

LAND ADMINISTRATION AND MANAGEMENT PROJECT

**KEY DOCUMENTS
PREPARED BY LAND LAW ADVISER:
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REPORT A9



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INTRODUCTION

This document contains a compilation of papers prepared by the Land Laws Adviser during the Adviser's second assignment with the LAMP from 21 February, 2003 to 21 March, 2003 . The purpose of the assignment was to identify the law and regulatory changes required to facilitate the use of free patents for mass titling.

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AMENDMENT TO THE LAWS AND REGULATIONS RELATING TO FREE PATENTS IN ORDER TO FACILITATE SYSTEMATIC ADJUDICATION

Although the Free Patent process may not be the best process for simple, fast and efficient titling, with a number of amendments to the existing laws and regulations to facilitate the process, it could provide a reasonable vehicle for systematic adjudication pending more major reform of the land laws. Based on the experiences of the LAMP team in PIO 1 in Leyte, it would greatly facilitate the process of mass titling if the laws regulations and instructions were altered to provide the following flexibilities for mass land titling:

(a) AMENDMENTS TO THE LAW

1. Reduce the period of possession required to obtain a Free Patent from 42 years to 10 years

For free patent, possession and occupation of the land must be 30 years prior to the effectivity of R.A. No. 6940, which law took effect upon its publication in a newspaper on April 15, 1990. Possession must have commenced on April 15, 1960.

This period is too long and unrealistic and creates difficulty in proving claims. Past free patent laws required a lesser period. Act 926 of 1903, required possession only since August 1, 1890 – or thirteen (13) years. Act 2874 of 1919 required possession since July 4, 1907, twelve (12) years. C.A. No. 141 originally required possession since July 4, 1926, or ten (10) years. R.A. No. 782 of July 21, 1952, required possession since July 4, 1945, or only seven (7) years. Under the Civil Code, ownership of land can be acquired by adverse possession or acquisitive prescription. With good faith and a just title, possession of the land under conditions laid down by law ripens into ownership after the lapse of ten (10) years, through ordinary prescription. In the absence of good faith and a just title, possession for 30 years ripens into ownership through extraordinary prescription.

The free patent law should be amended by shortening the period of occupancy to ten (10) years, following the period required for ordinary acquisitive prescription under the Civil Code.

Note: DENR AO No.2002-36 indicates that the period required by s.44 of CA 141 is thirty years prior to an application. This is either a mistake or an attempt to amend s.44. However, it is an established rule of statutory construction that administrative regulations cannot amend or expand the law.

Action Required: Amend s. 44, CA 141

2. Clarify the right for a grant of Free Patent over tenanted land

In Leyte it has been found that up to 60% of the land in some Barangays is tenanted. Section 44 of CA 141 entitles a person to a Free Patent if they have continuously occupied and cultivated the land for the requisite period. The wording of the Act leaves open to question the entitlement of an owner whose land is occupied and cultivated by a tenant farmer. If a tenant is in occupation under an agreement which recognizes the ownership rights of the applicant there does not appear to be any good reason why the time that the tenant is in possession should not run for the benefit of the applicant.

The DENR Manual for Land Disposition (1991) requires a free patent investigation to consider whether "the applicant used share tenants to cultivate the area in violation of PD 152". PD 152 prohibits the employment or use of share tenants in whatever form for purposes of complying with the requirements of the Public Lands Act regarding entry, occupation, improvement and cultivation. It appears that this Decree was intended to apply primarily to Homestead Grants and operate prospectively from the time of application rather than retrospectively. But this is not clear.

The law should be clarified to allow constructive occupation by a tenant to satisfy the applicant's period of occupation.

Action Required: Amend s.44, CA 141 , PD No. 152

3. Extend the Free Patent provisions for administrative confirmation of incomplete or imperfect title to apply to residential, commercial, industrial, government and church lands.

In 1982 Batas Pambansa Blg. 223 introduced provisions extending Free Patents to residential lands of the public domain, although it was expressly provided that the provisions did not apply to residential lands located in cities, in capitals of provinces, in first class, second class, third class and fourth class municipalities, and in townsite reservations. It was also provided that all applications for free patent should be filed on or before December 31, 1987. This deadline has never been extended. There is a need to extend these provisions to apply to all residential land.

In addition, a much greater benefit would be gained from the adjudication process if the systematic adjudication teams could include in the data gathering and title registration other classes of land which they come across in their investigations, such as commercial, industrial, government and church lands. This facility would greatly expedite the ultimate goal of a comprehensive record of all lands and meet the needs of holders of lands other than agricultural lands.

CA 141 currently limits the entitlement to a free patent to natural persons who are natural-born citizens of the Philippines. In the case of commercial, industrial, government and church land this will need to be expanded to include corporations and other legal entities entitled to hold land.

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Action Required: Amend CA 141 by the inclusion of new provisions.

4. Remove restrictions and encumbrances on the Free Patent

(a) Restriction on alienation or encumbrance

Under Section 118, of the Public Land Act, lands acquired by free patent or homestead provisions shall not be subject to encumbrances or alienation from the date of approval and for a term of five (5) years from and after the date of issuance of the patent or grant nor shall they become liable to the satisfaction of any debt contracted prior to the expiration of said period; except in favor of the government or any of its branches of units or institutions or legally-constituted banking corporations.

These provisions are not appropriate in situations where persons have been in possession and occupation of the land for many years. These persons should be allowed to transfer their lands or mortgage them to banking institutions in the same way as persons acquiring title through the judicial titling process. The restrictions do not apply where a title issues under the judicial titling process.

Furthermore, unrestricted ownership of the land would be in keeping with the principle of a free land market as a contributor to the nation's growth through the development of a market economy.

Action Required: Amend s.118, CA 141 to remove Free Patents from the application of these provisions.

(b) Right of re-purchase

Section 119 of the Public Land Act provides that every conveyance of land acquired under the free patent or homestead provisions shall be subject to repurchase by the applicant, his widows or legal heirs within a period of 5 years from the date of the conveyance.

This is another provision which does not apply to titles issued under the judicial titling process. Not only is this provision an impediment to the free operation of the land market but it's operation is unfair.

Cases have occurred where the value of the land had sharply increased or that the buyer has introduced permanent valuable improvements on the land before the lapse of 5 years.

The Supreme Court has ruled that a homestead or free patent grantee who exercises his right of repurchase cannot be made to pay more than the purchase price that he received even if the value of the land has appreciated several times over. This can be unfair to the buyer, especially if the appreciation in the value of the land was due to his efforts and investments. It represents an increment in the value which the homestead or free patent grantee did not deserve.

In like manner, the Supreme Court has ruled that where the buyer introduces permanent improvements on the land, he is considered as a builder in bad faith, thus, he has to remove the same at his own expense, without any obligation on the grantee to reimburse the value thereof.

Even in the guise that this is necessary to serve public policy for the grantee to keep the land, it can work injustice to the buyer who has invested money to introduce valuable improvements on the land.

Action Required: Amend s.119, CA 141 to remove Free Patents from the application of these provisions.

(c) Restrictions on transfer to corporations, associations or partnerships

S.121, CA 141 provides that, except with the consent of the grantee and the approval of the Secretary of Natural Resources, and solely for commercial, industrial, educational, religious or charitable purposes or for right of way, no corporation, association, or partnership may acquire or have any right, title, interest, or property right whatsoever to any land granted under the free patent, homestead, or individual sale provisions of this Act or to any permanent improvement on such land.

This is another restriction on the operation of a free land market which does not apply to titles issued under the judicial titling process.

Action Required: Amend S.121, CA 141 to remove Free Patents from the operation of these provisions.

5. Provide for the issue of Free Patents without payment of outstanding taxes.

The law is presently unclear on the position of the payment of taxes before the issue of a patent. It would expedite systematic adjudication and encourage greater participation by landholders if free patents could issue without requiring payment of taxes, providing there is a valid claim to ownership. It is considered that, on a proper reading of s. 44, CA 141, there is no requirement for payment of taxes where the land has been occupied and cultivated. Nevertheless, DENR Memorandum Circular No. 9 of May 5, 1993 and Joint DAR-DENR Memorandum Circular No.14 Series of 1997 require that the real estate taxes must be paid, although LRA MC dated February 20, 1990 provides that Realty Tax clearance need not be required in the initial registration of patent titles. The Department of Justice, in an advising to the LAMP Task Force dated May 29, 2002, stated that original certificates of title should be issued irrespective of whether or not taxes due on the land have been paid. It was further stated that "The issuance and delivery of ordinary, cadastral or patent titles should under no circumstances be used as a means for enforcing the collection of land taxes".

Action Required:

- (i) Amend CA 141 to clarify that payment of real estate taxes is not a prerequisite to issue of a free patent where the land has been occupied and cultivated.
- (ii) Amend the abovementioned Memorandum Circulars.

(b) AMENDMENTS TO LAWS AND/OR REGULATIONS

1. Provide for a minimum fee for issue of Free Patents

Because of the initial start up costs associated with systematic rights registration it is not practical to attempt to recoup all of those costs. International experience through a number of projects has noted that cost recovery must be set at a low level to encourage persons to use the process. The gap between cost and recovery is

effectively a government subsidy of the process. It is unlikely, however, that a project that is designed to help the poor can be sustainable without such a subsidy.

The advantage of subsidizing of the process is that it makes the process of parcel-based rights registration viable. By charging a small fee to the applicant, however, there can be partial cost recovery. Notwithstanding the cost to the government in providing the subsidy, there are greater benefits seen for the future than the costs at present. There are also advantages in setting a flat fee for certainty for the public and also administrative simplicity. This fee should be payable on issue of the free patent rather than on the making of the application.

Action required: Amendment of the laws and regulations prescribing fees for free patents.

2. Provide a simple and cheap means of attestation of documents required for evidentiary purposes.

Currently statements in writing to establish possession and ownership must be attested before a notary. This costs P100 for each attestation and, generally several statements are required for each matter. This cost is a burden for the landholders and causes them to be reluctant to take part in the adjudication proceedings. This burden could be overcome if the statements could be attested before DENR officials.

Action Required: Include a new provisions enabling statements for the purpose of Free Patent issue to be attested before those categories of officials provided by Administrative Order.

Other issues for possible consideration:

3. Reliance on unregistered deeds.

One of the issues causing difficulty for the Prototype in Leyte is the requirement of the ROD that any unregistered supporting documents in the chain of title should first be registered.

The requirement of the ROD for registration of all unregistered documents appears both unreasonable and not supported by the law. Registration of documents relating to unregistered land is not compulsory and lack of registration does not, of itself, affect the validity of the documents. Registration is designed to bind third parties through constructive notice. However, the law itself declares that “any recording made under this section shall be without prejudice to a third party with a better right.” Under this situation an earlier unregistered instrument prevails over a later instrument notwithstanding registration of the latter. The rule of preference to the one of two deeds which is first recorded, contained in Article 1544 of the Civil Code, does not apply to unregistered land. The constructive notice resulting from registration is effective and binding only to future and subsequent dealings on the land. In short, registration does not afford full protection, does not ensure validity and registration of unregistered documents immediately prior to title issue does not seem to serve any purpose.

Action Required: There does not appear to be any legal requirement that deeds be registered in order to be accepted as part of the evidence of title. Nevertheless, in view of the insistence of the ROD on this requirement it might be necessary to stipulate that unregistered deeds are acceptable.

4. Technical descriptions

Certificates of title are required to contain a technical description of the land in the title that is complicated, tedious and costly to produce, prone to error and not readily understood by the public. The practice is more in keeping with an outdated deeds registration system than a modern title registration, where the emphasis should be on simplicity and efficiency. The practice is an impediment to efficient mass titling.

There does not appear to be any legal requirement that a patent or a certificate of title contain a technical description. However, in this case also, it may be necessary to specify the form of land description on patents in order to overcome the views of the ROD.

Action Required: Where land is defined by a plan on public record, the free patent for that land should not be required to contain a technical description. The land should simply be described by reference to the plan.

(c) AMENDMENTS TO REGULATIONS

The processing of free patents could also be simplified and expedited by changes to existing procedures prescribed by Administrative Orders and Memorandum Circulars. This will be the subject of further investigation and recommendation.

PROPOSED CHANGES TO REGULATIONS TO FACILITATE MASS TITLING OF FREE PATENTS

- 1. Allow mass notice of applications by allowing a single notice to apply to multiple parcels rather than requiring a single notice for each parcel.**

The notice should not be an individual notice for each land parcel but, in recognition of the mass processes, it should permit a single notice containing multiple applications. This would simplify not only the preparation and posting of notices but also the affidavit of posting.

- 2. Permit the public notice to be displayed by the base camp rather than by CENRO personnel.**

In the interests of streamlining processes, the prototype is seeking to have all field processes completed at one time before referring the file to CENRO for processing. This will permit the interview and acceptance of the evidence, the posting and the ocular inspection to be completed before the file is referred to CENRO for review of the application. See also the following paragraphs 3, 4 & 5.

CENRO considers that before the application can be posted, it needs to be stamped "Received" and also stamped "Verified" in CENRO. This of course is an administrative process that may not add value but has characterized processes in the past. These steps should not be preconditions to posting of notices. Although CENRO has agreed to change its processes to conduct a form of pre-verification, it is not sure if it has the power to dispense with the stamping requirements. It is recommended that the regulation simplify the posting requirements to permit efficiencies.

- 3. Provide that the affidavit of public notice from the Systematic Adjudication Team Leader, that notices have been displayed and no objections received, will satisfy the notice requirements.**

See para. 2 above.

- 4. Allow public objections to be accepted by the base camp, permitting the base camp or CENRO to accept objections.**

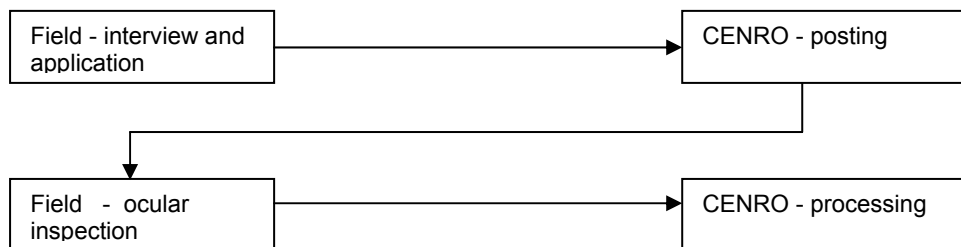
As all operations at this stage are intended to be carried out by the base camp it seems appropriate that objections be received by base camp. This will have the advantage of facilitating public access.

- 5. Provide that objections received on one or more parcels should not delay the processing of the remaining parcels.**

In the interests of expedition, where an objection is received in respect of a parcel included in a mass notice of applications, processing should still proceed in respect of the parcels which are not the subject of objection.

6. Eliminate multiple interviews by permitting the ocular inspection and the original interview to be carried out at the same time.

In previous applications received on an individual basis, the application is posted by CENRO after the owner lodges an application for public land supported by documentary evidence. The posting occurs and then the deputy public land inspector goes into the field to conduct the ocular inspection. Although these processes work well for individual applications initiated by the owner, they bring inefficiencies for systematic titling processes. For example it means two separate interviews by the adjudicator (i) to complete the application and to receive the evidence. Then a delay occurs for 14 days while posting occurs (ii) at the completion of the notice period the adjudicator goes back into the field to conduct the ocular inspection. This results in the following cyclical process:



In the interests of streamlining processes, the prototype is seeking to have all field processes completed at one time before referring the file to CENRO for processing. This will permit the interview and acceptance of the evidence, the posting and the ocular inspection to be completed before the file is referred to CENRO for review of the application.

7. Permit CENRO to utilize contract processors.

The existing process is undertaken by government staff within CENRO who have a level of expertise in this area. However, when the project expands this will provide a bottleneck that may limit production. It is recommended that CENRO be empowered to recruit and train contract staff to undertake the processing of claims. To ensure the greatest flexibility it would be beneficial if processing were able to be undertaken in the field such as at the base camp.

8. Remove the requirement that deputy public land inspectors carry out the ocular inspections.

Under the present practice only regular employees or those occupying permanent positions in CENRO may become land inspectors. In CENRO Leyte there are six deputy public land inspectors, so an expanded land titling programme will place a major burden on these staff. It is recommended that CENRO be empowered to engage contractual deputy public land inspectors. This will provide greater flexibility when DENR seeks to gear up the production processes. The advantage of this approach is that mass land titling processes can be expanded more rapidly using contract staff, who will be trained by the same programme conducted by the Land Management Division. This will ensure that quality of outputs is maintained. The processing of applications by CENRO provides

another safeguard. It is recommended that the regulations specifically permit the use of contract staff.

9. Assuming the recommended relaxation of the attestation/oath provision of the PLA is enacted, allow documents to be signed before more accessible officers such as the land management examiner, the land registration examiner, the records officer, the special investigator or engineer.

This, again, is part of the strategy of having all processes undertaken in the field in order to simplify and expedite the handling the matters.

10. Permit the issue of free patents up to 12 ha. in size.

The Public Lands Act recognizes that free patents can be issued for land up to 12ha in area. However, Joint DAR-DENR Memorandum Circular No.14 of 1997 limits a free patent to 5ha, with DAR first covering the excess area and issuing a CLOA or Emancipation Patent as the case may be prior to the issue of the free patent. The issue of free patents up to 12ha would speed up the mass titling process. MARO has agreed and has confirmed that the titling process will in fact help its efforts at land redistribution. The existence of a title and a land survey will assist MARO in its recovery process. Registration of a title exceeding 5ha does not hinder MARO's work and it removes the potential for claimants to use the land titling process to avoid CARP obligations by subdividing the land before titles are issued. However the ROD has indicated that it will not register free patents exceeding 5ha.

11. Decentralise the approval of free patents by permitting approval under delegated authority.

Pursuant to the most recent pronouncement on the subject, DENR AO 2002-20, free patents covering an area of not more than 3ha may be signed by the Regional Executive Director, while patents larger than that in area must be forwarded to Head Office for approval/signing by the Secretary. Whilst the need for checks and balances is understood, it is considered that setting up a mass titling programme will require a degree of flexibility in the process to sign the multiple titles likely to be issued under the programme. Although approval of the Secretary may be retained for individual issue of patents, it is recommended that in the case of mass titling all patents be approved by PENRO.

12. Permit the free patent to issue without inquiry into the amount of land owned elsewhere by the applicant.

Current practice is for CENRO, prior to issue of the free patent, to inquire as to the amount of land owned elsewhere by the applicant. This appears to be a time-consuming and unproductive exercise which might be dispensed with .

13. Provide for a minimum fee for issue of Free Patents.

Because of the initial start up costs associated with systematic rights registration it is not practical to attempt to recoup all of those costs. International experience through a number of projects has noted that cost recovery must be set at a low

level to encourage persons to use the process. The gap between cost and recovery is effectively a government subsidy of the process. It is unlikely, however, that a project that is designed to help the poor can be sustainable without such a subsidy.

The advantage of subsidizing of the process is that it makes the process of parcel-based rights registration viable. By charging a small fee to the applicant, however, there can be partial cost recovery. Notwithstanding the cost to the government in providing the subsidy, there are greater benefits seen for the future than the costs at present. There are also advantages in setting a flat fee for certainty for the public and also administrative simplicity. This fee should be payable on issue of the free patent rather than on the making of the application.

This issue is also included in the proposed amendments to the laws.

14. Allow the fee for free patents to be paid at the time that the free patent is issued.

The point in time at which fees must be paid is not clear. AO No. 2000 – 62 provided that no application shall be given due course unless all fees are paid. Previous guidelines had permitted payment to be postponed to the time of title issue if the applicant. However, AO No. 2000 – 67, which prescribed new procedures for processing applications is silent on this point.

It would encourage landholders to participate and also ensure the proper collection of fees if the fee was collected by CENRO at the time of title issue, rather than by the base camp at the time of initial processing.

15. Provide for the issue of Free Patents without payment of outstanding taxes.

DENR Memorandum Circular No.9 of May 5, 1993 and Joint DAR-DENR Memorandum Circular No.14 Series of 1997 both require that real estate taxes be paid as a condition precedent to the issue of a free patent. While not entirely clear on this point, the law does not seem to support these Circulars. In fact S.115 of the Public Lands Act appears to suggest that there is no tax liability at the time of application. DOJ has recently advised that “The issuance and delivery of ordinary, cadastral or patent titles should under no circumstances be used as a means for enforcing the collection of land taxes” - see advising to the LAMP Task Force dated May 29, 2002. Also, LRA Memorandum Circular dated February 20, 1990 provides that Realty Tax Clearance need not be required in the initial registration of patent titles.

The requirement operates as a disincentive to landholders to participate in the mass titling programme and should be withdrawn.

This issue is also included in the proposed amendments to the laws.

16. It would be preferable if all the proposed changes could be incorporated into the one comprehensive Administrative Order covering all matters relating to the mass titling of free patents.

**World Bank/AusAID Fifth Supervision Mission and Mid-Term Review
Aide Memoire – Annex VII**

Annex VII recommends various measures which might be taken to facilitate mass titling using free patents and also identifies some issues which might be clarified with regard to the judicial titling process.

Following are the recommendations and my comments thereon.

4 a) To permit field processes to be truly systematic, and to address the needs of landholders of land other than agricultural land, usually the higher value land, the availability of free patents needs to be expanded to residential, commercial and industrial land;

This has been recommended for inclusion in the Draft Bill.

b) To ease problems of proof of occupation, the required period of land occupation needs to be reduced from 42 years to the 10 year period of prescription under the Civil Code;

This has been recommended for inclusion in the Draft Bill.

c) To bring land under tenancy under free patent titling, there is a need to allow constructive occupation by a tenant to satisfy the applicant's period of occupation and cultivation;

This has been recommended for inclusion in the Draft Bill.

d) There is a need to remove the prohibition of transfers and mortgaging for five years after the grant of the patent, recognizing that free patents are now being issued to landholders familiar with land markets and land values, and less in need of protection;

This has been recommended for inclusion in the Draft Bill.

e) There is a need to allow the grant of the patent and its registration to proceed without a usually futile but time-consuming inquiry into the amount of land owned elsewhere by the applicant;

This will be recommended for inclusion in an Administrative Order or Circular.

f) To permit comprehensiveness in systematic work, consideration should be given to making free patents available not only for privately held land but for government and church land.

This has been recommended for inclusion in the Draft Bill.

g) To consider whether there is not a better way to protect the rights of the family than the current right of repurchase by the applicant, widow or legal heirs within five years from the date of any reconveyance of the land by the patent-holder; a requirement that the land be titled to both husband and wife could be more effective and would not undermine the marketability and mortgageability of the land;

Unlike homestead patents the free patent recognizes the right for both husband and wife to apply and to be registered. However, it is proposed that the Draft Bill remove the right of repurchase from free patents.

h) There is a need, in recognition of those same changed circumstances, to remove the requirement of consent of the Secretary of DENR to any transfer to corporations, associations and partnerships, and

This has been recommended for inclusion in the Draft Bill.

i) There is a need to relax the attestation/oath provision to allow the officials before documents can be signed to be specified by DENR regulation, to facilitate proof and lower costs in the systematic work.

This has been recommended for inclusion in the Draft Bill.

5. In addition, the DAR-DENR Circular 14 of 1997, imposing a five hectare limit on free patents to enforce agrarian reform limits on size of holdings, should be reconsidered; the titling process should not be used to enforce land reform, and the parcels should be patented up to the twelve hectares allowed under the Public Land Act, though subsequently DAR may of course apply its more stringent ceilings.

This will be recommended for inclusion in an Administrative Order or Circular.

6. It would also greatly facilitate the process of mass titling if DENR regulations and instructions were altered to:

a) allow mass notice of applications, allowing a single notice to apply to multiple parcels rather than requiring a single notice for each parcel;

b) reduce the public notice requirement from 30 days to 15 days; permit the public notice to be displayed by the base camp;

c) replace the affidavit of public notice from barangay chairman with an affidavit from SAT (*Systematic Adjudication Team*) leader that notices have been displayed and no objections received;

d) allow public objections to be accepted by the base camp, permitting the base camp or CENRO to receive objections;

e) eliminate multiple interviews by permitting the ocular inspection and the original interview to be carried out at the same time;

f) eliminate multiple interviews by permitting the ocular inspection and the original interview to be carried out the same time, and remove the requirement that deputy public land inspectors carry out the ocular inspection; ***(repeats e)***

g) permit CENRO to utilize contract processors;

h) reduce public notice period from 30 days to 15 days; and – ***(repeats b)***

i) assuming the recommended relaxation of the attestation/oath provision of the PLA is enacted, allow documents to be signed before more accessible officers such as the land management examiner, the land registration examiner, the records officer, the special investigator or engineer.

These will be recommended for inclusion in an Administrative Order or Circular except as regards the public notice requirement which is already 14 days.

7. There are areas in which the Ministry of Justice could by instruction clarify issues that have created uncertainty with regard to registration of titles from mass use of judicial titling, an ongoing process in the pilots and one which must be completed, and that would in some cases also facilitate mass titling using free patents;

a) clarify that the claimant can produce a non-registered deed in support of a claim of title;

The requirement of the ROD for registration of all unregistered documents appears both unreasonable and not supported by the law. Registration of documents relating to unregistered land is not compulsory and lack of registration does not, of itself, affect the validity of the documents. The

constructive notice resulting from registration is effective and binding only to future and subsequent dealings on the land, and registration of unregistered documents immediately prior to title issue does not seem to serve any purpose. This issue should be taken up with DOJ.

b) clarify that non-payment of real property taxes is not an impediment to the issue of a title, if the arrears are recorded on the title as a lien;

The DOJ has already advised that the issue of original titles should not be subject to the payment of real estate taxes – see advising to LAMP Task Force dated May 29, 2002. The only circumstance in which taxes would be payable would be where a supporting deed was required to be registered. Such a deed could not be registered without payment of all taxes due on that transaction. However, if supporting deeds are not required to be registered no tax liability arises.

c) clarify that the Solicitor General should not lodge appeals against decisions of the municipal trial court in judicial proceedings;

This is fairly broad and might not obtain agreement. The main point on which agreement should be sought is that the Solicitor General should not appeal as a matter of course in all cases. From the LAMP point of view it would be sufficient if the Solicitor General would not appeal in cadastral proceedings. This should be taken up with the DOJ.

d) clarify that the Solicitor General's Office should not require the project to submit all answers to the Solicitor General's Office for review;

This should be taken up with the DOJ

e) authorize several key players from the Solicitor General's Office to participate in the PIO 1 leveling off workshop with judges, Commissioners of the Court, and cadastral officers, scheduled for 27-28 March 2003;

Invitations to attend should be given to the Solicitor General

f) clarify whether the length of occupation under current law that must be proved for free patent applications is from 16 April 1960 or simply 30 years prior to the date of the claim;

The current law still is that the length of occupation that must be proven is from 16 April 1960. A recent DENR AO 2002-36 quotes s.44 CA 141 as requiring only occupation for 30 years prior to application. This is either a misquote or an erroneous attempt to change the law, as a basic rule of statutory construction is that an administrative order cannot change a law. I think it would be a bit embarrassing for DENR if the DOJ was asked to clarify this. DENR has been requested to AO 2002-36.

g) clarify whether the passage of the free patent renewal law in 2002 had the effect of reducing the period of occupation required to be proved in cadastral proceedings (in the current pilots proof back to 12 June 1945 is being required).

It seems clear that RA 9176 did not have any effect on the required period of occupation in cadastral proceedings. No clarification need be sought.

PROCEDURE FOR CORRECTION OF PLANS AND TITLES IN THE CASE OF DEFICIENT SURVEYS

It appears that there are surveys in existence that are deficient for various reasons. Some of these deficiencies are the result of survey control problems causing orientation or positional inaccuracies. Others relate to graphically surveyed parcels that have shapes and areas appearing on the plan that do not correspond with that appearing on the ground.

In order to overcome this an amendment survey plan showing the correct boundaries, together with a detailed investigation report must be prepared either by a private or Government surveyor and approved by DENR. However, there does not appear to be any law which defines the conditions for amendment of a title issued for a piece of land the subject of a defective survey. It seems that interested parties or jointly with the title holder may file a petition with the proper Court of First Record for the amendment of the title. This may be done under s.108 of PD 1529 which, although not specifically directed to this issue, provides that :

“No erasure, alteration or amendment, shall be made upon a register book after the entry of a certificate of title or of a memorandum thereon and the attestation of the same by the Register of Deeds, except by order of the proper Court of First Instance. A registered owner or other person having an interest in registered property or, in proper cases, the Register of Deeds with the approval of the Commissioner of Land Registration, may apply by petition to the court upon the ground that an omission or error was made in entering a certificate or memorandum thereonand the court may hear and determine the petition after notice to all parties in interest, and may order the entry or cancellation of a new certificate, the entry or cancellation of a memorandum upon a certificate, or grant any other relief upon such terms and conditions As it may consider proper.”

There is a need to provide a better legal basis for the amendment of titled lots that have defective technical descriptions because of erroneous surveys. The provisions need to be more flexible because, in many cases the technical defect may be minor but, under the present law the amendment goes through the judicial process which is tedious, time consuming and costly. The law should enable action to be taken on amendment cases using an administrative process only.

Under an administrative process the registration authority could either

- (i) prior to registration of the plan, send notice to persons having an interest in affected lands, specifying a period for objections. Where any objection cannot be upheld the plan should proceed to registration unless a court order is obtained prohibiting registration: or
- (ii) after registration of the amendment plan, send notice to all affected parties of the intention to amend the title, specifying a period for objections. Where any objection cannot be upheld the title should be amended unless a court order is obtained prohibiting the amendment.