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2 April 2013

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The Honourable Sylvan Richards JP MP
Minister of Environment and Planning
Dame Lois Brown-Evans Building, 5th Floor
58 Court Street
Hamilton HM 12

Dear Sir

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.

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

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- (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

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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").

- (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.
- (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).
- (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

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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).

- (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.
- (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.

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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;

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- (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
- (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.

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.

Please contact our Mr E Scott Swainson at 298-3247 (direct) should you have any questions regarding the content of this letter.

Yours faithfully

Appleby (Bermuda) Limited

Encs

cc: The Hon Legay Graig Cannonier - Premier
The Hon Everard Trenton Richards - Minister of Finance
The Hon Dr Edmund Grant Gibbons - Minister of Economic Development
The Hon Michael Martin Fahy - Minister of Home Affairs
The Hon Trevor Gerard Moniz - Minister of Public Works
The Hon Mark James Pettingill - Attorney General & Minister of Legal Affairs

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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 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.

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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

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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 35(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.

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 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

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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.

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.
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.

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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

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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 track 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.
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**.

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 .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

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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.

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

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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 & 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."

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[B] Classés 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

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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.

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.

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.

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[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 fulfilment 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. The competing judgement 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 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

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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.

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Moniz George & LaVigne

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

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KMG/ram

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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.

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.

Moniz
George &
La Vigne


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Ministry of Environment
Re: Land Registration

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

REPORT TO THE BAR ASSOCIATION
REGARDING THE PROPOSED INTRODUCTION INTO BERMUDA
OF THE ENGLISH LAND TITLE REGISTRATION SYSTEM

(11)

Having heard the proposals put forward by Mr. Frank Lund and the Consultant Mr. Jeremy Lawrance, and having considered the proposals we do not feel that we can support the introduction of the proposed Land Title Registration system into Bermuda as it will not provide a cheaper or more convenient method of Conveyancing. The reasons are set out below.

1. Financial

We have been told that the Registry would be self financing, but we are told that no estimated figures for the cost of setting up and running the Registry have been prepared.

This Committee does not believe that the Registry will be self financing because:-

(a) Mr. Lawrence expressed an opinion that in any country where there are under 45,000 titles, a Land Registry would be uneconomical. Bermuda has only approximately 9,000 titles and no country with so small a number of title has ever introduced a self financing Land Title Registry.

(b) Mr. Lund stated that the first registration of every title and incumbrance in Bermuda in the proposed sweep will be free. This is expected to take 4 years and may well take much longer. At the present time the costs of all land transactions are paid for by the land owners. The only way that the cost of setting up and running the Registry including the free registration can be met is out of public funds by increasing taxation on the general public whether land owners or not.

(c) Mr. Lawrence estimated that the staff required to run the Registry will include a Registrar, an Adjudication Officer (a Lawyer) a Demarcation Officer, Surveyors and support staff. We are informed that the Cayman Island Registry employs eight people in the surveying department alone.. The majority of the staff will be professionally qualified persons and will command top salaries. In addition, if they are not Bermudians, they will be entitled to other "perks". Other costs associated with the Registry include the provision of office space, office furniture, electricity, telephone, paper and supplies etc. etc.

(d) In addition to the costs of running the Department, the proposal is that Government will guarantee all titles once they have been registered, and will pay compensation for any errors made by the Registry. The cost of payments of compensation could be substantial.

(e) The Minister of Public Works stated that a fee of \$30.00 would be charged for each transfer of title and/or registration. If there are 1,000 transactions per year, this would provide only \$30,000.00 per year, which would not even cover the cost of the Registrar's salary.

(f) Assuming that the costs of this Department run to \$1,000.000.00 per annum and taking the estimate that there may be 1,000 transactions per year, in order to cover the costs of running the Department (excluding compensation) a fee of \$1,000.00 per transaction will have to be charged. To impose such a fee, on the transfer of land and financing secured by land, in addition to the present stamp duties and legal fees, will make such transactions much more expensive.

(g) On a transfer of property instead of investigating the title deeds, it will be necessary to search at the Registry and register the transfer. All the other work done by the Conveyancer will remain the same, therefore in addition to the legal fees now payable the client will incur additional legal fees to register the title and the registration fee. Thus total conveyancing costs and disbursements payable by the client will increase.

(h) In order to protect themselves all land owners and Mortgagees will no doubt consult their Attorneys to represent their interests and to obtain a Certificate of title. Many will also have to have their land surveyed. This will involve every property owner in an additional charge of \$1,000.00 or higher merely to ensure that they do not lose their properties in the "free" first registration.

(i) Our present Ordnance Survey Maps are on the scale of 1 to 2500. Mr. Lund stated that a new set of Ordnance Survey maps will have to be prepared at a larger scale. This will also be at public expense

(j) An "expert" will have to be employed to assist in setting up the Registry whose salary will have to be paid for by the tax payer.

2. Disadvantages to the Public

The Sub-Committee feels that the registration of land titles in the manner proposed will not be in the public interest, and quite contrary to the assumptions of Government, will in fact be detrimental to the public. It is felt that the public will be most concerned about the following:-

- a. The additional cost of the transfer of land and/or registration fees for every Mortgage, loan, Charge or other matter to be entered into the Register.
- b. The creation of one more Government Department like the Department of Planning, to interfere in private matters unnecessarily, and which will cause delays.
- c. Title deeds will become obsolete as the registration will be title. The ordinary man in the street will no longer have his bundle of title deeds as proof of his ownership of his property, but will have a Land Title Certificate in substitution for his deeds.

- d. The majority of bank loans are presently made on the security of the deposit of title deeds. Under the proposed system the Land Title Certificate will replace title deeds and borrowers may have to pay legal fees for preparation and registration of the charge plus the registration fee, and will be subject to delays involved in the registration process.
- e. The system provides for general boundaries instead of defined boundaries. The general boundary system which involves the definition of land by reference to walls and hedges has never been used in Bermuda as from the date of the Norwood survey we have always had a precise survey system with boundaries defined by measurements. The introduction of a general boundary system is in our view impossible as in many cases there are no physical features to define the boundaries between one lot and another. It would also result in uncertainty and social problems as the owners of land would be unable to precisely mark their boundaries at all for example to erect a fence or wall in the correct position. The land will be defined by reference to Ordnance Survey maps which are of such a scale that no precise measurements are possible and boundaries instead of being able to be marked to an accuracy of within an inch as at present, will only be able to be defined to an accuracy of three or more feet. This will be detrimental to the ownership of land and will detract from the land owners existing rights in their land. For Bermudians who are extremely sensitive as to the exact position of their boundaries, and are willing to fight for a matter of inches, this will be a most disturbing and distressing aspect of title registration.

- f. The general public will be horrified to discover that before their title of their property is registered, and a certificate of title issued, their ownership and the approximate location of their boundaries are to be determined by a civil servant.
- g. Bermuda's entire planning and development legislation is dependent on the precise definition of boundaries, for example the requirement that one cannot build within ten feet of a boundary and minimum lot sizes defined in square feet.
- h. It will become impossible for a property to be left in such a way that it will remain in the family, and the normal practice of leaving property for example "to my wife for her life and then to our children for their lives and then to our grandchildren who may then be living" will be impossible. The proposed system will give the first life tenants the power to sell the property and dispose of the proceeds. A considerable number of titles in Bermuda are held in this manner.
- i. Where a land owner made a Will leaving the property for a life interest and then to others, and died with the belief that the interest created by him would be protected, he made his Will in vain and the homestead could immediately pass out of family ownership. The Grandchildren will by Government's action in introducing this proposed system, be deprived of their right to inherit their family homestead, which is unique, and will be entitled to a proportion of the proceeds of sale only, instead.

- j. All those who have made Wills in similar terms but have not yet died, will be forced to consult their Attorneys to draw revised Wills which will incur additional legal expenses. In order to protect their property under the proposed system, professional trustees will have to be appointed, thereby imposing further expenses on the estate.
- k. The total cost will have to be met from taxing the general public, whether land owners or not.
- l. If the public has access to the Registry full information as to loans will become available and could be considered an infringement of the privacy of the individual land owners. If it is not made public, it will be detracting from the rights that we now have to search for Mortgages.
- m. The first "free" registration will result in long periods during which all transactions relating to the land being registered will be suspended and subject to delays while titles and boundary questions are argued.
- n. The requirement for all transfers of land to be registered will invariably cause a delay of weeks and months, and it will no longer be possible to purchase a property and then have a quick re-sale.
- o. Under the proposed system, Mr. Lund said that any land for which no application for registration had been made within 20 years would revert to the Government.. An ordinary land owner who may not understand the full implications of registering title or for some other reason for example living abroad may fail to apply to register title within the twenty year period, will then find that the Government has taken away all his rights to the land absolutely.

3. Do we need Land Registration

In considering the points raised by Mr. Lund in his presentation to the Bar Association, we wish to reply as follows:-

- a. Although a Land Registry has been considered in the past, it has never been considered necessary or feasible.
- b. It is agreed that as much detail as possible relating to land should be available, but under the proposed system, less will be available, especially regarding boundaries.
- c. The land titles registry will not answer all the questions as to the ownership of the land, nor the bounds of each parcel, but on the contrary, as stated above, the boundaries will become undefined and rights of inheritance of the land will be taken away.
- d. Government already has in its possession full details of every transfer which takes place on the Island by means of Notices to the Registrar General and Land Valuation Office. In addition, every sale and purchase of land by a Non-Bermudian is registered, and all Voluntary Conveyances, Mortgages and Assignments of Mortgages are registered. All of these registrations include a full description of the property including measurements and deed plans. The proposed system would not contain such details.
- e. The proposed Registry will not stop discrepancies or arguments about boundaries. In our view, it will result in a flood of appeals to the Supreme court, which could be such as to completely clog up the legal system, as every owner will wish to have his rights determined and/or arguments settled before his title is registered and his rights are lost.

- f. For numerous reasons as stated above, the Registry will not protect land owners, and the owners will not be happy to have a certificate in place of his title deeds.
- g. Unless the Land Registrar is extremely experienced in Conveyancing in Bermuda, he has no hope at all of identifying errors and resolving problems which arise. Even if he is an experienced Bermudian Conveyancer, there will still be problems and errors which may not come to his attention.
- h. As stated above, all information of land held by Non-Bermudians, is already in Government's possession, as under the Immigration and Protection Act 1956 lawyers are required to register every sale and purchase. If proper use were made of that information, the exact acreage of land owned by Non-Bermudians could be determined.

None of the reasons put forward by Mr. Lund to support his suggestion that a Land Title Registry is necessary hold water after examination. In our view it is not necessary to set up a Government Department to do the work that is now being done by the private sector in a cheaper and more efficient manner. It would appear that the only reason is to set up another bureaucratic department is to give Government control over land, and this will be greatly resented by the public.

4. Legal Problems

After ten years of work by the Law Reform Committee the Conveyancing Act 1983 was introduced and came in to effect on 1st January 1984. This Act appears to be working well. In order to introduce the Land Registration, the Conveyancing Act will have to be repealed and the English system, a completely new system of land holding will have to be introduced in Bermuda. Such changes would be wide ranging and complicated, and cannot safely be introduced without a great deal of consideration.

The Law Reform Committee considered the introduction of the English system and determined that there was no good reason to change our law.

Even if the Conveyancing Act is scrapped and new legislation introduced, a deed to transfer ownership will still be necessary. The other work to be done by lawyers, for example preparation of Sales Agreement dealing with the Agents, parties, Banks and other Government Departments and all the other work necessary in order to complete the transfer of land will still be necessary. The only change is that instead of looking at a bundle of title deeds, the lawyer will have to attend to look at the Registry and will have to register every transaction. Having to deal with one more Government Department will cause further headaches, complications and delays, and legal fees will not be reduced. We have been informed that there is no country in the world where after Land Registration has been introduced the legal fees have been lowered.

There are numerous other Acts which may require amendment in order to bring in the proposed legislation, and this will be a lengthy and time consuming job for the Parliament draughtsmen.

5. Practical Problems

There are a number of practical problems which do not appear to have been considered by the advocates of this new proposed system, and these are as follows:-

- a. The majority of properties in Bermuda are Mortgaged and the title deeds are held by the Mortgagees. The owners will therefore not have access to their title deeds in order to take them to the Registry for registration, and may have difficulties ensuring that the Mortgagee does so.

- b. This will place a tremendous burden on the Banks and other financial institutions who must hold hundreds of packets of title deeds. As the deeds are kept under the names of the owners in alphabetical order, and not by Parish or Postal District, it will be an extremely difficult and time consuming job for them to locate the correct deeds to send to the Registry Parish by Parish.
- c. Does a Mortgagee have the legal right to send title deeds for registration without the Mortgagor's instructions? Who will be responsible for loss of title should a Mortgagee fail to forward a set of title deeds for registration within a twenty year period.
- d. Assuming that many bundles of title deeds will be forwarded to the Registry at the same time, and will be opened together for the purposes of comparison, the prospect of title deeds being mixed up, lost, placed in the wrong bundle etc is horrendous. If this should happen before the title is registered and there is not sufficient proof of title for registration, who is to be responsible?
- e. If a Conveyance is void under the provisions of Section 35 (formerly 32) of the Development and Planning Act 1974 but is given an absolute title in error, which Act would take precedence?
- f. Will planning restrictions be entered on the Register?
- g. How will owners of property who live abroad be protected and advised of the requirement for registration.
- h. Following recent legal proceedings in England, serious deficiencies in the English system have been revealed. For example:

- i. Where claims are made by persons having overriding interests in property (whether registered or not and which are not shown on the register), Banks have now discovered that where they thought they had a good security for monies loaned, this is not the case. A new Act of Parliament is therefore being introduced in England.
- ii. The Court of Appeal has criticised defining boundaries of properties by reference to Ordnance Survey maps as being "worse than useless". A Committee has now been appointed in England to revise the whole land registration legislation.

Conclusion

This report is our personal opinion and is based on the information available to date, and there may well be many other serious problems and draw backs which have not yet come to our attention.

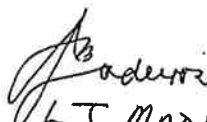
It is clear from the above, that little, if any, consideration has been given to the drawbacks of the system and its effects on land ownership in Bermuda and the public. In view of the vast financial drain on the Island's limited resources, and to the disadvantages to the public, we therefore cannot support the proposed system.

Dated the 13th day of December 1985


ELIZABETH JONES


KEVIN GEORGE

We the undersigned agree with the contents of this Report and do not support the proposed introduction of a Land Title Registration system.


L.J. MADEIROS

Mello & Jones
BARRISTERS & ATTORNEYS
NOTARIES PUBLIC

*Chancery Lane, Hamilton
Bermuda*

MICHAEL J. MELLO
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(111)
RECEIVED
JAN 14 1986

MONIZ & GEORGE

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BY HAND

Peter J. C. Smith
Barristers and Attorneys
Sea Venture Building
Parliament Street
Hamilton 5

Dear Peter,

10th January 1986


Re: Land Title Registration

Enclosed herewith is the Report containing the views of Kevin George and myself regarding the proposed Land Title system. This Report has also been signed by a number of other Conveyancing Lawyers who agree with our opinion. You will note that we are totally against their proposed system for numerous reasons.

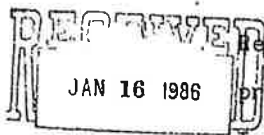
This Report has been forwarded to you as Chairman of the Sub-Committee, and we would be most grateful if you could take the matter to the Bar Council. Please let us know what position the Bar Council takes.

We shall look forward to hearing from you.

Yours faithfully,
Mello and Jones


Miss Elizabeth Jones

c.c. Kevin George



MONIZ & GEORGE

Report of the Subcommittee of the Bar Association regarding the proposed introduction into Bermuda of land title registration.

I forward herewith a report of a subcommittee prepared by Kevin George and Elizabeth Jones which is supported by Mr. Tony Bedford and in general by Mr. David Cooper, although Mr. David Cooper thinks the wording of it is too strong and also a note to the subcommittee prepared by Mr. Simon Farmer. My own feelings in the matter are as follows:-

1. A system of general boundaries will not operate in Bermuda because Bermuda where it has been surveyed has been surveyed to the nearest inch and therefore if there is to be a system of land registration it will have to be the Torrens system or some system in which all boundaries, easements, restrictive covenants, etc. are given in the greatest detail.
2. I do not believe that Government has given consideration as to the cost of setting up such a land title registry and that it is my belief that it will be very expensive.

I am following the heads prepared by Kevin George and Elizabeth Jones and make the following comments:-

1. Financial
 - a. The groups of people involved in land transfers are:
 - i. the legal profession
 - ii. surveyors
 - iii. real estate agents
 - iv. bankers
 - v. deposit companies
- and of course the general public consisting of vendors, purchasers, mortgagees, mortgagors, landlords, tenants and property owners and all persons having any dealings with real property.

If a land registry was set up, would there be fewer people involved in the private sector in land transactions and the answer to this question must be "No" because all the persons listed in 1-5 above will still be involved and all will require the same amount of staff as they now have. Legal fees if there is to be a land registry will be calculated on a time basis plus a charge for care and control for the difficult and larger transactions. In addition, there will

be the cost to Government of operating a land registry. Unless there is a substantial reduction in the number of personnel in the private sector involved in land transaction, then there will be an increase in cost to the public of land transfers, as expenses from the increased number of persons in Government will be the consequences of which flow from that have to be paid.

- b. Government has not thought out the economics of operating a land registry with between 9,000-15,000 titles where there is a considerable amount of activity. It should not be difficult to ascertain from the Registrar General's office the number of land transfers, mortgages, deeds of further charge and reconveyances each year. A further study needs to be made to ascertain the number of transactions, entries and searches which will be made in the proposed land registry.
- c. The idea of Mr. Farmer that there should be a land department which deals with all matters relating to land i.e., planning, acquisition of land by non-Bermudian companies, corporations and land registration and its staffing requirements could be considered. Government could consider the cost of such a department and the manner in which it would be run. The suggestion of Mr. Farmer that the monies obtained by Government from stamp duties and licence fees should be used to fund the land department ignores the fact that these monies now form part of the Consolidated Fund and to use them to pay for a land registry would deprive the Consolidated Fund of some of its income.
- d. It is desirable that persons from the private sector as well as from Government visit other places comparable to Bermuda in which there is a land title registration system so as to form some idea as to whether or not a similar land registry is appropriate for Bermuda. I am certainly not convinced that a land title registration system will produce a cheaper and more efficient method of land transfers.

e. More information is required from Government as to whether or not the assertions contained in paragraph 1c of the Jones and George report are correct.

f. Assuming that the fees on land registration are as follows -- \$20.00 for a search, \$25.00 for entering a reconveyance, \$100.00 for entering a lien be it a mortgage or further charge or judgment, \$50.00 for other entries, \$250.00 for land transfer. I would guess that there would be:-

3,000 searches at \$20.00	\$60,000.00
300 reconveyances at \$25.00	7,500.00
500 deeds of further charge, mortgages and judgments	50,000.00
500 other entries at \$50.00	25,000.00
700 land transfers at \$250.00	175,000.00
Total	<hr/> \$317,500.00 <hr/>

This will be the additional cost to the public in direct taxation if we have a land transfer system. In addition, the land registry costs as is suggested that the Cayman Island registry costs, there will be the additional amount which Government will be required to find to pay the staff necessary to operate it. I agree with Mr. Farmer's comment in paragraph 1e which is a reference to paragraph 1e of the Jones and George report.

I do not accept the comments of Mr. Farmer in paragraph 1e because stamp duties form part of the general revenue and should not be applied to operate a land registry. Government obviously has not thought out the costs of operating a land registry and it cannot do so until a decision is made as to whether it will operate through the Torrens system or through general boundaries, the latter being totally impractical for Bermuda. If the Land Registry is to pay for itself and there is to be a Torrens system, what will be the public reaction to the large fees which will be necessary for Government to charge to make its department which pays for itself.

- g. I agree with the comments of the Jones & George report as to paragraph 1g and it is my belief that additional work will be required for the legal practitioner and it may well be that his fees will have to be increased with the additional registration fees, the costs of conveyancing could be higher than it is at the present time were a land registration system to be put in. I agree with the Jones & George report except that I also agree with Simon Farmer that the fee estimates given by Jones & George may be on the high side.
- h. Government has not put forward a case which convinces me that the costs of land transfers, mortgages, etc. will be less to the public once a land registry is operating properly.

It is my belief that if a proper Torrens system were put in it may be that the sufficient competent staff can be obtained so that land transfers will be simplified and land transfers could be done in a more speedy manner. I offer the following comments:-

- a. Unless a land department is created as suggested by Mr Farmer, there will be an additional Government department with which those involved in land transfers will have to deal and thus it will automatically slow down the speed of dealings in land.
- b. It will be an expensive and difficult matter to educate the public particularly the elderly that a certificate of title has taken the place of deeds.
- c. With regard to paragraph 2d of both reports, I agree with the Jones and George comments rather than that of Simon Farmer.
- d. With regard to paragraph 2e, it is my view that the general boundary system will not work in Bermuda and should be strenuously opposed by all concerned in land transactions. If there is to be a system of land registration, it must be done based on actual survey down to almost the nearest inch.

- e. I agree with the Jones and George Report on item 2e and the only way the existing and dormant disputes could be cleared up would be by the introduction of a system such as the Torrens system or some system close to it.
- f. With regard to paragraph 2f, the Jones and George report is too strong, but it is my view that many members of the general public will not be pleased to discover that their ownership of property and the location of their boundaries has to be determined by a civil servant.
- g. The comments in paragraph 2g show clearly the reason why a general boundary system cannot possibly work.
- h. 2h, i, and j deal with an age-old problem of a desire to prevent land going out of a family. Land registration should not be the means of dealing with the rule against perpetuities. The law has always been that it is desirable that land should be transferable and should not be tied for too long and at the same time give effect to the natural desires of a testator to protect a surviving spouse and perhaps children who may be considered not to be as wise as a testator.
- j. The comment in paragraph 2l of the Jones and George report is not a valid comment because at the present time the public has access to the mortgage register, the judgment register and to the Land Tax Office to ascertain whether or not there are any mortgage, judgment or land tax liens on any property. There is no privacy now and there would be no privacy if there was a land registration system unless privacy were put into it which of course would increase the amount that lawyers have to do to do a search as it would be necessary to obtain the permission of a land owner to search.
- k. I do not share the optimism of Simon Farmer that the Bermuda new creation will be more efficient than its English counterpart.

1. I agree with Simon Farmer on paragraph 2n.
3. Here I would like to make the general comment that there is a vast amount of information in the Registrar General's office and in parish vestry notices formerly in the possession of the parish vestries and now in the possession of the Registrar General which requires to be collated, gone over by a surveyor and put on to a computer. This information is in the form of the mortgage register, notices of a change of ownership, voluntary conveyances etc. It is my belief that Government should employ a surveyor, a clerk and a computer and sort out this information and ascertain its value. Once this has been done, Government would then be in a position to discuss with the persons concerned the desirability or otherwise of Land Registration and also the type of land registration which could operate in Bermuda.
I offer the following comments on paragraph 3.
 - a. I agree with Simon Farmer on 3b and I would urge government at this stage to put all the information they have relating to land titles and all land related matters including planning matters on a comprehensive computerized central register. This should be done before land registration takes place, if it is going to take place.
 - b. The comments of Jones & George in paragraph 3c are valid relating to boundaries and ownership of land if we have a general boundary system which will not work.
 - c. With regard to paragraph 3d, if the existing information is put on the computer, it may be necessary to amend the Conveyancing Act setting out how to describe property including measurement and deed plans, etc. so that the description in all documents complies with the system required to enable everything to be put on to a computer.

- d. A system of general boundaries will not stop discrepancies or arguments about boundaries but will in fact increase them and will cause more litigation about land and boundaries than there is at the present time. If a system requiring a detailed survey for every land transfer is put in, then once everything has been registered, there should be no more boundary disputes except where squatters rights are involved.
- e. The Jones & George comments in 3f are too strong and in the second line the word "will" should be changed to "may".
- f. With regard to paragraph 3g, human error will occur regardless of what system is involved.

Legal Problems

The position of the Law Reform Committee is that the Law Reform Committee was asked originally to look into the question of the law reform of the land law and after many meetings and careful consideration, it was decided that the matter should be dealt with in stages and the first stage should be to amend the conveyancing law. This was done by the Conveyancing Act of 1983 after a careful study with different draftsmen over many years. The sub-committee's view was that after the conveyancing had been in operation for about five years, the property law should be looked at and consideration given to its amendment. The Conveyancing Act has only been in operation for two years and in my view it is premature to consider amending the substantive land law until about 1987 or 1988. After the land law has been amended, should that be desirable, and that is a matter upon which government should take advice from the Law Reform Committee, then the substantive law should be amended. After that has been in operation for some 4-5 years, then if Government wishes again to consider the question of land registration, that should be the time to consider it and not at the present time. I do not agree with Jones & George that the Law Reform Committee has determined that there was no good reason to change our law. The Law Reform Committee has decided that the conveyancing law should be changed and after that has been working for some years, the land law should be looked at with a view to ascertaining whether or not it requires any changes and if it does, recommend

them.

5. I agree that there are immense practical problems in bringing in a system of land registration in Bermuda.

a. The Jones and George report is basically correct and I certainly cannot support any system of land registration based on general boundaries, but I see no reason as to why Government should not take full advantage of all the vast information which it has at the present time in the Registrar General's office, the Land Valuation Office and in the Department of Planning and take advantage of the modern technologies which are available and produce a system of land registration which is suitable for Bermuda. This could be done, but certainly not in the manner in which Government has gone about producing what it has so far produced.

b. I, like Simon Farmer, do not support the rejection of the land title registration concept, but I totally reject the proposed system as unsatisfactory, inefficient and more expensive than that which is in force at the present time. Land registration of a different system could work in Bermuda, but I very much doubt if it would be cheaper and more efficient than the present system. In any event, inadequate information is available to enable me to make an opinion. Thus, at the present time, I am not satisfied that the proposed system would either be cheaper or more efficient than the present system.

c. It is true that there are serious defects in the English system. It is slow and expensive. A Committee has been appointed to revise the whole of the land title registration legislation. Would it not be wise to wait and see what changes are made and how they work out before Bermuda takes any steps.

Government has made a decision to have a general boundary system of land title registration without finding out first if it will work and without consulting the persons, namely lawyers, surveyors, real estate agents, bankers and deposit company managers, who know the most. It is the general opinion of the committee that a general boundary system will not work and should be opposed. The Committee is divided as to whether or not some other system will work.

The Committee is of the opinion that the introduction of a system of land title registration in Bermuda will be a monumental task and as much care must be taken as was taken by the Law Reform Committee and Government to produce the Companies Act, 1981. Unless Government takes the greatest care there will be an unsettling state of chaos relating to the ownership of land and land transfers, which will only be able to be sorted out at great cost to Government and to the public. A general boundary system will produce this undesirable result and it will not be cheaper or more efficient than the present system to operate.

copies to:-

Mr. Tony Bedford, Appleby Spurling & Kempe,
Mr. Farmer, Conyers Dill & Pearman
Mr. D. Cooper, Hallett Whitney & Patton
Ms. Jones, Mello & Jones
Mr. C. Vaucrosson, Vaucrosson's
Mr. K. George, Moniz & George

MINUTES OF THE MEETING OF THE SUBCOMMITTEE ON LAND SURVEYING
FOR LAND TITLE REGISTRATION. - as amended - (Meeting number 9).

Held on Tuesday 5th November, 1991.

Present:

Mr. David Summers (Committee Chairman)
Mr. Sean Johnson
Mr. Philip Holder
Mr. Ian Waddington
Mr. Kevin George
Mr. George Griffith

Apologies:

Mr. Erwin Adderley

1. Minutes of meeting number 7, held on October 8th: Approved; no matters arising.
2. Minutes of meeting number 8, held on October 22nd: Approved.
- 2(1) Matters arising: Mr. Griffith requested clarification of item 3(S) as the wording appears to be unclear. Mr. Johnson replied that the minutes reflected a general statement made by Mr. Griffith that the committee should be cognizant of certain factors and constraints in the formulation of their recommendations.
- 2(2) On the issue of the national grid, Mr. George recalled a statement made by a visiting representative of the Maritime Land Registration and Information Service that the survey control programmes undertaken in Maritime Canada would not be suitable for adoption in Bermuda. The Chairman replied that this applied principally to the methodology of the survey and not to the establishment of a network of national grid control points by both government and private surveyors.
3. **Fixed Boundaries: report recommendation 12.60.**
- 3(1) The Chairman provided the committee with a brief note summarising the present and proposed systems for documenting the boundaries of land. With the present system, the Chairman explained of problems with the Development and Planning Act that stem from the fact that only part of the Ontario legislation was adopted in Bermuda. The Chairman considered that the Bermuda Development and Planning Act needs amending in the light of the land registration proposals. A majority of the committee agreed on this point. Mr. Holder pointed out that subdivision registration gives the subdivision perpetual status.
- 3(2) With reference to the statement on the proposed system, Mr. Johnson stated that "fixed boundaries" are not precise cadastral surveys as such, but are boundaries that have been determined by the process provided in the Act and the determined boundary is then precisely surveyed using national grid coordinates. Furthermore, "title surveys" are also precise cadastral surveys but of boundaries that have not been fixed, and they are analogous to present day survey practices.
- 3(3) The question of the definition and nature of a fixed boundary and its interpretation in the Cayman Islands legislation was discussed by the committee at length. Mr. George said that disputes concerning boundaries rarely come before the Supreme Court and those that do most often concern adverse possession. Both the Chairman and Mr. Waddington agreed, adding that the fixed boundary process, as existing in the Cayman Islands and where landowners could establish their boundaries without regard to survey evidence, would generally result in additional expense for landowners. Mr. George stated that all properties being registered would need to have their boundaries fixed, because under the present

system a purchaser can sue the vendor for title up to the boundary as recorded in the conveyance, and this would not be possible under the proposed registration system. Both the Chairman and Mr. George stated that they would not support the introduction of land registration if the recommendations by Mr. Johnson regarding boundaries and surveys are adopted.

- 3(4) The Chairman questioned Mr. Johnson over an apparent contradiction between sections 12.62 and 12.63 of his report. Mr. Johnson agreed that there does appear to be a contradiction; however, it arises out of his interpretation of the law and practices in the Cayman Islands. The law does not dictate how the boundary being fixed is established, but in practice the boundary is established, or marked out, by a licenced surveyor before it is fixed by the registrar, and then recorded by a licensed land surveyor using national grid coordinates. According to the law, the boundary can be established by simple agreement between adjoining landowners without the need for a surveyor. However, in practice a surveyor is always employed in the process because it is the survey evidence which carries the greatest weight in submissions made to the Registrar about the true position of the original boundary. The Chairman and Mr. Waddington expressed grave concern about landowners being able to fix their common boundary without considering the survey evidence.
- 4 In summing up the meeting, the Chairman stated that there appears to be fundamental differences between the committee members on what form the determination and surveying of boundaries for registered land should take. The committee agreed to consider sections 14 to 22 of the Cayman Islands Registered Land Law at the next meeting in order to better understand the fixed boundary process as it applies in that jurisdiction.
5. The meeting closed at 11.00am.
6. Date of next meeting: Tuesday, 26th November 1991.

26th November 1991.

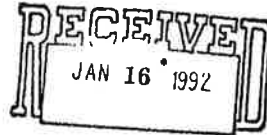
cc. Minister of Works and Engineering,
Permanent Secretary, Ministry of Works and Engineering.
Chief Surveyor, Lands Buildings and Surveys Division.

Ministry of Works and Engineering



All Committee Members

Kevin George



MONIZ & GEORGE

Dear Member,

Re: Land Registration.

Please find enclosed the final reports to the Advisory Committee of the Land Survey Subcommittee and the Administration Subcommittee, which are tabled for inclusion on the agenda for tomorrow's meeting. (Friday 17th of January in the Ministry of Works and Engineering boardroom on the second floor of the Post Office building, commencing at 9.00 am).

The agenda for the meeting is as follows:

1. Apologies for absence.
2. Minutes of Meeting held on Tuesday, December 3rd, 1991.
3. Matters arising.
4. Final report of the Administration subcommittee.
5. Final report of the Land Survey subcommittee.
6. The Ontario "Strategic Alliance": a model for land registry operation.
7. Programme for the introduction of land title registration.
8. Any other business.
9. Date of next meeting.

Yours Sincerely,

(for Chief Surveyor)

cc. Minister of Works and Engineering

Permanent Secretary, Ministry of Works and Engineering

(v)
Lands, Buildings
& Surveys Division

P.O.Box HM 525
Hamilton HM CX
BERMUDA

TELEFAX (809)295-0170
TELEX 3246 CWAGY BA (ATTN: PWD)
TELEPHONE (809) 29

Date *16th* January 1992

Your reference 30/11

Our reference

Land Title Registration Advisory Committee to the Minister of Works and Engineering, Dr. The Hon. Clarence Terceira J. P., M. P.

Report of the Land Survey Subcommittee to the Advisory Committee. 16th January 1992.

An examination of the issues relating to land surveying and the definition of real property boundaries pertaining to the introduction of a system of land title registration in Bermuda.

The Subcommittee members and organisations they represent:

Chairman	Mr. David Summers	Bermuda Association of Surveyors
Secretary	Mr. Sean Johnson	Ministry of Works and Engineering
	Mr. Kevin George	Bermuda Bar Association
	Mr. George Griffith	Attorney General's Chambers
	Mr. Philip Holder	Attorney General's Chambers
	Mr. Erwin Adderley	Department of Planning
	Mr. Ian Waddington	Bermuda Association of Surveyors
	Mr. Ted Gauntlett	Bermuda Chamber of Commerce.

Subcommittee's terms of reference:

To examine in greater depth some of the issues identified in the Feasibility Report and to submit final reports by the end of 1991.

Meetings:

1. The subcommittee has met on twelve occasions since its establishment on 1st April, 1991. In addition there have been two special meetings held jointly with members of the land law subcommittee. All meetings were of two hour duration.

Scope:

1. The subcommittee has addressed its task by concentrating on an examination of chapters eleven and twelve of the Feasibility Report¹.
2. During the course of this work, it became most apparent that there exists a substantial amount of overlap between the subcommittees, in particular between the land law and land survey subcommittees. A considerable amount of time has been consumed by matters that involve a large component of land law, and as a result the subcommittee felt it necessary to convene two special joint meetings with members of the land law subcommittee to satisfactorily address these matters.

General Concepts:

1. The subcommittee is of the general view that the present system is working reasonably well and that the needs and requirements of the community are to improve the present system, rather than to introduce a radically different system.

Registry Index Map:

1. It is the recommendation of the subcommittee that the registry index map of land

parcels should allocate a unique parcel identifier based on the Parish, share, section and lot number, in a similar fashion generally used on the Parish Vestry maps.

2. It is noted that Richard Norwood's surveys carried out in the 17th century provided the basic format of Parishes and shares.

3. The proposed legislation should include a section stating that the registry index map is not conclusive evidence about the location of the boundaries of land.

4. In compiling the registry index map all parcels of land, including roadways, which are not held as a contiguous part of the title of another parcel of land, should be treated as a separate parcel of land in the registry.

Concepts and Terminology:

1. The subcommittee defined the term "fixed boundaries" as those boundaries that have been determined.

2. A majority of the subcommittee favoured the retention of the current practice of cadastral, or boundary surveying. In consequence, most of the subcommittee did not support the concept of "general boundaries" as it operates in England and Wales.

3. The subcommittee agreed to adopt amended terminology for describing the concepts and processes involved: "general boundary" and "fixed boundary" would be replaced with "boundary" and "determined boundary" respectively. The expression "determined boundary" is taken to mean a boundary established in accordance with the proposed statutory procedure.

4. The subcommittee agreed that a parcel of land, subjected to first registration, can be registered without a prior need for its boundaries to be determined or surveyed. A party may commission from a licensed land surveyor a new survey, and have this new survey plan appended to the register. However, a survey may be required, and/or boundaries determined for first registration if the Registrar so directs; for example, where land is inadequately described or adjoining titles overlap.

5. The subcommittee agreed to amend the items under paragraph 12.62 of the feasibility report, to conform with their conclusions and recommendations:

(1) Determined boundaries:

(a) shall be defined and controlled according to the provisions of this law and associated laws and regulations;

(b) they shall only be established under this law, by application to the registrar or as directed by the Registrar, and then recorded by reference to national grid coordinates.

(c) they shall be determined initially by a licensed land surveyor acting upon survey evidence in the customary manner;

(d) all determined boundary survey data must be submitted to the registry for checking, whereupon they are stored for future reference;

(e) the Registrar has discretionary powers to order a boundary to be determined upon a survey being undertaken;

(f) they shall agreed by adjoining proprietors;

(g) upon failure to agree, the Registrar may either convene a hearing at which evidence shall be submitted and proprietors given the opportunity to be heard or refer the matter to arbitration if all parties agree or to the Supreme Court.

(h) the Registrar may act as an adjudicator and give a ruling on the position of the boundary, and apportion costs;

(i) the matter may be referred to arbitration if all parties so agree or there shall be a right of appeal to the Supreme Court;

(j) no Arbitrator or Court shall determine a boundary unless previously considered by the Registrar.

6. Those boundaries that have not been determined by the Registrar, Arbitrator or the Court in accordance with the land registration law, are boundaries that are defined by the available evidence (survey, physical or otherwise) and exist according to the general common law.

7. Surveys for providing evidence about the location of any boundary and for the more precise description of the location, area and extent of a parcel of land (cadastral surveys), whether the boundary has been determined or not, may be appended to the register at any time after first registration. These surveys must conform to the requirements of the Land Survey Regulations.

8. The register will not provide conclusive evidence about the exact extent of a parcel of land nor of the precise location of its boundaries. However, the provision of cadastral survey plans attached to the register promotes increased certainty and clarity in the description of registered land and the record of the location of boundaries. The correctness and accuracy of cadastral survey plans, although much improved for registered land, will not be guaranteed by the registry, and as such purchasers must take the usual customary measures to satisfy themselves that the land is correctly described.

Licensing of Land Surveyors:

1. It is important to note that the bill entitled "Professional Surveyors Registration Bill", which is currently being prepared for presentation to the legislature, does not include provisions for the licensing of land surveyors.

2. It is anticipated that legislation similar to the Cayman Islands Land Surveyors Law will need to be enacted in Bermuda contemporaneously with the registered land law.

The National Grid:

1. The subcommittee recommends that all boundary positions should be related to a national grid coordinate framework.

Roadways:

1. The issue of roadways, including public roads, is a complex one. In particular, the

matter of whether Government owns public roads in fee simple or merely enjoys surface rights over the land comprising the public highway, may need to be addressed.

2. It has been noted that it has been the practice of Government in modern times to acquire the fee simple interest in land in connection with improvements to public roads.

3. It is the conclusion of the subcommittee that whilst the matter of the title to public roads may need to be addressed it is more of a public works matter than a land title registration matter.

The Development and Planning Act 1974:

1. It was generally agreed by the subcommittee that the subdivision section of the Development and Planning Act 1974 possibly needs to be amended.

2. It was apparent that not all of the concerns about the subdivision section of this Act were directly related to land title registration issues.

Conclusion:

1. The work of reviewing the relevant portions of the Feasibility Report cannot be treated as an entity in itself, as that Report recommends that the Cayman Islands Registered Land Law and accompanying Land Survey Law be adopted and adapted.

2. The subcommittee's current terms of reference must be considered as the first of a number of different phases in this overall process.

3. The next contemplated phase is a review of the Cayman Islands registered land legislation relating to land survey matters to formulate recommendations regarding its adoption and/or adaption for use in Bermuda.

References:

(1) Report of a Study into the Feasibility, Benefits and Costs of the Introduction of Land Title Registration in Bermuda. Sean Johnson, Ministry of Works and Engineering, 1990.

MINUTES OF THE MEETING OF THE SUBCOMMITTEE ON LAND SURVEYING
FOR LAND TITLE REGISTRATION (Meeting number 12).

Held on Thursday 16th January 1992.

Present:

Mr. David Summers (Committee Chairman)
Mr. Sean Johnson
Mr. Philip Holder
Mr. Ian Waddington
Mr. Kevin George
Mr. George Griffith
Ms. Cathy Lightbourne (observer)

Apologies:

Mr. Erwin Adderley

Not Attending:

Mr. Ted Gauntlett

1. Minutes of the special joint meeting held on January 17th:
 - 1(1) Mr. Griffith stated that in relation to the subject matter of item 6, the word "conclusive" in item 10 is inappropriate. The subcommittee agreed that "conclusive" should be replaced with "best".
2. Matters arising from the minutes: None.
3. The majority of the rest of the meeting was dedicated to considering and amending the draft report of the subcommittee.
- 3(1) Mr. Griffith asked that a note be made, in reference to item 4 under the heading Concepts and Terminology, about the issue of whom will bear the costs for surveys undertaken in requirement of the proposed statutory procedures, so that the issue can be properly considered at the appropriate time.
4. The meeting closed at 10.30 am.
5. Date of next meeting: subject to ratification at the next Advisory Committee meeting.

16th January 1992..

cc. Minister of Works and Engineering,
Permanent Secretary, Ministry of Works and Engineering,
Chief Surveyor, Lands Buildings and Surveys Division.

Land Title Registration Advisory Committee to the Minister of Works and Engineering, Dr. The Hon. Clarence Terceira J P M P.

Report of the Administration Subcommittee to the Advisory Committee. 20th December 1991.

The Administrative and Organisational Issues Surrounding the Introduction of the System of Land Title Registration.

The Subcommittee members and organisations they represent:

Chairman: Mr. Sean Johnson	Ministry of Works and Engineering
Mr. John Scanlan	Land Valuation Department
Mr. Arthur Jones	Chamber of Commerce
Mr. Paul Nicholls	Department of Planning
Mr. Ted Gauntlett	Chamber of Commerce

Subcommittee's terms of reference:

To examine in greater depth some of the issues identified in the Feasibility Report and to submit final reports by the end of 1991.

The major institutional issues have been identified as (1):

1. An open land register.
2. Use of computers and issues associated with dissemination and ownership of information.
3. Copyright.
4. The registry as a public or private organisation.

This report summarizes the findings, conclusions and recommendations of the subcommittee; it does not provide an analysis of the issues nor a record of the subcommittees deliberations and discussions of these issues.

On the 2nd of October, Mr. Ted Gauntlett joined the subcommittee following a request by the Chamber of Commerce for additional representation. Unfortunately, during October Mr. Jones resigned from all committees for personal reasons.

The subcommittee began meeting on April 1st, 1991 and for a further 7 meetings up to and including October 2nd, 1991. The subcommittee resolved to suspend temporarily further meetings because its remaining agenda would in all likelihood be duplicated in other subcommittee meetings. In the interim period, Mr. Gauntlett agreed to serve on the land surveying subcommittee.

The findings, conclusions and recommendations of the subcommittee relating to the issues discussed are as follows:-

1. On the question of the desirability or otherwise of an open land register as opposed to a register closed to public inspection, the subcommittee unanimously rejected the latter as it felt that openness is more desirable than secrecy in matters relating to land ownership. This openness should include transfer price. However, the subcommittee was unable to reach a conclusion or recommendation on whether a mortgage and mortgage principal are available for public information. Privacy in financial matters may outweigh the desirability for openness. The subcommittee generally held the opinion that a mortgage must be declared on the register,

but it felt that the terms, conditions and principal of the mortgage are a private matter between mortgagee and mortgagor.

The subcommittee suggests, but does not recommend, a register open to public inspection, on the payment of the prescribed fees, excluding instruments and documents supporting entries made on the register, such as mortgage agreements, leases, etc..

2. An open land register raises questions and issues associated with the use and abuse of the information provided, particularly where computers facilitate the batching and reprocessing of this information. The subcommittee recommended that statutory safeguards on the distribution and use of information abstracted from the register must be adopted. Furthermore, the subcommittee recommends that the prescribed fees for examining and copying the register be set in such a manner that discourages persons from batching information about individual proprietors.

3. The subcommittee recognizes that computers will play an integral role in the function of the registry, and support the use of computers because of benefits in operational efficiency. The subcommittee also recognise that a computerised register can be linked or integrated with a wider land information system to service the information needs of government and the community, including the possibility for remote terminal access for property professionals. However, the subcommittee also recommend the adoption of necessary safeguard to protect the rights and privacy of individual proprietors.

4. The subcommittee was divided and therefore unable to reach a conclusion and recommendation on the issue of documents supplied to the registry that may be the subject of copyright. The specific case of survey plans was discussed. As survey matters are within the jurisdiction of another advisory subcommittee the subcommittee resolved to refer this issue to the plenary committee for wider debate at the appropriate time.

5. Another issue upon which the subcommittee preferred not to put forward a firm recommendation was that of the *modus operandi* of the registry. The options discussed included: the registry as part of an existing Government Ministry and department; as a separate department; as a quasi-government agency (QANGO); as a joint public/private corporation; and as a private company. The factors that the subcommittee identified as most important to the operation of the registry were efficiency, flexibility and level of service. The primary function of the registry is to provide a service to purchasers, vendors, mortgagees of land and their agents and representatives, and as such, the registry should be geared to provide the level of service demanded by the community. Because the registry will be self supporting financially from fees it charges for its services, there exists the opportunity to adopt appropriate business methodology to achieve the service objective. With this in mind, the subcommittee found merit in the idea of both the joint corporation and the Qango. The registry as a fully fledged Government department was not dismissed, provided that certain conditions are met, but the option of a private company received little support.

In their consideration of this issue the subcommittee felt unable to put forward a recommendation, and concluded that the authority for making a decision on this issue will ultimately rest with the Government.

6. Other matters agreed by the subcommittee included the following: the form and operation of the land parcel identification number, or identifier as recommend in the feasibility report (1); the use of statutory forms as recommended in the feasibility report.

References: Report of a Study into the Feasibility, Benefits and Costs of the Introduction of Land Title Registration in Bermuda. Sean Johnson, Ministry of Works and Engineering, 1990.



(vi)

The Bermuda Association of Surveyors

AD SUMMUM

MEMBER OF THE COMMONWEALTH ASSOCIATION OF SURVEYING AND LAND ECONOMY

*Post Office Box No. 1411
Hamilton 5, Bermuda*

18th July, 1989

~~JUL 24 1989~~

The Ministry of Works & Engineering
Lands, Buildings & Surveys Division
P.O. Box HM 525
Hamilton HM CX

Attention: Brian James, Chief Surveyor

Dear Sir,

Re: Proposed Land Registration, Annex 11, Consideration and Proposals
with Respect to Survey Matters

Thank you for providing us with a copy of the paper Annex II outlining considerations with respect to survey matters. This paper, which we understand is being circulated amongst Government departments, has been studied by my sub-committee of land surveyors and following discussions, we respond accordingly.

Before addressing a few individual points contained within this paper we wish to make it clear that the overall contents of the document will be misleading to the lay person without the benefit of good technical back up and thorough research into this very complex subject. We do understand that this paper has been prepared for preliminary discussion only, but we repeat that we are

somewhat alarmed at the possible misleading effect this will have on the non technical mind. There is absolutely no reason for The Bermuda Government to adopt a system of registering land that is a step backward from its present system and is not an improvement on the best and most efficient system that presently exists in the world today. Surely time and money spent now researching other countries land registration systems will be money well spent and to the benefit of future generations of Bermuda. The benefits of a good system will be appreciated not necessary by todays generation, but by those who will be fortunate to see it work into the 21st century.

We note from the paper that reference is made to hostility from both the surveying and legal professions to the subject of general boundaries. Let us not lose sight of the fact that we are not entering the ring opposing something just for the sake of ourselves. We consider that the major hostility to general boundaries will come from the landowner and not the surveyors or lawyers. We are adamantly opposed to general boundaries because we know they will never work in Bermuda and will never be accepted by the people of Bermuda who have recognized precise boundaries for years.

The surveyors in Bermuda have been compiling property plans based on precise measurements for a great number of years. To say that these surveys are produced in relative isolation is not strictly true. To say that these surveys promote boundary disputes is most definitely not true. All surveys carried out by recognized land surveyors are related in all respects to adjoining properties and the only isolation is a common co-ordinate number applied to each individual point.

Recently, The Bermuda Government spent money on the upgrading and recomputation of The national Grid. With this in mind we feel that this money should most definitely not be wasted and the transition and application from these key

points to the individual property most definitely must be exercised. With todays technology and equipment we do not consider this to be any significant additional financial burden to the general public and the end result will be to the absolute benefit of all concerned.

We feel we cannot address many of the points contained in the paper by means of correspondence, but if offered the opportunity we will be more than pleased to discuss why certain aspects won't work in Bermuda and why certain statements are untrue and misleading. With the availability of todays technology and the unknown assistance of tomorrows technology we cannot accept any backward steps in the production of a good survey system applied to proposed land registration. We as a group have no desire to be considered by future generations as the perpetrators of an archaic and useless system.

We trust you understand our point of view and do not lose sight of the fact that we are here to offer assistance in producing the best for Bermuda.

Yours faithfully,

A handwritten signature in dark ink, appearing to read 'I. Waddington', with a stylized flourish at the end.

Ian Waddington

Chairman, Land Registration Committee

cc. The Hon. Clarence Terceira MP

Mr. Les Cock, Permanent Secretary

Mr. Peter Smith