ensure better protections in the future. This Part considers the benefits and shortcomings of expanding address confidentiality programs to include real property records as a way to protect victims of domestic violence, abuse, and stalking from those who use public records to pursue them. Section A examines the tension between protecting victims of abuse and maintaining the integrity of land records. Section B discusses the advantages currently afforded by address confidentiality programs that include real property records. Section C addresses significant problems with current statutes, specifically in providing (1) deficient protections for program participants and (2) overbroad restrictions on recording systems. This Part concludes that while statutes like Minnesota's Safe at Home statute provide beneficial protections to victims of abuse, they do not sufficiently protect program participants in real estate matters, and they fail to adequately provide for the interests of real property recording systems.

A. THE IDENTITY PROTECTION OBJECTIVE OF ADDRESS CONFIDENTIALITY PROGRAMS UNDERMINES THE NOTICE FUNCTION OF REAL PROPERTY RECORDS

There is an unavoidable conflict between the goals of address confidentiality programs and those of property recording systems. When location and identity information are suppressed in real estate records, the consequences extend beyond just program participants. Any attempt to lessen these external effects, however, will weaken protections for victims. By making concessions that balance the interests of address confidentiality programs with those of real estate recording systems, legislators can secure the most important elements of each. This Section will detail the issues involved when address confidentiality programs expand to include real property records. It will also discuss possible approaches to resolving these issues

while still protecting the essential interests of both address confidentiality programs and real estate records systems.

1. Problems Involved When Legislatures Apply Address Confidentiality Programs to Real Estate Records

The primary purpose of address confidentiality programs is to protect the location of victims of domestic abuse, sexual assault, and stalking from those who attempt to find and harm them.¹⁰⁸ Many programs accomplish this by issuing substitute addresses for participants to use in place of their residence addresses.¹⁰⁹ This method works for most of the situations in which a person might disclose their location information. In some cases, though, information about an individual's location can be communicated in other forms. Most people are familiar with GPS as a means of identifying a specific point on the earth's surface. Land records do not yet use GPS coordinates to fix boundaries, but the section-township-range or lot and block designations of most legal descriptions can narrow down a location to a very small and very specific area.¹¹⁰ Parcel numbers are equally precise and are often used for tax, and occasionally recording, purposes.¹¹¹

The substitute address approach of many address confidentiality programs will not affect this type of location data, because it is not expressed as a mailing address. In fact, some property locations may not even have mailing addresses. When, however, an address confidentiality program seeks to protect not only address information but location information generally, it impacts these other types of location data as well, because they are all then included within the program's scope. Such an expansion of protections (1) raises concerns about all property in a given county; (2) impacts the priority of conveyances; and

108. See MINN. STAT. § 5B.01 (Supp. 2015); Even, *supra* note 9.

109. See, e.g., MINN. STAT. § 5B.05; N.J. STAT. ANN. § 47:4-6 (West 2014); Even, *supra*, note 9.

110. See ROGER BERNHARDT & ANN M. BURKHART, REAL PROPERTY IN A NUTSHELL 325-28 (6th ed. 2010) (describing several different forms of legal descriptions).

111. See VA. CODE ANN. § 17.1-252 (2015) ("Circuit court clerks in those localities with a unique parcel identification system shall require that any deed . . . bear, on the first page of the deed or other instrument, or state in the cover sheet submitted with the deed or other instrument, the tax map reference number or numbers, or the parcel identification number (PIN) or numbers, of the affected parcel or parcels.").

(3) even affects government-provided certificates of ownership. This Subsection will examine each of these issues in turn.

a. Clouds on Title

When address confidentiality programs attempt to protect all of the different types of location data connected to participants, they have a significant effect on local property interests. In addition to the property interests of those enrolled in the program, this expanded scope has an effect on every property owner in the counties where enrollees reside. Unlike other public records in which individuals provide certain information to the government, property records are intended for the use and benefit of the general public.¹¹²

When a program participant purchases, sells, mortgages, or otherwise disposes of a property interest and can require the county recorder not to reveal the location of the property, the document offers very little helpful information to others in that county. People can learn who granted or received the property, but they do not know where exactly the property is located. Minnesota's statute prior to its amendment obscured even more information in participants' property records.¹¹³ In addition to prohibiting county recorders from revealing location information, the statute also barred the release of identity information, including names.¹¹⁴ As a result, the only thing a member of the public could learn is that some unknown person sold some unknown property somewhere in the county, though even the fact that it is within the county might not be verifiable.¹¹⁵

In addition to providing no information about what property interests the individual conveyed or received, the lack of location information creates a risk for every piece of property within the county. Because there is no way to know the location without a legal description, any later buyer or mortgagee has to

112. See Scheid, *supra* note 15, at 101; Szypszak, *North Carolina*, *supra* note 15 (explaining that public notice of interests affecting real property is an important goal of recording statutes and the real property records); see also Charles Szypszak, *Real Estate Records, the Captive Public, and Opportunities for the Public Good*, 43 GONZ. L. REV. 5, 5 (2007–2008) [hereinafter Szypszak, *Real Estate Records*] (“Public records provide those who acquire real estate interests with a means of giving public notice of their rights.”).

113. See MINN. STAT. § 13.045 (Supp. 2015).

114. *Id.* at subdiv. 3 (“[P]rivate or confidential location data on a program participant who submits a notice . . . may not be shared with any other government entity or nongovernmental entity . . .”).

115. See *id.*

assume the worst and account for the risk that the property they are interested in may be affected.¹¹⁶ This cloud on the title of every property in the county will reduce the marketability of all properties in the county, making the land less valuable.¹¹⁷ When one participant can have this type of effect on an entire county, the risk will only increase as more participants engage in more conveyances.

b. Recording Issues

Protecting all location information will also have a significant effect on the property interests of program participants themselves. The most effective way to avoid having one's name and location information in the property records after purchasing property is never to record the documents involved in the transaction. In general, this does not make the conveyance invalid or deprive the recipient of any interest in the property.¹¹⁸ A problem arises, however, as a result of the recording acts each state has enacted.¹¹⁹ If the grantor were later to give the same interest to someone else who did opt to record, the original grantee would have received nothing.¹²⁰ It is unlikely anyone would accept the substantial risk of losing a house or land by deciding not to record. As a result, any address confidentiality program that seeks to enable victims of domestic violence to relocate by purchasing property should be careful to protect lo-

116. If a document has been recorded in a certain county but has a redacted legal description, there is no way to determine what property the document affects. It could relate to any piece of property in the county, or it might not even be for a property in the county.

117. See Szypszak, *North Carolina*, *supra* note 15, at 211 (“[M]aking the public records a more reliable indication of ownership . . . improved the marketability of North Carolina real estate.”).

118. See HERBERT THORNDIKE TIFFANY, 5 *THE LAW OF REAL PROPERTY* § 1262 (Basil Jones ed., 3d ed. 1939) (“[A] failure to record the instrument in no way affects the passing of title as between the parties thereto.”). There are, however, a small number of jurisdictions in which a deed must be recorded to effectively transfer title. See *id.* § 1262 & nn.40, 40.10 (Supp. 2015).

119. See Szypszak, *Real Estate Records*, *supra* note 112, at 7 (“Although real estate law is fundamentally the same across the United States, individual state laws govern . . .”).

120. Whether in a race, race-notice, or notice state, the subsequent purchaser would have priority over the victim who did not record. In a race state, he would have recorded first and thus would have met the requirement to have priority. In a notice state, he would have recorded without notice of the victim's purchase, thus obtaining priority over the victim's interest. And finally, in a race-notice state, he would have recorded first and without notice of the previous purchaser's interest, therefore he would have priority.

cation information in the property records in such a way that participants receive the protection of the state's recording act.

A program that requires recorders to redact location information will have a far greater impact in notice and race-notice states than it will in pure race states. In race jurisdictions, the lack of a legal description viewable by the general public will not affect conveyance priority; all that matters is that the document is recorded before those from any other transfer of the property.¹²¹ This still presents a cloud on the title of all other property in the county, but the program participant is at least able to record his or her conveyance document and take advantage of the protections of the recording statute. Because only a few states have pure race statutes, the more important outcome is what happens for a program participant under notice or race-notice recording acts.¹²²

In a pure notice jurisdiction, any subsequent purchaser must take the property without notice of any earlier claims in order to have priority over those claims.¹²³ Recording a document will generally give a grantee strong protection against later claims, since any recorded document is generally considered to provide constructive notice of its contents.¹²⁴ Redacting a document or preventing the public from viewing a document, however, causes problems for this idea of notice. If a buyer examining title cannot search for or read a legal description involving the property he is trying to examine, he cannot know what property that document affects and cannot have notice of the conveyance. As a result, that buyer will satisfy the recording act's requirement that he not have notice of the prior claim, and he may be able to gain priority despite the program participant's recording.¹²⁵ Actual notice will certainly not exist, because the buyer has not been able to see what property is affected and can likely not even find the document.¹²⁶ Constructive notice may also be a problem, since the buyer could not have found the information through a reasonable search of the real estate records.¹²⁷ Without anything to point

121. 11 THOMPSON ON REAL PROPERTY, *supra* note 17, § 92.08(a).

122. *See id.* (only three states employ race recording acts).

123. *See id.* § 92.08(b)-(c).

124. *Id.* § 92.09(c).

125. *See id.* § 92.08(b) (explaining the operation of notice recording acts).

126. "Actual notice" is "notice from the subsequent purchaser's actual knowledge of the prior interest." *Id.* § 92.09(c).

127. "Constructive notice" deems a subsequent purchaser "to have notice of all facts that . . . a reasonable title search of the public real estate records

the buyer to the document, he cannot be responsible for knowing what it contains.

A race-notice recording act raises many of the same concerns. Yet in a race-notice jurisdiction a program participant is better protected. A redacted document still provides no notice to a later purchaser, which satisfies one requirement to obtain priority, but any later purchaser must also record first.¹²⁸ To benefit from a race-notice statute, therefore, a participant must record before any subsequent purchaser, because she will have no means of providing notice after the conveyance document is suppressed.

If address confidentiality programs wish to protect participants more effectively, they must find a way to provide third parties with notice while still restricting the actual location information of the individual enrolled in the program. How recorders index and make such documents viewable will significantly affect what type of notice other parties receive and, as a result, how successful transaction documents will be in transferring property interests when at least one is a participant in a state address confidentiality program. If documents can be indexed in such a way that a search will indicate a certain legal description is affected by the program, parties would at least have notice that further inquiry is necessary.¹²⁹ This constructive notice would protect program participants by fulfilling the notice requirements of a recording statute. Such a structure would also protect buyers by informing them of potential interests affecting the properties in which they are interested.

c. *Torrens Registration System*

While not many states employ a Torrens registration system for property,¹³⁰ an address confidentiality program that seeks to include land records in those few states will have to address the information included on Torrens certificates in addition to that contained in indices and recorded documents. Because Torrens certificates list all documents currently affecting

would have revealed." *Id.*

128. *See id.*

129. *See Szypszak, North Carolina, supra* note 15, at 224 (referencing a South Carolina Supreme Court decision holding that a document "binds a purchaser only "if enough is disclosed by the index to put a careful and prudent examiner upon inquiry, and if upon such inquiry the instrument would be found" (quoting *Dorman v. Goodman*, 196 S.E. 352, 355 (N.C. 1938))).

130. *See Szypszak, Public Registries, supra* note 62 (noting that only about ten states still employ a Torrens system for land registration).

a property, merely redacting the legal description on the certificate will not protect the owner.¹³¹ Anyone can pull up past documents memorialized on the certificate and see what land they affect. To address this issue, any index providing the name of the owner would have to indicate only that the individual held property covered by a Torrens certificate. Likewise a search for a specific legal description should be limited to say that such a property was registered under the Torrens system. If a searcher were able to access a certificate, even with the owner's name redacted, it is likely there would be recent documents executed by the owner listed on the certificate. As a result, anyone examining the certificate could likely discover the current owner. Even if access to the certificate itself is blocked, any searcher would have notice, but he would have to submit a request for further information about the records in order to see the details of the certificate.

2. Available Approaches To Address the Conflict Between Protecting Program Participants and Maintaining the Stability of the Land Records

Given the opposing goals of address confidentiality programs and real property records, no solution will be able to fully satisfy the objectives of both. As in many other areas of the law, legislatures must look for a balance. Of course, the address confidentiality programs of nearly all states do not currently protect participants' information in property records.¹³² By refraining from doing so, legislatures maintain the stability of the land records system in their states. Yet at the same time, those legislatures allow difficulties to continue for victims of domestic violence or stalking who attempt to escape by relocating and purchasing a home.

An alternative is to formulate an approach, as Minnesota has done, that secures the most important aspects of both victim protection through confidentiality and certainty of property rights through public property records.¹³³ An approach that balances the most important elements of each system will require concessions, but there is precedent for that on both sides. Most address confidentiality programs allow disclosure of address or

131. See *In re Morgeson*, 371 B.R. 798, 802 (B.A.P. 6th Cir. 2007) (describing the contents of a certificate of title).

132. See *Address Confidentiality Laws, by State*, *supra* note 12.

133. MINN. STAT. §§ 5B.01-.12, 13.045 (Supp. 2015); MINN. R. 8290.0100-.1500 (2015).

location information to law enforcement, by court order, and, in some situations, for child custody cases.¹³⁴ These exceptions show a willingness to compromise program participant confidentiality in favor of other important interests. Maintaining the integrity of the land records system is certainly a significant interest, especially because it benefits program participants as well.

Property records systems have made similar concessions. There are a number of interests that cannot be found by searching recorded documents.¹³⁵ These interests do, however, still affect property, and parties must account for them when participating in real estate transactions.¹³⁶ While the common exceptions to recording acts do not involve redacted or limited information in documents that have been recorded, such changes would not impede the overall functioning of states' recording systems. The number and impact of program participants is likely to be small, so a system that accounts for location confidentiality will likely not detract strongly from the goals of current property records.¹³⁷

B. CURRENT STATUTES ALLOW PROGRAM PARTICIPANTS TO RELOCATE WHILE PROVIDING FOR THE CONTINUED OPERATION OF REAL PROPERTY RECORDS SYSTEMS

Because Minnesota's Safe at Home program grants broader protections than those of other states, this Section will start with Minnesota's statute as a model and examine the benefits of the program. Specifically, this Section will analyze what portions of the Minnesota statute successfully support the interests of the real estate system and the state's Safe at Home program and, as a result, should be followed by other states looking to expand the protections of their address confidentiality programs to real property records.

134. See, e.g., MINN. STAT. § 13.045, subdiv. 3 (court order and law enforcement); *Falconi v. Sec'y of State of Nev.*, 299 P.3d 378, 380 (Nev. 2013) (“[T]he rights of a custodial parent to know where his or her child resides must be balanced against the important state interest in protecting victims of domestic violence served by the state’s fictitious address program.”).

135. See Szypszak, *North Carolina*, *supra* note 15, at 210 (explaining the effect of judgment liens, mechanics liens, tax liens, environmental liens, and probate proceedings on real property).

136. *Id.*

137. In an article from 2013, Minnesota's Safe at Home program was reported to have provided protection for over 2,000 participants. Rosario, *supra* note 97. It reported that at “the end of 2012, roughly 1,215 . . . are enrolled in 518 households across the state.” *Id.*

1. Benefits for At-Risk Individuals

The greatest benefit Minnesota's program provides to those who have been victims of domestic abuse or stalking is the ability to protect not just their personal addresses but all information related to their location.¹³⁸ As noted previously, there are a number of different types of information that might disclose the location of an individual enrolled in an address confidentiality program. Most situations involve a victim's postal address, and Minnesota allows, as do many other states, participants to use a substitute address.¹³⁹ Minnesota also allows participants to protect their location even in cases where other types of location data are required.¹⁴⁰ In these instances, victims must still provide the data, but government agencies are required to keep that information confidential.¹⁴¹

As a result of the broad scope of Minnesota's Safe at Home program, participants can purchase and finance their own homes without the risk of their abusers discovering their location through the documents recorded as part of the transaction.¹⁴² This ability offers a much better option than the alternatives and fulfills the purpose stated in the name of the program by allowing participants to be safe in their homes.

Without a provision protecting location information in property records, victims of domestic violence face substantial risk in purchasing a home and exposing their location to their abusers. As discussed above, one option is to purchase a house but never record the conveyance documents. This approach protects individuals from being found, but it also exposes them to the risk that their conveyance may later be superseded if another party purchases the same interest and does record. Another option might be for the individual to find a third party to purchase and hold the house for her. This alternative still holds substantial risk for the victim, who must trust the third party to act in the victim's best interest. A victim is more likely to trust someone familiar, like a relative or close friend; although anyone determined to track the victim will likely know the per-

138. See MINN. STAT. § 13.045 (Supp. 2015).

139. *Id.* § 5B.05(a).

140. *Id.* § 13.045.

141. *Id.* at subdiv. 2.

142. See *id.* at subdiv. 4a(a) (requiring that recorded documents not be displayed in such a way that location and identity information are both viewable at the same time).

son's friends and family and would be able to find any conveyance by those parties as well.

Another potential approach is for a victim to change his or her name and social security number.¹⁴³ By changing this information, no documents recorded to finalize a home purchase will alert abusers or stalkers to the victim's location, because they will not know to look for the victim's new name and social security number. Another consequence of the name change, however, is that the victim will lose all work and credit history.¹⁴⁴ As a result, the individual will find it difficult to obtain financing for the property.¹⁴⁵ This method does effectively hide the victim from pursuers, but it also severely handicaps the person's ability to carry on with his or her life.

Another similar alternative is for the victim to form a legal entity, such as an LLC or an S corporation, through which she can purchase property and obtain financing. This option achieves the desired protection by hiding the identity of the owner in any transactions. On the other hand, it exposes the individual to additional costs. It may be difficult to obtain a loan on favorable terms for the entity, legal counsel may be required to set up the entity, and the entity must pay formation and filing fees.¹⁴⁶ These added costs and extra steps likely prohibit most victims from pursuing this option when purchasing a home.¹⁴⁷ In addition, the name of the victim may still be con-

143. See Driskell, *supra* note 76.

144. *The Cost and Impact of Crime: Understanding the Financial and Human Impact of Criminal Activity: Hearing Before the S. Comm. on the Judiciary*, 109th Cong. 8–9 (2006) (statement of Mary Lou Leary, Executive Director, National Center for Victims of Crime).

145. While it may be particularly difficult to obtain a traditional mortgage loan, the FHA will still underwrite loans for those who have limited or no credit histories. See U.S. DEP'T OF HOUS. & URBAN DEV., HUD 4155.1, MORTGAGE CREDIT ANALYSIS FOR MORTGAGE INSURANCE ch. 4 § C.1.d (2011), http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/handbooks/hsg/4155.1 ("The lack of a credit history, or the borrower's decision to not use credit, may *not* be used as the basis for rejecting the loan application. Some prospective borrowers may not have an established credit history. For these borrowers . . . the lender must obtain a non-traditional merged credit report (NTMCR) from a credit reporting company, or develop a credit history from [other sources]" (emphasis in original)).

146. Filing fees in Minnesota, for example, for a corporation or an LLC are at least \$135. *Business Filing Fee Schedule*, OFFICE OF THE MINN. SEC'Y OF STATE, <http://www.sos.state.mn.us/Modules/ShowDocument.aspx?documentid=4148> (last visited Apr. 17, 2016).

147. See Margaret F. Brown, *Domestic Violence Advocates' Exposure to Liability for Engaging in the Unauthorized Practice of Law*, 34 COLUM. J.L. & SOC. PROBS. 279, 286 (2001) ("Many victims of domestic violence are financial-

nected to the business through the formation documents or annual filings.¹⁴⁸ As a result, there may be an additional risk connected with this alternative.

Without a program that protects a program participant's location information in the real property records, there are no strong options for a victim of domestic violence to purchase a new home. The only remaining alternatives are those that do not involve owning a home. Victims can live with relatives or friends, stay in a domestic violence shelter, or lease an apartment or house. These may provide sufficient long-term solutions for some individuals, but they do not provide the long-term benefit and independence of owning a home.¹⁴⁹ Extending the protection of address confidentiality programs to real property records will allow a more achievable alternative for individuals looking to reestablish their independence and provide a permanent home safe from their abusers.

2. Protections for Property Records

Despite the confidentiality required by Minnesota's Safe at Home program, the legislature included several provisions in the amended statute that protect the function of the state's real property records. First, the amendment makes an exception to its general rule that government entities cannot disclose identity information or location information.¹⁵⁰ The amendment allows county recorders to release separately the location information and identity information of program participants.¹⁵¹

ly dependent on their abusers and cannot afford an attorney."); Michele Gilman, *A Court for the One Percent: How the Supreme Court Contributes to Economic Inequality*, 2014 UTAH L. REV. 389, 403 ("[D]omestic violence victims are disproportionately poor.").

148. In some states, it is possible to do a simple name search to discover information about an entity's registered address, its officers, and even the officers' addresses. See, e.g., *Business Name Search*, IN.GOV, https://secure.in.gov/sos/online_corps/name_search.aspx (last visited Apr. 17, 2016). Even if the documents are not available online, it is often possible to order copies for a nominal fee. See, e.g., *Search Business Filings*, MINN. BUS. & LIEN SYS., <https://mblsportal.sos.state.mn.us/Business/Search> (last visited Apr. 17, 2016).

149. See CHRISTOPHER E. HERBERT & ERIC S. BELSKY, U.S. DEP'T OF HOUS. & URBAN DEV., *THE HOMEOWNERSHIP EXPERIENCE OF LOW-INCOME AND MINORITY FAMILIES* 3–6 (2006), http://www.huduser.gov/publications/pdf/hisp_homeown9.pdf (describing benefits of homeownership).

150. MINN. STAT. §§ 5B.05, 13.045 (Supp. 2015); 2014 Minn. Laws ch. 173, § 2 (effective Apr. 30, 2014).

151. 2014 Minn. Laws ch. 173, § 2.

Most states index documents submitted for recording in two different places¹⁵²: the tract index references documents based on the parcels they affect¹⁵³ and the grantor-grantee index lists documents by reference to the parties who executed the documents.¹⁵⁴ Often the tract index will include the names of the grantor and grantee for a conveyance.¹⁵⁵ Under the recent amendment to the Minnesota Safe at Home statute, however, the name of a program participant cannot be listed with the location information in the tract index.¹⁵⁶

This makes the tract index less helpful, but it still allows the tract index to provide notice if there is a conveyance affecting a specific property. By allowing a conveyance to still be indexed to a specific parcel, the Minnesota Safe at Home statute avoids creating a cloud on the title of other properties in the county. The amendment also ensures that program participants receive the protection of the recording act, since anyone searching for documents affecting a specific property will at least have notice that there is a document affecting that property.¹⁵⁷

The amendment also structured the Minnesota Safe at Home statute to allow recorders to list the name of the program participant in the grantor-grantee index, though no legal description can be included.¹⁵⁸ This also accommodates the notice goal of the property recording system. Anyone looking to buy property from a protected person can see whether or not that individual has conveyed any interests in the property by looking at the grantor index.¹⁵⁹ Even though a buyer will need to see the document to know what property is affected, the buyer will

152. 14 POWELL, *supra* note 19, § 82.03[2].

153. *Id.* § 82.03[2][c].

154. *Id.* § 82.03[2][b].

155. *Id.* § 82.03[2][c].

156. 2014 Minn. Laws ch. 173, § 2 (clarifying that a county recorder can release a participant's name and substitute address if they "are not disclosed in conjunction with location data").

157. *See id.* ("The procedures must provide public notice of the existence of recorded documents and certificates of title that are not publicly viewable and the provisions for viewing them under this subdivision. Notice that a document or certificate is private and viewable only under this subdivision or subdivision 4b is deemed constructive notice of the document or certificate.")

158. *See id.* ("This subdivision does not prevent the public disclosure of the participant's name and address designated under chapter 5B in the county reception index if the participant's name and designated address are not disclosed in conjunction with location data.")

159. *Id.*

receive notice that further inquiry is required.¹⁶⁰ This arrangement also protects victims who own property, because it does not reveal any information about their location. At most, a stalker could discover that his victim lived in a particular county, but he would not be able to determine his victim's location with any further specificity. As a result of the discrete elements of the conveyance in each index, parties can find a name associated with a transfer in one location and an address with some transaction in another, but there is no way to tie the two together. A scheme such as this is able to address the notice and priority concerns involved with the property recording system while preserving the confidentiality of a victim's location.

Another strength of Minnesota's statute is the flexibility it affords recorders' offices across the state in carrying out the requirements of the statute.¹⁶¹ Due to the novel inclusion of real estate records in the address confidentiality program, there is no standard for maintaining a system to track what documents have been redacted or made unavailable and to ensure that those documents are made available when the participant is no longer entitled to the program's protections. Because the burden of administering the program's effects on the real estate records in each county falls on the recorders,¹⁶² permitting each recorder's office to determine the best way to implement the statute will allow them to remain focused on carrying out their primary task of making real estate records available to the public.

In addition, Minnesota's statute provides an example of a reasonable exception to the confidentiality of program participants. The statute allows certain persons to contact the secretary of state to request information regarding redacted or unviewable documents.¹⁶³ This is a particularly important exception because it allows third parties to better determine the state of title for a property. Those who have legitimate interests in knowing the precise state of a property—lenders or title insurers, for instance—pose no risk to victims of domestic abuse. Hindering the efforts of such entities may actually have a nega-

160. *Id.*

161. *Id.* ("Each county recorder shall establish procedures for recording or filing documents to comply with this subdivision.").

162. *See id.*

163. *Id.* ("Upon request, the secretary of state may share data regarding a program participant's real property records for the purpose of confirming or denying that the program participant's real property is the property subject to a bona fide title examination.").

tive impact on program participants if it prevents participants from obtaining financing or selling their properties. Providing a mechanism for accessing protected documents enables the property records system to operate as it was intended and provide outside parties with an accurate picture of matters affecting a given property.

C. CURRENT PROGRAMS FAIL TO ADEQUATELY PROTECT VICTIMS OF VIOLENCE AND IMPOSE SIGNIFICANT BURDENS ON RECORDING SYSTEMS

Minnesota's Safe at Home statute provides a strong starting point for legislatures that want to expand their address confidentiality programs to protect victims of domestic violence seeking to relocate. Even so, the program fails to achieve its purpose in a number of critical respects. While the program offers significant protections to participants by suppressing their location information in county recording systems, it leaves open several other avenues to find a participant who has purchased property. Additionally, the program imposes heavy burdens on county recorders and third parties who facilitate real estate transactions.

1. Victims Seeking To Relocate by Purchasing a New Home Are Not Fully Protected by Programs Like Minnesota's Safe at Home Program

States looking to implement a system like Minnesota's Safe at Home program should be aware of the current weaknesses of the program. The goal of Minnesota's program—"to enable state and local agencies to respond to requests for data without disclosing the location of a victim of domestic violence, sexual assault, or stalking"—suggests an intention to protect all types of location information against disclosure.¹⁶⁴ The legislature specifically identifies property records for protection and notes that these records include "documents maintained in a public recording system, data on assessments and taxation, and other data on real property."¹⁶⁵ To ensure that location information in these records is suppressed, a participant must submit a real estate notice to the county recorder.¹⁶⁶ The county recorder must, in turn, send a copy of the notice to the person responsi-

164. MINN. STAT. § 5B.01 (Supp. 2015).

165. *Id.* § 13.045, subd. 2(b).

166. *Id.*

ble for the property tax records in that county, presumably so that the county tax records do not show the name and location information of the individual.¹⁶⁷ The statute only addresses, however, what the county recorder can or cannot disclose.¹⁶⁸ It does not specify what other real estate records are affected and how government entities must handle that information.

There are a number of systems beyond the county land records that provide information on owners and property locations. The property tax records and assessment records noted in the Minnesota statute are just two examples.¹⁶⁹ Counties often have geographic information systems (GIS) that combine a number of different types of information about property in a given county.¹⁷⁰ These systems often include addresses, legal descriptions, tax parcel numbers, property identification numbers, ownership information, and even information on the most recent transfer of a property.¹⁷¹ In some counties, the public can search these databases by owner name.¹⁷²

In addition to searching property tax records and GIS databases, abusers attempting to track down their victims can also access information compiled from property sales disclosure forms. A number of states require that parties conveying property file a form disclosing the purchase price and other information when they file their transaction documents with the county recorder.¹⁷³ These forms can include the names and ad-

167. *Id.* at subdiv. 4a(b).

168. *Id.* (“[T]he county recorder must not disclose the program participant’s identity data in conjunction with the property identified in the written notice . . .”).

169. *Id.* at subdiv. 2(b).

170. Whitman, *supra* note 60, at 243–44 (describing the function of geographic information systems).

171. *See, e.g.*, HENNEPIN INTERACTIVE MAPS, <http://gis.hennepin.us/Property/Map/default.aspx> (last visited Apr. 17, 2016) (Hennepin County, Minnesota GIS portal); RAMSEY COUNTY GIS USER GROUP, <http://www.ramseygis.org> (last visited Apr. 17, 2016) (Ramsey County, Minnesota GIS portal); RUSH COUNTY IN SEARCH, <http://beacon.schneidercorp.com/Application.aspx?AppId=470&LayerId=6610&PageTypeId=2&PageID=3605> (last visited Apr. 17, 2016) (Rush County, Indiana GIS portal).

172. *See, e.g.*, COUNTY OF EL DORADO—GOTNET, <http://gem.edcgov.us/gotnet> (last visited Apr. 17, 2016) (El Dorado County, California GIS portal); CURRITUCK COUNTY GIS ONLINE MAPPING PROGRAM, <http://currituckncgov.com/Freeance/Client/PublicAccess1/index.html?appconfig=PublicGISViewer2013> (last visited Apr. 17, 2016) (Currituck County, North Carolina GIS platform that allows for name searches of property owners); MAPINDY, <http://maps.indy.gov/MapIndy> (last visited Apr. 17, 2016) (Marion County, Indiana GIS portal).

173. *See, e.g.*, IND. CODE § 6-1.1-5.5 (2014) (mandating that parties to a re-

dresses of the seller and buyer; the address, legal description, or tax parcel information for the property; and financing information.¹⁷⁴ In some states, any member of the public can easily perform a name search to find a specific disclosure.¹⁷⁵ In other states, even though the records are available to the public, an individual attempting to perform a search must have some information about the property or transfer to find the relevant record.¹⁷⁶

While the Minnesota statute represents a move in the right direction, it falls short of its intended effect. Without addressing and specifying a method to deal with the other forms of location information associated with real estate transfers, victims who purchase property remain susceptible to discovery.

2. Minnesota's Safe at Home Statute Imposes Heavy Burdens on Those Responsible for Maintaining and Examining the Real Estate Records

Despite allowing recorders flexibility in implementing systems to address the requirements of Minnesota's program, the extension of the Safe at Home program to include real property records places significant burdens on county recorders. In addition to the normal duties of county recorders, the officials must also follow the timelines of each real estate notice they receive from program participants. Each real estate notice must be re-submitted every time the program participant's certification is renewed, which occurs every four years.¹⁷⁷ Recorders must have a system by which they process the documents and real estate notices of program participants, index the documents in such a way that searchers receive notice of their existence, and track the documents so that they can remove redactions and viewing restrictions when a participant is no longer protected by the program.¹⁷⁸ Further, recorders must coordinate with the secre-

al estate conveyance file a sales disclosure form); MINN. STAT. § 272.115 (2015) (requiring that a certificate of real estate value is filed for certain transfers of real property).

174. See, e.g., IND. CODE § 6-1.1-5.5-5; MINN. STAT. § 272.115, subdiv. 1.

175. See, e.g., *Sales Disclosure Form*, IND. GATEWAY, <http://gatewaysdf.ifonline.org/Search.aspx> (last visited Apr. 17, 2016) (Indiana's sales disclosure form search).

176. See, e.g., *eCRV Electronic Certificate of Real Estate Value*, MINN. REVENUE, <http://www.revenue.state.mn.us/CRV/Pages/eCRV.aspx> (last visited Apr. 17, 2016) (Minnesota's certificate of real estate value search).

177. See MINN. STAT. § 5B.03, subdiv. 3 (Supp. 2015).

178. See *id.* § 13.045, subdiv. 4a(a).

tary of state to process requests for documents and maintain full copies of redacted or private documents to securely deliver to authorized outside parties.¹⁷⁹

Any program structured like Minnesota's will also impose burdens on outside parties who are regularly involved in real estate transactions. This statute will have a great effect on title insurance companies in particular.¹⁸⁰ First, title insurance companies face increased risk when documents are more difficult to find. Requiring a modification of recorders' usual practices in indexing documents creates another opportunity for recording mistakes. Title insurance companies bear the risk on both sides of any potential mistakes. If the title insurer cannot find a document creating a certain interest, it will likely have to defend its insured against that interest in court and may have to pay out the value of the policy.¹⁸¹ On the other hand, if the title insurance company is insuring a buyer who is a program participant and there is a mistake in the recording that allows another purchaser to receive priority, the insurance company will have to pay out the claim or defend against that interest.¹⁸²

In addition, title insurance companies face an increased burden of having to contact the secretary of state to formally request information about every affected document involved in their searches.¹⁸³ When only small numbers of participants engage in property transactions, this may not be a great burden. But if more participants take advantage of the program's protections, this may become a large drain on the time and resources of the title examiners of title insurance companies.

A more significant hurdle is the lack of a provision allowing title examiners to access the documents themselves. The statute states that "the secretary of state may respond by an affirmation in writing that the property subject to the title examination is or is not the property subject to a program participant's real property notice."¹⁸⁴ If it is not the property subject to a notice, then the examiner need take no further action. If, on

179. *Id.* at subdiv. 4a(a)(3).

180. See Szypszak, *Public Registries*, *supra* note 62, at 683 (explaining that title insurance has now become an indispensable part of real estate transactions).

181. See 16 RICHARD R. POWELL, *POWELL ON REAL PROPERTY* § 92.16, LEXIS (Michael Allan Wolf ed., 2015) (title insurer's duty to defend); *id.* § 92.17 (loss title insurer must pay out).

182. See *id.* §§ 92.16–17.

183. MINN. STAT. § 13.045, subdiv. 4b(b).

184. *Id.* at subdiv. 4b.

the other hand, it is subject to a participant's real property notice, the statute does not explicitly provide that the title examiner can gain access to the actual document, which is crucial for determining what the state of title is for a property.¹⁸⁵

To examine the impact of this provision, consider the two circumstances that will lead a title examiner to request information. In the first instance, an examiner has found a deed by searching for the name of the protected person. To determine whether the deed affects the property he is examining, the examiner requests information from the secretary of state, who informs the examiner that the property is the property involved in his search. This being the case, the examiner needs to see the entire document to examine its provisions. At this point the examiner knows the location of that property is linked to the protected person. The secretary of state has no further interest in keeping the document, since any sensitive information is already revealed. Despite no further advantage from maintaining confidentiality, the current Minnesota statute does not explicitly allow the secretary of state to release the entire document to the title examiner.¹⁸⁶

In the second instance, consider an examiner who has searched not for the name of a protected person but rather for the property owned by the protected person. The examiner discovers that there is a deed for the legal description he searched. The examiner does not know who the protected person is, but he knows it must be a program participant. An affirmation from the secretary of state informing the examiner that the property is subject to a real property notice will not give the examiner any helpful information.¹⁸⁷ The examiner must know who the owner is to determine whether any other interests

185. See Szypszak, *Real Estate Records*, *supra* note 112, at 8 (noting that ownership rights to real estate are determined by a "particular transactional history for that parcel," which "can only be assessed fully by examining all of the documents in the chain of title").

186. MINN. STAT. § 13.045 subd. 4b.

187. A deed may include real covenants, reserve an easement over the property for the grantor, or contain any number of other terms. See 14 POWELL, *supra* note 19, § 81A.06[1] (covenants); 4 RICHARD R. POWELL, POWELL ON REAL PROPERTY § 34.04[5], LEXIS (Michael Allan Wolf ed., 2015) (reserving an easement). A deed may even be defectively executed. POWELL, *supra* note 181, § 92.03[2][a]. To determine whether any of these are the case, an examiner must have full access to the documents.

have been given by that person.¹⁸⁸ He could drive to the property to see who is in possession, but this may not reveal who the owner is: the property could be occupied by a tenant, a relative or friend of the owner, or even some entirely unrelated party. The easier and surer route is for the secretary of state to release the protected document to the examiner once it is sure the examiner is not a danger to the protected person. Without a provision explicitly allowing the release of a document in this case, a title examiner cannot fully determine what the state of title is for a property.¹⁸⁹

As this Part has demonstrated, the Minnesota legislature's attempt to reconcile the interests of the state's Safe at Home program and its real estate recording systems still leave significant concerns to be addressed. Nevertheless, the recent amendments to the statute represent promising steps toward balancing the competing interests of address confidentiality programs and county real estate records. The next Part suggests further changes to fully address the most important concerns of both property records systems and address confidentiality programs.

III. LEGISLATURES SHOULD MODIFY THE MINNESOTA SAFE AT HOME STATUTE TO INCLUDE OTHER PROPERTY-RELATED RECORDS AND TO INCREASE ACCESS FOR AUTHORIZED PARTIES

This Part proposes a statutory approach for states that wish to expand their address confidentiality programs to protect victims who are attempting to restart their lives by purchasing property and establishing a new home. The proposed approach seeks to further the goal of protecting victims whose abusers track them through public records while minimizing the impact on the public notice function of real estate records systems. This Note suggests a legislative approach based on Minnesota's Safe at Home program, but it also proposes expanding the program's protections to include other real estate-related records as well as providing increased access to protect-

188. See Szypszak, *Public Registries*, *supra* note 62, at 690 (explaining that an examiner "checking title must develop a chain of ownership by linking grantors with grantees").

189. See Szypszak, *Real Estate Records*, *supra* note 112, at 8 (noting that the interest an owner holds in a property is determined in part by the "transactional history" of the property, which can only be ascertained by a thorough examination of all the documents involved).

ed records for authorized parties. Section A discusses additional protections for participants in address confidentiality programs. Specifically, it suggests that legislation (1) explicitly include all location-related records; and (2) provide instructions regarding how each office holding those records should be notified and how they should handle protected information. Section B recommends further changes to benefit those involved in the business of real estate records by (1) allowing standing authorization for certain entities; and (2) permitting access to the full text of protected documents.

A. EXPAND PROTECTIONS TO OTHER PROPERTY-RELATED RECORDS

While Minnesota's statute provides program participants with significant protections, it has several weaknesses that detract from its efforts to shield victims from their abusers. Any legislation modeled after Minnesota's statute can incorporate several changes that will significantly improve its protections. First, it should clearly include and address all records and information databases that contain location and identity information. Second, any legislation should require that the program administrator contact every office that maintains this information and should specify how each office must handle the location and identity information of protected persons.

1. What Records Should Be Included?

As noted above, Minnesota's Safe at Home statute does not fully accomplish its mission to protect participants from discovery through real estate-related records. It fails to provide a mechanism by which victims can protect their location information contained in property tax, assessment, sales disclosure, and GIS record systems. Victims of domestic abuse, sexual assault, and stalking will only be safe in their new homes when their location information and identity information are kept separate in all real estate information systems, and when a method exists for program participants to inform all of the different governmental entities responsible for the various property records. Because databases and services that include real property information may vary from state to state, each state legislature must consider the systems used by its state and county government and tailor the statute to account for every method by which a member of the public could access property and owner information.

2. How Should the Statute Address the Additional Records?

Minnesota's program does provide some helpful guidance regarding the method by which victims may inform the administrators of the various records systems of their protected status. Under the Safe at Home statute, participants submit a real estate notice to the county recorder with specific information about the affected property. The county recorder then sends a copy to the secretary of state and the person responsible for taxation in the county.¹⁹⁰ A similar system would work well for informing the entities involved with the various real estate-related records. Program participants are unlikely to know the different offices to which they need to send notices. Placing responsibility upon a more knowledgeable government agency would better ensure that all of the relevant agencies receive notice. Because the secretary of state bears the primary burden of administering address confidentiality programs in most states,¹⁹¹ that same entity should bear responsibility for distributing real property notices to the various government offices. In this way, even if program participants don't understand the importance of contacting various governmental offices to suppress tax records, assessment records, GIS records, and sales disclosure records, their location and identity information will be protected in all of those systems.

In addition, any statute purporting to protect the real property interests of participants should specify how each system must handle the location and identity information of enrollees who purchase property. This Note commends Minnesota's approach for balancing the needs of the recording system against those of victims and finding a solution that protects the interests of both. By allowing county recorders to place only the names of protected persons on the grantor-grantee index and only the property description in the tract index, the statute allows the property records to provide notice while still keeping participants' identity and location information separate.¹⁹²

For other property-related records, such as tax and GIS information, this Note supports a balanced approach as well. Victims are protected best when their location and name information cannot be connected. Therefore, protecting program participants requires suppression of only one type of infor-

190. MINN. STAT. § 13.045, subdiv. 4a(b).

191. See *Address Confidentiality Laws, by State*, *supra* note 12.

192. MINN. STAT. § 13.045, subdiv. 4a.

mation. Given the various methods for presenting location information and the importance of location information to records for taxes, assessments, and GIS databases, suppressing name information appears to be the best approach. When name information for records such as these is confidential, members of the public will not be able to perform name searches for protected persons, nor can they connect a property with any specific individual. Allowing location information alone, however, will still permit protected individuals to look up information about their own properties. This will be particularly useful for enabling participants to access property tax and assessment information. This Note therefore proposes that any statute expanding protections for program participants to real property records should allow only location information of protected individuals to be released in the various property databases of government entities other than the county recorder.

B. INCREASE AUTHORIZED PARTIES' ACCESS TO PROTECTED RECORDS

Just as legislatures following Minnesota's example ought to supplement the statute's provisions for protected individuals, they should also consider additional protections for real property records. Any legislation modeled after Minnesota's Safe at Home statute needs to provide entities regularly involved in examining real estate records with improved access. Such a statute should (1) allow entities to obtain long-term authorization to access protected records; and (2) permit authorized entities to access the entire content of protected records.

1. Who Should Have Access to Records?

As with many other aspects of address confidentiality, the Minnesota Safe at Home statute provides a good starting point for compromise on who should have access to protected records. Any statute attempting to protect disclosure of location information about victims of domestic abuse or stalking should enforce some system that will keep abusers from gaining access to protected records. Minnesota's statute provides for a case-by-case evaluation of each request for further information.¹⁹³ Such an approach certainly achieves the desired protection and will likely not burden outside parties if the volume of such requests remains low. If, however, protected properties are transferred

193. *Id.* at subdiv. 4b(a).

frequently or participants with common names start to sell or buy real estate, a need for such requests will increase. Because title insurance companies perform most of the title searches for real estate conveyances, the burden of these requests will fall primarily on them.¹⁹⁴

Only a small number of title insurance companies handle the majority of the country's title policies and, consequently, title exams, so the secretary of state will likely handle many requests from the same small number of entities.¹⁹⁵ This Note therefore proposes that legislatures permit certain entities to be approved by the secretary of state for instant access to all protected real estate records. Such a provision would still require all other parties to submit requests for any desired information, but it would allow those entities involved in the business of real estate transactions to avoid the burden of repeated requests.

2. What Should Authorized Parties Be Able To Access?

While it starts on the right path, the Minnesota statute does not go far enough in allowing outside parties to acquire the information they need to accurately determine the state of title for a property. The Minnesota statute allows the secretary of state to inform title examiners whether the property involved in their search is connected with a participant in the Safe at Home program.¹⁹⁶ If the examiner discovers that the land he is examining is not connected with a participant, he can be sure no further inquiry is required. If, on the other hand, he discovers that the property he is examining is, in fact, protected by the program, the secretary of state is not required to provide any further information. This is not acceptable. Without access to the entire document, the examiner has no way to determine what the state of title is for the property.

A balanced approach should allow examiners to fully evaluate the state of title to a property by providing a method for releasing the full content of restricted documents. Whether the examiner has submitted a request or is a previously authorized

194. See Szypszak, *Public Registries*, *supra* note 62, at 683.

195. See U.S. GOV'T ACCOUNTABILITY OFFICE, REP. NO. GAO-07-401, TITLE INSURANCE: ACTIONS NEEDED TO IMPROVE OVERSIGHT OF THE TITLE INDUSTRY AND BETTER PROTECT CONSUMERS 3 (2007), <http://www.gao.gov/new.items/d07401.pdf> ("In 2005, for example, five insurers accounted for 92 percent of the national market, and most states were dominated by two or three large insurers.").

196. MINN. STAT. § 13.045, subdiv. 4b.

party, the secretary of state has already had the opportunity to make sure he can be trusted. In this way, a statute allowing for the release of full documents related to a program participant can still ensure that location information is protected against unauthorized use and can also avoid impeding the normal operation of real estate transactions.

C. A BALANCED APPROACH BASED ON MINNESOTA'S SAFE AT HOME STATUTE IS SUPERIOR TO ALTERNATIVES THAT PROMOTE ONLY THE INTERESTS OF VICTIMS OR OF RECORDS SYSTEMS

Because the purpose of address confidentiality programs in restricting access to information is directly opposed to that of real property records, which seek to make information public, there is no scheme that will fully meet both objectives. The possible approaches to this conflict include (1) not extending address confidentiality programs to any real estate records; (2) thoroughly protecting victims by not allowing location or identity information to be disclosed in real estate records under any circumstances; or (3) developing a system that balances the interests on both sides and preserves the most important aspects of each.

Nearly every state currently falls into the first category. Not all states have address confidentiality programs, but almost all of those that do, do not currently protect the personal information of program participants in real property records.¹⁹⁷ By not including real estate records in the protections of their address confidentiality programs, these states guarantee the stability of their land records systems. As a result, these states ensure that members of the public can continue to easily determine the state of title for property. This has numerous benefits, not the least of which is that these states avoid any additional burdens on real estate transactions or any decrease in the marketability and value of properties.¹⁹⁸

In choosing not to offer any additional protections to victims of domestic violence or stalking, however, these states perpetuate the struggles of victims who are attempting to escape abusive situations by relocating and purchasing a home. In addition, they deny victims the benefits of homeownership—

197. See *Address Confidentiality Laws, by State*, *supra* note 12.

198. See Szypszak, *North Carolina*, *supra* note 15, at 211 (describing how “making the public records a more reliable indication of ownership . . . improved the marketability of North Carolina real estate”); Part II.C.2 (explaining the burdens imposed on parties involved in real estate transactions).

benefits that are not available to victims who must live with relatives or friends, stay in domestic violence shelters, or rent an apartment or house.¹⁹⁹ Extending the protections of address confidentiality programs to real property records will provide a more achievable alternative for victims who wish to reestablish their independence and acquire a permanent home that is safe from their abusers.

As noted above, states have recognized a number of interests important enough to merit exceptions from the normal standards of real estate records systems. Judgment liens, mechanics liens, tax liens, environmental liens, and probate proceedings often cannot be found by searching recorded documents, but they are nevertheless valid interests that affect real estate.²⁰⁰ Allowing one additional special rule for victims of domestic violence would not impede the overall operation of states' recording systems. Parties involved in real estate transactions already account for the risk that one of these outside interests affects their property. They would be able to account for an address confidentiality exception as well.

No states have yet pursued the second approach—that of expanding an address confidentiality program to prohibit location or identity information from being disclosed in real estate records under any circumstances. This framework would guarantee that program participants are protected as thoroughly as possible, ensuring that no stalker or abuser would have access to any information that would aid them in tracking down their victims. This is an important consideration, particularly in light of the dangers stalkers and abusers pose to their victims.²⁰¹ Those who seek the protection of address confidentiality programs do so because they have endured abuse, domestic violence, or stalking serious enough that they have needed to leave their homes. If discovered by their abusers, these victims may face the same dangers again.

Despite the benefits for program participants, the extreme protections under this approach have some serious drawbacks. First, the existence of recorded documents that cannot be tied to a particular property or a particular person creates a substantial cloud on title for all properties in a county, which, in turn, has a significant impact on the marketability and value of

199. See HERBERT & BELSKY, *supra* note 149 (describing benefits of homeownership).

200. Szypszak, *North Carolina*, *supra* note 15, at 210.

201. See *supra* text accompanying notes 71–75.

those properties.²⁰² Second, suppressing all identity and location information in program participant's recorded documents will likely deprive participants of the protections of state recording acts.²⁰³ This directly undermines the objective of enabling participants to establish new, permanent residences.

In order to secure the protections of recording statutes for program participants, address confidentiality programs must allow certain information to be disclosed in the property records. While this would diminish the protections of programs, several states have already shown a willingness to compromise in other aspects of their address confidentiality programs when important interests are at stake.²⁰⁴ It would be entirely consistent, therefore, to allow certain limited exceptions to a broadened address confidentiality program in order to protect the title of other properties in the state and to ensure that victims are able to take advantage of state recording acts.

The third and final alternative is to formulate an approach, as Minnesota has done, that secures the most important aspects of both victim confidentiality and the public notice provided by real estate records.²⁰⁵ Minnesota's legislature has been largely successful in balancing these two interests. However, Minnesota's program still does not adequately protect victims of domestic abuse or violence, because it does not address a number of other property-related records that could potentially reveal the location of program participants.²⁰⁶ In addition, Minnesota's program makes it too difficult for parties regularly involved in real estate transactions, particularly title companies, to access the information they need.²⁰⁷ By addressing these issues, this Note's solution provides more thorough protections for victims of domestic violence who wish to purchase property to escape their abusers, and also protects the notice function of real property records by allowing members of the public to more easily determine what interests affect their properties.

202. See *supra* Part II.A.1.a.

203. See *supra* Part II.A.1.b.

204. See, e.g., MINN. STAT. § 13.045 (Supp. 2015) (court order and law enforcement); *Falconi v. Sec'y of State of Nev.*, 299 P.3d 378, 384 (Nev. 2013) (“[T]he rights of a custodial parent to know where his or her child resides must be balanced against the important state interest in protecting victims of domestic violence served by the state's fictitious address program.”).

205. MINN. STAT. §§ 5B.01–.12, 13.045 (Supp. 2015); MINN. R. 8290.0100–.1500 (2015).

206. See *supra* Part II.C.1.

207. See *supra* Part II.C.2.

CONCLUSION

States are increasingly recognizing the need to protect victims of domestic abuse, sexual assault, and stalking as they attempt to escape from their oppressors. The protections states offer vary widely. In some parts of the country victims are offered only small benefits, like confidential voter registration. In others, individuals are able to use a substitute address for any governmental entity requiring a mailing address. The most protective programs allow participants to use a substitute address for any purpose, public or private, and permit protected persons to require nearly complete confidentiality from all government entities. Yet, despite this variety in protections offered, no state has offered sufficient protection for victims wishing to permanently relocate and start new lives by purchasing a home. Minnesota's Safe at Home statute offers the best potential solution to relocating victims by providing a means for program participants to suppress information about their location in county real property records. Even so, for all its benefits, Minnesota's program fails to adequately protect individuals seeking to avoid discovery when buying a new home. It also places too great a burden on the parties involved in maintaining and searching county property records.

Legislatures contemplating an expansion of their address confidentiality programs to protect victims who have decided to relocate by buying property should modify Minnesota's statute to ensure full protection for all records related to property conveyances and guarantee access to protected records for outside parties involved in the business of real estate transfers. This approach will secure victims of domestic abuse and stalking against discovery through real property records, and will further the primary goal of county recording systems to inform the public of interests affecting real property. A program that implements such a scheme will be a step toward better long-term solutions for victims of domestic violence and sexual assault.