

HOUSE BILL REPORT

HB 1376

As Passed House:
March 5, 2021

Title: An act relating to registration of land titles.

Brief Description: Concerning registration of land titles.

Sponsors: Representative Fey.

Brief History:

Committee Activity:

Civil Rights & Judiciary: 2/9/21, 2/12/21 [DP].

Floor Activity:

Passed House: 3/5/21, 83-14.

Brief Summary of Bill

- Repeals the Torrens Act registration system for real property.
- Provides for the withdrawal of real property from the registration system and the recordation of the certificate of withdrawal.

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

Majority Report: Do pass. Signed by 13 members: Representatives Hansen, Chair; Simmons, Vice Chair; Abbarno, Davis, Entenman, Goodman, Kirby, Klippert, Orwall, Peterson, Thai, Valdez and Walen.

Minority Report: Do not pass. Signed by 1 member: Representative Walsh, Ranking Minority Member.

Minority Report: Without recommendation. Signed by 3 members: Representatives Gilday, Assistant Ranking Minority Member; Graham, Assistant Ranking Minority Member; Ybarra.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Staff: Yelena Baker (786-7301).

Background:

Recording System.

There is not a single statewide recording system in which real property records are kept. Rather, the records for property within each county are kept at the county level by the county auditor. County auditors are required to keep both a grantor and a grantee index of recorded documents. The grantor-grantee indices include the following information:

- date of recording;
- grantor's name;
- grantee's name;
- nature of document recorded;
- volume and page where recorded and/or the auditor's file number;
- remarks;
- description of property; and
- assessor's property tax parcel or account number.

In order to determine what instruments, such as mortgages and easement deeds, have been recorded on a piece of property, a title searcher would search the grantor-grantee indices for references to every recorded document regarding that piece of property. The title searcher would then examine each recorded document by going to the volume and page where recorded. The compilation of all of the documents regarding a single piece of property is often referred to as an abstract of title. Generally, people rely upon title insurance companies to search the records and prepare an abstract of title.

Torrens Registration System.

In 1907 Washington adopted the Torrens real property registration system as an *optional* alternative to the recording system. Although both the recording and the registration systems are housed in the county auditor's office, the two systems are separate from one another.

The Torrens system is similar to the registration system used for cars and boats but involves a judicial component as well. A person believing he or she has title to land begins the registration process by filing an application, together with an abstract of title, with the court and with the auditor's office. Once the application is filed, the court refers the matter to a court-appointed attorney called the examiner of titles, who then examines the title and files an opinion with the clerk with respect to the applicant's title.

Assuming the opinion is favorable, the court issues a summons. The applicant is the plaintiff, and any persons in possession or appearing to have an interest are defendants. If the action concludes with a judgment, default or otherwise, a decree of confirmation of title and registration is entered quieting title to the property. The decree is not final for 90 days; it is subject to appeal. Once final, the court decree is binding and, based on this decree, the

county auditor issues the first certificate of title, listing the owner as well as any others whom the court has determined in the decree to have any interest in the property.

At this point, the title is considered a registered title. Alphabetical and tract indices of registered land are kept by the county auditor. Once an original certificate of title is issued, any subsequent transaction that affects the title must be registered rather than recorded.

There is a statutory means for removing land from registered title and returning it to recorded title that involves the auditor but does not require court action.

Summary of Bill:

The Torrens Act is repealed in its entirety. A several-step process for removing registered property from the registration system and placing it in the recording system is provided, as follows:

1. By December 1, 2021, the auditor shall send each owner of registered land a written notice informing the owner that the registry system has been discontinued, that the property will cease to be subject to registration on July 1, 2022, and that—for no charge—the owner may withdraw the property from the registration system and cause it to be restored to the recording system. The notice must also contain a statement that the validity and priority of lien interest or ownership is not affected by the withdrawal process.
2. By July 1, 2022, the owner of registered property may surrender the certificate of title to the auditor; such surrender shall be considered as a withdrawal.
3. Upon surrender, the auditor shall, without charge:
 - a. accept the surrender;
 - b. issue a certificate of withdrawal; and
 - c. cause to be recorded the certificate of withdrawal and all instruments filed that relate to outstanding interests in such real property and to outstanding liens, mortgages, and other charges upon the property referred to in or noted upon the certificate of title.

If the real property is not voluntarily withdrawn from the registration system by its owner, it shall cease to be subject to the provisions of the Torrens registration system as of July 1, 2022. On this date, the auditor shall cause the registration volumes and indices to be closed and placed in the permanent deed records. All properties remaining in the registration are automatically withdrawn as of that date, and the auditor is to issue a certificate of withdrawal and record the certificate and other associated instruments.

It is expressly provided that the repeal of the Torrens Act does not affect any right accrued or liability incurred under those statutes prior to repeal.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed, except for section 3, relating to providing that real property which is not voluntarily withdrawn from the Torrens registry by July 1, 2022, shall cease to be subject to the Torrens Act, and section 5, relating to providing for the closure of the Torrens registry, which take effect July 1, 2022.

Staff Summary of Public Testimony:

(In support) The Torrens land registry is a procedurally inefficient and outdated system of guaranteeing ownership and debt. That function is best performed by attorneys and title companies, not by local government. The modern system of recording land records for purposes of establishing and documenting the chain of title should be adopted as the only system.

While millions of land parcels in the state are recorded under the modern abstract-of-title or chain-of-title system, about 4,000 land parcels in the state are accounted for in the archaic Torrens registration system, with about 3,000 of these in King County. For the five counties that still have Torrens-registered land, operating these two systems is incredibly inefficient.

Under the Torrens system, the original registration must go through the courts, and what takes hours, days, or even months under the Torrens system can be done within minutes by recording with a county auditor. Registering land under the Torrens system is a skill that not many people have at this point, and it creates additional costs at the county auditor's office. In King County, there is currently only one staff member who can perform these transactions, and each transaction can take hours to research and process correctly, even though that same research still has to be done by the title companies as well.

After the original registration of title, the landowner can authorize some transactions, such as loans, but other transactions, such as transferring title to heirs after the owner's death, must go through the courts in what is a lengthy, costly, and often confusing process. The inheriting citizens must go before a judge and the examiner of titles to receive a court order allowing a transfer to take place. This transaction, which in the modern system would take minutes, can take days to complete, all at the cost of thousands of dollars to the inheriting citizen. A typical court order costs around \$1,200 in recording fees alone because of the number of documents associated with it.

The Torrens system disadvantages tradespeople who wish to file a lien against a property because they have to go through the courts to file a lien rather than simply recording it through the county auditor's office.

Some people believe that registering land under the Torrens system protects them from

foreclosure, eminent domain, liens, or payment of taxes, and that is all incorrect. These transactions will still occur, but only after lengthy court proceedings.

Landowners with recorded titles are protected by insurance issued by privately owned title companies, who research the chain of title and find any outstanding debts, easements, or restrictions. If a problem is later identified, such as a boundary issue, the title company pays the owner for that impact. Under Torrens, it is the county government that is the guarantor. This is funded with a very small fee collected at the time of the original registration and it is insufficient to settle a possible claim.

(Opposed) None.

Persons Testifying: Representative Fey, prime sponsor; Marianne Nichols, Pend Oreille County Auditor; Josie Delvin, Washington State Association of County Clerks; Brenda Chilton and Vicky Dalton, Washington State Association of County Auditors; and Jon Scherer, King County Recorder's Office.

Persons Signed In To Testify But Not Testifying: None.