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# Possessory Title Registration: An Improvement of the Torrens System

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## POSSESSORY TITLE REGISTRATION: AN IMPROVEMENT OF THE TORRENS SYSTEM

*The Minneapolis-St. Paul area has more registered property than any other urban area in the nation. In 1982, the Minnesota Legislature adopted the first possessory title registration statute, thus simplifying the process of obtaining a Torrens title. This Article examines the Torrens system on both a local and a national level and discusses the advantages and disadvantages of registering property under the possessory title registration statute.*

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### INTRODUCTION

The Torrens system of title registration provides property owners with an effective method of establishing a fee simple title.<sup>1</sup> Although

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1. In distinguishing the Torrens system from the recording system, the Minnesota Supreme Court stated:

The basic principle of [the Torrens] system is the registration of the title of land, instead of registering, as the old system requires, the evidence of such

the Torrens system addresses the problems of title insecurity and inefficiencies in the conveyance of real estate created by present methods of establishing title,<sup>2</sup> it is only used on a limited basis in certain jurisdictions in the United States.<sup>3</sup> The difficulty and expense of registering title under current statutory procedures is the primary factor restricting the development of the Torrens system.<sup>4</sup>

The Minnesota Legislature has simplified the process of obtaining a Torrens title by adopting the first possessory title registration statute in the nation.<sup>5</sup> The statute enables property owners to register possessory estates in land without instituting an in rem judicial proceeding.<sup>6</sup> The possessory estate is evidenced by a certificate of possessory title (CPT) which is replaced with a standard certificate of title after the expiration of five years.<sup>7</sup> The statute mitigates the initial cost of title registration<sup>8</sup> and eliminates formalities which hinder its use.<sup>9</sup> Possessory title registration should facilitate further use of the Torrens system in Minnesota and serve as a model for other jurisdictions.

This Note examines the strengths and weaknesses of the Torrens system on both a national and local level and illustrates how possessory title registration improves the Torrens system from a property

title. In the one case only the ultimate fact or conclusion that a certain named party has title to a particular tract of land is registered, and a certificate thereof delivered to him. In the [recording system] the entire evidence, from which proposed purchasers must, at their peril, draw such conclusion, is registered.

State *ex rel.* Douglas v. Westfall, 85 Minn. 437, 438, 89 N.W. 175, 175 (1902).

The terms "title registration" and "Torrens system" are used interchangeably throughout this Note.

2. See *infra* notes 44-48, 92-96 and accompanying text.

3. Eleven states currently use the Torrens system in some capacity. They include Colorado, Georgia, Hawaii, Illinois, Massachusetts, Minnesota, New York, North Carolina, Ohio, Virginia, and Washington. See *infra* note 22.

4. See *infra* notes 54-58 and accompanying text.

5. Act of Mar. 10, 1982, ch. 396, 1982 Minn. Laws 192 (codified at MINN. STAT. §§ 508A.01-.85 (1984)).

6. A "possessory estate in land" is defined by the statute as:

a fee simple estate held by an owner who (1) has been found on examination by the examiner of titles . . . to be the record owner of the land described; (2) has satisfied the examiner of titles that he and his predecessors in title have had actual or constructive possession of the land described for a period of not less than 15 consecutive years . . . and (3) has paid the taxes on the land described for at least five consecutive years during the 15 year period.

MINN. STAT. § 508A.01, subd. 3.

7. See *infra* notes 163-68 and accompanying text.

8. See Sclar, *Minnesota Simplifies Land Registration*, 11 REAL EST. L.J. 258 (1983). "[T]he CPT registration system has the potential for removing the remaining disincentive for Torrens registration—the high cost of registering uncontested titles by judicial proceeding." *Id.* at 261.

9. See Burton, *Proposed Possessory Title Registration for Minnesota*, HENNEPIN LAW., Sept.-Oct. 1981, at 16.

owner's perspective. First, the Note provides a brief overview of the Torrens system in the United States.<sup>10</sup> This section also points out various hindrances restraining the growth of title registration.<sup>11</sup> The second section examines the use of the Torrens system in Minnesota.<sup>12</sup> Finally, the Note highlights the background of possessory title registration<sup>13</sup> and reviews the mechanical aspects of the current statute.<sup>14</sup> This section also analyzes the statute's effect on the Torrens system in Minnesota<sup>15</sup> and the constitutionality of possessory title registration.<sup>16</sup>

## I. THE TORRENS SYSTEM IN THE UNITED STATES

### A. History and Development

The Torrens system of title registration is named after Sir Robert Torrens, who implemented the first registration system in South Australia during the middle of the nineteenth century.<sup>17</sup> The Torrens system gained initial acceptance in territories under British rule.<sup>18</sup> Many industrialized nations discovered the strengths of title registration and subsequently adopted similar systems.<sup>19</sup> Approximately thirty nations currently use a form of title registration.<sup>20</sup>

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10. See *infra* notes 17-73 and accompanying text.

11. See *infra* notes 49-73 and accompanying text.

12. See *infra* notes 74-121 and accompanying text.

13. See *infra* notes 122-45 and accompanying text.

14. See *infra* notes 146-69 and accompanying text.

15. See *infra* notes 170-98 and accompanying text.

16. See *infra* notes 199-212 and accompanying text.

17. For an overview of the history of the Torrens system, see B. SHICK & I. PLOTKIN, *TORRENS IN THE UNITED STATES* 17-20 (1978). For a brief discussion of the Torrens system's growth, see 6A R. POWELL & P. ROHAN, *POWELL ON REAL PROPERTY* ¶ 908[1] (1984); Beale, *Registration of Title to Land*, 6 HARV. L. REV. 369 (1893); Patton, *The Torrens System of Land Title Registration*, 19 MINN. L. REV. 519, 520-21 & n.2 (1935); Comment, *The Case for Land Registration*, 6 MERCER L. REV. 320 (1955).

18. The Torrens system was first adopted in South Australia in 1858. It was later adopted in 31 British territories including British Honduras (1858), British Columbia (1860), Tasmania (1862), New South Wales (1862), Ireland (1865), New Zealand (1870), Wales (1875), Jamaica (1888), Nova Scotia (1904), and Uganda (1908). U.S. DEP'T OF HOUSING & URBAN DEV., *LAND TITLE RECORDATION PRACTICES: A STATE-OF-THE-ART STUDY* 23 (1980) [hereinafter cited as HUD REPORT] (copy on file at the William Mitchell Law Review Office); B. SHICK & I. PLOTKIN, *supra* note 17, at 17; see also Fiflis, *English Registered Conveyancing: A Study in Effective Land Transfer*, 59 NW. U.L. REV. 468 (1964) (analyzing the English Land Registration Act); Phillips, *The Development of the Land Titles Systems in New Zealand and the Australian States*, 1969 N.Z.L.J. 608.

19. Norway, Germany, Israel, France, Austria, and Sweden have developed variations of the title registration concept. The most active Torrens system exists in Sweden where 100% of the land is registered. Israel currently has 80% of its land registered. HUD REPORT, *supra* note 18, at 23-24.

20. Lobel, *A Proposal For a Title Registration System for Realty*, 11 U. RICH. L. REV. 501, 513 (1977).

Title registration has failed to gain widespread popularity in the United States, however. Twenty-two states enacted registration statutes at the beginning of this century.<sup>21</sup> Only eleven jurisdictions have retained the system.<sup>22</sup> Despite its inherent weaknesses, the recording system continues to prevail as the dominant method of establishing title to real estate in the nation.<sup>23</sup>

### B. Theory of the Torrens System

The Torrens system is premised on the concept that title to land should be absolute and indefeasible, and that the conveyance of land should be simplified and made less expensive.<sup>24</sup> In order to remove a title from the recording system and place it in the Torrens system, an owner must bring an in rem judicial proceeding.<sup>25</sup> The proceeding operates directly against the land to vest and establish title in the owner.<sup>26</sup> As a result, registration creates a conclusive title to the

21. *Id.* at 514; Whitman, *Optimizing Land Title Assurance Systems*, 42 GEO. WASH. L. REV. 40, 62 n.93 (1973); see also McCall, *The Torrens System—After Thirty-Five Years*, 10 N.C.L. REV. 329 (1932) (examining the use of title registration in nineteen jurisdictions between 1895 and 1917).

California repealed its title registration statute in 1955. Problems with the assurance fund, in combination with its lack of use, forced the legislature to repeal the statute. See Comment, *The Torrens System of Title Registration: A New Proposal For Effective Implementation*, 29 UCLA L. REV. 661, 676-77 n.85 (1982).

Oregon repealed its title registration statutes in 1972 because they were rarely used. 1972 Or. Laws Ch. 478, § 1. Furthermore, the state's county recorders found the statutes annoying. Whitman, *supra*, at 63 n.93.

22. The following jurisdictions currently have title registration statutes on record: Colorado, COLO. REV. STAT. §§ 38-36-101 to -199 (1982 & Supp. 1984); Georgia, GA. CODE §§ 44-2-60 to -253 (1982 & Supp. 1984); Hawaii, HAWAII REV. STAT. §§ 501-1 to -221 (1976 & Supp. 1984); Illinois, ILL. ANN. STAT. ch. 30, §§ 45-90 (Smith-Hurd 1969 & Supp. 1984); Massachusetts, MASS. GEN. LAWS ANN. ch. 185, §§ 26-56A (West 1977 & Supp. 1984); Minnesota, MINN. STAT. §§ 508.01-.85 (1984); New York, N.Y. REAL PROP. LAW §§ 370-435 (McKinney 1968 & Supp. 1984); North Carolina, N.C. GEN. STAT. §§ 43-1 to -64 (1984); Ohio, OHIO REV. CODE ANN. §§ 5309.01-.98, 5310.01-.21 (Page 1981 & Supp. 1983); Virginia, VA. CODE §§ 55-112 (1981 & Supp. 1984); Washington, WASH. REV. CODE ANN. §§ 65.12.005 to .800 (1966 & Supp. 1985).

23. See HUD REPORT, *supra* note 18, at II-1 ("Recorded" rather than "registered" land parcels currently predominate overwhelmingly in all 50 states").

24. Comment, *supra* note 17, at 323-24; see Baart v. Martin, 99 Minn. 197, 205, 108 N.W. 945, 948 (1906) ("the primary purpose of [the Torrens system] is the creation of an indefeasible title in the registered owner, and the simplification of the transfer of land"); 8A G. THOMPSON, COMMENTARIES ON THE MODERN LAW OF REAL PROPERTY § 4353, at 78 (1963); Staples, *The Conclusiveness of a Torrens Certificate of Title*, 8 MINN. L. REV. 200, 200 (1924); Comment, *supra* note 21, at 676.

25. See R. POWELL & P. ROHAN, *supra* note 17, at ¶ 909[3].

26. G. THOMPSON, *supra* note 24, § 4354, at 81. An in rem action may only be brought in a court which has jurisdiction over the land. See Comment, *Yes Virginia—There is a Torrens Act*, 9 U. RICH. L. REV. 301, 305 (1975). For a discussion of the

land.<sup>27</sup>

After completion of the judicial proceeding, an official certificate of title, which contains pertinent facts affecting the title, is issued.<sup>28</sup> The certificate is filed at the registrar's office in the county where the land is located, and a duplicate copy is given to the registered owner.<sup>29</sup> A party claiming an interest in the property must file an instrument with the registrar.<sup>30</sup> The particular interest is memorialized on the certificate as evidence of the claim.<sup>31</sup> Any party wrongfully injured by an error in the registration process is indemnified by an assurance fund.<sup>32</sup>

When a registered title is transferred, the interests noted on the certificate must be examined.<sup>33</sup> An additional search must also be made for outstanding federal tax liens and other encumbrances not shown on the certificate.<sup>34</sup> A new certificate is issued on transfer. The updated certificate contains the uncanceled interests noted on the prior certificate, as well as any additional interests.<sup>35</sup>

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procedures involved in registering a title under a typical state statute, see McCall, *supra* note 21, at 331-32.

27. See Beale, *supra* note 17, at 369; Patton, *supra* note 17, at 526; Comment, *supra* note 26, at 303; see, e.g., *In re Juran*, 178 Minn. 55, 58, 226 N.W. 201, 202 (1929).

28. Comment, *supra* note 21, at 677-78; see Yzenbaard, *The Consumer's Need for Title Registration*, 4 N. KY. L. REV. 253, 257 (1977) ("This certificate will state the legal description of the property as determined by the court, the name or names of the owner, and on its reverse side, will note any and all encumbrances, liens, or interests outstanding on the property"). For an example of an official certificate of title, see B. SHICK & I. PLOTKIN, *supra* note 17, at 24-25.

29. Janczyk, *An Economic Analysis of the Land Title Systems for Transferring Real Property*, 6 J. LEGAL STUD. 213, 222 (1977); Lobel, *supra* note 20, at 515-16; Comment, *supra* note 21, at 676-78.

30. An interest in the property such as a mortgage, attachment, or lien must be filed at the registrar's office. An individual's interest will be lost if it is not appropriately filed. See Lobel, *supra* note 20, at 516.

31. Memorializing a claim or interest on the certificate preserves its legal effectiveness, and provides notice of its existence to interested parties. In addition, memorials prioritize outstanding interests according to their respective date of filing with the registrar. B. SHICK & I. PLOTKIN, *supra* note 17, at 30.

32. See generally *infra* notes 113-21 and accompanying text (discussing the function of the assurance fund and its specific use in Minnesota).

33. "A concise, up-to-date summary of the state of the title and references to all currently valid documents (the deed, mortgage, etc.) are immediately available on a single certificate and searches for prior documents are unnecessary subject only to a few off-certificate interests." HUD REPORT, *supra* note 18, at II-3.

34. Certain encumbrances are not shown on the certificate. For example, federal tax liens, short-term leases, appeals from a decree on the basis of fraud, public highways, and rights arising under the laws of the United States which are not required to be recorded by federal law are not shown on the certificate. Patton, *supra* note 17, at 527; Yzenbaard, *supra* note 28, at 257 ("Nonetheless, the nature of these exceptions generally can be ascertained by a brief title search or by an inspection of the property").

35. See B. SHICK & I. PLOTKIN, *supra* note 17, at 23-30; see also McDougal &

### C. *The Torrens System vs. the Recording System*

The recording system is based on the principle that private parties may transfer title through the delivery of deeds and other documents.<sup>36</sup> Public records of these transactions provide evidence of title.<sup>37</sup> The system operates on the assumption that the recordation of documents pertaining to a title provides constructive notice of their existence.<sup>38</sup> In essence, the status of a title is cryptically hidden in a multitude of public records.<sup>39</sup> The status of a Torrens title, on the other hand, appears on the face of the certificate.<sup>40</sup> Title registration thus consolidates information affecting a title's marketability rather than dispersing it throughout various records.

Whenever property is conveyed in jurisdictions using the recording system, various public records<sup>41</sup> must be searched in order to determine the title's marketability.<sup>42</sup> This process is both costly and inefficient.<sup>43</sup> Furthermore, the system does not provide purchasers

Brabner-Smith, *Land Title Transfer: A Regression*, 48 YALE L.J. 1125, 1134-35 (1939) (discussing criticisms regarding the competency of public officials administering the Torrens system).

36. See Janczyk, *supra* note 29, at 213-14; Lobel, *supra* note 20, at 503-04; see also Fiflis, *Land Transfer Improvement: The Basic Facts and Two Hypotheses for Reform*, 38 U. COLO. L. REV. 431, 438 (1966) (discussing the history of the recording system in the United States); Comment, *supra* note 17, at 321-22 (discussing various property interests which are not recorded under the recording system). See generally Chaplin, *Record Title to Land*, 6 HARV. L. REV. 302 (1893) (pointing out the various shortcomings of the recording system).

37. J. CRIBBET, PRINCIPLES OF THE LAW OF PROPERTY 279-80 (2d ed. 1975); Comment, *supra* note 26, at 302.

38. See R. POWELL & P. ROHAN, *supra* note 17, at ¶ 904[3]; G. THOMPSON, *supra* note 24, § 4340, at 4.

39. Most jurisdictions organize public records in a number of different indices. For example, Idaho has twenty-four indices containing information affecting land titles. J. CRIBBET, *supra* note 37, at 280. Recording statutes require that all claims affecting a parcel of property be considered. Janczyk, *Land Title Systems, Scale of Operations, and Operating and Conversion Costs*, 8 J. LEGAL STUD. 569, 570-71 (1979).

40. See *supra* notes 28-31 and accompanying text.

41. Grantor-grantee indices are the most popular means of organizing interests affecting the title to property. See Note, *The Tract and Grantor-Grantee Indices*, 47 IOWA L. REV. 481, 481-82 (1962); see also P. BASYE, CLEARING LAND TITLES § 3, at 10-11 (2d ed. 1970) (discussing the use of grantor-grantee system); Janczyk, *supra* note 39, at 570-71.

North Dakota, Oklahoma, South Dakota, Utah, and Wyoming, however, currently maintain tract indices rather than grantor-grantee indices. See Curtis, *Simplifying Land Transfers: The Recordation and Marketable Title Provisions of the Uniform Simplification of Land Transfers Act*, 62 OR. L. REV. 363, 365 n.15 (1983).

42. For a discussion of the burdens associated with searching a title using grantor-grantee indices, see P. BASYE, *supra* note 41, at 10.

43. The lack of consolidated records in the present recording system adds to the expense and inefficiency of searching titles. HUD REPORT, *supra* note 18, at II-3 to -4; see Gresham, *The Residential Real Estate Transfer Process: A Functional Critique*, 23 EMORY L.J. 421, 450 (1974) ("This inefficient land title indexing system adds additional un-

with secure titles since certain occurrences affecting the title cannot be recorded.<sup>44</sup> As a result, the recording system's failure to provide conclusive proof of ownership creates a need for title assurance either in the form of an insurance policy or an attorney's title opinion.<sup>45</sup>

By providing a more conclusive form of ownership than the recording system,<sup>46</sup> the Torrens system promotes efficiency and reduces costs of future transfers.<sup>47</sup> An examination of a registered title requires less time than examining a title under the recording system.<sup>48</sup> Thus, the Torrens system rectifies inherent weaknesses in the present recording system by simplifying the process and decreasing the cost of establishing title.

#### D. Obstacles to Further Acceptance of the Torrens System

##### 1. The Registration Process

Procedural hurdles in the registration process are responsible for the Torrens system's lack of popularity in the United States. High costs associated with initiating an in rem action<sup>49</sup> and the length of time required to complete an entire proceeding deter owners from

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necessary expense to each home purchase transaction to the economic detriment of the consumer"); Lobel, *supra* note 20, at 506.

The recording system is also inefficient since the historical record of the title must be reevaluated each time the property is transferred. See Janczyk, *supra* note 29, at 213-14; McDougal, *Title Registration and Land Law Reform: A Reply*, 8 U. CHI. L. REV. 63, 65-66 (1940).

The high cost of title insurance in the United States is attributable, in part, to labor costs associated with searching public records. Leary & Blake, *Twentieth Century Real Estate Business and Eighteenth Century Recording*, 22 AM. U.L. REV. 275, 291-92 (1973).

44. State recording acts do not provide constructive notice of mechanics and materialmen's liens, forgery, incapacity, or interests arising by adverse possession. See Fiflis, *supra* note 36, at 452-53.

45. See Lobel, *supra* note 20, at 504-05; Comment, *Title Insurance in California*, 39 CALIF. L. REV. 235, 235-36 (1951).

46. See *supra* note 27 and accompanying text.

47. HUD REPORT, *supra* note 18, at II-3; Fairchild & Gluck, *Various Aspects of Compulsory Land Title Registration*, 15 N.Y.U. L.Q. REV. 545, 545 (1938); Fiflis, *supra* note 36, at 450; Patton, *supra* note 17, at 530-31; Comment, *supra* note 17, at 332-34; Comment, *supra* note 21, at 683 & n.99.

48. See *supra* notes 40-43 and accompanying text.

49. A 1977 study estimated that the initial cost of registering a title in the United States often exceeded \$1,000. B. SHICK & I. PLOTKIN, *supra* note 17, at 47. Advocates of the Torrens system agree that the initial cost of registration is a major factor contributing to its lack of use. See R. POWELL & P. ROHAN, *supra* note 17, at ¶ 908[3][b]; Lobel, *supra* note 20, at 516; McCall, *supra* note 21, at 345; Patton, *supra* note 17, at 530-31; Whitman, *Transferring North Carolina Real Estate Part II: Roles, Ethics, and Reform*, 49 N.C.L. REV. 593, 612 (1971); Yzenbaard, *supra* note 28, at 262 n.32.

For an empirical analysis of the costs associated with changing from the recording system to the Torrens system, see Janczyk, *supra* note 39, at 575-82.



utilizing title registration.<sup>50</sup> Unfortunately, these hurdles overshadow the strengths of the Torrens system.<sup>51</sup>

Fourteenth amendment due process considerations require that all parties with an interest in property scheduled for registration must be given notice of the judicial proceeding.<sup>52</sup> The notice requirement provides interested parties with the opportunity to assert their rights at the proceeding.<sup>53</sup> The combination of expenses generated during registration<sup>54</sup> exceeds the cost of establishing title under the recording system.<sup>55</sup> Furthermore, the length of time required to register a title can range from two to eighteen months.<sup>56</sup> Owners are not only deterred by the length of the process,<sup>57</sup> but are also daunted by inherent formalities in the judicial proceeding.<sup>58</sup> Consequently, title registration is most frequently used in situations when disputed interests make a title unmarketable.<sup>59</sup>

Benefits associated with a registered title are acquired by future owners in the form of reductions in the cost of subsequent conveyances.<sup>60</sup> From a long range economic standpoint, the initial cost of registration is reasonable when compared with the savings it generates in the future.<sup>61</sup> The average property owner, however, cannot

50. See *infra* note 56 and accompanying text.

51. See Fairchild & Gluck, *supra* note 47, at 548-49 ("ignorance of the advantages of the provisions of the registration laws militates considerably against its further expansion").

52. See *infra* note 199 and accompanying text.

53. A proceeding for registration is ordinarily heard by the court without a jury. One of the interested parties, however, may make a motion for a jury trial. Comment, *supra* note 26, at 305.

54. The major elements of expense in an initial registration proceeding include: (1) examiners' fees; (2) indemnity fund contribution; (3) publication costs; (4) expenses in updating the abstract; (5) survey costs; and (6) attorney's fees. Fiflis, *supra* note 36, at 471.

55. See HUD REPORT, *supra* note 18, at II-2.

56. See B. SHICK & I. PLOTKIN, *supra* note 17, at 6; Fiflis, *supra* note 36, at 473.

57. Fiflis, *supra* note 36, at 473-74; Yzenbaard, *supra* note 28, at 262.

58. See HUD REPORT, *supra* note 18, at III-14 ("A purchaser is likely to view the judicial procedure required for initial registration as inconvenient or even intimidating"); McCall, *supra* note 21, at 345 ("A very potent reason why the average landowner does not register his title is the fact that the registration proceedings savor strongly of a lawsuit").

59. See Patton, *supra* note 17, at 532. Real estate developers, individuals purchasing land at tax or mortgage foreclosures, and owners of land susceptible to adverse possession also utilize title registration on a regular basis. HUD REPORT, *supra* note 18, at III-15.

60. See Lobel, *supra* note 20, at 521-22; Yzenbaard, *supra* note 28, at 259.

61. After the initial registration is completed, the costs to the seller and purchaser in the subsequent transfer are minimal. The need for an extensive title search and title insurance is eliminated. Lobel, *supra* note 20, at 522; see also Janczyk, *supra* note 39, at 577-82 (discussing the cost reduction in future transfers of registered land with empirical data).

justify expenditures of this magnitude since he will not benefit directly from initial registration.<sup>62</sup>

## 2. Interest Group Opposition

Interest groups dependent upon the recording system have successfully fought against the development of the Torrens system.<sup>63</sup> Title insurance companies, title lawyers, and abstract companies benefit from the complexities and inherent risks of establishing title under the recording system.<sup>64</sup> The present system creates a need for the services performed by these organizations.<sup>65</sup> Since title registration diminishes the need for alternative forms of title assurance,<sup>66</sup> vested interests in the status quo provide strong opposition to the growth of the Torrens system in the nation.<sup>67</sup>

## 3. The Secondary Mortgage Market

Realities of the mortgage market restrict a consumer's choice as to the purchase of title insurance on registered property.<sup>68</sup> While many lending institutions are generally satisfied with an attorney's certificate of examination,<sup>69</sup> secondary mortgage markets require that

62. "The general public, so far as it is informed upon the subject, prefers to buy a registered title, but is often not so keen about registering its own titles because of the initial expense." Patton, *supra* note 17, at 531.

63. See Fairchild & Gluck, *supra* note 47, at 546-48; Fiflis, *supra* note 36, at 432; Patterson & Alexander, *Land Title Records Modernization: An Update on the RESPA Section 13 Research*, 16 REAL PROP., PROB. & TR. J. 630, 636 (1981); Rood, *Registration of Land Titles*, 12 MICH. L. REV. 379, 380 (1914); Whitman, *supra* note 21, at 62; see also McDougal & Brabner-Smith, *supra* note 35, at 1147 (discussing the public's disinclination to use the Torrens system created by adverse publicity on the system); Yzenbaard, *supra* note 28, at 263 ("[a]lthough such opposition to registration may stem from a sincere belief in the disadvantages of the system, it may also be that the lawyer's desire to stay in business and to make a profit cause opposition"); Payne, *The Price the Bar Must Pay to Retain its Title Practice*, 35 ALA. LAW. 277, 279 (1974) (discussing the loss of lawyers' title practice to title insurance and abstract companies).

64. Lobel, *supra* note 20, at 504; Yzenbaard, *supra* note 28, at 263; Comment, *supra* note 21, at 668. See generally Cross, *Weaknesses of the Present Recording System*, 47 IOWA L. REV. 245 (1962).

65. See Gresham, *supra* note 43, at 425; see also Payne, *Ancillary Costs in the Purchase of Homes*, 35 MO. L. REV. 455, 469 (1970) (pointing out that there is a direct relationship between the expense of establishing title and a city's population due to the volume of records).

66. Cf. *supra* note 24.

67. Comment, *supra* note 17, at 336; see *supra* note 63.

68. Theoretically, consumers have an option of purchasing property without utilizing the services of a lawyer or professional organization specializing in searching and insuring title. If a consumer needs financing from a commercial lending institution, however, he is required to purchase title insurance. See Lobel, *supra* note 20, at 504-05.

69. See *id.* A lender is primarily concerned that the title to mortgaged property is

both registered and recorded property possess title insurance.<sup>70</sup> In fact, life insurance companies, which are primary investors in the secondary mortgage market, initially argued that title insurance is the most satisfactory approach to assuring title marketability.<sup>71</sup> Title insurance is now required on all mortgages entering the secondary mortgage market.<sup>72</sup> The popularity of selling mortgages on the secondary market has created institutional constraints forcing consumers to purchase title insurance whenever they need financing.<sup>73</sup>

## II. THE TORRENS SYSTEM IN MINNESOTA

### A. History and Development

Despite its lack of popularity in other jurisdictions,<sup>74</sup> the Torrens system is widely used in Minnesota.<sup>75</sup> The state legislature passed the first title registration statute in 1901.<sup>76</sup> The current statute is codified at chapter 508 of the Minnesota Statutes.<sup>77</sup>

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clear for subsequent resale so that it will be able to recoup its investment. Gresham, *supra* note 43, at 453.

70. See Lobel, *supra* note 20, at 504-05.

71. HUD REPORT, *supra* note 18, at 37.

72. The Federal National Mortgage Association (FNMA), the principal buyer of mortgages on the secondary market, requires the purchase of title insurance. FEDERAL NATIONAL MORTGAGE ASSOCIATION, FNMA CONVENTIONAL HOME SELLING CONTRACT SUPPLEMENT § 314.01 (1975); CONVENTIONAL SELLING CONTRACT SUPPLEMENT § 314.01, *reprinted in* 1 PRACTICING LAW INSTITUTE, FEDERAL NATIONAL MORTGAGE ASSOCIATION 278 (1975).

73. *Id.* "Such title evidence will consist of a mortgage title policy on a standard form approved by FNMA . . . in an amount not less than that of the original principle amount of the mortgage indebtedness issued by a title insurance company satisfactory to FNMA." *Id.*

74. See *supra* notes 21-22 and accompanying text.

75. See *infra* notes 76-78 and accompanying text. After examining the Torrens system in Minnesota, Blair C. Shick and Irving H. Plotkin discussed the system's successful development:

For the most part, we attribute the successes of the Torrens system in [the Twin Cities] to the professional caliber and devotion of the various judges, examiners, and registrars who have held these positions over the years. . . . [T]he system as a whole, and its various administrative components, holds the confidence and respect of the wide range of interests concerned with local real property.

B. SHICK & I. PLOTKIN, *supra* note 17, at 99.

76. Act of Apr. 11, 1901, ch. 237, 1901 Minn. Laws 348.

The statute was changed in 1905 when the legislature made a general revision of various public statutes. Act of Apr. 19, 1905, ch. 305, 1905 Minn. Laws 454. The legislature originally limited the statute's use to counties having over 75,000 inhabitants. As a result, rural counties could not use title registration. See *id.* § 1. The limitation was repealed in 1909, thereby enabling all counties to utilize title registration. Act of Apr. 14, 1909, ch. 183, § 1, 1909 Minn. Laws 205.

77. See MINN. STAT. §§ 508.01-.84 (1984). For a discussion of the use of title registration in Minnesota during the beginning of the century, see McCall, *supra* note 21, at 333-34.

Property owners in Minnesota have used the statute on a regular basis since its implementation.<sup>78</sup> Hennepin, Ramsey, St. Louis, and Anoka counties have created an office of examiner of titles.<sup>79</sup> Applicants in these counties are not required to pay for a title examiner's report in the proceeding.<sup>80</sup> Applicants owning property in other counties, however, must compensate a court-appointed title examiner, thereby increasing the total cost of the registration.<sup>81</sup>

The Twin Cities metropolitan area contains the highest percentage of registered property of any urban area in the nation.<sup>82</sup> It is estimated that between forty and forty-five percent of all the titles in Hennepin County are registered under the Torrens system.<sup>83</sup> A great deal of the property in the metropolitan area was registered during periods of economic expansion when real estate development rose to peak levels.<sup>84</sup> On average, however, the Hennepin County

78. By the beginning of 1927, 20,594 lots were registered in Hennepin County. See A. SKOG, *TORRENS SYSTEM OF LAND TITLES* 13 (1927). In Ramsey County, however, where the system is frequently utilized, only about one percent of the property was registered by 1927. See McCall, *supra* note 21, at 334 (disclosing information obtained from practitioners in the Minneapolis-St. Paul metropolitan area).

Since the Torrens system was introduced in Hennepin County in 1901, more than 18,000 original Torrens cases have been completed. Because many cases contain more than one abstract and because of subsequent subdivisions, this means that abstracts numbering in the tens of thousands no longer need be examined by attorneys. In the vast majority of cases, these abstracts were very complex and their existence today would place an almost intolerable burden upon attorneys in practice.

Letter from Richard W. Edblom, Examiner of Titles for Hennepin County, Minnesota to Blair C. Shick (July 18, 1977), at 2 (copy on file at the William Mitchell Law Review Office) [hereinafter cited as Letter from Edblom to Shick]. Shick is the co-author of B. SHICK & I. PLOTKIN, *TORRENS IN THE UNITED STATES* (1978).

The level of utilization of the Torrens system in Minnesota is attributable, in part, to the validity of a registered title in the state. For example, Hennepin County has had only one claim against its assurance fund. See Sclar, *supra* note 8, at 261.

79. The principal function of the examiner of titles is to examine abstracts of property being registered, and to determine potential defendants who may have an interest in the property. B. SHICK & I. PLOTKIN, *supra* note 17, at 79; see also R. POWELL & P. ROHAN, *supra* note 17, at ¶ 909[5] (discussing the duties of examiners of titles in other jurisdictions).

80. An examiner of titles is appointed by a district court judge and compensated by the county if there are over 75,000 inhabitants in the county. Therefore, in counties with fewer than the specified number of inhabitants, and in Stearns County and Dakota County, examiners are compensated only by the county for legal services provided to the registrar. MINN. STAT. § 508.12, subd. 1 (1984). Applicants in these counties must compensate the examiner for any services rendered in the registration process. *Id.*

81. *Id.*; see also McCall, *supra* note 21, at 340 (discussing examiner's fees in Minnesota during the 1920's).

82. HUD REPORT, *supra* note 18, at III-9.

83. Ramsey County has approximately the same number of registered properties as Hennepin County. *Id.*

84. A substantial increase in the number of applications occurred during periods

Title Examiner's Office receives approximately 150 applications, Ramsey County approximately sixty applications,<sup>85</sup> and Anoka County approximately thirty applications per year.<sup>86</sup>

Most counties outside of the metropolitan area do not utilize title registration on a regular basis.<sup>87</sup> A number of factors contribute to its lack of use. First, the success of the system depends upon the completion of a thorough title examination.<sup>88</sup> A party desiring to register land in a county with less than 75,000 inhabitants must pay a court-appointed examiner.<sup>89</sup> Applicants in many counties must therefore absorb the cost of the title examination.

Second, the incentive to utilize title registration is frequently generated by the legal community.<sup>90</sup> Unlike practitioners in the metropolitan area, however, rural practitioners are often insufficiently acquainted with the Torrens system and are thus not inclined to promote the system's use among their clients.<sup>91</sup>

### B. Elimination of Abstracts

Minnesota uses the abstract-attorney method of establishing title to real estate. An abstract is a condensed history of the title derived from public records dating back to the original deed from the United States government or the state of Minnesota.<sup>92</sup> An abstract title contains a summary of prior conveyances, interests, estates, liens, and other potential claims against the property.<sup>93</sup> An abstract thus provides evidence of title by summarizing key facts affecting the title's

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of economic expansion; specifically, during the mid-twenties and between 1955 and 1965. See B. SHICK & I. PLOTKIN, *supra* note 17, at 88; see also McCall, *supra* note 21, at 340 ("A particularly active real estate market may cause [individuals whose titles are technically defective] to turn to registration under the Torrens law as an effective means of removing clouds on their titles").

85. See B. SHICK & I. PLOTKIN, *supra* note 17, at 88.

86. Letter from Edward A. Bock, Jr., Examiner of Titles for Anoka County, Minnesota (Nov. 5, 1984) (copy on file at the William Mitchell Law Review Office) [hereinafter cited as Bock Letter].

87. "[T]here is a wide spread disparity among counties as to the level of local expertise in, and enthusiasm for, torrens titles." Burton, *supra* note 9, at 17.

88. After the applicant files an abstract of title with the court, it is forwarded to an appointed examiner of titles. The examiner accordingly examines the abstract and files his report and opinion of the title with the court. See MINN. STAT. § 508.13. "The protection of interests of persons other than the applicant rests upon . . . the professional skill of the Examiner of Titles." Burton, *supra* note 9, at 17.

89. See *supra* note 80.

90. See B. SHICK & I. PLOTKIN, *supra* note 17, at 99.

91. Telephone interview with Edward A. Bock, Jr., Examiner of Titles for Anoka County, Minnesota (Oct. 4, 1984) (discussing the strength of the Torrens system in Anoka County and in rural counties throughout the state) [hereinafter cited as Bock Telephone Interview].

92. See J. CRIBBET, *supra* note 37, at 294.

93. I C. FLICK, ABSTRACT AND TITLE PRACTICE § 51, at 57 (2d ed. 1958).

marketability.<sup>94</sup> Whenever the property is conveyed, the abstract must be updated and re-examined either by an attorney for the buyer or the mortgagee.<sup>95</sup> Abstract examinations are inherently time consuming, since the attorney must re-examine innumerable old records which may affect the title.<sup>96</sup>

Title registration eliminates the need to record the property history in a conventional abstract.<sup>97</sup> While the initial cost of registering land in Minnesota is comparatively more than that of establishing title under the abstract system, the economic benefits associated with owning registered property arise in future conveyances.<sup>98</sup>

A professional examination of a registered certificate of title requires less time than does an extensive abstract examination.<sup>99</sup> The immense volume of information on most abstracts forces practitioners to utilize an abstract company's services in updating and examining the document.<sup>100</sup> The fee schedules of many metropolitan law

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94. For example, an abstract may contain a map which is essential to the description of the property. An abstract also contains a summary of all court proceedings affecting the title, the marital status of the grantor as well as all liens and encumbrances. G. THOMPSON, *supra* note 24, § 4486, at 522; see I R. PATTON & C. PATTON, PATTON ON TITLES § 43, at 141 (1957).

95. "[I]t is customary, despite much adverse criticism, for the attorney for the buyer or mortgagee to make a complete re-examination of the abstract upon each transfer and to charge his client as though no previous examination had been made." Payne, *A Typical House Purchase Transaction in the United States*, 30 CONV. & PROP. LAW. 194, 207 (n.s. 1966).

96. Since abstract examiners are concerned with whether the information in an abstract contains adequate proof of marketable title, they often become too technical in their title requirements. Stringent requirements force abstract examiners to analyze minor mechanical deficiencies which do not affect the title's marketability. Consequently, abstract examinations require a great deal of time. Payne, *In Search of Title*, 14 ALA. L. REV. 11, 47-48 (1961). "The result [of stringent title requirements] is an ever tightening spiral of technicality known as 'flyspecking.' The practice of flyspecking . . . places an intolerable burden upon conveyancers and their clients because of the demands for actions to reform defects in titles." *Id.*

97. Once the registration proceeding is completed, any party claiming an interest in the property must file an instrument with the county registrar. The interest is then memorialized on the face of the certificate at the registrar's office. Thus, any encumbrances on the title are indicated on the certificate, and are no longer hidden in the abstract. Lobel, *supra* note 20, at 516.

98. See *supra* notes 60-61 and accompanying text.

99. See Transcript of recorded testimony on the Certificate of Possessory Title Bill given before the House Judiciary Committee, H.F. No. 919, 72d Minn. Leg., 1981 Sess. at 4 (Apr. 16, 1981) (statement by Richard Peterson, private practitioner and former assistant to the Examiner of Titles in Washington County, Minnesota) (copy on file at the William Mitchell Law Review Office) [hereinafter cited as Judiciary Committee Hearings].

100. "It makes it necessary for [an attorney] to use an abstract company . . . to the extent that the system gets more complex, [an attorney] relies more and more on the company . . ." *Id.* (statement by Richard Peterson).

firms reflect a savings to owners of registered property.<sup>101</sup>

### C. Cost and Length of Initial Registration

The initial cost of title registration has restricted the Torrens system's development in Minnesota.<sup>102</sup> It is difficult to accurately estimate the average cost of registration. Since attorney's fees constitute the major expense in a registration proceeding, a case involving several disputed interests costs significantly more than a registration involving few, if any, disputed interests.<sup>103</sup> It is estimated, however, that the initial cost of registering title to a parcel of land in the Twin Cities ranges between one and two thousand dollars.<sup>104</sup>

The length of the registration process is dependent upon a number of factors. First, the examiner's office cannot begin its examination of the title until it receives an updated abstract from the applicant's attorney.<sup>105</sup> After the abstract is received, the examiner issues a report on the status of the title.<sup>106</sup> The period of time between the receipt of the abstract and the issuance of the examiner's report differs among counties.<sup>107</sup> Second, the applicant or his attorney must determine the names and addresses of interested parties<sup>108</sup> and have the parties served with a summons.<sup>109</sup> The

101. Richard Edblom, Examiner of Titles for Hennepin County, completed a survey of fee schedules maintained by large metropolitan law firms for the examination of registered titles. A majority of firms in the survey indicated that their fees are based upon the amount of time required to complete a title examination. Representatives of each firm pointed out that it takes significantly less time to examine a registered title than an abstract. Therefore, owners of registered property receive a savings in the form of lower attorney's fees when the property is conveyed. Letter from Edblom to Shick, *supra* note 78, at 1-2.

102. See B. SHICK & I. PLOTKIN, *supra* note 17, at 89.

103. "[T]he largest single component [of the initial cost] arises from the need for legal services. Legal costs also involve the greatest degree of variability." *Id.*

104. Letter from Richard W. Edblom, Examiner of Titles for Hennepin County, Minnesota (Jan. 16, 1985), at 1 (copy on file at the William Mitchell Law Review Office) [hereinafter cited as Edblom Letter].

105. See MINN. STAT. § 508.13.

106. *Id.*

107. In Hennepin County, an applicant's examiner's report is normally issued within two to four months after the application for registration is filed. The examiner's office, however, can complete a report within one to four weeks if the applicant's attorney requests a "rush". Edblom Letter, *supra* note 104, at 1.

In Anoka County, reports are issued within one month after the abstract is filed at the examiner's office. Bock letter, *supra* note 86, at 1.

108. Minnesota law requires that the application contain "[t]he names of all persons or parties, except the applicant, who appear of record, or who are known to the applicant to have or to claim any right, title, estate, lien, or interest in the land and the nature and character of it." MINN. STAT. § 508.06, subd. 5. For a complete list of the required contents of an application for registration, see *id.*, subds. 1-10.

109. *Id.* § 508.15. The defendants must answer the application for registration within 20 days after service. *Id.* § 508.16, subd. 1. The answer must state the specific

summons must be published once each week for three consecutive weeks in a legal newspaper in the county where the land is located.<sup>110</sup> If none of the interested parties file an objection to the summons, the registration is scheduled for a hearing.<sup>111</sup> The length of time required to complete the final steps of the registration process is thus largely determined by the applicant's attorney.<sup>112</sup> On average, an initial registration proceeding requires six months for completion.<sup>113</sup>

#### D. The Assurance Fund

Claims against registered property are indemnified by an assurance fund. An individual wrongfully deprived of an interest in property due to an error in the registration process is compensated by proceeds from the fund.<sup>114</sup> Since the assurance fund is user-supported,<sup>115</sup> the size and frequency of claims must not exceed the amount of revenue generated by applications from registration.<sup>116</sup>

A Real Estate Assurance Account (REAA) was developed in order to strengthen the assurance fund on a state-wide basis in Minnesota.<sup>117</sup> The REAA was created by merging assessments on the sale of tax forfeited land<sup>118</sup> with fees generated from the respective registration systems in each county.<sup>119</sup> The fund currently contains

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objections to the application, and set forth the right, title, estate, interest, or lien which the defendant is claiming. *Id.* § 508.17.

110. *Id.* § 508.16, subd. 1.

111. For example, in Hennepin County an applicant's attorney can schedule a hearing on any Tuesday after the statutory period for answering the summons has expired. Edblom Letter, *supra* note 104, at 1.

112. "When the attorney receives [the examiner's] report, the time required to complete the proceeding is largely up to him." *Id.*

113. See HUD REPORT, *supra* note 18, at III-9. Richard Edblom, Examiner of Titles for Hennepin County, estimates that a single parcel of residential property with uncontested title can be registered in approximately two months. Edblom Letter, *supra* note 104, at 1.

114. See R. POWELL & P. ROHAN, *supra* note 17, at ¶ 909[10]; B. SHICK & I. PLOTKIN, *supra* note 17, at 34; McDougal & Brabner-Smith, *supra* note 35, at 1144 ("a bona fide purchaser of registered land is protected against people who have slept on their rights; the latter are remitted, if deserving, to an assurance fund").

115. The assurance fund is supported by fees charged when property is registered. On a national basis, fees generally range between one-quarter of one percent and one-half of one percent of the property's assessed value. See Lobel, *supra* note 20, at 516; Yzenbaard, *supra* note 28, at 257-58.

116. The inadequacy of the assurance fund in California during the 1930's caused the ultimate collapse of the Torrens system in that state. Cf. R. POWELL, REGISTRATION OF THE TITLE TO LAND IN THE STATE OF NEW YORK 72 (1938).

117. See Act of Apr. 11, 1980, ch. 543, 1980 Minn. Laws 719.

118. See MINN. STAT. § 284.28, subd. 8.

119. See *id.* § 508.75.



reserves in excess of two million dollars.<sup>120</sup> Counties outside of the metropolitan area receive the greatest benefit from the REAA since many counties did not generate enough revenue through registration to create adequate reserves in their assurance funds.<sup>121</sup>

### III. POSSESSORY TITLE REGISTRATION

#### A. Background and Theory

Possessory title registration originated in England as an alternative to registering absolute title to land.<sup>122</sup> During the beginning of the century, the vast majority of land registrations in England involved possessory titles.<sup>123</sup> Other nations have subsequently adopted similar systems for the purpose of simplifying the registration process.<sup>124</sup>

The possessory concept is based on the principle that an estate in land is created when a party holds the land for a specified period of time.<sup>125</sup> A possessory title differs from an absolute title in that interests or claims existing before the initial registration are not extin-

120. Memorandum from Jerry Engebretson, Fiscal Activities officer for the state of Minnesota, to Roy Muscatello, Director of Statewide Accounting (Aug. 1, 1984) (copy on file at the William Mitchell Law Review Office).

121. The generation of reserves for the assurance fund presented unique problems for rural counties before the REAA was created. Infrequent use of title registration, in combination with a lower turnover rate in the real estate market, caused deficiencies in county funds. The REAA insures that all rural claims will be indemnified. Interview with Richard W. Edblom, Examiner of Titles for Hennepin County, Minnesota, in Minneapolis (Sept. 20, 1984) [hereinafter cited as Edblom Interview].

122. See Fiflis, *supra* note 18, at 482; Comment, *supra* note 21, at 690 n.141; see also R. MEGARRY & H. WADE, *THE LAW OF REAL PROPERTY* LAW 1051-52 (2d ed. 1966) (discussing the registration of absolute, qualified, and possessory titles in England).

123. It was estimated that approximately 94% of all registrations between 1899 and 1909 involved possessory titles. R. POWELL, *supra* note 116, at 279 n.35. Possessory titles, however, account for less than one percent of the registrations in areas of England having compulsory registration. Fiflis, *supra* note 18, at 482.

124. Australia and New South Wales have a statute enabling a purchaser of land in an arms-length transaction to register a "qualified" title. The qualification is removed six years after the land is conveyed in a second arms-length transfer. The statute was aimed at increasing the rate of title registration by reducing the cost of registration. HUD REPORT, *supra* note 18, at V-19 & n.49.

125. The following quotation summarizes the characteristics of a possessory title under English law:

As the name implies, such a title is dependent upon actual occupation of the land, or upon receipt of the rents and profits it yields, and not necessarily upon a documentary title. . . . The declaration [creating the possessory title] should establish that the applicant and his predecessors in title have been in undisputed possession for a stated number of years . . . .

G. CURTIS & T. RUOFF, *THE LAW AND PRACTICE OF REGISTERED CONVEYANCING* 92-93 (2d ed. 1965).

guished until a statute of limitations has run.<sup>126</sup> In essence, the registration of a possessory estate in land is an intermediate step in obtaining an absolute title. Holding a possessory title for the requisite statutory period thus acts as a substitute for registration by adjudication.

Despite an interest in possessory title registration in the United States,<sup>127</sup> the concept has not been implemented in any jurisdiction other than Minnesota. Hawaii recognizes that property owners may register a possessory title, but does not enable a possessory title to ripen into an absolute title after the expiration of a statutory period.<sup>128</sup> Attempts by the United States Department of Housing and Urban Development (HUD) to influence the adoption of possessory registration statutes throughout the nation have also failed.<sup>129</sup>

126. See HUD REPORT, *supra* note 18, at V-19; see also McDougal, *supra* note 43, at 68 n.17

127. See Fiflis, *supra* note 18, at 482 (arguing that possessory title registration would decrease the initial cost of registration); McDougal & Brabner-Smith, *supra* note 35, at 1136. "It is possible that initial registration could be accomplished . . . by the registration of a 'possessory' title. . . . Only where registration is contested, would resort to judicial proceedings be necessary." *Id.*; Leach, Book Review, 58 MICH. L. REV. 1245, 1246 (1960) (reviewing L. SIMES & C. TAYLOR, *THE IMPROVEMENT OF CONVEYANCING BY LEGISLATION* (1960)) ("I have yet to see an exploration of the adaptability in America of the English device of the registration of 'possessory titles.' . . . I can't see why this won't work in the United States"). For an analysis of how possessory title registration could reform title registration in the United States, see generally Comment, *supra* note 21.

128. See HAWAII REV. STAT. §§ 501-72 (1976); see also *infra* note 163.

129. The Real Estate Settlement Procedures Act (RESPA) of 1974, Pub. L. No. 93-533, 88 Stat. 1724-31 (codified as amended at 12 U.S.C. §§ 2601-2617 (1982)), reflects Congress' concern regarding the excessive costs in the conveyance of real estate.

The Congress finds that significant reforms in the real estate settlement process are needed to insure that consumers throughout the Nation are provided with greater and more timely information on the nature and costs of the settlement process and are protected from unnecessarily high settlement charges caused by certain abusive practices that have developed in some areas of the country.

12 U.S.C. § 2601(a). Section 13 of RESPA directed the Secretary of HUD to "establish and place in operation on a demonstration basis, in representative political subdivisions . . . a model system or systems for the recordation of land title information . . . ." *Id.* § 2611. For a discussion of § 13 of RESPA, see generally Patterson & Alexander, *supra* note 63.

In a subsequent report prompted by § 13 of RESPA regarding title registration in the United States, HUD concluded that possessory title registration should be an element of a compulsory registration system. HUD REPORT, *supra* note 18, at V-20. "The advantage of possessory title registration is that it avoids an initial registration proceeding altogether, and thereby removes some of the present disincentives to register." *Id.* at V-19. As a result, HUD drafted an extensive Land Title Registration Act as a model registration system under § 13 of RESPA. See LAND TITLE REGISTRATION ACT (United States Department of Housing and Urban Development) (working

### B. Minnesota Adopts Possessory Title Registration

The Minnesota Legislature adopted a possessory title registration statute in 1982 as an addition to the current title registration system.<sup>130</sup> The purpose of the statute is to provide owners with a simplified registration procedure which does not require adjudication.<sup>131</sup> The statute provides for the issuance of a certificate of possessory title (CPT) upon the registration of a possessory es-

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draft 1980), reprinted in HUD REPORT, *supra* note 18, at VI-1 to -33 [hereinafter cited as LTRA].

Article Nine of the model LTRA outlines a procedure for the registration of possessory titles. The Act states that a certificate of possessory title should be issued upon the proof of (1) continuous possession of the property for five years prior to registration; (2) the payment of property taxes for five years before registration; and (3) the payment of the assurance contribution. *Id.* § 9-104. In addition, the LTRA states that all rights, interests, or claims in the property are extinguished after the expiration of 20 years from the initial registration if they are not memorialized on the CPT. *Id.* § 9-203.

HUD selected Summit County, Colorado as one area in which to test its model title registration system pursuant to § 13 of RESPA. See Rocky Mountain J., Jan. 30, 1980, at 1, col. 2. HUD's proposal was vigorously opposed by the Land Title Association of Colorado (LTAC), an association representing the Colorado land title industry. The LTAC argued that the HUD model registration system was an inferior method of establishing title in terms of cost, reliability, and excessive government involvement. See Rocky Mountain News, Mar. 2, 1980, at 4, col. 1; *Testimony of the Land Title Association of Colorado on House Bill 1029 Concerning County Powers to Adopt Land Title Registration Systems on a Demonstration Basis*, at 11-12 (copy on file at the William Mitchell Law Review Office). "Perhaps the most disturbing aspect of the establishment of even a demonstration Torrens system in Summit County is the unnecessary additional public expense paid for by the taxpayers to staff and organize a deficient process from the outset." *Id.* at 6. The proposal was subsequently defeated in the Colorado Legislature. H.B. 1029, 52d Gen. Assembly, 2d Sess. 1980 Colo. House J. 182 (bill postponed indefinitely).

HUD attempted to pass the model LTRA in Massachusetts, but the proposal was also defeated. Edblom Interview, *supra* note 121.

130. Act of Mar. 10, 1982, ch. 396, 1982 Minn. Laws 192 (codified at MINN. STAT. § § 508A.01-.85 (1984)). For the statutory definition of a "possessory estate in land," see *supra* note 6.

131. "The purpose of [the statute] is to provide a voluntary procedure for registration of certain possessory estates in land with certainty, at reasonable cost and speed, and without the necessity for the initial adjudication . . ." MINN. STAT. § 508A.01, subd. 2. HUD sponsored the development of the statute in a grant to the Hennepin County Title Examiner's Office pursuant to § 13 of RESPA. The grant was primarily directed toward the implementation of a computer program which would assist the examiner's office in the production of certificates of title. The HUD committee which authorized the grant, however, required the Title Examiner's Office to draft and introduce a possessory title registration statute in the Minnesota Legislature.

The Hennepin County Title Examiner's Office commissioned Bruce W. Burton, an attorney with the firm of Dorsey, Windhorst, Hannaford, Whitney & Halladay in St. Paul, Minnesota, to draft the possessory title registration statute. Edblom Interview, *supra* note 121.

tate.<sup>132</sup> The land becomes eligible to enter the Torrens system five years after the issuance of the CPT.<sup>133</sup> In certain situations, therefore, the statute eliminates the need to institute an in rem proceeding,<sup>134</sup> thereby decreasing the initial cost of registration and eliminating unnecessary formalities of the registration process.<sup>135</sup>

The first CPT bill was introduced in the Minnesota Legislature in 1981.<sup>136</sup> Local title insurance companies adamantly opposed it.<sup>137</sup> Even though the bill was initially defeated, it was subsequently reintroduced and passed by the legislature in 1982.<sup>138</sup>

The statute is designed to be implemented on a county-by-county basis.<sup>139</sup> Counties have the option of adopting the statute at their discretion upon written recommendation by the county recorder and by resolution of the county board of commissioners.<sup>140</sup> This limitation was placed in the statute so that counties would not be forced into testing the possessory concept against their will.<sup>141</sup>

Despite favorable support in the legal community,<sup>142</sup> the statute has not yet been implemented in any Minnesota county. The Hennepin County Title Examiner's Office is studying the feasibility of the concept, and hopes to have the county board of commissioners authorize the statute for use in the near future.<sup>143</sup> Anoka and Ramsey counties have not yet determined when they will adopt possessory

132. MINN. STAT. § 508A.22, subd. 1; *see also infra* notes 159-62 and accompanying text.

133. For a more detailed discussion of the five year period, *see infra* notes 163-67 and accompanying text.

134. *See* MINN. STAT. § 508A.01, subd. 2. For a general discussion of in rem judicial proceedings, *see supra* notes 26-27 and accompanying text.

135. *See infra* notes 173-79 and accompanying text.

136. Burton, *supra* note 9, at 16.

137. During the House Committee Hearings on the possessory registration statute, Mr. Gorden Lundberg, an attorney for the Title Insurance Company of Minnesota, stated the following in opposition to possessory registration:

There is too much necessity for accuracy, for checking, for controls to make [the possessory title registration system] translate into a facility of operation and that calls for simplifying the system. It seems to me any system which bases itself upon a bill of 42 pages in length can hardly be called simplifying the system. . . . In fact, during a period of 5 years we will be dealing not with two systems but with three systems. The abstract system, the regular Torrens system and this hiatus system [under] which we don't know whether we are registered or not registered.

Judiciary Committee Hearings, *supra* note 99, at 15.

138. Act of Mar. 10, 1982, ch. 396, 1982 Minn. Laws 192 (current version at MINN. STAT. §§ 508A.01-.85 (1984)).

139. *See* MINN. STAT. § 508A.01, subd. 1.

140. *Id.*

141. Edblom Letter, *supra* note 104, at 2.

142. *Id.* It has also been speculated that initial use of the statute will be modest. Burton, *supra* note 9, at 31.

143. Edblom Interview, *supra* note 121.

title registration.<sup>144</sup> Problems of administrative feasibility hinder its use in outlying counties.<sup>145</sup>

### C. Operation of the Statute

The CPT statute parallels the current chapter 508 title registration procedure in nearly every respect.<sup>146</sup> An individual owning property may register a possessory estate in land under the statute if he is the record owner, and is able to prove that the land has been actually or constructively held for a period of fifteen years.<sup>147</sup> The required holding period fulfills adverse possession requirements under Minnesota law.<sup>148</sup> Furthermore, the record owner must have paid taxes on the property for at least five consecutive years during the fifteen-year period.<sup>149</sup>

Application for a CPT must be filed in the recorder's office in the county where the property is located.<sup>150</sup> Upon receipt of a valid application and a satisfactory abstract,<sup>151</sup> the county examiner of titles

144. The Examiner of Titles for Anoka County has indicated that he is interested in possessory title registration. At present, however, the Anoka County office cannot manage the expected increase in registration applications as a result of the statute. Bock Telephone Interview, *supra* note 91.

Ramsey County is also interested in adopting possessory title registration, but the statute would also create an excess work load for that examiner's office. Letter from William J. McGraw, Deputy Examiner of Titles, Ramsey County, Minnesota (Jan. 16, 1985) (copy on file at the William Mitchell Law Review Office) [hereinafter cited as McGraw Letter].

145. See *supra* notes 88-90 and accompanying text.

146. Drafters of the CPT statute felt that modeling it after the current chapter 508 procedure would promote clarity and further use of the statute. Interview with Bruce W. Burton, drafter of the CPT statute, in St. Paul, Minnesota (Oct. 3, 1984).

147. MINN. STAT. § 508A.01, subd. 3.

148. "No action for the recovery of real estate or the possession thereof shall be maintained unless it appears that the plaintiff, his ancestor, predecessor, or grantor, was seized or possessed of the premises in question within 15 years before the beginning of the action." *Id.* § 541.02.

149. *Id.* § 508A.01, subd. 3.

150. *Id.* § 508A.11, subd. 1.

151. The application for a CPT must state "[t]he names of all persons or parties, except the applicant, who appear of record, or who are known to the applicant to have or to claim any right, title, estate, lien, or interest in the land and the nature and character of it . . ." *Id.* § 508A.06, subd. 5. The application must also state whether the land is occupied, and if it is occupied, the application must contain the names and addresses of the occupants. *Id.*, subd. 6. The application must also contain a recording of any liens or encumbrances on the property, together with their respective amounts. *Id.*, subd. 7. Furthermore, the applicant must provide the examiner with a certified abstract of title. The abstract's certification must be satisfactory to the examiner. *Id.* § 508A.11, subd. 2. The application requirements are therefore analogous to the requirements for a chapter 508 proceeding. See Burton, *supra* note 9, at 17.

will prepare a written report on the status of the title.<sup>152</sup> The report is based upon an examination of the application, the abstract of title, and the public records.<sup>153</sup> The written report outlines any rights, titles, estates, liens, and interests in the property.<sup>154</sup>

After an examination is completed, a notice is mailed to all parties who have an interest in the property.<sup>155</sup> The notice informs the parties that the applicant will obtain a CPT unless a written objection is submitted to the examiner within twenty days.<sup>156</sup> The proceeding is suspended if written objections are raised.<sup>157</sup> An applicant in this situation has the choice of instituting a chapter 508 judicial proceeding, or abandoning his attempt to register the title.<sup>158</sup>

If the examiner of titles does not receive any objections during the statutory period, and is satisfied that the applicant is entitled to a possessory estate in the property, the examiner will submit a directive to the registrar authorizing the issuance of a CPT.<sup>159</sup> The CPT will contain the name and address of the applicant, an accurate description of the property, and the marital status of the applicant.<sup>160</sup> After the initial CPT is issued, the examiner must submit a supplemental directive<sup>161</sup> to the registrar before the five-year statute of limitations or the ripening period can begin.<sup>162</sup>

The applicant or his successors in interest must hold the CPT for five years before the property becomes eligible to enter the Torrens system.<sup>163</sup> During this period any estates, mortgages, liens, charges,

152. MINN. STAT. § 508A.13, subd. 1.

153. *Id.*

154. *Id.*, subd. 2.

155. The applicant must furnish the examiner with a list of addresses of the parties indicated in the examiner's report. If certain addresses are not obtainable, the applicant must prove that he performed a diligent search for the information. *Id.*, subd. 4.

156. *Id.*, subd. 5 (this subdivision contains the model form notice).

157. *Id.*, subd. 3.

158. "If the Examiner's report is adverse or if any objections are raised, the proceeding is suspended. An applicant may change to full Chapter 508 procedure . . . or give up the quest for a torrens certificate." Burton, *supra* note 9, at 17.

159. MINN. STAT. § 508A.22, subd. 1.

160. *Id.*

161. *Id.*, subd. 2. The supplemental directive is not issued until the abstract has been updated through the date when the first directive was filed. *Id.* As a result, the supplemental directive records any interests which may have developed between the filing of the application and the examiner's issuance of the initial directive for preparation of the CPT. *Id.*

162. *See id.*

163. *See id.* § 508A.17, subd. 1. The CPT runs with the land, which enables successors' interests to assume the possessory estate. The five year statute of limitations will therefore not be affected by subsequent conveyances of the property. *See id.* § 508A.24.

The term "ripening period" is also used to describe the statute's five-year statute

or interests which develop are memorialized on the certificate.<sup>164</sup> After the expiration of the period, the registrar cancels the CPT and issues a certificate of title.<sup>165</sup> The certificate contains all memorials on the CPT,<sup>166</sup> and is issued in accordance with the requirements of chapter 508.<sup>167</sup> Parties whose interests are not memorialized on the CPT are protected by the five-year statute of limitations.<sup>168</sup> Any parties injured by an error in the registration process are protected by the assurance fund.<sup>169</sup>

#### *D. Possessory Title Registration as an Improvement of the Torrens System*

Possessory title registration constitutes a logical improvement of the Torrens system. Property owners have been reluctant to utilize the Torrens system due to the initial cost of registration,<sup>170</sup> the inherent formalities of the judicial proceeding,<sup>171</sup> and the overall length of the process.<sup>172</sup> Possessory title addresses these problems and eliminates major hurdles restraining the growth of the Torrens system.

The CPT statute will reduce many of the costs associated with registration. First, the statute minimizes the degree of legal assistance needed by owners in the initial registration because a court appearance is no longer required.<sup>173</sup> Since attorney's fees are a major component of the cost of initial registration, reducing legal involvement will result in substantial savings to property owners.<sup>174</sup> A knowledgeable layperson acting pro se could perform many, if not all, of

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of limitations. A possessory title is said to ripen into a Torrens title after the expiration of the statutory period.

It is interesting to note that the LTRA included a 20-year statutory period of limitation. See *supra* note 129. Consequently, Minnesota's possessory title registration statute provides a shorter ripening period, making the statute more appealing in terms of the length of time required to obtain a standard certificate of title.

164. See *id.* § 508A.25. "[T]he owner and every subsequent purchaser holds the property subject only to the interests memorialized on the CPT, the same statutory interests to which a Torrens owner is subject and any claims that may be made within five years from the issuance of the CPT." Sclar, *supra* note 8, at 262.

165. MINN. STAT. § 508A.85, subs. 1-2.

166. *Id.*, subd. 4.

167. *Id.* For a model form of a certificate of title containing the various requisite provisions, see MINN. STAT. § 508.35.

168. See *id.* § 508A.17, subd. 1; *infra* note 183 and accompanying text.

169. See MINN. STAT. § 508A.76. An individual who sustains a loss as a result of an error in the registration process must commence an action within six years. *Id.* § 508A.79; see also *supra* notes 117-21 and accompanying text (discussing the structure and method of recovery from the REAA).

170. See *supra* note 49 and accompanying text.

171. See *supra* note 58 and accompanying text.

172. See *supra* notes 56-57 and accompanying text.

173. See MINN. STAT. § 508A.01, subd. 2 (initial adjudication not necessary).

174. Henry Flasch, a practicing attorney with the firm of Doherty, Rumble & But-

the procedures necessary to obtain a CPT.<sup>175</sup> Second, the statute authorizes the use of mailed notice instead of the personal service and publication required under judicial registration.<sup>176</sup> The combination of reducing legal involvement and expenses incurred in notifying interested parties significantly reduces the entire cost of registration.

The statute also reduces the formality of the registration process since the entire procedure is completed in the examiner's office.<sup>177</sup> Judicial intervention is required only when an interested party objects to the registration.<sup>178</sup> Conducting the process in the examiner's office is not only more convenient for most applicants, but is also less formal than conducting the process in a judicial setting.<sup>179</sup> Reducing the formality of the process should also encourage further use of the Torrens system in Minnesota.

The statute may increase the time required for initial registration since an examiner of titles must complete an examination of the abstract before a CPT can be issued.<sup>180</sup> Even though the statute shortens the registration process from a procedural standpoint by eliminating the publication of notice requirement,<sup>181</sup> the length of time required to complete the initial registration is largely dependent upon the time required to complete the abstract examination.<sup>182</sup> Possessory title registration is unattractive to individuals unless they can wait a few months for the issuance of the CPT.

The five-year statutory ripening period will present a different problem to future CPT holders. The statutory limitation is designed

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ler in St. Paul, Minnesota, stated the following in support of the statute at the House Judiciary Committee Hearings:

[The initial registration] can all be done by the Examiner of Titles and could be done faster and without any publication in the newspapers to notify unknown persons who might have an interest in the property . . . . The Examiner of Titles would, of course, still have to examine the abstract in the first instance and then notify the people who appear of record and have an interest in the property as well. . . . I think [the statute] would be a beneficial thing to the public [in reducing] legal expenses . . . .

Judiciary Committee Hearings, *supra* note 99, at 7.

175. Burton, *supra* note 9, at 16.

176. Compare MINN. STAT. § 508A.13, subd. 4 (authorizing the use of mailed notice in possessory registration proceedings) with *id.* § 508.16, subd. 1 (requiring personal service and publication).

177. "Possessory title deserves a closer examination because of its innovative and unique approach to the problems of initial registration. . . . [It] avoids the need for a time-consuming, specialized procedure to examine and validate title prior to first registration." HUD REPORT, *supra* note 18, at 59.

178. See *supra* notes 157-58 and accompanying text.

179. See *supra* note 58 and accompanying text.

180. MINN. STAT. § 508A.13, subd. 1; see *supra* notes 151-54 and accompanying text.

181. See *supra* note 176 and accompanying text.

182. See *supra* note 107 and accompanying text.



to protect parties whose interests are not memorialized on the CPT.<sup>183</sup> Unlike a standard Torrens title, a CPT is not absolute and indefeasible.<sup>184</sup> A CPT holder may consequently be forced to defend the title's validity during the statutory period. The probability of this situation occurring is minimal since the initial abstract examination should reveal any outstanding interests in the property.<sup>185</sup> Furthermore, any individual harmed by an error in the registration process is protected by the assurance fund.<sup>186</sup>

### E. Limitations

#### 1. Statutory Amendments

A 1983 amendment to the CPT statute limits its application to situations in which a portion of the applicant's property is already registered.<sup>187</sup> Under the amendment, property owners cannot use the statute unless they own an adjoining parcel of registered land, or unless a portion of their land is already registered.<sup>188</sup> This limitation, however, is merely an option which a county board may elect to adopt.<sup>189</sup> If the limitation is initially adopted, a county board can repeal it by resolution, thereby enabling any property owner to use the procedure.<sup>190</sup>

The statute was amended for two reasons. First, proponents of the statute feared that allowing all property owners to use the statute would overburden title examiners' offices with a sudden influx of ap-

183. After a CPT is issued, the owner of the property or any subsequent purchaser holds the title subject to the estates, mortgages, liens, charges, and interests noted by memorials on the latest CPT. MINN. STAT. § 508A.25. The CPT is also subject to "any right, title, estate, lien, or interest founded upon any instrument, event, or transaction which is executed or occurred before the entry of the first CPT and which was not set out as a separate memorial." *Id.* § 508A.17, subd. 1. A party claiming a right or an interest must commence the action within the five years after the CPT is issued, and a notice of lis pendens must be registered upon the CPT. *Id.*

184. See *supra* note 24 and accompanying text.

185. See MINN. STAT. § 508A.13, subd. 2. "Under the [CPT statute], the Examiner of Titles will make the same thorough investigation of title based upon the application, abstract of title and other information as is required by the present Chapter 508 proceeding." Burton, *supra* note 9, at 17.

186. MINN. STAT. §§ 508A.76, .79; see *supra* notes 117-21 (discussing the REAA in Minnesota).

187. See Act of May 9, 1983, ch. 92, § 23, 1983 Minn. Laws 255, 269 (codified at MINN. STAT. § 508A.01, subd. 1).

"The resolution of the county board may limit the registration of possessory title to real estate to cases in which the applicant owns a tract of land which a portion has already been registered pursuant to chapter 508." *Id.* The term portion in the statute, however, is broad enough so that any size parcel of registered land satisfies the requirement.

188. See *id.*

189. See MINN. STAT. § 508A.01, subd. 1.

190. See *id.*

plications.<sup>191</sup> Second, proponents believed that the adopted limitation would not restrict use of the statute by the parties who have the greatest desire to use it, such as real estate developers and investors.<sup>192</sup>

In essence, the limitation reflects a legislative intent to preserve local government control of the Torrens system by enabling counties to adopt the statute at their discretion.<sup>193</sup> Since possessory title registration will result in increased use of the Torrens system,<sup>194</sup> counties must make appropriate administrative plans before the system is implemented. Undoubtedly, one of the metropolitan counties will have to implement the system and prove that it is a feasible modification of the Torrens system before other counties take the initiative to adopt it.<sup>195</sup>

## 2. Funding Requirements

The statute presents unique problems for Minnesota counties which fund a title examiner's office. Possessory title registration could significantly increase the number of title examinations performed by an examiner's office each year.<sup>196</sup> Increased use of the Torrens system, however, cannot be achieved without additional county financing.<sup>197</sup> The ultimate success of the possessory concept is thus dependent upon adequate financing of title examiners'

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191. Richard W. Edblom, Examiner of Titles for Hennepin County, encouraged the adoption of the statutory limitation, stating:

Although a court proceeding is not necessary to register title under the possessory title registration procedure, it is still necessary for an examiner to examine the abstract and write a report stating whether the applicant does have a good record title. . . . Consequently, this imposes a workload on the staff of our office not much different from a regular registration proceeding. . . . Therefore, it was my opinion that if we allowed unrestricted use of the possessory registration procedure, our staff, as presently constituted, would be unable to handle the volume that we could expect as shown by the interest expressed by attorneys in this procedure.

Edblom Letter, *supra* note 104, at 2.

192. See Burton, *supra* note 9, at 16 ("proponents of a CPT system cite the possible 'land bank' situation in which a developer assembles improved or unimproved lands and plans a new development or redevelopment of such lands in the course of the next five or ten years").

193. "The feature of county option would allow larger counties such as Hennepin, Ramsey and Anoka, with their fulltime professional staffs, experiences, and growing computer availability to adopt a CPT system without burdening the outlying counties." Burton, *supra* note 9, at 17.

194. See Edblom Letter, *supra* note 104, at 2.

195. See *id.* at 3.

196. See *supra* notes 142, 191 and accompanying text.

197. The Ramsey County Torrens Office could not handle alleged increases in abstract examinations if possessory registration was implemented within the near future. McGraw Letter, *supra* note 144.

offices.<sup>198</sup>

### F. Constitutionality

The CPT statute does not violate fourteenth amendment due process requirements. Due process requires that all interested parties receive adequate notice of an action and be given an opportunity to be heard.<sup>199</sup> The statute's notice provision<sup>200</sup> and five-year statutory limitation<sup>201</sup> satisfy these requirements.

The statute requires the examiner of titles to mail a notice of the application for possessory registration to all interested parties.<sup>202</sup> According to a recent decision of the United States Supreme Court,<sup>203</sup> mailed notice is a reasonable means of providing parties with actual notice of a proceeding affecting their property interests.<sup>204</sup> Furthermore, the registration will be valid even though an interested party does not receive notice as long as the procedure and efforts used to effectuate the notice are reasonable.<sup>205</sup>

Due process requirements are satisfied even though possessory title registration does not involve a judicial proceeding.<sup>206</sup> Statutory

198. In order to help mitigate the increased expense incurred when counties adopt the system, the Hennepin County Examiners Office has drafted a bill which would require a payment of fifty dollars to accompany each application for a CPT. The fee will be assessed on each parcel of property described in the application. The bill, however, has not been introduced in the Minnesota Legislature. A copy is on file at the William Mitchell Law Review Office.

199. 1 C. ANTIEAU, MODERN CONSTITUTIONAL LAW § 7:12-14 (1969); see, e.g., *Mul-lane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314-15 (1950); *Milliken v. Meyer*, 311 U.S. 457, 463-64 (1940).

200. MINN. STAT. § 508A.13, subd. 4.

201. *Id.* § 508A.17, subd. 1; see *infra* notes 210-12.

202. MINN. STAT. § 508A.13, subd. 4.

203. *Mennonite Bd. of Missions v. Adams*, 103 S. Ct. 2706 (1983).

204. In *Mennonite*, the Supreme Court held that published notice of a pending tax sale did not give a mortgagee adequate notice of the action. *Id.* at 2712. The Court pointed out that the mortgagee was identified in the recorded mortgage, and concluded that constructive notice by publication must be supplemented by mailed notice or personal service. *Id.* at 2711. "Notice by mail or other means as certain to insure actual notice is a minimum constitutional precondition to a proceeding which will adversely affect the liberty or property interests of any party . . . if its name and address are reasonably ascertainable." *Id.* at 2712. The *Mennonite* decision indicates that mailed notice meets fourteenth amendment due process requirements in judicial actions affecting property interests.

205. Comment, *supra* note 21, at 702. The court's decree does not affect a party who was not notified of the proceeding, yet whose identity could have been determined by a reasonable effort. Note, *Konantz, Koester, McCrossan, and Title to Torrens Property*, 4 WM. MITCHELL L. REV. 59, 81 n.110 (1978) (citing *Title & Document Restoration Co. v. Kerrigan*, 150 Cal. 289, 317, 88 P. 356, 363 (1906); *Sheaff v. Spindler*, 339 Ill. 540, 554-55, 171 N.E. 632, 638 (1930); *Tyler v. Judges of the Court of Registration*, 175 Mass. 71, 78-79, 55 N.E. 812, 815, *appeal dismissed*, 179 U.S. 405 (1900)).

206. Due process does not require a proceeding conducted by a judicial officer.

proceedings affecting property rights do not deny due process if they provide adverse parties with an opportunity to be heard.<sup>207</sup> Registration under the CPT statute provides for adequate hearing since an interested party is given an opportunity to file a written objection with the examiner of titles.<sup>208</sup> A valid objection suspends the process and forces an applicant to pursue registration by judicial proceeding.<sup>209</sup> The statute thus satisfies due process hearing requirements by utilizing the current in rem judicial proceeding as an outlet for applicants where interested parties object to the possessory registration.

The statute's five-year period of limitation or ripening does not violate due process hearing requirements. The limitation restricts the time within which parties must file a notice of a claim in order to preserve an interest in the property.<sup>210</sup> As a result, the five-year ripening period not only penalizes interested parties who fail to assert their rights, but also provides reasonable opportunity for an interested party to file notice of a claim.<sup>211</sup> The statute thus quiets title in the name of the party holding the registered possessory interest.<sup>212</sup>

### CONCLUSION

The Minnesota possessory title registration statute addresses the limitations of the Torrens system by eliminating the need to institute an in rem judicial proceeding in certain situations. The statute has the potential to reduce both the cost and formality of initial registration. It is questionable to what extent the statute will affect the initial length of registration since an examiner of titles must complete a thorough abstract examination before a CPT can be issued. Never-

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*See, e.g.,* Parham v. J.R., 442 U.S. 584, 607 (1979); Morrissey v. Brewer, 408 U.S. 471, 485-86 (1972).

207. Notice and opportunity to be heard are properly determined by the purposes of the procedure and its effect on the rights asserted. *Anderson Nat'l Bank v. Luckett*, 321 U.S. 233, 246 (1944).

208. *See* MINN. STAT. § 508A.13, subd. 3.

209. *See supra* note 158 and accompanying text.

210. MINN. STAT. § 508A.17, subd. 1; *cf. Brehmer, Limitations of Actions Affecting Title to Real Estate*, 30 MINN. L. REV. 23, 28-29 (1945); *Tulane, Title to Real Property—Thirty Year Limitation Statute*, 1942 WIS. L. REV. 258, 270-71. "The length of the saving period which must be allowed before a statute limiting remedies takes effect is within the discretion of the Legislature unless such discretion is clearly abused . . . . No case has been found holding that a year is not a sufficient period." *Id.*

A CPT applicant, however, must initially prove actual or constructive possession of the land for a period of 15 years. MINN. STAT. § 508A.01, subd. 3. This provision satisfies Minnesota's adverse possession requirements. *Id.* § 541.02. The total period of time needed to transform a possessory estate into an indefeasible certificate of title is therefore 20 years.

211. *See* MINN. STAT. § 508A.17, subd. 1.

212. *Id.*

theless, possessory title registration is a logical improvement of the Torrens system.

Unfortunately, the statute has not been implemented in any Minnesota county. The recent statutory amendment enabling counties to adopt possessory title registration on a limited basis enhances the concept's feasibility by restricting its initial use. Successful implementation of possessory title registration should encourage further use of the Torrens system in Minnesota and demonstrate to other jurisdictions that the concept is a viable modification of the Torrens system.