

On the case. *Lawyers Notes*

Land Ownership

Most of us at some point aspire to own our own real estate whether it be an urban residence on a quarter acre section, a farm or an ownership flat. In this article we propose looking at the background to the legal ownership of the various forms of real estate and at some of the responsibilities that go with ownership.

Today most of the land in New Zealand is registered under the Torrens title system - named after it's 19th century inventor Robert Torrens - and is regulated by the Land Transfer Act 1952.

In each area a District Land Registrar keeps a register recording all dealings and transactions in land, and issues a certificate of title to the land to each owner. The certificate names the owner, the nature of his or her interest in the land, gives a legal description of the land, and lists any restrictions, or other interests, such as mortgages registered against the land. Unless fraud has been involved, a registered owner has an indefeasible title, that is one which no other interests can override.

As the owner of land you have, subject to a variety of exceptions, the right to use and enjoy your land as you please.

Examples of some exceptions are building restrictions, the statutory rights given to the public bodies to maintain water, gas and power services and to the police to investigate crime. Registered owners are also affected by statutory controls on land and water use as some of our earlier articles on the Resource Management Act have shown.

Owners, and indeed occupiers, such as tenants, also have an obligation and in some cases a legal duty, not to use their land in a manner detrimental to an adjoining occupier. This is known as the law of nuisance. One owner, or occupier, can bring a court action against another seeking an injunction that the nuisance cease and, if the nuisance has caused some physical loss, seeking damages as well. So if you are troubled by smells, smoke or noise, even tree branches hanging over your land, you may seek and

injunction. Where the nuisance has had a physical effect on the property you may also seek damages.

Trespass may be seen as an interference with a persons possession of land. As the owner or occupier, you are justified in using reasonable force to prevent another trespassing on your land or buildings. Don't forget that ownership generally includes the land and the air above and the earth beneath, although the airspace is only owned to such height as is necessary for ordinary use, enjoyment of the land and structures upon it. One could therefore trespass by letting wires or advertising signs encroach on the airspace above someone elses land. It is also trespass to throw things onto land or to allow animals to stray there.

Under the Land Transfer Act 1952, boundaries are determined from the position of survey pegs. In their absence the boundary lines and measurements shown on the register of titles apply. Fencing serves to mark boundaries in a more visible way. In the absence of a specific agreement between neighbours one owner is liable to contribute equally with the other to the cost of erecting, repairing and maintaining a fence on the boundary between properties.

Other obligations that a land owner has are of course to pay all rates and land taxes if any. Rates are a statutory charge on the land and take priority over all other mortgages and charges, registered or not. On six months non payment the local authority may have the land sold or leased by the High Court. This means that anyone holding a mortgage on the land will have to pay rates which the owner fails to pay, in order to protect his or her investment.

These are examples of some of the obligations of a land owner. They are substantial and it is perhaps easy to understand why the purchase of real estate is a big step for anybody. Not only is there a large financial commitment at the outset, but there are also large ongoing legal commitments thereafter.

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*By Mitchell & Mackersy,
Barristers and Solicitors
Offices at Mornington
and Maori Hill.*