

Law delays fail to bring clarity

Chiu Kam-kuen is chairman of the general practice division council of The [Hong Kong Institute of Surveyors](#). He talks about the deed of registration and how an owner can establish his title to the property.

How does Hong Kong's deeds registration work? As a new owner, how is my title to the property established under the present regime?

The Land Registration Ordinance (LRO), which was enacted in 1844, governs the registration of deeds. During the conveyancing process, the purchaser's solicitor has to review historical title documents to establish a "clean" title to the land. While conveyancing has been carried out this way for more than 170 years, a person registered in the land registry as an owner of a property may not be the true owner as there may be some uncertainties in his title to the property. That's why solicitors are involved every time to ensure that the title being transferred is clean or free of defects.

What is the drawback to the existing system? What has been proposed to simplify the process?

Overall, Hong Kong's property ownership is transparent, given that land search records and imaging of instruments are easily accessible online or through the Land Registry. However, because the due diligence on legal title under the present regime is complex, the Land Titles Ordinance was enacted on July 7, 2004, to establish a title registration system to provide greater certainty on land title and to simplify the conveyancing process. Since then, new land granted by the government directly comes under the title registration system, under which the person registered in the title register as the owner is recognised by law as the true owner. The title can therefore be established as a matter of fact by checking the title register. However, existing land and property still remain under the terms of LRO and Conveyancing and Property Ordinance for an interim period previously set at 12 years. The LTO has not yet been implemented and post-enactment review of its provision is still in progress.

What will happen to property titles under LRO after conversion to LTO?

Despite the absence of a timetable, a new mechanism called "daylight conversion" has been proposed. Conversion is said to be automatic at the end of the interim period. No special application has to be made for conversion to take place. But there are exceptions, for example, when a "caution against conversion" has been registered or when an instrument submitted for registration under the old system has not completed registration. Conversion will follow automatically as soon as the obstacle to conversion has been removed. No investigation of title or issue of a certificate of good title by a practicing solicitor will be required afterwards.

Some properties have reportedly been sold without deed in recent foreclosure sales. Why would that happen? What are the risks for the purchaser?

Over the course of ownership, a previous owner might have lost the deed or document. Normally, when you purchase a property, you need to execute a deed or other document. That deed or document will be registered with the Land Registry. By declaring that has been lost, the conveyancing can still be carried out by issuing a certified copy. The title is considered defective, implying material legal risks. The title deed could still be held by a lender or as collateral for an outstanding loan.

Another risk is that one historic transaction was not registered at the Land Registry and that owner could still claim an interest in the property. Due to this encumbrance against the property, in most cases mortgage lenders will not lend to the purchaser. It might also affect the marketability of the property. While a letter of undertaking can certify that the purchaser holds the title to the premises to convince a bank to grant a mortgage, that does not mitigate the legal risks. That's why properties with defective titles are usually sold at public auctions. It makes sense for the purchaser to expect a discount on the price.

EXPERT ADVICE

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Residential mortgage loans in Hong Kong

Value (HK\$ billion)

■ Primary market ■ Secondary market
 ■ Refinancing loans

Centa-City Leading Sub-Index

	This week	Previous week	Previous month
Hong Kong	159.84	↓ 0.29%	↓ 0.18%
Kowloon	160.08	↑ 0.26%	↑ 0.85%
New Territories East	159.8	↓ 0.39%	↑ 0.04%
New Territories West	161.58	↓ 0.33%	↑ 0.17%

The Centa-City Leading Sub-Index is the weekly price movements in the secondary market.
 Source: Centaline Property Agency SCMP