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BUYING A PROPERTY

What is Torrens Title?

Title to land in New South Wales is recorded at the Land & Property Information Service which is administered by the Registrar-General.

Land under the Real Property Act is known as Torrens Title land. It is by far the most common land title and is the least expensive title to investigate and transfer. Under the Torrens system there is one Certificate of Title, and once you are registered on that title you are the State guaranteed owner with indefeasible title except in the case of fraud or error. The Torrens Title system depends upon a register in which dealings with property interests are recorded by computer. Nearly every one of the three million parcels of land in NSW has its own computer generated folio of the register.

What is different about Old System Title?

Old System title consists of a series of title documents called “a chain of title”. A title to the property is sound only if every document in the chain is itself sound; it is not guaranteed by the Government. The expense of investigating an Old System title is far greater than Torrens Title because making a thorough investigation of the chain of title for at least the past 30 years is usually complex and time consuming.

Old system dealings are registered in the General Register of Deeds maintained in the office of the Registrar-General. A true copy of any dealing to be registered must be lodged with additional forms providing basic details about the nature of the dealing and the locality of the land.

What is the meaning of “Qualified” Title?

Qualified Title results from Old System title while it is in the process of being changed to Torrens Title and the issue of a computer folio certificate for the land. Since 1967 it has been policy to convert Old System titles to Qualified Title as soon as possible. The Qualified Title is issued with a “Caution” that the Registrar-General has not investigated the Old System Title. A buyer's solicitor must therefore continue to investigate the Old System title even though a Qualified title has issued.

The qualification can, however be removed when either:-

- ⇒ Twelve years have elapsed since the date the Qualified Title issued; or
- ⇒ Six years have elapsed after the transfer of the land which was neither a gift nor resulting from a fraud.

When the owner is entitled to have the qualification removed, an application to cancel the caution may be lodged with the Registrar-General together with the title deed and the prescribed fee. The title that issues will then be Torrens Title.

What is a “Limited Title”

Limited titles are those for which the boundaries of the land have not been established by survey. Where the description in an Old System Deed does not refer to a lot in a survey plan recorded at the Land & Property Information Service, that service will prepare a Deposited Plan containing a reference to the Old System Deed and issues a Limited Certificate of Title.

The limitation does not restrict dealing with the land, and can be removed by the lodgement of a survey which accurately defines the boundaries.

Are there any other Titles?

Strata and Community Titles are both part of the Torrens title system, and will be dealt with in more detail next month.

Crown Land titles are now in the same form as Torrens Title deeds and are transferred using the same forms. Most Crown Land titles are either a lease or an incomplete purchase from the Crown, and in both cases it is necessary to ensure that there are no monies outstanding. The balance due on an incomplete purchase must be discharged in full within 3 months after settlement.



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