

TORRENS TITLE SYSTEM - AUSTRALIA AND OTHER DEVELOPED NATIONS - A COMMON MAN UNDERSTANDING - V. SRINIVASULU

The Torrens Title is a certificate of title for an interest in land. On this single certificate all transactions for the property land are registered; transfers, mortgages, leases and so on, with this registration guaranteed correct by the State. The Certificate of Title was formally prepared in duplicate; one remained with the Registrar General while the owner keeps the other.

Since 1990 the register of the certificates of title has progressively been converted to a computerized record. The original Certificate of Title is held electronically and a paper Certificate of Title is provided to the owner as evidence of ownership. Today at the Lands Titles Office any would be buyer can check the title of the property. From computer searches and plans of the district one can trace the land which is of interest. At a glance of the certificate the particulars of the property are clear and the ownership certain, allowing the buyer to go ahead with complete confidence.

Robert Richard Torrens is widely regarded as having conceived the idea of the Real Property Act. He first introduced his Bill to amend land titles to the State Parliament in May of 1857 and after much debate and opposition it came to the final vote in December. He then resigned his seat in parliament to become the first Registrar General to administer the new Act.

Robert Richard Torrens also helped the introduction of the Torrens Title system to other Australian states and New Zealand. Since then the principal of the Torrens Title system of land registration has spread throughout the world.

Torrens left Australia in 1862 and took his ideas to Ireland, his native country, and to England where he was knighted for his life's work. Prior to the Real Property Act, disputes over land ownership and boundaries were frequent and sometimes violent. Under the Torrens system there are

few disputes because all dealings are recorded on the Certificate of Title, which is guaranteed by the State.

Over the years methods have been modernized but the principal remains the same. A single indisputable Certificate of Title recorded in the Lands Titles Office and a paper version held by the owner.

For these benefits Australia and the world have much to thank Robert Richard Torrens.

Overview of the origin of Torrens Title System

The province of South Australia was created by an Act of the British government 1834. Two years later a group of colonists under Governor Hindmarsh arrived from England.

From the beginning there were land troubles, blocks that had been sold were not available when the colonists arrived. The survey plan was lagging as, Colonel Light, the surveyor was short of staff and equipment. With the arrival of fresh immigrants land was in demand.

Many colonists subdivided their blocks hoping to make large profits. Properties changed hands often, each time land was sold a deed of conveyance had to be prepared. South Australia had inherited the English Common Law system by which records of land transactions such as, deeds, mortgages and leases accumulated. All these were needed to prove ownership or title to the land. A good title depended on the succession of indisputable documents; if a deed was missing the title was in doubt.

The buyer's solicitor had to examine all documents to guard against fraud or error. This examination was time consuming and expensive. Solicitor's bills often amounted to more than the cost of the land.

Robert Richard Torrens was the son of one of the founding fathers of the colony of South Australia, Colonel Robert Torrens. He was responsible for the introduction and early implementation of the Torrens Title system of land certification still used in many parts of the world.

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In 1852 Torrens was made Colonial Treasurer and Registrar General. As Registrar General he found the need to reform the system of land conveyancing acutely urgent. He had the idea of using the same method to transfer land that was used in the selling of ships. Here a single document gave continuing proof of ownership.

The 1857 elections were drawing near and Torrens was standing for parliament. He made land title reform the main electoral issue. When the results were announced to the citizens of Adelaide, Torrens headed the polls and so Robert Richard Torrens became a member of South Australia's first elected parliament. Torrens first introduced his Bill to amend land titles in May of 1857 and after much debate and opposition it came to the final vote in December. The Bill was passed by parliament and there was much rejoicing by the citizens of Adelaide and so on 27 January 1858 the Real Property Act became law.

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Torrens title

Sir Richard Robert Torrens (1814-84) introduced a bill into the South Australian parliament in 1858.

"WHEREAS the inhabitants of the Province of South Australia are subjected to losses, heavy costs, and much perplexity, by reason that the laws relating to the transfer and encumbrance of freehold and other interests in land are complex, cumbrous, and unsuited to the requirements of the said inhabitants, it is therefore expedient to amend the said laws..."

Its purpose was to establish a land registry. Each piece of land would have a single Certificate of Title, kept at a government office. The state government would guarantee the validity of the title, rather than the solicitor/conveyancer who prepared the deeds of conveyance. The bill became the [Real Property Act \(SA\) of 1858](#).

The process of conveyancing has become so simple that the buyers and sellers of property can do it themselves without a solicitor/conveyancer.

The Certificate of Title shows:

- The present owners
- Easements such as underground pipes that may require access for storm water or sewage, and 'right of carriageway' for neighbours get access to their property
- Covenants such as building restrictions
- Caveats such as a requirement for someone's approval before transfer of ownership
- Mortgages

Strata title (called by different names in some states) is another Australian first. Instead of land, strata title describes a three dimensional block of 'air space'. It is an extension of the Torrens concept.

Thanks to the Torrens title system, conveyancing is a simple process that anyone can carry out. The Torrens title system operates on the principle of "title by registration" (i.e. the indefeasibility of a registered interest) rather than "registration of title." The system does away with the need for a chain of title (i.e. tracing title through a series of documents). The State guarantees title and is usually supported by a compensation scheme for those who lose their title due to the State's operation.

In most jurisdictions, there will be parcels of land which are still unregistered.

The Torrens system works on three principles:

1. **Mirror principle** – the register (Certificate of Title) reflects (mirrors) accurately and completely the current facts about a person's title. This means that, if a person sells an estate, the new title has to be identical to the old one in terms of description of lands, except for the owner's name.
2. **Curtain principle** – one does not need to go behind the Certificate of Title as it contains all the information about the title. This means that ownership need not be proved by long complicated documents that are kept by the owner, as in the Private Conveyancing system. All of the necessary information regarding ownership is on the Certificate of Title.
3. **Insurance principle** – provides for compensation of loss if there are errors made by the Registrar of Titles.