



## Bermuda Land Title Registration: Your Questions Answered

### Author:

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The *Land Title Registration Act, 2011* (the “Act”), as recently amended, is likely to come into full effect in August. Bermuda landowners may have a number of questions concerning this legislation, which we aim to answer in this article.

### What is Land Title Registration?

It is the creation by Government of a public register of land ownership in Bermuda. It is intended to provide certainty of ownership backed by a Government guarantee, simplify proof of ownership, and move Bermuda from its current system of unregistered land to a system of registered land, over time.

### When will it come into effect?

While the Act was passed by Parliament in 2011, it did not come into force until 2 July 2018 and then only in part (see next question). It is likely to be made fully effective on or about **13 August 2018**. The delay in bringing the Act into force was due to a number of issues associated with its implementation, which have been addressed through a series of amendments. The most recent of these is the *Land Title Registration Amendment Act, 2018* (the “Amendment Act”), which is currently being signed into law.

### Can any applications be made at the current date?

The Land Title Registry Office (the “LTRO”) is not yet accepting any applications for land registration. Currently, only Part 8 of the Act, which relates to cautions against first registration, is in operation. This facility enables a person who believes that he has an interest in a property that is destined for registration (and who is unlikely to be a title holder already) to register his interest at LTRO with a view to having such interest taken into account or noted as part of the registration process. An application for a caution needs to include particulars in respect of the interest being claimed, as well as an application fee in the sum of \$104.

### How will I know when land title registration becomes fully operational?

When the Land Title Registrar is satisfied that there are adequate arrangements in place at the LTRO to service the resulting applications, an official notice will be issued to the public which will bring the Act into full operation.

### Once land title registration commences do I have to register my land?

The Act specifies a number of property-related transactions that the Registrar may select as a trigger for **compulsory registration**. It is our understanding that the Registrar currently intends that conveyances for valuable consideration and mortgages (only) will trigger compulsory registrations in the first instance. The menu of triggers may be expanded at a later

date to include transactions such as voluntary conveyances, applications for sub-division and even an application for a primary family homestead designation.

### **Can I register my land voluntarily, and should I do so?**

The Act provides for voluntary registration and Government is keen to promote them. We understand that the Registrar is likely to issue a notice confirming that the LTRO is prepared to accept voluntary registrations at the same time as the notice of compulsory registration. The Amendment Act which is in the process of being signed into law allows for voluntary registration without involving an attorney. We understand that voluntary applications will be accepted by appointment only.

If you are intending to sell or mortgage your property in the near future, having your property registered in advance should avoid any delays as a result of title issues, and will reduce the legal fees on the future transaction, since the LTRO will not require an attorney to certify the title when a property is registered voluntarily but will require this when the registration is compulsory.

The title deeds will have to be deposited at the LTRO in connection with any application for registration and we recommend that applicants retain certified copies in case they need to show evidence of their title at any time prior to completion of the registration process.

### **My property is mortgaged. Can I apply for voluntary registration?**

No, any such application would have to be made by the mortgage holder. We understand that the banks may apply for voluntary registration of their mortgage portfolios.

### **What are the costs of registration?**

A registration fee will be payable upon the filing of any application for first registration (whether voluntary or compulsory). This fee will be calculated based on the value of the subject property or interest being registered, and by reference to a sliding scale that ranges from \$100 (in respect of the first \$100,000 of value) to a maximum of \$1,300 (where the value of a property or interest exceeds \$1,000,000).

Where an application is submitted on a compulsory basis, attorney input and ultimately an attorney's certificate of title will be required. The fees that will be charged by an attorney for this service will be calculated based on the value of the property and by reference to the recommended scale of fees produced by the Bermuda Bar Association.

### **What do I need in order to make an application?**

Every application for first registration will need to include the relevant application forms, as well as a survey plan, the original title deeds and other relevant documents relating to the subject property and/ or the owners (such as marriage certificates, other documents evidencing name changes, and death certificates).

The LTRO will also require applicants to provide appropriate ID. Application forms for voluntary registrar registration, known as Form A5 and Form DL, the latter being a form for listing all documents submitted in support of the application, are available from the LTRO.

Additional information may be demanded by the Land Title Registrar as deemed necessary. Where an application is being made on a compulsory basis, your attorney should have all the deeds and documents required to support the application as part of the standard conveyancing transaction that triggers the registration.

### **My property is held in a trust. Will the settlement deed be publically available following registration?**

We have been told that the Registrar will require sight of the original deed of settlement (and presumably therefore any deeds of variation). However our current understanding is that they will not form part of the public record.

## What are the penalties for failing to register when required to do so?

Following completion of a transaction that triggers compulsory registration, a penalty is payable at a rate of \$200 per day for each day of non-registration.

## My neighbour and I have been in dispute for some time regarding the correct boundary between our properties. Can I do anything to prevent him from registering title to the land in dispute?

You should consider registering a caution against registration of his title (see above: *Can applications be made at the current date?*). It is, however, unclear how helpful this will be since the registration of title does not guarantee exact boundaries.

## What happens to my title deeds following registration?

They will be returned to you (in the case of a voluntary registration) or to your attorney (in the case of a compulsory registration). The LTRO will retain electronic copies, but we recommend retaining the originals in a safe place at least until all surrounding properties have been registered, in case subsequent registrations lead to queries regarding the registration of your title.

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