

# **Introducing Land Title Registration to Bermuda: Another World?**

**John Meadows, Land Registrar, and Mark Griffin Project Manager**

**Key words:** Land Title Registration, Property Rights

## **SUMMARY**

The last 50 years have witnessed several attempts to introduce Land Title Registration to Bermuda. To date all such attempts have failed leaving Bermuda in the minority of jurisdictions in the developed world that do not have a centrally administered property registration system.

In this paper the authors present an evaluation of the current Bermuda Land Title Registration project. They examine why previous attempts to introduce title registration have failed and state the reasons why they believe that the current project represents a genuine opportunity for the Government of Bermuda to successfully introduce Land Title Registration and provide guaranteed property rights for the island's land owners.

## **Bermuda in Context – Geography, History, Economy**

### **Geography**

The Bermuda archipelago, (less commonly known as the Somers Isles), at approximately 32° 20' North and 64° 45' West lies some 1000 km east of its nearest neighbour at Cape Hatteras, North Carolina, United States and almost 1500 km north east of Nassau in the Bahamas. It is approximately 5130 km from Dublin, Ireland. Of the 211 islands, there are 7 principal islands, all joined by bridges and causeways to comprise a contiguous landmass, known locally as 'The Island'.

These islands combine to give a length of coastline of about 103 km and a total land area of about 54 square kilometres. Almost all of the island might be described as 'suburban' in character. There is about 230 km of paved public roads and another 350 km of paved and unpaved roads. It has been estimated that there are some 20,000 land parcels on the islands.

### **History and Economy**

Bermuda was first settled in 1609 by English colonists on their way to Virginia and is now a self-governing overseas territory of the United Kingdom. With strong cultural ties with the Caribbean, Bermuda is an associate member of CARICOM. Bermuda enjoys one of the highest per capita incomes in the world and this is largely achieved through financial services to international companies, and tourism.

TABLE 1.  
BERMUDA AND THE WORLD

	Bermuda	Island of Guernsey	Ireland	Cayman Islands
Area (sq km)	54	64	70,280	262
Population	66,163 (2007 est.)	60,382 (2004 est.)	4,109,086 (2007 est.)	46,600 (2007 est.)
GDP (\$)	\$4.5 billion (2004 est.)	\$3.1 billion (2005 est.)	180.7 billion (2006 est.)	\$1.9 billion (2004 est.)
GDP per capita (\$)	\$69,900 (2004 est.)	\$49,922 (2004 est.)	44,500 (2006 est.)	\$43,800 (2004 est.)

Source: www.cia.gov and www.gov.gg

Figure 1. Illustrates the position of Bermuda's economy in relation to Guernsey, Ireland and the Cayman Islands and allows a comparison of population totals and land area.

### **Land Title Registration in Bermuda – Historical Land Tenure Arrangements**

Current land tenure arrangements in Bermuda can be traced back to the early years of settlement of the islands. In 1614 the Virginia Company surrendered Bermuda to the Crown and Bermuda became the first legal offshore colony of Britain. In 1615 the separate and autonomous Bermuda Company, formed by English investors took over the Charter formerly held by the Virginia Company by way of a Charter granted by King James. That year witnessed the first survey of the islands, carried out by Richard Norwood. In 1616 following the first General Assizes, Norwood under the instruction of Governor Daniel Tucker divided Bermuda into eight tribes (parishes) each tribe being named after the principle investors in the Virginia Company. This was followed by the further division of the tribes into twenty five acre strips or shares which were in turn allocated to the other investors in the Company. The current mosaic of landholdings in Bermuda has generally speaking arisen as a result of the successive sub division of these original shares and can, at least in theory, be traced back to this early division of the islands. Legislative developments supporting Bermuda's land tenure arrangements can similarly be traced back to the early years of settlement. Fearnley (2007) states that "the underlying law of real property in Bermuda has retained all the substantive characteristics of English Property law as it obtained in 1612". According to Johnson (1991) 'Bermudian land tenure is ostensibly a mixture of the tenures of estates, freehold and leasehold, which operate under a system of private conveyancing'. It is within the context of these arrangements that numerous attempts have been made to introduce title registration to the island driven primarily by the inherent inefficiencies that exist in the current system of private conveyancing, a key feature of which is the time consuming, troublesome and expensive investigation of title each time property changes hands.

## Land Title Registration in Bermuda – A Retrospective

The earliest references to land title registration to Bermuda date back to the 1950's. Papers from the archives reveal that the Executive Council of the Government was considering title registration as a means of improving the island's land administration as far back as 1954. In 1964 the matter once again came to the fore when the Parish Vestries and the Public Works Department met to discuss the need for land registration. In the 1970's the Bermuda Association of Surveyors lobbied the Department of Planning to take steps to set up a land registry. At that time the Assistant Director of Planning recommended the establishment of a committee comprising key stakeholders from both within and outside of Government and consideration being given to obtaining assistance from the Ministry of Overseas Development (now the UK Department for International Development - DFID). Although changing Government priorities meant that the project never came to fruition land title registration remained on the political agenda.

It was however the 1980's before the matter once again gained prominence. On this occasion, Cabinet, having concluded in June 1985 that a Land Title Registry should be established in Bermuda, appointed Mr. J C D Lawrance as a land title consultant. Lawrance produced two reports on the matter recommending compulsory systematic adjudication with fixed boundaries as the means to establish land title registration in Bermuda. It was suggested that the cost of the operation be borne by Government and that the necessary legislative framework be based upon that in place in the Cayman Islands. The Director of Planning at the time wrote in response to Lawrance's final report; "Having now had a full opportunity to peruse and consider the report...I am of the opinion that the proposals put forth are unlikely to gain the approval of the Bermuda Government". The primary reason behind his objection was that of the cost to the Government of implementing the project.

Despite land title registration remaining on the political agenda it was several years before the Government decided to once again consider the feasibility of its introduction. In the early 1990's another consultant, Mr. Sean Johnson, was engaged by the Minister of Works and Engineering to produce a report on the matter. In many respects Johnson's report entitled 'Report of a study into the benefits and costs of the introduction of land title registration in Bermuda' can be regarded as a seminal work on land tenure in Bermuda. The report was comprehensive in terms of both its scope and content. Johnson undertook a detailed study of Bermuda's land tenure arrangements and his report covered all of the key requirements of a proposed land registration system and included a financial appraisal.

Johnson concluded that the most appropriate means of introducing title registration to Bermuda was by means of a sporadic compilation of the register, a more flexible approach to the determination of boundaries, reform and modernization of general land law specifically in the areas of settled land and mortgages and the use of the Cayman Islands legislation as a basis for that to be enacted in Bermuda. Interestingly, the report also recommended the establishment of a pilot project in order to prove that the system could work and made reference to the increasingly important supporting role that technology could play in facilitating the establishment of land title registration.

Unfortunately the publication of Johnson's report met with no tangible outcome and thus it could be construed that the work was yet another document destined to be consigned to the archive. However the authors of this paper believe that Johnson's report with its comprehensive content has influenced all subsequent attempts to introduce land title registration in Bermuda, including the current initiative.

It was circa. 1999 before the next project was instigated this time under the leadership of the Ministry of Environment, Development and Opportunity in co-operation with the Ministry of Works and Engineering and the Attorney General. An inter-departmental committee was established and in May 2001 it produced its 'Land Title Registration Project' report. The recommendations contained in the report were very much aligned with those contained in the earlier reports by Lawrance. It recommended systematic adjudication supported by the preparation of adjudication, survey and land registration bills, site surveys of each parcel and substantial reform of the extant land law. The report estimated that systematic adjudication would take five and a half years and require 32 temporary staff plus a project manager. Although the recommendations contained in the report were supported by Government they were met with mixed reactions amongst key stakeholder groups and as a result the initiative once again stumbled.

Throughout the fifty year period considered in the preceding paragraphs a great deal of time and effort has been spent attempting to introduce land title registration to Bermuda. Projects have been initiated, committees have been formed, meetings held, fact finding visits made and consultants engaged all with the aim of building consensus as to establish the best form of land registration for Bermuda. To date none of these initiatives have borne fruit. A lack of agreement as to the most appropriate implementation methodology, objections on the ground of cost and the lack of unequivocal support from those representing the legal and surveying professions have always served to stifle implementation.

# Land Title Registration in Bermuda – The Current Project

## Project Initiation

The beginnings of the current project can be traced back to the fall of 2003 when following a review of the 2001 Project Report, representatives from the International Unit at Her Majesty's Land Registry; London visited Bermuda to meet with stakeholders and present alternatives for the implementation of land title registration. Shortly thereafter and following the appointment of a new Chief Surveyor to the Ministry of Works and Engineering the project was once again re-invigorated and responsibility transferred from the Ministry of Environment to the Ministry of Works and Engineering. In June 2005 the Cabinet directed the Ministry of Works and Engineering to phase in the introduction of Land Title Registration concentrating initially on the registration of the Government's estate (which accounts for approx 18% of the total land mass) and then extending the system to include the registration of private land.

## Project Strategy

An underlying criticism of previous initiatives was that in the main they were perceived to have failed to address the specific requirements of Bermuda and instead sought to impose an existing system from another jurisdiction. It was recognised at the initiation of the current project that such an approach is inappropriate. Instead a system is being adopted that is based upon established principles and international best practice and customised specifically to Bermuda. The implementation strategy for the current project differs from that used for previous initiatives in several ways.

Firstly, the core 'technical strategy' for the current project focuses on the implementation of land title registration by means of sporadic registration (through the progressive introduction of statutory triggering events (e.g. a conveyance on sale), supported by the compilation of an index map upon which registered parcels will initially be identified by means of an indicative boundary. While this approach is a departure from the systematic adjudication / fixed boundary approach advocated under previous initiatives the authors are of the opinion that the two approaches aren't mutually exclusive. When considering past attempts to introduce land title registration to Bermuda the dogma that has surrounded an either /or approach to systematic vs. sporadic adjudication or fixed vs. general boundaries has had nothing but a negative impact. The sporadic approach currently being advocated when used alongside the adoption of indicative boundaries provides a less resource intensive and thus less costly option for Government. It does not however preclude a future move to a more systematic approach, (indeed the initial registration of the Government's estate will be on a voluntary systematic basis), or the incremental improvement of boundary delineation both of which are being considered as part of the policy formulation process.

Secondly, previous initiatives have tended to follow a sequential approach to implementation never really moving beyond the feasibility study and establishment of an advisory committee stage. The current project features a holistic approach that is underpinned by 'systems thinking'. Thierry (1965) as quoted by Zavenbergen (2001) defines a system as "... a whole of interacting components that has been organised according to a plan in order to reach a certain goal". The systems based approach is manifested by the simultaneous implementation of the 'interacting components' i.e. the organisational legal and technical aspects of the proposed system, that is currently underway. These components are discussed in more detail below.

Thirdly there was early recognition that the application of a 'blueprint approach' supported by a formal project methodology would be too restrictive and that a 'process based' approach that allows for adaptability and flexibility would be more appropriate. Such an approach finds resonance in modern management thinking. Mintzberg (1994) refers to need for the development of strategy to be dynamic and reflect the changes that can occur when an organisation (even an embryonic one such as the Land Title Registry Office) interacts with the environment in which it has been established. Acha (1996) refers to the need for adaptive planning and a holistic approach that doesn't separate project design from project implementation. Such an approach is appropriate to the current project because, while retaining the support of the Government, implementation is dependent upon input from a wide range of stakeholders both within and external to Government who to a greater or lesser extent each has their own value sets and agenda's. The need for flexibility is thus paramount.

Finally, the current project has been able to take full advantage of the opportunities afforded by information communications technology (ICT) and easier access to organisations with extensive experience of land title registration. ICT, primarily access to the internet and the use of email has provided the current project team with a previously unimagined resources in terms of access to knowledge and information about land title registration systems, the means by which they have been established and the way in which they are structured and operate. This knowledge and information has been supplemented with visits by members of the current project team to organisations responsible for land title registration in other jurisdictions, namely Canada (Maritime Provinces), Cayman Islands and the UK (England and Wales). Such visits have been made possible by greatly improved air transport links to and from Bermuda.

## **Project Implementation**

Project implementation is focused on providing a system of land title registration for Bermuda that is consistent with the 'features of an ideal system of land transfer' as described by Brickdale (1914) i.e. secure; simple to use; accurate; cheap; expeditious; suitable to circumstance. In order to achieve this objective the staff of the Land Title Registry Office who comprise the project team is currently engaged in the simultaneous development of a series of work streams the combined outputs of which will put all of the required components of the desired system in place for a 'Go-Live' during the spring of 2008. These components are described in more detail below.

## **Office Accommodation**

The Land Title Registry Office has been established in a dedicated office suite located in the centre of Hamilton, Bermuda's capital city. The choice of location is important as it will put the office within easy reach of the vast majority of its customers. Office layout has been carefully planned. The accommodation, which includes both front and back office areas, has been designed to provide the impression of a professional and secure environment both essential features aimed at gaining the early confidence of customers and clients. Workstation layout has been designed to support a multi functional team based business operation – see below.

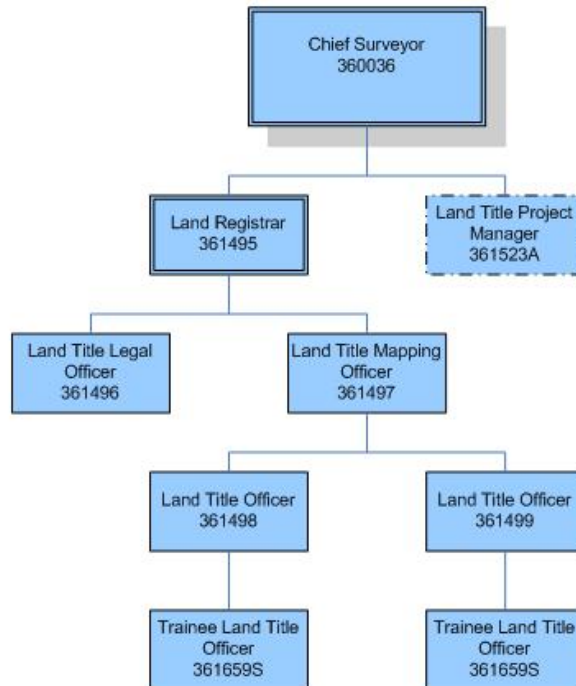
## **Human Resources - Organisational Structure**

Particular attention has been paid to organisational design. In comparison with Caribbean land registry offices a very small team of staff has been recruited. This has been made possible by the strategic decision to commence the registration programme using a sporadic approach and to utilise team based multifunctional working practices combined with the use of the latest technology. Facilitating this approach the staff of the Land Title Registry Office have extensive knowledge, experience and qualifications in the fields of land registration, law, GIS, surveying and business administration gained while working in both the private and public sectors.

Figure 2. The Bermuda Land Title Registry Office – Organisation Chart

## Land Title Registry Office

12<sup>th</sup> September 2007



### Business Operations and Job Design

The team based multifunctional approach to business operations underpins the organisational structure. Jobs and business processes are being designed to allow individual members of staff to undertake all of the core business functions while maintaining currency in their own specialist field. It will thus be possible for a member of the Land Title Registry Office staff to accept an application for registration at the front desk and then, provided it is in order, complete all aspects of the registration, both mapping and register creation, as a single process. Such an approach is possible as a result of the level of skills and experience available in the core project team.

Jobs are therefore being designed to reflect this approach and as a consequence it is possible to incorporate many of the elements of good job design e.g. combined tasks, skill variety, task identity and significance, task autonomy etc. to provide jobs that will be motivating and satisfying and result in the delivery of first class services and a quality products.

Job design cannot be separated from the design of business processes and workflow which in turn are influenced by the configuration of supporting information systems. To ensure effective, efficient and economic business operations all three elements must complement each other. Operational layout and workflow are therefore being designed to be able to deal with the Land Title Registry Office's anticipated workload within the context of a multifunctional team based working environment. A process layout that allows one stop operations but also provides the flexibility for peer review and referral is being developed.

## **Information System**

Land Title Registry Office operations will be supported by the NORWOOD information system after Richard Norwood who famously surveyed the island in 1615. The basis of NORWOOD will be the *landfolio*® information system developed and supplied by Stewart International of Houston Texas, part of the Stewart Title Company. Stewart's *landfolio*® system was first implemented in Antigua in 2004 under a 'repeatable implementation plan' for deployment in other Eastern Caribbean states. The system is being tailored to suit the organisational and operational requirements of the Bermuda Land Title Registry Office. When fully implemented it will provide the office with the capability to create and store land title registers, create a digital index map of land parcels, scan deeds and plans and ultimately offer web based information services.

## **Policy and Legislation**

Policy and legislation are being developed with reference to international best practice, lessons learned from previous initiatives and engagement with key stakeholder groups. Many of the fundamental principles upon which the core policy framework for land title registration in Bermuda is being established are already tried and tested worldwide (e.g. the land title register will be a parcel centric record of legal rights and interests in land, it will be guaranteed by Government who will provide compensation to anyone who suffers loss as a result of an error or omission in the register). Over and above the adoption of these policies the project team is attempting to steer a course that avoids the pitfalls that have beset previous initiatives in this area. By way of example, previous attempts to introduce land title registration have faltered over the issue of reform of property law. Given that much of Bermuda's law of property is antiquated (e.g. Mortgage Registration Act 1786) reform and modernisation appear both necessary and appropriate. It remains the view of the incumbent project team that the issue of law reform must remain separate from the introduction of land title registration if implementation is to proceed as planned. The team is therefore seeking to implement land title registration without full scale reform save that which is absolutely essential to ensure a smooth transition from unregistered to registered conveyancing. This approach is not without precedent. Dowson and Sheppard (1956) state "It still appears to be imperfectly understood that Registration of Rights to Land – like its prototypes Registration of Rights to Ships, to Stocks, to Shares – is a system of record and not a system of land tenure. Its introduction inaugurates a new method of conveyancing, but does not establish a new code of substantive Land Law or alter such law, save in so far as is necessary to admit the new method of conveyancing....Its function is to record and thereby facilitate and

clarify, the operation of whatever land law is in force.” The principle aim for the development of policy and legislation remains to find a practical framework within which a system of land title registration that is appropriate for Bermuda can be implemented. This will be achieved through Government’s continuing endorsement of the project methodology and ongoing engagement with stakeholders.

### **Registration of the Government Estate**

Work to prepare the Government’s estate for registration has already commenced. The deeds and documents relating to Government land holdings currently in the custody of the Ministry of Works and Engineering are being sorted and catalogued. Once the NORWOOD information system is implemented it is the intention to use the voluntary registration of the Government’s estate as a ‘pilot’ registration project in order to conduct a thorough testing of both the information system and the supporting business processes prior to public go-live.

### **Mapping Update**

Two sub-projects, currently at initiation phase will see the Land Title Registry Office and the Survey Department work alongside local and international vendors to firstly establish a network of Continuously Operating Reference Stations (CORS) to enable real time connection of survey measurements to the Bermuda National Grid 2000 by GPS and secondly the provide new high resolution ortho-photography for use with the Land Title Registry Index Map. Together these projects will enable the Land Title Registry Office to introduce incremental improvements to its mapping capability.

### **The Future - Project Sustainability**

Having a project team that predominantly comprises overseas contract officers immediately raises questions in respect of the long term sustainability of the land title registry operation. The possibility remains that all of the core staff could leave the island by 2010. The issues of operational continuity and the development of organisational capacity have been considered from the outset. At project initiation it was recognised that human resource development would be a key means to ensuring institutional sustainability. During the recruitment and selection process for staff efforts were focused on attracting suitable Bermudians especially from the well established professions of law and land surveying. While the campaign didn’t prove to be as successful as desired a Bermudian Chartered Land Surveyor was recruited and is now employed in an accelerated promotion to the position of Mapping Officer.

Given the difficulties that were experienced recruiting suitable staff work immediately began on devising a succession plan that would see the recruitment of two graduate Bermudian trainees who would be trained and developed to be able to take on the roles of Land Title Officers in order to replace the contract officers currently in those positions. The exercise to recruit these staff has recently been completed. The timing of the hiring of the trainees and the Land Title Mapping Officer is crucial.

The learning opportunities afforded by being part of the initial project implementation together with the structured training programmes that they are undertaking are unbeatable. These three Bermudians will play a significant part in shaping the system and ensuring the future sustainability of land title registration in Bermuda.

## **Conclusion**

The reference to ‘Another World’ in the title to this paper is taken from a popular song about Bermuda that alludes to both the island’s remote location and its uniqueness as a place. This is reflected in the opening line, “Bermuda is another world - 700 miles at sea”. In the context of this paper this begs the question ‘Is Bermuda so unique that it represents a departure from the majority of jurisdictions in the developed world that enjoy the benefits associated with modern systems of land registration?’ There are no doubt those who would answer in the positive saying that Bermuda’s land tenure arrangements have worked perfectly well for nearly 400 years without land title registration. Land tenure in Bermuda does have certain unique features borne of the historical and cultural context in which they have developed. (E.g. in Bermuda it remains possible for tenants in common to deal separately with their shares in a property, there is still use of the mechanism of the strict settlements etc.) These features however are not so unique as to have never been experienced elsewhere. For this reason and those that follow an effective system of land title registration is as appropriate to Bermuda as it is to any other jurisdiction in the developed and developing world. Indeed, given Bermuda’s position as one of the most urbanized and densely populated territories on the planet and the seemingly relentless pressure on its land resources an effective system of land title registration would appear to be an absolute necessity. The Minister of Works and Engineering in the Foreword to the recently published public consultation document on land title registration stated “Given the finite nature of this resource (land) here in Bermuda it is the responsibility of Government to ensure that it is managed, traded, and utilized in an efficient manner in order for it to be of benefit to both current and future generations”.

The authors of this paper are of the firm belief that the current project represents a genuine opportunity for the Government of Bermuda to realize this responsibility and press forward with plans to introduce title registration. The team responsible for implementation has over 100 years of land administration experience. Between them they have developed an extensive understanding of land tenure issues peculiar to Bermuda. The holistic approach to implementation has resulted in the project achieving a far greater momentum than that of any of the previous initiatives.

Provided that the Government’s enthusiasm and support can be maintained, Bermuda will soon be joining other jurisdictions worldwide that enjoy the benefits that derive from land title registration.

## REFERENCES:

Bermuda Beacon, Part 1 Richard Norwood [www.homepages.rootsweb.com/norwood](http://www.homepages.rootsweb.com/norwood)  
Accessed 28.08. 2007.

General Information on Bermuda taken from <http://en.wikipedia.org/wiki/Bermuda> Accessed  
28.08.2007.

Fearnley, R. (2007). *'A Land Title Registration System for Bermuda – Report and guidance notes on proposals for Legislation'*. Report prepared for the Ministry of Works and Engineering, Land Title Registry Office by Her Majesty's Land Registry International Unit, London.

Johnson, S. (1991). *'Report of a Study into the Feasibility, Benefits and Costs of the Introduction of Land Title Registration in Bermuda'*: Report prepared for the Ministry of Works and Engineering, Lands Buildings and Surveys Division.

Thierry, H. (1965). *'Organization and Supervision – Scan and development'* Leiden: Stenfert Kroese.

Zavenbergen, J. (2002). *'Systems of Land Registration Aspects and Effects'*. Publications on Geodesy 51, NCG, Netherlands Geodetic Commission.

Mintzberg, H. (1994). *'The Rise and Fall of Strategic Planning'*. The Free Press. Simon and Schuster Inc. New York.

Acha, V. (1996). *'Policy Development under Uncertainty'*. Capacities for Managing Development: Course Readings 4. The Open University, Milton Keynes.

Fortescue-Brickdale, Sir Charles. (1914). *'Methods of Land Transfer: Eight lectures Delivered at the London School of Economics 1913'*. Stevens and Sons Limited, London.

Dowson, Sir Ernest & Sheppard, Mr. V.L.O. (1955). *'Land Registration'*. Her Majesty's Stationery Office, London.

Bermuda is another world by Hubert Smith

Public Consultation Document: Introducing Land Title Registration to Bermuda. Ministry of Works and Engineering, Land Title Registry Office, April 2007.

## BIOGRAPHICAL NOTES

John E. Meadows, Land Registrar, has over 25 years Land Registration experience. Most of this was gained while working for Her Majesty's Land Registry, England and Wales where he ended up as the Head of the Agency's International Unit. During this time he was involved in projects in Eastern Europe, the Middle East, Africa and the Caribbean. John is currently based in Bermuda where, along with Mark Griffin, he is responsible for the implementation of the Bermuda Land Title Registration project.

Mark A. Griffin is a Fellow of the Royal Institute of Chartered Surveyors. He began his career in Geomatics in the UK and now has over 25 years of experience of living and working in Europe, the Near East, Middle East, Africa, Asia and for the last 10 years, Bermuda. Mark has worked in both private and public sectors, most recently specializing in Geographic Information Systems. Mark is the Project Manager who along with John Meadows is responsible for implementation of the Bermuda Land Title Registration project.

## CONTACTS

John E. Meadows  
Bermuda Land Title Registry Office  
11 Victoria Street,  
Hamilton, HM11,  
BERMUDA  
Tel. + (441) 294-9261  
Fax + (441) 296-1324  
Email: [jemeadows@gov.bm](mailto:jemeadows@gov.bm)

Mark A. Griffin  
Bermuda Land Title Registry Office  
11 Victoria Street,  
Hamilton, HM11,  
BERMUDA  
Tel. + (441) 294-9262  
Fax + (441) 296-1324  
Email: [mgriffin@gov.bm](mailto:mgriffin@gov.bm)

Web site: [www.ltro.gov.bm](http://www.ltro.gov.bm)