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AN EXPLANATION OF THE TORRENS SYSTEM

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In conveyancing, one of the lawyer's responsibilities is to confirm that the party selling the property actually owns the property that they are selling.

Historically, confirming ownership required the lawyer to check the documents transferring title to the property for several prior transactions. This is known as the Deed System, which is still used in some jurisdictions in Canada. In the Deed System, even though a person appears to be the owner of land, the purchaser is not entitled to rely on the registry and must confirm that the person selling the property was the rightful owner of the property.

British Columbia uses a Torrens System, modeled after the ship registry system devised by Robert Torrens. In the Torrens System, a purchaser does not need to search back through each previous transfer. Instead, the purchaser can rely on whatever name shows on the Land Title Registry. If the Land Title Registry shows a person as the owner, the purchaser can buy the property from that owner without worrying about how that person became the owner.

The Torrens Land Title Registration System provides a sure method for determining and assuring title to land. Under a Torrens System, security of title is based on the four principles of indefeasibility, registration, abolition of notice and assurance. Each of these is described below.

The first principle is indefeasibility. A title that is indefeasible cannot be defeated, revoked, or made void. The person who is registered on title has a right, good against the world, to the land. Under the British Columbia Torrens System, evidence of ownership is shown by a registered indefeasible title which includes the name of the owner and the names of any others who have interests in the property. There are a limited number of exceptions to this principle of indefeasibility and these are listed in s. 23 of the *Land Title Act*

The second principle is registration. Registration in the Land Title Office is important because it is required to establish an indefeasible title. While registration is not mandatory in British Columbia, failure to register means that the estate or interest claimed by an owner cannot be enforced against a third party.

The third principle is abolition of notice. With the adoption of the Torrens System, the principle of notice has been abolished. It is not necessary, in British Columbia, to make an exhaustive inquiry into the validity of a title or an interest. Rather, a person who deals with land is entitled to rely on the Land Title Register. A limited number of exceptions to this principle are set out in s. 29 of the *Land Title Act*.

The final principle is assurance. While the Torrens System allows the purchaser to rely on the names shown on the Land Title Registry, there are occasions where title may not be accurate. The *Land Title Act* establishes an Assurance Fund to compensate individuals who are deprived of an interest in land through the operation of the Torrens System.

An example would be best to illustrate how the Assurance Fund works. Mr. Smith is the registered owner of a piece of property. A fraudulent person, Mr. Jones, obtains false identification purporting to identify him as Mr. Smith. Mr. Jones then transfers the property to an innocent third party, Ms. Adams. Ms. Adams becomes the owner of the property without any knowledge of the fraud or forgery.

Using these facts, Ms. Adams would remain the owner of the property since she was a completely innocent purchaser with no knowledge of the fraud. Mr. Smith would be compensated by the Assurance Fund, provided they were not at fault for their loss.

This is a quick summary of the Torrens System. For further information, please contact our offices.

The information you obtain at this site is not, nor is it intended to be, legal advice. You should consult a lawyer for individual advice regarding your own situation.

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