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Certificates of Possessory Title: A Sensible Addition to Minnesota's Successful Torrens System

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CERTIFICATES OF POSSESSORY TITLE: A SENSIBLE ADDITION TO MINNESOTA’S SUCCESSFUL TORRENS SYSTEM

Kimball Foster†

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I. INTRODUCTION

Minnesota is one of only a handful of states with an active “Torrens”—or registered property—system of land records. Although originally enacted in twenty states, this system of land records either has been repealed or has been simply rarely used in all but Minnesota and two others: Hawaii and Massachusetts. In Minnesota, the Torrens system is alive and well, and the Minneapolis-St. Paul area has more registered land than any other urban area in the nation. More than forty-two percent of the tax

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2. See, e.g., 765 ILL. COMP. STAT. ANN. 40/3 (West, Westlaw through 2013 Reg. Sess.).
parcels in Hennepin County are now registered. The widespread success in Minnesota has been attributed to a confluence of factors. One is 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.” Any loss from errors made by the registrar or examiner of titles is paid for out of the state’s general fund. Also, the state had the considerable benefit of the fifteen-year tenure of R.G. Patton as Hennepin County Examiner of Titles from 1932 to 1947. Mr. Patton was a nationally renowned expert on real estate and title matters. The proliferation of bodies of water in the state is another important reason for the success of the Torrens system in Minnesota. Water and riparian rights present interesting and complex title issues. Some examples include land descriptions, ownership of the lakebed and navigability, and configuration of land created by the effect of accretion and reliction. And, certainly one of the most important reasons for the success of Minnesota’s registered property system is the willingness of its legislature to regularly enact legislation to

7. Id.
11. “The gradual accumulation of land by natural forces [especially] as alluvium is added to land situated on the bank of a river or on the seashore.” Id. at 23 (defining “accretion”).
12. “The alteration of a boundary line because of the gradual removal of land by a river or stream.” Id. at 1404 (defining “reliction”).
simplify and improve the system. A number of actions that once required court involvement can now be done administratively. Perhaps the most significant and yet unsung legislative move toward simplicity and ease of use of the registered property system came in 1982 with the passage of Minnesota Statutes chapter 508A, permitting registration itself to occur without a court proceeding and allowing for Certificates of Possessory Title (CPTs). After a brief explanation of the recording and registration systems of land ownership, this article will discuss the history and purpose behind the adoption of chapter 508A. And, while Minnesota has a registration system it can be proud of, this article will make several suggestions for its improvement.

II. RECORDING SYSTEM

All states, including Minnesota, have a recording system for establishing title to real estate, frequently called the abstract system. The primary functions of the recording system are to provide a public record of land ownership and notice of the existence of certain outstanding interests, encumbrances, and claims. Interests in land are not transferred by recording a deed, but rather by delivering the deed or other instrument to the grantee. To constitute public notice of such transfers, the instruments are delivered to the county recorder in the county where the land is located for entering into public indexes. The county recorder accepts the documents for recording if they appear to be properly executed, and then copies and indexes them, generally by the names of the parties to the instrument in the grantor/grantee index and by the land description in the tract index. Parties wanting information about land search the appropriate indexes to locate pertinent documents and then examine the documents for

16. Minn. Stat. §§ 507.32, .34.
17. Id. § 507.24, subdiv. 1 (requiring a recordable conveyance affecting real estate to be (1) legible and archivable, (2) executed, (3) acknowledged by the parties executing it, and (4) the acknowledgment is certified).
18. Id. § 386.03.
19. Id. § 386.05.
content, terms, legality, etc. Unless a title company is making the search in preparation for its issuance of a title policy, the search commonly is made from an abstract of title prepared by a licensed abstractor. An abstract of title consists of a brief memorandum entry of all recorded documents that affect the land under examination.  

III. REGISTRATION SYSTEM

Several states have the Torrens system as an optional second 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. The system was proposed by Robert Richard Torrens, a British customs officer in South Australia, and modeled after the ship registry system.

Land is transferred from the abstract recording system to the Torrens system by a court proceeding in the nature of a quiet title action. The following process set out here is that used in Minnesota and differs somewhat from that employed in any other state. The examiner of titles, a lawyer who has been appointed by the court to serve as the county’s examiner, supervises the court proceeding at all times. The property owner, usually represented by a lawyer, files an application to register his or her property and provides an abstract of title. The examiner of titles reviews the abstract of title and issues a report to the court identifying defects and interests, listing evidence to be presented at trial, and naming parties to get notice. The court issues a land title summons, it is published for three weeks in a legal newspaper, and it is served on

20. Abstracts in Minnesota are increasingly rare these days as they are no longer required by the terms of the standard purchase agreements in use in Minnesota. See MINN. ASS’N OF REALTORS, PURCHASE AGREEMENT (2012).
21. Cf. Note, supra note 4, at 828 n.23 (stating that recorded land parcels are the predominately overwhelming choice in the United States). No state has the Torrens system as its sole land records system.
22. See In re Juran, 178 Minn. 55, 58, 226 N.W. 201, 202 (1929).
25. Id. at 525.
27. Id. § 508.11.
28. See id. § 508.13.
all parties that the examiner has named. After an answer is filed, a hearing is held. The matter is treated as a default if there is no answer within the time allowed or heard as a contested matter if an objection is made. After sufficient evidence is offered, the court adjudicates the applicant’s title and all interests to which the property is subject. The court issues its decree of registration, setting out the description of the property, the name of the owner, and all other parties with an interest in the property, the nature of each party’s interest, and the statutory exceptions to the conclusiveness of the certificate of title to be issued. The decree is filed with the registrar of titles, and an official certificate of ownership—the certificate of title—is issued, which is guaranteed by the state. There is never more than one certificate of title outstanding for the same interest. In Minnesota, once land is registered, it may not be “de-registered” in any county with a city of the first class or in Carver County. At all times, the examiner and registrar are under the control of the court.

Documents relating to Torrens land are not recorded with the county recorder, but rather are filed (recorded) with the county registrar of titles. Except for transfers of title by someone other than the fee owner, documents generally are accepted for filing by the registrar as they would be accepted for recording by the county recorder. However, the registrar will not only inspect the documents for compliance with recording standards, as the county recorder must do, but also will inspect the document’s validity. Is the document made by the registered owner or another party with an interest shown on the certificate? Does it accurately

29. Id. § 508.16, subdiv. 1.
30. Id. § 508.20.
32. Id. § 508.22 (“If, after hearing, the court finds the applicant has a title proper for registration . . . it shall make and file its decree therein, confirming the title of the applicant and ordering its registration.”).
33. Id. § 508.23.
34. See id. §§ 508.22–23, subdiv. 1.
35. See id. § 508.28.
36. Id. § 508.24, subdiv. 2; see also id. § 410.01 (defining “first class” as a city that has more than 100,000 inhabitants).
38. MINN. STAT. § 508.12, subdiv. 1.
39. Id. § 508.32.
40. Imperial Developers, Inc. v. Calhoun Dev., L.L.C., 790 N.W.2d 146, 149 (Minn. 2010).
describe the land? Have all necessary parties joined in making the instrument? If all requirements are met the registrar will accept the instrument for registration and “memorialize” it on the certificate of title. The examiner of titles is the legal advisor to the registrar and provides guidance to the registrar when questions arise. By statute, the registrar must comply with the examiner’s instructions regarding instruments offered for filing.

As first enacted, Minnesota’s Torrens statute required judicial action for many matters that typically arose after registration, such as probate transfers after the registered owner’s death, termination of a spouse’s interest in a marriage dissolution, the addition of vacated streets adjoining a parcel of registered land, and the issuance of new certificates of title following foreclosure of real estate tax liens and mortgage foreclosures by action. While adjudication of such matters is still available, over the years, and particularly in 1992, the legislature has vested increasingly more authority in the examiner of titles to investigate such occurrences and determine their legal sufficiency. If, after such investigation, the examiner is satisfied that the matter was handled properly, he or she is authorized to issue an examiner’s directive to the registrar. This directive may, for example, instruct the registrar to add the portion of a vacated street that accrues to adjoining registered land described in the directive or to cancel the certificate and enter a new one to the spouse who was awarded the property in a marriage dissolution.

41. Minn. Stat. § 508.38.
42. Id. § 508.12, subdiv. 1.
43. Id. § 508.321.
47. Id. § 10, 1992 Minn. Laws at 248 (codified as amended at Minn. Stat. § 508.73, subdiv. 2).
48. Id. § 8, 1992 Minn. Laws at 247 (codified as amended at Minn. Stat. § 508.58, subdiv. 2).
49. See generally id. §§ 8–36, 1992 Minn. Laws at 247–64 (expanding the examiner of title’s authority in areas that were previously the sole domain of the district court).
In 1993, the legislature amended Minnesota Statutes section 508.71, granting the examiner authority to issue directives regarding the sufficiency of condominium documents. In 1996, the legislature again amended section 508.71 to authorize the examiner to issue corrective directives. In 1999, the legislature made a major change to Minnesota’s Torrens system with the elimination of the owner’s duplicate certificate of title. Previously, no voluntary documents could be filed with the registrar without presentation of the owner’s duplicate certificate. During his tenure as Hennepin County Examiner in the 1940s, R.G. Patton equated the importance of the owner’s duplicate certificate of title to that of a passbook for a bank savings account. The Hennepin County Examiner’s Office believed that no better case could be made for getting rid of owners’ duplicates than Patton articulated in that statement.

The legislature also has expanded the administrative authority of the registrar of titles. The registrar now may omit a number of interests from future certificates after the expiration of a statutory time period, including claims of unregistered interest, attorneys’ liens, money judgments, notices of lis pendens, and mechanics’ liens. The legislature’s willingness to vest the examiner and registrar with increasing authority makes the Torrens system easier and less expensive for people to use and is a significant reason for the success of the system here where it has failed elsewhere.

Proceedings after the initial registration allow for adjudication of matters that are not appropriate for an examiner’s directive. These matters include mortgage foreclosures by advertisement.

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54. MINN. STAT. § 508.70, subdiv. 2 (2012).
55. Id. § 481.13, subdiv. 2.
56. Id. § 508.63.
57. Id. § 508.66.
58. Id. § 514.12, subdiv. 3.
60. MINN. STAT. § 508.58, subdiv. 2 (authorizing the examiner to issue directives following mortgage foreclosures done by court action).
contract for deed cancellations,\textsuperscript{61} and boundary questions,\textsuperscript{62} as well as matters set out in Minnesota Statutes section 508.71, subdivision 2.\textsuperscript{65} Such proceedings are commenced by petition to the examiner of titles,\textsuperscript{64} as opposed to being commenced by service of a summons and complaint for an ordinary civil action. Although both types of proceedings are district court matters, an ordinary civil action rarely is appropriate for adjudicating interests in Torrens property because it skirts the examiner’s participation.

The Torrens system is designed to conclusively establish matters of ownership.\textsuperscript{65} “The title examiner participates in proceedings, and all interested parties, including mortgagees, are notified of proceedings and allowed to participate. This process ensures compliance with due process and statutory requirements.”\textsuperscript{66} Appellate courts have set aside court orders that concern registered land not obtained in a proceeding subsequent to initial registration.\textsuperscript{67} With very few exceptions,\textsuperscript{68} registered land is subject only to interests shown on the certificate of title. The good-faith holder of a certificate of title will even prevail in the face of a forged deed in his or her chain of title.\textsuperscript{69} If the registrar has made an error that causes harm, the injured party may seek monetary recovery from the state’s general fund.\textsuperscript{70} Originally, such claims would be paid from a segregated assurance fund into which a small percentage of registration fees were deposited. Few claims had

\textsuperscript{61} Id. § 508.71, subdiv. 2(1).
\textsuperscript{62} Id. § 508.671, subdiv. 1.
\textsuperscript{63} Id. § 508.71, subdiv. 2.
\textsuperscript{64} Id.; see also MINN. R. PRAC. DIST. CT. 213.
\textsuperscript{65} That being said, a certificate of title is not 100\% conclusive, and nor should it be. See In re Collier, 726 N.W.2d 799, 808 (Minn. 2007) (“[Edward A.] Bock[, then Hennepin County Examiner of Titles,] claims that some degree of flexibility makes the Torrens Act more useful and efficient.”); Patton, supra note 24, at 528.
\textsuperscript{68} See MINN. STAT. § 508.25 (listing standard exceptions); Collier, 726 N.W.2d at 809 (excluding instances where a purchaser has actual notice of a previous, unregistered interest); Konantz v. Stein, 283 Minn. 33, 36, 167 N.W.2d 1, 5 (1969) (excluding occasions where parties in possession are not given notice of registration of the land).
\textsuperscript{69} MINN. STAT. § 508.51; R.G. Patton, Evolution of Legislation on Proof of Title to Land, 30 WASH. L. REV. & ST. B.J. 224, 234 (1955).
\textsuperscript{70} MINN. STAT. § 508.76, subdiv. 1.
occurred in over one hundred years,\textsuperscript{71} and, ultimately, it became clear that the large fund balance was unnecessary. In 1989, the legislature amended Minnesota Statutes section 508.76 to abolish the assurance fund and provide for any such loss to be paid from the general fund.\textsuperscript{72} The state benefitted by the fund balance and the citizens benefitted by the full faith and credit of the state to cover losses.

While the recording system is based on the principles that private parties may transfer title through the delivery of deeds and other documents, and that they may provide evidence of such transactions by recording the documents, the status of a Torrens title appears on the face of the certificate and “is at all times an adjudicated title.”\textsuperscript{73} In \textit{Murphy v. Borgen}, the conclusiveness of a certificate of title was upheld against a defendant’s later claim of excusable neglect for failing to object to the registration.\textsuperscript{74} The court in \textit{Murphy} refused to grant relief under its general equitable powers, stating “for just what a court may do to the Torrens judgment on application addressed to its equitable powers will find a limit only in the ingenuity of counsel in searching for and devising methods of attack.”\textsuperscript{75}

A certificate of title for real estate is analogous to a car title card. The government determines the validity of documents presented for encumbering or transferring the property, shows such instruments on the certificate of title or car title card, and entitles parties to rely upon the information shown. It would be quite unpopular with the citizens of Minnesota if car titles were kept under a recording system, putting the onus on the buyer or lender to examine a stack of car title transfers, documents, or liens, rather than the current state registration system. Yet, in Minnesota—and in every other state—most land parcels are still under the abstract system, even though land prices exceed car

\textsuperscript{71} Telephone Interview with Jill Nguyen, Assistant Att’y Gen., State of Minn. (July 2, 2013) (stating that during the last ten to fifteen years, there have been only about a dozen such claims); see also SHICK & PLOTKIN, \textit{supra} note 6, at 86 (noting that as of 1978, no valid assurance claims had ever been filed in Hennepin or Ramsey County); Patton, \textit{supra} note 24, at 530 (“There are seldom any demands upon this [assurance] fund, and it need not be large.”).


\textsuperscript{73} Patton, \textit{supra} note 24, at 527.

\textsuperscript{74} 148 Minn. 375, 377, 182 N.W. 449, 450 (1921).

\textsuperscript{75} \textit{Id.}
prices. The difficulty and cost of registering a parcel of land,\textsuperscript{76} lack of public awareness of the benefits of registered land,\textsuperscript{77} and the opposition of “industries and professions whose revenue depends upon real estate transactions”\textsuperscript{78} are generally the reasons given for the lack of greater acceptance of land registration.

Economic interests are most often the impetus behind a registration action.\textsuperscript{79} For example, commercial downtowns and other urban areas have a higher proportion of registered land parcels as they are more valuable. The owners want to be certain there are no title defects to impair their financial investment. Urban parcels also change hands more frequently than rural land, such as farms which may be in the same family for generations. Each transaction results in more documents to be examined and a higher degree of risk of title loss due to a missed adverse interest. Owners of land susceptible to adverse possession have recognized the value of registration as a bar to such loss of title. In North Carolina, for example, lumber corporations owned tracts of forest-covered swampland too large to be reasonably and regularly patrolled.\textsuperscript{80} The corporations registered the tracts to eliminate the possibility of title loss due to adverse possessors and to facilitate the later subdivision and sale of the land.\textsuperscript{81} In northern Minnesota, with its rich iron ore deposits, mining companies insisted on registered land to conclusively establish their title before starting to mine.\textsuperscript{82} In the early 1930s, one author reported that the City of Minneapolis refused to purchase any real estate for its own use until the title had been registered.\textsuperscript{83} Homeowners who have offered their home for sale, only to suffer the unfortunate experience of learning that their title is defective, are another class of individuals that choose to register title. While a quiet title action is available to adjudicate title defects in abstract property, a Torrens registration offers more certainty due to the short period following registration for

\begin{itemize}
  \item \textsuperscript{76} Note, supra note 4, at 831–32.
  \item \textsuperscript{77} Goldner, supra note 15, at 671 n.48.
  \item \textsuperscript{78} Charles Szypszak, Real Estate Records, the Captive Public, and Opportunities for the Public Good, 43 GONZ. L. REV. 5, 6 (2008).
  \item \textsuperscript{79} Frederick B. McCall, The Torrens System—After Thirty-Five Years, 10 N.C. L. REV. 329, 337 (1932).
  \item \textsuperscript{80} Id. at 337.
  \item \textsuperscript{81} Id.
  \item \textsuperscript{82} Id. at 338.
  \item \textsuperscript{83} Id. at 340; see also Patton, supra note 24, at 525 n.15.
\end{itemize}
someone to raise objections. A decree of registration cannot be attacked more than six months after its entry. 84

Registered land has significant benefits in addition to the certainty and conclusiveness of a certificate of title. Court adjudications generally are more quickly obtained in a proceeding subsequent than in a quiet title action and are more determinative than the latter. Judgments against a person with a name similar to, or the same as, the registered owner will not cloud the title. 85 Encroachments by neighbors will not result in loss of title due to adverse possession. 86 Disputed boundary lines can be adjudicated and marked on the ground with judicial landmarks. 87 A three-dimensional registered land survey can be used to convey air parcels. 88 And, at all times, the experienced professionals in the examiner and registrar’s offices review documents and legal descriptions for adequacy.

To be successful, the registered property system requires skill and knowledge of the county examiner of titles and registrar of titles. Most counties outside of the metropolitan area see little Torrens activity, and, consequently, outstate examiners do not have the level of experience and expertise of the metropolitan area examiners. In four counties—Hennepin, Ramsey, Anoka, and St. Louis—the examiners are full-time and paid as county employees. 89 In Washington County, the examiner holds a half-time, county-paid position. In the other counties, the user of the system pays the examiner for his or her services. It is likely that another reason for the infrequent use of registration in out-state counties is the additional cost that must be paid by the applicant to the examiner, who usually is a lawyer in private practice that the county designates as the county’s examiner. Minnesota law requires the judges of the district court to appoint an examiner in each county within their district. 90

To remove the impediments that prevent a wider usage of the registration system, the Torrens statute could be amended to allow the court to appoint one examiner in each of the ten judicial

85. Id. § 508.63.
86. Id. § 508.02.
87. Id. §§ 508.671, 559.25.
88. Id. § 508.47.
90. Minn. Stat. § 508.12, subdiv. 1.
districts, rather than one examiner in each of the eighty-seven counties. Also, the county could pay the examiner’s fees, similar to how counties contract with private attorneys to outsource the duties of the county attorney as needed. These two amendments would encourage use of registration statewide through cost reductions to the user and would increase the knowledge and expertise of Minnesota’s examiners.

IV. THE CPT COMES ON THE SCENE

While experts who are familiar with the recordation and the registration systems recognize the benefits of the latter, they also identify the initial cost and complexity of registering land as deterrents to registration. Many writers have urged the adoption of the English system where titles are registered on a “day-forward” basis; \(^{91}\) that is, a certificate is issued at the next transfer after adoption of such law. \(^{92}\) The certificate lists the owner and all outstanding encumbrances, which are shown in the title policy from a title insurance company or the abstract. \(^{93}\) From then on, documents must be registered on the certificate to affect the land. Documents that predate the first certificate date must still be examined, but over time will cease to matter due to age until, eventually, pre-certificate interests may be ignored completely.

This is one of the twelve key land registration reform concepts \(^{94}\) presented to the United States Department of Housing and Urban Development (HUD) in response to section 13 of the Real Estate Settlement Procedures Act (RESPA). \(^{95}\) Section 13 resulted from a 1969 presidential commission study that found high closing costs and interest rates may have kept potential home

92. See Goldner, supra note 15, at 690–92.
93. Id. at 692.
buyers out of the real estate market. The recordation system was seen as outmoded and responsible, directly or indirectly, for a substantial portion of real estate settlement costs. Congress instructed HUD and the Veteran’s Administration to jointly study settlement costs with the aim of reducing them to enable more citizens to buy houses. HUD hired consultants to conduct the research and advise Congress, resulting in a series of five reports.

The consultants examined recordation practices and systems, mapping and surveying, and land title registration systems. In one of these reports, the consultants studied registration systems used in the United States and other countries to ascertain why registration has made few inroads (and has lost many of those advances) in the United States, and yet is used in approximately thirty other countries. The report attempted to identify the statutory features that have contributed to the more successful Torrens systems and contained a draft of a model land title registration statute. The report identified six principal and overall objectives to be achieved in a registration system: accuracy, indefeasibility, speed, accessibility, reasonable cost, and protection against error or misconduct by public officials. The report recommended a phased-in, day-forward registration, as a simplified form of possessory title registration. Under the proposed system, the registrar would issue a certificate of possessory title to a landowner upon proof of the continuous possession of the land for a prescribed number of years and the payment of the real estate taxes for five years immediately preceding the application. The taxing authority’s records could even trigger the issuance of

98. See id.
100. HUD sought passage of the model act in a number of states without success; ultimately, that part of RESPA was stricken from the statute as obsolete. Act Approved Sept. 30, 1996, Pub. L. No. 104-208, sec. 2103(h), 110 Stat. 3009, 3009-401.
102. Id. at V-19 to -20.
103. Id. at V-20.
the first certificate automatically after the same person had paid the real estate taxes for five consecutive years. 104

HUD offered grants in an attempt to implement some of the recommendations. Hennepin County applied for and received one of only two grants HUD offered to local governments to implement a computerized method of handling Torrens records, rather than the labor-intensive handwritten records used since 1901. 105 While that project did not prove entirely successful until a much later iteration, the grant was predicated on the Hennepin County Examiner of Titles Office drafting and introducing a possessory title registration statute in the Minnesota Legislature. 106 Undoubtedly, HUD’s selection of Hennepin County to draft and propose such legislation was due, at least in part, to the success and acceptance of the Torrens system in Minnesota. The Hennepin County Examiner of Titles Office commissioned Bruce W. Burton, an attorney with a prominent St. Paul real estate law firm, and former dean and professor at William Mitchell College of Law, to draft the statute. 107 The approach Professor Burton and the others working on the concept took was not the day-forward registration the HUD report suggested, but rather was an administrative process available to a person who had owned land for more than fifteen years and had paid the taxes on the land for at least five of those years. The bill was introduced in 1981 and was adamantly opposed by local title insurance companies. 108 Yet, in 1982, the bill was reintroduced and passed, making Minnesota the first (and, so far, only) 109 state to allow possessory title.

Possibly, in order to reduce opposition, the legislation was drafted to be effective only in those counties where it was adopted by county board resolution upon the recommendation of the county recorder. 110 Eight years elapsed before the first county

104. Id. at V-21.
106. Note, supra note 4, at 842 n.131.
107. Id.
108. Id. at 843; Bruce W. Burton, Proposed Possessory Title Registration for Minnesota, HENNEPIN LAW., Sept.–Oct. 1981, at 16, 16.
109. Note, supra note 4, at 841.
110. Id. at 826; see also LANE & EDSON, P.C. & U.S. DEP’T OF HOUS. & URBAN DEV., supra note 13, at III-10 (noting that Hawaii has a possessory title system but such title does not ripen into absolute title). As of 1978, more than forty years after possessory title was authorized in Hawaii, no possessory titles had been registered.
111. The county recorder also is the registrar of titles.
board, Hennepin County, acted to adopt it in 1990. To date, fifteen of Minnesota’s eighty-seven counties allow CPT registrations: Anoka, Carver, Cass, Crow Wing, Hennepin, Hubbard, Isanti, Itasca, Mille Lacs, Ramsey, Scott, Sherburne, Swift, Todd, and Wabasha.

V. PROCEDURES FOR CPT REGISTRATIONS

CPT registrations are designated for uncontested titles and are administrative rather than judicial proceedings. The process is simple, which leads many homeowner applicants to proceed without a lawyer. To register title, the owner files an application, identifying the land and the names of all persons or parties who occupy the land; who appear of record; or who the applicant knows may have or claim to have any right, title, estate, lien, or interest in the land and the nature and character of such right. The examiner of titles issues a report after examining the application, the abstract, and the public records. The report sets forth all rights, estates, liens, and interests in the property and is mailed to the applicant. The applicant then provides the examiner with a list of the names and addresses of the persons identified in the report as having an interest in the land. The examiner mails the identified persons a notice of the CPT registration, setting out the interests that will be shown on the certificate to be issued, unless an objection is made within twenty days from the date of mailing. A party receiving the notice should review it to see how his or her interest will be reflected on the certificate to be issued, unless an objection is made within twenty days from the date of mailing to allow for

112. Res. No. 90-7-546R1, Ways & Means Comm., Hennepin Cnty. Bd. Proceedings 226 (July 10, 1990). Within weeks, the first three CPT applications were made, one by the principal real estate clerk in the county recorder’s office and the other two by prominent real estate lawyers who wished to register the title to their own homes. County Pioneers Records System for Land Owners, HENNEPIN FAMILY (Hennepin Cnty.), Aug. 31, 1990, at 1, 1.

113. See Posting of Kimball Foster, Kimball.Foster@hennepin.us, to Minnesota Examiners of Title Discussion List (July 7, 2013) (on file with author).

114. See MINN. STAT. § 508A.06 (2012) (setting out the application content).

115. Id. § 508A.13, subdiv. 1.

116. Id. § 508A.13, subdiv. 2.

117. Id. § 508A.13, subdiv. 4.

118. Id.

119. Id. § 508A.13, subdiv. 5.
investigation and correction. Absent a timely objection, the examiner will direct the registrar to issue the first CPT, subject to the following:

(a) the exceptions set out in section 508A.25;
(b) separate memorials showing all outstanding rights, titles, estates, liens, and interests set forth in the examiner’s report, and any additional liens, encumbrances, or other interests affecting the land, arising after the filing of the application; and
(c) a memorial of the examiner’s directive which must state that the land described in the directive is subject to the rights of persons in possession, if any, and any rights which would be disclosed by a survey except as those rights are limited by section 508A.02, subdivision 1.

The land is registered from the date the examiner’s directive is filed with the registrar, and thereafter all instruments affecting title to the land are filed with the registrar and memorialized upon the CPT. No publication or personal service of notice is required which allows for a speedy completion, and because the process is simple enough that most homeowners can proceed without a lawyer, the entire process can be completed inexpensively.

VI. SUBSEQUENT CHANGES

Historically, tax titles (those acquired through statutory forfeiture following the owner’s failure to pay real estate taxes) have been considered unmarketable in Minnesota. When the state is unable to sell land it has acquired following forfeiture, it is deprived of the income from the sale of the land and from future real estate taxes the new owner would pay. The lands would be considered marketable only after the expiration of a significant, and often unclear, period of limitations, a quiet title action, or a

120. See id.
121. Id. § 508A.22, subdiv. 1.
122. Id.
123. In counties with county-paid examiners, the county board establishes a CPT examination fee that is reasonable and reflects the actual cost to the county. See id. § 508A.82, subdiv. 18. In Hennepin County, the fee is $135. Res. No. 90-7-546R1, Ways & Means Comm., Hennepin Cnty. Bd. Proceedings 226 (July 10, 1990). Recording and abstracting costs are extra.
registration. When marketability is reduced, the property value is also reduced, as is the price a buyer is willing to pay for the land.

Several years after the Hennepin County Board of Commissioners approved the use of CPTs and after five years of experience with CPT registrations, the potential for achieving marketability of tax forfeited land through the CPT process was envisioned. The state would handle registration before the sale, resulting in higher sale values. The CPT process, being administrative rather than judicial, would be inexpensive and fast. The problem, however, was that the state, as the holder of tax-forfeited land, was not an “owner” as defined by Minnesota Statutes section 508A.01. The statute defined a possessory estate in land as:

[A] fee simple estate held by an owner who

(1) has been found on examination by the examiner of titles pursuant to section 508A.13 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 prior to the date of entry of the first CPT; and

(3) has paid the taxes on the land described for at least five consecutive years during the 15 year period.

Obviously, the state would not be able to meet the requirements of possession and tax payment. The statutory definition of owner had to be changed before tax-forfeited land owned by the state could be brought within its purview, and that was done in 1996. The legislature changed the definition of owner from one essentially equivalent to an adverse possession standard to something less. A possessory estate in land is now defined as:

a fee simple estate held by an owner who

125. See MINN. STATE BAR ASS’N—SECTION OF REAL PROP. LAW, MINNESOTA STANDARDS FOR TITLE EXAMINATIONS No. 45 (11th prtg. 1997).

126. See supra text accompanying note 122.


129. See MINN. STAT. § 541.02.
(1) has been found on examination by the examiner of titles pursuant to section 508A.13 to be the record owner of the land described; and
(2) has satisfied the examiner of titles that the owner is in actual or constructive possession of the land described.\footnote{129}

Under the revised definition, the state qualified as an owner and became eligible to apply for a CPT.\footnote{130}

A practice was developed in Hennepin County,\footnote{131} whereby a real estate lawyer, with considerable experience dealing with registered land, was hired by the county to review the off-record documents of the tax forfeiture. If it appeared that all statutory requirements had been met in the forfeiture proceeding, the lawyer would assemble the documents into a package, the county auditor would certify the package as accurate and complete, and an application for the CPT registration would be made to the examiner of titles. The document package, along with a forty-year abstract of title showing a source of title as defined in section 541.023, subdivision 7, was deemed sufficient for the examiner of titles to determine if the state had record title, and therefore could apply for a CPT. Nearly 500 parcels have been registered under the CPT process in Hennepin County, the majority of them tax-forfeited parcels.\footnote{132}

VII. RIGHTS OF THE CPT HOLDER

Both a CPT and a certificate of title show that the land described is subject to the following rights or encumbrances:

(1) liens, claims, or rights arising or existing under the laws or the Constitution of the United States, which this state cannot require to appear of record;
(2) the lien of any real property tax or special assessment;
(3) any lease for a period not exceeding three years when there is actual occupation of the premises thereunder;
(4) all rights in public highways upon the land;
(5) the right of appeal, or right to appear and contest the application, as is allowed by this chapter;

\footnote{130}{\textit{Id.} \textsection 508A.01, subdiv. 3.}
\footnote{131}{\textit{See id.}}
\footnote{132}{The county handles tax forfeitures for the state.}
\footnote{133}{E-mail from Eric Jorgenson, Pub. Records Supervisor, to Kimball Foster, Hennepin Cnty. Examiner of Titles (Oct. 25, 2013) (on file with author).}
(6) the rights of any person in possession under deed or contract for deed from the owner of the certificate of title; and

(7) any outstanding mechanics lien rights which may exist under sections 514.01 to 514.17.

An additional standard exception for CPT land is any claim that may be made pursuant to section 508A.17 within five years from the date of the first CPT. Unrecorded interests of persons not in possession would fall under this exception, as would recorded interests missed by the abstractor or examiner, or determined by the examiner to be nominal and ignored. The legislature has set out a five-year statute of limitations for asserting such interests, and until the expiration of that period, even good-faith purchasers for value are subject to them.

At the end of the five years, either at the request of the registered owner or automatically when the land is transferred, the registrar of titles will cancel the CPT and enter a regular certificate of title in the same format as issued in a chapter 508A registration, free of the five-year exception, but with two other exceptions:

(1) “[I]n lieu of reciting that the certificate of title was issued pursuant to the order of the district court, [it] shall recite that it was issued pursuant to the provisions of [section 508A] and recite the date the certificate of title was issued for the land involved.”

(2) The memorial of the examiner’s directive that states that “the land is subject to the rights of persons in possession, if any, and any rights which would be disclosed by a survey, except as such rights are limited by section 508A.02

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134. See Minn. Stat. § 508A.25(1)–(7). The rights of a person holding certificate of possessory title and a person holding a CPT are very similar. See id. § 508A.25(1)–(7). Appeals for a CPT are addressed in section 508A.29 of the Minnesota statutes.

135. Id. § 508A.25(6); see also id. § 508A.17, subdiv. 1.

136. Burton, supra note 108, at 17. Examples of the latter might be where the abstract contains no death certificate for a past joint tenant but the examiner is able to locate a newspaper obituary, or where a past conveyance mistakenly identified Block 12 instead of Block 2, and there is no Block 12 in the plat.

137. See Minn. Stat. §§ 508A.25(6), 508A.17, subdiv. 1.

138. Id. § 508A.85, subdiv. 3.

139. Id. § 508A.85, subdiv. 2.

140. Id. § 508A.85, subdiv. 1.

141. Id. § 508A.85, subdiv. 4.
subdivision 1." will be carried forward onto future certificates and may not be removed without an order of the district court. 

CPT land is registered subject to the rights of persons in possession. The persons may have acquired rights in the land as adverse possessors for the length of time and in the manner required for recognition as adverse possession; as the holders of a prescriptive easement; pursuant to an unrecorded deed or lease; or by agreement, acquiescence, or estoppel. Those rights, acquired before the CPT registration, will continue. A CPT registration is not intended to determine or to terminate rights of persons in possession; an owner who desires to determine or terminate rights cannot do so with a CPT registration. Unlike a regular registration, the county surveyor generally does not inspect property for the CPT, although the statute provides for such inspection at the examiner’s discretion. Whether or not a person in possession is given notice of the CPT proceeding, any rights of such person will survive the registration. If the person has adversely possessed the property for the required number of years and in the manner necessary to establish adverse possession, or has otherwise acquired rights in the property, the record owner’s CPT registration will not divest the possessor of those rights. If the possessor has not yet acquired rights as of the CPT registration, he or she is merely a trespasser both before and after the registration whether or not he or she has been given notice. While there is no mechanism in a CPT registration for determining whether such rights exist, the matter is preserved for later hearing. The CPT applicant may opt instead for a chapter 508 registration where the adjudication can be made, or postpone the matter to any time after the CPT is issued and a proceeding subsequent is commenced under section 508.71. The court then will determine any rights of parties in possession at the time of the CPT registration and, if no such rights existed, may order the deletion of the examiner’s

142. Id. § 508A.22, subdiv. 1.
143. Id. § 508A.85, subdiv. 4.
144. Id. § 508A.02, subdiv. 1.
145. Id. § 508A.01, subdiv. 1.
146. Id. § 508A.02.
147. Id. § 508A.14.
149. Id., 167 N.W.2d at 4–5.
150. Id. at 41, 167 N.W.2d at 7.
directive. Until such court order, the memorial of the directive, which states that the property is subject to the rights of persons in possession and matters that a survey would show, remains on the certificate.

A person in possession as a matter of right is not subject to the five-year limitation contained in Minnesota Statutes section 508A.17. In this respect, CPTs can be equated with a chapter 508 registration where a person in possession is not given notice of the registration. As early as 1902, the question of the rights of a person in possession without notice of the registration was answered by the Minnesota Supreme Court in Douglas v. Westfall. The court in this case discussed federal and state due process requirements and held that statutes of limitations for registered land that limit the time to open a decree of registration do not apply to an adverse claimant in actual possession of the land upon whom the summons was not served. There is no service of process in a CPT registration, merely mailed notice to those persons having a right, title, estate, lien, or interest. This is more of a courtesy mailing to inform them that the property in which they have an interest is being registered; that documents must now be filed with the registrar of titles rather than the county recorder; and of the language that will appear on the CPT reflecting their interest.

Also preserved for later adjudication are rights that would be shown by a survey. Although boundary lines can be registered after the land has been registered, they cannot be registered in conjunction with a CPT registration. Assume a lot is shown as sixty feet wide on the plat. The conveyances historically have been the east thirty feet and the west thirty feet. The owner of the east thirty feet applies for a CPT and a certificate is issued to him. However, a

151. MINN. STAT. § 508A.85, subdiv. 4.
152. Id. § 508A.22, subdiv. 1(c).
153. Id. § 508A.17, subdiv. 1.
155. See id. at 439–44, 89 N.W. at 176–78.
156. Id. at 444–45, 89 N.W. at 178.
157. Note that while the applicant must disclose in the application all persons who have or claim to have an interest, notice is given only to those determined by the examiner as having a right, title, estate, lien, or interest. Compare MINN. STAT. § 508A.06(5) (providing that the applicant disclose the names of persons he or she knows “to have or to claim any right, title, estate, lien, or interest in the land”), with id. § 508A.13, subdiv. 4 (providing that the applicant furnish a list of persons “having any right, title, estate, lien, or interest in land”).
158. See id. § 508.671, subdiv. 1.
survey would show that the lot is only fifty-eight feet wide with a fence running down the middle separating the east twenty-nine feet from the west twenty-nine feet. Assuming the fence location reflects the actual occupation of the lot and has been sufficiently established as the boundary by practical location, the CPT registration of the east thirty feet cannot deprive the westerly owner of the east one foot of his property, although it is included in his neighbor’s registration.

By opting to postpone adjudication of the rights of persons in possession or matters that would be shown by a survey, the CPT holder risks the loss of key evidence showing the status of any rights on the date of the registration. One Minnesota examiner outside the metro area requires as a general rule that a survey be provided by a CPT applicant when the land to be registered is described by metes and bounds. This examiner then attaches the survey to the CPT directive, and it becomes part of the record. While the accuracy of the survey is not determined, it may disclose problems prompting the applicant to opt for a chapter 508 registration in lieu of a CPT. If not, the survey may be helpful in a future judicial setting. Boundary encroachment and other possessory issues will rarely arise, but should that happen, they can all be handled in a proceeding subsequent to initial registration.

VIII. CONCLUSION

Minnesota has the benefit of a strong and well-functioning Torrens system, which has succeeded where most other states have failed, and has the unique situation where fifteen counties to date have the benefit of CPT registrations. Minnesota has a statewide Examiner of Titles Association that meets semiannually, and many of the state’s examiners of title are active in the state bar association with several examiners sitting on the real estate section’s legislative committee. The bar association hosts an e-mail system that allows all Minnesota examiners to communicate easily with the other examiners, asking questions and sharing advice. Through sensible legislative updates to recognize and anticipate changes in

technology, the needs of Minnesota’s citizens, and of others who do business in the state, the Torrens system will continue to be recognized as a valuable state asset.