

**BUDGETARY REVIEW AND ACTIVITY BREAKDOWN
FOR THE DEEDS LAND REGISTRY**

The total governmental expenditure upon the Deeds Registry, including staff salaries, for the years 1992 and 1993 did not for either year exceed G\$3.5 million. The allocation for the year 1994 is just in excess of G\$6 million.

The fees and Revenues, however, collected by the Registry were:

1992	\$107,495,255
1993	\$144,428,729

From these figures, the argument for expenditure of a significant proportion of the revenues on staff remuneration is self-evident.

Transactions - Deeds/Land Registry

	<u>1992</u>	<u>1993</u>
Companies	282	323
Deeds Poll	2388	2987
Bills of Sale	1778	2116
Powers of Attorney	5627	7610
Business Names	3140	2923
Miscellaneous Deeds	370	645
Trade Marks, etc.	392	385
Deeds of Gift	-	150
Transports	1254	2742
Leases, Mortgages		
Transfers	1553	1496

In 1993 the diminished staff processed about 2,500 more transactions over the previous year's with an increase in revenue of G\$37 million.

Proper Remuneration, staffing and training are accordingly crucial and having regard to the legal and commercial value of the services rendered and the substantial revenue collected, these elements call for immediate redress.

DOCUMENTATION AT THE DEEDS REGISTRY AND LAND REGISTRY

The registers at the Deeds Registry are hand-written and go back to the late 19th century although some records relating mainly to land ownership are of the late 18th century. Where land titles are concerned, there are two concurrent systems, namely the 'Transports' system arising from a Roman-Dutch jurisprudence and the thirty-four years old Torrens Land Registration system operated by the Registrar of Deeds in the capacity of Registrar of Lands.

Transports

The originals of transports recording transactions in land are preserved in bound volumes of about 50 transactions each and are typewritten so far by manual non-electric typewriter. So also are the original deeds of mortgages, and leases prepared and submitted by the parties or their Attorneys-at-Law.

The land registers are of a loose leaf detachable type, manually entered up and are the only means by which a direct answer may be obtained as to the ownership of a plot of land. From much handling and non-repair these important registers are in a continuing state of deterioration. The registers that should give corresponding information regarding mortgages, leases and other encumbrances have been discontinued for the past 12 years and are almost physically inaccessible.

The survey maps supporting transport titles are very poorly stored and many are in serious state of disrepair. The maps generated for these purposes must since 1917 have been recorded in the Lands and Surveys Department. Thus back-up copies or original are likely to be available there.

Land Registry Titles

The Register, completely handwritten and loose-leaf is the owner's title and apart from ownership, records on the same leaf all mortgages, leases and any other interests or transactions affecting the parcel of land. Documents of completed transactions are normally stored in large envelopes. The registers most of which are less than thirty years in use are generally in good condition.

The survey maps, copies of the originals on record in the Department of Lands and Surveys are in reasonably good condition.¹

Other Documents and Registers

The Power-of-Attorney, Change-of-name Deeds Poll, Indentures, Miscellaneous Deeds, Bills of Sale and charges are all filed in typewritten form and eventually bound in volumes of 100. The books registering them are all handwritten, but with the use of inferior quality of paper and through indifferent human operation, these registers need to be re-written to be of use, in particular the alphabetical indexes by which documents may later be found.

According to the chief volume-binder for the Deeds Registry, there has been no leather or board for proper binding of document volumes since 1971 through shortage of funds. The binding of one volume takes about 8 hours.

Both the Georgetown registry and the sub-registry in New Amsterdam have vaults that in theory safeguard documents. In Georgetown, however, documents in the vault are sometimes crumbling due to humidity and improper maintenance. In New Amsterdam similar conditions exist. Until 1993 the New Amsterdam vault was subject to flooding. With support from the AID Caribbean Justice Improvement program, this problem, at least, appears to have been corrected. Still, neither New Amsterdam nor Georgetown offices have any measure of climate control.

The registry system is entirely manual, using no automation, photocopy or micro-photography technology although non-electric typewriters are used. Thus, no backup copies of records exist in the event they are lost, damaged or stolen, or in the event of a natural disaster like a fire.

Companies & Business Names

The register and indexes are all manually prepared. Each Company's incorporation documents are placed in a file and stored in cupboards in the registry vault. The actual corporate documents are typewritten as submitted by the companies themselves.

¹ Like the other records of the Registries, there is no back-up microphotographic or other process as a duplicate of the titles or records of the two land registries.

Business names registration comprises a simple hand-written register and single page application forms later bound into volumes.

Trade Marks, Patents & Designs

The system is entirely manual with an intense visual element in the necessary searches of the hand-prepared registers. The records are quite alarmingly not stored in a vault and are entirely open to sabotage and irremedial destruction by ill-will or any other cause.

The recent commitment by the Guyana Government to join the World Intellectual Property Organization would accentuate the urgent need for addressing the operations, sanctity and security of this vital aspect of national and international commerce.

**THE "TRANSPORT" SYSTEM (DEEDS REGISTRY ACT (1919) AS
AMENDED, CHAPTER 5:01 OF THE LAWS OF GUYANA)**

It should be noted that the land governed by the transport system is mainly a narrow strip of about 2 miles in depth running along the 270 mile Atlantic coastal fringe of Guyana and land of similar depth along the banks of some of the main rivers.

Riverain lands granted by virtue of the (Crown) State Lands Act and which grants have been since made absolute may be transported as freehold land.

An owner of transported property owns the land from the centre of the earth to the sky above, subject to such rights as overflight or such mineral rights as may have been specifically reserved to the State. The form of transport essentially reflects the fees and duty paid, the name of the proponent i.e. the vendor or person passing title, the name(s) of the persons to whom title is passed, a description of the property conveyed and the value or purchase price.

The conveying or transport of property involves publication of the transaction in the Official Gazette on one Saturday with an allowance of two weeks for the filing of an opposition by a creditor of the vendor or by someone claiming an interest in the property. The validity of such opposition is settled by an action in the High Court which must be instituted by the opposer.

The transport process should ordinarily be completed in about six weeks at most, a period needed mainly on account of the publishing requirement - a characteristic of the applicable Roman-Dutch system - and the necessary file review. However, institutional inefficiencies tend often to double the time.

In the normal course, the initial documentation for a transport, mortgage or lease is prepared and filed by an Attorney-at-Law. This is not a legal requirement as either party may do so saving some legal fees.

The sale process for a transport of land from "A" to "B" is described below, based on the presentation of documents at the Deeds Registry counter by a lawyer's assistant:

1. Basic documentation, namely Instructions to Advertise, Affidavits of the vendor (A) and purchaser (B), and A's title would be presented to the Registry counter clerk for filing. The clerk makes a cursory check to ensure that all necessary, basic documents are presented. The clerk then taxes the documents in accordance with the fee schedule, and returns them to the lawyer's assistant, who takes them to the cashier (receipt writer).

2. The Cashier (receipt writer) issues a receipt based upon the payment, and records the receipt number on the main document.

3. At end of session, the clerk of the conveyancing section will take all documents filed, and will enter them into a log book. This will constitute a record of the documents having been filed.

4. The filed documents pass to the Conveyancing Officer head of the Section.

N.B. Steps 1 to 4 take place at the same session or the same day.

5. The Conveyancing Officer examines the documents for legally required contents, with emphasis on the following:

- (a) The title must correspond with the property sold;
- (b) The description of Instructions to Advertise (Notice of Advertisement) and Affidavits must correspond and be consistent with that in the Title; or the portion sold.
- (c) Encumbrances, i.e., leases and prior mortgages affecting the Title must have been removed, or should be taken into account in the present transaction;
- (d) The Conveyancing Officer may make simple amendments to the Instructions for clarity of advertisement in the Official Gazette;
- (e) The officer will note onto the Instructions any serious defects that would inhibit further processing; and
- (f) In the case of a first-time subdivision of property in a title, the officer will examine the land surveyor's plan to ensure conformity with the title and municipal or health laws limiting subdivision.

6. The Conveyancing Officer now hands over those matters thought to be in order to an advertisement clerk. Defective transactions are passed by the Conveyancing Officer to be placed by a counter clerk in "out of order" bundles, arranged alphabetically according to the lawyers' surnames.

N.B. This process may take from one to four weeks and often longer from the time of filing to the time of submission for advertisement.

7. The advertisement clerk makes a list of titles in all transactions received from the Conveyancing Officer, and passes to these to the office assistant operating in the vault.

8. The vault office assistant places bound volumes containing the original titles on a long table.

9. The advertisement clerk compares annotations on A's title documents with the corresponding originals. The clerk then collates with a junior clerk the text of the Instructions with that on the original; makes an annotation in pencil on the back of the original and on the front of the Instructions (Notice of Advertisement) the prospective number of the transaction and the date of the Official Gazette in which the transaction will be advertised.

10. The advertisement clerk delivers the bundle of Instructions ready for advertisement to the Official Gazette courier, or sends the bundle to the Official Gazette printing company.

11. Following publication of the transactions in the Official Gazette, the printers return the Instructions to the Conveyancing Officer.

12. In the case of a transport, the Conveyancing Officer will pass the instructions to the Typing Pool.

13. A typist will insert into the printed transport form particulars of parties A and B, a description of the property, fees paid with reference to the receipt number, the number and date of the vendor's (A's) title and the value of the property. The typist passes the completed forms to a collating clerk.

14. The collating clerk will check the typed transport forms with the Instructions, and submit the document to the Registrar (or Deputy Registrar) for certifying.

15. In the event of opposition, which may be filed by the 13th day after the advertisement in the Official Gazette, the counter clerk taxes the Notice of Opposition, at the same time extracting from the collating clerk the transaction opposed and isolating it in a special bundle.

16. The Registrar (or Deputy Registrar) examines the transports typed, collated and submitted to ensure (a) the sufficiency of title, (b) proper description and legal capacity of the parties, (c) proper value, and (d) provision for previous encumbrances. The Registrar will then certify the transport as being in order for passing and execution by the parties.

17. Certified transactions are collected from the Registrar by the collating clerks. The collating clerks place the transactions in bundles ready for passing at the next Transport Court

18. Following passing by the parties 'A' and 'B' in attendance at the "Transport Court," which is held twice weekly the documents will be signed by the Registrar (or Deputy Registrar) and the Conveyancing Officer. The transports are then entered into a register by any clerk, and assigned a number which for all time determines their reference number and date. Next, all transactions are passed to an Annotations Clerk.

19. The Annotations Clerk:

(a) records on the submitted titles the effect of the transaction;

(b) prepares a corresponding list of original transport volumes for the office assistant to lay out on the long table in the vault.

(c) annotates the original titles accordingly;

(d) enters the transactions in the land register, and

(e) passes the completed bundle of annotated transactions to the Conveyancing Officer for preparation by the clerks of the Titles to be issued to the new purchasers.

Mortgages of Transported Property:

In terms of processing a mortgage on transported property, the above procedure in relation to transports is the same up to and including step 10.

Mortgage Deeds are prepared and submitted by Attorneys-at-Law for the several lending institutions. These would contain the particulars of the parties, loan amount and description of the property in accordance with that published in the Official Gazette.

They are collated by the Collating Clerks as at step 14 (above) and are subjected to all the corresponding stages thereafter, except that they are entered not in the land register, but in a register of encumbrances or Mortgage Register. It should be noted, however, that this last and most important process of entry into a Mortgage Register, although formally required by law, has not been observed for about ten years.

The final process is the preparation by the Clerks of the conformed copies or "grosses" of the mortgage deeds, for collection by the lending institutions in due course.

For leases and transfers of leases of 21 years or more, the procedure is similar to that for a mortgage. Cancellations of mortgages are not advertised.

**THE "LAND REGISTRY" TORRENS SYSTEM (LAND
REGISTRY ACT (1959) AS AMENDED, CHAPTER 5:02
OF THE LAWS OF GUYANA):**

This system, introduced in 1960 into Guyana is essentially registration of the land which is its main focus. In comparison with the transports system with which it is concurrent, land registry transactions are much simpler. There is no requirement of advertisement in the Official Gazette and a transaction of any nature may be completed, with or without the parties being in attendance at the registry, within one day.

The land is identified and described as a parcel located in a block situate in a geographical zone with no need for lengthy description or reference to a land surveyor's plan.

Ordinarily land is brought under this system when it falls within a registration area so designated by ministerial Order. Awards are made by a Commissioner of Title - judge of the Land Court - to successful applicants for title to land within such an area based on an accurate survey done by a land surveyor statutorily provided by the Commissioner of Lands and Surveys for that purpose.

On the basis of the Orders made by the Land Court and transmitted to the Registrar, the first entries of land are made in the register.

In respect of each parcel of land, the register provides information on ownership, area, encumbrances, judgements or caveats. A caveat has the effect of a restraint imposed by an objector against future dealings with a parcel without the objector's being heard.

Registered land is protected by an Assurance Fund to which contribution is made by the parties to each transaction and from which compensation may be paid to someone mistakenly dispossessed of land.

Once on the register, land may not be withdrawn from it.

The Act provides simple statutory forms for most of the ordinary processes like transfer on sale, mortgage, lease or caveat. These forms duly completed by the parties, are presented at the Land Registry after being signed by the parties before a Notary Public, Justice of the Peace or Commissioner of Oaths in Guyana or overseas before a Notary Public or other designated Official. They may also be signed before the Registrar or Assistant Registrar.

Upon payment of the requisite fee, the advalorem duty and contribution to the Assurance Fund, the transaction of sale and transfer or mortgage of land may be entered into the register in one or two days and a new Certificate of Title issued within one week to a new owner. There is no requirement of advertisement and no provision for opposition as under the transport system.

Accordingly, not only is the sale and transfer of property capable of being completed in one or two days, but the raising of loans by way of mortgage may be effected in a similar period.

Again, unlike the transport system the Act makes provision for registration of:

- a. A lien obtained by lodgement of the Owner's Certificate of Title in the hands of the person holding the lien;
- b. A judgement of the Court or a writ of execution against the owner's property;
- c. A caveat by some person claiming an interest in the land.

THE LAND COURT - LAND REGISTRY ACT

The Land Court is presided over by a Commissioner of Title who has the power to determine all matters regarding title to land in a declared registration area. The Commissioner, upon such declaration, invites all persons having claims on whatever basis, whether by prescription, testate or intestate succession, purchase or actual ownership by a document of title to such land.

A land surveyor provided by the Commissioner of Lands and Surveys prepares a preliminary or sketch plan identifying the several portions claimed and illustrating disputed boundaries.

Following due publication in the Official Gazette and newspaper, the Commissioner of Title adjudicates upon the applications and makes declarations of title (or recordings of a previous title where appropriate) whereupon the surveyor prepares the final plan showing every piece of land as a parcel. After due publication of these declarations the Commissioner of Title transmits to the Registrar of Lands orders under the seal of the Land Court upon the basis of which the Registrar opens a land Register for the particular area. The land is now "registered land" for all purposes and all time and may in future be dealt with only under the provisions of the Land Registry Act.

In the future, experience and lessons learned in Trinidad and Tobago, and St. Lucia and elsewhere may prove extremely valuable to streamline the process, once the funding emergency is overcome.

For example, in Trinidad and Tobago, land registration was carried out by a number of field teams which included a Registration Officer and a Survey and Recording Officer. In Trinidad, prior to the declaration of a new Registration Section, the government held public meetings to explain the program of registration and informed the public of the procedures that they must follow. Persons wishing to assert their rights to parcels were asked to bring documentation of their rights to the Registration Officer Unit's office, set up to coordinate the local registration activities. All evidence of a claim was presented in that office. The Officer held a hearing if there were any disputes that could not be immediately resolved. Only when the Registration Officer could not resolve the dispute did the land tribunal hear the disputes. Once all tasks had been complete in the Registration Section, the index maps and parcel registers were put on public display for 90 days, to give the public the chance to examine the findings and a last chance to petition to the Registration Officer. Claimants are required to do much of the work for themselves (as described by Stanfield in his report to the IDB).

St. Lucia had a very similar experience (as described by Grenville Barnes, LTC Research Paper 102). The legal foundation was laid out in three separate laws that were introduced specifically for the purpose of a new land registration effort. They included the Land Adjudication Act, the Land Registration Act, and the Land Surveyors Act. The Land Adjudication Act outlines the process of acquiring title to land under the new system and defines the responsibilities of the adjudication team and landholders. The Land Surveyors Act described the legal requirements for the spatial definition of land, and the Land Registration Act detailed the elements and working of the new title registry system. St. Lucia utilized the concept of titling "brigades," to include a demarcation/survey/recording officer, an assistant for demarcation, two survey assistants, a recording assistant, a driver and two or three laborers.

These Trinidad and St. Lucia laws can serve as models for up-dating Guyanese legislation. This will potentially allow for group processing of applications to avoid paperwork, while registering immediately all properties not in dispute. At present in Guyana, these are processed one by one, in separate Land Court proceedings and actions. The Land Court will currently hold back entire Land Registration Areas until all disputes are settled. Almost all work is done by the Land Court itself, not the community. Legislation could be amended to allow for processing of non-disputed claims in immediate fashion.

Other interesting models might be found in Kenya, Belize and the Cayman Islands.

**Comparison of Transactions at Registries in
Private Lands: recorded at the Deeds Registry**

Office Section:	Conveyance	Land Registry
Document Name:	"Transport" or "Deed"	"Registered Title"
Historic Origin:	The original Roman/Dutch System operative in Guyana. Based primarily on names of the parties involved in the transaction.	Australian, imported by the British to improve on the Roman/Dutch system. Based on the parcel, rather than buyer or seller.
Property Description requirements:	Sometimes Long, verbal descriptions of land; survey plans often feature	Reference only to Block, zone and parcel number on a survey.
Time requirements for transfer or mortgage	6 to 8 weeks in theory. 3-6 months in practice.	In theory, 1 day. In practice, 2 days to 1 week
Geographical application to date:	Entire Coast and banks of larger rivers.	Mainly coastal with some riverain areas.
Procedure:	long documentation, publication in the <u>Gazette</u> , period for opposition, execution before the Court.	Presentation at registry. Almost instant registration.
Cost/benefits:	Does not often require elaborate survey, but process is time consuming.	Process is cheap and fast, but requires up front investment in surveys by Government.
Amount of documentation:	extensive	minimal.

THE JUDICIAL SALE TRANSPORT

The Deeds Registry Act makes provision for the issue of a judicial sale transport. The sale may arise from the execution process whereby the property of a debtor is sold at auction by the Registrar of the Court to recover the amount of a judgement at the instance of a judgement creditor, a mortgagee seeking to recover unpaid money or a statutory authority e.g. Municipal or Local Authority or Commissioner of Inland Revenue seeking to recover an amount due as rates on immovable property or Income Tax. The Act provides that where land is sold at auction (execution) a transport may be passed by the marshal of the Court to the purchaser.

In the course of the execution process the Registrar of Deeds is required to notify the holders of mortgages and leases of the intended sale so that they may appear to protect their interests. It is in this regard that the failure of the Registrar to maintain the Register of mortgages and encumbrances is most significant since an interested creditor who did not see one of the three advertisements of the execution sale in the Official Gazette may not be so notified by the Registrar and lose the opportunity to protect his position as creditor.

Of particular note is the use of the device of execution sale by a local authority for recovery of unpaid rates. It had been hallowed practice for persons having no proper title to their land in a town or village district to allow his payments to fall into arrear. When, with his full awareness, the property was eventually sold at execution, he and many others of similar mind, would attend the sale and bid unopposed for his land and pay the sale price and minimal legal costs. The marshal would then, in keeping with the provisions of the Deeds Registry Act, pass transport to the purchaser who would thereby acquire relatively cheaply a good clean title.

The system has recently become rather complicated thereby depriving many small villagers of this simple means of obtaining transports for their land.