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The Reform of Property Registration Systems in Costa Rica: A Status Report

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and Luis Salas

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Abstract

Costa Rica is in the midst of a substantial reformation of its real-property registration system. The purpose of this paper is to provide the foundation for an analysis of how that reform process might be accelerated and improved. To that end, the paper describes the current condition of the Costa Rican registry and the changes that have been instituted to date. The Introduction and Section II review the origins and current status of the two primary existing registries – the National Registry (RN) and its subsidiary, the Real Property Registry (RPBI). Section III describes their jurisdiction and structure. Section IV outlines the ways in which they are currently financed. Section V reviews the registries' principal functions and operations. Sections VI and VII catalogue the respects in which they are currently being reformed. Among the dimensions of change are: integration of the registries with an improved cadastre; improving on-line access to the registry records; and addressing the problems presented by adverse possessors and landless migrants. Section VIII considers the relationship between registry reform and the Costa Rican system of "supplementary title." Finally, Section IX outlines the ways in which disputes that arise out of the registry process currently are being resolved.

Keywords: Central America; Costa Rica; property; registry

JEL Codes: K11; O13; O54

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I. INTRODUCTION

Costa Rica gained its independence from Spain peacefully in 1821. At that time, Spain had little interest in the country, which unlike its neighbors, was not rich in precious metals or other resources and did not have large indigenous populations that could be impressed as laborers. Once independent, Costa Rica copied the majority of its laws from Spanish codes. Particularly influential was the Spanish Constitution of Cadiz, which (among other features considered revolutionary for the period) mandated that the judicial branch of government be autonomous. Liberal reformers during this period drafted a new constitution emphasizing equality, freedom, security, democratic institutions, and the protection of property.¹ The autonomy of the judicial branch was preserved and fortified as a means to guarantee the rule of law throughout the country.

Land shortages and problems relating to an unequal distribution of land are remarkably absent from Costa Rica's history.² Indeed, through the mid-1960's, Costa Rica had large tracts of uninhabited, unclaimed land. Through its history, several laws have been passed to encourage settlement, most unsuccessfully. The relative tranquillity resulting (in part) from the surplus of land allowed the country to focus on creating a diverse, stable economy,³ and a strong political and legal infrastructure to support it.⁴ Part of this legal infrastructure has included the development of a well-functioning property registry system, a system that despite its strengths and modernity continues to evolve.⁵

¹These liberal reformers are referred to collectively as the "Generation of Olympus." Their new constitution was ratified in 1871, although its full implementation took several years. In fact, the apex of the group's influence came in the late 1880's and early 1890's.

²There is some speculation that the name "Costa Rica" was chosen as a means to attract more people.

³Average per capita income is over \$2,600 annually. Costa Rica has also enjoyed relatively high growth rates -- 4.8% annually between 1983 and 1988, higher in the years following with the exception of 1991. Even in the downturn of 1995, GDP growth still was 2.5%. Costa Rica's economic troubles generally relate to expansionist policies in the eighties and a growth in foreign debt, which contribute to periodic bouts of high inflation.

⁴Liberal politicians who drafted the Costa Rican constitution and later guided the country through the early twentieth century focused on achieving the goals of a well-educated citizenry that could participate in the political life of the country, and the development of trusted, well-structured government institutions like the judiciary.

⁵Recent examples of this evolution are the new Registry Regulations ("Reglamento Registral"), which took effect in March 1998, the new Notary Code ("Código Notarial") which was passed in June 1998, and continuing efforts to

Costa Rica began significant registry reforms in the late 1960's. These reforms were both structural and operational. Over the last two decades, Costa Rica has implemented automated systems that have increased the efficiency of the real-estate registry and of the registry system as a whole. In addition, the administrative structure of the registry has been reorganized to increase efficiency and productivity. In spite of these advances, many registry users in Costa Rica suggest that the institution continues to suffer from technical problems and inefficiency.⁶

Three aspects of the Costa Rican registry are instructive. First, the system is impressively comprehensive; over 80% of Costa Rican property owners hold registered titles,⁷ and while certain threats to tenure security exist,⁸ the degree of legal security overall is quite high. Second, the process of Costa Rican reform is informative, not only for its successes but also for the unforeseen problems that have resulted from it. Third, the registry in Costa Rica has both benefited from and contributed to the high public regard in which the national government as a whole is held. The result is a popular culture that encourages both the registration of property and reliance on the registry system to ascertain the legal status of property.

digitize cadastral information so that it may be unified with registry records and accessed remotely by system users. See Decreto 26771-J, Gaceta No. 54 (March 18, 1998); Ley 7764, Gaceta No. 98 (May 22, 1998); Section E *infra*.

⁶This paradox is noteworthy. The property registry's computer system has suffered failures, sometimes repeatedly within a short period. This is apparently due to a lack of adequate resources for maintenance of the computer system, and not problems with the system itself. Another factor that may contribute to the perceived slowness or complexity of the RPBI is that many documents fail to comport with legal requirements, causing delays in their processing. This problem, however, is attributable to the notaries who prepare such documents, not the registry that must sort through them.

⁷This figure is only approximate. The remaining lands in Costa Rica are largely classified as state reserves. Unregistered landowners with writings or other documents account for another portion of the unregistered land. In all, Costa Rica has very few cases of possession without color of title. In other words, the problem of squatters is relatively minor.

⁸Among these threats, Costa Rican officials and notaries report the growth of organized crime rings, which target valuable properties in fraudulent conveyance schemes, although the overall number of such incidents is still very small. Moreover, Costa Rica still lacks a fully integrated cadastre-registry in which an interested party can obtain a full legal and geographic record relating to a parcel.

II. AUTHORITY

The Costa Rican Real Property Registry ("Registro Público de Bienes Inmuebles" or "RPBI") was founded in 1867, pursuant to an 1865 statute.⁹ The statute itself was a copy of the Spanish Mortgage Registry law. In 1888 when the first Civil Code was passed, the laws governing the registry were consolidated in its Title VII. That same Title continues to provide the legal authority for the administration and operation of the public registry.¹⁰

In 1975, Costa Rica integrated its registry system. A new National Registry ("Registro Nacional" or "RN") was created to oversee each of the country's different registries, including the RPBI.¹¹ Subsequent legislation modified the system's structure to its present form.¹² The objective of the RN is to unify and coordinate the operation of the various registries that it oversees, improve service to registry users, improve the system's efficiency, and facilitate its modernization.¹³ It should be emphasized, however, that each of the registries is legally independent and possesses autonomous functions. Only their administration is coordinated by the RN.

In addition to Law 5695 and Title VII of the Civil Code, a number of other laws govern the RN and RPBI. Most important is the new set of Registry Regulations ("Reglamento Registro Público") issued in 1998.¹⁴

The RN enjoys substantial economic and legal autonomy. It maintains a special account managed by the Central Bank of Costa Rica with moneys derived from registry revenues.¹⁵ In

⁹See Ley Hipotecaria, No. 31 (Sept. 25, 1865). The Law had 82 articles that governed the property registry and instituted the principles that continue to serve as the foundation of registry law in Costa Rica.

¹⁰See Código Civil (12th ed. Porvenir, 1998) (revised and updated August 1, 1998).

¹¹See Ley de Creación del Registro Nacional, Ley 5695 (May 28, 1975).

¹²See Law 5950 (Oct. 27, 1976) and Ley 6934 (November 28, 1983).

¹³See Ley de Creación del Registro Nacional, Ley 5695, Art.1 (May 28, 1975) as reformed by Law 6934 (November 28, 1983).

¹⁴See Reglamento del Registro Público, Decreto-Ejecutivo 26771-J (Feb. 18, 1998) (published in La Gaceta, Mar. 18, 1998). This set of regulations replaced the regulations passed in 1995, but made few substantive changes other than adequately accounting for the restructuring of the RN accomplished in the new Notary Code. See Decreto Ejecutivo 24322-J (Jun. 12, 1995). The 1995 Regulations replaced Costa Rica's original registry regulations, which were not implemented until 1943, over 75 years after the registry system began operating.

Other important laws include Ley de Creación del Registro Nacional, Ley 5695, (May 28, 1975) as reformed by Lay 5950 (Oct. 27, 1976) and Law 6934 (Nov. 28, 1983); Ley sobre Inscripción de Documentos en el Registro Público, Ley 3883 (May 30, 1967); Ley 6145 (Nov. 18, 1977) (reforming Ley 3883 to simplify the registration process); Ley sobre Requisitos Fiscales, Ley 6575 (April 27, 1981). A complete list of laws that involve or implicate the RPBI is available at the Registry itself. See RPBI, "Leyes y Reglamentos Que Se Aplican en el Registro Público de la Propiedad Inmueble."

addition, the RN may accept donations and may enter into financial agreements with national and international organizations.¹⁶ Its authority is curtailed, however, by other Costa Rican laws that limit its total budget and require that RN revenues in excess of this amount be turned over to the national treasury.¹⁷

The RPBI enjoys substantial autonomy in its day-to-day operations and administration. The fact that the RN is dependent on the Ministry of Justice, a politicized institution, also has a limiting effect on the autonomy of the RPBI. As governments and political priorities change, attention to issues facing the RPBI waxes and wanes.

Although the RN possesses legal personality, the RPBI itself does not. Thus, those wishing to bring claims against the RPBI must sue either the RN or individual employees, registrars, and administrators in their official capacity.¹⁸ Nonetheless, according to the Civil Code, RPBI registrars are responsible for injuries caused by failures to process correctly legally valid documents.¹⁹ Defendants are personally responsible under Costa Rican law for the costs of their defense.²⁰

In land disputes involving third parties, registry workers may be subpoenaed by the judge to give evidence, although this is uncommon. More common is the submission of registry documents -- such as certifications or affidavits by relevant RPBI staff.

¹⁵See Ley de Creación del Registro Nacional, Art. 7.

¹⁶See Ley de Creación del Registro Nacional, Arts. 8-9 (granting authority to the RN to determine how monies allocated to it are used).

¹⁷See Traspaso de Recursos de la Carteras de Inversión de Organos y Entes Públicos al Gobierno Central, Ley 7723 (published in La Gaceta, Diario Oficial, 10, Jan. 15, 1998). The effect of the law is minimal, however, since the RN lacks authority to spend money without specific authorization. Hence, whether the money is in the registry's account or the national treasury makes little difference. Also worth noting, is that there is some question as to whether the law is obligatory or facultative. The national controller's office ("controlería nacional"), which is in charge of supervising the RN, has declared it to be the latter.

¹⁸Registry officials and notaries familiar with such cases indicate that plaintiffs will generally sue as many parties as can legally be charged.

¹⁹Such liability can result from any omission, imprecision, or error during the registration process. See Código Civil, Título VII, Art. 454 (1998) ("Si por omisión de circunstancias o por oscuridad o inexactitud al expresarlas, fuere inducido en error un tercero, el Registrador será responsable de los daños y perjuicios.")

²⁰According to the new Notary Code, damages arising from RPBI errors will be paid through insurance purchased by the Administrative Council of the RN. See Código Notarial, Artículo 173 (reforming Article 22 of Law 3883 (1967) and Ley de Creación del Registro Nacional, Law 5695). Nonetheless, this insurance program has not yet been implemented. In addition, the costs of their legal defense will still be born by registry employees when they are sued individually.

III. STRUCTURE AND ORGANIZATION

A. National Registry System (Registro Nacional)

The present Costa Rican registry system is integrated and exercises national jurisdiction. The RN oversees various registries, including the Real Property Registry ("Registro de Bienes Inmuebles" or "RPBI"), as well as the National Cadastra, and two support divisions -- one for general administration and the other for automated systems.²¹

The activities of these components are coordinated by the general directorate of the RN, assisted by a sub-directorate. The RN itself is administered as a whole by an interinstitutional Administrative Council ("Junta Administrativa") named by the Ministry of Justice through a political process.²² All budgetary and administrative decisions taken by the RN are subject to the approval of this council. The Director of the RN is appointed by the Administrative Council.²³ The Director cannot also be one of the directors of any of the component registries, nor can the Director interfere in issues that the components themselves are charged with managing.²⁴ The Director may, however, promulgate policies and internal rules that seek to integrate the registry system.²⁵

B. Real Property Registry (RPBI)

A Director is assisted by a group of legal staff and a deputy director.²⁶ The RPBI has two main divisions. First, the Registry Services Division administers the various sections that provide information and certifications, and accepting applications and materials from

²¹The present structure of the RN was first implemented in 1975 and later modified in 1976 and 1983. See Ley de Creación del Registro Nacional, Ley 5695 (May 28, 1975) (reformed by Law 5950, Oct. 27, 1976 and Ley 6934, Nov. 28, 1983).

The other registries within the RN include the Personal Property Registry ("Registro de Bienes Muebles"); the Intellectual Property Registry ("Registro de la Propiedad Industrial y Derechos Autor"); and the Business and Mercantile Registry ("Registro de Personas Juridicas"). See Ley de Creación del Registro Nacional, Art.2.

²²See Ley de Creación del Registro Nacional, Art. 3. The seven member council is comprised of the Minister of Justice who chairs the council, a practicing notary with "renowned experience," the National Director of the Notary Bar, and a representative from each of the following offices: (1) Attorney General; (2) Costa Rican Bar ("Colegio de Abogados de Costa Rica"); (3) Association of Topographers ("Colegio de Ingenieros Topografos"); and (4) Costa Rican Institute of Notarial Law. See Notary Code Art. 172 (reforming Ley de Creación del Registro Nacional, Art. 4). In practice, the Minister of Justice exercises the most influence in establishing policy; in council decision making, the Minister of Justice casts two votes.

²³See Ley de Creación del Registro Nacional, Art.6.

²⁴See Ley de Creación del Registro Nacional, Art.6.

²⁵The best example of these internal regulations are the "criterios de calificacion," established for the sorting and examination of registry documents.

applicants.²⁷ This division also manages access to computerized records and, where paper records are still in use, the registry books ("tomos"). The Registration Division is in charge of carrying out inscriptions of rights.²⁸ The property registry is unified in a single central office; all records are maintained in San Jose by the RPBI. To facilitate efficiency, the RPBI divides inscription applications among the registrars to ensure that each has a relatively equal work load.²⁹ Each group also has a chief, typically a registrar with advanced experience who also must have a law degree and several registrars and assistants who process the applications.

Registry users have no access to the registrar who is processing their application. Instead, chief registrars attend to registry users who have questions or wish to lodge complaints.³⁰ This structural change is relatively new, and RPBI administrators ("Direccion") are still evaluating it. The reason for implementing the change was to promote efficiency by freeing registrars from the responsibility of having to wait upon individual applicants – a responsibility that greatly reduced the productivity of each registrar and the overall efficiency of the system.³¹

With the exception of the RPBI supervisors, the registry staff is relatively young. This is especially true of the technical staff, most of whom join the registry to gain experience and then move into the private sector.³² This pattern is driven by a large salary differential between the public and private sectors.³³ At least in part, the new Notary Code will mitigate this problem by

²⁶See Reglamento del Registro Público, Art. 3-6.

²⁷See Reglamento del Registro Público, Art. 10.

²⁸See Reglamento del Registro Público, Art. 7.

²⁹Note that "equal workload" does not necessarily mean that each registrar processes exactly the same number or type of applications. Because certain transactions take longer to process, efforts are made to spread work out to maximize the total number of documents that are processed.

³⁰See Reglamento del Registro Público, Art. 8. There are currently five chief registrars who handle all consultations. Users voice concern that more are needed. Registry officials indicate that, while more personnel to handle consultations would be useful, currently there is no money available to hire more chief registrars.

³¹Some users are unsure the change has been for the better. Many find being unable to communicate with registrars frustrating, and argue that the prohibition may lengthen the inscription process. Minor faults or confusion on the part of a registrar that could be eliminated in a short face-to-face meeting instead sometimes lead to a rejection, a return of the document to the submission area, delay, or reprocessing. Other observers wonder whether the prohibition on contact is real, noting that every registrar carries a cellular phone and anecdotal stories of illicit payments to speed inscriptions are commonplace.

³²The migratory pattern of personnel creates opportunities for those who stay to attain higher levels in the RPBI infrastructure than their experience and training might otherwise allow. Workers welcome these opportunities.

³³The differential depends on market conditions and the position and skill of the individual, but salaries in the private sector may range from 33% to 50% higher. It is also worth noting that for some positions, the RPBI offers half the salary of other state institutions, but in other cases offers employees a premium in comparison with other government agencies hiring for similar work.

allowing higher salaries to be paid to technical staff, whom the current salary structure has most disadvantaged in relation to prevailing salaries in the private sector.

The rate of employee turnover among registrars and assistants is much lower. At least part of the reason is that, in comparison to other public-sector legal jobs, the registry offers above-average compensation. All positions are salaried. There are no compensation bonuses awarded for completing more work or higher quality work, although such factors are important in considering individuals for promotions.³⁴

Still, RPBI officials worry that worker morale may be lowered by the rules exposing them to personal liability for alleged errors. Unlike other systems where only the registrar may be sued, in Costa Rica any registry employee may be named in a suit that alleges wrongdoing in his official capacity.³⁵ Not only may employees be sued individually for wrongdoing, but they must personally assume the resulting legal fees. Even if the claim is later dismissed, which is the most often outcome of suits against registry personnel, or the employee's innocence is established, neither the RPBI nor Costa Rican government reimburses his or her expenses.³⁶ These expenses often are equivalent to the value of several months' salary, and no insurance is available to provide registry workers with economic protection and security.³⁷

C. Records Organization

Records in the RPBI are organized according to the Folio Real system. The office keeps track of all rights and interests pertaining to real property and mortgages.³⁸ Records relating to "horizontal property," which includes apartments and condominiums, are kept separately from

³⁴At least some notaries voice concern that promotions occur too rapidly in the RPBI. They express concern that more senior employees lack an adequate understanding of the regulations and real world exigencies behind inscription applications. As a result, applications may be rejected or processed incorrectly.

³⁵See *Ley de Creación del Registro Nacional*, Art.22. This law, however, did not preclude suits against individual registry workers, nor provide for indemnification of their costs.

³⁶Any judgment for damages, however, will be paid through insurance purchased by the Administrative Council of the Registry.

³⁷The chief reason for the lack of insurance is that the industry in Costa Rica is a government approved monopoly, which despite orders to develop such insurance coverage, has failed to do so because they argue that their exposure is too high given the premium rates.

³⁸See *Reglamento del Registro Público*, Art. 3. Costa Rican law identifies five rights of ownership, namely the right of possession, use, division and alienation, defense and exclusion, and restitution and indemnification. See *Código Civil*, Art. 264.

the general Folio Real.³⁹ Also, certain coastal property in Costa Rica is covered by special legislation that does not allow private ownership, but does permit certain leases and use rights to be appropriated.⁴⁰ These interests are registered in the RPBI.

Like other countries in the region, Costa Rica maintains a Diario in which all documents submitted to the RPBI are noted.⁴¹ Every Diario entry must clearly identify the parcel to which the inscription pertains and the type of transaction.⁴² Under the Folio Real system, each inscription relates to a specific parcel, which is designated by a unique number, and must indicate the interested party and the nature of the rights or interests that party has with respect to the land. Since 1982, records in the RPBI have also noted the cadastra plan number corresponding to the parcel. This number can be used to gain access to the complete cadastral record for the parcel.⁴³

Records in any component of the RN are public and may be examined by anyone.⁴⁴ Registry users can gain access to records by using a variety of indices maintained by the RPBI. For users that lack the parcel numbers of the tracts in which they are interested, indices exist for the names and national identification numbers ("cédulas") of property owners, creditors and debtors, and document presentation dates. Using the computer system, searches are very rapid and can be completed with limited information about a parcel.⁴⁵ In all cases, the RN and its components may set up policies and procedures to ensure the security of records and prevent them from being altered, removed, or destroyed.

One security measure is the use of passwords to gain access to the computerized registry system in order to make changes to records. Thus, registry users may consult records on-line,

³⁹See Código Civil, Art. 459; Reglamento del Registro Público, Art. 3; Ley de Propiedad Horizontal, Ley 3670 (March 22, 1966) (reformed by Ley 6890, Sept. 13, 1983); Reglamento al Artículo 8 de la Ley de Propiedad Horizontal, Decreto-Ejecutivo 26259-MIVAH-MP (published in Alcance 44, La Gaceta 168, Sept. 2, 1997).

⁴⁰See Ley sobre la Zona Marítimo Terrestre (1977) and accompanying regulations. Coastal land 200 meters inland from the average high tide are the property of municipal governments. The 50 meters closest to the sea are reserved for public use; private use of any kind is prohibited. The remaining land is subject to zoning restrictions, but may be leased ("dado en arriendo") to private parties who are either Costa Rican citizens, or in the case of corporate entities, at least 50% is owned by Costa Ricans.

⁴¹See Reglamento del Registro Público, Art. 26.

⁴²See Código Civil, Art. 460; Código Notarial, Art. 88.

⁴³Important to note is that the RPBI and Cadastre are linked, but not unified. Not all parcels registered in the Cadastre have been inscribed in the RPBI. Thus, having the cadastral map number for a parcel will not necessarily allow a registry user to access legal information pertaining to it. Having the parcel number, however, will always be sufficient to obtain the parcel's cadastral information.

⁴⁴See Código Civil, Art. 449.

⁴⁵In a written system, the variety of searches possible would be more limited and much slower.

but cannot make changes to them. Registrars and other staff may also be monitored by programming the computers to track and index inscriptions by the unique passwords of the registry employees who edit them. Thus, anomalies can be traced to a specific person.

D. Catastro Nacional

In contrast to other countries in the region, Costa Rica's cadastre agency is also administered by the RN.⁴⁶ This organizational integration of the RPBI and the National Cadastre ("Catastro Nacional") has facilitated cooperation and coordination between the two components. Like the RPBI, the National Cadastra is divided into departments, and one of these is dedicated to providing users with cadastra services. These services include inscription, cadastre consultations ("consultas catastrales"), copies, record updates ("resello"), certification, and microfilming.⁴⁷ Inscription in the Cadastra involves a process analogous to inscription in the RPBI. Cadastre plans (in essence, plat maps) are received, examined, numbered, archived, and returned to the interested party.⁴⁸ Cadastre consultations involve the retrieval or provision of cadastral information to cadastra users.⁴⁹

While portions of the National Cadastre have been digitized and are available to users on-line, most cadastre records are still in paper form. Users request to view about 1,200 cadastre plans each day.⁵⁰ The remaining services are explained in the Cadastra Regulations.⁵¹

The other three departments in the Cadastra concern themselves with (a) the maintenance of geodetic control points and the collection of geographic information, (b) the creation of geographic maps from which cadastral maps can be made, and (c) the synthesis of territorial

⁴⁶The cadastre and RPBI are linked administratively through the RN, legally through the obligatory use of cadastre map numbers in registry records, and functionally through the computer system that archives registry records, and the cadastral references they contain. See generally Ley del Catastro Nacional. This coordination has not always existed. The Costa Rican National Cadastre was created in 1916, but it was not until 1977 that jurisdiction over it was shifted to the RN. See Catastro General, Ley 70 (1916); Ley de Creació del Registro Nacional, Art. 2.

⁴⁷See Reglamento a la Ley del Catastro Nacional, Decreto-Ejecutivo 132607-J (Apr. 24, 1982), Art. 75.

⁴⁸See Reglamento a la Ley del Catastro Nacional, Art. 76. To be accepted for inscription, plat maps or plans of parcels must be clear, prepared and signed by a professional topographer, be officially stamped by the College of Topographers, and carry the correct cadastre fee in the form of special stamps. A minimum of four copies is required. See id., Art. 77. The applicant receives a receipt, and the information must be processed within eight business days. Where problems are noted, documents are returned with an explanation and may be corrected; otherwise, the applicant retrieves a copy of the inscribed plan. See id., Arts. 78-83.

⁴⁹See Reglamento a la Ley del Catastro Nacional, Art. 87.

⁵⁰Retrieval of these paper documents is highly labor-intensive, and the documents are stored in a dank basement archive. Because the condition of some of the maps is deteriorating and it is expensive to maintain and use them, National Cadastre officials are interested in microfilming and/or digitizing the system as soon as possible.

information and legal information with the geographic data gathered earlier to form a complete cadastral map.⁵²

IV. FINANCES

The Registry budget is part of the Executive budget approved by the National Assembly. The Ministry of Justice will first propose a budget for the RN and each of its components.⁵³ This budget must then be approved by the Treasury ("Ministerio de Hacienda") and National Assembly. Once approved, expenditures are supervised and approved by the Controller's Office ("Controleria General de la Republica" or "CGR"). The CGR ensures that moneys are spent appropriately and ensures that the Registry complies with its legal mandate.

The RN generates income by charging users for the services that it provides. These fees are established by law and are not subject to change by the RN.⁵⁴ Users pay the fees by purchasing registry stamps, which are then attached to applications in a fashion analogous to the way postage stamps are attached to mail. Once the documents are submitted to the RPBI, the stamps are canceled.

The schedule of RPBI fees ("Arancel") and the formulas used to determine them have been simplified by the new Notary Code.⁵⁵ All applicable fees must be paid upon submission of the inscription application.

The RN is financially self-sufficient, bringing in more revenue in service fees than it spends in providing those services. Within the RN, the RPBI is the single largest income producer and contributor to the overall surplus of the institution. The RN has revenues of over 2,300 million colones (approximately 8 million dollars), but its budget is less than half this amount. This surplus is the source of some controversy.

According to Costa Rican law, most registry revenues remit to the national treasury. The government counts on this money to service the national debt and provide other government

⁵¹See Reglamento a la Ley del Catastro Nacional, Arts. 88-91.

⁵²These departments execute the cadastre work process described in the Cadastre Regulations. See Reglamento a la Ley del Catastro Nacional, Arts. 27-31.

⁵³This proposal is made in consultation with the RN, which typically prepares a budget proposal for approval by the Ministry of Justice. That is, in practice, the RN is able to set budget priorities with the monies legally at its disposal.

⁵⁴See Código Notarial, Art. 179 (amending Ley de Aranceles del Registro Público, Ley 4564, Arts. 1-2, 9 (April 29, 1970)).

⁵⁵See Código Notarial, Artículo 179 (amending Ley de Aranceles del Registro Público, Ley 4564, Art. 2 (April 29, 1970)).

services. For their part, many in the Registry are concerned about the limits on spending imposed by the law. The limits do not, they argue, allow the RPBI to maintain and improve its information system technology because funds for new equipment and software are not included into the regular budget. Moreover, the spending limits do not recognize current market trends. Computer system operators and other technical staff, for example, can now command salaries in the private sector that can be more than double those offered by the RPBI.⁵⁶

V. FUNCTIONS AND OPERATIONS

A. Institutional Purpose and Principles

As with other registries in the region, the RPBI maintains records of all rights and interests pertaining to real property. The broader purpose of the institution is to guarantee the security of registered property rights.⁵⁷ The chief mechanism by which the RPBI, and more generally, the RN accomplish this goal is through the dual processes of inscription and publicity. Any title which constitutes, recognizes, modifies, or extinguishes an ownership right, usufruct, use, tenancy ("habitación"), servitude, mortgage, or rental right may be inscribed in the RPBI.⁵⁸ Titles which are not inscribed have no effect against third parties.⁵⁹

The RPBI functions according to seven basic principles, common to the registry systems of other countries in Central America, which have remained constant since the institution's founding:

⁵⁶Even among non-technical staff, turn-over is quite high which raises costs for the RPBI (which constantly must train new employees), reduces the overall experience that service providers have, and may reduce the quality of registry work.

⁵⁷See Código Notarial, Art. 172 (reforming Ley sobre Inscripción de Documentos en el Registro Público, Ley 3883 (March 30, 1967)) ("El propósito del Registro Nacional es garantizar la seguridad de los bienes o derechos inscritos con respecto a terceros. Lo anterior se logrará mediante la publicidad de estos bienes o derechos. En lo referente al trámite de documentos, su objetivo es inscribirlos.") The right of private ownership, the basis for all property rights, is established in Article 45 of the Costa Rican Constitution. That article guarantees that owners may not be deprived of their property without compensation. See Constitución de Costa Rica, Art. 45.

"La propiedad es inviolable; a nadie puede privarse de la suya si no es por interés público legalmente comprobado, previa indemnización conforme a la ley. En caso de guerra o conmoción interior, no es indispensable que la indemnización sea previa. Sin embargo, el pago correspondiente se hará a más tardar dos años después de concluido el estado de emergencia.

Por motivos de necesidad pública podrá la Asamblea Legislativa, mediante el voto de los dos tercios de la totalidad de sus miembros, imponer a la propiedad limitaciones de interés social."

⁵⁸See Código Civil, Art. 459.

⁵⁹See Código Civil, Art. 267-268; Reglamento del Registro Público, Art. 47. Note that certain servitudes need not be inscribed to have effects against third parties.

- **Principle of Petition ("Principio de Rogación")**⁶⁰

Anyone with a real-property interest, or any representative of such a person, may present an application for inscription of that right in the RPBI.

- **Principle of Priority ("Principio de Prioridad")**⁶¹

In Costa Rica, as throughout Central America, priority is established based on when a valid inscription application is presented to the RPBI. Once an application has been submitted, no other contradictory inscription may be made by a third party.

- **Principle of Publicity ("Principio de Publicidad")**⁶²

The registry is public, and its records can be consulted by anyone. Costa Rican law also provides that information may be written, microfilmed, or digitized.

- **The Principle of Public Faith ("Principio de Fé Pública Registral")**⁶³

All registry records are presumed to be complete, accurate and legal -- and therefore may be relied upon by third parties.

- **Principle of Legality ("Principio de Legalidad")**⁶⁴

Corresponding to the Principle of Public Faith, the Principle of Legality requires that only applications that conform to all legal requirements and formalities may be inscribed. The RPBI must check documents to ensure that such requirements are satisfied.

- **Chain of Title ("Principio de Tracto Sucesivo")**⁶⁵

Property must pass from owner to owner according to a legitimate chain of title. Rights cannot be inscribed if this chain cannot be established by the applicant.

- **Principle of Specificity ("Principio de Especificidad")**⁶⁶

To be valid, registry records must clearly express three elements: the parcel, the party with the interest, and the interest itself. Strengthening this principle was one goal of reforms contained in the New Notary Code. After May of 1999, all inscription applications will be required to be accompanied by a valid cadastre plan number.

⁶⁰See Código Civil, Art. 451

⁶¹See Código Civil, Art. 455.

⁶²See Código Civil, Art. 449

⁶³See Código Civil, Art. 456.

⁶⁴See Reglamento del Registro, Art. 32.

⁶⁵See Código Civil, Art. 452; Reglamento del Registro, Art. 54.

⁶⁶See Código Civil, Art. 460.

B. Safeguarding Priority

Until recently, the registry system failed to eliminate an important source of insecurity for creditors. The reason was that the RPBI only accepted documents pertaining to existing rights and interests. Thus, a mortgage creditor could only inscribe its interest at the RPBI after the underlying transaction (a sale of a house, for example) closed. In most instances, there is a lapse of time between the date on which a creditor extends commitment to finance a transaction, and the transaction's closing date when the creditor's pending interest is perfected and may be inscribed. During this interim period, the legal situation of the property may change to the detriment of the creditor.⁶⁷ Thus, the creditor could not guarantee that the priority of its pending interest in the property would be preserved during the period between the time it decided to extend credit and the time that the relevant transaction closed.⁶⁸ Moreover, other creditors who might be taken advantage of by deceitful parties had no way of knowing that another creditor had a pending interest. The net result was a reduction in the total amount of credit available, and a corresponding increase in the costs borrowers faced to obtain credit.

Adopting a mechanism first introduced in the Torrens (Australian) registry system, the Costa Rican RPBI has now effectively solved this problem. The introduction of "reservations of priority" ("reservas de prioridad") has provided a means by which creditors and others with pending interests can ensure that their priority will be maintained. Moreover, the new system enables other interested parties to learn about incipient mortgages by consulting the RPBI records.⁶⁹ Reservations of priority are annotations entered in the registry record for a parcel that indicate that a right or interest is pending. This annotation includes information about the interested parties, the rights or interests that would be established pending the consummation of the transaction to which they relate, and the date when the notation is made. While the

⁶⁷In Costa Rica, sellers are required to disclose all loans and other interests pertaining to the property being sold. Nonetheless, this legal requirement is of little practical value either to a buyer or to a creditor once a loan is extended, the transaction is consummated, and the parties become aware that the property is encumbered. A creditor may lose the value of the loan if the buyer lacks other assets, or the culpable seller cannot satisfy a judgment in the creditor's favor.

⁶⁸Note that, even though in each case the creditor has a valid legal claim to recover monies lent because of outright fraud or failures to disclose information that the law requires, nonetheless, the legal protection was of little practical use. Recovery actions were costly, and, often, responsible parties fled or were otherwise judgment proof.

⁶⁹See Código Notarial, Art. 184 (1998) (adding Articles 34-36 to Ley sobre Inscripción de Documentos den el Registro Público, Ley 3883 (March 30, 1967)). The new Article 34 defines the reservation of priority, while Article 36 explains its legal effects. Article 35 establishes the maximum 30-day vigilance of such notations.

reservation of priority does not prevent other applications from being presented to the RPBI, the Registry will not inscribe rights that would undermine those of the beneficiary of a reservation of priority. Instead, such applications are held. Reservations of priority are valid for 30 days. If at the end of that time, the underlying transaction has not been completed and the necessary inscription applications have not been presented, the annotation ceases to have any legal effect. Other inscription applications presented during the interim period acquire the priority that they otherwise would have had if the notation had never been made. If the transaction is completed and the necessary documents are presented to the RPBI within the 30-day period, any conflicting applications that were presented subsequently to the annotation of the reservation of priority are rejected.

C. Eliminating Provisional Titling

The new Notary Code changes sections of the Costa Rican Civil Code relating to provisional titling of interests.⁷⁰ According to the changes, provisional titling no longer exists. Instead, inscription applications for which definitive title cannot be granted are especially noted in the relevant RPBI record(s). "Provisional annotation" (as the new system is called) is possible in five cases:⁷¹

- (1) a pending transaction will affect the rights and interests in the property;⁷²
- (2) a request is made to adjust an existing registry entry, but a judicial order to do so is pending or some other act is required;
- (3) a declaration is made of a death or other event which will have effects on real property interests;
- (4) an attachment or foreclosure action;
- (5) an inscription application presented to the RPBI cannot be accepted because of some fault or defect that may legally be rectified without rejecting the application entirely -- an "error subsanable."

Depending on the case, the time permitted to convert the provisional annotation to a permanent one varies. In all cases where the time expires, the notations will be officially

⁷⁰See Código Notarial, Ley 7764 (1998) (changing the name of Article 468 of the Civil Code from "De las Inscripciones Provisionales" to "De las Anotaciones Provisionales" and implementing a one year timeframe to correct errores subsanables). Law 7764 also adjusts other relevant parts of the Civil Code, including Articles 469-479.

⁷¹See Código Notarial, Art. 178 (reforming Código Civil, Art. 468).

canceled in the registry. With respect to defective inscription applications (case (5) above), this change in the law is especially important. Prior to the change, provisional titles relating to faulty applications could be inscribed and persist indefinitely. From 1950 to 1997, the RPBI accumulated about 350,000 provisional titles.⁷³ Because the provisional titles might have become definite at any time, third parties would avoid transactions involving property for which provisional titles had been inscribed, effectively taking such land out of the active real estate market.

The new rules ensure that properties will not become frozen (since provisional annotations expire after a fixed amount of time) but protect the interests of rightful owners who submit inscription applications that contain rectifiable errors. In such cases, a provisional annotation is made in the registry. When the owner returns with the corrected application, the rights that are inscribed have priority from the date of the submission of the original application.

D. Promoting Integration of Information

The new Notary Code makes a number of other important changes to the rules according to which the RPBI operates. To facilitate integration of registry and cadastre information, all inscription applications must include the number of the cadastra plan for the property.⁷⁴ If no official plan for the property exists, the current owner of the land must arrange to have one prepared by a licensed topographer and inscribed at the National Cadastre office.⁷⁵

The Notary Code also permits the adoption of internal registry regulations that streamline inscriptions and promote land tenure security.⁷⁶ A recent change in the rules, for example,

⁷²This case would include reservations of priority.

⁷³The provisional titling problem was a fault in the 1861 Spanish civil code that Costa Rica copied in 1865. While Spain corrected the problem in 1869 by establishing "automatic" expiration of provisional titles, Costa Rica did not likewise correct its law until this past year.

⁷⁴See Art. 174 (reforming Art. 30 of Ley 6545)

⁷⁵See Reglamento a la Ley del Catastro Nacional, Art. 48. In Costa Rica, topographers are licensed by a national society and, like notaries, are public officers bound by principles of good faith, and legally responsible for effects of the document signed by them. The plans must comply with requirements relating to precision, accuracy and format established in the National Cadastre regulations. See Reglamento a la Ley del Catastro Nacional, Arts. 53, 55-74 (giving general requirements and indicating that specific details will be determined by the National Cadastre). In addition to the property itself, the cadastre plan must indicate relevant legal information pertaining to the parcel, the location of neighboring parcels, current owners, corresponding cadastre plan numbers and registry numbers, and any other complementary information deemed necessary by the National Cadastre. See Reglamento a la Ley del Catastro Nacional, Arts. 50-51.

⁷⁶See Código Notarial, Art. 184 (adding new Art. 32 to Ley sobre Inscripción de Documentos en el Registro Público, Ley 3883 (Mar. 30, 1967)); Ley Sobre Inscripción de Documentos en el Registro Público, Art. 16.

permits inscription applications to be processed without accompanying information from the municipality where the property is located.⁷⁷

E. Registry Use

The use of the RPBI has been increasing in recent years.⁷⁸ RPBI statistics relating to the number of inscriptions and other services provided in 1997 indicate that more than 514,000 certifications, 385,000 title search reports, 572,000 copies of microfilmed documents, and 225,000 inscriptions were completed. These figures represent a significant increase in registry use over the last several years. In addition, the RPBI handles a large number of inquiries each day, concerning both existing records and registry procedures and rules.

F. Inscription Process

Modernization of the RPBI and the process by which property rights may be inscribed began in the 1960's.⁷⁹ Prior to that time, Costa Rica's real estate registry system had changed little since the nineteenth century. The inscription process was tedious and costly, especially when the property had not been previously registered. In such cases, an applicant had to establish his rights in a judicial process similar to that used for positive prescription; he had to demonstrate his possession of the land for ten years, had to hire a surveyor to prepare an accurate plat map of the parcel, and hire a notary to prepare the title. The claim then had to be submitted to a judge who personally inspected the parcel and issued a ruling. If affirmative, the party would then have to navigate the property registry system itself, which could take months.

The current process has fewer steps, is less costly, and is usually completed more quickly. Even for properties not previously inscribed, the process is relatively straightforward. Whereas previously a judicial order was needed, Costa Rican law now permits notaries to prepare the necessary documents for presentation directly to the RPBI.

⁷⁷See Registro Nacional, Circular DRP-046-98 (internal document).

⁷⁸From 1990 to 1997, the number of documents presented to the RPBI surged from 317,390 to 498,454. This increase corresponds to the overall growth of the Costa Rican economy and more active land market. More recent statistics suggest the number of inscriptions per year has continued to increase, though less rapidly.

⁷⁹The first law to reform the land registration process was passed in 1967. See *Ley sobre Inscripción de Documentos en el Registro Público*, Ley 3883 (May 30, 1967) (as reformed by Law 6145 (November 18, 1977) and Law 6575 (April 27, 1981)). See also generally *Código Civil*, Arts. 448, 459-463; *Reglamento del Registro*, Decreto 26771-J (March 18, 1998) (describing the current inscription process).

The essential steps in the process are as follows: First, an inscription application must be prepared and signed by a notary.⁸⁰ The application will include the applicant's title which describes the right or interests sought to be inscribed, the land to which they pertain,⁸¹ and the interested party or parties. The application also must include unique registration number of the parcel ("ficha") if it has been registered previously, the number corresponding to the cadastre plan for the parcel, a declaration of the value of the underlying property or transaction,⁸² and correct payment in the form of registry stamps ("timbres").⁸³ The notary that prepares and affirms the information in the application. Finally, each application must have a special security ticket ("boleto de seguridad") from the notary who authorizes the transaction.⁸⁴ These security tickets are issued by the RN itself and each have a unique number. This notary must also sign and stamp the application and indicate the number of the application in his or her protocol book.⁸⁵ The Registry Regulations provide more detailed information about the requirements for an application.⁸⁶

Once executed, the notarized application is presented at the submissions section of the RPBI where the Diario is kept. RPBI staff quickly review the application to be certain that all formal requirements, including appropriate payment, have been met. If the adequate payment stamps have not been attached, for example, the applicant must go to another window to pay the difference and then return to submit the application.

⁸⁰In Costa Rica, the requirements to be a notary include the following: (1) good conduct; (2) no legal impediment, as defined in Article 4 of the Notary Code; (3) possess a law degree and license to practice law, as well as two years membership in the National Bar (Colegio de Abogados) in good standing; (4) have a fixed residence in Costa Rica, except for notary consultants; (5) have an open, public office in Costa Rica, except for notary consultants; and (6) be fluent in Spanish. See Código Notarial, Art. 3.

⁸¹Pertinent information about the land includes the property's location, borders, area, neighbors, any improvements that have been made, any existing rights or interests in the parcel, and whether the parcel has been previously inscribed.

⁸²The value of the transaction (usually simply the value of the relevant property) is required by the Registry Fee Office ("Oficina de Tasación") to assess the correct registry fee. In a purchase-sale contract, for example, the correct value of the transaction is the higher of the declared value of the property filed with the municipal government for property tax purposes, and the "market value of the property" as determined by the purchase price. Because owners often undervalue their land holding to avoid paying taxes, the latter value is generally greater.

⁸³Registry stamps are much like postal stamps. These may be purchased at the registry and at certain other locations.

⁸⁴See Reglamento del Registro, Arts. 49, 100-103.

⁸⁵A protocol book is kept by each notary in which every public document ("escritura pública") that the notary prepares is recorded. The books themselves are numbered and tracked by the Supreme Court, which issues them. In this way, public documents may be checked for validity, and responsibility for any irregularities can always be tracked to the appropriate notary. The notary's name and number are checked by computer at the RPBI submission window.

Some users of the RPBI complain about the efficiency of the document submission process - although the typical wait of 5 to 20 minutes does not seem outrageous. It is true that the wait can be much longer at peak times. Within the registry building, a makeshift market of individuals charge for the "service" of waiting on the line.⁸⁷

An application that meets the standard legal formalities is accepted officially, assigned a document number, mechanically time/date stamped, and scanned into the RPBI's computer database.⁸⁸ A note is then added to the electronic file containing the application that includes an abstract of the application, its number, and the time and date when it was officially submitted.⁸⁹ The documents that accompany the application then pass to a room behind the submission window area where they are scanned electronically into the RPBI's system. These electronic copies are stored permanently in lieu of paper documents. Once scanned, the documents themselves are available for inspection simply by entering the appropriate document number. Finally, the computer system automatically divides the applications that have been received among the various registrars.

Next, the registrar to whom the application is assigned performs a title search ("estudio registral").⁹⁰ If information is missing (e.g., the full names of neighbors) or substantive errors are discovered (e.g., a third party apparently owns the tract in question), the document be sent back to the applicant for correction or the submission of additional information.

Although exact statistics are not available, RPBI officials report that at least three-quarters of applications presented for the first time have some form of error. Of these errors, most can be rectified without the application being rejected outright and losing its priority.⁹¹ A notation of the error and date of its discovery is entered in the application's electronic record, and it is returned to the submission area. Then the applicant or designated representative is notified. The applicant has one year to correct the error to avoid losing priority.⁹² Corrected applications are

⁸⁶See Reglamento del Registro Público, Arts. 48-49. See also Código Civil, Art. 460.

⁸⁷Registry users sometimes identify this as an example of "soft corruption" whereby those with greater resources can pay for better service. In this case, the line can be avoided. During the inscription process itself, service may also be sped up for a price.

⁸⁸See Reglamento del Registro, Art. 26, 28. Those applications that fail to meet the formal requirements for submission are not accepted.

⁸⁹See Reglamento del Registro, Art. 29.

⁹⁰See Reglamento del Registro, Art.32-33. This check must take no longer than 8 days to complete.

⁹¹Such minor errors are known as "errores subsanables."

⁹²See Código Civil, Art. 468 as amended by Código Notarial (1998).

returned to the submission area where special windows are available for "non-first-time" submissions.⁹³ It is not uncommon for documents to pass back and forth between the applicant and RPBI as many as three or four times before finally proceeding to be inscribed.⁹⁴

Certain applications have significant errors that cannot be rectified. In such cases, the application is rejected and must be resubmitted, whereupon it will be assigned a new document number.⁹⁵ The registrar assigned the application will make a corresponding cancellation of the annotation made in the registry record for the parcel ("cancelación del asiento de presentación").

Once the application is approved, it is inscribed and digitally signed by the registrar.⁹⁶ A copy of the completed title is printed and attached to the original application, which is retrieved by the user. Once entered, the inscription is updated and, within one hour, is made available to the general public as part of the parcel's record.⁹⁷

All use of the traditional hand-written books for inscriptions has been prohibited.⁹⁸ Although about 85% of the RPBI's records have already been digitized, a minority have yet to be converted to digital form. To facilitate this conversion process, when an inscription application relates to a property that has not yet been converted, the registrar assigned to process the inscription must first transfer the parcel's record into the computerized system.

To prevent tampering with computerized records, passwords are required to edit files. The system tracks all entries and changes by these passwords so that the registrar can be held

⁹³First-time presentations are made at the "ventanillas del Diario," whereas subsequently, documents are presented at the "ventanillas de despacho."

⁹⁴It is unclear why errors are so frequent. Registry users complain that internal regulations change frequently and these changes are not publicized. Moreover, inexperienced registrars and staff often misapply existing rules. Registry officials contend that many notaries fail to take the time necessary to prepare an application properly. Moreover, many notaries are simply lazy and do not stay abreast of the latest regulations that may pertain to their transactions. They point out that all such regulations are available on-line and copies of relevant sections can be obtained at the RPBI itself. Users, however, point out that internal circulars and directives are not available, and that these often contain important information about rules changes. While it is uncertain whether the problem is access to information or laziness and nonchalance about acquiring it, what appears clear is that important information about RPBI rules and regulations is not getting to those who need it.

⁹⁵See Reglamento del Registro, Art. 35. Where an application is rejected, a reason must be provided by the registrar who reviewed it. If the party disagrees with the judgment, an appeal may be made to the Chief Registrar, and then to the Registry Administration. See Reglamento del Registro, Arts. 36-38. In practice, applications are rarely rejected outright by the RPBI. Almost always, the application is returned to the applicant for corrections.

⁹⁶See Reglamento del Registro, Art. 44.

⁹⁷When operating perfectly, the RPBI can process documents in one half hour from the time they enter and are approved for inscription to the time when the public can access the newly-updated record. This pace, however, is not always achieved.

⁹⁸The use of digital technology is authorized in the Registry Regulations. See Reglamento del Registro Público, Art. 63.

accountable for any anomalies.⁹⁹ Measures have also been taken to protect the records from technical malfunction. First, the actual registry record files are not stored on the servers that users access to view them, but rather on a single, central, more secure computer.¹⁰⁰ Second, backups of these records are updated daily and stored in secret locations to reduce the risk of catastrophic loss.¹⁰¹

From start to finish, the process of inscription typically lasts a minimum of eight (8) business days, but can extend to double or triple that time – and can last much longer when the application requires corrections.¹⁰²

The costs of the inscription process vary with the type of transaction and its value, but most users and the RPBI staff agree that the costs for registry services are low, unlike the costs of preparing the application, especially the notary's fee. While greater competition among notaries results in a decrease in fees, they can still be quite high.¹⁰³ This issue has become a highly charged political controversy recently.¹⁰⁴

⁹⁹See Reglamento del Registro, Arts. 106-108.

¹⁰⁰The network accessed by registry users is composed of a series of servers, to which the RPBI uploads registry files daily. This technical structure limits the possibility that RPBI files might be tampered with remotely by hackers.

¹⁰¹According to the RPBI, at most two days of transactions are "at risk" and, if necessary, these could be recreated.

¹⁰²Errors may be minor, yet still prevent the inscription from being completed. In one anecdotal case, a notary described having an application returned because on one sheet with a graphical picture of the parcel, a name of a neighboring landowner was missing. This sheet, however, was in effect a copy of another document in the application and also confirmed written information contained in application, both of which included the missing name. This return and resubmission extended the total time for processing by over a week.

¹⁰³Notaries generally charge 1.5% of a transaction's value up to a maximum of one million colones (375,000 dollars) and a smaller percentage on any remaining balance.

¹⁰⁴The controversy is based in a legal dispute between the Bar Association of Costa Rica ("Colegio de Abogados de Costa Rica") and the Ministry of Justice. At least until 1994, the fees for all notary and other legal services were established by a ministry-approved schedule. In 1994, the Costa Rican legislature passed a new consumer protection and antitrust law (Ley de Promoción de la Competencia y Defensa Efectiva del Consumidor, No. 7472, Dec. 20, 1994). Article 10 of that law appeared to eliminate, albeit implicitly, the existing notary fee schedule ("arancel de honorarios profesionales de servicios de notariado") which had been last updated in 1991. The official schedule had been very favorable to practicing notaries since, for example, it set a fixed percentage for charges associated with preparing an inscription application relating to a purchase-sale agreement. See Decreto-Ejecutivo 20307-J (published Apr. 4, 1991). Although the fee was graduated, for high-valued transactions, the notary fee was extremely high even though such transactions did not require much additional work on the part of the notary. Practically, however, market forces had already begun to erode the use of the official fee schedule. Notaries would negotiate with large clients. One argument to eliminate the schedule altogether has been that it applies only to smaller claimants who pay higher fees than they otherwise might "because the government requires it." The language of Article 166 of the new Notary code requires that notaries charge clients according to the "established fee schedule" as proposed by the Association of Notaries and approved by the Ministry of Justice. The Association argued that either a new schedule was needed or the former one was still in effect. In September, the Office of the Attorney General ("Procuradía General") issued an opinion which confirmed that the 1991 fee schedule had been derogated by the consumer protection and antitrust legislation, notwithstanding the reference to a fee schedule in the recently-passed Notary Code. The Association proposed a new fee schedule, but on December 3, 1998, the Ministry

G. Certifications

For information relating to records that have already been computerized, certifications can be completed in as quickly as five minutes using the RPBI network. Where records have yet to be computerized, more time is required to consult them before certifications can be granted.

H. Information Inquiries

Title searches may now be conducted on-line.¹⁰⁵ Those without computers of their own may either hire computer-equipped notaries or several terminals in the Registry. Title searches ("informes registrales") cost 300 colones (equivalent to 1.25 dollars). The report generated by a search reveals the current owner of a tract, a legal description of the property, mortgages and financial interests on the land, servitudes and usufructs, surveys and a description of the property's boundaries, and for most parcels, a cadastre number with which the party may obtain a topographic map.¹⁰⁶ Copies of the information can also be made for a nominal fee. Users unfamiliar with the new, computer-based system can obtain help from registry staff.¹⁰⁷ The system allows searches of records by parcel number ("ficha"), but in cases where a user does not have this number, on-line indices are available to help locate it. The most important of these indices is the property-owner index. There is also an analogous mortgage-holder index.

Even though there is ready access to on-line information, many users do not feel confident enough with computers to try the system. Other users do not trust the computers even if they know how to use them and, as a result, will not rely on the on-line information and use the

of Justice rejected it, stating that the conditions necessary to establish fixed prices (conditions required by the 1994 Consumer Protection legislation) did not exist. See Decreto 27473-J (published in La Gaceta, Dec. 3, 1998). Three days later, the Association published a directive, indicating that in the absence of a new fee schedule, it would continue to abide by the one approved in 1991. See "La Junta Directiva del Colegio de Abogados," La Nacion (Dec. 6, 1998) at 38 (paid advertisement).

¹⁰⁵ On-line searches are available only for parcels that have been transferred into the computerized system -- currently about 85%.

¹⁰⁶ Older properties that have not been active for some time may lack these maps. The National Cadastre offers survey services. These surveys and preparation of the cadastral map of the parcel take about a month. Where the parcel is proximate to a National Park or Reserve, notaries will consult with the Ministry of Natural Resources ("Ministerio de Recursos Naturales, Energía y Minas") and Forestry Service ("Dirección General Forestal") in addition to conducting a title search at the registry to be certain the parcel does not encroach and/or have special zoning requirements.

¹⁰⁷ Registry users, however, claim to be unaware of this service. Many argue that the government has not done enough to publicize the benefits of the new system, and inform users, especially notaries, how to use and take advantage of it.

system as an initial research tool. The RN and RPBI have done little to disabuse such users of such concerns.¹⁰⁸

For those who do conduct searches on-line, the system represents a significant advance over the traditional registry model. Nonetheless, technical glitches and system failures continue to pose problems. In addition, some users have noted that the automated system can actually make title searches more difficult. In some cases, important history relating to a title has not yet been computerized, while in others information about a title is simply "missing." In both cases, one must visit the RPBI to conduct a search of archived written records. This problem is thought to be temporary; eventually all records will be incorporated into the system.

VI. CURRENT PROJECTS AND REFORM EFFORTS

A. Greater Integration of Cadastral Information

The RPBI, is currently linked to the National Cadastra, and both are administered by the RN. However, the two agencies are not unified. For example, registry records do not always contain a reference to a corresponding cadastral plan. Likewise, many parcels that have cadastral plans inscribed at the National Cadastra are not also inscribed at the RPBI.

Another reason greater integration is necessary is that RPBI records about the extension of parcels often deviate from the geographic information contained in the cadastra. Reconciling discrepancies in these two sets of information will clarify property ownership. Moreover, the RPBI records contain geographic descriptions of parcels that are not referenced to geodetic control borders. Hence, boundaries are not exact. As one notary stated, "We know who the owners are, but what they own is less clear." Maintenance of the national cadastre has been problematic. Despite the credibility of the RPBI and its high use, most registry users are presently unconcerned about a parcel's official geographic information, focusing instead on the legal information maintained by the RPBI.¹⁰⁹ Part of the reason may be that the National Cadastra is not as up to date, not as complete in its coverage, and not as automated as the RPBI. Thus, the RN has sought ways to improve the coordination between the RPBI and National

¹⁰⁸More publicity and RPBI-sponsored training in the form of professional seminars are solutions proposed by some familiar with the system and the concerns of its critics.

¹⁰⁹There is some indication that this trend may be changing insofar as requests for cadastral information have increased in recent months.

Cadastral in order to improve the quality of information each agency provides and facilitate the maintenance of up-to-date records in each.

Reforming the existing Cadastral Law ("Ley del Catastro Nacional") has been one initiative. According to Article 30 of that law, as revised by the new Notary Code, all RPBI inscriptions must make reference to a cadastral plan for the relevant property.¹¹⁰ Prior to the reform, maintenance of the national cadastral was more difficult because cadastral plans only needed to be referenced, and hence updated, when inscribing property either whose borders had changed or which had not previously been registered in areas that had been declared "zonas catastradas" (i.e., officially mapped by the National Cadastral). In practice, this regime had the effect of concealing situations in which, for example, one large parcel was divided into smaller lots, or several small lots were combined, or the boundaries of a parcel changed in modest respects (e.g., because of an alteration of a river bed). Straightforward purchase-sale agreements did not require any cadastral reference, nor did any transaction outside areas designated by the National Cadastral. Thus, many improvements to land were never noted, and errors in the legal descriptions of property often persisted indefinitely.

The new requirement imposed by the reform of Article 30 stimulates upgrading of the cadastral records, ensures that legal descriptions of land transactions correspond to actual tracts, acts as a check on fraudulent conveyances, and provides a source for additional information to registry users conducting title or general information searches. It is also hoped that the required use of the National Cadastral and the increased integration of legal and geographic information will make registry users more aware of the value of the service it provides, thereby increasing its use and facilitating the maintenance of its records.

Legislation currently pending before the National Assembly would continue the integration process.¹¹¹ Its objective is to have all RPBI and National Cadastral records cross-referenced and accessible on line. Integrating cadastral information with existing RPBI records would fix property boundaries and bolster land security nationally.¹¹²

¹¹⁰See Código Notarial, Art. 174 (amending Art. 30 of Ley del Catastro Nacional, Ley 6545 (March 25, 1970)).

¹¹¹This new proposal, tentatively called "Ley para la Armonización de Datos entre Registro y Catastro", is part of a broader real property law reform project.

¹¹²It is important to recognize that an updated cadastral in itself will not resolve all land disputes. Even with geodetic control points, for example, if a river changes course (a common situation in Costa Rica), the legal question will still remain what to do about the land that is revealed -- whether it should belong to the owner who "lost" the land where the river now flows, or instead to the person who owns the parcel across the river adjacent to the new territory.

The process of integration is valuable in ferreting out cases of multiple titles and conflicting documents which everyone agrees exist within the existing system.¹¹³ Such cases involve single parcels for which more than one title has been issued, possibly because the descriptions of the parcel may have made it appear distinct in each.¹¹⁴ In some instances, the registered owner in the RPBI is not the same individual that has registered maps indicating ownership of the parcel in the National Cadastra.

B. Improving On-Line Information Access

The RPBI is working on ways to speed the process of updating registry records and making them publicly available. Already, the system allows users to access information about where an application is in the process, in much the same way that the movement of packages shipped with some air-freight companies can now be checked on-line. Nonetheless, the present system, even when working optimally, still includes some delay between official inscription and the moment when such updated information is available to users. In addition, the present system does not always work optimally. Users report that it continues to suffer from technical difficulties. Reported problems include system failures and delays in reporting new information. Thus, users who consult registry records on-line run some risk that the information they obtain may not be completely up-to-date. Moreover, the system is not available 24 hours a day. System upgrades require that outside access be discontinued at certain times.

One reason for the delays and persistent failures is the age of the computer server network used by the RPBI. For that reason, efforts are underway to obtain the funds necessary to modernize the hardware and software. An outside consultant has been hired to prepare a report on how best to upgrade the computer system and continue the process of automation.

¹¹³According to RPBI officials, before reform Costa Rica had registered officially records corresponding to an area of land equivalent to that of Venezuela.

¹¹⁴This situation is common within families where a parent or grand-parent left property to heirs without legally delineating specific parcels. In some cases, children sought to register their respective portions, but did not inscribe cadastre plans of their property. In others, cadastre plans were inscribed at the National Cadastre, but the title would not be registered with the RPBI. Years later, the "true" size and location of each parcel within the former estate would be almost impossible to ascertain.

VII. RELATED INITIATIVES

A. Completing a National Cadastre

Costa Rica is creating a new, highly integrated cadastre that would include not only geographic information linked to geodetic control points, but also land value and use data, as well as other information likely to be useful to a variety of public and private entities.¹¹⁵ Municipal governments are particularly interested in a national cadastre because it would allow them more accurately to assess and collect property taxes, their most important source of revenue.

The national cadastre reform project is still in its initial stages. Currently, comprehensive cadastral maps have been completed for only about 25% of the country -- although this area does include San Jose. For areas that still need to be mapped, a multi-step process will be used, which involves:

- (1) demarcating a specific work zone,
- (2) setting up a network of geodetic control points,
- (3) taking aerial photos,¹¹⁶
- (4) creating geographically-corrected maps by triangulation,
- (5) preparing photogrammetric maps or orthophotos,¹¹⁷
- (6) integrating legal information from the RPBI, and data from field teams to create preliminary cadastral maps,
- (7) recognizing and resolving discrepancies between the geographic, legal, and actual situation of the parcels in the area,
- (8) checking the work internally,
- (9) publishing a draft cadastral map for public review,
- (10) resolving any appeals,

¹¹⁵Chief among the national government agencies that would benefit from an up-to-date multipurpose cadastre are the Agrarian Development Institute ("Instituto de Desarrollo Agrario"), the National Institute for Housing and Urban Affairs ("Instituto Nacional de Vivienda y Urbanismo"), the Institute for Municipal Development ("Instituto de Fomento y Asesoría Municipal"). In the private sector, political parties, national newspapers, marketers, and developers would all benefit from information maintained in a national multipurpose cadastre. Costa Rica's national petroleum company, in fact, has financed mapping projects aimed at developing the cadastre.

¹¹⁶Area maps of the country, scaled at 1:50,000, already exist and are being updated as necessary. The bulk of this work was completed in the 1950's, by the IGN, and later updated in the 1970's and 1980's.

¹¹⁷At this step, smaller-scale maps are derived from the large, raw geographic data from aerial photos. The general rule is that the scale of the latter cannot be increased by more than a factor of four. Thus photos taken at a 1:40,000

- (11) making final revisions, and
- (12) implementing maintenance procedures.

Financial support for the National Cadastre Project has come from a variety of foreign governments and international agencies. Looking ahead, the next areas of focus will be cantons in the northern and southern regions of Costa Rica.¹¹⁸ The Inter-American Development Bank (IDB) will likely contribute significantly to this phase of the Project.¹¹⁹

B. Dealing with Illegal Squatters

The problem of illegal squatters in Costa Rica dates from the 1930's. Often land owned by foreigners was targeted, and conflicts developed.¹²⁰ The government's response in 1942 to create the Office of Colonization and Distribution of State Lands ("Oficina de Colonización y Distribución de Tierras del Estado") within the Ministry of Agriculture and Livestock was insufficient. The Office was meant to eliminate the squatter problem by making uninhabited state lands available to disputants. Unfortunately, neither the squatters nor the owners were interested in accepting the substitute land.

In 1962, the Costa Rican government created the Institute of Lands and Colonization ("Instituto de Tierras y Colonización"), which today is known as the Agrarian Development Institute ("Instituto de Desarrollo Agrario" or "IDA"). The agency's purpose was to implement 1961 legislation promising compensation for expropriated lands and guaranteeing rights of ownership. At first, the IDA attempted to offer unsettled land to owners, many of whom were foreigners, who had lost their land to organized squatters. In 1969, the IDA changed its policy in favor of actively working to settle disputes involving squatters. The new approach proved more effective.

At present, organized squatter groups still exist, but the overall scope of the problem is more localized and is usually dealt with by local police or through the court system. Thus, efforts to mitigate the problem focus on judicial efficiency and ensuring that laws against squatting are

scale cannot be used to create a map with a scale smaller than 1:10,000. Note also that the National Cadastre has not yet begun creating orthophotos, but plans to begin doing so soon.

¹¹⁸These areas were selected in part because of international pressure to regularize the lands located there. Recent violence over ownership had resulted in the deaths of foreigners.

¹¹⁹Although not yet fixed, the IDB is currently considering a financing package with a value in the range of \$20-33 million dollars.

¹²⁰Land disputes accounted in part for the Cost Rican Civil War of 1948.

enforced. Some owners report that the police are unresponsive when first notified that squatters have invaded the owner's parcel. Inaction often forces the owner to use the courts, which is more costly.

C. Addressing the Issue of Landless Migrants

Costa Rica depends on foreign migrant workers to perform field work, especially on coffee plantations. Harvesting coffee is a labor-intensive process of picking the beans off each branch. The majority of this work is done by Nicaraguans who are willing to perform the work for wages much lower than Costa Ricans would accept. Approximately 500,000 Nicaraguans work in Costa Rica -- a large number in a country with a population of only about 3.5 million. When the harvest is over, however, many of the Nicaraguan workers do not leave Costa Rica, but rather migrate through the country in search of work. At any given time, there are at least 100,000 illegal immigrants from Nicaragua in Costa Rica. This situation creates political and social tension because these workers often become squatters on private lands and settle in National Reserves and Parks.

According to some observers, an up-to-date registry-cadastre system would be a first step in addressing the issue. A multipurpose cadastre could help identify where most migrant labor is used and might help identify arrangements that would prevent mass migrations and illegal squatting during the off season.

VIII. SUPPLEMENTARY TITLE (ADVERSE POSSESSION)

In Costa Rica, supplementary titling is treated under the heading "positive prescription" ("prescripción positiva").¹²¹ According to the Civil Code, three conditions must be met for a prescriptive claim to ripen. The claimant must have a title to the property, must act in good faith, and must have legal possession of the property.¹²² Prescriptive rights cannot accrue unless the claimant possesses good title to the parcel, or to the rights or interests the claimant seeks.¹²³ For claimants who lack title, the only alternative to acquire rights is through occupation. Occupation, however, is only effective for unclaimed lands that belong to no one.¹²⁴ The claimant must be acting in good faith at all times to succeed in a claim of positive prescription.¹²⁵ That is, the claimant must have good reason to believe that the property is not owned by another individual, both at the time of acquisition and at all times thereafter.¹²⁶ Legal possession requires at least one year of occupancy. Possession of the land claimed must also be continuous, public, and tranquil.¹²⁷ Prescriptive claims require at least 10 years of possession.¹²⁸ Finally, prescriptive claims cannot be made against co-tenants of property, only against third parties,¹²⁹ and prescriptive rights have no effect against third parties unless they are registered.¹³⁰

Where a claimant can satisfy the legal requisites for positive prescription, he or she must file a claim before the local court. Public notice will then be given in a national paper. If a legal owner appears to challenge the claimant, the judge will dismiss the case. If no opponents appear,

¹²¹See Código Civil, Art. 853. Although any property may be acquired by prescription, the description here focuses on the use of prescription to acquire rights over real property.

¹²²See Código Civil, Art. 853.

¹²³Note that for servitudes, rights of possession, and personal property, the possession of good title is presumed unless and until contrary evidence is proffered. For prescriptive claims of ownership of real property the burden rests with the claimant. See Código Civil, Art. 854.

¹²⁴See Código Civil, Art. 485.

¹²⁵See Código Civil, Art. 855.

¹²⁶This is distinct from the laws of other countries in Central America, which require proof of good faith acquisition of land claimed by positive prescription or supplementary title, but presume or simply do not require such good faith subsequently.

¹²⁷These requirements are standard in the laws of other countries in the region. In Costa Rica, continuous possession is presumed absent contradictory evidence if the claimant can demonstrate possession at one time and again at a subsequent time. See Código Civil, Art. 859. Possession must be clear to any interested party and/or registered for a prescriptive claim to succeed. See Código Civil, Art. 858. Violent acquisition of land, or violent possession of it does not count toward the total time required for a prescriptive claim to ripen. See Código Civil, Art. 857.

¹²⁸See Código Civil, Art. 860. This time may accrue under different apparent owners so long as a chain of title can be established. See Código Civil, Art. 863.

¹²⁹See Código Civil, Art. 864.

the judge will call witnesses who are neighbors to testify. If the facts supporting the claim are corroborated, the judge may then grant a prescriptive title.

To take an illustration for analysis, consider the facts of a recent case.¹³¹ In 1974, Carmen Lopez Perez, a citizen of Honduras, inherited a large lot located in the district of Zapote outside San Jose, Costa Rica. In 1975, she agreed to let her aunt Alba Lopez build a small home on the land and live there. In 1997, after the relationship between the two women had soured, Carmen Lopez sought to assert her ownership rights over the land and remove Alba from the property. Alba filed a countersuit alleging that she had acquired the property by prescription.

The court ruled that although the 10-year period has clearly tolled, the other legal requisites had not been met. In particular, Alba López had lived on the land with the knowledge and consent of Carmen López, and had no good title to the property. Nonetheless, the court did find that Alba López was a co-owner of the home for which she had contributed money to construct. Consequently, a judgment for payment of that interest was rendered on her behalf; in effect, the court ordered her to sell her interest to Carmen López at the fair market price.

Of course, if Carmen López had abandoned the property, positive prescription could provide a means by which Alba López to gain title. She would first need to acquire a title by occupation and possession, and then wait the required ten years for the prescriptive claim to mature.

Costa Rican law regarding positive prescription differs in three respects from that of other countries in Central America. First, in Costa Rica, even after a claimant succeeds in obtaining a title through positive prescription, any opponent who believe title was granted in error may have the case reopened within the first three years following the final judgment ("período de convalidación"). If the opponent shows a stronger claim of right, the prescriptive title will be revoked and any encumbrances or other interests acquired during the intervening period will become null and void. During the following seven years, the title may still be challenged, but only through the regular ordinary process. Even if the prescriptive title is canceled, the rights and interests of third parties relating to the property will be preserved.

Second, Costa Rica lacks a separate legal concept of "extraordinary prescription" whereby a claimant who lacks title can gain rights to property. Only claimants with good title can bring a

¹³⁰See Código Civil, Art. 861. Note that servitudes acquired by prescription are an exception; they need not be inscribed to have effect against third parties.

¹³¹See *Carmen López Pérez v. Alba López López*, Case #968-93, Ruling of First Instance #99-97 (Dec. 1997). The decision regarding the prescription claim was affirmed on appeal.

prescriptive claim. Claimants who lack title may gain one through a separate process based on the principles of occupation and good faith possession.¹³²

Third, in Costa Rica, positive prescription can extinguish the rights of former owners. Once the tenth anniversary of the granting of prescriptive title passes, no opponents may bring claims challenging the title holder's ownership.¹³³

IX. DISPUTES

A. Mechanisms

Because Costa Rica enjoys a well-functioning judiciary that operates in an environment of respect for the Rule of Law, mechanisms for resolving disputes are relatively well-established. The Code of Civil Procedure ("Código de Procedimiento Civil") was updated in 1989 and took effect in 1990. Among its aims was to speed up the judicial process, which prior to the new code often required ten years to resolve a dispute. Nonetheless, the judicial process can still be slow and costly, two factors that may dissuade those with meritorious claims from having those claims heard.

Like its neighbors, Costa Rica rarely utilizes administrative agencies to hear disputes. Thus, the RPBI has no dispute-resolution function with respect to property conflicts. The sole exception to this principle involves cases of registry error that affect the rights or interests of only one party. In such instances, the interested party need only petition the RPBI to make the necessary change.¹³⁴ In all other situations, the parties to a dispute must either resolve the matter on their own or use the judicial process.

Alternative dispute resolution (ADR) provides an increasingly important way of circumventing the formal judicial system. The new ADR law in Costa Rica gives judges the authority to call for a mediation or negotiation session at whatever point in a case they think it would be useful.¹³⁵ In addition, the law provides that disputants who reach whole or partial

¹³²See Código Civil, Arts. 277-286 (describing the right of possession and requirements to acquire it).

¹³³See Código Civil, Arts. 868 et seq. (establishing that all rights, claims and corresponding legal actions, not otherwise excepted by law, are extinguished after ten years). Thus, the former owner loses the right to challenge the legitimacy of a new owner's claim after 10 years. In this respect, Costa Rican law is like that of many U.S. jurisdictions and unlike that of its neighbors whose law forbids ownership rights from ever being extinguished.

¹³⁴In a sense, this is less an exception than an example of what occurs when parties come to an agreement and create a notarized document petitioning the registry to act; here there is only one party.

¹³⁵See Ley sobre Resolución Alternativa de Conflictos y Promoción de la Paz Social, Art. 6 (Dec. 9, 1998) (published in La Gaceta 9, Jan. 14, 1998).

resolutions that meet specific minimum requirements outside the traditional court process be allowed to have their agreements formally recognized at any point before a final judgment in a case is rendered.¹³⁶

With respect to the court system, cases involving more than three times the official minimum wage are tried according to the ordinary process. Most land disputes are in this category. Disputes for smaller amounts and certain other actions are tried according to a summary process. Appeals of judicial decisions are presented to three-judge panels.

Costa Rica's ordinary judicial process is similar to those of its neighbors. The three main phases of the process are the pre-trial stage (where a complaint is filed, exceptions presented, and an answer is filed); the proof stage (where evidence is officially presented); and the judgment stage.¹³⁷ In contrast to the systems of some of its neighbors, Costa Rican law requires that all exceptions be made at the beginning of the process; objections that would result in dismissal of the claim are not delayed until after the judgment is rendered.¹³⁸

The summary judicial process mirrors the ordinary process, but in a compressed format with less time permitted for each step.¹³⁹ Cases involving easements and suits by creditors to attach property are two types of land-related conflicts where the summary process is used.¹⁴⁰

B. Illustrations

1. Fraudulent Conveyances

Unfortunately, Costa Rica has experienced a growing problem with fraudulent conveyances. Typically in such cases, corrupt notaries and others conspire to defraud rightful landowners (often foreign citizens) out of their property. The recent case of "Greenway" illustrates the problem.¹⁴¹

The Greenway company owned an undeveloped lot in San Jose. A shopping mall was built nearby, increasing the value of the lot considerably. The owner of Greenway, Mr. Ick, who was a citizen of Taiwan, decided to sell the land. A prospective purchaser was found, and a tentative

¹³⁶See *Ley sobre Resolución Alternativa de Conflictos y Promoción de la Paz Social*, Arts. 5, 9.

¹³⁷See generally *Código Civil de Procedimiento*, Arts. 290-427.

¹³⁸See *Código Civil de Procedimiento*, Art. 298.

¹³⁹See *Código Civil de Procedimiento*, Arts. 433-434.

¹⁴⁰See *Código Civil de Procedimiento*, Art. 432.

¹⁴¹Though based on a real case, names have been altered.

agreement reached. On the morning of the day of the closing, Mr. Ick's counsel, a member of a prestigious law firm in San Jose, checked the RPBI -- a matter of routine at the firm. To his dismay, he discovered that Greenway had already been sold, apparently in a transaction consummated in Panama just a few days earlier. Somewhat embarrassed, he informed the buyer who was already at the office with money in hand. The sale was not consummated.

When notified, Mr. Ick pointed out that he had never been to Panama where the documents used to sell the property were supposedly signed. His signature was forged. Upon further research, the attorney discovered that the firm that supposedly bought the lot, Inmobiliaria, S.A., had immediately sold it to another "third party" named FATEX. Moreover, the notary who had prepared the necessary documents already had several complaints lodged against him. The sale, although plainly fraudulent, would be difficult to rescind. FATEX could claim that it was a good-faith purchaser that bought the property relying on registry records indicating that Inmobiliaria, S.A. was the legitimate owner.

As the case unfolded, the fraud became more apparent. The principle financier of Inmobiliaria was a Mr. C. Soldit, reputed to be part of an organized group in Costa Rica that searches for valuable lots belonging to foreigners who are less likely to notice that something is amiss until it is too late.

Unfortunately, under the current system, cases of this sort are difficult to prevent and costly to correct.

2. Invasions

If a landholder discovers that his property has been invaded, he must take action to remove the invaders or risk losing his rights to the parcel through prescription. If the squatters have been on the land a short time, less than one year, the landholder can obtain an order ("interdicto") in a summary process that only requires a showing of ownership and the presence of uninvited occupants. If the squatters have planted crops or make other improvements, the landowner may be liable for their value if the improvements were made in good faith – i.e., without actual or constructive knowledge that the land was owned. Because the duration of the occupancy is a factor in determining whether the improvements were made in a good faith, the landowner is well advised to take action quickly.

Where squatters have been on the land for more than one year, the rightful owner will need to proceed through the ordinary judicial process, which (as indicated above) can be both time-consuming and costly.

3. Administrative Error

The following is a common scenario: X submits an application to inscribe a title to Greenacre. Before X owned the land, his father was the registered owner. Instead of registering the property in X's name, the RPBI mistakenly processes the application as a records update and, in effect, re-inscribes Greenacre with X's current information, but in the name of X's father. X realizes the mistake two weeks after submitting the application when he picks up the receipt.

When a mistake of this sort is made by the registrar or by registry employees, the RPBI has the legal responsibility to correct the mistake. With additional automation, mistakes can be corrected very rapidly. Nevertheless, many administrative errors take months to resolve. Because the cost of a suit is high, most registry users choose simply to wait for the error to be cleared up. These mistakes can be disruptive to business, but very little empirical data exists about how many errors are committed, how many of these are not immediately corrected, and how much such errors cost users and others who depend on the registry for accurate, efficient service.

4. Boundary Disputes

As work on the national cadastra continues, a growing number of boundary disputes will be discovered and require resolution. It is hoped that alternative dispute resolution, including negotiation and mediation, will be able to resolve the bulk of these disputes. Most involve very small strips of territory between two parcels -- either overlaps or areas that are legally unclaimed by either party.¹⁴² For those disputes that cannot be solved with ADR, the ordinary judicial process is available.

¹⁴²At least in part, the new Ley sobre Resolución Alterna de Conflictos y Promoción de la Paz Social (Dec. 9, 1997) was passed to address border disputes and other land-related disputes