

Registration of Land

Registration of Land Titles

A system by which ownership of real property is established through the issuance of an official certificate indicating the name of the individual in whom such ownership is vested.

Land titles are registered through a statutory process called the *Torrens title system*, in somewhat the same way that automobile titles are registered in most states. Under Torrens system, land ownership can be readily ascertained without any need for repeated examinations of voluminous public records, and the resulting titles are generally secure and ready for transaction.

Torrens title

The purpose of the *Torrens system* is to provide certainty of title to land.

Torrens Title is a South Australian invention that revolutionised the method of recording and registering land ownership. It is a system where land ownership occurs when the document that transfers ownership of the property is filed at the local Land Titles Office. The purpose of the Torrens system is to provide certainty of title to land.

The Torrens Title System was first introduced in South Australia in 1858, and subsequently used in other Australian states and around the world. Torrens Title is named after its inventor, Sir Robert Richard Torrens, who was instrumental in the implementation of this unique and efficient system of dealing with land. The system resulted from Sir Torrens' desire to improve on the old English land law system which was very complex, time consuming and expensive.

The main object of the Torrens Title System is to make the register conclusive. Once your name is registered on the Torrens Title register, you become the owner of the property to the exclusion of all others. You therefore obtain '**title by registration**', which is a pivotal concept of Torrens Title.

Under the system, a Certificate of Title exists for every separate piece of land. The certificate contains a reference that includes a volume and folio number, ownership details, easements and/or rights of way affecting the land and any encumbrances including mortgages, leases and other interests in the land.

Torrens Title is useful because it eliminates grounds for most dispute litigation, avoids the consequences of lost certificates and greatly reduces the costs of land sale and transfer. People can change the Torrens Register through lodging and registering a 'dealing'.

Normally, the person who is recorded as the owner of a parcel of land cannot have their title challenged or overturned. This concept is known as '**indefeasibility of title**'. There are, however, a few exceptions to this general rule such as if the land was registered fraudulently.

Upon registration of the decree, a designated officer, ordinarily called the **registrar of titles**, makes and files the original certificate of title in the proper register. A duplicate of the certificate must be delivered to the registered owner. Once this procedure has been completed, the land becomes registered land. Any subsequent transfers and dealings regarding it must be made according to statute.

Torrens title is a system of land title where a register of land holdings is maintained by the state, it guarantees an **indefeasible title** to those included in the register. Land ownership is transferred through registration of title instead of using deeds. Its main purpose is to simplify land transactions and to certify to the ownership of an absolute title to real property. It has become pervasive around the countries strongly influenced by Britain, especially those in the Commonwealth and has spread to most other non-commonwealth countries.

Overview

The Torrens title system operates on the principle of "**title by registration**" (i.e. the indefeasibility of a registered interest) rather than "registration of deed." The system does away with the need for a chain of title (i.e. tracing title through a series of documents). The State guarantees title and is usually supported by a compensation scheme for those who lose their title due to the State's operation or omission.

The Torrens system works on three principles;

1. **Mirror principle** – the register (Certificate of Title) reflects (mirrors) accurately and completely the current facts about a person's title. This means that, 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.

2. **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 the Private Conveyancing system. All of the necessary information regarding ownership is on the Certificate of Title.
3. **Indemnity principle** – provides for compensation of loss if there are errors made by the Registrar of Titles.

Common law

At Common law, land owners needed to prove their ownership of a particular piece of land back to the earliest grant of land by the Crown to its first owner. The documents relating to transactions with the land were collectively known as the "**title deeds**" or the "**chain of title**". This event could have occurred hundreds of years prior and could have been intervened by dozens of changes in the land's ownership. A person's ownership over land could also be challenged, potentially causing great legal expense to land owners and hindering development.

Even an exhaustive title search of the chain of title would not give the purchaser complete security, largely because of the principle *nemo dat quod non habet* ("no one gives what he does not have") and the ever-present possibility of undetected outstanding interests. The common-law position has been changed in minor respects by legislation designed to minimize the searches that should be undertaken by a prospective purchaser. In some jurisdictions, a limitation has been placed on the period of commencement of title a purchaser may require.

Deeds registration

The effect of registration under the Deeds Registration System was to give the instrument registered "priority" over all instruments that are either unregistered or not registered until later. The basic difference between the

deeds registration and Torrens systems is that the former involves registration of instruments while the latter involves registration of title.

In contrast of

Torrens system in which basically the one who registered in a land registry as owner of a piece or parcel of land has an indefeasible title of the land, deeds

registration system is merely a registration of all important instruments related to that land. In order to establish one's title to the land, a person (or usually their purchasers' attorney) will have to ascertain, for example:

- all the title documents are properly executed;
- "a chain of title" is established, i.e. the proper ownerships from the granting of the land from the government to the present owner;
- there are no encumbrances on the land that probably will harm the title of the land.

Moreover, though a register of who owned what land was maintained, it was unreliable and could be challenged in the courts at any time. The limits of the deeds-registration system meant that transfers of land were slow, expensive, and often unable to create certain title.

Creation



Under the system many maps showing property boundaries need to be kept.

In order to resolve the deficiencies of the common law and deeds registration system, Torrens introduced the new title system in 1858, after a boom in land speculation

and a

haphazard grant system resulted in the loss of over 75% of the 40,000 land grants that was issued in the colony. He established a system based around a central registry of all the land in the jurisdiction of South Australia, embodied in the

Real Property Act 1886 (SA). All transfers of land are recorded in the register.

Most importantly, the owner of the

land was established by virtue of his name being recorded in the government's

register. The Torrens title also records

easements and the creation and discharge of mortgages.

The historical origins of the Torrens title are a matter of considerable controversy.

Torrens

himself acknowledged adapting his proposals from earlier systems of transfer and registration, particularly the system of registration of merchant ships in the United Kingdom. The Prussian mortgage legislation also served as an example.

James E. Hogg, in *Australian Torrens*

System with Statutes (1905), has shown that Torrens derived ideas from many other sources

and that he received assistance from a number of persons within South Australia.

Stanley Robinson, in *Transfer of Land in Victoria* (1979) has argued that Ulrich Hübner, a German lawyer

living in South Australia in the 1850s, made the most important single contribution by adapting principles borrowed from the Hanseatic registration system in Germany.

Nevertheless, it cannot be denied that Torrens' political activities were substantially responsible for securing acceptance of the new system in

South Australia and eventually, in other Australian colonies and New Zealand.

He oversaw the introduction of the system in the face of often-

vicious attack from his opponents, many of whom were lawyers, who feared loss of work in conveyancing, because of the

introduction of a simple scheme. The Torrens system was also a marked departure

from the common law of real property and its further development has been characterised by the reluctance of common-law judges to accept it.

Land register

The land register is the central aspect of the Torrens system. Originally the register was a bound paper record, but today the register is typically kept in a (Computerised) database.

On the first registration of land under the system, the land is given a unique number (called a folio) which identifies the land by reference to a registered plan. The folio records the dimensions of the land and its boundaries, the name of the registered owner, and any legal interests that affect title to the land. To change the boundaries of a parcel of land, a revised plan must be prepared and registered. Once registered, the land cannot be withdrawn from the system.

A transfer of ownership of a parcel of land is affected by a change of the record on the register. The registrar has a duty to ensure that only legally valid changes are made to the register. To this end, the registrar will indicate what documentation he or she will require to be satisfied that there has in fact been a change of ownership. A change of ownership may come about because of a sale of the land, or the death of the registered owner, or as a result of a court order, to name only the most common ways that ownership may change. Similarly, any interest which affects or limits the ownership rights of the registered owner, such as a mortgage, can also be noted on the register. There are legal rules which regulate the rights and powers of each of these interests in relation to each other and in relation to third parties.

The State guarantees the accuracy of the register and undertakes to compensate those whose rights are adversely affected by an administrative error. Claims for compensation are very rare.

Effect of registration

The main difference between a common law title and a Torrens title is that a member of the general community, acting in good faith, can rely on the information on the land register as to the rights and interests of parties recorded there, and act on the basis of that information. A prospective purchaser, for example, is not required to look beyond that record. He or she does not need even to examine the Certificate of Title, the register information being paramount. This contrasts with a common law title, which is based on the principle that a vendor cannot transfer to a purchaser a greater interest than he or she owns. As with a chain, the seller's title is as good as the weakest link of the chain of title. Accordingly, if a vendor's common law title is defective in any way, so would be the purchaser's title. Hence, it is incumbent on the purchaser to ensure that the vendor's title is beyond question. This may involve both inquiries and an examination of the chain of title.

The registered proprietor of Torrens land is said to have an indefeasible title. That means that only in very limited circumstances can his or her title be challenged. These challenges are established in the legislation, and are subject to rules made by courts. For example, in Victoria such challenges are established in section 42 of the Transfer of Land Act 1958. A court can also adjust rights as between parties before it, and order changes to the register accordingly.

Indefeasibility of title

Indefeasibility of title applies to the registered proprietor or joint proprietors of land.

This indicates that the registered interest holder will be free from all encumbrances other than *inter alia*:

- Those listed on the title;
- Those claiming the land on a prior folio;
- where the land is included by wrong description on the part of the Registrar and the proprietor is not or has not derived title from a purchaser 'for value';
- paramount interests- (f)) – these interests, although even possibly unregistered, are 'superior' to interests that are registered.

Additionally, there exist exceptions or circumstances that can penetrate the indefeasibility. Common factors that, when evidenced by a party, may penetrate and defeat the registered holder's claim include:

- Fraud committed by the registered interest holder [principle of immediate indefeasibility].
- Judicial action, where it can be shown that there was some contractual promise or undertaking by the registered party *vis-a-vis* the unregistered party;

- Inconsistent legislation (in which case the most recent legislation prevails);
- Volunteer, where the registering party acquires the interest for no consideration (e.g. bequeathed in a will).