

UNIVERSITY OF TWENTE.

*Presented at the FIG Working Week 2019,
April 22-26, 2019 in Hanoi, Vietnam*

What Would Title Registration Bring to a Deeds System with High Quality Land Information?

Prof. dr. Jaap Zevenbergen, MSc, LL.M

Prof. dr. Hendrik Ploeger, LL.M (TU Delft)

FIG Working Week 2019

Hanoi, 23 April 2019



FACULTY OF GEO-INFORMATION SCIENCE AND EARTH OBSERVATION



Land Registration

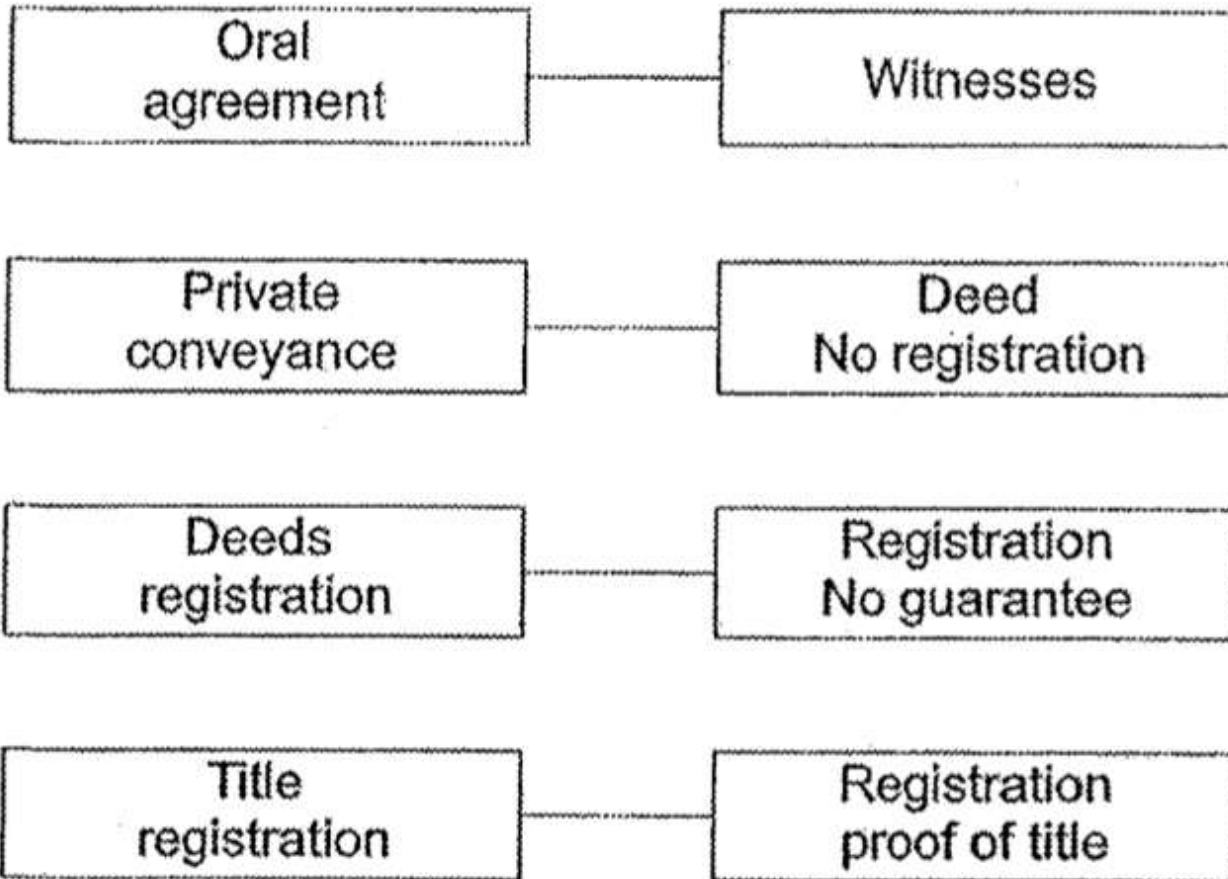
- types of transaction evidence
- (Oral agreement)
- Private conveyancing
- Registration of deeds
- Registration of title

(Larrson 1991)



Means of transaction

Evidence



*Types of transaction evidence
(taken from Larsson 1991: 17)*



The four basic principles*

- a. The booking or register principle
- b. The consent principle
- c. The principle of publicity
- d. The principle of speciality



Registration of Deeds

- public repository of documents (deeds mortgages, survey plans)
- elements
 - logging of time
 - indexing of instrument
 - archiving of document or copy
- deed does not in itself prove title, it is just a record of an isolated transaction



Registration of Deeds

- core principles (compared to private conveyancing)
 - security
 - evidence
 - notice and priority
- legal documents are registered, not title to a property



Registration of Title

- overcome defects of registration of deeds
- simplify process of transaction
- the register describes current property ownership and charges/liens
- compulsory, examination, warranty
- register becomes 'proof of ownership'

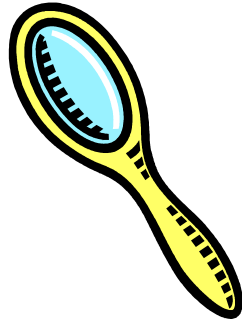
- > rudimentary deeds reg. of 19th cent.



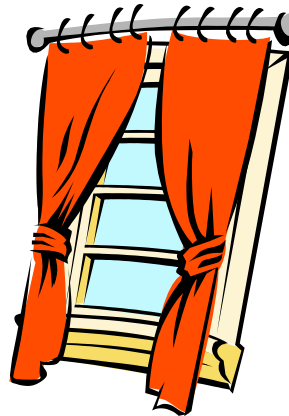
Title Registration System

- Often associated with three principles:

- Mirror



- Curtain



- Insurance



Registration of Title

- Critique:
 - expensive and cumbersome to implement (and for government to run)
 - often involvement needed of (expensive) private practitioners, like land surveyors, lawyers/notaries, planners, valuers
 - time required for state examination and approval of title and survey (boundary)
 - introduction of overriding interest \neq mirror principle; title (cert.) does not reflect all rights on the ground



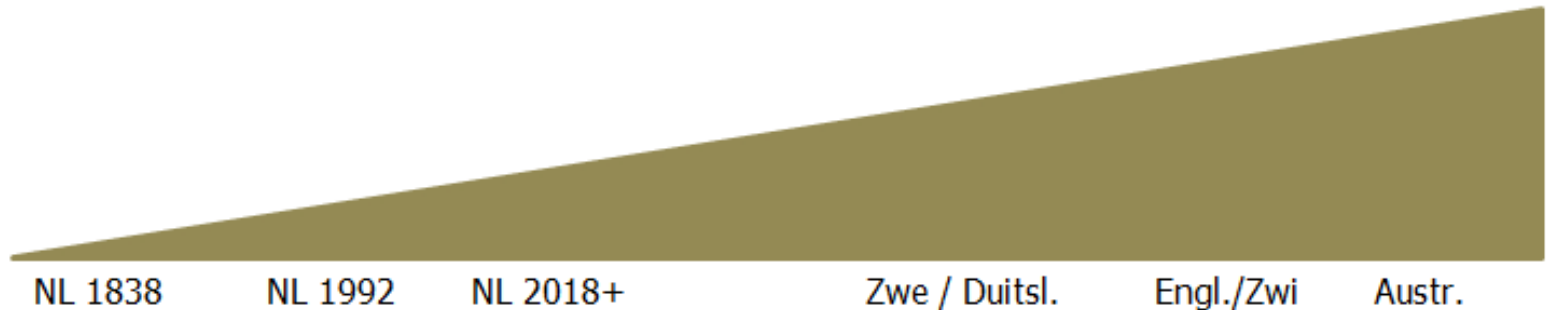
Improve Registration of Deeds

- further improvements:
 - better records management
 - standardization of forms and procedures
 - realistic/flexible survey standards / exam
 - partial / sampling examination of documents
 - compulsory registration
 - automation of indexes
 - searchable/computerized title abstracts



Gliding scale

vertical: legal provisions that enforce and guarantee
horizontal: ideal types: pure deeds (left) to pure title (right)



Registration of Deeds

- Improvements in Netherlands:
 - better records management +
 - standardization of forms and procedures (*)
 - realistic/flexible survey standards / exam *
 - partial / sampling examination of documents*
 - compulsory registration *
 - automation of indexes +
 - computerization of title abstracts +



The Netherlands (laws)

- Cadastre (Napoleonic base) finished in 1832
- Public Register in Civil Code 1838
- Under one Agency 1839
- New Civil Code 1992, incl. Law on Cad. and Public Reg.
 - Strengthened legal position of the registers (and cadastre ?)
 - More often registration mandatory, consequence of non-reg.
 - Some call it 'semi-positive'
- Law on Base Register Cadastre 2008
 - For public sector mandatory use and assumption of correctness



The Netherlands (records)

- Index keeping done from the start, also per parcel
- Gradual improvements over time, esp. after 1922
- Around 1990 indexes became digital
 - much easier searching
 - easier to maintain consistency
 - notaries could check online around moment of transfer
 - from early 2000s notaries can lodge deeds electronically
- Some projects considered to revisit unclear situations, semi-legal approach to showing adverse possession/prescription



The Netherlands (quality)

- Transactions after 1992 legally better
- Transactions after ~1990 more consistent
- Transactions after ~2000 no typing mistakes
- Since 2008 'cadastral owner' deemed correct in public sector
- Society expects **correct information online**
- Ambition of Agency
 - In the long run we aim for a positive register in which the registered rights are guaranteed

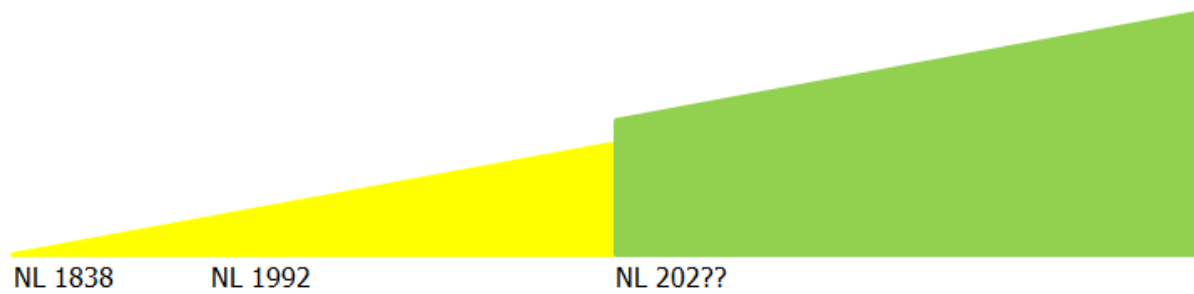


The Netherlands (ideas)

- Agency could give quality label ('we guarantee') to 'cadastral owners' of land transacted for value since ~1995
 - Or give a 'warning' in older cases they do not fully trust
 - Notary could rely on this and reduce her 'searches'
- Agency could invest in improving % of inheritances cleared to update register
- Agency could proactively look for adverse position cases
- Agency could investigate and clear out 'unclear areas' (legal provisions since 1992)
- So move more and more to the middle of the diagram, but .. ?



It seems there is a threshold in the 'gliding scale'



Hop Step Jump

- Hop
 - 1992 law + digital records
- Step
 - Ongoing improvements
- Jump ?
 - Positive system / Registration of Title



Better Quality LI → Registration of Title ?

- More and more investments in data quality (via process chains) leads to better quality, but less and less improvements in the end
 - law of diminishing returns ?
- Transfers that do not legally demand document a/o registration remain hard to get, and take legal precedence over 'cadastral owner'
- As long as non-registered owners can be around, parties / notary have to spend time to make sure it is not the case here
- To really benefit from the good quality data, legal provisions in our opinion need to be changed → legal status of 'cadastral owner' has to be recognized in private law as well → guaranteed ??



Towards Positive System / Registration of Title ?

- Current systems works fine for the real estate market
- Very few court cases
 - weaknesses around inheritance and adverse possession (but in many title systems as well)
 - will full 'jump' be worth it ?
 - will there be support in politics / main stakeholders ?
 - if not now, will discussion come back ?
 - same data is 'positive' for public sector
 - society expects quality data from government / online
 - Future ? To be decided





WORKING WEEK 2020

10 – 14 MAY

www.fig.net/fig2020

Smart Surveyors for Land and Water Management

