

**THE DISTRICT LANDS PARTITION AND
RE-ALLOTMENT ACT (CHAP. 60:03 OF
THE LAWS OF GUYANA)**

By this Act, in force since 1926, the people of any local Government district would petition the Minister responsible for lands who would appoint a suitable person, usually a Government land surveyor, to partition and where appropriate, re-allot the lands in that community on the basis of purchase or inheritance or a previous unsatisfactory title. The partition Officer has no power to take into account claims based on prescription although this was often done to general satisfaction. The powers and procedures are much akin to those of a Commissioner of Title under the Land Registry Act with ample publication and opportunity for appeal by dissatisfied claimants.

The Partition Officer would eventually pass transports for a very modest fee to those persons whose awards were unopposed.

Although the Act remains in force, it has not been invoked since the coming into being of the Land Registry Act. The procedure toward title is no shorter and the latter Act has the following advantages:

1. Greater powers of a Commissioner of Title
2. The availability of the Commissioner's legal skill in addressing conflicts with a legal basis.
3. The general power of a Commissioner to base his awards on prescription which is a major element in applications to the Land Court.
4. The surveyor provided by the Commissioner of Lands is able to concentrate on the technical matter of surveying, leaving conflict resolution to the legally trained Commissioner of Title.
5. The land ultimately comes onto the land register and is governed by the Act with all its associated advantages over the transport system.

There is a collateral Act namely the District Lands Partition and Re-allotment (Special Procedure) Act, Cap. 60:04 by which certain areas specified in the Schedule to the Act were brought under the principal Act. Although the minister has power to add to the Schedule, this is not likely to be done, for the reasons addressed above.

CO-EXISTENCE OF THE TRANSPORTS & LAND REGISTRY SYSTEMS

It may be noted that the Land Registry Act provides for the continued existence of a transport for land situate within a registration area and for the Commissioner of Title merely to record such a title if the holder does not wish to surrender it in favour of a new declaration of title. However, provision is made for such a transport holder to transport the land to himself "as registered proprietor" and so become subject to the system and its procedures.

Although it was hoped that the land registration system might eventually overtake and replace the transports system, such a process is not likely to take place for many decades. The paucity of Land Courts, essential land surveying staff and Registry officials as well as the vast area to be addressed, dictate that the two systems will run together for many years to come.

There are no operational problems arising from the co-existence of the two systems, although some inconvenience may be caused by the necessary suspension of transport transactions in a newly created registration area while a Commissioner of Title adjudicates and makes his awards which may affect land held by transport.

TITLE THROUGH PRESCRIPTION:

By presentation of a Petition to the High Court of the Supreme Court, an occupier may under the provisions of the Title to Land (Prescription and Limitation Act obtained).

Documented owners can get title through the Roman concept of prescription. If an occupier has notoriously and openly occupied the land for twelve or more years, the occupier can request a title by virtue of prescription. The application must include an up-to-date survey, a legal petition, notice to all neighbors, notice to the state if the land borders on State Land, and other requirements. An advertisement is placed in a newspaper of general circulation and another notice is published in the official Gazette. This provides other citizens an opportunity to oppose the titling of the land. If no timely oppositions are made, the order is made by the Court declaring the petitioner to be entitled to have title registered or transport passed in his favour.

The prescriptive process is subject to the law's delays. The costs involved for small holders may exceed the market value of the land.

EFFECT OF OTHER LAWS UPON DEEDS REGISTRY LAND TITLES

There are in addition several Acts of Parliament whereby title systems operated by the Registrar of Deeds may be affected by the vesting of property in the State of some statutory Authority. The Registrar is required upon submission to him; of the relevant ministerial Order, to register the subject land in the name of the State or Authority and to make due annotation upon the titles affected by the Order.

East Demerara Water Conservancy Act	Cap. 55:03
Acquisition of Lands for Public Purposes Act	Cap. 62:05
Acquisition of Land (Land Settlement) Act	Cap. 62:06
Sea Defence Act	Cap. 64:03
Drainage & Irrigation Act	Cap. 64:03
Telecommunications Act 1990 - No. 27 of 1990	

Lands required by the Government for the purposes of roads, water and electricity may be acquired under the provisions of the Requisition of Lands for Public Purposes Act., Cap. 62:05

The Guyana Water Authority Act Cap. 55:01 deals with the administration and provision of water, but does not address the matter of substantive legal rights to subterranean water.

POLICY IMPLICATIONS AND CONCLUSIONS

The purpose of this review was to provide a thorough explanation of the Deeds Registry and its current status. The review also had as a goal to identify major constraints in the legal and institutional framework, which could be addressed in the policy dialogue between the Inter-American Development Bank (IDB) and the Government of Guyana.

The most immediate problem facing the Deeds Registry is the low level of remuneration, resulting in an inability of the Registry to attract and retain competent staff, and an associated low and indifferent quality of performance. There are severe delays in completion of land transactions under the transport system, and the very integrity of titles and records is in question. Documents have been lost or stolen. Fraud and mistakes make the process one that could result in legal uncertainty of ownership. Meanwhile, fee schedules are in some cases outdated and often so low as to be more of a nuisance than a revenue source.

The physical environmental problems also call for immediate attention. Records at the Deeds Registry are hand written and go back to the 19th Century. Often parcel maps are in disrepair. Records are sometimes bundled with string and left on the floor. Both the Georgetown registry and the subregistry 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.

The registry system in Guyana is entirely manual, using no automation, photocopy, or microphotography technology. 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. Especially troubling is the ease at which a bad-intentioned individual or disgruntled former employee could completely sabotage records.

No where in the Deeds Registry Act does it specify that funding must come from the Attorney General's Office. It is included within the Ministry of Legal Affairs in order to present a consolidated budget. Likewise, no where in the Deeds Registry Act is provision made for income to the Registry apart from what it will collect as fees for filing of documents. However, by tradition, the Registry has been included in the Attorney General's budgetary submission for general treasury funds, and all incomes are paid to Inland Revenue via the Attorney General's office.

The specific problems of the Conveyance System were recognized even back in the 1950s. To attack this problem, in the early 1960s, the British introduced "Land Registration" to Guyana, a Torrens-like (title) system based on parcel identification. This conversion occurred not only in Guyana, but in other Caribbean countries (this is part of a wider, global trend in this direction). In essence, it is a registry of the land itself. Transactions are much easier. The buyer and seller simply appear at the registry and the transaction takes place. There is no publication requirement. All that is really needed in terms of legal documentation is the block number, the zone and the parcel number. Consequently, document drafting is less complicated and transactions may be completed all in one day often at less cost than under the transport system.

To convert from the Deeds Registry (Conveyance/Transport) System to the Land (title) Registry System requires up front investments in survey. Due to the high cost of survey, a phased approach was implemented in which the Attorney General would declare a series of "Land Registration Areas" for conversion. Gradually, over time, the entire country would be converted.

Unfortunately, the surveying has become very problematic, due mainly to budgetary constraints at the Lands and Surveys Department. Consequently, the survey process slowed greatly to the point that no survey work was undertaken in 1993. There has been little money in the system to pay surveyors and few are willing to work at the rates the government wishes to pay. Neither has the Land Court had in recent years been given a chance to work. It had no surveyors last year to carry out its work. It does not have adequate staff. In short, conversion from the old Conveyance System to the Land Registry System stalled.

A possible additional constraint on conversion to the new Land Registry System, beyond the severe budgetary crisis, is the required adjudication procedure. Applications to the Land Court are processed individually, rather than collectively, resulting in duplication of effort. For example, if a Land Registration Area has 100 parcels, and 99 have no disputes, the entire package is held up until all disputes are resolved. Still, each of the 100 parcels would have to have a separate file and a separate application, with accompanying fees, in order to be processed. This creates potential bottlenecks in the processing of Land Registration applications and unnecessarily duplicates paperwork.

From the above background, several issues become apparent. First, there must be a mechanism in place to finance the Deeds Registry so that it can operate in a professional manner. It must pay its employees a suitable wage and maintain the office in an appropriate state. It should also finance improvements where necessary to bring the office back up to standard. Second,

streamlining the process within the Land Court (Commissioner of Title) should be taken under consideration for conversion from the Conveyance to the Land Registry System.

I. Exactly how can the Registry of Deeds be made financially sound?

A possible solution to the Registry financial problems might be the mechanism of a "Closed Department" with "enhanced salary structure." Potentially, two steps would be required. First, the Registry must have a reliable funding source. That is, it must have the legal ability to retain and spend income. Second, it must have the right to utilize an enhanced salary structure, to pay wage rates above the normal civil service salary.

Guaranteeing a reliable funding via this mechanism would not require changing the Deeds Registry Act. What would be needed is only a change in funding source. This is an administrative decision which must be made by the Government of Guyana. In short, *a semi-autonomous funding source is fundamentally a political decision, not a legal one.* This will give the Registry sufficient funds to maintain the office, make improvements and pay salaries.

Specifically regarding salaries, to pay employees more than the official civil service salary structure requires an additional, special procedure. There are mechanisms within the Government to make an agency a "Closed Department." Interestingly, there is precedent for this with the Deeds Registry. Years ago, the Deeds Registry was once considered a "Closed Department" for salary and promotional purposes. This would require no new legislation, but would require a positive administrative decision by the Government via the Public Service Ministry and the Finance Ministry.

It is proposed that the Government of Guyana consider simply authorizing a higher salary structure than is currently used for the rest of the public service, with the monies provided by the consolidated budget of the Registry itself. This mechanism, a special salary scale, has been used for example by the Income Tax Department and the Office of the Auditor General. Concurrently, the Government should also revise the fee schedule to recover amounts more in keeping with the value of the service rendered.

II. Exactly how can the adjudication process for the conversion of land to the Land Registry section be streamlined?

Streamlining the adjudication of land becomes an issue whenever the Attorney General declares a "Land Registration Area." The Area may be conversion of freehold titles from the Conveyance to the Land Registry System.

The present system in Guyana under the Land Court and the Commissioner of Title, as described above, is not efficient, due mainly to funding constraints. 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.

A Records Working Group/Coordinating Committee of inter-Ministerial GOG officials should be established with members from the Deeds Registry, Land Court, Supreme Court Registry, Department of Lands and Surveys, Ministry of Legal Affairs, Inland Revenue, Agriculture, Census, National Data Management Center, and other appropriate entities. The Commercial Banks and the Bar Association should be invited to participate with the working group. This would give some direction and guidance to the Registry, experience sorely lacking at the moment.

The Records Working Group/Coordinating Committee of inter-Ministerial GOG officials will work toward an eventual, phased-in, Multi-purpose Land Information System (to include the Registry of Deeds, Inland Revenue, Lands and Surveys, etc.), and an automation of other office activities (Notarial Section) such as the companies registry, patents, trademarks, business names, deeds poll, etc. The Multi-Purpose Land Information System (MPLIS), will be based on a network system using compatible/exchangeable information formats.

For the land information system, special consideration should be given to the possible use of Global Positioning System (GPS) technologies to lower the costs of traditional surveys.

As a result of revised institutional financing and potential procedural streamlining, processing time at the Registry should be dramatically reduced. All land registry and all non-property related transactions should be recorded within one business day. Excluding statutory required delays, the registry/administrative processes of unopposed Transport transactions, including leases and mortgages, should be completed within one business day.

In the long term, with increased emphasis on planning, the Deeds Registry will incorporate computerized technologies, to the extent practical, to provide enhanced customer service. The property-related transactions eventually will be linked to the

MPLIS network. This will include mortgage transactions. Other registry activities will also be computerized, to the extent practicable. Consideration may be given to the establishment of facilities for access to Registry information/records located in Essequibo county and additionally at Corriverton, Corentyne, Berbice.

Notwithstanding the observations made above, a definitive case cannot now be made against the efficacy of the Land Court. The declaration of a host of registration areas in response to the need for proper title has not been supported by the provision of an adequate corps of Commissioners of Title, Land surveyors, land Court staff and in general the funds necessary for such operations. Given those vital resources the system could prove itself as it did years ago where those resources were made available.

Technical assistance and other legal and administrative changes can also contribute to a revamped and modernized Registry. A draft, sample Action Plan Proposal is included with this report to provide some guidance on how the Ministry of Legal Affairs might begin this process.

Recent Significant GOG Actions

Virtually nothing has been done to improve the Registry in recent years. On the contrary, it should be noted that, while even in the course of our review and discussing ways to increase public sector salaries at the Deeds Registry, the general governmental salary structure was recently revised generally downward. This, of course, has affected the Deeds Registry, causing additional employees to leave over the last couple of months.

Proposed Actions under the IDB Policy Loan:

Tranche I. Consideration of creation of a "Closed Department" with an enhanced salary structure.

While no change to the Deeds Registry Act would be required, creation of a "Closed Department" would require at a minimum a positive administrative decision by the Government via the Public Service Ministry, the Finance Ministry and the Ministry of Legal Affairs. Concurrently, these Ministries could take appropriate measures to allow for an enhanced salary structure for the Registry and a more appropriate fee schedule. Income generated beyond budgetary needs could be returned to the national treasury.

Tranche II.

Review of the Potential to Streamline the
Registration Process.

The Government of Guyana may give due consideration to changing appropriate legislation in light of the comparative experiences presented. Updating the law, based on these other experiences, could allow for *reduced initial registration costs and process time via processing of applications, adjudications and surveys in groups.*

SUMMARY IDENTIFICATION OF PROBLEMS/ISSUES

The single biggest issues facing the Deeds Registry are:

- (1) an adequate, sustainable and reliable funding mechanism;
- (2) streamlining certain property registration procedures;
and
- (2) the lack of a defined vision of where the Registry and related governmental agencies are heading over the next 15 to 20 years.

Below are immediate concerns of the Deeds Registry, major issues and constraints affecting its legal, institutional and operational efficiency. The concerns listed are inter-related and cumulative in their impact.

I. Physical Facilities Issues:

- a. Need for more Storage space/shelves and proper drawers or cabinets for land-survey plans.
- b. Lack of air conditioning, causing accelerated deterioration of documents.
- c. Flooding in New Amsterdam vault.
- d. Public access to records. Microfiche units recommended.
- e. Lack of photocopiers, adequate telephone lines, facsimile machine, word processing equipment, electric typewriters, etc.
- f. Possible need for a registry in the eastern-most part of the county of Berbice.
- g. Books/Documents are being attacked by insects.
- h. Lack of ordinary items of office stationery and gadgets.

II. Employee Issues:

- a. Salaries abysmally low, resulting in an inability to attract or retain qualified staff, and weak morale. Possible incentive for employee corruption or indifferent performance.

- b. Lack of basic education upon employment. Lack of adequate training on the job, since training funds are very limited.
- c. High turn over in junior staff.
- d. Urgent need to address recruitment of qualified staff to man the improved recording facilities recommended in the Action Plan.

III. Process Issues:

- a. Lack of backup copies. If there were a fire, for example, all records would be lost. In cases of damaged documents or theft, reconstruction is labor intensive and problematic, if not impossible.
- b. Deterioration of maps/books, inability to repair and maintain.
- c. Transport System is very slow, expensive and labor intensive. Consequently, mortgage finance process is also very slow.
- d. Other governmental entities which gather and maintain geographic and ownership information, do not share this with the registry.
- e. Need to have a trained staff member assist the public with every inquiry.

IV. Public Finance Issues:

- a. The registry generates income for the national treasury, but cannot retain even a portion to offset expenses.

Inability to establish additional "user fees" beyond those that are now paid to the national treasury.
- d. Allocations from national general purpose funds are inadequate to maintain efficient services expected of the registry.
- e. Budgets approved by the Finance Ministry have a short time horizon, preventing economies of scale in contracting and purchasing over longer terms.
- f. In certain cases, the fees collected by the Deeds Registry are very low and do not correspond with the true value of the service provided.

V. Management Issues.

- a. Lack of sufficient support for carrying out management tasks (management is often engaged in the "work" of the registry, rather than "managing" it, due to a shortage of skilled personnel).
- b. Lack of the designation of an "Assistant Registrar" of lands for the New Amsterdam Sub-registry.

VI. Inter-Institutional Issues related to the Deeds Registry:

- a. Transparency problem: With property ownership information becoming more difficult to retrieve, property owners can now in some cases avoid effective taxation.

Financial transactions, mortgages, registers unkept; archaic process for and files for corporations are stored in a system which is difficult for the public to consult directly and efficiently.

- b. Coordination with the Lands and Surveys Department: Due to funding limitations at the Lands and Surveys Department, there are constraints on the amount of surveys being carried out to support the land registration process.