

A Reprint from *Tierra Grande*

THE TEXAS TITLE TRAIL

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TEXAS LAND TRAILS

All land in Texas originally belonged to the government of Spain, Mexico, the Republic of Texas or the State of Texas. From the 1500s to the end of the 1800s most of that territory converted from public ownership to private hands. That transfer of sovereignty resulted in a system to record and verify private land titles.

The current system originated when the Republic of Texas created the General Land Office (GLO) to administer the land grant process. Individuals were granted a *land certificate* for a specified amount of land, dependent on certain criteria being met.

An individual then located available public land, and with the certificate in hand, had the land surveyed. The *field notes* (a written account of the survey) were filed with the GLO. After fulfilling conditions of the grant (such as making improvements and paying fees) the individual could apply for the *patent* (original title), which was ultimately granted by the GLO.

A patent is the legal instrument transferring land from the public domain to private ownership. In Texas, the set of records, or title, documenting a land

grant from Spanish or Mexican sovereignty provide proof of ownership and are recognized by the state. With a few exceptions, documentation of title to all privately held land in Texas begins with a patent filed with the GLO.

Few landowners ever see the patent, however, because transfer of title is now administered in the county clerk's office of each Texas county. When a property transfers ownership, the instrument (usually a warranty deed) used to document that transfer is filed with the county clerk. The filing serves as notice to the public that the property has changed hands. When property is sold and resold, a chain of title is created.

County clerks maintain an index of sellers (grantors) and buyers (grantees) for all property transactions. Although offices vary in the level of technology they employ, all counties provide a means to search these records. This allows an individual to go to the clerk with the current owner's name and trace the history of title transfers for the property in question through the names of previous owners found in the deed records.

A historical map of Texas territory, showing various land grants and settlements. The map is titled "TERRITO" in the top right corner. It features a network of roads and rivers, with numerous place names and labels. The map is oriented vertically, with the top of the page at the top of the image. The text boxes are overlaid on the map, providing historical context for the land grants shown.

CORONADO'S CLAIM WAS FIRST

The history of land ownership in Texas dates to 1540, when Spain made the first formal claim on Texas lands. Coronado made the claim at the town of Ysleta on the Rio Grande. The first Spanish settlers arrived in 1716.

It is believed that the first land grant was made in 1731, somewhere near present-day San Antonio. Many land grants around this time were given to Native Americans on the condition that they maintain the land under cultivation and production. The largest of these Spanish land grants covered 939 square miles (600,960 acres) in Cameron County.

In 1821, Mexico overthrew Spain. Texas remained under Mexican control until 1835. Under Spanish and Mexican control, almost 26.3 million acres were granted to private owners. Mexico began to settle Texas with Anglo-American colonists. Over 9,000 families were attracted to Texas by *empresarios* (a Spanish

term for contractor), such as Stephen F. Austin.

In 1835, the Mexican government was overthrown and the Republic of Texas established. The Republic issued grants for 1,329,200 acres. During its initial offering, land certificates were sold at 50 cents per acre to people who had contributed to Texas' fight for freedom. In 1836, the GLO was established. In 1846, Texas was annexed by the United States.

After annexation, a dispute arose over Texas' boundaries. The United States subsequently paid \$15.5 million to settle the dispute involving claims to land that today are in New Mexico and Colorado. This settlement delineated Texas' boundaries, which enclose nearly 172.7 million acres.

The state of Texas retained title to all vacant and unappropriated lands. Along with the land, the state retained liability for its sizable public debt. Public lands were the only asset the state had to address these substantial obligations.

CLASSES OF LAND GRANTS

Texas Republic land grants were called *headrights*, probably a reference to the colonial practice of granting so many acres to heads of families. Initially they were given to private individuals to further public goals, such as rewarding individuals for military service or promoting settlement.

First-class headrights were extended to settlers who had arrived in Texas before March 2, 1836. These grants allowed qualifying heads of families to claim one league and one labor, which equaled 4,605 acres. Single men were limited to 1,476.1 acres.

Second-class headrights were available to settlers arriving after March 2, 1836, but before September 30, 1837. Head-of-family claimants of second-class headrights could take 1,280 acres while single men were limited to 640 acres. Those taking land under the second-class headright were required to live on the land; first-class

headright owners had no residency requirements.

Headrights became less generous as time passed. Third-class headrights extended ownership of 640 acres of land to heads of families (320 acres for single men) arriving in Texas between October 1, 1837, and December 31, 1839. The same amount of acreage was given for fourth-class headrights, which applied to those who arrived between January 1, 1840, and January 1, 1842. In addition to the residency requirement, fourth-class rights stipulated that ten acres had to be cultivated to obtain the patent.

Preemption grants were similar to headright grants, but were made after Texas became a state. They were issued to natives already occupying the land rather than people relocating to Texas. Between 1845 and 1854, homesteaders could claim up to 320 acres.

From 1854 to 1856 and then again from 1866 until 1898, homesteaders could claim as many as 160 acres. To qualify for the grant, homesteaders were required to live on the land and make improvements to the property, such as perimeter fencing, barns or residences.

The Republic granted a new wave of *empresarios* land in several colonies following the struggle for independence. Within these colonies, heads of families were issued up to 640 acres while single men could apply for 320 acres. Fifteen acres were required to be cultivated to receive a patent.

During the remainder of the 19th century, Texas created many land-grant programs, each with a specific purpose and requirements. By 1898, no more public lands were available. The table catalogs the grant programs and numbers of patents issued by the GLO.

UNPATENTED LAND EXISTS

Some privately held land is not properly patented. Usually, this problem can be traced to an inaccurate original survey. If, for example, a small parcel was not included in the original survey, that parcel is known as a "vacancy." Owners may not be aware of these title defects.

When an unpatented parcel is found, the owner faces a lengthy process to perfect the title. The details of this process are far too intricate to describe here. However, a good-faith claimant has a preferential right to purchase or lease the vacancy from the GLO.

A good-faith claimant is someone who has occupied or used the land for at least ten years. A person who purchased land that a seller has occupied or used for ten years or more, believing that he or she owned the land, is also considered a good-faith claimant. In some cases the owner of the adjoining land qualifies as a good-faith claimant. The GLO makes this determination.

Before the GLO will grant or amend a patent, the claimant must obtain a re-survey of the land and submit the

surveyor's report. The required report normally includes field notes, sketches, deeds, abstracts, other surveyor's reports, the surveyor's professional opinion of the original survey's construction, notes on bearings, distances, landmarks and professional conclusions based on factual observations. This process is expensive.

The language in a deed does not directly indicate the existence of a valid patent. The only way to verify a property's patent is to trace the chain of title back to the original grant on file with the GLO. With the abstract number and county name, the GLO should be able to verify that a patent was issued.

The files and archives of the GLO in Austin are a rich information resource. In addition to providing legal title protections, these files are invaluable to historians and genealogists. Visit the GLO website (<http://www.glo.state.tx.us/archives.html>) for more information. ♣

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PATENTS ISSUED BY THE TEXAS GENERAL LAND OFFICE*

First Class	17,382
Second Class	6,056
Third Class	37,670
Bounty	9,257
Donation	4,922
Scrip	73,375
Sales Scrip	7,997
Preemption	18,980
School Land	35,230
School Land A	51,198
School Land B	22,183
City of Austin Lots	905
Out Lots of Austin	276
Galveston Island Lots	195
Mineral	150
Capitol Land	785
Asylum	1,662
University Land	1,542
Mustang Island	832
Total	290,597

* As of 1986. Possibility of some error in counts, resulting from inefficient past record keeping.

Source: Gary Mauro, *The Land Commissioners of Texas, 150 Years of the General Land Office*, Austin, General Land Office of Texas, 1986



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