



Residential Free Patent Bill

Frequently Asked Questions

1. When we implement the free patent bill, do we have to survey all those residential parcels, or are there existing cadastral surveys?

Yes, property survey is required before any kind of titling could be made.

The purpose of a land survey is to accurately know a position on land, to establish an indicated position on the ground, and to reflect the same on a map for reference purposes. Surveying a property is a requirement for land disposition and land registration under Commonwealth Act No. 141 (Public Land Law) and PD 1529 (Property Registration Law). The reason for this is simple – the identity of the land has to be established with certainty (we call this object certain in Obligation and Contracts) before any registered rights can be appended to it.

Surveys are conducted either by the government (government surveys) or by licensed private survey practitioner (private surveys). Government surveys are by administration (those conducted by government surveyors) or by contract to private surveyors. Both surveys, government and private, has to be approved by the DENR.

The government large scale surveying programs is through the cadastral survey projects (started sometime in 1909). Cadastral survey involves the survey of a whole municipality (or an extensive portion) for identifying and delineating the **individual parcels** of all landowners and claimants which will be the basis of the issuance of titles or patents. It also includes the delineation of the boundaries of the various political units (barangay, municipality and province) as well as the boundaries between the forested areas and the alienable and disposable lands. Cadastral surveys are conducted by the government for purposes of political boundary delineation, land adjudication, real property tax mapping, land development planning, etc. At present, about half (around 750) of all municipalities are cadastrally surveyed; the surveys of the other half are either incomplete or in-progress.

In areas with approved cadastral survey, residential land owners do not need to have another private survey, the survey record in the DENR on his cadastral



lot is sufficient. Lot owner should submit an approved private survey if his municipality has no cadastral survey.

Since surveying of the property is a requirement, only residential lands with approved surveys could be titled. This means that all residential lands within a municipality with an approved cadastral survey can be titled. Those residential lands within a municipality with no approved cadastral survey can have his property surveyed by a licensed surveyor. This is type of survey is called “private survey” and this has to be submitted to the DENR for inspection, verification and approval. This process of verification is necessary to insure that the survey was conducted within the standards/accuracy prescribed for property surveys and to ensure that the survey did not encroached with other previously approved surveys.

2. What is the process of issuing a title?

The procedure in “registering title” is either judicial or administrative.

There are a number of ways by which title to public land may be registered or title thereto granted to qualified individual. The principal methods are those provided by the Public Lands Act, but another means is provided in the CARP law, RA 6657 where, in addition to private lands, certain public land may be transferred to farmer beneficiaries. Other laws related to land disposition are Act 496, the Land Registration Act, Act 2259, the Cadastral Act and PD1529, the Property Registration Decree which provide for the registration of lands claimed as private property and which are dealt with under the heading “Confirmation of Imperfect Title”.

Under the Public Land Act, title or ownership to public lands can be made through:

1. Homestead Settlement (Chapter IV)
2. Sale of Agricultural Land (Chapter V)
3. Sale Residential, Commercial and Industrial Land (Chapter IX)
4. Townsite Reservation (Chapter XI)
5. Free Patent – Administrative Legalization of Imperfect Titles (Chapter VII)
6. Judicial Confirmation of an Imperfect Title (Chapter VIII)

In summary, title or ownership to public land can be acquired through acquisitive prescription of 30 years (5 and 6) or through a government land grant (No. 1) and sales (Nos. 2, 3 and 4).

The procedure is as follows:



JUDICIAL (No. 6 mentioned above) titling is as follows:

Registering your title to a property is initiated before the Regional or Municipal Trial Courts (RTC and MTC) acting as a land registration court. The proceeding is *in rem* or a proceeding directed against the property and will bind the “whole world”. The proceeding is likewise bound by the Rules of Court, including the Rules of Evidence. Judicial confirmation of title can be either compulsory (under the Cadastral Act, Act No. 2259) or voluntary under the Public Land Act and Presidential Decree 1529. However, the compulsory registration of land under the cadastral proceeding has long been abandoned as a means of mass titling of unregistered land as the same has been proven inefficient. The government has long ceased to file cadastral cases before the court.

Since confirmation of an imperfect title is judicial, there is a need to hire lawyers to present the landowners claim in court. The following is the procedure:

- a. Survey of the Land
- b. Approval of the Survey by the DENR
- c. Filing of an Application before the Court
- d. Setting of Initial Hearing to Establish Jurisdiction
- e. Transmittal of Application to the Land Registration Authority
- f. Publication of Notice in the Official Gazette and Newspaper
- g. Service of Notices
- h. Filing of Opposition (If any)
- i. Initial Hearing
- j. Hearing on the Merits
 - Presentation of the evidence of the petitioner (testimonial and documentary)
 - Formal Offer of Evidence by the petitioner
 - Presentation of the evidence of the oppositor (if there is any)
 - Formal Offer of Evidence by the oppositor
 - Submission of the Memorandum
- k. Promulgation of Judgment
- l. Issuance of the Order to Issue Decree
- m. Issuance of a Decree by the LRA
- n. Sending of Decree by the LRA to the RoD
- o. Entry of Decree
- p. Issuance of Certificate of Title

The process will take at least eighteen (18) months if no opposition is interposed by any claimant or if the government does not appeal the decision of the court. In case of an opposition or appeal, the entire process can last for years or in some instances, even decades.



ADMINISTRATIVE (Nos. 1 to 5)

Administrative titling of land is the mandate of the DENR. The process, may it be agricultural free patent, homestead, or sales patent is less formal and less rigid proceedings and not governed by the strict rules of evidence. The proceeding is a quasi-judicial function of the DENR (in the last 105 years) and has technical personnel dedicated to land adjudication. The procedure varies per kind of patent applied for or issued but are more or less as follows:

- a. Survey
- b. Filing of application before the CENRO
- c. Initial/Preliminary Examination of Application
- d. Examination of Land Inspector/Examiner
- e. Posting of Notice
- f. Order of Approval of Application
- g. Transmittal for Approval of Patent to the PENRO/Regional Office
- h. Approval of Patent
- i. Transmittal of the Patent to the Register of Deeds
- j. Entry of the Patent
- k. Issuance of Certificate

In sales patents (residential, commercial and industrial lands) as well as Townsite application, the process shall include appraisal of the land, publication and bidding and payment of the appraised value. Under RA730, if the land is residential and is not more than 1,000 sqm. direct sale is allowed to actual occupants (no bidding). The process in agricultural free patent usually takes 3 to 6 months if there is no opposition. In sales, it could take 6 months to 1.5 years. The delay is usually caused by the problems relating to appraisal of the land, bidding and publication requirement. Deferred payment is allowed up to ten years.

Batas Pambansa 223 (Residential Free Patent)

The need to address the issue of mass titling in residential public land caused the enactment in 1982 of Batas Pambansa Blg. 223. The law introduced provisions extending Free Patents to residential lands of the public domain, although it was expressly provided that the provisions did not apply to residential lands located in cities, in capitals of provinces, in first class, second class, third class and fourth class municipalities, and in townsite reservations. It was also provided that all applications for free patent should be filed on or before December 31, 1987.

In the said law, the land is given for free to those who had acquired acquisitive prescription of 30 years. The procedure is thus much simpler and affordable to land owners (without appraisal, bidding and payment of the value of the land which is the most common concern of land owners why they refused to have their land administratively titled).



3. Do we need to provide a budget for surveying?

Budget on surveying should not be included in the residential free patent bill.

It is already covered by the general mandate under CA141. We do not need a new specific legislation for surveying; the DENR should only include the activity in the yearly appropriation budget (Appropriation Bill) of the department. The budget for cadastral surveying, however, competes with other "priority" programs of the DENR belonging to the other "sectors", i.e. forestry, mining, environment, etc. Since departments, such as DENR, are given budget ceiling (a little more than 5 billion), allocating the same to specific activity of each sector (lands, forestry, etc.) becomes a matter of prioritization by the Secretary. In the budget for 2007, congress allocated 200M for cadastral surveying. This is the first time in almost 2 decades that a substantial money is allocated by the government for cadastral surveying.

4. Are we expecting conflicts?

Let's do some statistics here.

There are less than 800 claims and conflicts cases in the DENR yearly spread in its 16 Regional Offices throughout the Philippines. Its annual Agricultural Free Patent issuance is at 100,000 patents a year. In simple computation, there could be 800 conflict cases in every 100,800 applications. That is **less than 0.8% of the total number of applications**. Thus, if patent production will rise to 150,000 because of the Residential Free Patent Applications, conflict cases will likewise rise by 0.8%. The number (1,200 cases) is still manageable and statistically better resolved in the Department than with the regular courts that handles gamut of cases ranging from petty crimes to murder and marriage annulment.

The decision of the Secretary is appealed before the Court of Appeals.

5. How are conflicts resolved?

There is an existing mechanism and procedure (Settlement of Land Disputes) in the DENR to resolve land conflict in public land disposition. This has been instituted in the agency since the time of the Bureau of Lands (105 years already) up to the present.

The power and authority of the Department to decide cases of claims and conflicts is enshrined in the following provisions of the Public Land Act, C.A. 141 as amended:



SECTION 3. The Secretary of Agriculture and Natural Resources shall be the executive officer charged with carrying out the provisions of this Act through the Director of Lands, who shall act under his immediate control.

SECTION 4. Subject to said control, the Director of Lands shall have direct executive control of the survey, classification, lease, sale or any other form of concession disposition and management of the lands of the public domain, and his decisions as to question of facts shall be conclusive when approved by the Secretary of Agriculture and Natural Resources.

The courts will not interfere with the administration by the Lands Department of lands of the public domain in the absence of fraud, imposition, error or abuse of discretion (*Eusebio vs. Agricola de Balaran*, L-21519, March 31, 1966).

The Director of Lands is a quasi-judicial officer. As a quasi-judicial officer, he makes findings of facts, and even passes upon mixed question of facts and law. The decision of the Director of Lands when approved by the Department head is conclusive as to questions of fact, while on questions of law the decision is subject to judicial review.

The power granted by law to the Director of Lands and to the Secretary of Environment and Natural Resources regarding the administration and disposition of alienable lands of the public domain carries with it the authority to determine the conflicting claims of applicants and occupants. As stated explicitly in one case the determination of contest between claimants as well as the issuance of patent to either party come exclusively under the jurisdiction and authority of the Director of Lands (*Gonzales vs. Director of Lands*, 42 Phil. 227).

6. Doesn't the bill encourage squatting?

The bill allows for free patent on public lands only, and does not include privately-owned and titled lands.

The bill allows for free patent on public lands only. It doesn't grant free patents to occupants of lands that are privately-owned and already titled. It is also limited to lands not intended for public use and to areas classified as "residential" under the comprehensive land use plan of the local government.