



# TO HAVE

# &

# TO HOLD

## Property Titles at Risk in Peru

By Ryan Dubé

ALMOST 30 YEARS AGO, Amalia Reátegui and her husband, Eusebio, packed up their possessions, wrestled together their eight children, and moved to their new home: a dusty plot of land on the barren outskirts of the Peruvian capital, Lima. At first, life wasn't easy there. Basic services, like running water and electricity, weren't available. Roads were unpaved, and public transportation was nonexistent. Quality schools and health clinics were far away, in the more established and wealthier neighborhoods.

But even though conditions were tough, moving to San Juan de Lurigancho, one of Lima's earliest informal settlements, offered the couple a rare chance to become homeowners, which would have been out of their reach in the city's traditional districts.

Little by little, things improved. They built a sturdy house made of concrete, got electricity and, years later, running water and sewage. Buses arrived, and even a metro connecting San Juan de Lurigancho to the rest of the city. Their children went off to postsecondary education, and later landed jobs in hospitals, the municipality, and the navy.

Just as important for Amalia and Eusebio was a piece of paper from the government—the title recognizing their formal ownership of the 120-square-meter plot of land where they lived.

Today, the couple still lives in the same peach-colored house, but their family home, like their neighborhood, has been transformed over the years. The one-story house is now a four-story building with eight two-bedroom apartments, one for each of their adult children.

For Amalia, a 71-year-old soft-spoken grandmother with shoulder-length black hair, this was all part of the plan. "When we first

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built our home, I always thought it would be for my children," she said. "It is my house, and it is for them."

But for her children, who spent the equivalent of tens-of-thousands of dollars to build the upper floors, the current living situation leaves them in a legal limbo, where the ownership of their apartments is based solely on a verbal agreement with their parents rather than legal paperwork.

### Reverting to Informality

The case highlights a new trend that is puzzling experts of urban development and property rights in Peru. After years of demanding legal titles for their homes, residents are allowing their properties to become deregularized by failing to use the national registry, known as Sunarp, to document property transactions such as real



The home of Marcelo Nuñez and Marta Nicho de Nuñez in San Juan de Lurigancho (left) may slip into informality because they have not registered the additional floor they are building for their daughter and grandson (right). Credit: Max Cabello Orcasitas





estate sales, change of ownership within families, or the construction of additional floors subdivided into apartments. As a result, properties revert to informality, and the government registry does not accurately reflect the actual owners.

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The issue is a growing concern for policy experts, who say it could have major social, economic, and legal costs. Without legal registration, disputes can quickly arise among siblings over ownership of a family home after the parents die. Resolving the dispute can lead to high legal costs in Peru’s already overburdened and slow courts. Informal owners can’t use their property as collateral for formal bank financing, and they face lower resale value if they decide to put their home on the market. It also risks undermining the sustainability of Peru’s pioneering titling program, a popular tool aimed at promoting economic development that was later emulated around the world.

“The children are now living in the same situation that their parents were living in 40 years ago. They’ve become informal again,” said Julio Calderón, a Peruvian sociologist, Lincoln Institute researcher, and expert on property rights. “Urbanistically, this is a time bomb.”

## The Rise of Informal Settlements in Peru

Like other Latin American capitals, Lima experienced a population explosion during the second half of the last century, as migrants from across Peru flooded into the arid coastal city seeking a better life.

In 1950, fewer than a million people lived in Lima. By 2000, that number had ballooned to 7.4 million, according to the United Nations Popula-

tion Division. Today, the Peruvian capital is home to more than 9 million people, representing almost a third of the country’s total population. The drivers of Peru’s internal migration are varied, but it’s mainly a result of political and economic hardships in the countryside. In the 1970s, the rural economy crashed following a failed agrarian reform by General Juan Velasco, a leftwing military dictator.

The economy was battered again in the early 1980s during one of the worst El Niño weather events on record, causing damaging floods and collapse of the fisheries. At around the same time, the leftist Shining Path rebels launched a violent insurgency in the southern highlands, forcing many residents there to flee to Lima to escape a bloody conflict that would claim about 70,000 lives.

In Lima, the government wasn’t prepared for the wave of migrants. With nowhere to live, new residents began to take over vacant land on the city’s outskirts, sometimes clashing with police. One of those informal developments eventually became San Juan de Lurigancho. Hector Nicho, a community leader there, remembers the authorities as being powerless to stop the flood of people who seized land, hoping to make it their own.

“The first day of the invasion, there were 15 or 20 people. The following day, we were 500. The day after that, we were 1,500. It just kept growing. They couldn’t stop it, even though the state had sent police,” said Nicho, who was just a boy when he participated in the land invasion some four decades ago.

Land grabs occurred throughout Lima, eventually leading to the creation of districts like Villa El Salvador on the city’s southern edge and San Martín de Porres in the north. The squatters were some of the city’s most impoverished residents, living in areas noticeable for the lack of state presence and vast informal economy.

By the late 1980s, things were only getting worse. Peru’s economy had spiraled into hyperinflation. The Shining Path, once confined to the rural highlands, was fast encroaching on Lima, threatening to overthrow the government and install a Maoist-inspired regime.

## De Soto’s Titling Program

Around this time, Hernando de Soto, a Peruvian economist, proposed a way out of the mess. De Soto argued that providing legal ownership to property would trigger development by allowing the poor to leverage their individual assets in the formal economy and access financing. But complex and expensive bureaucratic barriers were preventing that from happening, De Soto said.

“They realized that one of the biggest obstacles to registering property in Peru was their own public registry,” said Angel Ayala, a lawyer and expert on property registration. “The problem wasn’t the informality. The problem was that the formal sector wouldn’t allow you to enter it,” he said, referring to the government’s then-complex and costly regulations for property registration.

De Soto’s ideas were embraced by Peru, which created a new legal framework to provide property titles for people like the Reáteguis, living in informal settlements in places like San Juan de Lurigancho.

In 1996, the government created the Commission for the Official Registration of Informal Property (COFOPRI) to lead a nationwide

urban titling program. It also created a parallel registry, known in Spanish as the Registro Predial Urbano. The registry, which focused only on Lima’s informal settlements, slashed the requirements for property registration, making it faster and cheaper for poor land owners to get titles.

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The results were impressive. According to *Regularization of Informal Settlements in Latin America*, a Lincoln Institute report by Brazilian lawyer Edésio Fernandes, COFOPRI reduced the time to obtain a title from 7 years to 45 days. It cut the number of steps from 2,007 to 4. The cost of registering declined from US\$2,156 to almost nothing.

Since its creation, COFOPRI has issued about two million property titles, making it one of the largest programs of its kind in the world.

“The people who worked there worked 24



hours a day,” said Jorge Ortiz, a former COFOPRI employee who later became the superintendent of Peru’s traditional public registry, known as Sunarp. “They really identified with what they were doing.”

De Soto’s titling policy became the preeminent approach for land regularization around the world. It won praise from development organizations like the World Bank and the Inter-American Development Bank, and from politicians like former U.S. President Bill Clinton. Peru, as a pioneer of the program, became a model for other countries in Latin America, Africa, and Asia that were also grappling with widespread informality and poverty.

Almost 20 years since the creation of COFOPRI, academics have identified several social and economic benefits from titling. Families with formal title, for example, invest more in their homes and their children’s education, studies show. They also have fewer children.

Critics of the program, however, argue that De Soto’s main hypothesis—that titles will increase the poor’s access to formal credit—has simply not materialized as he envisioned.

They also point to unintended consequences of large land-titling programs, such as political manipulation and incentive for squatters to continue invading land, creating new informal developments without services, in the hope of being registered one day.

## The Risks of Deregularization

In Peru, one of the main concerns is the sustainability of the titling, as more and more properties are becoming deregularized. Years after they seized land, the original property owners are retiring or passing away. Their property, often given to their children, is slipping back into informality.

“What we have seen happening is that the second and third property transactions are no longer registered. For a number of reasons, people simply fail to keep their properties fully legal,” said Fernandes. “So in a few years’ time, you are back to square one in terms of the legalities of the area.”



Amalia Reátegui (center) subdivided her home in San Juan de Lurigancho in order to build additional floors with apartments for her daughters and their families. Credit: Max Cabello Orcasitas

Unless the trend changes, policy experts say, the government’s aggressive titling program could unravel, along with its benefits.

Informal property owners risk losing the most basic benefit of titling: tenure security and legal protection against eviction and fraud. They could face other costs, like legal expenditures to resolve disputes over ownership.

There are also opportunity costs. Informal homeowners can’t use their property to access formal credit. They’d also miss out on receiving fair market compensation if they decided to sell their home.

The extent of the deregularization is difficult to gauge, but a recent Lincoln Institute study by Oswaldo Molina, an Oxford-trained economist, found that just 21 percent of second property transactions in Peru’s recently titled areas were being formally registered (Molina 2014).

“When the reform started, it wasn’t just an issue of providing titles to the people, but maintaining them formal,” said Molina. “So what happened with the other 79 percent?”

“We are now going to have numerous properties with titles, but in the name of someone else,” he added.

## Causes for the Failure to Register

During his time as the head of Sunarp, Ortiz said it was extremely rare to see individuals registering second property transactions. For Ortiz, this has been a disappointment.

“I believed in the model from the 1990s,” said Ortiz, who was the head of Sunarp during the start of President Ollanta Humala’s administration in 2011. “And now, some 30 years later, I’m seeing that it could go to waste.”

The causes of deregularization are obscure, but experts point to cultural issues and changes in public policy as important drivers.

In many places in Peru, there is a strong respect for the verbal decisions of parents, even concerning important legal issues like property registration. In cases where a family home is subdivided, children rely on their parents, the property owners, to sign off on the transaction in order to provide them with a formal title.

Experts say that many parents are happy to let their children pay for the subdivision, but they don’t consider providing formal title, believing that a verbal agreement is sufficient to split up the property. In other cases, parents refuse to provide title over concerns that they could lose control over their home.

“There is still a culture where you respect the decision and the word of the parents,” said Jesus Quispe, the director of Cenca, a Lima-based urban development institute, which works in San Juan de Lurigancho. “Few transactions go through the legal system. There is a culture of informality.”

Ramiro García, the head of the urban program at the Peruvian development organization Desco, says many families ignore the public registry until they confront a problem, like a legal dispute over ownership.

“It is bureaucratic, expensive, and families don’t consider it necessary,” he said from his office in Villa El Salvador.

Before Lima’s population boom, families that couldn’t afford to buy a home could move to the outskirts, grab a piece of land, and build a house. Today, most of the vacant land is gone. What remains is located on the edge of mountains, often unstable for living.

As land has become scarcer, demand for housing has remained robust. As a result, the

city has started to expand upward, with apartment buildings replacing houses.

Real estate prices have also skyrocketed, driven by Peru’s strong economic growth over the past decade. For young families from lower-middle class backgrounds, escalating costs have made it increasingly difficult to acquire their first home.

To help their children, parents who settled Lima’s outskirts a few decades ago are now adding two or three floors to their homes, and subdividing them into apartments.

In San Juan de Lurigancho, Melly Rosas, a 53-year-old secretary at a church, decided to add three more floors to her house after watching her married children struggle to save up enough money to buy a property.

“At first, this wasn’t our plan,” she said. “But it was too expensive for them to buy land while paying rent.”

“We are growing upward because there isn’t any more space,” Rosas added, referring to the increasing number of buildings in her neighborhood.

Rosas and her husband, Ricardo, haven’t looked into providing titles for their children’s apartments, but they plan to. “We know we have



San Juan de Lurigancho was a dusty outpost of Lima when Amalia Reátegui and her family settled there informally thirty years ago. Credit: Max Cabello Orcasitas



Marcelo Nuñez may pay costly fees to register the apartment his daughter is building on the second floor of his home, so that the title to the property remains formal. Credit: Max Cabello Orcasitas

to do so, because it will reduce a lot of problems they could have,” she said. “Right now, everything is verbal.”

A short drive away, on a quiet, residential street, Marcelo Nuñez, a 52-year-old shoemaker, lives in a spacious house with high ceilings that help to keep it cool during Lima’s hot summer days. Attached to the house is a small store, where his wife sells soft drinks and potato chips.

Like their neighbors, Nuñez and his family slowly built their home over the last 30 years, one wall at a time. Now his 28-year-old daughter is building a second floor, where she plans to live with her baby boy. Nuñez’s son, 25, will likely live on the third floor.

Nuñez said he hadn’t planned to register the upper floors, even though they will be owned by his children. “For my part, I hadn’t thought about doing it legally, because we are family,” he said. “It’s pretty strange to do a subdivision legally. Normally it is just by word.”

But, like Rosas, Nuñez agrees that leaving his children without formal titles could create future problems. “If they’re in agreement, I wouldn’t have a problem with doing it legally,” he said.

But cultural factors aren’t the only impediment to property registration. Policy experts say that people like Rosas and Nuñez will run into several costly regulatory requirements if they eventually decide to formalize their properties.

The obstacles arose, experts say, due to the government’s decision to eliminate the Registro Predial Urbano, the parallel registry created to speed up formal registration in Lima’s informal settlements.

In 2004, Peru merged the Registro Predial Urbano into Sunarp, the traditional public

registry that was seen as too costly and bureaucratic. The Registro’s simpler procedures for second and third property transactions were replaced by Sunarp’s more complicated and costly requirements.

Critics of the decision say the government made the change due to lobbying from powerful groups representing public notaries, who were concerned about losing lucrative business due to the Registro Predial Urbano. Unlike the traditional registry, the Registro allowed property owners to hire any lawyer, not just notaries, to legalize their transactions.

“By returning to the previous system, the costs multiplied by five. People said, ‘No, I’m not going to do that,’” said Ayala, the lawyer and expert on titling. “The issue isn’t cultural. It is about how to maintain the titling process in the formal system.”

Deregularization in Peru has far-reaching consequences for other countries that established their own titling programs based on the Peruvian model.

Argentine economists and Lincoln Institute researchers Sebastian Galiani, of the University of Maryland, and Ernesto Scharfrodsky, of the Universidad Torcuato Di Tella, found that in a recently titled suburb of Buenos Aires a significant portion of households were falling back into informality. In a 2013 study, the authors concluded that deregularization was likely due to the unaffordable cost of keeping the properties formal (Galiani and Scharfrodsky 2013).

“This isn’t just a Peruvian issue, but something that is much larger in the region,” said Molina, the economist who studied deregularization in Peru. “It is a problem with the short-term view of the reform.”

## Potential Solutions

To stem the tide of deregularization, policy experts say authorities will need to intervene now to prevent the need for costly retitling programs in the future.

Some small steps have been taken. In 2007, the government issued legislation to provide lower-income title holders with funds to formal-

ize subdivisions, a process that first requires them to register construction of the house. (Peru’s registration program gave residents titles to the land, but not the house built on top.) However, registration experts say the 2007 program was never fully implemented.

More importantly, experts say the government should reinstate simpler procedures, like those that were discarded when the Registro Predial Urbano was integrated into Sunarp. “The concrete thing to do would be to reconsider mechanisms that were used before,” said Molina. “The Registro was created so that the poor could correctly receive titles.”

Regulatory changes may not be enough on their own. Many experts insist that the problem requires authorities to tackle Peru’s broader culture of informality as well. To do so, they say, the government should launch a campaign to educate residents about the importance of maintaining their properties formal.

“This is a problem that the government has to address,” said Gustavo Riofrio, a sociologist and Lincoln Institute researcher who has spent his career studying property rights. “You have an entire city that was made by these people who are facing the same problem. It is now a social problem, not an individual one.”

Officials at Sunarp say they are working to simplify procedures for property transactions, without jeopardizing the legal security that the current system provides. Sunarp says it is also working to educate people about the importance of using the registry, but acknowledges that the government “hasn’t been able to instill in the population the importance of formalization.”

Until there is a greater acceptance of the regulatory system, some lawyers say Peru should make registration compulsory. Unlike many other countries, Peru does not require registration of property transactions; it’s voluntary.

“We have to educate people so they understand that registration doesn’t just provide security. It’s important to create value as well,” said Ortiz. “But until we have a new culture, we need to require people to register by modifying the civil code.”

At the home of Amalia and Eusebio, in San

Juan de Lurigancho, their 40-year-old daughter Emma is eager to discuss property titles.

Emma, who lives in a third-floor apartment with her son, says the subdivision of her childhood home is working out nicely so far. The family members respect each other’s space, but they still get together for a lunch on Sunday. The children also help their aging parents with expenses such as food.

But Emma says she knows it’s important to define ownership legally, especially after seeing cases where other families get mired in legal conflicts over their home. She thinks her parents will eventually start the process to provide their children with titles.

“My mom and dad still feel physically well. When that changes, I think they’ll let it go,” she said. “But for the moment, they are still keeping it tied up. For me, that’s OK.” □

**Ryan Dubé** is a Canadian journalist based in Lima, Peru. His articles have been published in *The Wall Street Journal*, *The Globe & Mail*, and *Latin Trade*. He has also worked on projects for the Economist Intelligence Unit. He can be reached at [rdube83@gmail.com](mailto:rdube83@gmail.com).

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