

Land Registered Under the Torrens Act

Several years ago an attorney drafted a “family trust” for a Seattle couple. Without going into details about why they chose that mechanism for their estate plan, this story begins after the couple both passed away. Their son, the “successor trustee” had an offer to buy the family home and that deal was in progress – until the title company called to say that the son couldn’t convey good title to the buyer. It turns out the family home was originally transferred to the deceased parents by a Certificate of Title under the Torrens Act; it had not been deeded to them – so the title company couldn’t perform its title search and the seller couldn’t complete the sale.

The Torrens Act arose following an Australian method for recording ownership interests in sailing ships, where a “Certificate of Title” was given to each new owner – much like today’s car registration process. The problem arises because title companies have no access to these private documents, and cannot guarantee ownership.

There is, however, a simple court process whereby the family can obtain a court order to transfer title to the new purchaser, and even have the court order that the land be taken off the “registration” rolls and placed into the recording system. Nearly all land records today are held in the recording system, which greatly facilitates the job of the title company.