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Torrens Issues for Minnesota Surveyors

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I. Introduction.

These materials are written for Minnesota surveyors, to help them understand the Torrens issues that impact their work.

II. So what exactly is “Torrens” and why does it matter?

Summary: Torrens is the name of the person who created this system of land registration and record keeping. Torrens land and abstract land have different rules.

The Torrens title system is a method of registering titles to real estate. The system is used in the British Commonwealth countries, including Canada, and in Europe but has not been widely adopted in the United States. Minnesota adopted the Torrens title system in 1901. For the most part, it is a voluntary system in which you opt-in for different reasons.

The system is named after Sir Robert Richard Torrens, who introduced it in South Australia in 1858 and later lobbied for its adoption in other parts of the country. He wrote several books on the subject, arguing that his system simplified the transfer of real property and eliminated the need for repeated examinations of land titles.

Under the traditional system of transferring, or conveying, land, the history of the property in question must be examined to ensure that the seller can convey marketable title to the purchaser. When property is sold, a deed is filed and recorded with the county land office. The deed contains the names of the sellers and the buyers, the ownership relationship of the buyers (*for example*, joint tenants or tenants in common), and the legal description of the property. This information is abstracted from each deed and recorded in a document called an Abstract of Title. An attorney or a real estate title examiner inspects each entry to determine that good title has been passed with each transaction. If any problems exist with the title, they must be remedied before the purchaser may obtain marketable title.

The Torrens system does away with this “title examination” process. A court or bureau of registration operates the system, with an examiner of titles and a registrar as the key officers. The owner of a piece of abstract land files an application with the district court to have the land registered. The examiner of titles reviews the abstract of title and issues a report to the court. Once the court has adjudicated the interests of the owners and the encumbrancers, the registrar issues a certificate of title to the owner. This certificate is ordinarily conclusive as to the person’s rights in the property.

When the owner sells the property, the certificate alone is the title, just like an automobile title. When the deed to a new buyer gets recorded, the certificate of title gets cancelled and a new one gets issued to the buyer. There is no need to go back and look at the cancelled certificates of title.

One drawback to the Torrens system is the initial cost of registering the property.

III. Reasons to register title.

- You can vertically divide Torrens property by use of a three-dimensional registered land survey. Minn. Stat. § 508.47, Subd. 4.
- A condominium development must be either all abstract or all Torrens. *See* Rule 222, General Rules of Practice for the District Courts. If the property is part abstract and part Torrens, you may register title to make the entire property Torrens.
- Clear up title problems, such as: a break in the chain of title; a gap in the legal description; a lost deed; the mortgage was paid off, but was never satisfied of record; the contract for deed was paid off, but the seller never gave a deed.
- Judicially determine a boundary, once and for all. Just registering the title will not solve a boundary dispute. Setting judicial landmarks is the next step.
- Protection from adverse possession; you cannot adversely possess Torrens property.

IV. Definitions.

Abstract Property—also known as unregistered land. Before 1901, all real property in Minnesota was abstract property. Under the abstract system, documents evidencing marketable title may be found in recorded documents or by material outside the recording system.

Abstract of Title—a summary of the material parts of the documents recorded against a particular piece of land. Starts at the patent from the United States government and continues to present day.

Certificate of Possessory Title—it looks like a certificate of title, however this property was registered under Minnesota Statutes Chapter 508A. This is an administrative registration procedure; it is not a judicial proceeding. So, title defects cannot be solved using this process, and if there are title defects, this process is not available. A possessory estate in land is a fee simple estate held by an owner who (1) has been found on examination by the examiner of titles pursuant to section 508A.13 to be the record owner of the land described; and (2) has satisfied the examiner of titles that the owner is in actual or constructive possession of the land. A successful CPT land registration ends with the issuance of a certificate of possessory title, which will “ripen” into a certificate of title after five years. Hennepin County became the first county in the nation to allow possessory title registration when the Hennepin County Board of Commissioners approved its use on August 1, 1990.

Certificate of Title—the document that identifies the owners and encumbrancers of a specific piece of registered land. (Think: automobile title.) The certificate of title is not “evidence” of title. The certificate of title is *the* title to the real estate. The certificate of title shall contain the name and address of the owner, a legal description, a description of

the estate of the owner (for example “joint tenants”), and shall by memorial contain a description of all encumbrances, liens and interests which affect the title.

Common Interest Community Certificate of Title—the CICCT. Created for condominiums and planned communities, and it is the “extra” certificate of title that goes along with the certificate of title created for each unit. What gets filed on the CICCT are the documents that affect all the units, for example the CIC Declaration and CIC Plat, the easement granted by the association to the cable company, the association bylaws, and the amendment to the CIC Declaration. Each unit certificate of title contains a reference to the CICCT, and both make up the title for the unit.

County Recorder—the person in charge of the unregistered (abstract) recording system in each county.

Examiner of Titles—an attorney appointed by the judges of the district court to be an examiner of titles and legal adviser to the registrar of titles. Issues reports to the court in initial registration proceedings and in proceedings subsequent to initial registration. Acts as fact finder for the district court and recommends orders to be entered by the court. Provides legal advice to the registrar of titles and assists parties in transactional situations.

Examiner’s Directive—a written directive issued by the Examiner of Titles, directing the Registrar of Titles to take some action.

Exchange Certificate—the owner of registered land may request that the Registrar of Titles exchange her certificate of title for a new one, free from memorials of interests that no longer affect the land. And, land on two or more certificates of title can be combined onto one new certificate of title.

Initial Registration Proceeding—will transfer a title from the recording act system (abstract title) to the registration system (Torrens title). The proceeding is in the nature of a suit against all persons, both known and unknown, who could possibly assert an adverse right. The proceeding requires the participation of the Examiner of Titles in the county where the land is located. At the end, the court issues an order and decree of registration, and when filed with the Registrar of Titles, a certificate of title gets issued.

Interlocutory Order—in either an initial registration proceeding, or a proceeding subsequent, it is the court order directing the surveyor to go out and set the judicial landmarks. An interlocutory order does not finally determine a cause of action but only decides some intervening matter pertaining to the cause, and requires further steps. After the judicial landmarks are set, the surveyor prepares a “plat of survey” showing the location of the judicial landmarks.

Judicial Landmark (JLM)—a tool available for marking court-established boundary lines after a lawsuit between adjoining property owners. Under Minnesota Statutes

Section 559.25, judicial landmarks must be stone or iron. The intent is that they are durable and able to be located by others.

Memorials—the list of encumbrances that affect the title, identified by document number, document type, date of filing, and a “running in favor of” column.

Proceeding Subsequent to Initial Registration—a court action seeking some change in the title to registered land. The proceeding requires the participation of the Examiner of Titles in the county where the land is located. At the end, the court issues an order directing the Registrar of Titles to take some action.

Recital—on a certificate of title, these are the encumbrances located below the legal description and above the memorials.

Registered Land—the more “sophisticated” name for Torrens land.

Registrar of Titles—the person in charge of the registered land system in each county.

Torrens—the last name of the person who first implemented this system of title registration. Sir Robert Richard Torrens implemented the Torrens system of title registration in South Australia as early as the 1850’s. The Minnesota legislature adopted this system in 1901.

Unregistered Land—the more “sophisticated” name for abstract property.

V. Miscellaneous notes based on the definitions.

- Land on a certificate of title can be combined with land on a certificate of possessory title.
- There is no practical difference between a recital and a memorial, meaning one is of no greater value than the other.
- In Minnesota, business entities must be represented by a licensed attorney when appearing in district court. *Nicollet Restoration, Inc., v. Turnham*, 486 N.W.2d 753 (Minn. 1992).
- An Examiner’s directive is for situations that do not require a factual determination. A proceeding subsequent is required for situations that require the court to make a factual determination.
- Think: County Recorder/unregistered land/abstract land
- Think: Registrar of Titles/registered land/Torrens

- The County Recorder and Registrar of Titles are physically the same person, however the records are indexed differently.
- Documents recorded in abstract are delivered to the County Recorder. Documents recorded in Torrens are delivered to the Registrar of Titles.
- Think of all the land in the County as pieces of a puzzle. The puzzle pieces have to fit together. When the owner wants to register the title, we don't want to create a gap or overlap with adjoining Torrens land. So the legal description in the new registration may be changed to match what has already been registered. Since the court will ultimately adjudicate that the applicant owns this land with the new description, we can do this.

VI. Different rules for Torrens land.

A. Certificate of plat correction.

This cannot be filed with the Registrar of Titles without first obtaining a court order. The court must order the Registrar of Titles to accept for filing a certificate of plat correction. This is based on a Minnesota Attorney General opinion issued January 7, 1956. The procedure is as follows:

1. Prepare the certificate of plat correction. Have it go through the approval process just as you would if the plat were only abstract land.
2. Keep the original certificate of plat correction. Do not lose it!
3. The petitioner files a petition in a proceeding subsequent to initial registration and requests that the court issue an order directing the Registrar of Titles to accept for filing the certificate of plat correction. The court order must tell the Registrar how to show the correction on the certificates of title.

B. Vacated streets.

“Upon the filing of a certified copy of a resolution or ordinance of a city vacating an adjoining street or alley that was dedicated to the public in a plat, a registered owner is entitled to have added to the legal description on the certificate of title that part of the vacated street or alley that accrues to it, provided the vacation occurred after the land was originally registered. The vacated street or alley may be added to the certificate of title by order of the district court or by a written directive from the examiner of titles.” Minn. Stat. § 508.73, Subd. 2.

1. The city vacates the street.
2. The city council resolution gets filed with the Registrar of Titles and memorialized on the certificate of title.
3. A request is made to the Examiner of Titles to issue a directive adding the vacated street to the legal description.
4. The description is written as a stand-alone parcel.

Instead of this:

Lot 1, Block 1, Blackacre, together with that part of Smith Avenue that accrues to said lot by reason of vacation.

Try this:

Lot 1, Block 1, Blackacre.

That part of vacated Smith Avenue, dedicated in the plat of Blackacre, lying northerly of the centerline of said avenue, and between the southerly extensions of the east line and of the west line of Lot 1, Block 1, said plat.

5. A court order is required if you need to adjudicate who gets the vacated street. For example, on a cul-de-sac.

C. Eminent Domain.

If the land of the registered owner is taken in fee, a new certificate of title may not be entered except by order of the district court or upon the written certification of the examiner of titles as to the legal sufficiency of the final certificate or quick-take order. This does not apply to easements. If an easement is the interest condemned by the city/county/state, then the final certificate or quick-take order gets memorialized on the current certificate of title.

For a fee taking:

1. The condemning authority goes through all the regular steps to condemn the land, just as if the land were abstract.
2. Record a certified copy of the document used to transfer title (either the quick-take order or the final certificate).
3. Request that the Examiner of Titles certify that the eminent domain proceedings were legally sufficient to transfer title, and direct the registrar of titles to cancel the current certificate and issue a new one to the

condemning authority for that part of the land taken in fee, with a “residue certificate” issued to the fee owner for that part not taken in fee.

4. The process of obtaining a new certificate of title in the name of the condemning authority is the last 5 percent of the case that never gets done. In 2015, when I was a deputy examiner of titles, I reviewed a city’s fee take from 1959, and the state’s fee take from 1992.

D. Locating Judicial Landmarks.

1. The legal description on the certificate of title reads as follows:

Lot 1, Block 1, Blackacre
The west boundary line has been set by judicial landmarks in Torrens Case No. 12345.

2. The certificate of title may contain a memorial of the “plat of survey” and the document name may be “memorial plat.” If you do not see this memorial, then order the court file and obtain a copy of the plat of survey which will be found in the court file.
3. Once you have a copy of the plat of survey, you can see where the JLMs were originally set. *Note:* They may not have been set on the lot corners! Perhaps they were offset for some “good” reason.

E. Recording a plat executed by the trustee of a revocable trust.

Facts: The property is Torrens, the owner is the Trustee of a revocable trust, and the owner is platting the land.

This plat requires the approval of the Examiner of Titles. Under Minn. Stat. § 508.62:

No instrument executed by an owner whose fee title to registered land is held in trust which transfers *or plats* the land, shall be registered except upon the written certification of the examiner of titles * * *.

F. A condominium cannot include both abstract and Torrens land.

This is a recording/indexing issue. The condominium unit, which is essentially a box of air, cannot be both abstract and Torrens. You are forced to file the condominium declaration, the deed, and the mortgage, in only one spot. It can be all abstract, or all Torrens. It cannot be both. This requirement comes from Rule 222 of the Minnesota General Rules of Practice for the District Courts.

G. A planned community, using a condominium-style plat, can include both abstract and Torrens land.

A planned community can include both abstract and Torrens land. If the planned community is single family homes, and the CIC plat is the subdivision plat, you know how to handle this. However, if the CIC plat is a condominium-style plat, the recording of documents can get messy.

You may own Unit 1, CIC No. 1000, The Lofts on Main Street, a planned community located in Hennepin County.

But your certificate of title reads as follows:

That part of Unit 1, CIC No. 1000, The Lofts on Main Street, a planned community located in Hennepin County, which lies within Lot 1, Block 1, Blackacre.

And every document affecting that unit must be recorded in both abstract and Torrens.

H. All condominiums affecting Torrens land must be approved by the Examiner of Titles before recording.

This requirement is not found in Minnesota Statutes Chapter 515B. It is found in the Torrens Act, Minn. Stat. § 508.351, Subd. 1:

Prior to recording with the registrar of titles of a declaration or bylaws of a condominium, or an amendment to the declaration or bylaws, or a supplemental declaration pursuant to section 515B.2-111, a determination must be made by an order of the court in a proceeding subsequent to initial registration or by a written directive of the examiner of titles that the documents comply with the requirements of the applicable condominium statute.

The examiner of titles issues a directive telling the registrar of titles where to file the condominium declaration and CIC plat, and what to move over to the common interest community certificate of title (CICCT).

I. Land on multiple certificates of title, with a common owner, can be combined into one new certificate of title, and the legal description may change for the better.

1. You have been asked to prepare a plat.
2. The legal description of the land is found on five certificates of title:

Certificate of Title	Legal Description
No. 100	Tract A, Registered Land Survey No. 2, Hennepin County, Minnesota
No. 101	Tract B, Registered Land Survey No. 2, Hennepin County, Minnesota
No. 102	Tract C, Registered Land Survey No. 2, Hennepin County, Minnesota
No. 103	Tract D, Registered Land Survey No. 2, Hennepin County, Minnesota
No. 104	Tract E, Registered Land Survey No. 2, Hennepin County, Minnesota

3. The Registrar of Titles can cancel the five certificates of title, and issue one new one. Here is the result:

Certificate of Title	Legal Description
No. 200	Tracts A, B, C, D, and E, Registered Land Survey No. 2, Hennepin County, Minnesota

4. The fee is \$20 to cancel a certificate of title, and \$20 to issue a new one. *Don't quote me on this price check. The take-away is that an exchange certificate is chump change.*
5. There may be times when you want to split the land onto two certificates of title, and you can do that, too.
6. Attached is an extreme example of when you would want to combine the land on two certificates of title, into one new certificate of title. What is the new legal description?

Certificate of Title

Certificate Number: 1348237

Created by Document Number: 4937944

Transfer from: 1179984

Originally registered April 13, 2006 Certificate No: 1179984, District Court No: 20677

State of Minnesota

County of Hennepin

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S.S.

Registration

This is to certify that

Johannes Marliem, whose address is 1485 Green Trees Road, Orono, Minnesota, 55391
and
Mai Chie Thor, whose address is 1485 Green Trees Road, Orono, Minnesota, 55391
as joint tenants

are now the owners of an estate in fee simple

In the following described land situated in the County of Hennepin and State of Minnesota:

Lot 1, Block 1, Green Trees on Tanager Lake, except that part of Lot 1, Block 1 Green Trees on Tanager Lake embraced within the following described property: That part of the Government Lot 2, Section 11, Township 117, Range 23 and part of Lot 10, Rearrangement Of Orono Point and that part of the County Road dedicated in Orono Point all described as beginning at a point on the South line of said Government Lot 2 as determined in Torrens Case No 13819 distant 431.8 feet East along said South line from its intersection with the West line of said Section 11; thence on an assumed bearing of South 87 degrees 18 minutes 38 seconds East along the South line of said Government Lot 2 a distance of 246.56 feet; thence Northeasterly 217.30 feet along a non-tangential curve concave to the Northwest, having a radius of 196.87 feet and a chord bearing of North 41 degrees 26 minutes 54 seconds East; thence North 9 degrees 49 minutes 36 seconds East tangent to said curve a distance of 182.53 feet; thence Northeasterly 136.56 feet along a tangential curve to the right having a radius of 269.75 feet and a central angle of 29 degrees 00 minutes 24 seconds; thence North 38 degrees 50 minutes 00 seconds East tangent to the last described curve, a distance of 61.49 feet; thence North 82 degrees 25 minutes 00 seconds West, 134.80 feet; thence North 53 degrees 03 minutes 40 seconds West, 142.70 feet; thence North 42 degrees 27 minutes 00 seconds West, 144 feet; thence North 8 degrees 00 minutes 00 seconds West, 127.25 feet; thence North 2 degrees 23 minutes 00 seconds West 47.40 feet; thence North 23 degrees 31 minutes 00 seconds East to the shore line of Tanager Lake; thence Westerly along said shore line to the East line of Registered Land Survey No. 1090, Hennepin County, Minnesota; thence Southerly along said East line to the shore line of Lake Minnetonka; thence Southeasterly along the last mentioned shore line to an intersection with a line drawn Southerly parallel with the Southerly extension of the Westerly line of said Section 11 from the point of beginning, which parallel line is marked by Judicial Landmarks set pursuant to Torrens Case No. 13819; thence Northerly along said parallel line to the point of beginning, except that part of the above described land lying within "N.J. Stubbs First Subdivision In Lot Number 2 Section 11 Town 117 Range 23".

Subject to utility and drainage easements as shown on plat;

Certificate of Title

Certificate Number: 1376187

Created by Document Number: **5121516**

Transfer from: **1139554**

Originally registered November 28, 1977 Volume: 1851, Certificate No: 558332, District Court No: 18032

State of Minnesota

County of Hennepin

}

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Subject to utility and drainage easements as shown on plat;

Part of the boundaries of above plat are marked by Judicial Landmarks set pursuant to Torrens Case No. 13819;