

## **Paugh's Laws | What you Need to Know About the Address Confidentiality Program**

### **Part two in a two-part series**

Earlier this year, I introduced the Secretary of State's Address Confidentiality Program (ACP) that as of January 1, 2019, applied to shielding real property records. (In case you missed it, you can read that article [HERE](#)).

The Program provides victims of domestic violence or human trafficking: a substitute address in place of their actual address, a mail-forwarding service, and coordination among State and local agencies to keep a Participant's actual address confidential. The official regulations, now available in COMAR, clarify the obligations of the ACP participant, their real estate agent, lender, attorneys, and any other person involved in the real property transaction, including planning that must take place before a Sales Contract is signed. What are the logistics of an ACP transaction? What follows below is a summary of several pertinent regulations.

#### **1. Applicant applies with the Secretary of State to participate in the ACP.**

An individual must apply to be part of the ACP long before settlement. Among other requirements, applicants must be a present or future resident of Maryland and have recently relocated or intend to relocate within thirty (30) days from the date of application to an address unknown to the abuser. Within ten (10) days of receiving an application, the Secretary must approve or deny the applicant into the Program. After an application is approved, the Participant receives an authorization card that includes their substitute mailing address.

#### **2. Once accepted into the ACP, the Participant notifies the Secretary of State of their intent to purchase real property.**

If an ACP participant plans to buy real property and wishes to shield that future address from the Land Records, the Participant must, before applying for financing or initiating the transaction, notify the Secretary of State of their initial consideration to purchase property. If the property is purchased without financing, the Participant must notify the Secretary of the same immediately after acquiring an ownership interest in the property. Upon this notification, the Secretary provides the Participant-Buyer with a: 1) Notice of ACP Participation and 2) Real Property ACP Notice.

#### **3. The Participant (or any agent of the Participant) must submit a copy of the "Notice of ACP Participation" to ALL persons involved in the real property transaction.**

This means that the ACP Participant-Buyer must inform their real estate agent that they are part of the ACP, and that the Participant or Realtor must ensure that the mortgage broker, lender, home owner's association, attorneys handling the transaction, and any other person involved with the purchase receives a copy of the "Notice of ACP Participation." On receipt, every party becomes obligated to keep confidential the Buyer's actual property address that is the subject of the transaction, disclose the address only as permitted by the regulations, and comply with all other applicable regulations.

**4. The “Real Property ACP Notice” must be submitted with any instrument to be recorded as well as a copy sent to the Secretary of State, State Department of Assessments and Taxation, and State Archives.**

Instruments to be shielded as part of the ACP cannot be recorded electronically. A Deed and any other instrument to be recorded must include the “Real Property ACP Notice” and be sent to the applicable county finance office and the Clerk of the Circuit Court. A copy must also be sent to the Secretary of State. A separate “Real Property ACP Notice” must be obtained and submitted for each property in which the Participant-Buyer acquires an ownership interest.

Once the Circuit Court receives the instruments to be recorded and the Notice, (and is thus informed that the documents are to be shielded from the public record), whether it be a Deed, Deed of Trust/Mortgage, Assignment or Release, the Clerk will index the record by the property street address in any field that requires the ACP Participant’s name. In place of the actual instrument, the corresponding Land Records book and page number to an ACP Deed will contain a “Shielded Document” cover page and “Page Intentionally Left Blank” subsequent pages, with instructions to contact the Secretary of State.

Furthermore, the Clerk provides a certified copy of the “Real Property ACP Notice” and accompanying instrument to: the State Department of Assessments and Taxation and the Maryland State Archives, prompting these agencies to shield the address of any record containing the Participant’s name, and use the street address in lieu of the property owner’s name.

**What are the circumstances in which an ACP Participant’s identity, protected by a Real Property ACP Notice, may be disclosed?**

A clerk of a circuit court and the Secretary of State are prohibited from disclosing an ACP Participant’s identity information in conjunction with an ACP Notice unless an exception applies. This issue is especially relevant for attorneys who review title work for a transaction and happen to come across a shielded instrument in the chain of title. COMAR includes a specific procedure to request a shielded record for the purpose of performing a title examination, and as such, it is prudent planning to request these records early and allow additional time to complete reviewing title. In other circumstances, the ACP Participant may consent to the disclosure of a protected real property record in writing for a specific purpose. Moreover, identity information may be disclosed pursuant to a court order.

A Participant’s information will remain protected until: the participant consents to the termination of the Real Property ACP Notice in writing; the Notice is terminated pursuant to a court order; the Participant no longer holds a record interest in the property identified in the Notice; or by written notice from the Secretary to the clerk of the circuit court that the individual part of the Notice is no longer a Participant in the ACP.

**BOTTOM LINE**

While becoming a Participant in the ACP begins with the Buyer, the obligation of confidentiality and otherwise compliance with the ACP extends to everyone involved in the real property transaction. I cannot emphasize enough how important it is for the Participant or their real estate agent to submit the “Notice of ACP Participation” to all persons part of the transaction. A Buyer or their agent must not wait until the day of settlement to inform the lender, attorneys, and other parties of the Buyer’s participation in the Program. Moreover, the “Real Property ACP Notice” that must be provided to the circuit court, Secretary of State, SDAT, and State Archives must be obtained prior to signing a Contract (if the Buyer is financing the transaction). Becoming familiar with the ACP procedures and sharing this information with your colleagues will best ensure your compliance with this very important State Program, avoid delays in settlement and recording, and above all, protect the identity of an ACP Buyer.

Readers with questions about this or any real estate legal matter can reach Brianne at 301-698-9300.

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