

A STUDY OF LAND TENURE ISSUES IN BARBADOS

FINAL REPORT

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1. INTRODUCTION

The need for this study emanated from land tenure and administration issues which arose in a Housing and Neighborhood Upgrading Program (BA-0054) currently under preparation in Barbados. Certain problems in the urban housing sector may be linked to land market inefficiencies caused by tenure insecurity (IDB 1998a). The study was designed to better understand the Barbadian land tenure system in general, as well as the specific relationship between land tenure and the housing sector. The specific terms of reference were as follows:

- Provide basic information on land tenure in Barbados, including the legal and institutional framework supporting land administration
- Analyze the current institutional structure and the legal and administrative procedures for (i) converting leasehold tenancies into owner-occupied freehold (ii) resolving land rights disputes, (iii) parcel surveying, (iv) leasing of government land, and (v) registration of title to property
- Analyze current systems and procedures for land information management, geodetic control and valuation and taxation of property
- Identify legal, financial and administrative constraints in the land registration process
- Evaluate the Government's ability to effectively manage public lands, including divestment (sale and lease) procedures, environmental monitoring capacity, revenue generation from leaseholds, illegal occupation and expropriation (compulsory acquisition)
- For each issue identified, recommend a set of possible actions

This work was carried out during a two week visit to Barbados (18-29 May, 1998) and is based on interviews with key land administration personnel (see Appendix A for list), visits to relevant government offices, a brief tour of the Island, a field visit to four urban tenancies in the Bridgetown area, and a study of reports, laws (see Appendix B) and other documents pertinent to this topic.

In Section 2 I identify and describe the primary and secondary tenures found in Barbados. Where possible I have quantified the number of parcels or area within each of these categories as a means of dimensioning the relative extent of each tenure category. The organisational structure of the major institutions responsible for land administration (the operational arm of land tenure) is described in Section 3. Sections 4 and 5 describe the cadastral surveying and land registration/recordation systems in Barbados. Section 6 provides a brief summary of the land valuation and taxation system. This is followed in Section 7 by a detailed consideration of transaction costs involved in typical land transactions. Finally Section 8 identifies the major land tenure issues and provides recommendations for addressing these.

I would like to thank Margaret Talma and the personnel in her office for facilitating my visit.

2. CURRENT LAND TENURE SITUATION

Land tenure is defined as the bundle of rights associated with a parcel of land together with the rules that control the allocation and exchange of those rights. It includes de facto rights that may not have been formalized through the legal system as well as legally recorded or registered rights.¹ In this report I have approached the subject by looking initially at primary tenures which deal with the major bundles of rights, such as freehold and Crown land. I have also distinguished between rural and urban situations as these present different issues and problems. In the latter part of this section I deal with the secondary tenures or rights that exist in Barbados, such as the plantation and urban tenancies.

2.1 Primary Tenures

Broadly speaking, the following primary land tenure categories can be identified in Barbados:

- Agricultural Freehold Estate²
- Freehold Smallholding³
- Crown Land
- Protected Areas
- Urban⁴ Freehold Land

A detailed history of land tenure in the agricultural sector is given in Beckles (1981), while a similar account of residential subdivisions in Barbados can be found in Nurse (1983). Both of these papers report on the land tenure situation up to the late 1970s and provide a useful historical insight into the urban and rural sectors in Barbados. The White Paper on Housing also provides a short but informative historical perspective on land tenure and housing.⁵

2.1.1 Agricultural Freehold Land

The early history of land tenure in Barbados was dominated by large sugar plantations owned by wealthy, and often absentee, owners who maintained a feudal system of tenure over their workers. In 1860 there were 500 plantations occupying 89 264 acres⁶ or 84% of the total area of land on the Island. The size and number of plantations has decreased in size over the last century giving rise to a number of smallholder estates of less than 10 acres in size. This dynamic is illustrated in Table 1 which shows that in 1989 there were 227 agricultural estates larger than 10 acres occupying 43% of the land in Barbados, almost half the area occupied in 1860.

Table 1. Land Tenure Dynamics in the Agricultural Sector

¹ It does not include land use issues which relate to how these rights are used

² Greater than 10 acres

³ Less than and equal to 10 acres

⁴ Urban is defined to include residential, commercial and industrial lots

⁵ GOB 1997a, pp. 1-4

⁶ Beckles 1981, p.17

DATE	Agricultural Estates (>10 acres)		Agricultural Small Holdings	
	No.	Acreage	No.	Acreage
1961 ^a	286	71,910	27,626	12,546
1971 ^b	264	64,186	12,629	9,131
1989 ^a	227	45,395	16,951	7,880

a. Source: GOB (1996, p. 13)

b. Source: Beckles (1981, Table 9 based on 1971 Agricultural Census)

2.1.2 Crown Land

Although there is no composite map of Crown land in Barbados, the Government⁷ apparently remains the largest landholder. Large tracts of agricultural land are owned by the Government, but administered by bodies such as the BADC (Barbados Agricultural and Development Corporation), BAMC (Barbados Agricultural Management Corporation), and BACT (Barbados Agricultural Credit Trust). The Crown has also “vested” an increasing amount of land in the National Housing Corporation (NHC) for lease or sale to private households.

2.1.3 Protected Land

Barbados does not currently have any significantly large areas set aside as national parks or other types of reserves. This is partly explained by the extensive coverage of the private plantations early on in the Island’s history. However, there is an Environmental Management and Land Use Planning for Sustainable Development Project⁸ underway with a subprogramme that will establish a national park system on the north, east and southeast coasts. Amongst other tasks, this project will “categorize all lands within the boundaries of the proposed National Park into public and private ownership, and record the occupancy and use of all parcels.”⁹

Since sustainable development involves the relationship between the natural environment and human activity, at some point this project will need to link to land tenure information in order to clarify the human dimension, especially who has what rights in environmentally sensitive areas.

2.1.4 Urban Freehold Land

The term “urban” and what this includes is not clearly defined in Barbados. In some instances, urban is synonymous with the Greater Bridgetown Area.¹⁰ whereas the Physical Plan for the country refers to the urban corridor which covers the development along the west, south and southeast coasts as well as the Greater Bridgetown Area. A further question arises about the residential villages in the countryside and whether or not

⁷ Government land and Crown land are used synonymously in Barbados and in this report

⁸ Partly funded by the IDB

⁹ Terms of Reference, Environment Management and Land Use Planning for Sustainable Development (no date), 12p.

¹⁰ See p.24 of the White Paper on Housing (GOB 1997a)

they are included in “urban.” The census data from 1990 provides no help on this question as it does not make any distinction between urban and rural.

In any event, there is a significant amount of freehold land, owned both privately and by the Crown, in residential, commercial and industrial areas. There is also a concerted effort to convert many of the chattel house owners in these areas towards freehold ownership as discussed in the next subsection.

2.2 Secondary Tenures

There are a number of secondary tenure rights which have become the primary focus of land tenure policy over the past two decades and which continue to play a central role in lower income residential areas. These secondary tenures are:

- plantation tenancies
- urban tenancies
- disenfranchised tenancies
- NHC house and spot rentals
- Single lot rentals
- House rentals
- Squatting¹¹

Each of these tenures is discussed in more detail in the following sub-sections and shown in Figure 1.

2.2.1 Plantation Tenancies¹²

After emancipation farm workers were allocated a “spot” on which they could erect a chattel house in exchange for their labour. If the worker was fired (s)he lost the rights to occupy the “spot” and would typically move the entire wooden chattel house to another location. Watson and Potter (1997, p.34) explain that “..the house was generally a moveable timber two-room cabin, approximately eighteen by nine feet in dimension and built on a rockpile foundation.” These chattel houses are still visible today across both the rural and urban landscapes.

The plantation tenantry system evolved from these feudal beginnings to a point where ownership of the chattel houses continued with the land being rented from the owner. Certain plantation tenancies are purely residential¹³, others are entirely agricultural¹⁴, while a third group are a mix of agricultural and residential.¹⁵

¹¹ Squatting is included here because in some cases occupation of the land can lead to the establishment of a valid claim to property

¹² The term “rural tenancies” is sometimes used to denote the composite group of “plantation tenancies” plus tenancies on rural Crown land

¹³ 18% according to data collected on 203 tenancies in 1978 (Beckles 1981, p.20)

¹⁴ The house is part of an agricultural holding (35% in 1978 (Beckles 1981, p.20))

¹⁵ 47% according to data collected on 203 tenancies in 1978 (Beckles 1981, p.20)

In 1980 the government instituted a land policy which would move these tenancies towards the freehold ownership of the lots on which the chattel houses were located. This policy was laid out in the Tenancies Freehold Purchase Act, the Tenancies Development Act and the Tenancies Control Act. This policy has been described as follows:

The social thrust of the post-independence legislation is also to be found in the Tenancies Freehold Purchase Legislation introduced in 1980 which established the rights for tenants of lots in designated tenancies to purchase the freehold at a stipulated price. Essentially the statute sought to widen the ambit of land ownership and to facilitate the ability of persons to build stone or extended wooden structures on land secured from the vagaries of a landlord-tenant relationship. It is an important piece of legislation and its clear drafting and the accompanying simple and inexpensive procedures highlight it as an important element of social engineering. (Carmichael 1996, p.270)

This was such a powerful piece of legislation that it even altered the interpretation of the Constitution to be consistent with the Tenancies Freehold Purchase Act as indicated in Sect. 41 of this Act:

To prevent uncertainty, section 16 of the Constitution is altered by this Act to any extent necessary to insure the constitutionality of this Act.¹⁶

¹⁶ I am not qualified to comment on the legality of apparently putting the Act above the Constitution

Figure 1. Primary and Secondary Tenures in Barbados

This “social legislation” essentially pressured the land owners of tenancies to sell the tenancy lots to the tenants at a price of B\$1.00 per square metre of land with a minimum price of B\$300.¹⁷ The First Schedule attached to the Act listed some 365 plantation tenancies (see Table 1 below), but the more realistic number is in the region of 325.

Table 2. Distribution of Plantation Tenancies by Parish^a

PARISH	NO. OF PLANTATION TENANCIES	% OF TOTAL
St. Michael	18	5
Christ Church	32	9
St. George	51	14
St. Philip	60	16
St. John	36	10
St. James	19	5
St. Thomas	48	13
St. Joseph	16	5
St. Andrew	17	5
St. Peter	45	12
St. Lucy	23	6
TOTAL	365	100

a. Source: First Schedule, Tenancies Freehold Purchase Act

The process for converting plantation tenancies into freehold is outlined in Figure 2 on the next page. To date 95% of the tenancy lots (land under and around chattel house) have been fully surveyed and progressed to the point where the Division of Housing has sent all the necessary information to the landowners and tenants (i.e. Step J). Only 55-60% of the tenancies have actually been conveyed and recorded in the Registry (Step L). It is unclear how many of the outstanding 35-40% are in the process of being conveyed, but it is likely that most of these never got any further than step J (see Figure 2) in the process. Apparently the owners are in favour of this scheme as the so-called “peppercorn” rents that they were obtaining from the tenants were more trouble than they were worth.

¹⁷ Second Schedule, Part I, Tenancies Freehold Purchase Act

Figure 2. Procedure for Freehold Conversion of Plantation Tenancies

2.2.2 Urban Tenancies

Urban tenancies are similar to the residential plantation tenancies¹⁸ except that these are only found in urban areas. These tenancies were initially defined as land subdivided into lots for the renting of chattel houses. A 1989 amendment to the Tenancies Freehold Purchase Act redefined urban tenancies to be limited to:

... an area of land that is subdivided, before or after 1st November, 1980, into more than 5 lots for letting as sites for chattel buildings to be used as dwelling houses whether the land is vested in the Crown, in a statutory board or in any other person, but does not include land adjoining the foreshore.¹⁹

This means that only those parcels of land with 6 or more tenancies fall under the category of urban tenancies. However, the right to purchase is retained by those excluded by the later definition (i.e. those with 2-5 tenancies on a parcel), when the following conditions were met (as at 1st February, 1990):

- (a) Tenant had exercised his/her right to purchase the freehold of the lot;²⁰
- (b) Tenant had made “substantial improvements” to the dwelling house or part of the dwelling house (including construction of water-borne toilet facilities);²¹
- (c) Tenant has been residing on a lot for 20 years or more.²²

The effect of this legislation was to create a right to purchase over the landlord’s parcel which is regarded as an overriding interest in this parcel. This right can be held by the tenant or a sub-tenant who may be renting from either the tenant or the landlord (owner of the land parcel).²³ In the Greater Bridgetown Area there are approximately 200 tenancies, accounting for some 3 000 households and covering a total area of 225 acres of land.²⁴

¹⁸ Chattel house is owned by tenant but land is rented from a landlord

¹⁹ Sect. 2 of the Tenancies Freehold Purchase Act

²⁰ Sub-Sect. 5(2)(a) of the Tenancies Freehold Purchase Act

²¹ Sub-Sects. 5(2)(b) and 5(3)(b) of the Tenancies Freehold Purchase Act

²² Sect.8 of the Tenancies Freehold Purchase Act

²³Sub- Sects. 4(2) and 4(3) of the Tenancies Freehold Purchase Act

²⁴ GOB 1997b, p. 9

Appendix C contains two maps illustrating the spatial distribution and density of houses in two urban tenancies.

These tenancies were to be sold at the market price for the unimproved land (i.e. excluding the chattel house and other improvements constructed by someone other than the landlord).²⁵ This has apparently led to unaffordable prices being asked by the landlords, with the result that the transition to freehold has not taken place. It is estimated that less than 20% of the 3 000 households have purchased their lots (GOB 1997b, p. 11). The Habitat II report explained it as follows:

*The transfer of tenancies in the rural area has generally been successful but in the urban areas, in spite of the same provisions of the Tenancies Freehold Purchase Act, only 50% of the tenants appear willing to purchase their lots. This apparent unwillingness, or inability, of qualified tenants to purchase their lots presents a challenge to the full realization of the goals of the Act.... Several reasons have been offered for this but the one related to the high price features prominently as the major deterrent. Tenants consider that land prices in the range of \$6.00 and \$7.00 per square foot are much too high. At the same time however, valuations of recent urban areas suggests that the market price is indeed in the range quoted.*²⁶

In some instances the landlords have apparently based the price on a figure which incorporates infrastructural development undertaken by others. Other reasons put forward for the poor response are (a) unwillingness by tenants/owners to purchase/sell, and (b) eviction of qualified tenants from the lots.²⁷

There is currently a proposed Act before Parliament that seeks to fix the price at a nominal value of approximately B\$1.00 with the government carrying the burden of covering the balance of the asking price.²⁸

2.2.3 “Disenfranchised” Tenancies

The disenfranchised are those urban tenants who do not meet the criterion of 6 or more tenancies (i.e. those in the 2-5 range) on one parcel nor the additional criteria with respect to having exercised their right to purchase, substantial improvements or 20 years of occupation (see previous sub-section). While these tenants did possess purchase rights under the initial definition of urban tenancy, they no longer have this right under current

²⁵ Second Schedule, Part II, Tenancies Freehold Purchase Act

²⁶ GOB 1996, pp. 39-40

²⁷ GOB 1997b, p. 11

²⁸ I was unable to obtain a copy of this

legislation, hence the term “disenfranchised.” It is estimated that about 200 households fall into this group affecting some 1000 individuals.²⁹

Currently, the government is offering a B\$10 000 or B\$15 000 relocation grant to these individuals which is disbursed when suitable alternative housing is available. In other word, resettlement is seen as the solution to disenfranchised tenancies problem.

2.2.4 Single Lot Rentals

Generally, the tenants in this tenure category will own their chattel house but pay rent to the landowner. This category of tenants have never fallen under the tenancies legislation and therefore are not addressed by the freehold conversion policy. In short, they appear to have “fallen through the cracks” in the initiative to move from tenants to owners. The Urban Renewal Programme described their predicament as follows:

*Government has no legal responsibility to this group, whose tenure is subject to the whims of landlords. There is no protection from exorbitant rent increases nor from eviction, irrespective of the length of time spent on the land.*³⁰

While this group falls outside the scope of the social legislation, they are equally as poor as the urban tenancies and perhaps more vulnerable given their isolation. The Habitat II paper (see GOB 1996, p. 39) estimates that approximately 1000 tenants fall in this tenure category.

2.2.5 NHC Spot and House Rentals

In this tenure category the land is owned by the Crown, but vested in the NHC, who in turn rent³¹ out either a house or a “spot” (land) on which tenants can erect their own house. NHC reported that a total of 1 557 spot rentals had been allocated during the history of the programme (1956-1997), with 52 (3%) of these having been allocated during the 1996/97 budget year. The bulk (61%) of these are located in the parishes of St. Michael and Christ Church.³² Over a similar reporting period, NHC indicated that 10 493 houses had been rented over the life of the programme, with 100 (1%) being rented in 1996/97. Once again the large majority (81%) of these can be found in St. Michael and Christ Church.³³

2.2.6 Private House Rentals

While in many of the tenure categories discussed above the tenants owned their house but not the land, this group owns neither. Like the single lot tenants, this group are outside the scope of the tenancies legislation and have almost no tenure security or protection against “spiralling” rents. They do not generally have any lease agreements and therefore

²⁹ GOB 1997b, p. 10

³⁰ GOB 1997b, p. 11

³¹ This is typically formalised through a lease agreement

³² NHC 1997, p.22

³³ NHC 1997, p. 21

fall under a ‘tenancy at will’³⁴ situation which is one of the lowest rungs on the tenure ladder.

This group also do not enjoy the advantages of government subsidised rental units which have certain basic facilities and consequently many live in “substandard housing conditions.”³⁵ It is estimated that this category accounts for 22% of the housing stock in the Greater Bridgetown Area and 16% across the whole Island.³⁶ The Habitat II paper reports on a 1995 survey which showed that approximately 20% of households in the survey were both land and house tenants, although it does not indicate whether they are living on private or Crown land.³⁷

2.2.6 Tenure Status of Dwellings (1990)

The 1990 Census does provide some information on tenure at the dwelling level. I have included two tables (Table 3 and Table 4) on the next page which report on the relationship between population and dwelling unit by parish (including a distinction between occupied and vacant dwellings) and the tenure status of these dwellings. It is notable that the parishes of St. Michael and Christchurch contain over half (56%) the dwellings on the Island. In these two parishes approximately 39% of the dwellings are privately owned. A significant number of dwellings (9% in St. Michael and Christ Church) are vacant (presumably derelict or abandoned), indicating the advanced age of much of the housing stock.

2.2.7 Squatting

Squatting is defined as the occupation of either Crown or private land without the express permission of the owner(s) and without the completion of any formal application to acquire rights. This is not yet as significant a problem in Barbados as it is in many other developing countries, but it is on the rise. There are about 350 cases in St. Peter and St Michael parishes and an unknown number on Parish Lands.³⁸

2.3 Irregular Tenures

Irregular tenures are those tenures that, for one reason or another, do not fit into any of the categories described above. Unlike squatting, the people involved have a right to be on the land, but they have not fulfilled the requirements for formalising the rights. The following cases will fall into this tenure category:

- Land informally subdivided without Town Planning permission or a survey
- Land conveyed without a survey
- Land put into the Title Registration system without an adequate survey³⁹
- Land adjudicated to bring it under the Title Registration system, but never registered

³⁴ The will of the landlord

³⁵ GOB 1997b, pp.18-19

³⁶ GOB 1997b, p. 18

³⁷ GOB 1996, p.39

³⁸ GOB 1997a, pp. 22-23

³⁹ There are approximately 2,000 cases of these which came from the sporadic adjudication efforts

- Boundary disputes or uncertainties holding up the formalisation process
- Encroachments in registration districts preventing the finalisation of the registry maps
- Tenants in the process of purchasing their tenantry lots, but who have not completed the final steps

The following section describes the institutional or organisational structure in place in Barbados for formalising and managing the land tenure system.

Table 3. Population and Dwelling Units (occupied vs. vacant) by Parish^a

PARISH	POPULATION	DWELLING UNITS		TOTAL	% OF TOTAL DWELLINGS
		OCCUPIED	VACANT		
St. Michael	89,840	27,712	2,216	29,928	36
Christ Church	46,943	15,063	1,639	16,702	20
St. George	16,718	4,702	232	4,934	6
St. Philip	20,540	6,039	625	6,664	8
St. John	9,640	2,662	216	2,878	4
St. James	20,771	6,688	988	7,676	9
St. Thomas	10,676	3,077	179	3,256	4
St. Joseph	7,204	2,030	214	2,244	3
St. Andrew	5,624	1,519	103	1,622	2
St. Peter	10,055	2,970	319	3,289	4
St Lucy	9,277	2,749	262	3,011	4
TOTAL	247,288	75,211	6,993	82,204	100%

a. Source: 1990 Census Report (p.3)

Table 4. Type of Tenure in Occupied Dwelling Units^a

PARISH	OWNED	PRIVATE RENTED	GOVT. RENTED	RENT FREE	OTHER TENURE	NOT STATED	TOTAL	% OWNED
St. Michael	18,430	5,715	2,505	815	108	139	27,712	67
Christ Church	10,717	3,179	667	339	64	97	15,063	71
St. George	4,226	300	33	121	12	10	4,702	90
St. Philip	5,301	495	22	174	27	20	6,039	88
St. John	2,420	126	22	66	21	7	2,662	91
St. James	5,092	1,094	307	139	35	21	6,688	76
St. Thomas	2,730	221	44	51	16	15	3,077	89
St. Joseph	1,852	88	18	45	19	8	2,030	91
St. Andrew	1,439	29	17	20	12	2	1,519	95
St. Peter	2,536	278	26	112	16	2	2,970	85
St Lucy	2,509	168	4	55	9	4	2,749	91
TOTAL	57,252	11,693	3,665	1,937	339	325	75,211	

a. Source: 1990 Census Report (pp.311-313)

3. INSTITUTIONAL FRAMEWORK FOR LAND ADMINISTRATION

Land administration is the operational arm of land tenure which is typically composed of the institutions, both public and private, and procedures that formalize land tenure. Figure 3 illustrates the principle processes involved in land administration, both in the public and private sector. The private sector functions are essentially land surveying, carried out by licensed land surveyors, and conveyancing which is done by private attorneys-at-law. In certain circumstances, both of these functions are performed by land surveyors and attorneys within the public sector.

Figure 4 depicts the major organisations responsible for carrying out the land administration processes shown in Figure 3. Interestingly, the Land Registry and Department of Lands and Surveys are both situated in the Ministry of Transport, Public Works and Housing (MTPWH). This, seemingly, avoids the problem that plagues most Latin American countries where these two institutions are found in completely different arms of government. The remainder of this chapter summarizes the structure of the organisations shown in Figure 4.

3.1 Division of Housing

The Property Management Unit (PMU), within the Division of Housing, is responsible for managing all government property and other property in which government has an interest. In their day-to-day operations much of their efforts are consumed by arranging suitable office space for various government entities which includes managing the refurbishment of existing office premises. They also handle the insurance of all government property and the payment of rents for privately owned properties that are leased for government use. It is the opinion of personnel within the PMU that the management of government land is being adversely affected by the lack of a good inventory of this land as well as a shortage of resources.

The PMU is also involved with the acquisition of new government property and the sale and renting of this property. Increasingly, the Division of Housing has made use of the National Housing Corporation (NHC) to handle the disposal of government land as described in the next section. The flow of land from the Division of Housing to NHC and then through sales and rentals to private households is illustrated in Figure 5. The government adds to its pool of land resources through compulsory acquisition (eminent domain) or private treaty (voluntary purchase). Both Cabinet and Parliament consent is required for the former, whereas private treaty only requires Cabinet approval. Much of the urban land held by government is then “vested” in the NHC. This requires Cabinet and Parliament approval and the transfer is recorded in the land registry.

Figure 3. Land Administration Procedures

Figure 4. Land Administration Organisations in Barbados

Figure 5. Flow of Land from Housing to NHC to Private Households

3.2 National Housing Corporation (NHC)

The NHC was established in 1973 to replace the Housing Authority and the Urban Development Corporation. The constitution, functions and operation of the NHC are described in the Housing Act (CAP. 226). The main functions of the Corporation are to dispose of government land through sale, rent or lease and to generally carry out the government's policy of improving housing for the poor and expanding home ownership. The rentals are generally extended to the lower income sector, while sales have focused predominantly on the middle to lower-middle income sector. The actual volume of property that has been sold or leased for the period 1996-1997 is shown in Table 5.

The NHC also operates an extensive loan scheme which is authorized to make loans of up to B\$60,000 for the purchase or repair of an existing structure. In the case of purchases, the NHC will create a "legal mortgage" which uses the land as collateral for the loan. The NHC uses the chattel house as security for loans for improvement purposes and this arrangement is formalized through a registerable "chattel mortgage." This is an interesting concept as it allows renters to raise capital on a structure which can be moved and which is located on land owned by another party.⁴⁰ The owner's permission is, however, required, but the chattel owner is not required to have a formalized lease agreement with the owner. Generally, amounts of between B\$20,000-30,000 are loaned on this basis, but the amount depends on the specific improvement plans. These loans are only available to applicants with salaries below \$27,000 p.a. and the loans range from 5-11 years.

Current problems experienced with this scheme include:

- expansion of chattel house
- conversion to wall (from wood)
- degradation of structures
- changes in occupants
- houses are moved.

⁴⁰ Since the NHC does not foreclose on loans that are not repaid in time, it could be argued that this is more like a conventional loan than a mortgage where property (usually fixed) is used as collateral

Table 5. Sales and Renting of Crown Property through NHC (1996-1997) ^a

PARISH	LOTS CONVEYED	PROPERTIES CONVEYED	SPOT RENTALS	HOUSE RENTALS
St. Michael	117	16	31	59
Christ Church	11	6	0	9
St. George	6	1	3	1
St. Philip	6	5	9	3
St. John	1	0	0	0
St. James	19	1	2	7
St. Thomas	67	38	0	0
St. Joseph	3	0	0	0
St. Andrew	0	2	0	0
St. Peter	42	0	2	20
St. Lucy	7	0	5	0
TOTAL	279	69	52	99

a. Source: NHC 24th Annual Report for 1996-1997 (NHC 1997)

The original idea was that the NHC would gradually become self-sufficient and not rely on government funding. Since the land is given free of charge to NHC by the government, they would use this resource as a basis for funding. They have not yet reached the point where they are financially independent⁴¹ and there are questions about them achieving this through their Settlement 2000 Programme.⁴² Given the low profit margin and high risk associated with low income housing, it will be extremely difficult for NHC to become self-sufficient, while still targeting their social mission of addressing housing for the lower income sector.

3.3 Department of Lands and Surveys

The Department of Lands and Surveys is responsible for national mapping, the national geodetic control framework, the cadastral surveying and boundary adjudication for parcels in registration districts, and the recordation of cadastral plans submitted by private surveyors. The structure of the Department is shown in Figure 6.

When the new government office block in Warrens is completed, Lands and Surveys will move into these premises.⁴³ Although the Registry was also originally supposed to move to this new office complex, they are now scheduled to move into the new Supreme Court building in downtown Bridgetown. While the distances between this site and Warrens is not that great, it is important that this separation does not lead to less integration between Lands and Surveys and the Registry (as has been the case in other countries). Further details on the surveying profession and the practice of surveying in Barbados are given in the following section.

3.4 Land Registry

The Land Registry is the depository for deeds recorded in the common-law (recordation of deeds) system as well as the agency responsible for maintaining the title register under the registration of titles system. The Adjudication Unit, headed up by two Commissioners of Title is also currently located in the Land Registry. The responsibility of this unit is to adjudicate land that is to be brought into the title registration system. Initially, this unit comprised part-time personnel, but the two Commissioners and their staff are now full-time. The organisational structure of both the Registry and Adjudication Unit is illustrated in Figure 7. Further details on registration and recordation procedures are included in section 5.

⁴¹ Central Government disbursements ranged from B\$5-8 million during the 1980s (GOB 1997A, p.13)

⁴² See Bass 1998, p. 10

⁴³ They are temporarily located in office premises in Jemmotts Lane, between the Roman Catholic Church and the Barbados Family Planning Association Office (which is adjacent to the red light district)!

Figure 6. Organisational Structure of the Department of Lands and Surveys

Figure 7. Organisational Structure of the Land Registry and Adjudication Unit

4. LAND SURVEYING

4.1 Cadastral Surveying

Land surveying is carried out by a group of approximately 40-50 licensed professionals, 9 of whom work for the government in the Department of Lands and Surveys. Almost all of the private sector surveyors work in small, single person practices with the exception of one firm which has 6 licensed surveyors.⁴⁴

In order to be eligible for licensing one has to have a degree or diploma in surveying. Barbados did offer a 4 year surveying programme through the local community college, but this stopped functioning about 4 years ago. To obtain a license, candidates must take a local comprehensive exam (which includes a practical section) and work within the office of Lands and Surveys for at least 6 months.

The Land Surveyors' Act of 1980 provides for a Land Surveyors' Board which manages the licensing process and professional ethics and may also prescribe survey fees (with the approval of the Minister⁴⁵). The Land Boundaries Act of 1980 deals with the interaction of the land surveyor and the public (e.g. entry on land) as well as information to be obtained from the Chief Surveyor prior to undertaking a survey. Sections 9-12 outline the general requirements with respect to monumentation, survey plans and the recording of plans with the Chief Surveyor. Although survey plans submitted to the Department of Lands and Surveys are checked for completeness and correct format, no examination of the survey is done by the Chief Surveyor. This recording of plans is important as this action makes it admissible as legal evidence in court as indicated by Sect. 13(1) of the Land Boundaries Act:

The original of any plan, report or field notes of any survey or operation in a survey or any copy thereof, is inadmissible in evidence in any court unless it is proved to the satisfaction of the court that a copy of any such document has been lodged in the Department.

An example of a survey plan is included in **Error! Reference source not found.**

The Act also lays out a procedure for dealing with boundary disputes or cases where consent from an adjoining owner cannot be obtained.⁴⁶ The procedure can be summarized as follows:

- (a) surveyor applies for a warrant from a judge to carry out the survey
- (b) the judge, after hearing any objections to the warrant, may issue a warrant

⁴⁴ Hart, Hutchinson and Field

⁴⁵ Land Surveyors' Act, Sect. 15(1)

⁴⁶ Land Boundaries Act, Sects. 6-7

- (c) the surveyor's client deposits with the Accountant General sufficient funds to cover the costs of the survey (this is paid to the surveyor on completion of the survey)
- (d) the Chief Surveyor notifies the public of the recording of the surveyor's plan by publishing this in the Official Gazette
- (e) if no objections are received within 3 months, the plan is accepted as binding on all parties

The Land Survey Regulations (1993) framed under the Land Boundaries Act provide more detailed requirements for carrying out a survey, including such aspects as equipment to be used, basis for direction (or bearing), connecting surveys to geodetic control, monument specifications, survey plan sizes and composition, basis for rejecting plans submitted for recording and accuracy standards. The most relevant parts from the point of view of this study are the following:

- the regulations are flexible on the type of survey equipment and methods to be used (therefore allowing the use of GPS) provided they "attain the prescribed standards of accuracy"⁴⁷
- surveyors are only required to connect to geodetic control if the survey falls within an area (defined by the Chief Surveyor) where there is sufficient control, which means that surveys outside these areas are not necessarily geo-referenced⁴⁸
- connection to geodetic control is "mandatory" in Registration Districts (Section 5(3))
- monumentation is flexible recognising that different circumstances require different approaches⁴⁹
- monuments should be placed at all parcel corners⁵⁰, thereby providing good physical boundary evidence⁵¹
- the accuracy standards are high and inflexible, apparently not considering the heterogeneity in land in terms of land value⁵² and use (urban vs rural)

The current survey accuracy standards⁵³ are as follows:

- (a) angular misclosure of not more than 1 minute of arc per measured angle or 5 minutes of arc, whichever is the lesser;
- (b) a linear misclosure of better than 1/3000 of the distance traversed or 0.20m whichever is the smaller, except that traverses with a total length of less than 120m may have a misclosure not exceeding 0.04m;
- (c) the angle deduced from the bearings shown on a boundary plan shall be correct to within 2 minutes of arc or such angle as would be equivalent to a displacement of

⁴⁷ Section 3(5)

⁴⁸ Sections 5(1) and 5(2)

⁴⁹ Section 7(1)

⁵⁰ Most cadastral systems, including the Barbadian system, give greater weight to physical boundary evidence than measurement and plan evidence

⁵¹ Section 7(2)

⁵² However, the schedule of minimum fees for surveys does incorporate land value as a basis for computing fees

⁵³ Section 12(1)

- each of the marks at the ends of the two lines defining the angle by 0.030 metres at right angles to the lines, whichever is the greater;
- (d) the distance between any two marks as shown on a plan shall be correct to within 0.030 metres or $1/2000^{\text{th}}$ of the distance, whichever is the greater.

In registration districts (i.e. where the title registration system operates) the Chief Surveyor has to produce two types of plans. The “demarcation map” is based on a survey of all relevant parcels, but it also contains a list of all boundaries problems encountered. Typical problems include encroachments of walls, fences, houses, roofs and some boundary disputes.⁵⁴ While there is a mechanism in place to resolve these disputes (see earlier in this section), there is no time frame laid down. As a result these problems may persist for some time if the occupants are not motivated to resolve them.

The second type of map produced by Lands and Surveys is a “registry map” which is used as the definitive boundary record for registration. Essentially, this is the same as the demarcation map with the problems resolved. The lack of resolution of these problems has been holding back the processing of all parcels depicted on the plan with the result that they do not get registered. The Chief Surveyor is now proposing to produce smaller block plans and even individual plans in some cases in order to get around this bottleneck.

4.2 Geodetic Control Framework

A geodetic reference framework is a network of monumented points which have been surveyed and coordinates computed for all points. These points are what define and perpetuate the Barbados National Grid (or coordinate system). The Barbados national coordinate system is based on the Clarke 1880 spheroid with a transverse mercator projection which is centred on the island. The meridian of origin (Y axis) is $59^{\circ}33'35''$ west of Greenwich and the latitude of origin (X axis) is $13^{\circ}10'35''$ north of the equator. In order to simplify use of the coordinate system (i.e. to avoid the use of negative numbers) a false Easting of 30 000m and false Northing of 75 000m have been added to the origin. Some of the older survey and mapping data is related to the British West Indies Grid (BWIG), which is designed for the whole Caribbean and therefore has a different origin than the BNG.

Apparently, classical triangulation methods were used to establish the geodetic control framework in Barbados. There are an estimated 24 first order points, 65 second order points, 15-19 third order points and about 2 000 traverse control stations (mainly in the south eastern part of the island).

There is a GPS base station operating in Bridgetown within the office of Coastal Zone Management, but this position has not apparently been computed relative to other international GPS stations (IGS stations) in the region. The Department is in the process

⁵⁴ The demarcation map I examined had 17 such problems

of putting together a proposal to the US National Geodetic Survey (branch of NOAA) to define the GPS datum (WGS 84/ITRF) in Barbados and the relationship between this datum and the one currently being used in Barbados.

4.3 Large and Small Scale Base Mapping

The entire island fits onto a single 1:50 000 scale map. This map was last updated in 1993 and is published by the Ordnance Survey in the UK, although copyright is retained by the Department of Lands and Surveys. There is also island-wide coverage at a scale of 1:5 000, amounting to 97 map sheets. Within the built-up urban areas (south coast, greater Bridgetown area, and west coast) there are approximately 144 maps at a scale of 1:1 250.

4.4 Cadastral Information

The Department of Lands and Surveys is a repository for all cadastral plans as described above in subsection 6.1. In recent years the Department has been plotting the individual survey plans on a 1:5 000 scale index map. There is, however, no composite map showing all surveys done (or parcels defined by survey) on the entire island.

Three reference numbers are used to cross-reference cadastral information in the Department. Each plan is given a Plan Number that is structured as follows:

Plan Number: B4815-72

where:

B = size of the plan (no letter is included if the plan is larger than A3 size)

48 = the 1:5 000 scale map on which the plan will fall

15 = the grid square on the 1:5 000 scale map

72 = the individual plan number

Every time a plan is recorded a Recording Number is allocated to the plan, for example:

Recording Number: 772/97

where:

772 = sequential number beginning at 1 for each year

97 = year in which the plan was recorded (recording began in 1980)

The third number is a unique Parcel Identifier which is also included in the registry records so that the Department's cadastral information can be linked to the title registration information. This parcel identifier (PID) number is structured as follows:

PID Number: XBE 240

where:

X = Parish

B = Registration District

E = Block

240 = Individual lot number

The Chief Surveyor estimates that 75-80% of all parcels in Barbados have been surveyed, but not all of these surveys have been recorded in his office. Some of those not recorded may be available in the offices of private surveyors.

4.4 Digital Cadastral Data

The Land Information Division in Lands and Surveys has been computerizing the survey data acquired in Registration areas⁵⁵. This is done through the use of coordinate geometry, the results of which are plotted on the digital map base created by BarTel. They have been managing the data on a GIS called GeoVision, but are currently moving across to Arc/Info. Problems with the former system have apparently caused a significant backlog in the production of registry maps for parcels in registration districts.

5. LAND REGISTRATION

Barbados, like many other Caribbean nations, operates two systems of recordation or registration. These are the “common-law system,” which is a recordation of deeds system, and the “registration” system, which is a registration of title system.

5.1 Common-Law Recordation System

The common law system focuses on recording instruments as a means of establishing legal priority (first recorded is usually given priority) and providing notice to the public about dealings in land. A good title to land is established by tracing back dealings on the parcel of land for a minimum period of 20 years.⁵⁶

The deed recordation system has been criticized because it does not facilitate the determination of title as it requires a retrospective. Typically (this is the case in Barbados) instruments are indexed according to the names of the parties involved, the vendor (or grantor) and purchaser (or grantee). To identify the relevant recorded documents in a title search, it is necessary to track the document reference numbers (volume and folio number) through searching for the appropriate names in the index. Barbados, like many countries, has two name indexes. One is arranged alphabetically by the surname of the vendor (grantor/grantee index) and the other is arranged alphabetically by the surname of the purchaser (grantee/grantor index). This indexing approach is disappearing as modern relational databases no longer make it necessary to maintain this dual system as records can be searched using almost any field in the database.

The cumbersome searches necessary to determine title in the common law system have led to the introduction of a second system based on registration of title.⁵⁷

⁵⁵ Apparently 10,000 parcels are included in the 7 declared registration districts

⁵⁶ If no transactions have taken place on the property in the last 50 years, for instance, then it may be necessary to trace back further than 20 years to identify the last transaction

⁵⁷ Similar initiatives have taken place in other Caribbean countries, such as Trinidad and Tobago, St. Lucia, Jamaica and Belize

5.2 Registration of Title System

The “registration” (of title) system in Barbados was promoted as having the following advantages:

- simplification of dealings in land
- the elimination of the need to search several deeds and other legal documents in order to establish ownership or title
- the fact that the Government will guarantee title to all land that is registered⁵⁸

Quoting Lord Wilberforce, Thomas summarized the registration of title system as follows:

The system of land registration .. is designed to simplify and cheapen conveyancing. It is intended to replace the often complicated and voluminous title deeds of property by a single land certificate on the strength the land can be dealt with. In place of the lengthy and often technical investigations of title to which a purchaser is committed, all he has to do is consult the register, from any burden not entered on the register with one exception (overriding interests) he takes free. Above all, the system is designed to free the purchaser from the hazards of notice - real or constructive - which, in the case of unregistered land, involved him in enquiries, often quite elaborate...⁵⁹

Implementing a registration of title system generally requires a determination of title and boundaries for each parcel. This process is called land adjudication and in Barbados is dealt with in the Land (Adjudication of Rights and Interests) Act (CAP. 228A) of 1988. The responsibility for adjudicating titles is allocated to the Commissioners of Title⁶⁰ and Registration Officers.⁶¹ The corresponding responsibility for boundary adjudication is given to the Chief Surveyor.⁶²

Adjudication may be done systematically or sporadically. In most land titling projects a pro-active systematic approach is adopted whereby adjudication teams visit the field and carry out a comprehensive adjudication throughout a defined area or district. These teams resolve disagreements where possible, but any disputes over title claims or boundaries are referred to a Land Tribunal. The Barbadian equivalent of this Tribunal is the Commission of Titles. A sporadic approach may be pro-active, where teams visit isolated parcels selected on certain priority criteria or simply on demand. It may also be implemented in a voluntary manner waiting for land owners to come forward and dealing

⁵⁸ Thomas 1988, p.1 of Appendix (this paper also contains a useful appendix with simple questions and answers about the registration of title system)

⁵⁹ Thomas 1988, pp.1-2

⁶⁰ Currently there are two Commissioners but the Act allows for “such number...as are necessary for carrying out the purposes of this Act” (Sect. 3(1))

⁶¹ Currently there is one Registration Officer supported by three legal assistants, but the Act allows for as many as are necessary (Sect. 3(1))

⁶² Sect. 8 of the Land Adjudication Act

with this demand as it arises. Barbados has incorporated aspects of all of these approaches as explained by the previous Registrar:⁶³

- land parcels are adjudicated systematically where the Minister declares a registration district⁶⁴
- after 8th September, 1988, conveyances, subdivisions or leases outside registration districts are registered sporadically
- persons outside registration districts apply voluntarily to register their land

The one aspect that is missing is the pro-active approach which typically comes as part of a project. Thomas (1988, p.6) clarified this in the following statement: “It seems to be clear from the Acts that the burden generally falls on the owner whether systematic, sporadic or voluntary registration is involved.”

Once adjudication has been completed and claimants have been given an opportunity to verify (or appeal) the results,⁶⁵ first registration takes place. Since first registration is an outcome (and part) of the whole adjudication process, it is generally more expensive and complicated than subsequent registrations. The benefits of a registration of title system will invariably only become apparent once first registration is completed.

6. LAND VALUATION AND TAXATION

Land valuation and taxation are controlled by the Land Valuation Act (CAP. 229A) and the Land Tax Act (CAP. 78A) which were first passed in 1969 and 1973, respectively. A market-based comparative method of valuation is used in Barbados. In this method all conveyances⁶⁶ pass through the valuations section of the Land Tax Department so that the market value of these properties can be noted. Average market values can therefore be determined for areas with similar properties. Adjustments are usually made on an individual property basis to account for small differences in structure (number of rooms, facilities provided, etc) and other factors that affect value. The Land Tax Department is required to do a complete re-valuation of all properties in the Island every three years.⁶⁷ The last such re-valuation was carried out in April, 1996, which means the next one is scheduled for next year (1999).

The Land Tax Department has mapped approximately 90,000 parcels in Barbados. In some instances this has been based on boundary survey information, but they have also carried out their own parcel delineation for tax purposes. In order to facilitate the management of the geographic data, they make use of a multi-parcel unit called an “enclosure.” The boundaries of all enclosures are depicted on the 1:5,000 map sheets. In some of the more urbanised areas they make use of 1:1,250 scale maps. Their numbering system is based on the number of the 1:5,000 map sheet, a grid number on this sheet, the

⁶³ See Thomas 1988, pp. 5-6

⁶⁴ Sect. 10 of the Land Adjudication Act

⁶⁵ 60 days in Barbados

⁶⁶ They estimate that approximately 4,000 sales come through their office every year

⁶⁷ Sect. 10(1) of the Land Valuation Act

enclosure number and a lot number. They do not have GIS capabilities and rely entirely on manual methods (e.g. a pantograph is used to enlarge maps from one scale to another).

They have just started using a computerised system for managing their tax roll (attribute) information.⁶⁸ This system comprises 40 new terminals and they are running a Canadian software produced by VailTech Inc. Although they are currently going through “teething problems” with the new system, they are optimistic that it will enable them to be more efficient in the future.

The Commissioner of Land Tax estimates that 75-80% of the taxable population pay property taxes. An example of the tax that a lower income person living on a tenantry would have to pay when the tenantry is converted to freehold is given below:

Current Rent:	B\$1,000 p.a.
Probable Value:	B\$20,000
Tax Rate:	\$50 on 1 st B\$10,000 = B\$50
	0.8% on 2 nd B\$10,000 = B\$80
	Total Annual Tax = B\$130

This tax may be viewed as the annual cost in order to retain freehold ownership of a small parcel of land. The cost of actually obtaining title to a piece of land through a purchase is dealt with in the next section.

7. TRANSACTION COSTS

In many countries the formal land market is made less efficient and sometimes paralyzed by the high transaction costs related to parcel surveying, attorneys’ fees, and land registration (or recordation). This is a pertinent issue in Barbados where land policy has focused on converting urban tenancies into freehold tenure. In these cases a question has arisen about the incentive for these tenants to convert to freehold, given the associated purchase price, the transaction costs and the fact that they would now become eligible to pay land tax.

In this section I have documented the fee scales used by attorneys and land surveyors as well as the government taxes and fees associated with typical transactions. In order to appreciate how much these fees and taxes amount to for a lower income person, I have computed the transaction costs for conveying and mortgaging a low value property. The basis for computing the general transaction costs⁶⁹ involved in the selling/buying and mortgaging of property are given below in Table 6, Table 7 and Table 8. This is followed by a worked example for a property valued at B\$30 000 (see Table 10 and Table 11).

⁶⁸ Prior to this they made use of a central data processing unit in government

⁶⁹ Only direct monetary costs to the parties, either from professional fees or government taxes, are considered (i.e. opportunity costs and other indirect or non-monetary costs are excluded)

Table 6. Table of Attorney's Fees^a and Other Vendor Transaction Costs^b

TYPE OF COSTS	BASIS FOR COMPUTING COSTS	AMOUNT	NOTES
Vendor:			
(a) Attorney's Fee for preparation and completing conveyance (excluding conveyance under Tenancies Freehold Purchase Act)	Up to B\$25 000 Next B\$75 000 Next B\$100 000 Next B\$300 000 Thereafter	B\$750 2% 1.5% 1.25% 1%	Fees on registered land are 2/3rds of those shown
(b) Attorney's Fee for agreement for sale and purchase of land	Building Estates Other Agreements	B\$250 B\$400	
(c) Attorney's Fee for obtaining Tax Clearance Certificate	Standard fee per transaction	B\$100	
(d) Attorney's Fee for preparing Change of Ownership Forms	Standard fee per transaction	B\$100	
(e) Property Transfer Tax	Property with house Property without house Non-citizen	5% 5% 8%	First B\$25 000 exempted No exemption No house exemption
(f) Stamp Duty	Flat rate on market price	B\$10 per B\$1 000	
(g) VAT	Charged on Attorney's fees	15%	
(h) Exchange Control	Only applies to non-residents	\$250 (min)	

- a. Based on Legal Profession (Attorneys'-at-Law) (Remuneration for Non-Contentious Business) Rules, 1997, Statutory Instruments Supplement No. 48
- b. Based on information supplied by Keith Mayers, Private Attorney and UDC Legal Advisor, and the Registry Office

Table 7. Table of Attorney's Fees^a and Other Purchaser Transaction Costs^b

TYPE OF COSTS	BASIS FOR COMPUTING COSTS	AMOUNT	NOTES
Purchaser: (a) Attorney's Fee for preparation and completing conveyance (excluding conveyance under Tenancies Freehold Purchase Act)	Up to B\$25 000 Next B\$75 000 Next B\$100 000 Next B\$300 000 Thereafter	B\$1 000 2.5% 1.5% 1.25% 1%	Fees on registered land are 1/3rd of those shown
(b) Attorney's Fee for perusal of agreement	Building Estates Other Agreements	B\$300 B\$600	
(c) Transfer Tax	Only assessed on non-citizens	10%	
(d) VAT	Charged on Attorney's fees	15%	
(e) Recording Fee OR (e) Registration Fee	Per page OR Value of parcel does not exceed B\$20 000 Value of parcel does not exceed B\$50 000 Value of parcel does not exceed B\$80 000 Value of parcel does not exceed B100 000 Value of parcel does not exceed B\$200 000 Value of parcel does not exceed B\$500 000 Value of parcel exceeds B\$500 000	B\$4/page OR B\$20 B\$40 B\$70 B\$100 B\$150 B\$250 B\$300	In Common Law Deed Recordation System In Registration of Title System

a. Based on Legal Profession (Attorneys'-at-Law) (Remuneration for Non-Contentious Business) Rules, 1997, Statutory Instruments Supplement No. 48

b. Based on information supplied by Keith Mayers, Private Attorney and UDC Legal Advisor, and the Registry Office

Table 8. Table of Attorney’s Fees^a and Other Transaction Costs^b for a Legal^c Mortgage

TYPE OF COSTS	BASIS FOR COMPUTING COSTS	AMOUNT	NOTES
Mortgagor Costs:			
(a) Attorney’s Fee for preparation and completing mortgage for mortgagor	Up to B\$25 000 Next B\$75 000 Next B\$100 000 Thereafter	B\$750 1.5% 1% 3/8%	Fees on registered land are 1/3rd of those shown
(b) Attorney’s Fee for investigating title, perusing and completing mortgage for mortgagee	Up to B\$25 000 Next B\$75 000 Next B\$100 000 Thereafter	B\$1000 2% 1.25% 5/8%	Fees on registered land are 2/3rd of those shown
(c) VAT	Charged on Attorney’s fees	15%	
(d) Stamp Duty	Flat rate based on mortgage amount	B\$6 per B\$1 000	
(e) Recording Fee	Flat per page rate	B\$4/page	
(f) Valuation Fee charged by bank		B\$250 (min)	
(g) Negotiation Fee	Percentage of Mortgage amount	0.5%	

- a. Based on Legal Profession (Attorneys’-at-Law) (Remuneration for Non-Contentious Business) Rules, 1997, Statutory Instruments Supplement No. 48
- b. Based on information supplied by Keith Mayers, Private Attorney and UDC Legal Advisor
- c. The attorney’s fees for a Chattel Mortgage are half those for a legal mortgage

The Barbados Land Surveyors Association have passed a “Scale of Minimum Fees” which applies to (i) the resurvey of the perimeter of a parcel of land, (ii) the survey for subdivision of land, (iii) topographic surveys, and (iv) engineering surveys. For the purposes of this report I will deal only with the boundary surveying part ((i) and (ii)).

The fees differ according to whether the land being surveyed is “agricultural land” or other land. Agricultural land is defined as follows:

If (Land Value - \$10 000) / (Land Area – 0.2 ha) is less than \$10 000 per hectare it is agricultural land. If greater than \$10 000 then it is to be treated as residential, Industrial or Commercial Land. This applies to all land regardless of the use to which it is put.⁷⁰

⁷⁰ Barbados Lands Surveyors Association (1995), p. 1

Where value of land is used to compute the fees, this value is regarded as the “gross market value of the property less betterment value, or site value, whichever is greater.”⁷¹ The fee structure and amounts are shown in Table 9.

Table 9. Scale of Minimum Fees for Cadastral Surveys

CATEGORY OF LAND	PERIMETER SURVEYS	SUBDIVISION SURVEYS
A. Agricultural Land:		
(i) First 0.5 ha or part	B\$1 000	Each lot is charged for as if it were a perimeter survey, with no additional fee for perimeter survey
(ii) Excess	B\$900 per ha	
B. Residential, Industrial or Commercial		
(i) Land valued at less than B\$100 per m ²	B\$1 200 B\$1 400 per ha	<ul style="list-style-type: none"> ▪ B\$750 per lot ▪ B\$850 per lot ▪ B\$950 per lot ▪ First 0.2 ha B\$950 Excess B\$1 200 per ha
<ul style="list-style-type: none"> - First 0.1 ha or part - Excess <ul style="list-style-type: none"> ▪ Lots less than 1 000m² ▪ Lots from 1 000 – 1 500m² ▪ Lots from 1 500 – 2 000m² ▪ Lots from 2 000m² up 		
(ii) Land valued at B\$100 per m ² or more	B\$1 500 1.0% 0.5% 0.25%	Each lot treated as separate survey and charged for according to perimeter charge (see B (ii))
- First B\$40 000 or part		
- Next B\$460 000		
- Next B\$1 500 000		
- Excess over B\$2 000 000		

The scale of fees also describes exactly what tasks are included in these types of surveys. The fee negotiated by the government for the plantation tenancies apparently resulted in a 25-30% discount on the subdivision fees, but the standard fee was charged for the perimeter surveys.

In the following example (see Table 10 and Table 11) it is assumed that the property consists of a house on a lot which is not in a subdivision type development. In addition, it is assumed that it is surveyed and there are no problems with the boundaries.

⁷¹ Barbados Lands Surveyors Association (1995), p. 1

Table 10. Typical Transaction Costs for Low Income Vendors and Purchasers

TYPE OF COSTS (Value of Property = B\$30 000)	VENDOR (B\$)	PURCHASER (B\$)
(a) Attorney's Fee for preparation of conveyance	850	1125
(b) Attorney's Fee for sale/purchase agreement	400	600
(c) Attorney's Fee for obtaining Tax Clearance Certificate	100	
(d) Attorney's Fee for preparing Change of Ownership Forms	100	
(e) Property Transfer Tax	250	
(f) Stamp Duty	300	
(g) VAT	218	259
(h) Recording Fee (Registration Fee)		50 (40)
TOTAL COST	B\$ 2 218	B\$ 2 034 (B\$ 2 024)
COST AS % OF VALUE OF PROPERTY	7.4%	6.8%

For the purposes of computing mortgage transaction costs I am assuming that the mortgage is for 100% of the value and that the property is the same as that used in the above example (i.e. property is valued at B\$30 000).

Table 11. Typical Transaction Costs for Legal and Chattel Mortgages

	Legal Mortgage	Chattel Mortgage
Value of Mortgage (100%)	B\$ 30 000	B\$ 30 000
(a) Attorney's Fee for preparation and completing mortgage for mortgagor	825	412
(b) Attorney's Fee for investigating title, perusing and completing mortgage for mortgagee	1100	(no charge - done by attorneys in NHC)
(c) VAT	290	62
(d) Stamp Duty	180	180
(e) Recording Fee	75-100	75
(f) Valuation Fee charged by bank	250	0
(g) Negotiation Fee	150	0
TOTAL COST	B\$ 2 870 - 2 895	B\$ 729
COST AS % OF LOAN AMOUNT	9.6 %	2.4%

These costs can be reduced when, for example, the vendor and purchaser use the same attorney.

8. LAND TENURE ISSUES WITH RECOMMENDED ACTIONS

In this section I have first identified the general need to consider the use of more basic systems for surveying, conveyancing and registration in order to meet the needs of the poor. This is followed by a more specific discussion of land tenure issues together with recommendations for addressing these issues.

The land policy in Barbados is firmly behind a private freehold system of land tenure and, given the extent of the tenantry legislation and the conversion to freehold on plantation tenancies, there is no question that this policy direction will continue. From the grassroots or individual tenant perspective, it is apparent that most people want ownership or, in Bajan terms, “a piece of the rock.” Whether every Barbadian can afford to acquire his or her piece is another question, especially relevant to those in the lower income bracket.

The social legislation that calls for a tenure conversion on the plantation and urban tenancies is quite unique within the scope of my experience. However, the land administration system in Barbados is designed to a large extent for middle and upper income groups. The existing system provides mechanisms to facilitate the tenure conversion, but it has fallen short of achieving the goal of freehold tenure for all. I believe the inadequacy lies in the lack of fast, simple and cheap mechanisms for formalising land tenure arrangements. The surveying, conveyancing and registration are quite sophisticated and the corresponding cost of maintaining this high standard puts these services beyond the pocket of the poor. Government subsidies for these services may bring this within the reach of some, but when one considers the cost as a proportion of the value of the land, they are unrealistically high.

My general recommendation (more specific recommendations are given below) is that Barbados consider designing their land administration system so as to directly target lower income people. Since most poor people cannot move from the status quo to fully formalized tenure, I suggest a stepped, incremental approach be used. By implementing a simple, fast and cheap system of formalising⁷² these property rights the goal would be to survey and register all low income properties. In other words, give top priority to accessibility, even if it means lowering certain standards. Once in this more basic system, land owners can at a later stage move into the more sophisticated system at their own cost. This will undoubtedly occur once the value increases in value and they can afford the higher costs of the sophisticated system. The rationale for this dual system approach is simple – we cannot apply one homogeneous system of land administration, designed for the higher income brackets, to a heterogeneous socioeconomic situation. There is a world of difference between plantations and the tenancies on this land.

⁷² Formalising could include cadastral surveying, town planning, conveyancing and registration

In both the conversion of the plantation tenancies and the land adjudication and registration initiatives, the expectation has been that people will cooperate and follow through with the various procedures. Over a 18 year period, this has been true for 50% of the plantation tenancies and about 4000 parcels in the registration districts.⁷³ What is needed is a more pro-active approach towards these types of initiatives. In many cases this approach can only be implemented as part of a project which provides the injection of necessary resources. Barbados has several factors in its favour: (a) it is small; (b) the society in general is very law abiding and cooperative; and (c) the general level of education and competence is high. They are therefore in a better position than most to tackle the problem of poverty alleviation.

The specific issues and recommendations discussed below focus primarily in the urban area as, with the exception of the plantation tenancies, this is where most poverty occurs.

Issue 1: Since 1980 Less than 20% of the Urban Tenancies have been converted to freehold

Why is it that tenants on urban tenancies are not following through on the opportunity to obtain freehold tenure over their land parcels? Possible reasons include: (a) purchase price is too high, (b) tenants have no incentive to purchase as the rents are very low, (c) landlords do not wish to sell as they do not wish to lose this source of income, (d) transaction cost for formalising this transaction are too high.

The Government is addressing the issue of purchase price in a new proposed Act. If this is lowered significantly then this would remove the second problem with respect to low rents. The landlords have no legal basis for not following through with the conversion as the legislation clearly established the right to purchase as an overriding right on the land. To exercise this right, and lower the transaction costs, I suggest a pro active project-based initiative which firstly simplifies the land administration system (surveying, conveyancing and registration) and then provides the necessary resources for teams to visit the urban tenancies. These teams would undertake all activities necessary to convert the land to freehold and formalise this transaction.

Issue 2: An estimated 45% of the Plantation Tenancies have still not been converted to freehold even though they have been fully surveyed and processed by the Division of Housing

Earlier in this report I summarised the status of the plantation tenancies where essentially 95% of the lots have been surveyed and completed to the point where the Division of Housing has completed their obligations (see Section 2.2.1). However, only about 50% of the group have completed the conveyance that finalizes the conversion to freehold. The other 45% are stuck in the process, even though they only lack the last two steps (conveyance and registration). The problem is that these tenancies are dynamic and the longer the 45% remain incomplete, the more likely that change would have taken place. This change means that the survey information and Division of Housing information

⁷³ It is estimated that there are 9 000-10 000 parcels in the 7 registration districts

collected earlier in the process is probably already out-of-date. Given the amount of effort and resources that have already gone into this initiative, having to start again would be a tremendous waste.

I recommend that field teams revisit these areas to verify the information already collected by the surveyors and Division of Housing. The government could assign one of its attorneys to facilitate the conveyance. This would be done pro-actively whereby the teams would handle the conveyancing and submission to the registry. It is highly desirable that this information also be channeled through the adjudication commission so that it can be registered in the title registration system (as opposed to the common law deeds system).

Issue 3: Does the Registration of Title System offer a Cheaper, Faster, Simpler and more Secure form of Formalising Land Rights?

The registration of title system being implemented in Barbados does not appear to offer the advantages it is supposed to offer. The Barbadian Certificate of Title, for example, is not a single, simple certificate, but a lengthy document resembling the deeds in the common law system. It is also questionable whether the system is significantly cheaper, but it can be argued that it has not been given a fair chance to prove itself, since first registration has not been widely completed. The registration system in Barbados needs to be re-examined to assess whether it exhibits the characteristics that are fundamental to such a system. Most importantly, it needs to possess these characteristics so that it is accessible to the poor.

Another area of concern is the government guarantee of title. This concept first arose in the Torrens registration of title system introduced in Australia in the middle of the last century. In order to support this guarantee the government usually keeps an assurance fund which is used to compensate those who have a valid land claim, but are not the owners as shown on the register. The government protects the register against outside claims and pays out the claimants,⁷⁴ hence the concept of indefeasible title. In Barbados, even though there is a government guarantee, no assurance fund is kept. I am not convinced that title insurance would improve this situation.

It is important that the registration of title system be evaluated prior to any project efforts to implement the system more widely across the Island. Any project should focus on implementing a system which will be accessible to the poor.

Issue 4: The Implementation of the Title Registration System was supposed to have been completed by 1996, but less than 4% of the parcels on the Island have been fully registered

⁷⁴ The US concept of title insurance is very different from the state guarantee as it typically works with common law recordation of deeds systems and the insured parties can lose their land, but then claim damages against the title insurance policy

The original estimate of 7 years⁷⁵ to complete the whole Island was certainly an underestimate if one looks at the progress to date.⁷⁶ However, when looks at projects that have undertaken the implementation of such a system (e.g. Land registration and Titling Project in St. Lucia), this does not seem unreasonable for an island the size of Barbados. Why has progress been so slow? I believe the primary reason has been that insufficient resources were allocated to implementing this registration of title system and no project unit or project was put together to achieve this specific goal. In contrast, the initial adjudication unit were all part-time employees. Part of the responsibility off such a project unit should have been to publicise and promote the benefits of the new system and devise a plan for carrying out the necessary tasks.

One of the bottlenecks has been the lack of timely resolution of boundary encroachments and disputes and the finalisation of registry maps in Lands and Surveys. Once adjudication is completed and claimants have had 60 days to appeal the findings, all boundary and title decisions should be final. Under the current process, it appears that changes to boundaries can be made after adjudication. The small number of parcels with boundary problems should not hold back the majority of the parcels without problems. Once again, a more pro active project approach would facilitate the rapid resolution of most boundary problems.

Issue 5: How much Foreign Ownership and how many Golf Courses can Barbados afford?

This is a major land policy decision for Barbados who increasingly rely on tourism for their foreign exchange earnings. One argument I heard in favour of building more golf courses is that this may be the best and most efficient use of the land given that farming is not very lucrative. By creating an increasing number of areas to which only a small elite group of mainly non-Barbadians have access is not a recipe for social cohesion on the Island. An island that is 21 miles long and 14 miles wide at its longest and widest extents cannot afford to ignore the land needs of its people. The competing social and economic dimensions to land use are especially relevant to a small country of this size.

The government has appointed a high level commission to look at foreign ownership of land and presumably this group will make proposals that may affect the land tenure system as it applies to foreigners. Any land administration project should take this issue into account and focus on lower income Barbadians and not on the tourist sector.

Issue 6: Regularisation of Irregular Tenures

There are a number of properties in Barbados where the claimants have a valid claim to the land, but who have not fully formalised their claims. Some of these situations have been dealt with under other specific issues, but amongst the remainder the following are regarded as high priorities:

⁷⁵ Thomas 1988

⁷⁶ 4000 out of a total of 10 000 parcels have been registered in the registration districts

- The approximately 2,000 parcels which were subject to sporadic adjudication and put into the title registration system without an adequate survey
- The approximately 4,000 parcels which have been systematically adjudicated to bring it under the title registration system, but which have never been finally registered
- Tenants in the process of purchasing their tenantry lots, but who have not completed the final steps

I suggest that these three groups be given a high priority in any land tenure regularisation project. Once again these irregular tenures can best be dealt with through a targeted, pro active land adjudication exercise.

Issue 7: Tenure Security - What does it Mean?

Underlying the whole policy of moving to freehold is a question about the real impact of this apparent greater tenure security. Has freehold indeed brought with it some of the benefits that are supposed to accompany private property? Tenants on tenancies are not allowed to put in permanent foundations and convert to cement block walls as they are not the owners of the underlying land. Clearly, giving them freehold has removed this barrier.

I recommend that a study of the plantation tenancies that have been fully registered or recorded be carried out. This study would compare the ex-tenants current situation with that described by the baseline data collected by Housing in the process of freehold conversion. Some aspects that need to be investigated are: (a) improvement in standard of living, (b) use of credit, (c) availability and terms of credit, (d) infrastructure development, (e) relationship with original owner, (f) motivation to invest more resources in the property, and (g) other socioeconomic indicators of poverty.

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Appendix A

List of People Interviewed

Ms. Maryam Khalid, Chief, Property Management Unit, Division of Housing
Ms. Judith Field Gray, Chief Legal Officer, Legal Unit, Division of Housing
Ms. Dale Neblett Brown, Chief Legal Officer, National Housing Corporation
Mr. Bevan Kinch, Commissioner of Land Tax, Land Tax Department
Ms. Mary Haynes, Registrar of Titles, Land Registry
Mr. Michael Alleyne, Deputy Registrar of Titles, Land Registry
Mr. Bruce Carter, Commissioner of Titles
Mr. Dennis Haynes, Commissioner of Titles
Mr. Robin Gittens, Chief Surveyor, Lands and Surveys Department
Mr. Greydon Nesfield, General Manager, National Housing Corporation (NHC)
Mr. Speede, Administration, National Housing Corporation (NHC)
Mr. Keith Mayers, Private Attorney and Legal Advisor, Urban Development Commission
Mr. Kevin Leach, Deputy Project Manager, Environmental Management and Land Use
Planning for Sustainable Development Project (IDB-funded)
Ms. Fay Lumsden, International Housing Specialist, Urban Development Commission
Mr. Leon Harris, Inter-American Development Bank, Barbados Office
Mr. Gregory Hutchinson, Partner, Hart, Hutchinson & Field Inc., Private Land Surveyors
Mr. Brian Hart, Partner, Hart, Hutchinson & Field Inc., Private Land Surveyors
Mr. Mark Field, Partner, Hart, Hutchinson & Field Inc., Private Land Surveyors
Ms. Margaret Talma, Chief of the Project Unit, Urban Development Commission (UDC)
Mr. Glenvis Bradshaw, Supervising Valuer, Land Tax Department
Mr. Stanton Gittens, CEO, Ideal Homes (Private Developer)
Ms. Debbie Nurse, National Housing Corporation (NHC)

Appendix B
List of Relevant Laws

Land Acquisitions Act - CAP 228 (1949)
Crown Lands Divesting and Disposal Act*

Security of Small Holdings Act - CAP 237 (1955)
Tenancies Control Act
Tenancies Development Act (1980)
Tenancies Freehold Purchase Act- CAP 239B (1991)

Housing Act - CAP 226 (1973)
Urban Development Commission Act (1997)
Special Development Areas Act (1996)

Land Adjudication of Rights and Interests Act - CAP 228A (1988)
Land Registration Act (1988)
Land Registration Regulations (1989)
Property (Conveyancing) Act

Land Boundaries Act
Land Surveyors' Act (1980)
Land Survey Regulations

Land Valuation Act - CAP 229A (1985)
Land Tax Act - CAP 78A (1985)

* I did not receive a copy or review this Act

Appendix C

Maps showing Distribution of Urban Tenancies

Appendix D

Typical Survey Plan Recorded at Lands and Surveys