

# **THE TORRENS TITLE SYSTEM MINNESOTA THE SHORT COURSE FOR SURVEYORS**

**By David J. Meyers**

A surveyor colleague of mine came back from a continuing education class a while ago and said that the lawyer instructor wished out loud that the torrens system would go away. The lawyer, like some surveyors, did not like dealing with the torrens system. For many surveyors and lawyers, the torrens registration system can be confusing and the rules sometimes do not make sense.

Well, here is the news. The torrens system is not going away. In fact, it is taking in more property all of the time. For lawyers and surveyors who understand the system, it is really quite simple. It provides a certainty in ownership and legal descriptions, which the abstract system cannot give a property owner. Surveyors who understand the torrens system have an edge up because they can provide their customers with a method to clear a boundary question, so that, for all practical purposes, it can never be challenged again.

In order to understand and use the torrens system, the surveyor must first understand how a torrens title is created, who the people are that make the system work and be familiar with the torrens procedures and documents. Let's begin by understanding how a property becomes into the torrens system.

## **Torrens Title**

Title to property in Minnesota originated in the abstract system. The abstract records control the history of the property from the patent forward. In the early 1900's, Minnesota adopted a torrens title system. A torrens title is granted by Court order at the completion of a title

registration proceeding. This is an important distinction from the abstract system. In the abstract system, the most a Court order in a Quiet Title action will do is provide evidence of title to a future title examiner. In a torrens system, the title is actually registered in the name of the owner, with a specific legal description and a new source of title is created, called a Certificate of Title.

To start the process of registration, the property owner files an Application with the Court appointed Examiner of Titles. The Application asks the Court to register title and the owner may also register the boundary. The Application is then filed with the Court, and County Recorder. The Examiner of Titles then reviews the abstract and, if boundaries are to be established, a survey to prepare a report. It is best to have the survey before filing the Application if the goal is to register the boundary.

The Examiner's Report is an opinion to the Court and applicant on whether the applicant has a claim to title, which may be registered. It recites any defects in title and the legal description, and identifies the parties that must be a part of the registration process. The Court then issues a Summons to the parties. If any party contests the Application, then the Court determines ownership, boundaries, liens and all other aspects of the dispute. If no contest, default.

At the conclusion of the proceeding, the Court issues an Order and Decree of Registration, which instructs the Registrar of Titles to issue a Certificate of Title in the owners name, with the legal description (which could be the description of record or a new description as shown on the survey) and lists any Memorials, on the back of the Certificate, such as liens, easements and so on. After six months from the date of the Court Order, the Certificate of Title may not be challenged, even if someone later claims there was a mistake.

This is the short story. Of course, people seldom register title unless they have a problem to solve. Often the solution is complex, and finding agreement among owners can be a challenge. If the parties cannot agree, the Court holds a trial.

A major reason, in my experience, for title registration is to clear a boundary problem. That is why the surveyors have come to play a very important role in title registration. I do not have to explain to surveyors that there is often disagreement over a boundary, say within a government lot or other parcel that has been divided. A quiet title action, at best, will confirm a description, but the location of the description in the Court Order, when measured on the ground could be interpreted differently by different surveyors.

By registering the title to a description, and placing Judicial Landmarks (to be explained later), you all but guarantee that no one will ever challenge the boundary again.

### **The Players**

The two people in each county who are required by statute to maintain the torrens registration system are the Registrar of Titles and Examiner of Titles.

**Registrar of Titles.** Each county is required to have a Registrar of Titles. In all but a few of the metropolitan counties, the Registrar of Titles is usually the same person as the County Recorder. The Registrar of Titles is responsible for maintaining the integrity of the torrens system. Their specific duties and authorities are set out by statute. They must accept deeds, mortgages, plats and other instruments to be filed on Certificates of Title when title transfers. They may issue new Certificates of Title. They have some discretion to reject documents that might otherwise be allowed to be filed in the abstract records. This is intended to help maintain the integrity of the torrens system and not clutter up Certificates of Title.

**Examiner of Titles.** This is a lawyer appointed by the Court to assist the Registrar and the Court. The Examiner assists with the torrens application process, with certifying or directing that certain documents be recorded by the Registrar and helps with Court orders on existing Certificates.

In some metropolitan counties, the Examiner is a full time county employee. In the rest of Minnesota, Examiners of Title are usually private lawyers, who are paid by the property owner or applicant requesting their services.

It is important to have a good working relationship with both the Registrar of Titles and the Examiner of Titles if you intend to work in the torrens system in a county. Like other aspects of property, each of the 87 counties have slight variations on how they handle the torrens system. In my experience, all Registrars and Examiners are helpful. It is important to talk to them before proceeding on any complex torrens registration or action involving an existing torrens title.

### **The Documents**

**Certificate of Title.** This is the evidence of ownership. I often analogize this to a automobile title. It shows the name of the owner, it describes the property and lists any encumbrances or other burdens on title. These are called Memorials. Example 1 is an example of a Certificate of Title.

**Registered Land Survey.** The legal description on a torrens Certificate can become confusing if there are divisions of the property after registration using metes and bounds descriptions. To help avoid conflicts and overlapping Certificates of Title, the Registrar may request a registered land survey if the division of land is more than a simple split of a quarter quarter section or a simple quantity, as in the case of a platted lot.

A Registered Land Survey is prepared by the surveyor and filed like a plat. The lots are designated as tracts. But, this should never be a substitute for a plat. It is only used to assist the Registrar in keeping track of the torrens parcels. Exhibit 2 is an example of a Registered Land Survey.

All Registered Land Surveys need to be approved by the local Planning Commission, in the same manner as a subdivision is approved. A surveyor or property owner cannot simply file a Registered Land Survey, even if it has other signatures, to create a split or new property description. Unless you have the subdivision approval, you are only asking for trouble.

### **The Torrens Procedure**

The Torrens law may be found in Minnesota Statutes Chapter 508.

**Application to Register Title.** Example 3 is a typical Application to Register Title. It lists the name of the property owner, the description of the land, the encumbrances and the reason registration is being requested.

**Interlocutory Order.** When title is being registered, and assuming the boundary is an important part of registration, it is recommended by me as Examiner that Judicial Landmarks be established at the boundaries. After all parties have been served with the Summons, and all objections are resolved, the Court issues an Interlocutory Order. The Order states that all parties have been served, there are no unresolved claims to title, and the Order instructs the surveyor to mark the boundaries with Judicial Landmarks and to prepare a survey for the Court showing the monuments.

**Order and Decree of Registration.** Example 4 shows a typical Order and Decree of Registration. It includes the registered owner's name and address, legal description and required

Memorials. It is good practice to record this Order in the abstract records to place a future title examiner on notice of the torrens title. It must be recorded on the first Certificate of Title.

**Proceedings Subsequent to Initial Registration.** After a Certificate of Title has been issued, there are times when the Court must correct the Certificate. The most common correction these days is when title has been transferred by a mortgage foreclosure sale. The Registrar may accept deeds and other regular instruments of voluntary conveyance, without Court Order or Examiner Directive to convey title.

But, when there is an involuntary conveyance, such as a mortgage foreclosure or contract for deed cancellation, the Court must review the foreclosure and other process to confirm it was done properly. This requires a Court proceeding, with an Order to the Registrar.

A proceeding subsequent may also be used in limited circumstances to correct a legal description or determine the boundary of a torrens parcel.

**Examiner Directives and Certifications.** There are certain occasions when the Registrar needs direction from the Examiner to convey title or record documents. This includes any conveyance by a trust, or a conveyance using a Power of Attorney. In those cases, the Examiner must issue a Directive to the Recorder stating that the Examiner has reviewed the documents and they are in acceptable order.

### **The Law**

The torrens system is controlled by Minnesota Statutes Chapter 508. A couple of important statutes, which every surveyor dealing in the torrens system must review are Minnesota Statutes Section 508.671 dealing with boundary corrections and Minnesota Statutes Section 508.47 dealing with registered land surveys. Of particular importance to surveyors, and

one that often gets surveyors in trouble, is Section 508.671. Please note, the only way to correct a legal description on a Certificate of Title or determine the boundary of a torrens parcel is through a Proceeding Subsequent. Never attempt to set a torrens boundary without first understanding both of these statutes.

### **Certificates of Possessory Title**

Finally, there is a slightly different method to bring property in the torrens system that the surveyor must understand. Under Minnesota Statutes Chapter 508A, an owner may apply to an Examiner for a Possessory Certificate of Title (“CPT”).

Under the CPT method, the applicant prepares and sends the Examiner an Application. The Examiner then reviews and files the Application with the County Recorder. The abstract is updated and the Examiner determines whether the owner has title, and identifies the liens and encumbrances.

The lienholders and others with claims on the property are notified. If there is no objection, the Examiner may issue a Directive to the Registrar to issue a CPT. Example 5 is a CPT. The Court is not involved.

This CPT provides a quick and inexpensive way to correct title defects, but it seldom works for boundary questions. For example, a CPT will work to correct title where an old Contract for Deed vendor cannot be located, where there is a stray deed or mortgage or maybe the failure to join a spouse in a long past transaction.

If a CPT is issued and no one comes forward with an objection within five years, the title becomes a full torrens title as if it were registered by the Court.

Since surveyors are usually part of a boundary dispute or resolution, those claims may

only be determined by the Court. The CPT is generally not available to clear a boundary.

I have used a CPT in one instance to correct a boundary and avoid a quiet title lawsuit. The case involved the father who owned an entire quarter section, and over 30 years ago he sold the north 1,000 feet to a neighbor. Later the son inherited the farm from his father and the probate awarded him the south 1,640 feet of the quarter section. Well, as any surveyor can guess, the quarter section was actually 2,655 feet in length, resulting in a 15 foot gap between the 1,000 feet sold to the neighbor, and the south 1,640 feet.

Occupation, fences, and all evidence indicated that the father and son had always farmed up to the north 1,000 feet. With the Examiner's agreement, they had a new survey completed showing the correct description, and after notice to the neighbor, the land was brought into the CPT system.

### **Why Register Title?**

Title registration offers surveyors and owners the peace of mind that a boundary is set for ever. One important aspect of torrens property is that it is not subject to claims of adverse possession. The registered owner will not lose title to their property just because someone else has occupied and used the land for 15 years. This is an important and unique aspect of torrens property in Minnesota.

If you register title, you protect the land from adverse claims. And, if you set Judicial Landmarks, you establish the location of the boundary on the ground by a Court Order. No other surveyor may later come along and claim your boundary survey is in error.

So, once title is registered and the Judicial Landmarks placed, the boundaries and land within the boundaries are for all practical purposes safe from ever being challenged. No Court



has jurisdiction to change the Torrens Certificate or move the Judicial Landmarks.

**Questions?**

This article will give the surveyor the basics of the torrens system. In future articles, I will explain how to use the system to correct boundaries, and how surveyors and lawyers have gotten themselves into trouble by not understanding the torrens system.

If any one has questions or examples they would like to share, please email me. I would be glad to answer any questions or use your material in future articles.

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