

SurView

NEWSLETTER

by surveyors for surveyors

January 4, 2021



MESSAGE FROM THE PRESIDENT

Dear fellow members

I extend New Year's greetings from the Board of Directors of the Institute of Surveyors of Trinidad and Tobago.

As we bid farewell to 2020, we cannot help but reflect upon how a minute organism changed the entire world in a single bound. It was truly an unprecedented year in our lifetime dealing with the Covid-19 pandemic and the destruction left in its path. Unfortunately many have lost loved ones and our thoughts and prayers are with their families.

Having been undoubtedly one of the most turbulent years for the ISTT, I must acknowledge Mr. Stephen Joseph Affoo and the 2019-2020 Board of Directors inclusive of the Office Administrator for their unwavering commitment and resilience in navigating the uncharted waters of the pandemic to put us in the favourable position we are at. It was truly an uncertain period which required a quick sense of adaptability. We look to the new year with renewed hope, seeking to reinvent ourselves, refocus on our businesses and rekindle the spirit of the profession.

Many aspects of life, and in particular, the way we conduct our business has dramatically changed. In fact, many businesses now operate virtually and no longer need the 'brick and mortar' space. As Surveyors we have to adapt to that virtual world and embrace the advancing technologies. What we do with that experience is up to us, but do note, the ISTT is here and has been supporting our membership for the last 25 years.

In spite of many challenges that we overcame in 2020 and those we will face in 2021, I address you with pride as this year marks our 25th Anniversary. Many management committees and boards of directors came and went, having formed, developed and charted the course of our beloved Institute giving the current membership the opportunity to boast in our longevity. In the midst of this pandemic the 2020-2021 Board of Directors and I remain committed to seek innovative ways to service our membership and the wider public. It is my hope that 2021 brings renewed prosperity, revitalization of businesses and a sense of calm and wellbeing to our members, their staff and, their families.

Yours Sincerely

Lenny Hanomansingh

MBA, BSC, MISTT, TTLS

President, Institute of Surveyors of Trinidad and Tobago



Mr. Lenny Hanomansingh

President, 2020-2021

BOARD OF DIRECTORS 2020-2021

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CALENDER OF EVENTS 2021

TCPD / DevelopTT Training

Webinar

January 8, 2021

New Procurement Law

Webinar

January 19, 2021

IPMS Retail Buildings

Webinar

January (To Be Announced)

Impacts of Covid 19

Webinar

January (To Be Announced)

Guidelines on How to Run you Office

Webinar: Complying with the Covid 19

February (To Be Announced)

Issues Facing the Construction Industry

Webinar

April 20, 2021

Issues of Delayed Payments

Webinar

July 20, 2021

Town and Country Planning

Webinar: The Role of the Valuation Surveyor and Implications

July (To Be Announced)

Redefinition Surveys in Trinidad and Tobago

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Introduction

One of the most common request for cadastral land surveying services is for the redefinition of a parcel of land. Requests emerge from various necessities ranging from landowners who are interested in either relocating their boundary markers for fencing and development purposes to the legal requirement to show a potential purchaser the extent of the parcel being subject to sale. This exercise, undertaken with due legal authority by a Trinidad and Tobago Land Surveyor requires a mixture of training, legal principles and experience. Variations in opinion of the surveyors is rooted in personal experience and survey history. Professionalism edicts that clarity be applied to remove subjectivity from practice.



<https://www.veris.com.au/our-services/surveying/property/>

The problem at hand:

In Trinidad and Tobago there is a dual system of land titles, namely, the Old “English” Law or Common Law Title System (“the Common Law System”) governed by the Conveyancing and Law of Property Act, Chap. 56:01 and the registered land title system governed by our Real Property Act, Chap. 56:02 (“the RPA System”). A Client will normally provide the title instrument such as a Deed for Common Law lands or a Certificate of Title or Crown Grant for Real Property Act or Registered Title for the land. These instruments all describe the lands over which legal interest was conveyed at a point in time. A fortunate Surveyor will find an accompanying attached survey plan or may refer to a previous title instrument with a plan.

Additionally, the Registration of Deeds Act (Chapter 19:06) operationalized on 1st January 1885 - at Section “5A. No Deed which purports to grant, transfer or affect the title to any land, or any interest in any land, and to which any map, plan or diagram of such land is attached shall be registered under this Act unless such map, plan or diagram is certified by a licensed Surveyor within the meaning of the Land Surveyors Ordinance.” It is noteworthy to point out that it permitted the registration of a diagram or plan duly certified by a Land Surveyor, but did not necessitate for a plan to be attached to each and every transfer by a Deed.

The Real Property Act and its predecessor Ordinance both dictated that each transfer of land be accompanied by a diagram or plan prepared by a duly licensed Land Surveyor authorized to conduct Cadastral Surveys. The Real Property Act was brought into law in Trinidad and Tobago through the Real Property Ordinance, on January 1st of 1946, hence there is always a diagram or plan for such lands.

Arising out of the Registration of Deeds Act, many parcels were transferred/registered using a “metes and bounds” legal description without the benefit of a plan or diagram duly certified by an authorized Land Surveyor. Metes and bounds, limits or boundaries of a tract of land as identified by natural landmarks, such as rivers, or by man-made structures, such as roads, or by stakes or other markers. In this jurisdiction, “other markers” also encompasses adjoining land owners at the time of or even before the actual transfer of title. It is also possible to encounter descriptions in an instrument’s schedule which refers to measurements of boundaries by distances and may exclude a quantification of its area any combination of these descriptors conjoined or otherwise. Also, one may encounter a description by area only and referred to as a “lot” of land, commonly understood to be 5,000 square feet in area and based on the definition in the Public Health Ordinance Chapter 12 No. 4 of 1912 in Part II Section 6(a). This may be further compounded by the ubiquitous “more or less” description of a parcel’s acreage.

Legal Principles:

Over time, the Land Surveyors Act 33 of 1996 provides for the redefinition of boundaries requiring a TTLS to make a careful search and enquiry for evidence of “original survey marks. The principle to be maintained is that the marks, as found on the ground, define the boundaries of the land originally alienated, unless there is reason to believe that they have been moved. Boundaries as originally marked are for all purposes true boundaries, even where the survey marks are not the positions assigned to them by the data on the original plan.

If there are differences between the dimensions of the boundaries on the ground and those given on the plan, the TTLS must endeavour to obtain sufficient evidence to decide whether the differences are due to encroachments, movements of marks or to defects in the original survey. Also, if any difference mentioned is positively identified as arising from the survey mark not having been set originally as intended, and if the plan of the original survey, and the evidence derived from the re-survey clearly show the intention, the surveyor making the re-survey may reset the mark in accordance with the original intention, provided that:

- (a) the positions of improvements in relation to the amended boundary are not adversely affected;
- (b) the consent of all owners affected is first obtained.

Where a re-survey discloses difference(s) in lengths of boundary measurements or areas recorded by previous surveys, the TTLS must also demonstrate that the difference(s) is not due to encroachment on or by adjoining parcels of land.

In cases where a material disagreement is found to exist between an old and a new survey the Surveyor who carried out the latter is mandated to file with the Director of Surveys a full report on the subject accompanied by a plan.

Redefinition Survey in Practice

In relocating title boundaries, a TTLS must employ a combination of fact, law, precedent and experience. The facts are obtained from a search of the title instruments and registered survey plans, supplemented by a field survey where boundary irons, monuments and improvements on the ground can be related to the search information. The surveyor then applies the relevant principles of law and survey convention contained in the applicable Land Survey Act, Regulations and Rules in deciding the position of the boundary.

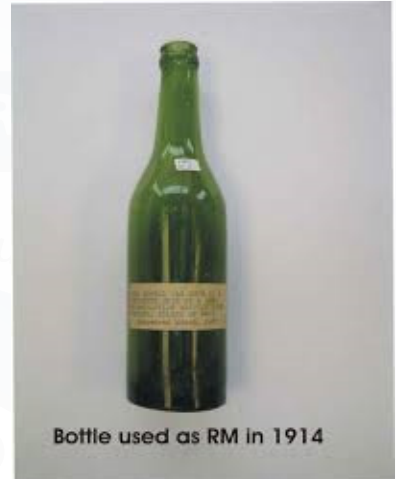
A redefinition is also the first step in a “new sub-division” survey, therefore it is the most frequent type of cadastral survey.



Surveyed parcel boundaries have traditionally been defined on the ground by the placement of survey marks and/or by reference to control stations and other natural or constructed features. There is no “absolute rule” as to the relative importance of field marks and features in any given situation, however survey convention embraces that greater weighting be given to certain features wherever discrepancies or inconsistencies arise. This historical hierarchy of survey evidence is listed below, in descending order of importance:

- Natural features
- Original Crown marks of grant boundaries
- Monuments/Controls
- Original undisturbed marks in private surveys
- Occupations
- Measurements

Given the particular circumstances, a surveyor must interpret the evidence and based on his experience/training determine the position of a boundary. This may lead to differences in opinion in the position of a boundary between surveyors. The need for Rules that guide the surveyor becomes of the utmost importance for consistency and fairness.



When differences of opinion occur between TTLs (each believing they have sufficient reasons to support their respective fixations), the surveyors may resolve the matter by referring the matter to the Director of Surveys for determination of a title boundary. Consequently the Land Survey Board is tasked under Section 64 of the Act with the responsibility to “(d) prescribe any matter or thing relating to the establishment and maintenance of survey marks and boundary beacon/monuments.”

The lack of definitive guidance in redefinition surveys suggest a deficiency in the governing system that, in some cases, lead to conflicts and open the practitioner to increased risk of complaints for professional service. The high frequency of redefinitions highlights the increased risk of such occurrences.

Conclusion

The international practice is for national governing bodies to provide guidelines to its registered surveyors. In Trinidad and Tobago there exists no definitive Survey Rules or Guidelines regarding the redefinition of boundaries to titled lands.

Advances in technology have enabled field measurements to be made to higher standards of accuracy than were previously possible. This in turn affects the relative future importance of measurements within the above hierarchy. Consequently, the last hierarchical evidence stream i.e. measurements, will undoubtable move upwards within the hierarchy. Its final position of the survey evidence chain has yet to be determined by the appropriate authority.

Until such a time, in each case, the TTLs will balance all of the available evidence and provide a professional opinion as to the position of a title boundary.

The Expropriation of Value: The Detrimental Effect of the Section Three Notice of the Land Acquisition Act on the Owner's Enjoyment and Benefit of Value or Worth of the Land and the Case for Compensation.

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The Acquisition Process.

The State can take land against the will of the owner. The land has to be required for a public purpose and the taking of the land must be done under the Land Acquisition Act No. 28 of 1994. This is a process that may take a few months but normally it would take at least more than a year.

According to Lord Denning in *Wilson V Liverpool Corporation* (1970)

"A scheme is a progressive thing. It starts as imprecise and is known to a few. It becomes more precise and better known as time goes on. Eventually, it becomes precise and definite and known to all."

The time in the process before the formal acquisition was referred to as "the shadow period" by Lord Nicholls in *Director of Buildings and Lands v Shun Fung* (1995). It is an important period in the acquisition process.

The owner is stymied in dealing and using the land. The owner cannot do anything to enhance the land and therefore increase the compensation. In fact, the land owner must mitigate any losses that may be incurred as a result of the acquisition.

Section Three of the Land Acquisition Act is the formal start of the acquisition process. It authorises the Commissioner of State Lands to enter the land for the purpose of carrying out surveys and investigative procedures to ascertain the suitability of the land for the intended purpose.

The publication of Section Three notice is notice to the owner and the world that the land is likely to be acquired by the State for a public purpose. The Section Three notice is published in the Gazette (print and electronic) and in the newspaper.

The Detriment caused by the Section Three Notice.

At the time the Section Three notice is published, if not before, the landowner ceases to enjoy the value or worth of the land. The land owner cannot:

- (a) cause the land to be used in a mortgage or secured lending;
- (b) include the land in a statement of affairs or balance sheet;
- (c) include the land in a statement of assets for a diplomatic mission;
- (d) use the land as bail security to assist relatives who were assisting the Police with their enquires.

No person, financial institution, government department or statutory body or diplomatic mission acting honestly and prudently will accept land with a Section Three notice attached for any purpose.

The Section Three notice expropriates the value or worth of land but leaves the owner in possession and with title.

Philosophy of Compensation- The Principle of Equivalence

The Principle of Equivalence was put forward by Blackstone (1765), refined by Lord Justice Leslie Frederic Scott in *Horn v Sunderland Corporation* (1941) and further by Lord Nicholls in *Director of Buildings and Lands v Shun Fung* (1995).

Blackstone opined:

“So great moreover is the regard of the law for private property, that it will not authorize the violation of it: no, not even for the general good of the whole community.” Further, “the legislature alone can, and frequently does, interpose, and compel the individual to acquiesce. But how does it interpose and compel? Not by absolutely stripping the subject of his property in an arbitrary manner; but by giving him a full indemnification and equivalence for the injury he sustained.”

Lord Justice Leslie Frederic Scott in *Horn v Sunderland Corporation* (1941), observed:

“The statutory compensation cannot, and must not exceed the owner’s total loss for if it does it will put an unfair burden on the public authority or the promoters who on public grounds have been given the power of compulsory acquisition, and it will transgress the principle of equivalence which is at the root of statutory compensation and the principle that the owner shall be paid neither less nor more than his loss. The enunciation of this principle, the most fundamental of all, is easy enough. Its justice is self-evident, but its application to varying facts is apt to be difficult.”

The application of the principle was approached by Lord Nicholls in *Director of Buildings and Lands v Shun Fung* (1995) when he gave three “useful guidelines.” These are:

- (a) there must be a causal connection between the compulsory acquisition and the loss claimed;
- (b) the loss must not be too remote; and
- (c) the claimants must behave reasonably to reduce or eliminate loss.

The expropriation of value or worth caused by publication of the Section Three notice clearly qualifies under the three “useful guidelines.”

Assessment of the Compensation

The owner is without enjoyment and benefit of the value or worth of the land for most of the acquisition process. This is for a period of time commencing from at least from the date of publication of the Section Three notice to payment under (a) Section 4 or (b) Section 5 or (c) the cessation of the acquisition process with the formal abandonment.

Logically, the owner should be entitled to compensation for land taken from the date of the publication of the Section Three notice where the acquisition comes to fruition.

In the case of abandonment, the owner should be compensated with interest based on the sum of the value of the land from the date of publication of the Section Three notice to the date of the abandonment.

Pursuing Greater Equity

The stated “original objective” of the current act, The Land Acquisition Act No.28 of 1994, was to “provide for greater equity”. Its most important aspect had to do with compensation.

Judging from the Ombudsman reports on acquisition matters before (1992) the Act was passed and after (2012) the Act was passed, it is clear the “original objective” was not achieved.

Compensation for the pre-acquisition expropriation of value or worth is a must and a natural step in achieving greater equity.

References:

Blackstone, William, Blackstone's Commentaries on the Laws of England, Chapter 16 Property, 1765

Horn-v-Sunderland Corporation [1941] 2 KB

Wilson v Liverpool Corporation (1970) 22 P& 282

Director of Buildings and Lands v Shun Fung Ironworks Ltd (1995) 2 AC111, PC