



**La Salle Institute of Governance  
Land Markets Development Project**

# Unleashing Dead Capital

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Extending Free Patent to Residential Lands

**Policy Paper Series, Volume 1, No. 1, 2008**

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# UNLEASHING DEAD CAPITAL: EXTENDING FREE PATENTS TO RESIDENTIAL LANDS



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In capital-scarce economies like the Philippines, a land title registered in a formal system is not only an important production asset but also excellent collateral for loans. However, much of the land parcels in the country are still outside of the formal system. Much focus and discussion has been made regarding titling of agricultural land in the last 20 years and in the process, the much more numerous but equally valuable titling of residential lands has been neglected. A review of current residential land titling infrastructure reveals that there are legal and operational constraints that inhibit or impede mass titling of public residential lands. Registration or confirmation of titles of residential lands is limited to court proceedings. Administrative legalization of titles on the other hand does not extend to residential parcels. The only available administrative process for residential lands is through sales patents, which is limited to newly released areas where no imperfect titles has set in. Under present title registration proceedings, it will take more than one thousand years to finish the millions of unregistered residential parcels in the country. Thus, in order to improve efficiency of residential land titling, new legislation is necessary to allow administrative legalization (free patent) in residential lands.

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## LIST OF ABBREVIATIONS AND ACRONYMS USED

<b>A &amp; D</b>	Alienable and Disposable
<b>BP</b>	Batas Pambansa
<b>CA</b>	Commonwealth Act
<b>CARP</b>	Comprehensive Agrarian Reform Program
<b>CENRO</b>	Community Environment and Natural Resources Office
<b>DAO</b>	Department Administrative Order
<b>DAR</b>	Department of Agrarian Reform
<b>DENR</b>	Department of Environment and Natural Resources
<b>DNR</b>	Department of Natural Resources
<b>DOJ</b>	Department of Justice
<b>FIG</b>	International Federation of Surveyors
<b>LAMP</b>	Land Administration and Management Project
<b>LMB</b>	Land Management Bureau
<b>LRA</b>	Land Registration Authority
<b>LRC</b>	Land Registration Court
<b>MSA</b>	Miscellaneous Sales Patent Application
<b>MTC</b>	Municipal Trial Court
<b>PD</b>	Presidential Decree
<b>PENRO</b>	Provincial Environment and Natural Resources Office
<b>RA</b>	Republic Act
<b>ROD</b>	Register of Deeds
<b>RTC</b>	Regional Trial Court

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# UNLEASHING DEAD CAPITAL: EXTENDING FREE PATENTS TO RESIDENTIAL LANDS



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## 1. Introduction: Land Titling and Land Registration

Land titling involves programs that adjudicate, delineate, and register rights to land within the community. When the rights of lands are registered, the landowners gain a stronger position against undue acquisition and to negotiate on equitable terms thereby creating a healthy and just land market.

Land registration (1) protects property rights; (2) facilitates transactions in land; and (3) enables the use of land as collateral for loans (McEwen 2001). It creates the chance for owners to make investments needed for economic growth and development. A titled land benefits the landowner through the increased value that the title gives. Titling also reduces potential conflicts and land disputes since rights and restrictions thereat can now be registered and made known to the inquiring public. As titling paves way for clearer property rights and facilitates greater ease of exchange, growth and efficiency in financial land markets is realized. Moreover, when rights to lands are determined and protected, and when lands and the rights to lands are traded in a secure and transparent manner, an efficient land market economy is achieved.

### 1.1. Residential Land Titles as Collateral for Capital

In capital-scarce economies like the Philippines, a land title registered in a formal system is not only an important production asset but also excellent collateral for loans. The lack of such an integrated system of property rights in today's developing nations, as claimed by Hernando de Soto in his book *The Mystery of Capital*, makes it impossible for the poor to leverage their now informal ownerships into capital and as basis for entrepreneurship. A registered title can arguably become more than a simple asset of production or a simple tenement instrument but a source of capital for the landowner that they can utilize for other economic activities. Considering the number of residential parcels that are still unregistered because of these constraints, it can be said that the country is sitting in a heap of unutilized capital, waiting to be unleashed.

Much focus and discussion has been made regarding the titling of agricultural lands in the last 20 years. The government has embarked in the biggest systematic land titling program under the Comprehensive Agrarian Reform Program or CARP (RA 6657) giving agricultural land titles to millions of Filipinos. The Department of Environment and Natural Resources (DENR), as one of the departments implementing CARP covering the titling and registration of public agricultural lands through free patents, distributes an average of 100,000 patents annually. In 2006 alone, DENR-CARP distributed 113,620 free patents on agricultural public lands (Data from DENR-CARP Office). On the other hand, in 2006, there were only 3,125 residential sales patents or less than 3% of the total number of patents issued by the department. It appears that titling of residential lands was relegated to the backwater. It is likewise noteworthy to mention that there has been no systematic public residential land titling program that has been implemented by the government.

A review of current residential land titling infrastructure reveals that there are legal and operational constraints that inhibits or impedes mass titling of public residential lands. Residential land is not covered by administrative free patent which has been effectively used by the government in its titling programs in the past. The present system of residential land registration is expensive, inefficient and will not support a mass titling program. It requires a full-blown court registration proceeding that has to be filed by each landowner to confirm his title. Administrative land titling, on the other hand, is limited to sale of public land, which requires appraisal, bidding (except patents issued under RA 730) and sale of each parcel applied for. The limited free patent on residential lands located in 5<sup>th</sup> and 6<sup>th</sup> class municipalities under Batas Pambansa Bilang 223 (1982) was not extended when it expired in 1987. As a result, a large number of residential lands remained untitled since most of the owners and/or actual occupants could not afford the present system requirement.

The Institute deemed it necessary to revisit residential public land titling in the Philippines in the light of the need for more land titles in the land market for purposes of generating capital.

The study will focus on the following:

- The Existing Land Titling and Land Registration System
- Residential Land Titling Process
- Issues and Concerns in the Current Residential Titling Process
- Conclusion and Recommendations

## **2. Title Registration in the Philippines**

Acquiring a registered title to a parcel of land in the Philippines is like entering a labyrinth. The agencies as well as the laws, rules and regulations involved in the activity are fragmented, if not

in conflict. However, it would be necessary to venture into this quagmire in order to canalize the discussion on residential free patents.

## 2.1. Basic Principle

All lands of public dominion and all other natural resources are owned by the state and all lands not otherwise clearly appearing to be privately owned are presumed to belong to the state which is the source of any asserted rights to ownership of land. Under this concept, private title to lands must be traced to some grant, express or implied, from the state (*Cruz vs. Secretary*, GR. No. 135385, December 6, 2000). This is also known as the *regalian doctrine* that finds expression in Section 2, Article XII of the Constitution (National Economy and Patrimony) and likewise incorporated under Book 2, Title 1, Chapter 3 of the New Civil Code. Only agricultural lands can be alienated or subject to private acquisition. The rest of the country's natural resources are inalienable and cannot be subject to disposition.

There are a number of ways by which title to public land may be registered or title thereto granted to a qualified individual. The principal methods are those provided by the Public Land Act, but another means is provided in the CARP Law (RA 6657) where, in addition to private lands, certain public lands may be transferred to farmer beneficiaries. Other laws related to land disposition are Act 496 (Land Registration Act), Act 2259 (Cadastral Act) and PD 1529 (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".

Lands of the public domain classified as alienable or open to disposition are further sub-classified as:

1. Agricultural;
2. Residential, commercial, industrial, or for similar productive purposes;
3. Educational, charitable, or other similar purposes;
4. Reservations for town sites and for public and quasi-public uses.

The following lands are not subject to private ownership:

1. Alienable and disposable lands that are intended for:
  - a. Public or semi-public use
  - b. Public service
  - c. Military reservations
  - d. Civil reservations;
2. Foreshore and reclaimed lands;
3. Lakes, navigable rivers and creeks;

4. Forest or timber;
5. Mineral lands; and
6. National parks.

Under the Philippine Constitution, land ownership is limited to Filipino Citizens and public land disposition is limited to 12 hectares. Citizenship restriction to ownership of land was introduced in the 1935 Constitution (Section 1, Article XIII of the 1935 Constitution). Area restriction was reduced to 12 hectares in the 1987 Constitution.

Under the Public Land Act, a qualified individual can acquire ownership of alienable and disposable land through:

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

Public land classification is very important to public land disposition because Section 8 of CA 141 (Public Land Act) provides that only lands classified as alienable and disposable land can be acquired by private hands. Such lands should have been declared open to disposition or concession and:

1. Officially delimited and classified;
2. Surveyed;
3. Not reserved for public or quasi-public uses;
4. Not been appropriated by the government;
5. Not in any manner become private property; and
6. Not been the subject of a private right recognized by law.

Qualified private individuals can acquire public lands through acquisitive prescription (30 years under the Civil Code of the Philippines) or through public land sale and homesteading. Lands acquired through acquisitive prescription have to be confirmed by the state, either through judicial proceedings or through administrative adjudication. Administrative adjudication is limited to agricultural lands and does not include or cover the other sub-classification, i.e. residential, commercial, industrial, and town sites. Homesteading is limited likewise to

agricultural lands in the frontier areas where agricultural settlement is encourage. Usually, these are newly released A & D public lands opened for settlement.

Private corporations or associations are not allowed to hold lands except by lease for 25 years renewable for not more than 25 years, and not exceeding 1,000 hectares. Citizens may lease not more than 500 hectares and may not acquire more than 12 hectares by purchase, homestead or grant.

Congress shall set specific limits of forests and national parks for conservation (Constitution Article XII, Section 4).

Private lands shall be transferred or conveyed only to qualified individuals, corporations, or associations except in cases of hereditary succession (Constitution Article XII, Section 7).

## **2.2. Land Classification and Title Registration**

Since only lands classified as alienable and disposable can be subject to private ownership, it would be worthwhile to discuss this concept before going to the present title acquisition and registration procedure.

The land classification in the Philippines as understood in land administration is the act of classifying land as natural resource. It is primarily an exclusive prerogative of the executive department of the government and is exercised by the Chief Executive and the Secretary of the Natural Resources Department as a delegated power (*Bureau of Forestry vs. Court of Appeals*, 153 SCRA 351).

The classification is descriptive of the legal nature of the land and not of what it looks like. Hence, the fact that a forest land has been denuded and its utilization is already agricultural does not by that fact mean that it has ceased to be forest land (*Amunategui vs. Director of Forestry*, G.R. No. L-27873, November 29, 1983). Moreover, classifications must be categorical: that is, land is either completely agricultural or completely forest or park.

The mandate of the DENR is now limited to those lands of the public domain denominated as "public forest" under the Revised Forestry Code, which have not been previously determined or classified, as needed for forest purposes in accordance with the provisions of the Revised Forestry Code (**DOJ Opinion No. 023**, Series of 1995, March 17, 1995).

Reclassification of lands that have already been subject to original classification is now with Congress pursuant to Section 4(a) of R.A. No. 6657 (Comprehensive Agrarian Reform Law). Also, the 1987 Constitution provides that Congress will now determine the final forest line. This is of course subject to the bill of rights provision on right to property and eminent domain.

Table 1 shows the area and ratio of lands that are classified as forest lands, alienable and disposable and unclassified.

**Table 1. Area and Ratio per Land Classification to Total Land Area**

<b>Item</b>	<b>Area in Hectares</b>	<b>Ratio</b>
Forest Land	15,000,000	50%
Alienable and Disposable	14,100,000	47%
Unclassified	900,000	3%
<b>Total</b>	<b>30,000,00</b>	<b>100%</b>

Source: Land Management Bureau

### **2.3. Property Surveys in the Philippines**

Surveying measures distances, directions, and angles between points and elevations of points, lines, and contours on, above, and below the earth’s surface to enable us to identify lands with accuracy. In the field, survey reference points are established and the determination of the precise location of important features in the survey area is made. Surveyors or Geodetic Engineers as they are commonly called in the Philippines also research legal records, look for evidence of previous boundaries and analyze the data to determine the location of boundary lines.

The identification of the land by defining the boundaries of the parcel through surveying is necessary before alienable and disposable land could be disposed or alienated by the government. The conduct and approval of original survey is within the exclusive jurisdiction of the DENR. The Land Registration Authority (LRA) is authorized to approve subsequent simple subdivision or consolidation surveys. Lands that are not surveyed cannot be disposed or alienated, and neither can it be registered for the simple reason that said land cannot be identified with certainty. Surveys standards is currently governed by the Manual on Land Surveys, Land Management Bureau, DAO No. 98-12 and DAO 07-29 or the Revised Regulations on Land Surveys of the DENR.

For purposes of property registration, surveys can be generally divided into two types – Cadastral and Isolated.

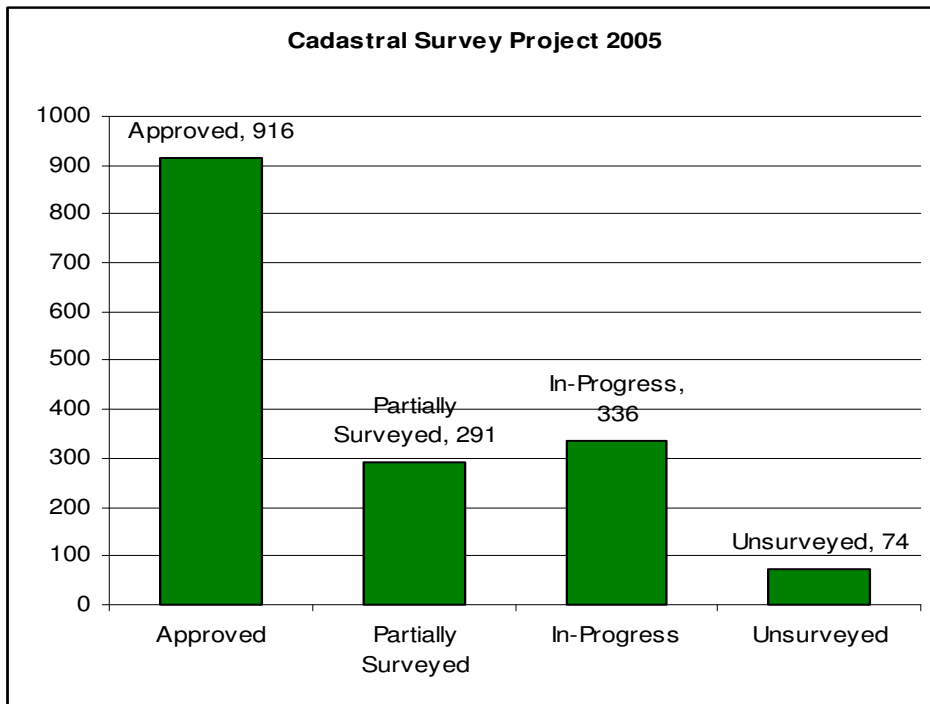
Cadastral surveys are conducted to determine the metes and bounds of all parcels within an entire municipality or city for land registration and other purposes (Section 5, DAO 07-29). Cadastral survey involves the survey of a whole municipality (or an extensive portion) for identifying and delineating 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, etc. All the other types of surveys are considered isolated.

Once a cadastral survey project is conducted on a municipality or city, all subsequent isolated surveys of parcels conducted within the area should be integrated and reflected in the cadastral records either as accepted or rejected. Once a previous survey is accepted, the parcel covered by it will have a corresponding lot number within the cadastre assigned to it. The previous survey number, however, is still indicated in the cadastral survey map for reference purposes.

The first municipality that underwent cadastral surveying is Pilar, Bataan in 1909. However, after almost one hundred years, only 916 municipalities and cities have an approved cadastral survey. Provided under Figure 1 is the status of all cadastral projects in the country.

**Figure 1. Status of Cadastral Surveys in the Philippines**



Source: LMB – Geodetic Surveys Division

## 2.4. Land Titles and Registration

### **2.4.1. Titles**

A title pertains to the ownership of property that is cognizable or enforceable in a court of law, or one that is complete and perfect in terms of the apparent right of ownership and possession. Private ownership of land is a privilege granted and protected by the state, the constitution and law. Titles during the Spanish colonization period are acquired through royal grant, sale, possession (Titulo de Compra, posesoria), etc. These titles were registered under the Spanish Mortgage Law. The United States recognized the property rights existing during the time of the Spanish colonial period (**Treaty of Paris**, Article VIII, Par. 2) and thereafter, introduced the present system of land ownership through the Public Land Act, Land Registration Laws and other land laws.

Titles, once acquired, may also be transferred by its owners to qualified individuals or corporations (there is a citizen requirement to ownership in the Philippines) through sale, donation, inheritance, foreclosure, forfeiture, state acquisition, and other recognized mode of property transfer. If the land is not registered, the title of the owner could still be lost to prescription, by mere adverse possession of another person for 30 years. However, prescription does not apply to lands registered under the Torrens System.

#### **2.4.1.1. Imperfect Titles**

Imperfect titles refer to ownership or acquisition of public lands through a mode recognized by law thereby attaching private rights to the land that can be legally enforced. Said right or title however are not yet complete and can be lost unless such right or title is perfected through a judicial or an administrative process.

Possession of real property, under certain conditions provided by law, could result to acquisition of an imperfect title. Titles or ownership to public land can be acquired through acquisitive prescription under the Civil Code of the Philippines and other laws (see Table 2), ten years if the possession is in good faith (ordinary prescription), and thirty years if the same is adverse.

In order to constitute such title by prescription or adverse possession, the possession by the claimant or by the person under or through whom he claims must have been actual, open, public, continuous, under a claim of title exclusive of any other right and adverse to all other claimants. The very definition of prescription as a mode of acquiring ownership as set forth in Art. 1106 of the Civil Code provides that, "*By prescription, one acquires ownership and other real rights through lapse of time in the manner and under the conditions laid down by law.*" Thus, a person who is in possession of the parcel of land under certain conditions as provided by law automatically becomes the owner of the said property. The application for confirmation is a mere formality, the lack of which does not affect the legal sufficiency of the title as would be evidenced by the Torrens title to be issued to it upon perfection.

**Table 2. List of Laws Providing for the Period of Possession Required Acquiring Title**

Date	Law	Period
1889	Civil Code of Spain	30 years
1901	Act No. 190 "An Act Providing a Code of Procedure in Civil Actions and Special Proceedings in the Philippine Islands"	10 years
1903	Act No. 926 "The Public Land Act of 1903"	10 years
1919	Act No. 2874 "The Public Land Act of 1919"	Since July 26, 1894
1936	Commonwealth Act No. 141 "The Public Land Act of 1936"	Since July 26, 1894
1949	Republic Act No. 386 "The New Civil Code of the Philippines"	30 Years
1952	Republic Act 782 "Act Granting Free Patent to Occupant of Public Agricultural Land since July 4, 1945"	Since July 4, 1945
1957	Republic Act No. 1942 "An Act to Amend Subsection (B) of Section Forty-Eight of CA 141"	30 Years
1964	Republic Act 3872 "An Act to Amend Section Forty-Eight of CA 141 and for other Purposes"	30 years
1977	Presidential Decree No. 1073 "Extending the Period of Filing Applications for Administrative Legalization (Free Patent) and Judicial Confirmation of Imperfect and Incomplete Titles to Alienable and Disposable Lands in the Public Domain Under Chapter VII and Chapter VIII of CA 141 as Amended for Eleven (11) Years Commencing January 1, 1977."	June 12, 1945 or earlier
1978	Presidential Decree No. 1529 "Property Registration Decree"	June 12, 1945 or earlier; By prescription and other means under existing laws
1990	Republic Act 6940	30 years

In homestead disposition, compliance of certain requirements (cultivation and residency) can also result to acquisition of vested right over the land by the homesteader even prior to the issuance of the grant or the patent (*Balboa vs. Farrales*, 51 Phil. 498, 1928). In effect, the execution and delivery of the homestead patent after the right to it has become complete are mere ministerial acts of the officers charged with that duty. However, prior to the actual execution and delivery of the patent, it can be said that the title of the homesteader is still imperfect.

#### **2.4.1.2. Perfected Titles**

These are titles or ownership to land that have been completed or formally recognized by the state through the issuance of a decree (issued by the Land Registration Authority after the court confirms the title of an applicant), patent or such other land grant to the owner or public land applicant and the registration of the same under land registration laws. Titles to public land can be perfected either through judicial confirmation (decree), administrative adjudication/legalization of acquisitive rights over real property (free patent), and through the

issuance of homestead, sales, town site and special patents. Once a title has been perfected, the same can now be registered in the Registry of Deeds of the locality.

## **2.4.2. Land Registration**

### **2.4.2.1. Torrens Title Registration**

Perfected titles, such as that coming from patents issued by the DENR and decrees issued by the LRA are registered in the Registry of Deeds in the locality under the Torrens System. The main purpose of the Torrens System is the registration of title which the owner/applicant has and to relieve his land of unknown liens or claims, just or unjust, against it. Once the land is brought within the operation of the system, title thereto becomes indefeasible and imprescriptible. It cannot be subject again to another proceeding for registration. The purpose of the Torrens System is to quiet title to land – to put a stop forever to any question of the legality of the title, except claims which were noted at the time of registration, in the certificate, or which may arise subsequent thereto. Consequently, once the title is registered, the owner may rest secure, without the necessity of waiting in the portals of the court or sitting in the mirador de su casa, to avoid the possibility of losing his land (*Legarda vs. Saleeby*, 31 Phil. 590; *Roxas vs. Enriquez*, 29 Phil. 31).

### **2.4.2.2. Subsequent Registration of Registered Lands**

Once the title is registered and the corresponding certificate issued, transactions subsequent thereto are admissible for registration. In fact, the law requires that these dealings be registered in order to affect third persons, otherwise, the transaction is binding only between the parties. The subsequent dealings may take the form of voluntary transactions, i.e., those freely entered into by the registered owner like sales, mortgages, leases and the like, or involuntary — those created against the will of the landowner or against his consent such as an adverse claim, a notice of lis pendens, an attachment or a levy on execution. The law prescribes the requirements and the procedure in the recording of these transactions.

### **2.4.2.3. Registration of Unregistered Lands**

The Registry of Deeds is also the registry of unregistered property or those properties that are outside the Torrens System. Holders of such lands mostly base their claims on tax declarations or deeds of conveyance from individuals who themselves did not have a perfected title on the land. What are registered really are only the instruments of the parties pertaining to the unregistered lands. The recordings made under this are without prejudice to a third party with a better right over the land. Thus, registration of dealings over unregistered land will not defeat any claims, registered or not, arising prior to the registration.

### 3. Registered Lands in the Philippines

The total land area of the Philippines is estimated at 30 million hectares, of which, 15 million hectares are classified as Alienable and Disposable or A & D in land administration parlance. Under the public land laws of the Philippines, only this portion can be titled while the rest remains inalienable. The total land parcels in the Philippines is estimated by the International Federation of Surveyors (FIG) in its Country Data Sheet for the Philippines to be at 50 million land parcels (Cadastral Template - Country Data 2003). The National Tenure Status provided by LAMP in its Land Tenure Status Report, on the other hand, estimated it to be around 24,200,575. The same study estimated the total number of untitled parcels at 11,149,443 or 46% of the total number of parcels (Land Administration and Management Project 2004).

There is no accurate data on the actual number of agricultural and residential public lands in the Philippines. However, it can be safe to assume that most of the remaining unregistered parcels mentioned in the above study could be mostly made up of residential parcels. In order to illustrate how we arrived at this conclusion, it would be necessary to make a cursory inventory of the output, in terms of hectares and patents, of agricultural land distributed by the DENR through the years.

#### 3.1. Agricultural Land Parcels

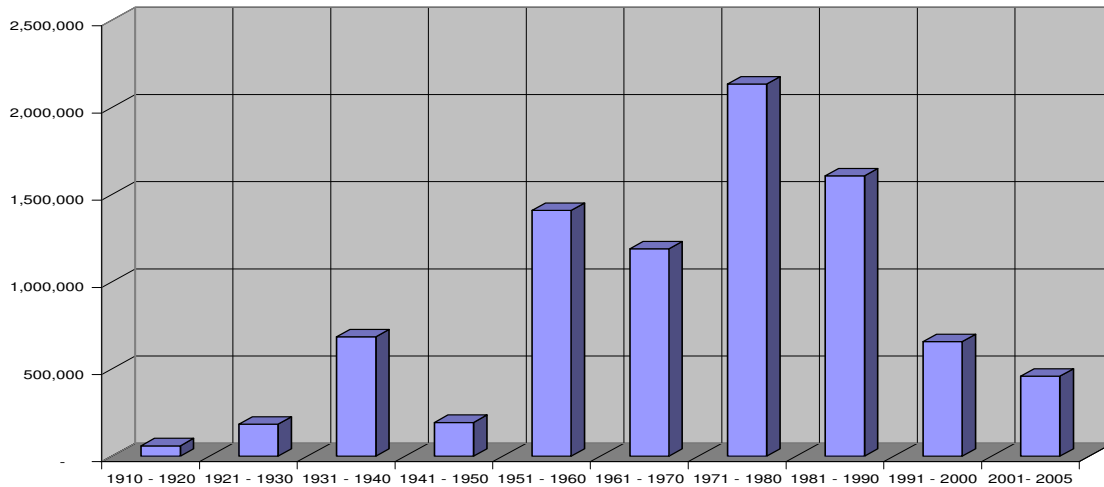
The DENR and its predecessor departments were able to issue from 1910 to 2005 a total of 3,491,179 patents with an estimated area of 8,580,840 hectares out of the 15 million hectares of alienable and disposable (A & D) land. Most of these patents were agricultural free patents and homestead patents given under the different agrarian distribution programs of the government such as the “Land for the Landless” program in the 1970’s and “Handog Titulo” programs in the 1980’s to present.

On the other hand *there is no comprehensive and systematic residential public land titling program* that has been instituted by the government, *neither is there an efficient and affordable residential titling process* available to individual landowners or public land occupants who want to secure a registered title over their land, unlike agricultural lands where administrative free patents and homestead patents titling procedures are allowed. This will be further discussed in detail later. As a result, it is estimated that no more than 70,000 residential patents are issued by the DENR out of the 3,491,179 patents that it has ever issued from 1910 to 2005.

The agricultural titling program of the government under CARP Programs alone from 1987 to 2006 accounted for 1.65 million hectares for the DENR and 3.11 million hectares for the DAR for a total of 4.76 million hectares of titled agricultural land. This activity alone represents 31% of all alienable and disposable lands in the Philippines, which is estimated at 15 million hectares. Added to this figure are the agricultural free patents issued during the massive titling program during the 1950’s up to the 1980’s to quell social unrest in the countryside.

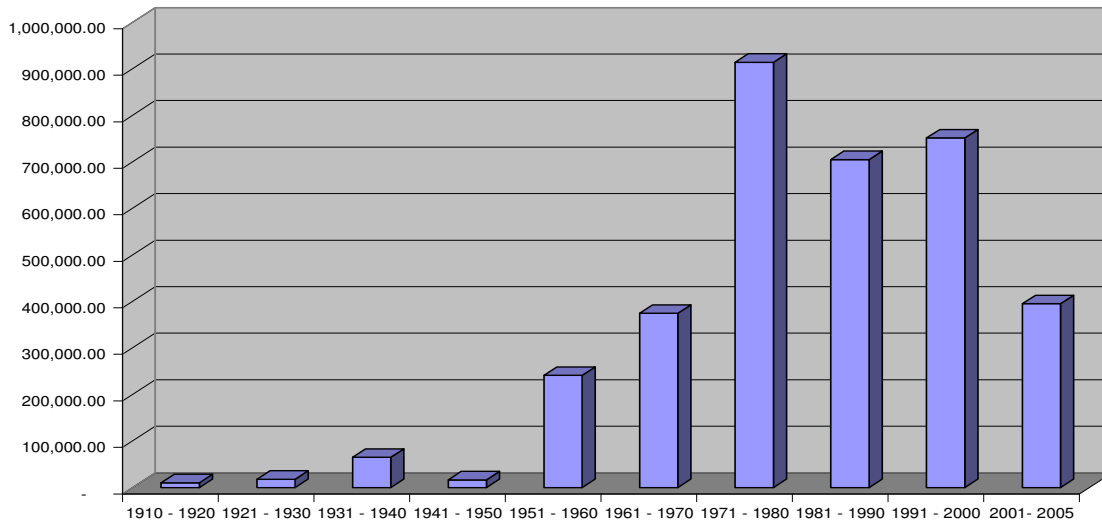
Most of the residential titles issued by the government were mostly during the pre-war cadastral proceedings. However, this type of compulsory registration of lands has long been abandoned by the government as a means of systematic adjudication of titles in favor of the more expedient administrative legalization of titles.

**Figure 2. Number of Hectares of Land Distributed**



The figure represents public land distribution from 1910 to 2005 of the DNR/DENR accounting for a total of 8,580,840 hectares of land or 57.2% of the total 15 M hectares of A & D Lands. The biggest bulk was distributed from 1950 to 1990 during the different agricultural distribution programs of the government.

**Figure 3. Patent Distribution by Decade**



The figure represents the number of patents distributed by the DNR/DENR per decade from 1910 to 2005 with a total of 3,491,179 patents representing one parcel for each patent. It can be seen from the table that more patents were distributed from 1970 onwards. This shows the dwindling size of agricultural land parcels being distributed.

### 3.2. Residential Land Parcels

Although there is no data on the actual number of residential land parcels, it can be said that these are much smaller in area, hence, more numerous than agricultural lands. Residential parcels are much smaller, the area of which is way below the average one hectare average disposition under CARP, its size varies from as small as 50 square meters in highly urbanized area to 1,000 square meters in the rural areas. Thus, it could be safe to estimate that the residential lands represent 70% of the total untitled parcels of the LAMP estimated 11,149,443 untitled parcels.

At this rate, about 7.8 million residential land parcels remain untitled. Assuming that every parcel is occupied by a single household and using an average household size of five (National Statistics Office), titling residential lands can benefit around 39 million Filipinos. The number could be much greater if we are going to use the estimate made by FIG as base since this source place the number of residential parcel at 50 million parcels.

## 4. Residential Land Titling Process

Under the Public Land Act, public residential land is a sub-classification of alienable and disposable lands of the public domain. Ownership over residential lands can be acquired through Sales Patents under Chapter IX of the said law or through Republic Act 730, if property is not more than 1,000 square meters and the applicant is qualified under the conditions set-forth in the law. As real property, public residential land can likewise be acquired through acquisitive prescription. Such right can be registered by confirmation of an imperfect title through a land registration proceeding before the court.

### 4.1. Judicial Confirmation of an Imperfect Title

Residential lands can likewise be acquired by acquisitive prescription through open, continuous, exclusive and notorious possession of thirty years under the present Civil Code or such other period as provided by law. Alienable public land, which includes residential land, held by a possessor, personally or through his predecessors-in-interest, openly, continuously and exclusively for the prescribed statutory period is converted to private property by the mere lapse or completion of said period *ipso jure* (*Cariño vs. Insular Government*, 42 Phil. 935; *Suzi vs. Razon*, 48 Phil. 424; *Herico vs. DAR*, 95 SCRA 437; and *Director of Lands vs. Bengzon*, 152 SCRA 369, 376.) The possessor of residential lands *ipso jure* becomes the owner of the same without the necessity of a prior issuance of a certificate of title (*Director of Lands vs. IAC and ACME Plywood and Veneer Corporation*, 146 SCRA 509, 522). However, said ownership is imperfect and has to be confirmed by the court in a land registration proceeding which should be

limited to ascertaining whether the possession claims is of the required character and length of time.

Said proceedings is initiated before the Land Registration Court (LRC) and currently the Regional and 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 either be 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 required in court in perfecting title:

1. Survey of the land;
2. Approval of the survey by the DENR;
3. Filing of an application before the court;
4. Setting of initial hearing to establish jurisdiction;
5. Transmittal of application to the Land Registration Authority;
6. Publication of notice in the official gazette and newspaper;
7. Service of notices;
8. Filing of opposition (if any);
9. Initial hearing;
10. Hearing on the merits;
11. Promulgation of judgment;
12. Issuance of the order to issue decree;
13. Issuance of a decree by the LRA;
14. Sending of decree by the LRA to the ROD;
15. Entry of decree; and
16. Issuance of Certificate of Title.

The process will take at least eighteen 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.

#### **4.2. Sales Patent Under Chapter IX of the Public Land Act**

Under Chapter IX of the Public Land Act, lands intended for residential, commercial, industrial and similar productive purposes may be disposed of by sale or lease through public bidding, generally following the procedure prescribed for agricultural lands.

The auction sale of residential, commercial and industrial lands is through oral bidding, where the applicant has to outbid the other bidders in order to acquire the land. In other words, the applicant does not have preferential right, unless he is an applicant who has introduced improvements on the land by virtue of a permit issued to him by the Bureau of Lands, in which case he has the right to a sealed bidding.

The conditions of the sale are as follows:

1. The purchaser *shall enter the land* and introduce suitable improvements thereon within six months, and complete such improvements not later than 18 months from the date of the award.
2. The purchaser *shall pay the purchase price* of the land in ten equal annual installments.

The processes involved in the sale are:

1. Filing of application;
2. Preliminary examination;
3. Examination of application;
4. Appraisal of the land;
5. Approval of the appraisal;
6. Publication of notice to sell;
7. Bidding (no bidding under RA 730);
8. Payment;
9. Final investigation;
10. Order of approval of patent;
11. Approving authority of sales patent;
12. Patent transmitted to the ROD;
13. Entry of patent; and
14. Issuance of the Certificate of Title.

### **4.3. Sales Patent Under Republic Act 730**

Republic Act No. 730 relaxes the requirement of bidding to promote titling of residential lands by allowing direct or negotiated sale subject to conditions. This kind of sale is commonly referred to as Miscellaneous Sales Application (MSA). Under the provision of RA 730, residential land can be disposed of without bidding to its actual occupants provided the following conditions are complied with by the applicant/occupant:

1. The applicant has in good faith occupied the residential land and built a residential house thereon where he lives;
2. The land is not more than one thousand (1,000) square meters
3. The applicant is not the owner of any residential lot in the municipality where the land is located; and
4. The land is not needed by the government for any public purpose.

Lands sold under RA 730 are appraised in accordance with Section 116 of Commonwealth Act No. 141, as amended. The procedure under RA 730 is similar to that of the Sales Patent except for the bidding. Thus, unlike in ordinary sales patent, the applicant is not at risk to lose his land through escalation of bidding by interested persons.

#### **4.4. Free Patent Under Batas Pambansa Bilang 223 (Expired)**

In 1982, Batas Pambansa Bilang 223 was enacted allowing the granting of Free Patents to residential lands. BP 223 is limited to 5<sup>th</sup> and 6<sup>th</sup> class municipalities. Thus, public residential lands in cities, 1<sup>st</sup> to 4<sup>th</sup> class municipalities and town site reservations were excluded from its operation. The law expired on December 31, 1987 and was not extended.

The procedure for the issuance of Free Patent under BP 223 is similar to that of the free patent for agricultural lands, as follows:

1. Filing of application before the CENRO;
2. Initial/preliminary examination of application;
3. Examination of land inspector/examiner;
4. Posting of notice;
5. Order of approval of application;
6. Transmittal for approval of patent to the PENRO/Regional Office;
7. Approval of patent;
8. Transmittal of the patent to the register of deeds;
9. Entry of the patent; and
10. Issuance of certificate.

### **5. Problems in Current Residential Titling**

As earlier discussed, there are only two modes of acquiring a registered title over residential land. The first is through confirmation of an imperfect title in court and the second is through Sales Patent under CA 141 and RA 730 in the DENR. The two processes could not operate in parallel since Sales Patents are applicable only to public lands where no unregistered private

ownership has attached. Confirmation presupposes that there is an imperfect title over the land (acquired by possession and acquisitive prescription) and thus, the land had already become private property.

### 5.1. Judicial Titling is Inefficient

In the 1925 case of *Susi vs. Razon*, the Supreme Court, En Banc, enunciated the doctrine that open, adverse, public and continuous possession of land gives the possessor by operation of law, not only the right to a grant, but a grant of the government and it follows that it can no longer be sold by the Director of Lands to another person, and if he does, the sale is void. Thus, if a residential land has been occupied for more than thirty years or such other period allowed by the law at the moment and such occupation is open, continuous, exclusive and notorious, the said property *ipso jure* ceases to be public and becomes private property of the possessor (*Director of Lands vs. IAC and ACME Plywood and Vencer Corp.*, 146 SCRA 509, *Rural Bank of Compostela vs. Court of Appeals*, 271 SCRA 76, *Natividad vs. Republic*, G.R. No. 88233, October 4, 1991 and *Abejaron vs. Nabasa*, G.R. No. 84831, June 20, 2001).

Since the Philippines has long been settled and almost all land parcels has actual occupants and/or at least tax declarant/claimant, confirmation through court proceeding appears to be the only applicable registration method to the millions of unregistered residential land.

Considering the possible great number of imperfect titles for registration, the type of proceeding is a very important factor to consider in assessing the viability of a titling process considering the vast number of still unregistered residential land. The process should be efficient and effective. Otherwise, it would take literally thousand of years to complete registration of untitled lands. The number of court issued decrees is the best indicator that will show the efficiency of land registration in court. In 2006, only 892 decrees were issued by the LRA for registration of confirmed titles by the court. This figure represents not only residential but other types of lands, i.e. agricultural, commercial and industrial lands. Thus, the number could be much lower. The table below (Table 3) shows the number of decrees of registration and patents issued from 2003 to 2006.

**Table 3. Decrees of Registration and the Various Patents Issued from 2003 to 2006**

Year	Decree	Agricultural Free Patent	Sales Patents
2003	1,325	98,486	4,057
2004	1,761	110,960	2,918
2005	975	101,143	2,607
2006	892	113,620	3,125

Sources: LRA, DENR-CARP and LMB

It can be said that the disproportionate ratio of land title production will give us an indication of the efficiency and effectiveness of court land registration procedures. The court issued decrees represent only 1% of the total number of titles issued, sales patents 3%, while free patents account for the rest with 96% of the total in the last four years.

## **5.2. Judicial Titling is Expensive**

Judicial confirmation of an imperfect title is also expensive to landowners. The process requires the engagement of lawyers and surveyors and could reach PhP100,000 to complete. The amount includes payments of filing fees in court, professional fees for surveying and preparation of survey maps, acceptance fees, appearance fees and other costs like publication, postings, procurement of witnesses, preparation of formal evidence and attendant to the proceedings. Said proceeding is expensive because of the nature of the action in court, which is mostly technical and adversarial that requires representations of landowners by legal professionals. More so, said proceedings will at least take 18 months to complete due to the heavy court loads of regular courts, barring any opposition or appeal.

## **5.3. The Administrative Titling Process for Residential Lands is Limited in Scope**

The administrative titling process for residential lands is limited to the application of sales patents. Residential sales patents issued by the DENR are deemed applicable only in public residential lands with no existing private rights attached thereto that had ripened to ownership. In effect, the DENR has no jurisdiction to sell residential lands that has become private by occupation and prescription, which comprise most of the untitled residential lands in the country. Free patent or administrative legalization of titles, on the other hand, is applicable only to agricultural lands.

The number of lands without private rights attached to it is very limited. Most of the untitled residential parcels have long been occupied as evidenced by the millions of tax declaration issued to occupants/claimants, as mentioned earlier. Hence, the coverage of this type of residential titling process in terms of number and area is not substantial. Most of the parcels that can be covered by residential sales patents by the DENR are limited to lands that have been recently released for disposition (lands that are recently classified as alienable and disposable or those that are released from government civil/military reservations). Lands for release (unclassified lands) cover only around 3% of the total land area of the country as 47% of the same has already been classified as A & D (Data from the Land Management Bureau).

An example of such land is the portion of the Boracay Island classified as A & D under Proclamation No. 1064 (2005) which can only be disposed by way of sales patent since prescription of 30 years has not yet benefited the occupant of the lands thereat. Prescription attaches only at the time of release, with most recent Supreme Court decision on the matter being *Buenaventura vs. Republic*, G.R. No. 166865, March 2, 2007. Military reservations that have been released under Republic Act No. 274 (Sale of Lands within Military Reservations Not Needed for Military Purposes) are likewise disposed by way of sales patents to bona fide occupants under RA 730.

**Table 4. Proclamations Under RA 274**

Year	Proclamation	Location/Beneficiary
1965	Proclamation No. 461 and 462	Portion of Fort Bonifacio in Favor of AFP Officers
1985/1987	Proclamation No. 2476 and 172	Portion of Fort Bonifacio Lower and Upper Bicutan and Signal Village in favor of bona fide occupants
1990	Proclamation No. 518	Portion of Fort Bonifacio known as Barangays CEMBO, South CEMBO, West REMBO, East REMBO, COMEMBO, PEMBO and Pitogo in favor of bona fide occupants
1991	Proclamation No. 709	Portion of Fort Magsaysay
1993	Proclamation No. 127	Portion of Camp Servillinano Aquino, Tarlac in favor of Tarlac Veterans Homeowner's Association
2000	Proclamation No. 330	Portion of Philippine Army Base, Cagayan de Oro City as AFP Off Base Housing Program
2000	Proclamation No. 331	Portion of Philippine Army Base, Tarlac City (Proc. 225) as AFP Off Base Housing Program
2004	Proclamation No. 563	Portion of Philippine Army Base, Tarlac City (Proc. 331) as AFP Off Base Housing Program

The table lists the various proclamations releasing portion of military reservations not needed for military purposes, disposed under RA 730.

Administrative titling under sales patents, because of its limited scope and coverage, will not be able to address the mass titling requirement necessary to title the millions of unregistered residential public lands.

#### **5.4. The Uncertainty as to the Price of the Land Deters Public Land Applicants**

The uncertainty of not knowing how much the land costs prevents applicants from using this process as a means of securing title to their lands. The price of public land for sale is not

predetermined. The value of the land will only be made known only after appraisal and bidding in accordance with the provisions of CA 141.

An applicant will only know the amount/value of the land after the appraisal of the land is approved by the land official concern. Prior to that, the applicant can only surmise and will rely on the “information” given by employees/investigators or appraisers in the land office as to the probable value of the land. Even then, once the appraisal has been approved, the applicant has to compete in a bidding that he could loose (although he enjoys some advantage, i.e. equaling the bid, which does not guarantee that the price will not escalate beyond his means). This process discourages occupants of public lands from pursuing the titling of his land.

Furthermore, the process of appraisals, approvals, bidding and awarding makes the processes time-consuming and complicated. However, recently, several housing programs of the government used RA 730 as a means of mass titling of public residential lands in the urban areas, mostly in former military camps. The land distributed was pre-appraised and its value socialized in order to make the same affordable to a poor urban dweller. However, the number of patents issued thereto is too small compared to the number of untitled parcels. DENR issued less than 5,000 sales and miscellaneous patents a year compared to its 100,000 agricultural sales patents a year.

### **5.5. Lapse of Batas Pambansa Bilang 223**

The need to address the issue of mass titling in residential public land caused the enactment in 1982 of Batas Pambansa Bilang 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 town site reservations. It was also provided that all applications for free patent should be filed on or before December 31, 1987.

Unlike PD 1073, which was extended and re-enacted under Republic Act 6940 and recently in 2002 under Republic Act 9176, the Free Patent on residential land was unfortunately left to quietly expire. BP 223 although limited, could have provided rural residential owners a means to title their residential lands without too much expense.

## **6. Free Patent On Residential Land**

Registration of titles in residential lands has been greatly hampered by the lack of convenient and affordable procedure that landowners could avail. At present, the only option for a landowner to title his land is through the court in voluntary judicial proceedings. A better alternative has to be

instituted in order to register the vast number of untitled residential lands. Administrative legalization (free patent), a proven efficient and cost effective process of titling agricultural lands, should be extended to residential lands.

### **6.1. Re-Enact and Expand Batas Pambansa 223 to Include All Residential Lands**

The need to institute an efficient and affordable registration process on residential lands titling has been addressed by the legislature before through the enactment of Batas Pambansa 223 on April 16, 1982 that allows Free Patent to residential lands in 5<sup>th</sup> to 6<sup>th</sup> class municipalities. The most important provision of the said law states:

SECTION 1. The provisions of any law, rules or regulations to the contrary notwithstanding, any citizen of the Philippines who is not a registered owner of a residential land in the same municipality and who, since June 12, 1945 or prior thereto, either by himself or through his bona fide predecessor-in-interest, has been actually residing on, and continuously possessing and occupying, under a bona fide claim of acquisition of ownership, a parcel of residential land of the public domain, which is alienable or disposable, and who has paid all the real estate taxes thereon since June 12, 1945 or prior thereto, shall, upon application, be entitled to have a free patent issued to him for such parcel of land not to exceed three thousand square meters: Provided, That the land applied for is not needed for the public service or public use: Provided, further, That no free patent shall be issued for residential lands located in cities, in capitals of provinces, in first class, second class, third class, and fourth class municipalities, and in town site reservations established under Chapter XI of the Public Land Act: Provided, finally, That none of the provisions of Presidential Decree No. 705 are violated by the issuance of such patent.

SECTION 2. The application shall be accompanied with a map and technical description of the land applied for, along with supporting affidavits of two (2) disinterested persons who are residents of the municipality where the land is located, attesting to the truth of the facts contained in the application to the effect that the applicant thereof has, either by himself or through his predecessor-in-interest, actually resided on and continuously possessed and occupied, under a bona fide claim of acquisition of ownership, the land applied for since June 12, 1945 or prior thereto, and has complied with the requirements prescribed in Section One hereof.

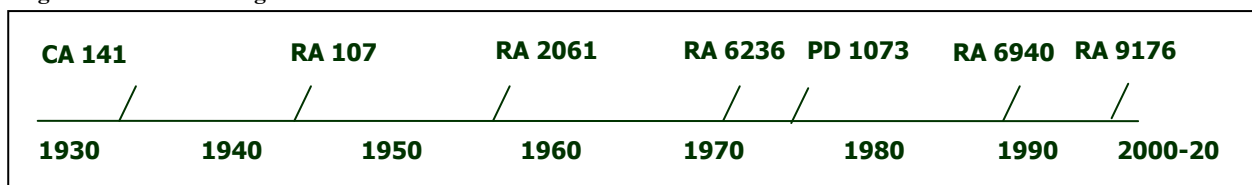
Said law was implemented under the then Bureau of Lands through Land Administrative Order No. 43-82. The procedure adopted in the processing of residential free patent is the same as the free patent application for agricultural lands. Section 7 of LAO No. 43-82 requires the applicant to submit the following documents to support his application:

1. Approved survey plan and technical descriptions of the land applied for. If, however, the land applied for is inside any public land subdivision or cadastral project, presentation of the approved survey plan and technical descriptions may be dispensed with.
2. Affidavits of two (2) disinterested persons who are residents of the municipality where the land is located attesting to the truth of the facts contained in the application. Relatives of the applicant within the 5<sup>th</sup> degree of consanguinity or affinity cannot be considered "disinterested persons."
3. A certification of the municipal treasurer that real estate taxes for the land applied for have been paid since or prior to June 12, 1945 or the official receipts evidencing payment thereof.
4. Certification of the Municipal Planning Board and the Public Works and Highways District Engineer that the land applied for is not needed for public service or public use.

Since the Bureau of Lands (now the DENR) is the repository of all survey plans and records, the landowner need not secure the services of a geodetic engineer for the preparation of the survey plans that he has to submit if he has to apply in court. Furthermore, the presentation of the above-mentioned documents, if the same will be made in court, may require at least four hearings if the personal appearance of the certifying officers will be required by the court for direct examination.

Batas Pambansa 223, however, was not extended when it expired in 1987 unlike the agricultural free patent that has always been extended by Congress (See Figure 4).

**Figure 4. Timeline of Agricultural Free Patent Extensions**



**The timeline of agricultural free patent extensions from Commonwealth Act 141 to Republic Act 9176 that allows agricultural free patent up to 2020.**

Furthermore, the impact of the said law to residential titling was not dramatically felt because it was limited only to 5<sup>th</sup> and 6<sup>th</sup> class municipalities. The area covered by these municipalities were mostly agricultural, hence, the residential lands thereat were also being covered by Agricultural Free Patents since these lands were likewise utilized for growing fruit trees, vegetables and crops. In fact, Land Memorandum Order No. 320-71 allows free patents in "poblacion," to state:

4. Lands Inside the "Poblacion". — While free patent grants are restricted to areas devoted to agricultural purposes, the mere fact that the land applied for is inside the poblacion, does not necessarily mean that the land is not agricultural or that it is residential, commercial or industrial. So, it is incumbent upon district land officers, land investigators, land inspectors and the Staff of the Land Management Division to exercise its *sound judgment* in determining the character of the land applied for, taking into consideration the use to which it is mainly devoted, the improvements existing thereon, its size, relative position, configuration and how it is classified for tax purposes.

To be able to fully cover all residential lands in the country, it is necessary to include residential lands in all cities and municipalities irrespective of its class. This would greatly widen its coverage and would impact more on high value residential lands that are mostly located in cities and 1<sup>st</sup> class municipalities where land development and land market is more active. Nonetheless, the coverage of the grant could be limited as to the area of the land applied for by providing a schedule:

**Table 5. Residential Free Patent Parcel Area Limits**

Class	Area
Highly Urbanized Cities	300 sq. m.
Other Cities	800 sq. m.
All Municipalities	1000 sq. m.

**Area limits of the residential lands covered by the residential free patent grant.**

The above table is in line with definition of a small property owner as defined under Republic Act 7279 (An Act to Provide for a Comprehensive and Continuing Urban Development and Housing Program). Section 3 (q) of the said law defines a small property owner, as follows:

"Small property owners" refers to those whose only real property consists of residential lands not exceeding three hundred square meters (300 sq. m.) in highly urbanized cities and eight hundred square meters (800 sq. m.) in other urban areas.

The 1,000 sq. m. area limit for all municipalities is based on the condition set forth by RA 730 allowing the grant of miscellaneous sales patent for properties not more than the said area. These conditions will ensure equitable distribution of residential lands to the greatest number of urban and city dwellers.

## **6.2. Remove the Restrictions on Free Patents on Residential Land**

Batas Pambansa 223 likewise provides restrictions similar to agricultural free patents to residential free patents granted under its provisions. Under Section 118 of the Public Land Act, lands acquired by free patent or homestead provisions shall not be subject to encumbrances or alienation from the date of approval and for a term of five years from and after the date of

issuance of the patent or grant nor shall they become liable to the satisfaction of any debt contracted prior to the expiration of said period, except in favor of the government or any of its branches of units or institutions or legally-constituted banking corporations.

These provisions are not appropriate in situations where persons have been in possession and occupation of the land for many years. These persons should be allowed to transfer their lands or mortgage them to lending institutions in the same way as persons acquiring title through the judicial titling process. The restrictions do not apply where a title is issued under the judicial titling process. Lands acquired by free patent should be placed on the same footing as lands titled by judicial proceedings and should be excluded from the restrictions imposed by Section 118 so that its registered owners can immediately utilize these properties as capital.

At any rate, there is no substantive difference between the ownership of those who acquired titles under court proceedings and those who acquire titles under administrative adjudication since the applicant's period of possession and other qualifications that has to be established for the issuance of the registered title are the same. The removal of restriction will immediately put the registered title into the land market and the capital that said title may generate (should the landowner wish to use it as collateral) could be immediately used for land development or for entrepreneurial activities of the landowner. The economic activities that will be generated by this new capital will boost the economy (rippling effect) of the country.

Furthermore, unrestricted ownership of the land would be in keeping with the principle of a free land market as a contributor to the nation's growth through the development of a market economy. This would spur land development in these newly titled areas.

### **6.3. Decrease Acquisitive Prescription to Ten Years**

The current period of thirty years (Section 44, Chapter VII of Commonwealth Act 141 as amended) is too long and unrealistic and creates difficulty in proving claims. With good faith and a just title, possession of the land under conditions laid down by law ripens into ownership after the lapse of ten years, through ordinary prescription. This will enable newly released actual occupants of recently released alienable and disposable residential lands to have their lands titled instead of waiting for thirty years. This will greatly improve the economy of newly released areas, mostly located in capital scarce agricultural municipalities, since more titles will be infused in its local land market.

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## La Salle Institute of Governance

The La Salle Institute of Governance (LSIG) is a research unit based at the College of Liberal Arts of De La Salle University-Manila. It is engaged in the production of new knowledge, tools, and strategies geared towards redesigning policies and governance systems. It is interested in developing relevant programs to enhance policy and governance reform initiatives that will contribute to poverty reduction and economic development.

LSIG has considerable experience in undertaking policy research and technical assistance projects especially in the field of economic governance. It was engaged in the provision of advisory services and support for anti-money laundering and tax governance legislation in 2001-2003. LSIG was a partner of the Institute of Governance of Canada in implementing a project called Strengthening Policy Partnerships and Learning Networks Linking Policy Experts from Government and Civil Society in 2003-2004. It partnered with the Congressional Planning and Budget Department in developing a legislative strengthening capacity-building program with the support of the United Nations Development Programme (UNDP). It was responsible for preparing the report on "Political and Electoral Reforms: A Rights-Based Approach to Legislation" under the Rights-Based Philippine Governance Review Project coordinated by the Development Academy of the Philippines with funding from the UNDP in 2004-2005. It also assisted the Yuchengco Center in organizing a policy conference on Ensuring Economic Security in the Countryside: Issues and Challenges for Local Governments in 2006.

### Land Markets Development Project

As part of its continuing support for the improvement of economic governance processes and institutions, LSIG has embarked on the Land Markets Development (LMD) Project in 2007. Through this project, a series of activities to foster the need to establish a secure property rights regime that is critical for economic growth and development will be undertaken.

The project will have two key activities. First, the project would organize multi-stakeholder forums and briefing sessions with policy makers. These consultative meetings would serve as venues to discuss issues, problems, and solutions for addressing the inequities and inefficiencies in the prevailing land market system.

Second, the project aims to increase public awareness on the policy imperatives surrounding property regimes and land markets development by disseminating research studies through a Policy Papers Series with the first issue devoted to the analysis of the need for a residential free patent law in the Philippines.