



Government of Bermuda
Ministry of Environment and Planning
OFFICE OF THE PERMANENT SECRETARY

25th April 2013

Appleby (Bermuda) Limited
Canon's Court
22 Victoria Street
Hamilton HM EX

Attention: Scott Swainson

Dear Mr. Swainson,

I write on behalf of the Hon. Sylvan D. Richards, JP, MP, Minister of Environment and Planning in response to your letter of April 2nd 2013 regarding the Land Title Registration Act 2011. The concerns expressed therein are addressed below. Please be assured that each of the issues has been considered at great length over a number of years and that none of them are new or ill-considered.

Before I proceed to address your concerns, I will first point out that this Government is committed to stimulating the wider economy and Land Title Registration will most certainly assist in this objective. More rapid conveyancing processes are attractive to both domestic and foreign investment. A guarantee of title backed by statute is by far the best title any jurisdiction can offer. This guarantee is attractive to everyone from a first time buyer looking to secure their own 'piece of the rock', to a hotel developer looking to invest millions of dollars in our economy and employ scores of Bermudians, to the banks who are being asked to advance funds to make these plans possible. It is widely accepted that an efficient and transparent property registration system is a boon to a developed economy such as Bermuda, not least for the fact it can serve as a basis for related services.

A system of registering private property rights that promotes internal confidence between its people, its commercial enterprises and its government is essential to growth and economic prosperity in the twenty first century. An eighteenth century method of conveying property rights is no longer acceptable to anyone other than those with vested interests in keeping it alive.

Bermuda is one of the very few remaining jurisdictions in the world which does not have a system of land title registration. We have the unfortunate situation whereby the staff of the Land Title Registration Office (LTRO) cannot answer the most basic land information question that they receive by telephone and email on a daily basis; "who owns that land?". What if that caller was a hotel developer? Imagine the impression will he then have when he is informed that there is no quick way of finding this out, and that a manual search through many books of deeds is required, with the associated delays. With a registered title, the same developer's lawyer can ascertain ownership from his own desktop with a few clicks of his mouse.

Your letter expresses three concerns. Firstly the issue of boundaries, secondly the class of title granted to registered parcels, and thirdly the guarantee of title. I would like to take this opportunity to allay your concerns by explaining how Land Title Registration will operate in practice.

1. Boundaries of registered parcels.

There seems to be confusion as to what an indicative boundary means in the Act. Indicative does **not** mean inaccurate. Contrary to your concern that the indicative boundary is in some way diminishing the accuracy of the extent of a parcel of land, the boundary shown on the Land Title Registry Index Map (LTRIM), and the description and area calculations shown on the Land Title Register reflect the contents of the very latest survey information available and will be delineated to with the highest accuracy under the up to date mapping system operated by the LTRO (LTRIM). The survey information will be taken from Cadastral survey information supplied by the applicant and plotted on the LTRIM using the very latest ESRI mapping tools.

The LTRIM has the latest boundary information as supplied by LTRO's sister section, the Government Survey Section, which has recently acquired orthophotographic survey information plotted at a scale of 1:1250. In the history of surveying in Bermuda there has never been an aerial survey as accurate and there has never been available to the government as comprehensive and powerful a mapping tool as the LTRIM. Any survey plans provided by an applicant will be scanned as part of the record of title and stored permanently. These survey plans will be available to view through our website.

The boundaries will be as accurate and exact as is humanly and technologically possible. This way of depicting boundaries on the LTRIM is a vast improvement on the current system, not a detriment. We only stop short of guaranteeing the 'legal' boundaries of a parcel, because that means something wholly different, and no conveyancer or surveyor currently guarantees the position of any legal boundaries, and never has. The legal boundary is an imaginary or invisible line dividing one person's property from that of another. It is an exact line having no thickness or width and is rarely identified with any precision either on the ground or in conveyances or transfers and is not shown on surveys or mapping. Ultimately the exact legal position of a boundary, if disputed, can be determined only by the court.

To establish a 'legal' boundary would require a new survey prior to each first registration, and would necessitate the express agreement of the owners of each side of the common boundary. Experience in other common law jurisdictions over the last 150 years including Australia, England, Canada and many Caribbean countries has shown that this has proved prohibitively expensive, unnecessarily bureaucratic, and most importantly has produced disputes among neighbours where there previously were none. Moreover, the conveyancing system that currently operates in Bermuda does not itself establish the exact position of the legal boundaries of properties conveyed because the agreement of neighbors is not generally sought or obtained.

Where adjacent land owners actually employ a surveyor to expressly determine their common boundary or boundaries, this survey can be lodged with LTRO and it will be scanned as a permanent record of title with an appropriate entry made in the register of each title. We considered this policy very carefully, and the reason we have not included this policy into primary or secondary legislation is because it could impose onerous conditions on local surveyors. It is strictly a voluntary policy and in any event will be unnecessary in the vast majority of cases.

In summary, once a parcel of land is registered, there will be no ongoing survey expenses for the landowner, unless they wish to divide their parcel. The boundaries shown on the LTRIM for each registered parcel will be the most accurately plotted boundaries with the most up to date survey

information yet known in Bermuda. The area of the parcel will be shown on the register in square meters to at least two decimal places, and the legal description will also be reflected on the register.

All the relevant statutory requirements of the Development and Planning Act 1974, the Conveyancing Act 1983, the Stamp Duties Act 1974, The Companies Act 1981, The Corporate Bodies Land Act 1936, The Bermuda Immigration and Protection Act 1956, and the Condominium Act 1986 will not just be satisfied by the information and accuracy of the LTRIM, but wholly exceeded. We know this because we have liaised with the Government departments responsible for the administration of these statutes, and they are fully aware of the high quality of the product LTRO produces.

2. Class of title.

Again there seems to be some confusion with the words used. Just as 'indicative' has been incorrectly interpreted, the word 'provisional' here is being interpreted as a wholly inferior class of title, where this is not the case.

The best class of title is of course absolute and this will be granted in the vast majority of cases, as long-standing practice in other jurisdictions demonstrates is not only feasible but routine. Exceptionally, however, this may not be possible, such as where some evidence is lacking or a defect in the title is apparent, so making it unsafe for LTRO to guarantee the owner absolutely against the risk of some other person claiming a right over the land. But in such cases the difficulty is one that already exist in the underlying unregistered title

Provisional titles are granted where there is some specific defect that has been identified and this will be stated in the register. Examples of this would include:

- Where the title is based upon long term possession rather than title deeds.
- Where the title deeds have been lost or destroyed and the applicant is unable to reconstitute the title fully.
- Where a document is missing from the root of title which may contain registrable rights and interests.

In all of these cases, LTRO staff will work with the applicant to attempt to remedy any defect in the title. The Registrar will grant an absolute title wherever possible, whilst bearing in mind the responsibility of the Registrar to preserve the integrity of the guarantee of title. This responsibility is foremost in the professional judgment and decision making processes of the staff of the LTRO. If provisional title is granted, an upgrade to absolute is always possible if the conditions for an absolute title are subsequently met (LTR Act s.81).

The Registrar and the staff of LTRO have the same high standards of examination of title as the Bar Association and all the Attorneys operating within its jurisdiction. Section 28(2) of the LTR Act imposes the same obligation on the Registrar to grant an absolute title in the same circumstances as a conveyancing Attorney would give assurance of title to a buyer or lender. Furthermore, s.28(3) gives the Registrar the authority to regularize a defect in title if it is not deemed to disturb the title of the applicant. This actually means a more secure title may be granted in certain circumstances where an Attorney could not underwrite it. So in these cases the quality of title would be more secure, not less secure.

Your statement that this hinges solely on the Registrar's discretion is simply untrue as the Registrar is always obliged to comply with an order of the Court and you can be assured that the Registrar will give an absolute title wherever and whenever able. LTR Act Schedule 6 describes the power of the court to alter the register.

The LTRO first registration application form carries a requirement for certification by an Attorney that the title being lodged contains a full and complete record of title. We will be guided by this certification and seek to grant the class of title applied for. In this way, the Registrar is indeed under an obligation to seek input from the Attorney who has deduced good title up to the standards required by s.16 Conveyancing Act 1983.

To re-iterate, an Absolute title will be granted in the vast majority of first registration applications, and the Attorney submitting the application is required to certify that the title is full and complete. The only times a provisional title would be granted is when there is a defect in the title or missing deeds. In such instances a conveyancing Attorney would already have noticed this defect and would not in any case advise a buyer or lender to accept such title at least without additional safeguards, such as a privately obtained defective indemnity policy. There is no reason why, if an otherwise defective unregistered title could be rendered acceptable with the adoption of such safeguards, the same would not be true of the resulting provisional registered title. Indeed, the possibility that the provisional title may be upgraded to absolute title after 20 years' undisturbed possession under section 81(2) places the owner in a potentially more advantageous position than the owner of the equivalent unregistered title.

In the case of the banks' existing mortgage portfolio, they would have based their decision to lend upon the security offered. The deeds and documents comprising the title to that security would already have been examined by an Attorney, and this Attorney would have provided a report on the quality of title. If there was a defect in the title, the Attorney would have brought it to the notice of the lender and the subsequent decision to lend would have been made in the full knowledge of the defect.

In summary, Section 28(5)(a) imposes an obligation on the registrar to note on the register precisely the reason a provisional title has been granted, so that it is plain for all to see; for instance whether the deeds have been lost or destroyed, whether a deed is missing or whether there is a third party who claims to have an interest in the property. So, again, any buyer or lender can make their decision based upon the full title information, information which would have been available in any case to the Attorney through the deeds and documents of title. It is important to remember that the Land Title Register is a species of recordation system, and the register will reflect, in every case, the current and accurate state of the title.

Each of the CEOs and Head Legal Counsel of HSBC, BNTB and Capital G has had a demonstration of our LTR system, has been impressed by it and is confident in the security afforded by a registered title. In a letter dated March 8, 2013 to The Hon. Minister of Environment and Planning, the Chairman of the Bermuda Bankers Association (BBA) stated;

"I can confirm that not only does the BBA fully support the introduction of Land Registration; the BBA believes that the implementation of Land Registration in Bermuda is **critical** to protecting the integrity of lending transactions in this jurisdiction".

You see that the BBA do not share your concerns regarding their existing mortgage portfolio or have interpreted s.28 LTRA in any way pessimistically. I again re-iterate, the Registrar and LTRO staff are committed to grant an absolute title whenever possible.

3. The Guarantee of Title.

There are three principles to land title registration: the Mirror principle, the curtain principle and the insurance principle. These are inexorably linked and they supplement and complement one another.

Without the guarantee of title the insurance principle is negated. It is rather unclear from your letter what you seek to gain from a register without a guarantee. Without a guarantee a buyer or lender cannot be sure that the ownership, rights and interests as they appear on the register are correct.

It is so fundamental it strikes at the very heart of LTR that the guarantee must come from the register. It is currently the case that there exists a situation whereby buyers and lenders rely upon the conveyancing bar to guarantee the interests being conveyed. In practice this means the Attorney carrying out the conveyancing. So there already exists a form of guarantee that is provided by the indemnity insurance of the conveyancer. The guarantee of title, for a registered title, will now be the responsibility of government through the unbiased registrar and staff of LTR rather than the Attorney, who by definition has his clients' interests foremost in his mind.

Importantly, and this seems to have been overlooked from the point of view of your letter, the Attorney lodging an application for first registration is required to certify in each and every case that the application contains a full and complete record of title, and that they have examined such title. The Attorney, having made this certification, remains liable for any error or omission for a period of six years, in line with the statutory limitation period. (LTR Act Schedule 1, Para 10(c)).

Your points about searches of title and Supreme Court judgments attaching to land and the subtleties of such nature are fully understood. However, what you seem to fail to understand is that the obligation to submit these types of interests for registration lies with the party who has the benefit of them. Even if the burdened estate is not registered at LTRO, any court order or judgment which has attached to any land is capable of protection by the lodging of an application for a caution against first registration. This gives the cautioner notice of any application for first registration and a right to object to it. There is a whole part in the Act (sections 34 to 41) that deals with cautions.

As you will hopefully come to realize, the staff of LTR have left no stone unturned in researching and implementing an LTR project that has been created and tailored specifically for the islands of Bermuda, with all its history and individuality taken into consideration. What we have not done is change any substantive land law, save for where it is absolutely necessary, such as the move from mortgages by conveyance to legal charges, which has the full support of the Bermuda Bankers Association.

You will see from the explanations above that your reservations and concerns regarding the accuracy of registered boundaries, the class of title and the guarantee of title are in fact unfounded, and each of these areas will be improved under a registered title system. Let us be clear that the rights and interests currently exercised over land will not be changed, but will be entrenched and supported by statute law. Ownership will be guaranteed by primary legislation, backed by a guarantee of title.

The LTRO is comprised of a small team of highly experienced and educated land law professionals dedicated to bringing about an accurate and current electronic register of land ownership, and associated rights and interests to Bermuda. The primary and secondary legislation is expertly drafted, drawing on international best practice and experience from many common law jurisdictions, including Australia, Cayman, Jamaica, Canada, England and Wales, Belize, Antigua and Barbuda and Northern Ireland. In each of these jurisdictions, title registration has been shown to support a modern market economy, stimulate growth through building confidence and transparency in land transactions, and most importantly gives a single point of enquiry for anyone who wants to ask that most basic of land questions; "who owns that property?"

Specific answers to each point raised in your letter (reproduced below) are addressed seriatim.

Re: Land Title Registration Act 2011 ("the Act")

Thank you for your letter dated the 25 February 2013 that was directed to Mr. Kevin M George of Moniz & George (and of the Conveyancing Bar).

We are disappointed to hear that the Minister intends to proceed with the implementation of the Act, notwithstanding our concerns, especially given that the OBA Government's pre and post election promises included seeking input from stakeholders, particularly within the context of stimulating Bermuda's economy and maximizing efficiencies within both the Government and private sectors. In each and every jurisdiction that employs a system of land title registration, it has been shown to support a modern market economy, stimulate growth through building confidence and transparency in land transactions. More rapid conveyancing has proven attractive to foreign and domestic investment.

Please find below our comments in respect of the climate and issues that surrounded the evolution of the draft Bill.

- (i) Our letter dated the 1 August 2001 (the "2001 Letter"), a further copy of which we enclose for your ease of reference (see item "I"), outlined in very clear terms the Bar Association's position in respect of the central component that ought to have been excluded from any land title registration system that came to be implemented in Bermuda, namely general, or "indicative" boundaries. This was on the basis that this component is unworkable in this jurisdiction (see [A] of the attached Schedule). The Bar consistently opposed indicative boundaries (being a central component of the English land title registration system) for more than 15 years prior to our 2001 Letter, the latter having simply served to reiterate the Bar's long standing position. Please find enclosed copies of prior missives (marked items "ii" to "v") supporting our historical position, which you will note date back to 1985. We have highlighted the relevant paragraphs of each missive for ease of reference. Please note additionally, that our historical position was strongly supported by the Bermuda Association of Surveyors, being another key stakeholder (see enclosed item "vi").*

Indicative does **not** mean inaccurate. Contrary to your concern that the indicative boundary is in some way diminishing the accuracy of the extent of a parcel of land, the boundary shown on the Land Title Registry Index Map (LTRIM), and the description and area calculations shown on the Land Title Register reflect the contents of the very latest survey information available. This survey information will be taken from Cadastral survey information supplied by the applicant and plotted on the LTRIM using the very latest ESRI mapping tools.

The LTRIM has the latest boundary information as supplied by LTRO's sister section, the Government Survey Section, which has recently acquired orthophotographic survey information plotted at a scale of 1:1250. In the history of surveying in Bermuda there has never been an aerial survey as accurate and there has never been available to the government as comprehensive and powerful mapping tool as the LTRIM. Any survey plans provided by an applicant will be scanned as part of the record of title and stored permanently. These survey plans are available to view and print through our website.

(ii) The Conveyancing Bar had also consistently advocated a system that excluded any Government "guarantee" component, because of the bureaucracy and unnecessary expense that would necessarily accompany same.

Without the guarantee of title the insurance principle is negated. It is rather unclear from your letter what you seek to gain from a register without a guarantee. Without a guarantee a buyer or lender cannot be sure that the ownership, rights and interests as they appear on the register are correct. It is so fundamental it strikes at the very heart of LTR that the guarantee must come from the register.

We also find it contradictory that in the paragraph above, you imply that the boundaries must be guaranteed, and yet you state here that to guarantee the contents of the register is unnecessarily bureaucratic. Again, we re-iterate that a registered title with all ownership, and associated rights and interests guaranteed is the best way of securing land rights.

(iii) When the draft Bill was being conceived (in about 2007) and preliminary concepts were being discussed with stakeholders, our concerns regarding the above mentioned components, particularly indicative boundaries, were clearly expressed (once again). As discussions progressed and it became apparent that our concerns were likely to be ignored, this did little to encourage continuing participation in the conceptual process by members of the Conveyancing Bar. Our level of participation was also negatively affected by steps that were being taken by the then PLP Government (more or less simultaneously), to amend the Bermuda Immigration and Protection Act 1956 ("the Immigration Act"), in a manner that was equally ill considered and fundamentally flawed, (notwithstanding our consistent objections).

We cannot comment upon the Immigration and Protection Act amendments, but can assure you that the LTR Act is well researched, well drafted and will work well in practice to secure the property rights of all Bermudian land owners.

From the time the LTRO was established in 2007, we have been in regular contact with numerous members of the Conveyancing Bar, right up to and beyond the debate in parliament which resulted in the LTR Act. These Attorneys have been material in framing policy and instrumental in many resultant sections of the Act. These Attorneys include the then Chairman of the Conveyancing Bar in 2007, who was most helpful in the initial stages of the policy proposals, and indeed throughout the whole drafting process right up to the debate in Parliament.

(iv) When select members of the Conveyancing Bar were finally invited to comment on the draft Bill in August 2011 and it became apparent that its provisions did in fact ignore our concerns and that our worst fears were about to be realized, any residual willingness on the part of our

members to participate in the introduction process (and effectively to assist in fine tuning the unworkable), more or less dissipated. These developments occurred within a climate punctuated by a real estate market that was caught in a downward spiral, which was being fuelled by uncertainty caused by the Bermuda Immigration and Protection Amendment Act 2007. It was also punctuated by a series of public confirmations by the then Government of its general unwillingness to entertain input from members of the Conveyancing Bar in respect of both legislative and policy reform, (notwithstanding our frontline position in the real estate market)

The LTRO staff has engaged in many consultation exercises over the last seven years or more, both formally and informally. The Conveyancing Bar is indeed our principle stakeholders, and the input and feedback we have received has been very useful and has indeed framed many of the policy decisions which have found their way into the legislation. The LTRO will continue to work very closely with our colleagues in the Bar, in order that the transition from unregistered to registered conveyancing may be as smooth as possible.

(v) As our attention slowly shifted in December 2011, from the turmoil still being caused by the Immigration Amendment Act to the potentially far more draconian threats that the Act presented, additional problematical components also became apparent, such as the procedures that govern the "classification" of title and in particular, the Registrar's unchallengeable supremacy in this regard. By this time most of us had simply acknowledged the imminent reality of these challenges, while still allowing for the possibility that a change in Government philosophy might cause common sense to prevail. Sadly this did not occur and the draft Bill was passed by Parliament.

You can be assured that the LTR Act is certainly not 'draconian' and is not a threat to anything or anyone. The Act seeks to enshrine in statute the existing property rights of individuals, in order that they become accessible and transparent. An absolute title will be granted in the vast majority of first registration applications, and the Attorney submitting the application is required to certify that the title is full and complete. The only times a provisional title would be granted is when there is a defect in the title or missing deeds. In such instances a conveyancing Attorney would already have noticed this defect and would not in any case advise a buyer or lender to accept such title. The Registrar works to the same standards of examination of title as any Attorney.

As to the Registrar's 'unchallengeable supremacy' this is simply not true. The Registrar is an unbiased civil servant and a product of statute. She must confine herself to both the letter and the spirit of the law and be subservient at all times to the Court and to Parliament. The functions and decisions of the Registrar and staff of the LTRO are open and transparent in all matters. Decisions are open to scrutiny and criticism, and you can be assured that the discharge of these functions is taken very seriously indeed.

(vi) The corollary of the above is that, since the former Government proceeded with a system that could never have been reasonably and logically supported by the Conveyancing Bar, while publicly voicing a general unwillingness to seriously entertain any of our legislative concerns, we were never "invited to participate" in the evolution of the draft Bill in a constructive and meaningful way. We were effectively "sidelined" within the context of the conceptual process. This point is further illustrated by the fact we have yet to receive (in draft form or otherwise) the Land Title Registration Rules ("the Rules"), notwithstanding the

fact that the Act has now been passed by Parliament and that sight of the Rules is clearly essential for the purpose of gaining an appreciation for the full impact of the Act. We find the continuing and possibly deliberate non-disclosure of the Rules wholly unacceptable.

We re-iterate that the Conveyancing Bar was consulted on numerous occasions, and very many of its number have contributed to the policy decisions and to the drafting of the Act. There was no question of being sidelined. Indeed we know for a fact that a large number of the Conveyancing Bar are openly in favour of Land Title Registration and have told us so. We have details of input from numerous Attorneys, minutes of meetings and records of emails we could produce in support of this. Those that have taken up our invitation for a demonstration of our system have been greatly impressed and encouraged by it. They have acknowledged the benefits to the public and to the conveyancing profession. The fact that the Rules have not yet been published is due to the fact that they have only recently been finalized and approved by the Legislation Committee of the Attorney General's Chambers, and to suggest that they have been deliberately withheld is simply untrue.

Our specific concerns regarding the Act (as indicated above) include:

- (a) The fact that the indicative boundary component is not capable of being implemented in Bermuda without large scale legislative, procedural and market reform;*

This is simply not true and shows a fundamental lack of understanding of the LTR system in general and survey and mapping procedures in particular.

The Land Title Registry Index Map (LTRIM), and the description and area calculations shown on the Land Title Register reflect the very latest survey information available. This survey information will be taken from cadastral survey information supplied by the applicant and plotted on the LTRIM using the very latest ESRI mapping tools.

The boundaries will be as accurate and exact as is humanly and technologically possible. This way of depicting boundaries on the LTRIM is a vast improvement on the current system, not a detriment. The boundaries shown on the LTRIM for each registered parcel will be the most accurately plotted boundaries with the most up to date survey information yet known in Bermuda. The area of the parcel will be shown on the register in square meters to at least two decimal places, and the legal description will also be reflected on the Register.

- (b) The fact that the classification of title component has the potential to lead to inequitable results that could ultimately result in a torrent of litigation being commenced against Government; and*

Again, not the case at all. The Registrar and the staff of LTRO have the same high standards of examination of title as the Bar Association and all the Attorneys operating within its jurisdiction. Section 28(2) of the LTR Act imposes the same obligation on the Registrar to grant an absolute title in the same circumstances as a conveyancing Attorney would give assurance of title to a buyer or lender. Furthermore, s.28(3) gives the Registrar the authority to regularize a defect in title if it is not deemed to disturb the title of the applicant. This actually means a more secure title may be granted in certain circumstances where an Attorney could not. So in these cases the quality of title would be more secure, not less secure. The experience of other land title registration jurisdiction demonstrates that, far from being burdened by any kind of "torrent of litigation," they benefit from systems that operate in a secure, routine and uncontroversial way that dramatically facilitates the conveyancing process when compared with the much more cumbersome and opaque systems they have superseded.

Section 28(5)(a) imposes an obligation on the Registrar to note on the register precisely the reason a provisional title has been granted, so that it is plain for all to see the reason, for instance whether the deeds have been lost or destroyed, whether a deed is missing or whether there is a third party who claims to have an interest in the property. So again any buyer or lender can make their decision based upon the full title information, information which would have been available in any case to the Attorney through the deeds and documents of title.

(c) The fact that the guarantee component, as well as the apparent uncertainty regarding the due diligence procedures that the Registrar will be required to adopt (when considering initial registration applications), will expose the Government and ultimately taxpayers to unnecessary liability and expense.

This is an incorrect interpretation of the guarantee of title. This guarantee is so fundamental it lies at the very heart of LTR that the guarantee must come from the register. It is currently the case that there exists a situation whereby buyers and lenders rely upon the conveyancing bar to guarantee the interests being conveyed. In practice this means the guarantee from the Attorney carrying out the conveyancing. So there already exists a form of guarantee that is provided by the indemnity insurance of the conveyancer. The guarantee of title, for a registered title, is now the responsibility of Government through the unbiased Registrar and staff of LTR rather than the Attorney, who by definition has his clients' interests foremost in his mind.

Importantly, and this seems to have been overlooked from the point of view of the letter, the Attorney lodging an application for first registration is required to certify in each and every case that the application contains a full and complete record of title, and that they have examined such title. The Attorney, having made this certification remains liable for any error or omission for a period of six years, in line with the statutory limitation period. (LTR Act Schedule 1, Para10(c)).

The above mentioned concerns are expanded upon in the attached Schedule which also incorporates additional questions and comments regarding the Act. Please note that our comments and concerns are (rather unhelpfully), being offered in the absence of the Rules and therefore, with the strict understanding that they are by no means exhaustive.

THE SCHEDULE

[A] The Definitive Boundary/Indicative Boundary issue

1. For more than 100 years, the process of confirming and recording definitive (or exact) boundary lines has formed the central core of both conveyancing practice in Bermuda and the valuation of land in Bermuda. Deeds of conveyance, as well as other land related deeds, have included property descriptions that have been prepared by reference to survey plans showing finite boundary lines. As these plans, as well as the resulting square area calculations, have improved in accuracy over the years (largely in line with improvements in surveying techniques) law firms, surveying firms and various Government departments, (where these plans and documents are required to be filed), have come to hold a wealth of accurate information regarding individual lots of land, island wide. Further, as this information has become more and more accurate and readily available, it has also become more and more central to the process of valuing land for transactional purposes, to such an extent that most land related transactions would fail to proceed in its absence. Information that hinges on definitive boundaries (and lot sizes) has also become a key component of most land related legislation, including, but not limited to, the

Development and Planning Act 1974, the Conveyancing Act 1983, the Stamp Duties Act 1974, the Conveyancing Act 1983, the Stamp Duties Act 1974, the Companies Act 1981, the Corporate Bodies Land Act 1936, the Bermuda Immigration and Protection Act 1956 and the Condominium Act 1986. Essentially, information that hinges on definitive boundaries is now so ingrained in our system, that it is incapable of being extricated without wholesale legislative and market reform.

We will continue to utilize the wealth of information as contained in the deeds and documents of title, and we will scan any surveys into our database and make them available as part of the record of title. We are not in any way changing current surveying practice.

The LTRIM has the latest boundary information as supplied by LTRO's sister section, the Government Survey Section, which has recently acquired orthophotographic survey information plotted at a scale of 1:1250. In the history of surveying in Bermuda there has never been an aerial survey as accurate and there has never been available to the government as comprehensive and powerful mapping tool as the LTRIM. In summary, once a parcel of land is registered, there will be no ongoing survey expenses for the landowner. The boundaries shown on the LTRIM for each registered parcel will be the most accurately plotted boundaries with the most up to date survey information yet known in Bermuda. The area of the parcel will be shown on the register in square meters to at least two decimal places, and the legal description will also be reflected on the Register.

All the relevant statutory requirements of the Development and Planning Act 1974, the Conveyancing Act 1983, the Stamp Duties Act 1974, The Companies Act 1981, The Corporate Bodies Land Act 1936, The Bermuda Immigration and Protection Act 1956, and the Condominium Act 1986 will not just be satisfied by the information and accuracy of the LTRIM, but wholly exceeded. We know this because we have liaised with the Government departments responsible for the administration of these statutes, and they are fully aware of the high quality of the product LTRO produces.

2. The Development and Planning Act is particularly notable within this context since both it and the development plans that are issued pursuant to it, require definitive boundary and lot size information to be filed before approval for the "development", or the "subdivision" of land can be procured. Key provisions of the Planning Act are effectively reliant on definitive boundary and lot size information for the purpose of controlling both the development potential and the subdivision potential of any given lot. Whilst the importance of development potential is widely appreciated and commonly understood, the importance of subdivision potential tends to be less obvious, due primarily to its uniquely Bermudian subtleties. In this regard section 35 of the Planning Act, makes subdivision approval a pre-requisite to the partitioning of any lot of land for the purpose of either creating an additional developable lot, or effecting a boundary adjustment. Subdivision approval is also required in order to grant just about any long term easement or other right that is intended to affect land. Further, section 25(B)(3) of the Planning Act renders any conveyance or grant that is effected in the absence of subdivision (where same is required) void. Whilst both development potential and subdivision potential are based primarily on square area, development potential is also (rather uniquely) linked to setback lines. These lines, which are of critical importance, effectively demarcate building zones or developable areas and they are necessarily calculated by reference to the location of boundary lines. It follows that both development approval and subdivision approval requirements are, by virtue of the Planning Act, inextricably linked to our land law system and also to the process of valuing land.

The Department of Planning has been consulted and is delighted with the power and accuracy of the LTRIM. They have commented that it is a vast improvement on the current system of surveying in isolation and they state that it will considerably improve some of their key processes, not least in the consideration of applications for sub-division of land.

Staff from the Department of Planning has taken the time to visit the LTRO on a number of occasions and have seen firsthand the excellent mapping and survey product we provide. They already utilize the LTRIM when researching the extents and other details of Government land. The only criticism they have is that the Act is not yet in force.

3. Certainty in respect of boundary lines and lot sizes also forms the basis of key provisions of the Conveyancing Act, including section 7 and the First and Second Schedules. These provisions, which are consistent with the system that predated the Conveyancing Act, are predicated (once again) on information flowing from definitive boundaries and lot sizes. In this regard lots of land are generally required to be conveyed (in terms that are as exact as possible), together with all buildings and structures that are thereon erected and also together with all easements and rights appurtenant thereto. The practical importance of boundary accuracy within the context of these provisions can, (by way of example) be illustrated by considering the position of a land owner who has, at great expense, constructed a substantial retaining wall along one of his boundary lines for the purpose of materially increasing the usable square area (and value) of his lot. Such an owner would (reasonably) expect ultimately to sell his lot with the benefit of this structure and he would also (reasonably) expect for the conveyancing system to cater fully and as a matter of course to the transfer of this crucial structure. He distinctly would not expect the system to completely ignore this structure, which would be the position on the basis of an indicative boundary approach. The importance of including this structure in any transfer of his land would be exemplified by the existence of deeded covenants relating to the maintenance and repair of the said wall that benefit the owner of the neighbouring lot of land (abutting the wall). Such covenants would need to be retained with accuracy in perpetuity for enforcement purposes.

All of the above will be supported on the LTRIM. We encourage you to take up the offer of a demonstration in order to allay your concerns. Easements and covenants such as those referred to above will be strengthened and protected by LTR.

The boundaries shown on the LTRIM for each registered parcel will be the most accurately plotted boundaries with the most up to date survey information yet known in Bermuda. The area of the parcel will be shown on the register in square meters to at least two decimal places, and the legal description will also be reflected on the register.

4. Valuations for the purposes of the Stamp Duties Act 1974 are also reliant on information flowing from definitive boundaries and lot sizes. In this regard most land related adjudications submitted in accordance with Part IV and section 39 of this Act, are required to be accompanied by accurate deed plans showing finite mete, bound and square area information, as well as detailed property descriptions, prepared by reference to such plans. The same applies to applications submitted pursuant to Part IX of the Stamp Duties for the purpose of valuing estates for probate and administration purposes. Such procedures and legal steps would grind to a halt in the absence of this information.

The Office of the Tax Commissioner has had a demonstration of our systems and has been impressed by the power and capabilities of it. They are fully supportive of LTR, indeed some LTR staff has been assisting the OTC in examining some deeds lodged in support of Primary Family Homestead applications. They have expressed their gratitude for this help and have remarked on our efficiency and knowledge in this regard. They too 'cannot wait' for the LTR Act to be in force.

5. The acquisition of freehold land by local companies, which is primarily governed by Section 120 of the Companies Act, is also linked to finite boundaries and lot sizes. A company's memorandum of association is required by law to specify "the limit of its land holding powers" (see Section 120(1)).

Further, the Minister appointed to administer this Act may not approve the acquisition of freehold land by a local company without having been supplied with an accurate deed plan showing (once again) finite mete, bound and square area information, as well as an accurate property description prepared by reference thereto. Similar information is required to be filed in order to establish a statutory corporation in accordance with the Condominium Act.

Following the acquisition of freehold land by a company (save and except for a statutory corporation established in accordance with the Condominium Act), finite boundary and lot size information relating to the land that has been acquired must be filed at the Office of the Registrar General in accordance with the Corporate Bodies Lands Act 1936. This is to enable Government to track or record the quantum of freehold land that is being held by companies from time to time. The resulting information is ultimately used for the purpose of formulating corporate land holding law and policy, which in turn is central to facilitating large scale hotel (and other) development projects in Bermuda.

6. Since the implementation of the Immigration Act in 1956, Government has placed considerable importance on its ability to trace or record the amount of land held by restricted persons in Bermuda from time to time. Such importance was escalated under the Immigration Amendment Act in 2007. Currently Section 89 of the Immigration Act (as amended) imposes numerical limits (calculated in acres) on the amount of land that may be held by restricted persons both island wide and parish by parish at any given time. The necessary calculations for the purposes of this Section are inextricably linked to finite boundary lines and lot areas. Further, section 102 of the Immigration Act requires this information to be filed at the Office of the Registrar General within 3 months following the date of acquisition.

Again, be assured that our boundary information is accurate. Your interpretation of 'indicative boundary' is erroneous. One of the unique functions of the LTR database is that every single piece of land that is registered will have information as to whether the land is owned by a Bermudian or non-Bermudian, by a corporate body or non-corporate body, and this information can be retrieved in a simple report. This report can be generated on a parish-by-parish basis, or island-wide. It will give precise area details in square meters to two decimal places. It is a very useful tool and one we are very pleased with.

7. Given that Bermuda's land related legislative and policy framework is, on the basis of the matters outlined above, predicated on information flowing from definitive boundaries and given that it is also near impossible to calculate the open market value of any given parcel of land in the absence of this information, a land registration system (such as the indicative boundary system contemplated in the Act), that completely ignores these realities, is necessarily ill considered.

I refer you to all of the comments above regarding your erroneous interpretation of the word 'indicative'.

The scale of the problems that are likely to flow from an indicative boundary system are probably best illustrated by exploring the financial hardship that an individual is likely to face after duly registering his land in accordance with the Act. As drafted, one of the triggers for registration under the Act is the completion of a new mortgage over a property. The landowner would be required to pay a registration fee, which we understand would be calculated by reference to the open market value of his property at the rate of 0.1% of this value (thus resulting in a registration fee rate that amounts to \$1,000.00 for every \$1,000,000.00 in market value). The landowner may also be required to have his property professionally valued before submitting his application so that this fee can be calculated and this would add a minimum of \$1,000.00 to his overall expenses. Having had his land duly registered with the benefit of an "absolute" title classification (assuming an entirely positive classification result) and having paid all of the related expenses, the landowner would (or should) logically assume that historical title deeds, deed plans and other information would be capable of being ignored thereafter, and further that he would not be required to incur any further costs and expenses in respect of procuring legal opinions from private

law firms and survey reports (and plans) from professional surveyors relating to his property. The landowner would therefore, be surprised to find (post registration) that further legal opinions from private law firms and survey reports from professional surveyors (relying on information procured from his historical title deeds and plans) would still be required (indefinitely) for the purposes of:

- (i) Having his property professionally valued for most practical purposes; or*
- (ii) Submitting a full or complete application to the Planning Department for development and/or subdivision purposes; or*
- (iii) Conveying his property to a company pursuant to the Companies Act and complying with the Corporate Bodies Land Act thereafter; or*
- (iv) Conveying his property to a restricted person in accordance with the Immigration Act and lawfully complying with all registration requirements thereafter, or*
- (v) Submitting an adjudication application, or to settling an estate in accordance with the Stamp Duties Act, or*
- (vi) Registering a plan at the Department of Works & Engineering for the purpose of establishing a condominium development in accordance with the Condominium Act.*

Again this is incorrect. Once a parcel of land is registered, there will be no ongoing survey expenses for the landowner. The boundaries shown on the LTRIM for each registered parcel will be the most accurately plotted boundaries with the most up to date survey information yet known in Bermuda. The area of the parcel will be shown on the register in square meters to at least two decimal places, and the legal description will also be reflected on the Register. The only time a landowner would need to engage the services of a surveyor thereafter would be if he wishes to divide a registered parcel. If an owner of a registered estate wishes to sell or mortgage the property, all the relevant information will be on the register and LTRIM, with no further expense in any of the potential actions above.

All the relevant statutory requirements of the Development and Planning Act 1974, the Conveyancing Act 1983, the Stamp Duties Act 1974, The Companies Act 1981, The Corporate Bodies Land Act 1936, The Bermuda Immigration and Protection Act 1956, and the Condominium Act 1986 will not just be satisfied by the information and accuracy of the register and the LTRIM, but wholly exceeded. We know this because we have liaised with the Government departments responsible for the administration of these statutes, and they are fully aware of the high quality of the product LTRO produces.

The Landowner would in any such instance face a ridiculous result that would be wholly inconsistent key objectives of the Act, as expressed in Section 2, namely simplifying "proof of ownership of registered land" and facilitating "the economic and efficient execution of transactions affecting registered land". Rather than experiencing such benefits, the individual would actually face the added aggravation and expense associated with an expensive land registration system that is only capable of confirming title to his land in very approximate (or indicative) terms and remains fully reliant on the historical definitive boundary system in order to confirm the actual extent of his land. This wholly inequitable result would quickly become a source of embarrassment for Government and it could also give rise to a significant public backlash.

Given the far reaching impact that the Act (as drafted) stands to have on other pieces of legislation, as well as on related procedures (as detailed above), it is difficult to comprehend how Schedule 9 to the Act, could have been drafted in a manner that largely ignores key provisions of other legislation. In this regard, Schedule 9, which purports to address consequential amendments, only appears to touch and concern three other pieces of legislation (and in an extremely limited manner). Whilst it could be argued

that the language that is included in section 13 of the Act could be deemed to override any conflicts arising from the legislation specified above, the difficulty with this argument is that such a result would be both practically and commercially unworkable and it would also create anarchy in an already unsettled market.

It is also difficult to comprehend how the Act could have come to completely ignore the need for wider "complex and substantial land law reform", when Government's own 2001 "consultative phase report", namely the "Government of Bermuda Ministry of the Environment, Development and Opportunity Land Title Registration project May 2001" clearly anticipated this requirement. This report also clearly recognized the importance of definitive boundaries and surveys stating that "Survey is by far the largest component (costs and manpower) of the project so it is essential that a solution be selected that meets local requirements" and "in the adjudication process, monumentation and agreed limits of possession on the ground are of primary importance."

There are a lot of claims above that are borne of a lack of understanding of what an 'indicative' boundary means in practice, and of the accuracy and capability of the LTRIM. The boundaries will be as accurate and exact as is humanly and technologically possible. This way of depicting boundaries on the LTRIM is a vast improvement on the current system, not a detriment. We only stop short of guaranteeing the 'legal' boundaries of a parcel, because that means something wholly different, and no conveyancer or surveyor currently guarantees the position of any legal boundaries, and never has. The legal boundary is an imaginary or invisible line dividing one person's property from that of another. It is an exact line having no thickness or width and is rarely identified with any precision either on the ground or in conveyances or transfers and is not shown on surveys or mapping. Ultimately the exact position of a boundary, if disputed, can be determined only by the court.

To establish a fixed 'legal' boundary would require a new survey prior to each first registration, and would necessitate the express agreement of the owners of each side of the common boundary. Experience in other common law jurisdictions over the last 150 years including Australia, England, Canada and many Caribbean countries has shown that this has proved prohibitively expensive, unnecessarily bureaucratic, and most importantly has produced disputes among neighbours where there previously were none.

In summary, once a parcel of land is registered, there will be no additional survey expenses for the landowner as a result of LTR. The boundaries shown on the LTRIM for each registered parcel will be the most accurately plotted boundaries with the most up to date survey information yet known in Bermuda. The area of the parcel will be shown on the register in square meters to at least two decimal places, and the legal description will also be reflected on the Register.

The wider issue of reform of substantive land law is beyond the scope of the LTR Act which has been deliberately and carefully drafted in order to fit with existing land law. Land title registration is a species of recordation system and not a new form of conveyancing. It can co-exist with any system of conveyancing and we have researched a number of jurisdictions including Northern Ireland and Nova Scotia where new land title registry offices were successfully created without wider land law reform, and this research has helped frame our legislation.

[B] Classes of Title – Absolute Title and Provisional Title

A further material concern relates to the process whereby title is to be classified in either "absolute" or "provisional" terms pursuant to section 28 of the Act. This process is wholly unacceptable because it hinges (entirely) on the Registrar's sole opinion, rather than placing the Registrar under a direct obligation to seek input from other persons before reaching a decision, in particular persons who are familiar with the process of deducing good title to land in accordance with established conveyancing

practice in Bermuda and also in accordance with Section 16 of the Conveyancing Act. Such matters are compounded by the fact that the Act does not appear to provide for any avenue of appeal in respect of a decision made by the Registrar. Given that a provisional title designation could materially reduce the market value of an individual's land, one would have expected for the Act to have included a land tribunal or other appeal avenue that is capable of ensuring an equitable result. Further, the fact that the value of an individual's interest in land could be significantly diminished (or effectively usurped) by virtue of a unilateral "provisional" designation issued in accordance with section 28, would appear (in the absence of an appeal mechanism), to cause this section to contravene Bermuda's Constitution, in particular Section 13 of the Bermuda Constitution Order 1968. If this omission is not addressed, we foresee an abundance of judicial review and constitution based claims arising against Government moving forward.

Again there seems to be some confusion with the words used. Just as 'indicative' has been incorrectly interpreted, the word 'provisional' here is being interpreted as a wholly inferior class of title, where this is not the case.

The best class of title is of course absolute and this will be granted in the vast majority of cases. Exceptionally, however, this may not be possible, such as where some evidence is lacking or a defect in the title is apparent, so making it unsafe for LTRO to guarantee the owner absolutely against the risk of some other person claiming a right in the land.

Provisional titles are granted where there is some specific defect that has been identified and this is stated in the register. Examples of this would include:

- Where the title is based upon long term possession rather than title deeds
- Where the title deeds have been lost or destroyed and the applicant is unable to reconstitute the title fully
- Where a document is missing from the root of title which may contain registrable rights and interests.

In all of these cases, LTRO staff will work with the applicant to attempt to remedy any defect in title in order to grant an absolute title wherever possible, whilst bearing in mind the responsibility of the Registrar to preserve the integrity of the guarantee of title, a responsibility the staff of the LTRO have foremost in their professional judgment and decision making processes.

Your statement that this hinges solely on the Registrar's discretion is simply untrue as the Registrar is always subservient to any order of the Court and you can be assured that the Registrar and staff of LTRO will give an absolute title wherever and whenever they are able.

The LTRO first registration application form carries a requirement for certification by an Attorney that the title being lodged is contains a full and complete record of title. We will rely upon this certification to grant the class of title applied for. In this way, the Registrar is indeed under an obligation to seek input from the Attorney who has deduced good title to up to the standards required by s.16 Conveyancing Act 1983.

To re-iterate, an Absolute title will be granted in the vast majority of first registration applications, and the Attorney submitting the application is required to certify that the title is full and complete. The only times a provisional title would be granted is when there is a defect in the title or missing deeds. In such

instances a conveyancing Attorney would already have noticed this defect and would not in any case advise a buyer or lender to accept such title except with appropriate safeguards.

In summary, the Registrar and the staff of LTRO have the same high standards of examination of title as the Bar Association and all the Attorneys operating within its jurisdiction. Section 28(2) of the LTR Act imposes the same obligation on the Registrar to grant an absolute title in the same circumstances as a conveyancing Attorney would give assurance of title to a buyer or lender. Furthermore, s.28(3) gives the Registrar the authority to regularize a defect in title if it is not deemed to disturb the title of the applicant. This actually means a more secure title may be granted in certain circumstances where an Attorney could not provide such an assurance. So in these cases the quality of title would be more secure, not less secure.

Section 28(5)(a) imposes an obligation on the registrar to note on the register precisely the reason a provisional title has been granted, so that it is plain for all to see the reason, for instance whether the deeds have been lost or destroyed, whether a deed is missing or whether there is a third party who claims to have an interest in the property. So again any buyer or lender can make their decision based upon the full title information, information which would have been available in any case to the Attorney through the deeds and documents of title. It is important to remember that the Land Title Register is a species of recordation system, and the register will reflect, in every case the current and accurate state of the title.

Contrary to property rights being diminished by LTR and rights being unconstitutionally compromised, LTR will support, strengthen and enshrine those rights in a statutory framework incapable of being compromised.

Local banks should be especially concerned in respect of the title classification process specified in the Act, because (unchallengeable) "provisional title" designations could have a material negative impact on the value of each bank's existing mortgage portfolio, thus compounding value depreciation problems that are already being experienced by the banks due to the current economic climate. Of course most of the compulsory registration triggers that are specified in Section 24 of the Act, such as the need to administer an estate, would trigger a registration requirement in respect of a mortgaged property and ultimately expose the subject bank to the risk of a provisional title designation. The immediate impact of value reductions could therefore, be extremely far reaching.

In the case of the banks' existing mortgage portfolio, they would have based their decision to lend upon the security offered. The deeds and documents comprising the title to that security would have been examined by an Attorney, and this Attorney would have provided a report on the quality of title. If there was a defect in the title, the Attorney would have brought it to the notice of the lender already and the subsequent decision to lend would have been made in the full knowledge of the defect. All the CEOs and Head Legal Counsel of HSBC, BNTB and Capital G have had a demonstration of LTR systems, have been impressed by it and are confident in the security afforded by a registered title. In a letter dated March 8, 2013 addressed to The Hon. Minister of Environment and Planning, the Chairman of the Bermuda Bankers Association (BBA) stated:

"I can confirm that not only does the BBA fully support the introduction of Land Registration; the BBA believes that the implementation of Land Registration in Bermuda is critical to protecting the integrity of lending transactions in this jurisdiction".

You see that the BBA do not share your concerns regarding their existing mortgage portfolio or have interpreted s.28 LTRA in any way pessimistically. I again re-iterate, the Registrar and LTRO staff are committed to grant an absolute title whenever possible.

The Act should also impose minimum "local practice experience" requirements upon both the Registrar and other key members of staff. In this regard it is our understanding that the UK land registration system (by way of example) imposed minimum (English) property law practice requirements in respect of both the chief land registrar and assistant registrars when their system was first being introduced (to assist in processing initial registration applications). A requirement of this nature would, to some extent, help to address the numerous classification difficulties that are likely to result from the nuances (or pitfalls) that affect our current system.

You are assured that the Registrar and the staff of LTRO are highly qualified and experienced individuals, fully capable of discharging their statutory duties. Should specialist advice be required, under the LTR Rules, the Registrar has the power to appoint a specialist to advise on any matter where the Registrar considers she has the appropriate knowledge, experience and expertise required in the circumstances.

[C] Government Liability Guarantees

Whilst the former Government clearly reached the conclusion that indemnifying parties who find that their properties have been incorrectly classified by way of the "Land Title Registration Fund" ("the Fund") was acceptable, we query whether the full extent of the financial risks associated with this approach, were fully and properly considered before reaching this conclusion. We would also be interested in gaining an appreciation in respect of the level of funding that is likely to be directed to this Fund, especially during the system's initial "teething" period. While an insurance (or reinsurance) safety net component is clearly contemplated in section 12 of the Act, we query whether the conditions that are likely to attach to any resulting insurance policy were properly considered before the Act was passed. Such conditions can of course be extremely onerous and they can also hinge on matters such as "local practice experience," (particularly within the context of the title classification process).

The absence of a local practice experience requirement in the title classification process also raises the question of whether formal due diligence or title search procedures have in fact been put in place by the Registrar, and if so whether such procedures are consistent with the current professional standards. Whilst any shortcoming in this regard would clearly be relevant within the contexts of claims against the indemnity Fund (and ultimately the public purse), such shortcomings could also negatively affect the fulfillment of insurance related conditions and ultimately the settlement of insurance claims. If, for example, the Registrar fails to appreciate that a Supreme Court judgment has already attached to land forming the subject matter of an application, especially a significant multi-million dollar development site, and the land receives an "absolute" classification (in error), the quantum of the resulting indemnity payment could be significant and Government's insurer may well be permitted contractually to avoid making a payment. Such a claim could deplete the Fund and place yet another unnecessary strain on the public purse.

I would refer you to Schedule 1 of the LTR Act, and the requirements of an indemnity, as the above paragraphs are not a correct interpretation. The Act has been carefully and deliberately worded so as to ensure the above example regarding a multi-million dollar claim could not happen. Firstly the Attorney lodging the application for registration is required to certify that he has fully examined the applicants' title to the property, and that the application contains a full and complete record of title. This certification doubles as a guarantee to the registrar for a period of six years (*LTRA Schedule 1 Para. 10 (c)*) so it is the Attorney who will be liable in such a case (as is current practice). Secondly, experience in other

jurisdictions shows that, with a land title registration system operated to high standards of quality, professionalism and compliance, such as is the case in Bermuda, the incidence of calls upon any indemnity fund is very low and entirely manageable.

The competing judgment issue is particularly interesting within the context of section 104 of the Act, which appears to extend to judgment creditors. In this regard while subsection 104(3) of the Act appears to take into account the ramifications of the Real Estate Assets Act 1787, (which generally enables Supreme Court judgments to attach to real property held by judgment debtors), this subsection appears to completely ignore the effect of Section 19A of the Supreme Court Act 1905, which has traditionally been construed as causing judgments to attach to a debtor's land on the date upon which a judgment is entered against him (in the Book of Causes and Judgments at the Supreme Court Registry). Once again, the failure to appreciate a subtlety of this nature could have dire consequences.

In the above example it falls squarely upon the applicant for registration to disclose to the Registrar on first registration. If a Court order has attached a judgment to real property and that property is registered, it is incumbent upon the person with the benefit of the order to register it as an incumbrance on the registered title (LTR Act s.50). If the land is not registered then the person with the benefit of the order may register it as a Caution against First Registration (LTR Act s.35). I am sure you will agree that this is a vast improvement on the current system and one which will assist in bringing property rights of this nature into a clearer format. This clearly sits with our aim of guaranteeing ownership and simplifying transactions.

I would like once again to extend the invitation to visit the LTRO, to see for yourself the modern, efficient systems we have in place, to experience the accuracy of the LTRIM, the knowledge and capability of the Registrar and her staff, and to witness firsthand how a twenty-first century land title registry can benefit everyone with an interest in land in Bermuda, from the small property owner who wants peace of mind knowing his ownership is backed by a statutory guarantee, to the bank who loaned him the money and who knows that their security is guaranteed, to the surveyors and attorneys who know where to come to obtain the most up to date information regarding their clients' title.

The Minister also wishes for me to reiterate our desire to meet with the Conveyancing Bar to address any issues that might remain outstanding.

I hope the above explanations have addressed your concerns and allayed your fears that LTR is ill-considered or in any way unsuitable for Bermuda, and I look forward to the implementation of a twenty-first century land title registration system.

Sincerely,



Charles Brown
Acting Permanent Secretary

CB/at