What Would Title Registration Bring to a Deeds System with High Quality Land Information?

Prof. dr. Jaap Zevenbergen, MSc, LLM
Prof. dr. Hendrik Ploeger, LLM (TU Delft)

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Land Registration

- types of transaction evidence
- (Oral agreement)
- Private conveyancing
- Registration of deeds
- Registration of title

(Larrson 1991)
Means of transaction

- Oral agreement
- Private conveyance
- Deeds registration
- Title registration

Evidence

- Witnesses
- Deed
- Registration
- Registration proof of title

Types of transaction evidence (taken from Larsson 1991: 17)
The four basic principles*

a. The booking or register principle
b. The consent principle
c. The principle of publicity
d. The principle of speciality

*despite differences between systems (e.g. deeds or title)
Registration of Deeds

- public repository of documents (deeds mortgages, survey plans)
- elements
  - logging of time
  - indexing of instrument
  - archiving of document or copy
- deed does not in itself prove title, it is just a record of an isolated transaction
Registration of Deeds

- core principles (compared to private conveyancing)
  - security
  - evidence
  - notice and priority
- legal documents are registered, not title to a property
Registration of Title

- overcome defects of registration of deeds
- simplify process of transaction
- the register describes current property ownership and charges/liens
- compulsory, examination, warranty
- register becomes ‘proof of ownership’

- > rudimentary deeds reg. of 19th cent.
Title Registration System

Often associated with three principles:

- Mirror
- Curtain
- Insurance
Critique:

- expensive and cumbersome to implement (and for government to run)
- often involvement needed of (expensive) private practitioners, like land surveyors, lawyers/notaries, planners, valuers
- time required for state examination and approval of title and survey (boundary)
- introduction of overriding interest ≠ mirror principle; title (cert.) does not reflect all rights on the ground
Improve Registration of Deeds

- further improvements:
  - better records management
  - standardization of forms and procedures
  - realistic/flexible survey standards / exam
  - partial / sampling examination of documents
  - compulsory registration
  - automation of indexes
  - searchable/computerized title abstracts
Gliding scale

vertical: legal provisions that enforce and guarantee
horizontal: ideal types: pure deeds (left) to pure title (right)
Registration of Deeds

- Improvements in Netherlands:
  - better records management +
  - standardization of forms and procedures (*)
  - realistic/flexible survey standards / exam *
  - partial / sampling examination of documents *
  - compulsory registration *
  - automation of indexes +
  - computerization of title abstracts +
The Netherlands (laws)

- Cadastre (Napoleonic base) finished in 1832
- Public Register in Civil Code 1838
- Under one Agency 1839
  - Strengthened legal position of the registers (and cadastre ?)
  - More often registration mandatory, consequence of non-reg.
  - Some call it ‘semi-positive’
- Law on Base Register Cadastre 2008
  - For public sector mandatory use and assumption of correctness
The Netherlands (records)

- Index keeping done from the start, also per parcel
- Gradual improvements over time, esp. after 1922
- Around 1990 indexes became digital
  - much easier searching
  - easier to maintain consistency
  - notaries could check online around moment of transfer
  - from early 2000s notaries can lodge deeds electronically
- Some projects considered to revisit unclear situations, semi-legal approach to showing adverse possession/prescription
The Netherlands (quality)

- Transactions after 1992 legally better
- Transactions after ~1990 more consistent
- Transactions after ~2000 no typing mistakes
- Since 2008 ‘cadastral owner’ deemed correct in public sector
- Society expects **correct information online**

Ambition of Agency
- In the long run we aim for a positive register in which the registered rights are guaranteed
The Netherlands (ideas)

- Agency could give quality label (‘we guarantee’) to ‘cadastral owners’ of land transacted for value since ~1995
  - Or give a ‘warning’ in older cases they do not fully trust
  - Notary could rely on this and reduce her ‘searches’
- Agency could invest in improving % of inheritances cleared to update register
- Agency could proactively look for adverse position cases
- Agency could investigate and clear out ‘unclear areas’ (legal provisions since 1992)
- So move more and more to the middle of the diagram, but .. ?
It seems there is a threshold in the ‘gliding scale’
Hop Step Jump

- Hop
  - 1992 law + digital records
- Step
  - Ongoing improvements
- Jump
  - Positive system / Registration of Title
Better Quality LI → Registration of Title?

- More and more investments in data quality (via process chains) leads to better quality, but less and less improvements in the end
  - law of diminishing returns?
- Transfers that do not legally demand document a/o registration remain hard to get, and take legal precedence over ‘cadastral owner’
- As long as non-registered owners can be around, parties / notary have to spend time to make sure it is not the case here
- To really benefit from the good quality data, legal provisions in our opinion need to be changed → legal status of ‘cadastral owner’ has to be recognized in private law as well → guaranteed??
Towards Positive System / Registration of Title?

- Current systems works fine for the real estate market
- Very few court cases
  - weaknesses around inheritance and adverse possession (but in many title systems as well)
  - will full ‘jump’ be worth it?
    - will there be support in politics / main stakeholders?
    - if not now, will discussion come back?
      - same data is ‘positive’ for public sector
      - society expects quality data from government / online
- Future? To be decided ….