

## Alert

### Bermuda Land Title Registration: Your Questions Answered

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A public register of land ownership in Bermuda was created for the first time by The Land Title Registration Act, 2011, which came into full effect in August 2018. Land Title Registration is intended to provide certainty of ownership backed by a Government guarantee, simplify proof and transmission of ownership, and, over time, move Bermuda from its current system of unregistered land title to a more modern system of dealing with land rights. Bermuda landowners may have a number of questions concerning Land Title Registration, which we aim to answer in this article.

#### Am I required to apply for registration of title to my property?

Title to a property must be registered at the Land Title Registry Office (LTRO) following either:

- (a) a sale and purchase transaction (but not when land is gifted or transferred voluntarily)
- (b) a mortgage (but not when an existing mortgage loan is increased by way of further charge).

The triggers for compulsory registration may be extended at a future date but, currently, there is no indication that this will happen any time soon.

In addition the LTRO will accept applications for voluntary registrations by existing land owners.

#### Are there benefits to registering title to my property voluntarily?

Yes. Registration results in a Government guarantee of ownership. Anyone who is considering selling or mortgaging their property in the near future should also consider registering their title in advance since registration will avoid title uncertainties for a purchaser or mortgagee. Note however that registrations are currently taking around 3-4 months to complete and so we do not recommend making an application immediately prior to a proposed transaction since, whilst the title deeds are lodged at the LTRO for registration and the registration is pending, the owner would be unable to prove ownership and this would delay the transaction.

The fees payable for voluntary registrations are based on the property value (which may be self-certified by the applicant) and are currently are as follows:

<u>Property value</u>	<u>Application fee</u>
\$0 – 100,000	\$100
\$100,001 – 200,000	\$250
\$200,001 – 500,000	\$365
\$500,000- 1,000,000	\$750
Over \$1,000,000	\$1,300

## How do I apply?

An application for compulsory registration will be made on behalf of a property purchaser or bank (in the case of a mortgage) by the applicant's attorney following completion of the transaction that triggers first registration. As part of the application, the applicant's attorney is required to confirm or certify that the applicant has good title to the property. If there are any title flaws or issues, these must be disclosed in the application. The LTRO may rely on the certification provided by the attorney when registering the title.

Applications for voluntary registration can be made by property owners on direct application to the LTRO.

## What do I need for the application?

Application is made on forms provided by the LTRO and must be accompanied by the owner's title deeds and a survey plan. Where a property owner is applying for voluntary registration, the LTRO will require certified ID (for compulsory registrations the applicant's attorney is required to confirm the applicant's identity). A registration fee is payable based on the value of the property (see question 2, above).

## What will I receive from the LTRO when the registration has been completed?

A newly registered owner will receive a printed title report (usually between 1 and 2 pages) reflecting the information retained on the electronic Land Title Register, together with a title plan. Each registered property is allocated a unique identification number or title number and the report will detail this, as well as the address of the property and the name of the registered owner. If the property is mortgaged this will be noted, as will any specific government permissions under which the property was acquired (e.g. Immigration Department licences for foreign owners or corporate landholding permissions).

Where a property has rights over (or is subject to rights in favour of) adjacent land (e.g. rights of way, restrictive covenants, etc) these are noted in the title report. However, generally the detail of such rights will be specified by reference to the title document containing them, rather than being set out in full in the land title report. Anyone who needs such details must apply to the LTRO for a copy of the relevant document and review it in the same way as for unregistered land.

## Following registration, will the LTRO title plan replace the need for a survey plan?

No. Land mass in Bermuda is limited and owners generally want to know the exact extent of their boundaries as best possible, to make sure encroachments are kept to a minimum. However, Land Title Registration does not extend to guaranteeing the boundaries of a property and the title plan is only indicative of the boundaries. It does not include measurements or, in many cases, any points of identification such as the names of boundary roads. The registration plan **cannot** be used in connection with many applications to other Government departments, such as: to the Planning Department in connection with planning search requests (which are undertaken as a matter of course for all intending purchasers of real estate to check whether there are any infringements of planning regulations), or for planning permissions; to the Department of Immigration for applications by non-Bermudians for land licences; and to the Registrar of Companies for applications for corporate land holding consents. The LTRO title plans will also not be of assistance in the event of a boundary dispute.

## Following registration, do I need to retain the historic title deeds?

Yes, it is critical to retain the historic title deeds and the LTRO has recently issued an advisory notice stating that, even after registration, title deeds should be kept safe and accessible when they are returned to you.

The Land Title Registration system and Government's title guarantee does not extend to the boundaries of the property. This is a significant departure from the unregistered land system under which properties are described by reference to exact measurements and survey plans and are staked in accordance with these descriptions and deed plans. Under Bermuda's planning regime, even a seemingly minor deviation in a boundary location or lot size may have a significant impact on value as a result of zoning, required setbacks and minimum lot sizes. Consequently, purchasers of registered properties will still want to have the boundaries staked and will require confirmation of the lot size and boundary locations. Anyone applying for planning permission will be required to provide a boundary survey plan. This can only be done by reference to the historic deeds. When selling, granting or acquiring any rights in or for a registered property, the owner should therefore expect to be asked to produce the pre-registration deeds. For the same reasons, the deeds will also be required in the event of a boundary dispute.

As explained above, the title reports produced by the LTRO note the rights affecting the registered title by way of cross reference to the historic deeds. Whilst copies of these documents should be available on application to the LTRO, errors in scanning or electronic copies can occur and plans may be distorted by copying or the copies may be difficult to read. In these cases, it would be necessary to review the original documents.

## Does Land Title Registration make conveyancing transactions quicker and easier?

In some ways, yes. Once the title to a property is registered, ownership can be confirmed without reference to the historic deeds. A purchaser will know, at a glance, whether or not he or she is dealing with the legal owner. However, as explained above, a purchaser may still need to review all documents noted on the LTRO title report that create rights affecting the property in order to assess their impact of the property's value and its future use and to check the lot size and boundaries. In many cases, conveyancing delays are the result of boundary encroachments rather than issues arising from a review of the title deeds and, in the absence of a Government title guarantee that extends to the boundaries, title registration will not assist.

## If deeds aren't strictly needed to transfer ownership, can someone "steal" my land?

There will always be dishonest people and people may be tempted to assume or misrepresent their identity. Indeed, there have been cases in other jurisdictions where registered land has been sold by someone who was not the real owner. In a way, Land Title Registration could make it easier to steal land if you are able to assume the owner's identity, however in these times of heightened awareness and compliance procedures requiring professional services firms and banks to "know your client", it should be possible to avoid abuse of the system. This is a good reason to consult a lawyer regarding any property dealings.

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