

The Torrens Land Registration System and the Benefits of Land Titling

By Robert Collie



The Torrens land registration system is the system of land registration which operates in our island by virtue of the Registration of Titles Act of 1889. This system of land titling simply put is where the state guarantees that certificates of title to land brought under its system is indefeasible, meaning that no one can claim against a person lawfully registered on that title for the land which is contained in that title, excepting in the case of fraud.

The Torrens titling system is based on three bedrock principles, namely:

- **Mirror principle** - the register (Certificate of Title) reflects (mirrors) accurately and completely the current facts about a person's title. This means if a person sells an estate; the new title has to be identical to the old one in terms of description of lands, except for the owner's name.
- **Curtain principle** - one does not need to go behind the Certificate of Title as it contains all the information about the title. This means that ownership need not be proved by long complicated documents that are kept by the owner, as in common law conveyancing system. All the necessary information regarding ownership is on the Certificate of Title.
- **Insurance principle** - provides for compensation of loss if there are errors made by the Registrar of Titles.

As obtains now under the Registration of Titles Act the following is the system of land registration as now takes place in Jamaica:

1. The completion of an Application Form prescribed in the Act.

2. The preparation, usually by an attorney of three statutory declarations in support of the application. One is from the applicant himself testifying to his possession of the property and the other two are from persons who have known the land for at least 30 years. In the alternative a valid conveyance maybe used provided its root of title is at least 30 years old.

3. A pre-checked survey diagram is prepared by a commissioner land surveyor. It now is seemingly compulsory that a pre-checked plan be provided for the application even though the Act allows for registration of title by detailed description.

4. Government taxes are paid in two respects, firstly property taxes which must be up-to-date for the application to be processed and must be evidenced by a certificate of payment of property taxes. Secondly, the application itself is subject to Stamp Duty and must be impressed with Government Stamps covering the duty.

5. The Registrar of Titles then takes the application once registration fees are paid with the supporting evidence (that is the statutory declarations, the survey diagram and the tax certificate) and sends them to the Referee of Titles, who for want of a better word is the 'Judge' of titles.

6. If the application and evidence meets with the approval of the Referee then he will order that his approval is given and the Registrar will then issue a notification of provisional approval which will be advertised by the Applicant in the Gleaner or Observer newspaper. The approval notice will give a member of the public the opportunity to lodge a caveat against the registration of the property if they so believe that the applicant has no right to the property.

7. If no caveat is entered on title then the land becomes subject to registered title as the Registrar is then compelled to register a certificate under his hand and seal of office that states that the applicant is the proprietor of the land as described in the application by plan or description.

At this juncture I would like to make mention of the seminal work of noted Peruvian economist and development theorist Hernando De Soto called the *Mystery of Capital*. In brief, De Soto argues that one of the main, if not the main, inhibitors to economic growth in third world countries is the limitations of formal property registration systems. Some maybe legal but the majority relate to the bureaucracy. De Soto points to the following as the benefits of a formal property system which operates efficiently, some of which I have embellished somewhat to bring the matter closer to home. If by some magical means our titling system were to operate in an efficient manner the following would inure to the country's benefit:

- It will allow first and foremost for working people in this country to finally define their asset in capital terms. Simply put, the farmer in Manchester can now go to the bank and building society and borrow money on their property which can be used to advance the country. He can afford more efficient technology to till the soil and reap what grows from it.
- Persons, especially younger persons, would become more invested in the country. The rural-urban migration of the last century, which continues to this day, can be stemmed. Young people who come to town find that they are faced with several hardships, not the least of which is how to survive. As their options are limited due to inadequate schooling and a limited job market they turn to crime. This is in contrast to the rural environment where at the very least they can grow food to put on the table and foster a communal environment. With a land title in their father's or mother's name, ideally both, they would feel invested in making the property a success, in up keeping it so as to retain value.
- greater independence for individuals from local community arrangements to protect their assets
- clear and provable protected ownership

- the standardization and integration of property rules and property information in the country as a whole
- increased trust arising from a greater certainty of punishment for cheating in economic transactions
- more formal and complex written statements of ownership that permit the easier assumption of shared risk and ownership in companies, and the insurance of risk
- greater availability of loans for new projects, since more things can be used as collateral for the loans
- easier access to and more reliable information regarding such things as credit history and the worth of assets
- increased fungibility, standardization and transferability of statements documenting the ownership of property, which paves the way for structures such as national markets for companies and the easy transportation of property through complex networks of individuals and other entities – one can be wary of this last point as the sub-prime crisis in the United States shows, attempting to make real estate assets, especially mortgage backed securities, too fungible may spread the risk wide, but the width of the risk may infect the entire market, making cauterizing the wound that the more painful.

Robert C. St. C. Collie

Robert Collie is an Associate at Myers Fletcher & Gordon and a member of the Firm's Property Department. Robert may be contacted at robert.collie@mfg.com.jm.

Myers, Fletcher & Gordon
Attorneys-at-Law
21 East Street