

3.23. Search by Title Insurance or Abstract Company (CPLR 4523)

A search affecting real property, when made and certified to by a title insurance, abstract or searching company, organized under the laws of this state, may be used in place of, and with the same legal effect as, an official search.

Note

This rule restates verbatim CPLR 4523. It sets forth a hearsay exception for a certified title search made by a New York title insurance, abstract or searching company. The exception does not identify the person who should make the certification; the better practice, however, would be for an authorized officer of the company to issue the certified search.

When admitted, the certified title search has the “same legal effect” as an “official search.” A county clerk may conduct an “official search” and in that instance the clerk’s certified title search constitutes prima facie evidence of its contents (CPLR 4520). In turn, therefore, the certified title search by a title insurance, abstract or searching company pursuant to this rule should be prima facie evidence of its contents. (*See* Vincent C. Alexander, Practice Commentaries, McKinney’s Cons Laws of NY, CPLR 4523.)

While the certified title search is thus admissible and should be “prima facie evidence” of its contents, evidence may be introduced to rebut its accuracy or otherwise to affect the weight of the evidence. (*Cf. Knox Vil. Assoc. v Town of New Windsor*, 219 AD2d 585, 586 [2d Dept 1995] [“the defendants overcame the presumption of accuracy afforded to the ancient documents produced by the plaintiff (*see*, CPLR 4522 . . .)”]; *Berman v Golden*, 131 AD2d 416, 417 [2d Dept 1987] [indicating that the terminology “prima facie evidence” in CPLR 4522 (Ancient filed maps, surveys and records affecting real property) created a rebuttable presumption of the accuracy of the documents]. *See* Vincent C. Alexander, Practice Commentaries, McKinney’s Cons Laws of NY, Book 7B, CPLR C4518:9.)