

Moniz George & LaVigne

Trevor G. Moniz, FCIArb MP
Kevin M. George
Christopher P. LaVigne

Peter J. Driscoll

KMG/ram

OFFICE: 18 Reid Street
Hamilton HM 11
Bermuda

MAIL: P. O. Box HM 1173
Hamilton HM EX
Bermuda

1st August 2001

Ministry of Environment, Development
and Opportunity
Government Administration Bldg.,
30 Parliament Street
Hamilton HM 12

**Attention: Mr. Brian Rawlinson
Permanent Secretary**

Dear Sir,

Re: Land Registration

I refer to the meeting held on 12th July 2001, between the Minister, certain ministry officials, and the members of the Land Registry sub-committee of the Bermuda Bar Association.

I wish to confirm at the out-set, as made clear at the meeting, that the Bermuda Bar Association is unable to endorse the concept of land registration in principle. Bermuda's conveyancing system, which is primarily a function of the private sector, is to a large extent, very efficient. To the extent that there are inefficiencies in the present conveyancing system, such inefficiencies largely occur within those areas which are the responsibility of the public sector.

By way of examples, the registration of mortgages and other documents by the office of the Registrar General, which should ideally be accomplished within a period of Twenty-four (24) hours from receipt of the same, typically take six months. Searches for unlawful Development by the Department of Planning, which can be accomplished within a period of seven days, can take up to twenty-eight (28) days (being the maximum time allowed to the Department by statute). Land valuations by the Land Valuation Department and the assessment of stamp duty by the Tax Commissioner, will normally take two to three months, whereas they should be accomplished within a period of two to three weeks. Finally, the system of registration of judgements at the Supreme Court Registry is nothing short of a complete disgrace.

While it is, of course, possible that a system of land registration will be more efficient than the present system, the Bar is extremely skeptical that the transfer of the additional functions from the private sector to the public sector will achieve any efficiency.

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The Bar believes that the major issue which must be addressed, prior to the establishment of any frame-work or time-table for the introduction of land registration, is what type of land registration will be best for Bermuda.

As you are aware the former United Bermuda Party Government, expended considerable time and resources in preparation for a plan to introduce the English land title registration system into Bermuda. Such system could not be endorsed by the Bar, as it was, and remains, our view that such system would require the introduction into Bermuda of alien concepts such as general boundaries, which would not be acceptable to the public and would result in a conveyancing system which is both overly bureaucratic and inefficient.

We were accordingly extremely pleased to receive the Minister's confirmation that the present Government has made no decision as to the type of land registration that should be introduced. It is our view that we do not require a computerized version of an essentially nineteenth century system (i.e. the English land registration system) but rather a twenty-first century Bermudian land title registration system, which specifically addresses the problems inherent in our present conveyancing system, whilst not interfering with the strengths of such system. This is our view that such system is not to be found within the European Torrens systems of which the English system is one, nor in the Colonial or former Colonial Territories, into which such system was introduced by British trained administrators, but within the deed registration system followed throughout the United States and parts of Canada.

The essential difference between the two systems is that in the Torrens system the function of transferring title to land becomes one carried out by the bureaucracy with Government "guaranteeing" title. In a deeds registration system, conveyancing remains a private sector function, where all land transactions are recorded by the public sector, and all relevant information concerning a piece of land becomes easily available to Government departments and other interested parties.

Whilst in the United States and parts of Canada, such systems have existed for many years and are consequently are not based on computer technology, which has given rise to professional title search companies, which make searches for land transactions at the Registry, being typically the local Court, a Bermuda registry should be entirely computerized from the start.

The essentials of a deeds registry, are that all transactions involving land are entered into the Registry and a simple search of the Registry through the internet, will reveal details of the property ownership, the description of the property with a survey plan, all mortgages and judgements encumbering the property and copies of all conveyances, mortgages and other documents relating to the property.

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In our view, such a system will address a number of the present inefficiencies in the conveyancing system, while providing to Government the information which it requires in the exercise of its functions in the most efficient and cost effective fashion. It is further our view that such a system would avoid the numerous problems, which would arise upon the introduction of the previously proposed English land title registry system as follows:-

1. As Government would not be guaranteeing titles, it would not be necessary to create and new and costly bureaucracy. The function of the deed register could be carried out by a small number of staff skilled in computer technology.
2. People could continue to buy, sell and mortgage property without the delays which would inevitably occur during the start-up phase of an English land title registry.
3. Under a guarantee title system it would be necessary to amend any and all legislation under which the sale or mortgage of land is restricted, which will include the Minors Act, the Development and Planning Act, the Human Rights Act, the Bermuda Immigration and Protection Act, the Mental Health Act, the Administration of Estates Act, the Companies Act, the Stamp Duties Act, as well as various provisions of the Supreme Court Act. Under the deeds registration system the great majority of such amendments would be unnecessary.
4. Whilst there are good reasons for the codification Bermuda's land law, to be carried out properly such task would take a considerable period of time. As a deeds register system will not require the codification of the land law, it may be proceeded with without delay thereby enabling the codification to be assigned to the Law Reform Committee being the most appropriate body to carry out such function.

We look forward to further discussing this matter with you further at your convenience.

Yours faithfully,
MONIZ GEORGE & LAVIGNE



Mr. Kevin M. George
Chairman, Bermuda Bar Association
Land Registration Sub-committee