



**BERMUDA**

**LAND TITLE REGISTRATION ACT 2011**

**2011 : 51**

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WHEREAS it is expedient to make provision for the registration of estates in land and in certain incorporeal hereditaments, and for connected purposes;

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

### **PART 1 PRELIMINARY**

#### **Citation**

1 This Act may be cited as the Land Title Registration Act 2011.

#### **Purpose of Act**

2 The principal purpose of this Act is to provide for a system of registration of estates in land, and estates in certain incorporeal hereditaments, so as to—

- (a) provide certainty in ownership of registered land;
- (b) simplify proof of ownership of registered land;
- (c) facilitate the economic and efficient execution of transactions affecting registered land;
- (d) provide publicly available information in relation to registered land and, so far as practicable, the rights that benefit and the burdens that affect registered estates;
- (e) provide compensation for persons who sustain loss from a failure of the land title registration system established by this Act; and
- (f) allow for the eventual introduction of facilities for conducting transactions in registered land electronically.

#### **Interpretation**

3 (1) In this Act, unless the context otherwise requires—

“agreed notice” means a notice entered in the register in pursuance of an application under section 52(2)(a);

“attorney” means a person duly admitted under the Supreme Court Act 1905 to practise as a barrister and attorney in the Supreme Court;

“cautionable estate” has the meaning given in section 35(2);

“caution against first registration” or “caution” means a caution lodged under section 35;

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- “cautioner” has the meaning given in section 34;
- “cautions register” means the register established and maintained under section 18(1)(b), which consists of the individual registers described in section 20;
- “certificate of legal effect” means a certificate of legal effect referred to in paragraph 15(3) of Schedule 3;
- “co-tenancy” means an estate held in coparcenary, in joint tenancy, or in tenancy in common, and “co-tenant” has a corresponding meaning;
- “court” means the Supreme Court;
- “demesne land” means land vested in Her Majesty for the purposes of the Government but in which an estate is not held by any person;
- “estate in land” means a freehold estate in a corporeal hereditament, or a leasehold estate in a corporeal hereditament;
- “estate representative” has the same meaning as in the Administration of Estates Act 1974;
- “freehold estate” means an estate that is held in fee simple absolute in possession;
- “Indemnity Fund” means the fund established under section 10;
- “Index Map” means the Land Title Registry Index Map established under section 15;
- “land” does not include incorporeal hereditaments;
- “land title register” means the register established and maintained under section 18(1)(a), which consists of the individual registers described in section 19;
- “leasehold estate” means an estate that is held for a term of years absolute;
- “LTRO” means the Land Title Registry Office established under section 4(1);
- “Minister” means the Minister responsible for land title registration;
- “prescribed”, in relation to any fee, means prescribed by regulations made under the Government Fees Act 1965 and, in relation to any other matter or thing, means prescribed by rules made by the Minister under this Act;
- “qualifying estate” means—
- (a) an unregistered registrable estate in land, but does not include a leasehold estate which, at the time of the conveyance, transfer, grant or creation has no more than the threshold term to run; and
  - (b) where rules have been made under section 22(3), an undivided share in an unregistered registrable estate in land, but does not include a leasehold

estate which, at the time of the conveyance, transfer, grant or creation has no more than the threshold term to run.

“rectification” has the meaning given in paragraph 1 of Schedule 6;

“register” means—

- (a) in relation to a registered estate, the land title register; and
- (b) in relation to a caution against first registration, the cautions register;

“registered” means entered in the register;

“registered charge” means a charge the title to which is entered in the register;

“registered estate” means an estate the title to which is entered in the register;

“registered land” means a registered estate or a registered charge;

“registrable disposition” means a disposition of a registered estate or a registered charge which, under section 46, is required to be registered in order to operate at law;

“registrable estate” means a freehold estate or a leasehold estate;

“registrar” means the Land Title Registrar appointed under section 4(2);

“requirement of registration” means the requirement of registration under section 24;

“restriction” means an entry referred to in section 58(1) regulating the circumstances in which a disposition of a registered estate or a registered charge may be made;

“settlement” means any instrument or combination of instruments under or by virtue of which any land stands for the time being—

- (a) limited in trust for any persons by way of succession; or
- (b) limited in trust for any person in possession—
  - (i) for an entailed interest whether or not capable of being barred or defeated;
  - (ii) for an estate in fee simple or for a term of years absolute subject to an executory limitation, gift, or disposition over on failure of his or her issue or in any other event;
  - (iii) for a base or determinable fee or any corresponding interest in a leasehold estate;
- (c) limited in trust for any person for an estate in fee simple or for a term of years absolute contingently on the happening of any event; or



- (d) charged, whether voluntarily or in consideration of marriage or by way of family arrangement, and whether immediately or after an interval, with the payment of any rentcharge for the life of any person, or any less period, or of any capital, annual, or periodical sums for the portions, advancement, maintenance, or otherwise for the benefit of any persons, with or without any terms of years for securing or raising the same;

“settlement beneficiaries” means the persons who fall within paragraphs (a) to (d) in the definition of “settlement” in this section;

“statement of truth” means an evidentiary statement that is not required to be administered or taken by a commissioner for oaths;

“tenant in common” means a person holding, together with one or more persons, a registrable estate in undivided shares;

“threshold term” means a period of five years or such shorter period of at least three years as rules may provide;

“unilateral notice” means a notice entered in the register in pursuance of an application under section 52(2)(b);

“valuable consideration” does not include marriage consideration or a nominal consideration in money.

(2) In subsection (1), in the definition of “demesne land”, the reference to land vested in Her Majesty does not include land in relation to which a freehold estate in land has determined, but in relation to which there has been no act of entry or management by the Crown.

(3) References to an interest affecting an estate or charge are to an adverse right affecting the title to the estate or charge.

(4) References to the right to object to an application to the registrar are to the right under section 92.

(5) For the purposes of this Act, land is in the possession of the owner of a registered estate in land if it is physically in the owner’s possession, or in that of a person who is entitled to be registered as the owner of the registered estate.

(6) In the case of the following relationships, land which is (or is treated as being) in the possession of the second-mentioned person is to be treated for the purposes of subsection (5) as in the possession of the first-mentioned person—

- (a) landlord and tenant;
- (b) chargor and chargee (or mortgagor and mortgagee);
- (c) licensor and licensee;

- (d) trustee and beneficiary.

## PART 2

### LAND TITLE REGISTRY OFFICE

#### Establishment of Land Title Registry Office

4 (1) There is established a Government Department to be known as the Land Title Registry Office (LTRO) which is charged with performing the functions assigned to it under this Act.

(2) The LTRO shall consist of a public officer who shall be known as the Land Title Registrar and such number of other public officers as may be required.

#### General powers of registrar

5 (1) In addition to any other powers conferred on the registrar by this Act the registrar may, in pursuance of his or her functions—

- (a) by notice in writing require any person to produce any instrument, certificate or other document or plan relating to any land, lease or charge with which the registrar is concerned on or before a date specified in the notice, or such later date as the registrar may allow;
- (b) by notice in writing summon any person to appear on or before a date specified in the notice, or such later date as the registrar may allow, and give any information or explanation that the registrar may require respecting any land, lease or charge with which the registrar is concerned, or any instrument, certificate or other document or plan relating to such land, lease or charge;
- (c) refuse to proceed with any registration if any instrument, certificate or other document, plan, information or explanation required to be produced or given is withheld or any act required to be performed under this Act is not performed;
- (d) refuse to proceed with any application or provide any service requested unless such fee as may be prescribed has been paid;
- (e) require any evidence, information or explanation to be verified—
  - (i) on oath or by an affirmation; or
  - (ii) instead of an oath or affirmation, by a statement of truth in such form as the registrar may determine;
- (f) administer oaths and affirmations;

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- (g) order that the costs, charges and expenses incurred by the LTRO or by any person in connection with any investigation or hearing held by the registrar for the purpose of this Act shall be borne and paid by such person in such manner and in such proportions as the registrar may think fit, and the amount of any such costs, charges and expenses shall be deemed to be a fee to which the provisions of this Act in relation to fees shall apply;
- (h) order that any land be surveyed or resurveyed, and authorize any person to enter any land for the purposes of conducting such a survey.

(2) Where the registrar makes an order under subsection (1)(h) in relation to any land and it appears to the registrar that—

- (a) the land, or any part of it, is occupied by any person; or
- (b) any person is an estate owner in relation to the land, or any part of it,

the registrar may only exercise the power conferred by subsection (1)(h) to authorize entry onto the land after having first given at least one month's notice to each such person of the making of the order and the intention to authorize entry onto the land.

(3) The following shall be enforceable as an order of the court—

- (a) a requirement under subsection (1)(a);
- (b) a summons under subsection (1)(b);
- (c) an order under subsection (1)(g).

(4) A person aggrieved by—

- (a) a requirement under subsection (1)(a);
- (b) a summons under subsection (1)(b);
- (c) an order under subsection (1)(g); or
- (d) an order under subsection (1)(h),

may appeal to the court, which may make any order which appears appropriate.

(5) Sections 119 and 120 of the Criminal Code Act 1907 (perjury) apply to any person who—

- (a) gives information or explanation under subsection (1)(b) that the person knows to be false or does not believe to be true; or
- (b) makes an oath, affirmation or statement of truth under subsection (1)(e) or (1)(f) that contains evidence, information or explanation that the person knows to be false or does not believe to be true,

as they apply to a person who, in any judicial proceeding, knowingly gives false testimony or wilfully gives testimony which the person does not believe to be true.

**Indemnity of officers**

6 The registrar shall not, nor shall any other officer of the LTRO, be liable to any action or proceeding for or in respect of any act or matter done or omitted to be done in good faith in the exercise or supposed exercise of their functions under this Act.

**Seal of registry**

7 The LTRO may have a seal, and every instrument purporting to bear the imprint of such seal shall be received in evidence and, unless the contrary is shown, shall be deemed without further proof to be issued by or under the direction of the registrar.

**PART 3  
FEES AND INDEMNITY**

**Payment of fees**

8 (1) A person lodging an application with the registrar shall remit to the registrar with the application such fee as may be prescribed under the Government Fees Act 1965.

(2) A person requesting information or a service from the registrar shall remit to the registrar with the request such fee as may be prescribed under the Government Fees Act 1965.

**Power to prescribe fees**

9 In exercising power under the Government Fees Act 1965 to prescribe fees in respect of the performance of any functions under this Act or in respect of any matters incidental to the performance of any such functions, the Minister of Finance may, to the extent he or she considers appropriate, arrange that the income arising from the fees so prescribed is sufficient, taking one year with another—

- (a) to discharge the expenses incidental to the working of this Act; and
- (b) to provide such amounts from time to time as he or she considers reasonable for the purpose of establishing and maintaining the Indemnity Fund.

**Indemnity Fund**

10 (1) There is established a fund to be known as the Land Title Registration Indemnity Fund.

(2) The Minister of Finance shall, after consultation with the registrar, pay from the Consolidated Fund into the Indemnity Fund such sums from time to time as in his or

her opinion are sufficient to ensure that, as far as practicable, any valid claims for indemnity arising under this Act may be satisfied out of the Indemnity Fund.

### **Indemnities**

11 (1) Schedule 1 (which makes provision for the payment of indemnities by the registrar) has effect.

(2) Any indemnities payable under Schedule 1 shall be paid—

(a) out of the Indemnity Fund; or

(b) if and to the extent that the amount held in the Indemnity Fund is insufficient, out of the Consolidated Fund.

### **Reinsurance arrangements**

12 (1) The registrar may, with the written consent of the Minister and the Minister of Finance (but not otherwise), enter into arrangements with one or more institutions to which this section applies that have the effect of insuring the liability of the registrar to pay indemnities under this Act, or some part of that liability.

(2) Any premiums payable by the registrar in respect of any arrangements referred to in subsection (1) shall be paid out of the Indemnity Fund.

(3) Any amounts recoverable from an institution under any arrangements referred to in subsection (1) shall be paid into the Indemnity Fund.

(4) An institution is one to which this section applies if it is registered as an insurer under the Insurance Act 1978, or is authorized to provide insurance under equivalent legislation in another jurisdiction.

## **PART 4**

### **RECONCILIATION WITH OTHER LAWS**

#### **Status of the Act**

13 (1) Except as otherwise provided in this Act, no other law and no practice or procedure relating to land shall apply to land registered under this Act so far as it is inconsistent with this Act.

(2) Except where a contrary intention appears, nothing in this Act shall be construed as permitting any dealing which is forbidden by the express provisions of any other written law or as overriding any provision of any other written law requiring the consent or approval of any authority to any dealing or requiring the licence, consent or approval of the Governor or any other authority to hold land.

**Application of Act**

14 This Act does not affect the law of property in Bermuda as it applies to estates, interests or dealings in land that are not registered or required to be registered under this Act.

**PART 5**  
**MAPS AND BOUNDARIES**

**Index Map**

15 (1) The registrar shall keep an index map, to be known as the Land Title Registry Index Map for the purposes referred to in subsection (4).

(2) The Index Map shall comprise—

- (a) a map or series of maps of such quality, scale, coverage and content as the registrar is satisfied will, with the information and data referred to in paragraph (b), enable the Index Map to fulfil its purposes; and
- (b) such information and data supplemental to the map or series of maps referred to in paragraph (a) as the registrar considers necessary to enable the Index Map to fulfil its purposes.

(3) The Index Map may be kept in electronic form or such other form or mixture of forms as the registrar may determine.

(4) The purposes for which the Index Map is to be kept are—

- (a) in relation to any parcel of land, to enable the following matters to be ascertained—
  - (i) whether any registered estate relates to the land;
  - (ii) how any registered estate that relates to the land is identified for the purposes of the register;
  - (iii) whether the land is affected by any, and if so, what, caution against first registration; and
  - (iv) such other matters as rules may provide.
- (b) subject to section 17(2), in relation to each registered estate, to record the extent and location of the land comprised in the registered estate;
- (c) in relation to each caution against first registration, to record the general extent and location of the land affected by it; and
- (d) such other purposes as rules may provide.

**Maintenance of the Index Map**

16 (1) The registrar may cause to be made a survey of any land for the purposes of—

- (a) compiling, maintaining and updating the Index Map;
- (b) processing any application made to the registrar under this Act.

(2) The registrar may, at any time, revise the Index Map or any part of it and may omit from the Index Map any matter that the registrar considers obsolete.

**Indicative boundaries**

17 (1) The boundary of a registered estate as shown for the purposes of the register is an indicative boundary.

(2) An indicative boundary does not determine the exact line of the boundary of the registered estate.

(3) Subsections (1) and (2) apply to the boundaries of—

- (a) any registered estate; or
- (b) the land affected by any caution against first registration,

shown on the Index Map or any plan derived from the Index Map.

**PART 6**

**THE REGISTERS**

**Registers**

18 (1) The registrar shall establish and maintain two registers, namely—

- (a) the land title register which shall consist of the individual registers described in section 19; and
- (b) the cautions register which shall consist of the individual registers described in section 20.

(2) The registers may be kept in electronic form or such other form or mixture of forms as the registrar may determine.

**Land title register**

19 (1) The land title register shall include an individual register for each registered estate.

(2) Each individual register shall be divided into three sections as follows—

- (a) the property section, containing—
  - (i) a brief description of the land comprised in the registered estate;
  - (ii) a reference to the relevant details in the Index Map;
  - (iii) in the case of a rentcharge created by an instrument, sufficient particulars of the instrument to enable it to be identified;
  - (iv) particulars of the appurtenances ascertained by the registrar to benefit the registered estate;
  - (v) any matter otherwise required to be entered in another section of the register which the registrar considers may more conveniently be entered in the property section;
  - (vi) such other entries as this Act may require or permit or rules may prescribe;
- (b) the proprietorship section, containing—
  - (i) the name of the owner of the registered estate;
  - (ii) at least one address for the owner of the registered estate to which communications from the registrar may be sent;
  - (iii) any restriction relating to the registration of dispositions of the registered estate;
  - (iv) any bankruptcy notice entered in relation to the registered estate;
  - (v) a statement as to whether the title is absolute or provisional;
  - (vi) where the title is provisional, the reason or reasons for registering the title as such;
  - (vii) where practicable, on first registration of a registrable estate or the registration of a leasehold estate granted out of a registered title or a subsequent change of owner of a registered estate, a note of the price paid or value declared for that estate;
  - (viii) any matter otherwise required to be entered in another section of the register which the registrar considers may more conveniently be entered in the proprietorship section;
  - (ix) such other entries as this Act may require or permit or rules may prescribe; and
- (c) the incumbrances section, containing—
  - (i) details of any registered charge sufficient to enable it to be identified;



- (ii) the name of the owner of any registered charge;
  - (iii) at least one address for the owner of any registered charge to which communications from the registrar may be sent;
  - (iv) any restriction relating to the registration of dispositions of a registered charge;
  - (v) any notice, other than a notice referred to in paragraph (b)(iv);
  - (vi) any matter otherwise required to be entered in another section of the register which the registrar considers may more conveniently be entered in the incumbrances section;
  - (vii) such other entries as this Act may require or permit or rules may prescribe.
- (3) The registrar may cancel any entry in the register on being satisfied that it has ceased to have any effect.
- (4) In relation to an entry made under subsection (2)(b)(vii)—
- (a) it may be subsequently modified as the registrar may consider appropriate to reflect any other change in the register;
  - (b) the registrar shall cancel it when there is some change in the register which the registrar considers would result in the entry becoming misleading;
  - (c) where it is cancelled it may be replaced by such further entry as the registrar considers to be appropriate.

### **Cautions register**

- 20 (1) Subject to subsection (2), the cautions register shall include an individual register for each caution against the first registration of title to an unregistered estate.
- (2) On registration of a caution, the registrar may open an individual register for each separate area of land affected by the caution as the registrar may determine.
- (3) Each individual register shall be divided into two sections as follows—
- (a) the caution property section, containing—
    - (i) a brief description of the land which the cautioner claims to be the owner of, or in which the cautioner claims to be interested;
    - (ii) a reference to the relevant details in the Index Map;
    - (iii) where the land referred to in sub-paragraph (i) is a leasehold estate, sufficient particulars of the lease to enable it to be identified;
    - (iv) particulars of the estate or interest claimed by the cautioner;

- (v) such other entries as rules may prescribe; and
- (b) the cautioner section, containing—
  - (i) the name of the cautioner;
  - (ii) at least one address for the cautioner to which communications from the registrar may be sent;
  - (iii) particulars of any person whose consent to the lodging of the caution has been notified to the registrar; and
  - (iv) such other entries as rules may prescribe.

## **PART 7**

### **FIRST REGISTRATION**

#### ***Voluntary Registration***

##### **When title may be registered**

- 21 (1) This section applies to any unregistered registrable estate which is—
- (a) an estate in land;
  - (b) a rentcharge; or
  - (c) a profit à prendre in gross.
- (2) Subject to the following provisions of this Part, a person may apply to the registrar to be registered as the registered owner of an estate to which this section applies if—
- (a) the estate is vested in him; or
  - (b) he is entitled to require the estate to be vested in him.
- (3) Subject to subsection (4), an application under subsection (2) in respect of a leasehold estate may only be made if the estate was granted for a term of which more than the threshold term is unexpired.
- (4) In the case of an estate in land, subsection (3) does not apply if the right to possession under the lease is discontinuous.
- (5) A person may not make an application under subsection (2)(a) in respect of an estate vested in him as a mortgagee where there is a subsisting right of redemption, but instead the provisions of section 23 apply.

(6) A person may not make an application under subsection (2)(b) if the person's entitlement is as a person who has contracted to buy under a contract.

(7) If a person holds in the same right both—

- (a) a lease in possession; and
- (b) a lease to take effect in possession on, or within a month of, the end of the lease in possession,

then, to the extent that they relate to the same land, they are to be treated for the purposes of this section as creating one continuous term.

### **Legal tenancies in common**

22 (1) This section applies where a registrable estate is held by two or more persons in undivided shares (whether or not any particular undivided share is vested in two or more persons as joint tenants).

(2) In relation to any registrable estate that is held in undivided shares—

- (a) the tenants in common holding all such shares (including in a case where any undivided shares are vested in two or more persons as joint tenants, all those persons) have a joint right to apply under section 21;
- (b) subject to subsection (3), no application may be made under section 21 by—
  - (i) a sole tenant in common; or
  - (ii) two or more persons who do not together hold all the shares.

(3) Where rules so provide, but not otherwise—

- (a) a tenant in common holding an undivided share that is not registered; or
- (b) two or more persons holding as joint tenants an undivided share that is not registered,

may exercise a separate right to apply under section 21 in relation to the tenant's, or their, undivided share.

(4) Where the right to apply under section 21 is exercised in accordance with subsection (2)(a) and the registrar approves the application, the registrar shall register all the undivided shares under a single register.

(5) Where, in accordance with rules made under subsection (3)—

- (a) an individual tenant in common applies under section 21 in relation to the tenant's undivided share; or

- (b) two or more persons holding an undivided share as joint tenants apply under section 21 in relation to their undivided share,

and the registrar approves the application, the registrar shall register that undivided share under a separate register.

- (6) Where a register is created under subsection (4), the registrar shall—
  - (a) include in the proprietorship section details of the ownership of each undivided share; and
  - (b) ensure that any entries in the register in respect of matters that affect only a specific undivided share are so drawn as to confine the effect of the entry to that share.
- (7) Where a register is created under subsection (5), the registrar shall—
  - (a) include in the proprietorship section details of the ownership of the undivided share; and
  - (b) ensure that entries made in the register relate only to matters that affect that undivided share or the land as a whole.

(8) Persons applying in accordance with subsection (2) or rules made under subsection (3) shall provide such information and evidence as the registrar requires to enable the registrar to comply with subsections (6) and (7).

### **Estate vested in a mortgagee**

- 23 (1) This section applies where—
- (a) an unregistered registrable estate is vested in a person as mortgagee;
  - (b) there is a subsisting right of redemption; and
  - (c) there is a person who, if all money owing on the security of the mortgage and all other mortgages or other charges (if any) had been discharged, would be entitled to have the registrable estate vested in him or her.
- (2) Either—
- (a) the mortgagor; or
  - (b) the mortgagee,

may apply to the registrar for the mortgagor to be registered as the registered owner of the unregistered registrable estate referred to in subsection (1)(a).

(3) If the registrar approves the application then, from the time at which the application was lodged—

- (a) the registrable estate vests in the mortgagor, subject to the charge referred to in paragraph (b) and to all other mortgages, charges and incumbrances to which the estate was previously subject when vested in the mortgagee; and
  - (b) there is vested in the mortgagee a charge capable of being completed by registration, having the effect referred to in subsections (4) and (5).
- (4) On registration of the charge referred to in subsection (3)(b), there shall be conferred on the mortgagee, by virtue of this subsection—
  - (a) all the powers conferred on a mortgagee by Part IV of the Conveyancing Act 1983; and
  - (b) subject to the provisions of Part IV of the Conveyancing Act 1983, such additional powers as were granted to the mortgagee by the instrument or combination of instruments creating the mortgage under which the registrable estate was previously held by the mortgagee.
- (5) The mortgagor, the mortgagee and any other parties to the instrument or combination of instruments creating the mortgage under which the registrable estate was previously held by the mortgagee shall continue to be bound by the provisions of that instrument or those instruments, except only to the extent that those provisions are inconsistent with the vesting of the registrable estate in the mortgagor in place of the mortgagee.
- (6) In relation to any other mortgages, sub-mortgages, charges and other incumbrances subsisting in relation to the registrable estate at the time of the application under subsection (2), the charge referred to in subsection (3)(b) shall have the same priority as the mortgage under which the registrable estate was previously held by the mortgagee.
- (7) On approving the application, the registrar shall—
  - (a) register the mortgagor as owner of the registrable estate;
  - (b) in relation to the charge referred to in subsection (3)(b), register the mortgagee as owner of a registered charge; and
  - (c) make such other entries in the register as ensure that the registered charge referred to in paragraph (b) is registered with the priority specified in subsection (5) in relation to such other mortgages, sub-mortgages, charges and other incumbrances as affect the registered estate.
- (8) In this section—
  - (a) “mortgagor” means the person referred to in subsection (1)(c); and
  - (b) “mortgagee” means the person referred to in subsection (1)(a).

***Compulsory Registration***

**Compulsory registration**

24 (1) Subject to Schedule 3, the requirement of registration applies on the occurrence of any of the following events—

- (a) the conveyance or other transfer of a qualifying estate—
  - (i) for valuable or other consideration;
  - (ii) by way of gift;
  - (iii) in pursuance of an order of the court;
  - (iv) in pursuance of section 27(1) of the Conveyancing Act 1983;
  - (v) by estate representatives in the course of administering a deceased person's estate;
  - (vi) giving effect to a partition of land held in co-tenancy;
  - (vii) by a deed that appoints a new trustee or is made in consequence of the appointment of a new trustee;
  - (viii) by a vesting order under section 34 of the Trustee Act 1975 that is consequential on the appointment of a new trustee; or
  - (ix) by a deed executed under section 4 of the Appropriation of Escheats Act 1870;
- (b) the grant out of a qualifying estate of an estate in land—
  - (i) for a term of years absolute of more than the threshold term from the date of the grant; and
  - (ii) for valuable or other consideration, by way of gift or in pursuance of an order of the court;
- (c) the grant out of a qualifying estate of an estate in land for a term of years absolute to take effect in possession after the end of the period of three months beginning with the date of the grant;
- (d) the creation of a first legal mortgage of a qualifying estate.

(2) In subsection (1)(a), the reference to transfer does not include transfer by operation of law.

(3) Subsection (1)(a) does not apply to—

- (a) the assignment of a mortgage otherwise than under section 27 of the Conveyancing Act 1983; or

(b) the assignment or surrender of a lease to the owner of the immediate reversion where the term is to merge in that reversion.

(4) For the purposes of subsection (1)(a) to (c), if the estate transferred or granted has a negative value, it is to be regarded as transferred or granted for valuable or other consideration.

(5) In subsection (1)(a) and (b), references to transfer or grant by way of gift include transfer or grant for the purpose of—

(a) constituting a trust under which the settlor does not retain the whole of the beneficial interest; or

(b) uniting the bare legal title and the beneficial interest in property held under a trust under which the settlor did not, on constitution, retain the whole of the beneficial interest.

(6) For the purposes of subsection (1)(d), a first legal mortgage is one which, on its creation, ranks in priority ahead of any other mortgages then affecting the mortgaged estate.

#### **Duty to apply for registration of title**

25 (1) If the requirement of registration applies otherwise than because of section 24(1)(d), the transferee or grantee, or either's successor in title, shall, before the end of the period for registration referred to in subsection (3), apply to the registrar to be registered as the owner of the estate which is transferred or granted.

(2) If the requirement of registration applies because of section 24(1)(d) the mortgagor, or the mortgagor's successor in title, shall, before the end of the period for registration referred to in subsection (3), apply to the registrar to be registered as the owner of the estate charged by the mortgage.

(3) The period for registration is two months beginning with the date on which the relevant event occurs, or such longer period as the registrar may allow under subsection (4).

(4) If on the application of any interested person the registrar is satisfied that there is good reason for doing so, the registrar may by order extend the period for registration to such later date as may be specified in the order.

(5) Rules may make provision enabling the mortgagee under any mortgage falling within section 24(1)(d) to require the estate charged by the mortgage to be registered whether or not the mortgagor consents.

**Effect of non-compliance with section 25**

26 (1) If an application for registration that is required to be made under section 25(1) or (2) is not made within the period for registration referred to in section 25(3), the transfer, grant or the creation of a registrable estate becomes void upon the expiration of that period.

(2) On the application of subsection (1)—

- (a) in a case falling within section 24(1)(a), the title to the registrable estate in land reverts to the person who held it before the transfer on a bare trust for the transferee;
- (b) in a case falling within section 24(1)(b), (c) or (d), the grant or creation has effect as a contract made for valuable consideration to grant or create the estate or mortgage concerned.

(3) If an order under section 25(4) is made in a case where subsection (1) has already applied, that application of the subsection is to be treated as not having occurred.

(4) The possibility of reverter under subsection (1) is to be disregarded for the purposes of determining whether a fee simple is a fee simple absolute.

**Liability for making good void transfers etc.**

27 If an estate is retransferred, regranted or recreated because of a failure to comply with sections 25(1) or (2), the transferee, grantee or, as the case may be, the mortgagor—

- (a) is liable to the other party for all the reasonable costs of and incidental to the retransfer, regrant or recreation of the estate; and
- (b) is liable to indemnify the other party in respect of any other liability reasonably incurred by him because of the failure to comply with sections 25(1) or (2).

***Classes of title***

**Classes of title**

28 (1) The classes of title with which the applicant may be registered as owner on the first registration of a registrable estate are—

- (a) absolute title; and
- (b) provisional title,

and the following provisions deal with when each of the classes of title is available.

(2) A person may be registered with absolute title if the registrar is of the opinion that the person's title to the estate is such as a willing buyer could properly be advised by a competent professional adviser to accept.



(3) In applying subsection (2), the registrar may disregard the fact that a person's title appears to him to be open to objection if the registrar is of the opinion that the defect will not cause the holding under the title to be disturbed.

(4) A person may be registered with provisional title if the registrar is of the opinion—

- (a) that the person is in actual possession of the land, or in receipt of the rents and profits of the land, by virtue of the estate; and
- (b) that the registration of the person with absolute title would not be appropriate.

(5) Where registration is with provisional title—

- (a) the register shall include such entry as the registrar considers appropriate to reflect the reason why absolute title has not been granted; and
- (b) the entry made under paragraph (a) may except from the effect of registration any estate, right or interest which the registrar considers should be so excepted.

#### ***Effect of First Registration***

#### **Effect of first registration - freehold estates**

29 (1) This section is concerned with the first registration of a person as the owner of a freehold estate.

(2) Registration with absolute title has the effect described in subsections (3) to (5).

(3) The estate is vested in the owner together with all interests subsisting for the benefit of the estate.

(4) The estate is vested in the owner subject only to the following interests affecting the estate at the time of registration—

- (a) interests which are the subject of an entry in the register in relation to the estate;
- (b) unregistered interests which fall within any of the paragraphs of Schedule 2; and
- (c) interests acquired under the Limitation Act 1984 of which the owner has notice.

(5) If the owner is not entitled to the estate for the owner's own benefit, or not entitled solely for the owner's own benefit, then, as between the owner and the persons

beneficially entitled to the estate, the estate is vested in the owner subject to such of their interests as the owner has notice of.

(6) Registration with provisional title has the same effect as registration with absolute title, except that it does not affect the enforcement of any estate, right or interest which appears from the register to be excepted from the effect of registration.

### **Effect of registration - leasehold estates**

30 (1) This section is concerned with the first registration of a person as the owner of a leasehold estate.

(2) Registration with absolute title has the effect described in subsections (3) to (5).

(3) The estate is vested in the owner together with all interests subsisting for the benefit of the estate.

(4) The estate is vested subject only to the following interests affecting the estate at the time of registration—

- (a) implied and express covenants, obligations and liabilities incident to the estate;
- (b) interests which are the subject of an entry in the register in relation to the estate;
- (c) unregistered interests which fall within any of the paragraphs of Schedule 2; and
- (d) interests acquired under the Limitation Act 1984 of which the owner has notice.

(5) If the owner is not entitled to the estate for the owner's own benefit, or not entitled solely for the owner's own benefit, then, as between the owner and the persons beneficially entitled to the estate, the estate is vested in the owner subject to such of their interests as the owner has notice of.

(6) Registration with provisional title has the same effect as registration with absolute title except that it does not affect the enforcement of any estate, right or interest which appears from the register to be excepted from the effect of registration.

### ***Dependent estates***

#### **Appurtenant rights and charges**

31 Rules may make provision for—

- (a) the registration of the owner of a registered estate as the owner of an unregistered estate which subsists for the benefit of the registered estate;

- (b) the registration of a person as the owner of an unregistered estate or charge which is an incumbrance on a registered estate.

### *Supplementary*

#### **Rules about first registration**

32 Rules may—

- (a) make provision about the making of applications for registration under this Part;
- (b) make provision about the functions of the registrar following the making of such an application, including provision about—
  - (i) the examination of title; and
  - (ii) the entries to be made in the register where such an application is approved;
- (c) make provision about the effect of any entry made in the register in pursuance of such an application.

#### **Ancillary matters**

33 Schedule 3 has effect.

## **PART 8**

### **CAUTIONS AGAINST FIRST REGISTRATION**

#### **Preliminary**

34 In relation to a caution against first registration, the "cautioner" means the person who lodged the caution, or such other person as rules may provide.

#### **Right to lodge**

35 (1) Subject to subsection (3), a person may lodge a caution against the registration of title to an unregistered registrable estate if the person claims to be—

- (a) the owner of a cautionable estate; or
- (b) entitled to an interest affecting a cautionable estate.

(2) For the purposes of subsection (1), a cautionable estate is a registrable estate which—

- (a) relates to land to which the caution relates; and
- (b) is an interest of any of the following kinds—

- (i) an estate in land;
- (ii) a rentcharge; or
- (iii) a profit à prendre in gross.

(3) No caution may be lodged under subsection (1) by virtue of ownership of or an entitlement to a registrable estate which is capable of being the subject of an application for its registration under Part 7.

(4) The right under subsection (1) is exercisable by application to the registrar.

### **Effect**

36 (1) Where an application for registration under Part 7 relates to an estate which is the subject of a caution against first registration, the registrar shall give the cautioner notice of the application and of the cautioner's right to object to it.

(2) The registrar may not determine an application to which subsection (1) applies before the end of such period as rules may provide, unless the cautioner has exercised the right to object to the application or given the registrar notice of the cautioner's intention not to do so.

(3) Except as provided by this section, a caution against first registration has no effect and, in particular, has no effect on the validity or priority of any interest of the cautioner in the estate to which the caution relates.

(4) For the purposes of subsection (1), notice given by a person acting on behalf of an applicant for registration under this Part is to be treated as given by the registrar if—

- (a) the person is of a description provided by rules; and
- (b) notice is given in such circumstances as rules may provide.

### **Withdrawal**

37 The cautioner may withdraw a caution against first registration by application to the registrar.

### **Cancellation**

38 (1) A person may apply to the registrar for cancellation of a caution against first registration if the person is—

- (a) the owner of the estate to which the caution relates; or
- (b) a person of such other description as rules may provide.

(2) Subject to rules, no application under subsection (1)(a) may be made by a person who—

- (a) consented in such manner as rules may provide to the lodging of the caution; or
- (b) derives title to the estate by operation of law from a person who did so.

(3) Where an application is made under subsection (1), the registrar shall give the cautioner notice—

- (a) of the application;
- (b) that the cautioner has the right to object to the application before the end of such period as rules may provide; and
- (c) of the effect of subsection (4).

(4) If the cautioner does not exercise the right to object to the application before the end of such period as rules may provide, the registrar shall cancel the caution.

#### **Cautions register**

39 Rules may make provision supplemental to section 20 about how the cautions register is to be kept and may, in particular, make provision about—

- (a) the form in which information included in the register is to be kept; and
- (b) the arrangement of that information.

#### **Alteration of register by court**

40 (1) The court may make an order for alteration of the cautions register for the purpose of—

- (a) correcting a mistake; or
- (b) bringing the register up to date.

(2) An order under subsection (1) has effect when served on the registrar to impose a duty on him to give effect to it.

(3) Rules may make provision about—

- (a) the circumstances in which there is a duty to exercise the power under subsection (1);
- (b) the form of an order made under subsection (1); and
- (c) service of an order made under subsection (1).

#### **Alteration of register by registrar**

41 (1) The registrar may alter the cautions register for the purpose of—

- (a) correcting a mistake; or

- (b) bringing the register up to date.
- (2) Rules may make provision about—
  - (a) the circumstances in which there is a duty to exercise the power under subsection (1);
  - (b) how the cautions register is to be altered in exercise of that power;
  - (c) applications for the exercise of that power; and
  - (d) procedure in relation to the exercise of that power, whether on application or otherwise.
- (3) Where an alteration is made under this section, the registrar may pay such amount as the registrar thinks fit in respect of any costs reasonably incurred by a person in connection with the alteration.

## PART 9

### DISPOSITIONS OF REGISTERED LAND

#### Owner's powers

- 42 (1) An owner's powers in relation to a registered estate consist of—
- (a) power to make a disposition of any kind permitted by the general law in relation to an interest of that description, other than—
    - (i) a mortgage by conveyance or transfer;
    - (ii) a mortgage by demise or sub-demise; and
    - (iii) a disposition that is prohibited by this Act.
  - (b) power to charge the estate at law by deed expressed to be by way of legal mortgage.
- (2) An owner's powers in relation to a registered charge or a registered sub-charge consist of—
- (a) power to make a disposition of any kind permitted by the general law in relation to an interest of that description, other than a sub-mortgage by transfer;
  - (b) power to charge the registered charge at law by deed expressed to be by way of legal mortgage or sub-mortgage.

**Right to exercise owner's powers**

43 A person is entitled to exercise owner's powers in relation to a registered estate or charge if the person is—

- (a) the registered owner; or
- (b) entitled to be registered as the owner.

**Mode of exercise**

44 (1) A registrable disposition only has effect if it complies with such requirements as to form and content as rules may provide.

(2) Rules may apply subsection (1) to any other kind of disposition which depends for its effect on registration.

**Protection of disponee**

45 (1) Subject to subsections (2) and (4), a person's right to exercise owner's powers in relation to a registered estate or charge is to be taken to be free from any limitation affecting the validity of a disposition.

(2) Subsection (1) does not apply to a limitation—

- (a) reflected by an entry in the register; or
- (b) imposed by, or under, this Act.

(3) This section has effect only for the purpose of preventing the title of a disponee being questioned (and so does not affect the lawfulness of a disposition).

(4) Nothing in this section is to be taken to authorize a disposition in favour of a person who is not permitted to acquire land in Bermuda by virtue of the Bermuda Immigration and Protection Act 1956 or the Companies Act 1981.

(5) Any person applying to register a disposition of—

- (a) a registered estate; or
- (b) a registered charge,

shall produce with the application such evidence as the registrar may require for the purpose of satisfying the registrar that the disponee is authorized to acquire land in Bermuda under the Bermuda Immigration and Protection Act 1956 or the Companies Act 1981, as the case may require.

(6) Where an applicant fails to satisfy the registrar that the disponee of a disposition that the applicant has applied to register is authorized to acquire land in Bermuda in accordance with subsection (5), the registrar shall refuse to register the disposition and shall cancel the application.

**Dispositions required to be registered**

46 (1) If a disposition of a registered estate or registered charge is required to be completed by registration, it does not operate at law until the relevant registration requirements are met.

(2) In the case of a registered estate, the following are the dispositions which are required to be completed by registration—

- (a) a transfer;
- (b) where the registered estate is an estate in land, the grant of a term of years absolute—
  - (i) for a term of more than the threshold term from the date of the grant;
  - (ii) to take effect in possession after the end of the period of three months beginning with the date of the grant; or
  - (iii) under which the right to possession is discontinuous;
- (c) the express grant or reservation of an easement, right, or privilege in or over land for an interest equivalent to an estate in fee simple absolute in possession or a term of years absolute;
- (d) the express grant or reservation of—
  - (i) a rentcharge in possession issuing out of or charged on land being either perpetual or for a term of years absolute; or
  - (ii) rights of entry exercisable over or in respect of a term of years absolute, or annexed, for any purpose, to a legal rentcharge; and
- (e) the grant of a charge by deed expressed to be by way of legal mortgage.

(3) In the case of a registered charge, the following are the dispositions which are required to be completed by registration—

- (a) a transfer; and
- (b) the grant of a sub-charge by deed expressed to be by way of legal mortgage or sub-mortgage.

(4) Schedule 4 (which deals with the relevant registration requirements) has effect.

(5) This section applies to dispositions by operation of law as it applies to other dispositions, but with the exception of the following—

- (a) a transfer on the death or bankruptcy of an individual owner; and
- (b) a transfer on the dissolution of a corporate owner.



(6) Rules may make provision about applications to the registrar for the purpose of meeting registration requirements under this section.

(7) In subsection (2)(c), the reference to express grant does not include grant as a result of the operation of section 7 of the Conveyancing Act 1983.

**Effect of dispositions on priority: basic rule**

47 (1) Except as provided by sections 48 and 49, the priority of an interest affecting a registered estate or a registered charge is not affected by a disposition of the estate or charge.

(2) It makes no difference for the purposes of this section whether the interest or disposition is registered.

**Effect of registered dispositions: estates**

48 (1) If a registrable disposition of a registered estate is made for valuable consideration, completion of the disposition by registration has the effect of postponing to the interest under the disposition any interest affecting the estate immediately before the disposition whose priority is not protected at the time of registration.

(2) For the purposes of subsection (1), the priority of an interest is protected—

(a) in any case, if the interest—

(i) is a registered charge or the subject of a notice in the register;

(ii) falls within any of the paragraphs of Schedule 5; or

(iii) appears from the register to be excepted from the effect of registration;  
and

(b) in the case of a disposition of a leasehold estate, if the burden of the interest is incident to the estate.

(3) Subsection (2)(a)(ii) does not apply to an interest which has been the subject of a notice in the register at any time.

(4) Where the grant of a leasehold estate out of a registered estate does not involve a registrable disposition, this section has effect as if—

(a) the grant involved such a disposition; and

(b) the disposition were registered at the time of the grant.

**Effect of registered dispositions: charges**

49 (1) If a registrable disposition of a registered charge is made for valuable consideration, completion of the disposition by registration has the effect of postponing to

the interest under the disposition any interest affecting the charge immediately before the disposition whose priority is not protected at the time of registration.

(2) For the purposes of subsection (1), the priority of an interest is protected—

(a) in any case, if the interest—

(i) is a registered charge or the subject of a notice in the register;

(ii) falls within any of the paragraphs of Schedule 5; or

(iii) appears from the register to be excepted from the effect of registration;  
and

(b) in the case of a disposition of a charge which relates to a leasehold estate, if the burden of the interest is incident to the estate.

(3) Subsection (2)(a)(ii) does not apply to an interest which has been the subject of a notice in the register at any time since the coming into force of this section.

## **PART 10**

### **NOTICES**

#### **Nature and effect**

50 (1) A notice is an entry in the register in respect of the burden of an interest affecting a registered estate or charge.

(2) The entry of a notice is to be made in relation to the registered estate or charge affected by the interest concerned.

(3) The fact that an interest is the subject of a notice does not necessarily mean that the interest is valid, but does mean that the priority of the interest, if valid, is protected for the purposes of sections 48 and 49.

#### **Excluded interests**

51 No notice may be entered in the register in respect of any of the following—

(a) an interest under a trust or a settlement;

(b) a leasehold estate in land which—

(i) is granted for a term of years of three years or less from the date of the grant; and

(ii) is not required to be registered; or

(c) a restrictive covenant made between a lessor and lessee, so far as relating to the demised premises.

### **Entry on application**

52 (1) A person who claims to be entitled to the benefit of an interest affecting a registered estate or charge may, if the interest is not excluded by section 51, apply to the registrar for the entry in the register of a notice in respect of the interest.

(2) An application under this section may be for—

- (a) an agreed notice; or
- (b) a unilateral notice.

(3) An application under this section shall be made in accordance with such rules as may be made in this regard.

(4) The registrar may only approve an application for an agreed notice if—

- (a) the applicant is the relevant registered owner, or a person entitled to be registered as such owner;
- (b) the relevant registered owner, or a person entitled to be registered as such owner, consents to the entry of the notice; or
- (c) the registrar is satisfied as to the validity of the applicant's claim.

(5) In subsection (1), references to the relevant registered owner are to the owner of the registered estate or charge affected by the interest to which the application relates.

### **Unilateral notice**

53 (1) If the registrar enters a unilateral notice in the register, the registrar shall give notice of the entry to—

- (a) the owner of the registered estate or charge to which it relates; and
- (b) such other persons as rules may provide.

(2) A unilateral notice shall—

- (a) indicate that it is such a notice; and
- (b) identify who is the beneficiary of the notice.

(3) The person shown in the register as the beneficiary of a unilateral notice, or such other person as rules may provide, may apply to the registrar for the removal of the notice from the register.

### **Cancellation of unilateral notices**

54 (1) In this section "beneficiary", in relation to a unilateral notice, means the person shown in the register as the beneficiary of the notice, or such other person as rules may provide.

(2) A person may apply to the registrar for the cancellation of a unilateral notice if the person is—

- (a) the registered owner of the estate or charge to which the notice relates; or
- (b) a person entitled to be registered as the owner of that estate or charge.

(3) Where an application is made under subsection (2), the registrar shall give the beneficiary notice—

- (a) of the application;
- (b) that the beneficiary has the right to object to the application before the end of such period as rules may provide; and
- (c) of the effect of subsection (4).

(4) If the beneficiary of the notice does not exercise the right to object to the application before the end of such period as rules may provide, the registrar shall cancel the notice.

### **Unregistered interests**

55 (1) If it appears to the registrar that a registered estate is subject to an unregistered interest which—

- (a) falls within any of the paragraphs of Schedule 2; and
- (b) is not excluded by section 51,

the registrar may enter a notice in the register in respect of the interest.

(2) The registrar shall give notice of an entry under this section to such persons as rules may provide.

### **Registrable dispositions**

56 Where a person is entered in the register as the owner of an interest under a disposition falling within section 46(2)(b) to (d), the registrar shall also enter a notice in the register in respect of that interest.

### **Supplementary**

57 Rules may make provision about the form and content of notices in the register.

**PART 11**  
**RESTRICTIONS**

**Nature**

- 58 (1) The registrar may enter a restriction in the register in accordance with this Part.
- (2) A restriction may, in particular—
- (a) prohibit the making of an entry in respect of any disposition, or a disposition of a kind specified in the restriction;
  - (b) prohibit the making of an entry—
    - (i) indefinitely;
    - (ii) for a period specified in the restriction; or
    - (iii) until the occurrence of an event so specified.
- (3) Without prejudice to the generality of subsection (2)(b)(iii), the events which may be specified include—
- (a) the giving of notice;
  - (b) the obtaining of consent; and
  - (c) the making of an order by the court or registrar.
- (4) The entry of a restriction is to be made in relation to the registered estate or charge to which it relates.

**Effect**

- 59 (1) Where a restriction is entered in the register, no entry in respect of a disposition to which the restriction applies may be made in the register otherwise than in accordance with the terms of the restriction, subject to any order under subsection (2).
- (2) The registrar may, in accordance with rules, by order—
- (a) disapply a restriction in relation to a disposition specified in the order or dispositions of a kind so specified; or
  - (b) provide that a restriction has effect, in relation to a disposition specified in the order or dispositions of a kind so specified, with modifications so specified.
- (3) The power under subsection (2) is exercisable only on the application of a person who appears to the registrar to have a sufficient interest in the restriction.

**Power of registrar to enter**

60 (1) The registrar may enter a restriction in the register upon being satisfied that it is necessary or desirable to do so for the purpose of—

- (a) preventing invalidity or unlawfulness in relation to dispositions of a registered estate or charge; or
- (b) protecting a right or claim in relation to a registered estate or charge.

(2) No restriction may be entered under subsection (1)(b) for the purpose of protecting the priority of an interest which is, or could be, the subject of a notice.

(3) The registrar shall give notice of any entry made under this section to the owner of the registered estate or charge concerned, except where the entry is made in pursuance of an application under section 61.

**Applications**

61 (1) A person may apply to the registrar for the entry of a restriction under section 60(1) if—

- (a) he is the relevant registered owner, or a person entitled to be registered as such owner;
- (b) the relevant registered owner, or a person entitled to be registered as such owner, consents to the application; or
- (c) he otherwise has a sufficient interest in the making of the entry.

(2) Rules may—

- (a) require the making of an application under subsection (1) in such circumstances, and by such person, as the rules may provide;
- (b) prescribe the form of consent for the purposes of subsection (1)(b);
- (c) provide for classes of person to be regarded as included in subsection (1)(c);
- (d) specify standard forms of restriction.

(3) If an application under subsection (1) is made for the entry of a restriction which is not in a form specified under subsection (2)(d), the registrar may only approve the application if it appears to him—

- (a) that the terms of the proposed restriction are reasonable; and
- (b) that applying the proposed restriction would—
  - (i) be straightforward; and
  - (ii) not place an unreasonable burden on the registrar.

(4) In subsection (1), references to the relevant registered owner are to the owner of the registered estate or charge to which the application relates.

### **Notifiable applications**

62 (1) Where an application under section 61(1) is notifiable, the registrar shall give notice of the application, and of the right to object to it, to—

- (a) the owner of the registered estate or charge to which it relates; and
- (b) such other persons as rules may provide.

(2) The registrar may not determine an application to which subsection (1) applies before the end of such period as rules may provide, unless the person, or each of the persons, notified under that subsection has exercised the person's right to object to the application or given the registrar notice that the person does not intend to do so.

(3) For the purposes of this section, an application under section 61(1) is notifiable unless it is—

- (a) made by or with the consent of the owner of the registered estate or charge to which the application relates, or a person entitled to be registered as such owner;
- (b) made in pursuance of rules under section 61(2)(a); or
- (c) an application for the entry of a restriction reflecting a limitation under an order of the court or registrar, or an undertaking given in place of such an order.

### **Power of court to order entry**

63 (1) If it appears to the court that it is necessary or desirable to do so for the purpose of protecting a right or claim in relation to a registered estate or charge, it may make an order requiring the registrar to enter a restriction in the register.

(2) No order under this section may be made for the purpose of protecting the priority of an interest which is, or could be, the subject of a notice.

(3) The court may include in an order under this section a direction that an entry made in pursuance of the order is to have overriding priority.

(4) If an order under this section includes a direction under subsection (3), the registrar shall make such entry in the register as rules may provide.

(5) The court may make the exercise of its power under subsection (3) subject to such terms and conditions as it thinks fit.

### **Withdrawal**

64 A person may apply to the registrar for the withdrawal of a restriction if—

- (a) the restriction was entered in such circumstances as rules may provide;  
and
- (b) the person is of such a description as rules may provide.

## PART 12

### CO-OWNERSHIP, TRUSTEES AND SETTLEMENTS

#### Creation of tenancy in common

65 (1) Subject to section 66, the registered owner, or where there is more than one, all the registered owners—

- (a) of a registered estate; or
- (b) of an undivided share in a registered estate,

may cause the registered estate or undivided share to be held in undivided shares in accordance only with subsection (2).

(2) For the purpose referred to in subsection (1), the registered owner or owners may—

- (a) transfer their registered estate or undivided share, as the case may be, to two or more persons by means of a prescribed form of transfer that contains—
  - (i) a declaration that the transferees are to hold the subject matter of the transfer in undivided shares; and
  - (ii) a declaration as to the size of the undivided shares referred to in subparagraph (i);
- (b) transfer to another person an undivided share in their registered estate or undivided share, as the case may be, by means of a prescribed form of transfer containing a declaration as to the size of the undivided share transferred.

(3) A transfer referred to in subsection (2) shall take effect on registration but not otherwise and section 67 applies where application is made to register such a transfer.

#### Severance of joint tenancies

66 (1) In this section—

- (a) “act of severance” means any disposition or voluntary action by two or more persons holding an estate or an undivided share in land as joint tenants, or any one of them, which would, where the estate or undivided



share is unregistered, have the effect of severing the joint tenancy and creating a tenancy in common; and

- (b) reference to persons holding as trustees is reference to their holding the relevant estate or undivided share on trust for the benefit, to any extent, of some person other than themselves.

(2) Subject to subsection (3), where—

- (a) a registered estate; or
- (b) an undivided share comprised in a registered title,

is held by two or more persons as joint tenants, no act of severance by them, or any one or more of them, shall have any effect to sever the joint tenancy.

(3) Where—

- (a) a registered estate; or
- (b) an undivided share comprised in a registered title,

is held by two or more persons as joint tenants, otherwise than as trustees, they may voluntarily sever the joint tenancy only in such manner as rules may provide.

(4) Subsection (2) does not prevent the severance of a joint tenancy by the occurrence of any event other than an act of severance, such as the bankruptcy of a joint tenant.

(5) Where a joint tenancy is severed in accordance with subsection (3) any one or more of the persons who have effected the severance, or the successors in title to such a person, may apply to the registrar for the effect of the severance to be entered in the relevant register.

(6) Where—

- (a) application is made under subsection (5) and the registrar approves the application; or
- (b) the registrar is notified of the occurrence of an event such as is referred to in subsection (4),

the registrar shall so alter the register of the relevant title as to record the effect of the severance that has taken place.

### **Registration of tenancies in common of registered estates**

67 (1) This section applies where a registered estate is held, or on registration of a registrable disposition will be held, by two or more persons in undivided shares (whether or not any particular undivided share is vested in two or more persons as joint tenants).

(2) Subject to subsection (3), where any registered estate is held in undivided shares, the registrar shall register all the undivided shares under a single register.

(3) Where rules so provide—

- (a) a person holding an undivided share in a registered estate; or
- (b) two or more persons holding an undivided share in a registered estate as joint tenants,

may apply to the registrar to register that undivided share under a separate register and, provided the application complies with such rules, the registrar shall register the undivided share accordingly.

(4) Where the registration is effected under subsection (2), the registrar shall—

- (a) include in the proprietorship section details of the ownership of each undivided share; and
- (b) ensure that any entries in the register in respect of matters that affect only a specific undivided share are so drawn as to confine the effect of the entry to that share.

(5) Where the registration is effected under subsection (3), the registrar shall—

- (a) include in the proprietorship section details of the ownership of the undivided share; and
- (b) ensure that entries made in the register relate only to matters that affect that undivided share or the land as a whole.

### **Trustees as registered owners**

68 (1) An application to register any registrable disposition shall be accompanied by a certificate in such form as the registrar may determine and signed by an attorney, an oath or affirmation by the applicant, or a statement of truth in a form determined by the registrar and signed by the applicant, which—

- (a) confirms that the person to whom the disposition has been made will not hold the subject matter of the disposition as trustee of a trust; or
- (b) confirms—
  - (i) that the person to whom the disposition has been made will hold the subject matter of the disposition as trustee of a trust;
  - (ii) whether the instrument, if any, creating the trust, confers on the trustee of the trust powers additional to those conferred on him by the Trustee Act 1975 and, if so, states what those additional powers are, and

- (iii) whether or not the instrument, if any, creating the trust, expresses a contrary intention such as is referred to in section 2(2) of the Trustee Act 1975 and, if so, states the terms in which the contrary intention is expressed.

(2) Where a registered estate or a registered charge becomes subject to a trust otherwise than as the result of a registrable disposition, the registered owner of the registered estate or the registered charge, as the case may be, shall lodge with the registrar a certificate in such form as the registrar may determine and signed by an attorney, an oath or affirmation by the applicant, or a statement of truth in a form determined by the registrar and signed by the applicant, which confirms—

- (a) that the registered owner holds the registered estate or the registered charge, as the case may be, as trustee of a trust;
- (b) whether the instrument, if any, creating the trust, confers on the trustee of the trust powers additional to those conferred on him by the Trustee Act 1975 and, if so, states what those additional powers are; and
- (c) whether the instrument, if any, creating the trust, expresses a contrary intention such as is referred to in section 2(2) of the Trustee Act 1975 and, if so, states the terms in which the contrary intention is expressed.

(3) Where a certificate, affirmation or oath under subsection (1) or (2) confirms that a registered estate or a registered charge is to be held by the trustee of a trust, the registrar may enter in the register such restriction, if any, as the registrar considers to be appropriate to reflect any limitation on the trustee's powers of disposition, having regard to—

- (a) the powers conferred on a trustee by the Trustee Act 1975; and
- (b) any statement made in the certificate, affirmation, oath or statement under subsection (1)(b)(ii) or (iii) or subsection (2)(b) or (c) as to matters contained in the instrument, if any, creating the trust.

(4) Save as required by this section, the registrar shall not be concerned with the terms of any trust affecting a registered estate or a registered charge.

### **Settlement of registered estates**

69 (1) In this section a registered estate held upon the "statutory trusts" shall be held upon trust to sell the same and to stand possessed of the net proceeds of sale, after payment of costs, and of the net rents and profits until sale after payment of rates, taxes, costs of insurance, repairs, and other outgoings, upon such trusts, and subject to such powers and provisions, as may be requisite for giving effect to the rights of the persons interested in the land.

(2) A settlement may only be created in relation to a registered estate in accordance with this section and any instrument or combination of instruments purporting to create a settlement in relation to a registered estate in any other way shall be of no effect.

(3) A settlement may be created in relation to a registered estate by means of an instrument or combination of instruments by which—

- (a) the registered owner holds the registered estate as trustee upon the statutory trusts; and
- (b) the interests of the settlement beneficiaries do not take effect at law but only as equitable interests under the statutory trusts.

(4) Subsections (1), (3) and (4) of section 68 apply to a registrable disposition that is an instrument or one of a combination of instruments to which subsection (3) refers to as they do to any other registrable disposition.

(5) Subsections (2) to (4) of section 68 apply where a settlement is created in relation to a registered estate by means of an instrument or combination of instruments that do not include a registrable disposition as they apply where a registered estate becomes subject to any other trust otherwise than as the result of a registrable disposition.

## **PART 13**

### **CHARGES**

#### **Registered charges**

70 (1) Subject to rules made under subsection (2), registered charges on the same registered estate, or on the same registered charge, are to be taken to rank as between themselves in the order shown in the register.

(2) Rules may make provision about—

- (a) how the priority of registered charges as between themselves is to be shown in the register; and
- (b) applications for registration of the priority of registered charges as between themselves.

#### **Tacking and further advances**

71 (1) The owner of a registered charge that is expressed to secure further advances may make a further advance on the security of the charge ranking in priority to a subsequent charge if the owner has not received from the subsequent chargee notice of the creation of the subsequent charge.

(2) Notice given for the purposes of subsection (1) shall be treated as received at the time when, in accordance with rules, it ought to have been received.

(3) The owner of a registered charge may also make a further advance on the security of the charge ranking in priority to a subsequent charge if—

- (a) the advance is made in pursuance of an obligation; and
- (b) at the time of the creation of the subsequent charge the obligation was entered in the register in accordance with rules.

(4) The owner of a registered charge may also make a further advance on the security of the charge ranking in priority to a subsequent charge if—

- (a) the parties to the prior charge have agreed a maximum amount for which the charge is security; and
- (b) at the time of the creation of the subsequent charge the agreement was entered in the register in accordance with rules.

(5) Rules may—

- (a) disapply subsection (4) in relation to charges of a description specified in the rules; or
- (b) provide for the application of that subsection to be subject, in the case of charges of a description so specified, to compliance with such conditions as may be so specified.

(6) Except as provided by this section, tacking in relation to a charge over registered land is only possible with the agreement of the subsequent chargee.

#### **Effect of completion by registration**

72 (1) On completion of the relevant registration requirements, a charge created by means of a registrable disposition of a registered estate has effect, if it would not otherwise do so, as a charge by deed by way of legal mortgage, that is to say a charge to which the following subsections apply.

(2) Subject to section 44 and subsection (3), on registration as a registered charge of a charge by deed by way of legal mortgage, there shall be conferred on the registered owner of the charge—

- (a) all the powers conferred on a mortgagee by Part IV of the Conveyancing Act 1983; and
- (b) subject to the provisions of Part IV of the Conveyancing Act 1983, such additional powers as were granted to the mortgagee by the instrument or combination of instruments creating the charge.

(3) The powers conferred by subsection (2) are subject to any entry in the register to the contrary.

(4) In the absence from the register of any entry to the contrary, such as is referred to in subsection (3), that subsection has effect only for the purpose of preventing the title of a disponee being questioned (and so does not affect the lawfulness of a disposition).

#### **Powers of sub-chargee**

73 The registered owner of a sub-charge has, in relation to the property subject to the principal charge or any intermediate charge, the same powers as the sub-chargor.

#### **Proceeds of sale: chargee's duty**

74 For the purposes of section 32(3) of the Conveyancing Act 1983 (mortgagee's duties in relation to application of proceeds of sale), in its application to the proceeds of sale of registered land, a person shall be taken to have notice of anything in the register immediately before the disposition on sale.

#### **Receipt in case of co-tenancy**

75 Where a charge is registered in the name of co-tenants, a valid receipt for the money secured by the charge may be given by—

- (a) the registered owners;
- (b) the survivors or survivor of the registered owners; or
- (c) the estate representative of the last survivor of the registered owners.

#### **Entry of right of consolidation**

76 Rules may make provision about entry in the register of a right of consolidation in relation to a registered charge.

#### **Power to create mortgages under the general law**

77 (1) Any power under the law of Bermuda to create a mortgage by conveyance or transfer, with provision for reconveyance on redemption shall, where the property to be mortgaged is registered land, be treated as a power to create a charge by deed by way of legal mortgage in relation to that registered land.

(2) Subsection (1) applies to any mortgage created by or pursuant to an order of the court as it does to other mortgages.

**PART 14**  
**REGISTRATION - GENERAL**

**Conclusiveness of registration as owner**

78 (1) If, on the entry of a person in the register as the owner of an estate, the estate would not otherwise be vested in him, it shall be deemed to be vested in him as a result of the registration.

(2) Subsection (1) does not apply where the entry is made in pursuance of a registrable disposition in relation to which some other registration requirement remains to be met.

**Dependent estates**

79 (1) The entry of a person in the register as the owner of a legal interest which subsists for the benefit of a registered estate shall be made in relation to that estate.

(2) The entry of a person in the register as the owner of a charge on a registered estate shall be made in relation to that estate.

(3) The entry of a person in the register as the owner of a sub-charge on a registered charge shall be made in relation to that charge.

**Accretion and diluvion**

80 (1) The fact that a registered estate in land is shown in the register as having a particular indicative boundary does not affect the operation of accretion or diluvion.

(2) An agreement about the operation of accretion or diluvion in relation to a registered estate in land has effect only if registered in accordance with rules.

**Power to upgrade title**

81 (1) Subject to subsection (2), where the title to a freehold estate is entered in the register as provisional, the registrar may enter it as absolute upon being satisfied as to the title to the estate.

(2) Where the title to a freehold estate has been entered in the register as provisional for at least twenty years, the registrar may enter it as absolute upon being satisfied that—

- (a) the registered owner is in possession of the land; and
- (b) the right of any other person to bring an action to recover the land has been extinguished under section 16 of the Limitation Act 1984.

(3) Where the title to a leasehold estate is entered in the register as provisional, the registrar may enter it as absolute upon being satisfied both as to the title to the estate and as to the superior title.

(4) None of the powers under subsections (1) to (3) are exercisable if there is outstanding any claim adverse to the title of the registered owner which is made by virtue of an estate, right or interest whose enforceability is preserved by virtue of the existing entry about the registration of the title as provisional.

(5) The only persons who may apply to the registrar for the exercise of any of the powers under subsections (1) to (3) are—

- (a) the owner of the estate to which the application relates;
- (b) a person entitled to be registered as the owner of that estate;
- (c) the owner of a registered charge affecting that estate; and
- (d) a person interested in a registered estate which derives from that estate.

(6) In determining for the purposes of subsections (1) and (3) whether any title is satisfactory, the registrar is to apply the same standards as those which apply under section 28 to first registration of title.

(7) On the title to a registered estate being entered under this section as absolute, the owner ceases to hold the estate subject to any estate, right or interest whose enforceability was preserved by virtue of the previous entry about the registration of the title as provisional.

#### **Use of register to record defects in title**

82 (1) If it appears to the registrar that a right to determine a registered estate in land is exercisable, the registrar may enter the fact in the register.

(2) Rules may make provision about entries under subsection (1) and may, in particular, make provision about—

- (a) the circumstances in which there is a duty to exercise the power conferred by that subsection;
- (b) how entries under that subsection are to be made; and
- (c) the removal of such entries.

#### **Alteration of register**

83 Schedule 6 (which makes provision about alteration of the register) has effect.

#### **Inspection of registers etc.**

84 (1) Any person may inspect and make copies of, or of any part of—



- (a) the land title register;
  - (b) any document kept by the registrar which is referred to in the land title register;
  - (c) any other document kept by the registrar which relates to an application made under this Act; or
  - (d) the cautions register.
- (2) The right under subsection (1) is subject to rules which may, in particular—
- (a) provide for exceptions to the right; and
  - (b) impose conditions on its exercise, including conditions requiring the payment of fees.

**Official copies of registers etc.**

- 85 (1) An official copy of, or of a part of—
- (a) the land title register;
  - (b) any document which is referred to in the land title register and kept by the registrar;
  - (c) any other document kept by the registrar which relates to an application made under this Act; or
  - (d) the cautions register,

is admissible in evidence to the same extent as the original.

(2) A person who relies on an official copy in which there is a mistake is not liable for loss suffered by another by reason of the mistake.

(3) Rules may make provision for the issue of official copies and may, in particular, make provision about—

- (a) the form of official copies;
- (b) who may issue official copies;
- (c) applications for official copies; and
- (d) the conditions to be met by applicants for official copies, including conditions requiring the payment of fees.

**Historical information**

- 86 (1) The registrar may on application provide information about the history of a registered title.

(2) Rules may make provision about applications for the exercise of the power conferred by subsection (1).

(3) The registrar may—

- (a) arrange for the provision of information about the history of registered titles; and
- (b) authorize anyone who has the function of providing information under paragraph (a) to have access on such terms as the registrar thinks fit to any relevant information kept by him.

### **Official searches**

87 Rules may make provision for official searches of the register, including searches of pending applications for first registration, and may, in particular, make provision about—

- (a) the form of applications for searches;
- (b) the manner in which such applications may be made;
- (c) the form of official search certificates; and
- (d) the manner in which such certificates may be issued.

### **Priority protection**

88 (1) For the purposes of this section, an application for an entry in the register is protected if—

- (a) it is one to which a priority period relates; and
- (b) it is made before the end of that period.

(2) Where an application for an entry in the register is protected, any entry made in the register during the priority period relating to the application is postponed to any entry made in pursuance of it.

(3) Subsection (2) does not apply if—

- (a) the earlier entry was made in pursuance of a protected application; and
- (b) the priority period relating to that application ranks ahead of the one relating to the application for the other entry.

(4) Subsection (2) does not apply if the earlier entry is one to which a direction under section 63(3) applies.

(5) The registrar may defer dealing with an application for an entry in the register if it appears to the registrar that subsection (2) might apply to the entry if it were to be made.

- (6) Rules may—
  - (a) make provision for priority periods in connection with—
    - (i) official searches of the register, including searches of pending applications for first registration; or
    - (ii) the noting in the register of a contract for the making of a registrable disposition;
  - (b) make provision for the keeping of records in relation to priority periods and the inspection of such records.
- (7) Rules under subsection (6)(a) may, in particular, make provision about—
  - (a) the commencement and length of a priority period;
  - (b) the applications for registration to which such a period relates;
  - (c) the order in which competing priority periods rank; and
  - (d) the application of subsections (2) and (3) in cases where more than one priority period relates to the same application.

**Duty to disclose unregistered interests**

89 Where rules so provide—

- (a) a person applying for registration under Part 7 shall provide to the registrar such information as the rules may provide about any interest affecting the estate to which the application relates which—
  - (i) falls within any of the paragraphs of Schedule 2; and
  - (ii) is of a description specified by the rules;
- (b) a person applying to register a registrable disposition of a registered estate shall provide to the registrar such information as the rules may provide about any unregistered interest affecting the estate which—
  - (i) falls within any of the paragraphs of Schedule 5; and
  - (ii) is of description specified by the rules.

**Effective date of registration**

90 (1) An entry made in the register in pursuance of—

- (a) an application for registration of an unregistered registrable estate; or
- (b) an application for registration in relation to a disposition required to be completed by registration,

has effect from the time of the making of the application.

(2) Rules may make provision about how the time of the making of an application is to be determined.

**Duty to act reasonably**

91 (1) A person shall not exercise any of the following rights without reasonable cause—

- (a) the right to lodge a caution under section 35;
- (b) the right to apply for the entry of a notice or restriction; and
- (c) the right to object to an application to the registrar.

(2) The duty under this section is owed to any person who suffers damage in consequence of its breach.

**PART 15**

**OBJECTIONS AND ADJUDICATION**

**Objections**

92 (1) Subject to subsections (2) and (3), anyone may object to an application to the registrar.

(2) In the case of an application under section 38, only the person who lodged the caution to which the application relates, or such other person as rules may provide, may object.

(3) In the case of an application under section 54, only the person shown in the register as the beneficiary of the notice to which the application relates, or such other person as rules may provide, may object.

(4) The right to object under this section is subject to rules.

(5) Where an objection is made under this section, the registrar—

- (a) shall give notice of the objection to the applicant; and
- (b) may not determine the application until the objection has been disposed of.

(6) Subsection (5) does not apply if the objection is one which the registrar is satisfied is groundless.

(7) If it is not possible to dispose by agreement of an objection to which subsection (5) applies, the registrar shall require the objection to be disposed of—

- (a) by adjudication in accordance with section 93; or
- (b) by reference to the court in accordance with section 94.

(8) The registrar may not require an objection to be disposed of by adjudication in accordance with section 93, and shall therefore require it to be disposed of by reference to the court in accordance with section 94, where—

- (a) the applicant or the objector claims; or
- (b) the registrar considers,

the matter is one in relation to which any person may be entitled to claim indemnity under Schedule 1 when the objection has been disposed of.

### **Adjudication**

93 (1) This section applies where the registrar requires an objection to be disposed of by adjudication under section 92(7)(a).

(2) In this section “qualified person” has the same meaning as in section 51(1) of the Supreme Court Act 1905.

(3) In this section and in sections 94 to 96 “adjudicator” in relation to the disposal of an objection is the person appointed to dispose of it under subsection (4).

(4) Where an objection is required under section 92(7)(a) to be disposed of by adjudication in accordance with this section, the registrar shall appoint a suitable person to act as adjudicator in relation to the disposal of the objection.

(5) For the purpose of subsection (4), any of the following is a suitable person—

- (a) if the registrar is a qualified person, the registrar;
- (b) any qualified person who is an officer of the LTRO.

(6) Subject to section 95(2), where the registrar has appointed an adjudicator under subsection (4) in relation to an objection, it is the function of the adjudicator to dispose of the objection by conducting an investigation into the application and the objection and—

- (a) determining whether the objection is to be upheld, upheld in part, or not upheld;
- (b) giving to the parties to the adjudication his or her reasons for the determination; and
- (c) making such order and giving such directions as may be necessary to give effect to the determination.

(7) An order under subsection (6)(c) may include a requirement on the registrar to—

- (a) give effect to the original application in whole or in part as if the objection to that original application had not been made; or
- (b) cancel the original application in whole or in part.

(8) A requirement on the registrar under subsection (7) may include—

- (a) a condition that a specified entry be made in the register of any title affected; or
- (b) a requirement to reject any future application of a specified kind by a named party to the proceedings—
  - (i) unconditionally; or
  - (ii) unless that party satisfies specified conditions.

### **Procedure**

94 (1) Hearings before an adjudicator appointed to dispose of an objection under section 93(4) shall be held in public, except where the adjudicator is satisfied that exclusion of the public is just and reasonable.

(2) Subject to that, rules may regulate the practice and procedure to be followed with respect to proceedings before an adjudicator and matters incidental to or consequential on such proceedings.

(3) Rules under subsection (2) may, in particular, make provision about—

- (a) when hearings are to be held;
- (b) requiring persons to attend hearings to give evidence or to produce documents;
- (c) the form in which any decision of the adjudicator is to be given;
- (d) payment of costs of a party to proceedings by another party to the proceedings; and
- (e) liability for costs thrown away as the result of neglect or delay by a legal representative of a party to proceedings.

### **Reference of objections to court**

95 (1) Subsection (3) applies where—

- (a) under section 92(7)(b) the registrar requires an objection to be disposed of by reference to the court in accordance with this section; or

- (b) at any time during the course of proceedings before him, an adjudicator appointed under section 93(4)—
  - (i) decides that the objection should be disposed of by reference to the court; or
  - (ii) is required by subsection (2) to direct the disposal of the objection by reference to the court.

(2) An adjudicator appointed to dispose of an objection shall direct the disposal of the objection by reference of the matter to the court if at any time during the course of the proceedings before the adjudicator, the adjudicator considers that the matter has become one in relation to which any person may be entitled to claim indemnity under Schedule 1 when the objection has been disposed of.

(3) Where in accordance with subsection (1) this subsection applies, the registrar or the adjudicator, as the case may be, shall direct such of the applicant or the objector as the registrar or the adjudicator considers appropriate to commence proceedings within a specified time in the court for the purpose of obtaining the court's decision in the matter.

(4) Rules may make provision about the reference under subsection (3) of matters to the court and may, in particular, make provision about—

- (a) adjournment of any proceedings before any adjudicator pending the outcome of the proceedings before the court; and
- (b) the powers of the registrar or the adjudicator in the event of failure to comply with a direction under subsection (3).

### **Appeals**

96 (1) Subject to subsection (2), a person aggrieved by a decision of an adjudicator may appeal to the court.

(2) Rules may make provision about the conduct of appeals under subsection (1).

### **Enforcement of orders, etc.**

97 A requirement of an adjudicator shall be enforceable as an order of the court.

## **PART 16**

### **SPECIAL CASES**

#### **Voluntary registration of demesne land**

98 (1) A grant made by Her Majesty under the authority of this section is to be treated as one falling within section 24 of the Constitution.

(2) Her Majesty may by deed grant an estate in fee simple absolute in possession out of demesne land to Herself.

(3) The grant of an estate under subsection (2) is to be regarded as not having been made unless an application under section 21 is made in respect of the estate before the end of the period for registration.

(4) The period for registration is two months beginning with the date of the grant, or such longer period as the registrar may provide under subsection (5).

(5) On the application of Her Majesty the registrar, if satisfied that there is a good reason for doing so, may by order provide that the period for registration ends on such later date as the registrar may specify in the order.

(6) If an order under subsection (5) is made in a case where subsection (3) has already applied, that application of the subsection is to be treated as not having occurred.

(7) Where Her Majesty grants to Herself an estate in fee simple under subsection (2) for the purpose of enabling an easement or profit à prendre to be granted over the land affected by the grant in favour of any person, the deed effecting the grant of the estate may include provision granting the easement or profit à prendre.

(8) Where a deed effecting a grant under subsection (2) includes provision granting the easement or profit à prendre, the grant of the easement or profit à prendre shall take effect upon the registration of the estate granted by the deed and the registrar shall enter the burden of the easement or profit à prendre in the register.

### **Compulsory registration of grants out of demesne land**

99 (1) Section 24(1) shall apply as if the following were included among the events listed—

- (a) a grant made under section 24 of the Constitution out of demesne land of an estate in fee simple absolute in possession, otherwise than under section 98;
- (b) grant made under section 24 of the Constitution out of demesne land of an estate in land—
  - (i) for a term of years absolute of more than the threshold term from the date of the grant; and
  - (ii) for valuable or other consideration, by way of gift or in pursuance of an order of any court.

(2) In subsection (1)(b)(ii), the reference to grant by way of gift includes grant for the purpose of constituting a trust under which Her Majesty does not retain the whole of the beneficial interest.



(3) In its application by virtue of subsection (1), section 26 has effect with the substitution for subsection (2) of—

“(2) On the application of subsection (1), the grant has effect as a contract made for valuable consideration to grant the estate concerned”.

**Demesne land: cautions against first registration**

100 (1) Section 35 shall apply as if—

- (a) demesne land were held by Her Majesty for an unregistered estate in fee simple absolute in possession; and
- (b) for the period of 10 years after the coming into force of this Act, subsection (3) of section 35 did not have effect.

(2) The provisions of this Act relating to cautions against first registration shall, in relation to cautions lodged by virtue of subsection (1), have effect subject to such modifications as rules may provide.

**Escheats etc.**

101 (1) Rules may make provision about—

- (a) the determination of a registered freehold estate; and
- (b) the registration of an unregistered freehold estate in respect of land to which a former registered freehold estate related.

(2) Rules under this section may, in particular—

- (a) make provision for determination to be dependent on the meeting of such registration requirements as the rules may specify;
- (b) make provision for entries relating to a freehold estate to continue in the register, notwithstanding determination, for such time as the rules may provide;
- (c) make provision for the making in the register in relation to a former freehold estate of such entries as the rules may provide;
- (d) make provision imposing requirements to be met in connection with an application for the registration of such an unregistered estate as is mentioned in subsection (1)(b).

**Demesne land: representation**

102 (1) With respect to a Crown interest, the appropriate authority—

- (a) may represent the Crown interest for all purposes of this Act;

- (b) is entitled to receive such notice as that person is entitled to receive under this Act; and
- (c) may make such applications, execute such deeds and do such other acts as that person is entitled to make, execute or do under this Act.

(2) In this section—

“the appropriate authority” means the Governor or any person authorized by him in that behalf;

“Crown interest” means an interest vested in Her Majesty for the purposes of the Government;

“interest” means any estate, interest or charge in or over land and any right or claim in relation to demesne land.

### **Bona vacantia**

103 Rules may make provision about how the passing of a registered estate or charge as bona vacantia is to be dealt with for the purposes of this Act.

### **Interest of creditors**

104 (1) This section applies where a registered estate is property to which section 1 of the Real Estate Assets Act 1787 applies, or would apply but for this section.

(2) In this section—

“debtor” means a person indebted within the meaning of section 1 of the Real Estate Assets Act 1787; and

“creditor” means the person having the benefit of the relevant debt duty or demand owed by a debtor.

(3) The rights of a creditor under section 1 of the Real Estate Assets Act 1787 are an interest in any registered estate where—

(a) there is a sole debtor and—

- (i) he is registered as the sole owner of the estate and holds it solely for his own benefit;
- (ii) he is registered as the sole owner of an undivided share in a registered estate and holds it solely for his own benefit; or
- (iii) the registered owners of the estate hold it as trustees for his sole benefit; or

(b) there are two or more debtors who are jointly liable for the debt, duty or demand and—

- (i) two or more of them are registered as the joint tenants of the estate and hold it solely for their own benefit;
- (ii) two or more of them are registered as the co-tenants (not being joint tenants) of an undivided share in a registered estate and hold it solely for their own benefit; or
- (iii) the registered owners of the estate hold it as trustees for the sole benefit of two or more of them.

(4) No creditor may enforce any rights under section 1 of the Real Estate Assets Act 1787 in respect of such a registered estate as is referred to in subsection (3) unless and until an agreed notice or a unilateral notice is entered in the register.

### **Bankruptcy**

105 (1) In this Act, references to an interest affecting an estate or charge do not include a bankruptcy petition or a receiving order under the Bankruptcy Act 1989.

(2) As soon as practicable after the presentation to the court of a bankruptcy petition, the court shall notify that fact to the registrar by a notice in which is specified—

- (a) the name of the debtor;
- (b) such addresses for the debtor as are available to the court;
- (c) the date on which the petition was presented; and
- (d) the court reference under which the bankruptcy proceedings are being conducted.

(3) Upon receiving notification from the court under subsection (2), the registrar shall enter in the register (in relation to any registered estate or charge which appears to him to be affected) a notice in respect of the petition.

(4) Unless cancelled by the registrar in such manner as rules may provide, a notice entered under subsection (3) continues in force until—

- (a) a restriction is entered in the register under subsection (6); or
- (b) the trustee in bankruptcy is registered as owner.

(5) As soon as practicable after the court makes a receiving order in any proceedings under the Bankruptcy Act 1989, the court shall notify that fact to the registrar by a notice in which is specified—

- (a) the name of the debtor;
- (b) such addresses for the debtor as are available to the court;
- (c) the date on which the receiving order was made; and

(d) the court reference under which the bankruptcy proceedings are being conducted.

(6) Upon receiving notification from the court under subsection (5), the registrar shall enter in the register in relation to any registered estate or charge which appears to him to be affected a restriction reflecting the effect of the Bankruptcy Act 1989.

(7) Where the owner of a registered estate or charge is adjudged bankrupt, the title of the owner's trustee in bankruptcy is void as against a person to whom a registrable disposition is made if—

- (a) the disposition is made for valuable consideration;
- (b) the person to whom the disposition is made acts in good faith; and
- (c) at the time of the disposition—
  - (i) no notice or restriction is entered under this section in relation to the registered estate or charge; and
  - (ii) the person to whom the disposition is made has no notice of the bankruptcy petition or the adjudication.

(8) Subsection (7) only applies if the relevant registration requirements are met in relation to the disposition, but, when they are met, has effect as from the date of the disposition.

(9) Nothing in this section requires a person to whom a registrable disposition is made to make any enquiries of the court as to the existence of any bankruptcy proceedings.

#### **Pending land actions, writs and orders**

106 (1) Subject to the following provisions, references in this Act to an interest affecting an estate or charge include—

- (a) a pending land action;
- (b) a writ or order affecting land issued or made by any court for the purposes of enforcing a judgment or recognizance; and
- (c) an order appointing a receiver or sequestrator.

(2) No notice may be entered in the register in respect of an order appointing a receiver or sequestrator.

(3) None of the matters mentioned in subsection (1) shall be capable of falling within paragraph 2 of Schedule 2 or paragraph 2 of Schedule 5.

(4) In its application to any of the matters mentioned in subsection (1), this Act shall have effect subject to such modifications as rules may provide.

**Incorporeal hereditaments**

107 In its application to—

- (a) rentcharges; or
- (b) profits à prendre in gross,

this Act shall have effect subject to such modification as rules may provide.

**PART 17**

**ADVERSE POSSESSION AND PRESCRIPTION**

**Adverse possession of registered titles**

108 (1) In this section—

- (a) “parcel” means a separate area of land—
  - (i) the freehold estate in which is within the same ownership; and
  - (ii) which does not adjoin any other land the freehold estate in which is within the same ownership as the estate referred to in sub-paragraph (i); and
- (b) “adverse possessor” means a person referred to in subsection (3)(a),

whether the freehold estates referred to are registered, unregistered or partly registered and partly unregistered.

(2) For the purpose of section 16 of the Limitation Act 1984 no right of action shall be treated as accruing in relation to a registered estate unless the land in question—

- (a) has an area no greater than one fifth of the area of all the land in the parcel that comprises or includes the estate in question; and
- (b) is in the possession of a person who—
  - (i) is the owner of an estate in other land that is adjacent to that land; or
  - (ii) is entitled to be registered as the owner of a registered estate in other land that is adjacent to that land.

(3) Subsection (4) applies where—

- (a) a person is entitled to apply for alteration under Schedule 6 so as to remove land from a registered title; and
- (b) the grounds for that person’s entitlement are that, as a result of adverse possession of the land by that person and any other persons on whose possession that person is entitled to rely, the title of the registered owner

or any predecessor in title to the registered owner had been extinguished under section 18 of the Limitation Act 1984 before the land was first registered.

(4) Where this subsection applies, an adverse possessor's entitlement to apply for alteration, if it has not previously ceased to be exercisable for any other reason, shall cease to be exercisable at the end of the period of ten years beginning on the date upon which any estate in the land in question, other than an estate referred to in subsection (5), was first registered.

(5) An estate is excepted from subsection (4) if it is a leasehold estate in relation to which—

- (a) rent is payable; and
- (b) the adverse possessor has been in receipt of that rent since the date on which the leasehold estate was first registered.

(6) Subsection (4) shall not apply if, within the period referred to in that subsection—

- (a) the court has made an order confirming that the adverse possessor is entitled to the registered estate;
- (b) proceedings in the court have been commenced to confirm that the adverse possessor is so entitled and those proceedings result in an order such as is referred to in paragraph (a); or
- (c) the registered owner has confirmed in writing his agreement to the adverse possessor's entitlement to the registered estate,

and the register is altered to give effect to the order or agreement, as the case may be, within the period of one year after the date of the order or agreement.

(7) Subsections (4) to (6) have effect without prejudice to the operation of section 48.

### **Prescription - easement and profit à prendre**

109 (1) In this section—

“claimant” means the person referred to in subsection (2); and

“prescription period” means a period of twenty years.

(2) Subsections (3) to (6) apply to determine the extent to which a person may claim to be entitled to an easement or profit à prendre over a registered estate in land for the benefit of land owned by that person by way of prescription.

(3) A claimant may claim to have acquired an easement or profit à prendre by prescription over a registered estate in land, and may therefore apply to register the burden of that easement or profit à prendre in the incumbrances section of the registered title to that estate, where—

- (a) the claimant, or any tenant of the claimant, has enjoyed the easement or profit à prendre claimed without interruption throughout the prescription period ending on the date on which the claimant applies to register the burden of the easement or profit à prendre;
- (b) the claimant is able to identify land of which—
  - (i) in the case of registered land, the claimant is the registered owner of the freehold estate;
  - (ii) in the case of unregistered land, the claimant holds the fee simple estate,  
and to which the easement or profit à prendre claimed is appurtenant;
- (c) the enjoyment referred to in paragraph (a) has been—
  - (i) open;
  - (ii) without force on the part of the claimant or any person acting with the claimant's authority or consent;
  - (iii) without the written consent of the owner of any estate in the land that is burdened by the claimed easement or profit à prendre or of any person having the authority of such an owner to give consent on his behalf;
- (d) he is not a defendant in court proceedings in which the existence of the easement or profit à prendre claimed is an issue; and
- (e) there has been no judgment given against him or any predecessor in title of his during the prescription period in which the court has found that the existence of the easement or profit à prendre claimed has not been established.

(4) For the purpose of establishing whether an easement or profit à prendre can be claimed to have been enjoyed without interruption throughout the prescription period, there shall be disregarded any interruption to the enjoyment of the easement or profit à prendre that has occurred within the last six months of that period.

(5) For the purposes of subsection (3)(a) the estate burdened by the claimed easement or profit à prendre need not have been registered throughout the prescription period.

(6) Where the claimant's estate in the land referred to in subsection (3)(b) is registered any application under subsection (3) shall include an application to enter the benefit of the easement or profit à prendre in the property section of the claimant's title.

**PART 18**  
**ELECTRONIC CONVEYANCING**

**Electronic dispositions: formalities**

- 110 (1) This section applies to a document in electronic form where—
- (a) the document purports to effect a disposition which falls within subsection (2); and
  - (b) the conditions in subsection (3) are met.
- (2) A disposition falls within this subsection if it is—
- (a) a disposition of a registered estate or charge;
  - (b) a disposition of an interest which is the subject of a notice in the register; or
  - (c) a disposition which triggers the requirement of registration,
- which is of a kind specified by rules.
- (3) The conditions referred to above are that—
- (a) the document makes provision for the time and date when it takes effect;
  - (b) the document has the electronic signature of each person by whom it purports to be authenticated;
  - (c) each electronic signature is associated with an accredited certificate; and
  - (d) such other conditions as rules may provide are met.
- (4) A document to which this section applies is to be regarded as—
- (a) in writing; and
  - (b) signed by each individual, and sealed by each corporation, whose electronic signature it has.
- (5) A document to which this section applies is to be regarded for the purposes of any enactment as a deed.
- (6) If a document to which this section applies is authenticated by a person as agent, it is to be regarded for the purposes of any enactment as authenticated by him under the written authority of his principal.



(7) If notice of an assignment made by means of a document to which this section applies is given in electronic form in accordance with rules, it is to be regarded for the purposes of any enactment as given in writing.

(8) In this section, “electronic signature” and “accredited certificate” have the same meanings as in the Electronic Transactions Act 1999.

(9) For the purpose of giving effect to the provisions of this section, rules may provide for—

- (a) section 6(1)(b) of the Electronic Transactions Act 1999 to be disappplied to any necessary extent; and
- (b) other provisions of that Act to be applied to any document to which this section applies with any modifications that the Minister considers to be appropriate.

#### **Authorized networks**

111 (1) The registrar may provide, or arrange for the provision of one or more electronic communications networks for use for such purposes as the registrar thinks fit relating to registration or the carrying on of transactions which—

- (a) involve registration; and
- (b) are capable of being effected electronically.

(2) Schedule 7 (which makes provision in connection with any network provided under subsection (1) and transactions carried on by means of such a network) has effect.

#### **Power to require simultaneous registration**

112 (1) This section applies to a disposition of—

- (a) a registered estate or charge; or
- (b) an interest which is the subject of a notice in the register,

where the disposition is of a description specified by rules.

(2) A disposition to which this section applies, or a contract to make such a disposition, only has effect if it is made by means of a document in electronic form and if, when the document purports to take effect—

- (a) it is electronically communicated to the registrar; and
- (b) the relevant registration requirements are met.

(3) For the purposes of subsection (2)(b), the relevant registration requirements are—

- (a) in the case of a registrable disposition, the requirements under Schedule 4; and
  - (b) in the case of any other disposition, or a contract, such requirements as rules may provide.
- (4) Section 46(1) does not apply to a disposition to which this section applies.
- (5) Before making rules under this section the Minister shall consult such persons as the Minister considers appropriate.
- (6) In this section, “disposition”, in relation to a registered charge, includes postponement.

#### **Electronic settlement**

113 The registrar may take such steps as the registrar thinks fit for the purpose of securing the provision of a system of electronic settlement in relation to transactions involving registration.

#### **Supplementary**

114 Rules may—

- (a) make provision about the communication of documents in electronic form to the registrar;
- (b) make provision about the electronic storage of documents communicated to the registrar in electronic form.

### **PART 19**

#### **MISCELLANEOUS AND GENERAL**

#### **Rights of pre-emption**

115 (1) A right of pre-emption in relation to registered land has effect from the time of creation as an interest capable of binding successors in title (subject to the rules about the effect of dispositions on priority).

(2) This section has effect in relation to rights of pre-emption created on or after the day on which this section comes into force.

#### **Proprietary estoppel and mere equities**

116 It is hereby declared for the avoidance of doubt that, in relation to registered land, each of the following—

- (a) an equity by estoppel; and

- (b) a mere equity,

has effect from the time the equity arises as an interest capable of binding successors in title (subject to the rules about the effect of dispositions on priority).

#### **Reduction in threshold term**

117 Where rules provide for the threshold term to be a period of less than five years the rules may contain such transitional provision as the Minister thinks fit.

#### **Conclusiveness of filed copies**

118 (1) This section applies where—

- (a) a disposition relates to land to which a registered estate relates; and
- (b) an entry in the register relating to the registered estate refers to a document kept by the registrar which is not an original.

(2) As between the parties to the disposition, the document kept by the registrar is to be taken—

- (a) to be correct; and
- (b) to contain all the material parts of the original document.

(3) No party to the disposition may require production of the original document.

(4) No party to the disposition is to be affected by any provision of the original document which is not contained in the document kept by the registrar.

#### **Suppression of information**

119 Section 145 of the Criminal Code Act 1907 applies to any person who, in the course of proceedings relating to registration under this Act, suppresses information with the intention of—

- (a) concealing a person's right or claim; or
- (b) substantiating a false claim,

as it applies to a person who gives to the registrar any information which the person does not believe to be true, intending thereby to cause (or knowing it likely to thereby cause) the registrar to do or omit to do anything which the registrar would not otherwise do or omit to do.

#### **Improper alteration of registers**

120 Section 123 of the Criminal Code Act 1907 applies to any person who—

- (a) intentionally or recklessly makes an unauthorized change in the register; or

- (b) dishonestly induces another—
  - (i) to change the register; or
  - (ii) to authorize the making of such a change,

as it applies to a person who, with intent to mislead any tribunal in any judicial proceeding, fabricates evidence by any means other than perjury.

### **Right to silence**

121 (1) Section 59 of the Police and Criminal Evidence Act 2006 (right to remain silent) shall not entitle a person to refuse to answer any question or produce any document or thing in any legal proceedings other than criminal proceedings.

(2) No evidence obtained under subsection (1) shall be admissible in any criminal proceedings under this Act against the person from whom it was obtained or that person's spouse.

### **Miscellaneous and general powers**

122 Schedule 8 (which contains miscellaneous and general rule-making powers) has effect.

### **Exercise of powers**

123 (1) Power to make rules under this Act is exercisable by the Minister.

(2) Except where otherwise provided, rules made under this Act shall be subject to the negative resolution procedure.

(3) The power of the Minister to make rules or orders under this Act includes power to make different provision for different cases.

### **Crown application**

124 This Act binds the Crown.

### **Application to territorial waters**

125 (1) This Act does not apply to land covered by the territorial waters of Bermuda unless the land in question—

- (a) is designated as land to which this Act applies by order made by the Minister under this paragraph;
- (b) is, on the date of coming into operation of this section, covered by territorial waters but is subsequently reclaimed and an order declaring the land to form part of a Parish has been made under section 9(1) of the Land Reclamation Act 1964; or

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(c) is, on the date of coming into operation of this section, part of the Morgan's Point Resort "Property" (as defined in section 2 of the Morgan's Point Resort Act 2011).

(2) The affirmative resolution procedure shall apply to an order made under subsection (1)(a).

(3) Before making an order under subsection (1)(a), the Minister shall consult such persons as the Minister considers appropriate.

### **Consequential amendments**

126 Schedule 9 (which makes consequential amendments to other enactments) has effect.

### **Commencement**

127 The provisions of this Act commence on such day as the Minister may be notice published in the Gazette appoint, and different days may be so appointed for different provisions or for different purposes.

**SCHEDULE 1**

(section 11)

**INDEMNITIES**

**Entitlement**

1 (1) A person is entitled to be indemnified by the registrar if the person suffers loss by reason of—

- (a) rectification of the register;
- (b) a mistake whose correction would involve rectification of the register;
- (c) a mistake in an official search;
- (d) a mistake in an official copy;
- (e) a mistake in a document kept by the registrar which is not an original and is referred to in the register;
- (f) the loss or destruction of a document lodged at the LTRO for inspection or safe custody; or
- (g) a mistake in the cautions register.

(2) For the purposes of sub-paragraph (1)(a)—

- (a) any person who suffers loss by reason of the upgrade of a provisional title to absolute title is to be regarded as having suffered loss by reason of rectification of the register; and
- (b) the owner of a registered estate or charge claiming in good faith under a forged disposition is, where the register is rectified, to be regarded as having suffered loss by reason of such rectification as if the disposition had not been forged.

(3) No indemnity under sub-paragraph (1)(b) is payable until a decision has been made about whether to alter the register for the purpose of correcting the mistake; and the loss suffered by reason of the mistake is to be determined in the light of that decision.

**Mines and minerals**

2 No indemnity is payable under this Schedule on account of—

- (a) any mines or minerals; or
- (b) the existence of any right to work or get mines or minerals,

unless it is noted in the register that the title to the registered estate concerned includes the mines or minerals.

**Costs - registrar's consent**

3 (1) In respect of loss consisting of costs or expenses incurred by the claimant in relation to the matter, an indemnity under this Schedule is payable only on account of costs or expenses reasonably incurred by the claimant with the consent of the registrar.

(2) The requirement of consent does not apply where—

- (a) the costs or expenses must be incurred by the claimant urgently; and
- (b) it is not reasonably practicable to apply for the registrar's consent.

(3) If the registrar approves the incurring of costs or expenses after they have been incurred, they shall be treated for the purposes of this paragraph as having been incurred with his consent.

**Costs where no indemnity payable**

4 (1) If no indemnity is payable to a claimant under this Schedule, the registrar may pay such amount as the registrar thinks fit in respect of any costs or expenses reasonably incurred by the claimant in connection with the claim which have been incurred with the consent of the registrar.

(2) The registrar may make a payment under sub-paragraph (1) notwithstanding the absence of consent if—

- (a) it appears to him—
  - (i) that the costs or expenses had to be incurred urgently; and
  - (ii) that it was not reasonably practicable to apply for his consent; or
- (b) he has subsequently approved the incurring of the costs or expenses.

**Claimant's fraud or lack of care**

5 (1) No indemnity is payable under this Schedule on account of any loss suffered by a claimant—

- (a) wholly or partly as a result of his own fraud; or
- (b) wholly as a result of his own lack of proper care.

(2) Where any loss is suffered by a claimant partly as a result of his own lack of proper care, any indemnity payable to him is to be reduced to such extent as is fair having regard to his share in the responsibility for the loss.

(3) For the purposes of this paragraph, any fraud or lack of care on the part of a person from whom the claimant derives title (otherwise than under a disposition for valuable consideration which is registered or protected by an entry in the register) is to be treated as if it were fraud or lack of care on the part of the claimant.

**Valuation of estates etc.**

6 Where an indemnity is payable in respect of the loss of an estate, interest or charge, the value of the estate, interest or charge for the purposes of the indemnity is to be regarded as not exceeding—

- (a) in the case of an indemnity under paragraph 1(1)(a), its value immediately before rectification of the register (but as if there were to be no rectification); and
- (b) in the case of an indemnity under paragraph 1(1)(b), its value at the time when the mistake which caused the loss was made.

**Determination of indemnity by court**

7 (1) A person may apply to the court for the determination of any question as to—

- (a) whether the person is entitled to an indemnity under this Schedule; or
- (b) the amount of such an indemnity.

(2) Paragraph 3(1) does not apply to the costs of an application to the court under this paragraph or of any legal proceedings arising out of such an application.

**Time limits**

8 For the purposes of the Limitation Act 1984—

- (a) a liability to pay an indemnity under this Schedule is a simple contract debt; and
- (b) the cause of action arises at the time when the claimant knows, or but for his own default might have known, of the existence of his claim.

**Interest**

9 Rules may make provision about the payment of interest on an indemnity under this Schedule, including—

- (a) the circumstances in which interest is payable; and
- (b) the periods for and rates at which it is payable.

**Recovery of indemnity by registrar**

10 (1) Where an indemnity under this Schedule is paid to a claimant in respect of any loss, the registrar is entitled (without prejudice to any other rights the registrar may have)—

- (a) to recover the amount paid from any person who caused or substantially contributed to the loss by his fraud; or



- (b) for the purpose of recovering the amount paid, to enforce the rights of action referred to in sub-paragraph (2).
- (2) Those rights of action are—
- (a) any right of action (of whatever nature and however arising) which the claimant would have been entitled to enforce had the indemnity not been paid;
  - (b) where the register has been rectified, any right of action (of whatever nature and however arising) which the person in whose favour the register has been rectified would have been entitled to enforce had it not been rectified; and
  - (c) where an attorney has signed a certificate of legal effect, a right of action against the attorney with respect to any negligent error or omission in the certificate of legal effect if the registrar has been required to pay an indemnity as a result of such error or omission within six years after the date of the certificate of legal effect.
- (3) References in this paragraph to an indemnity include interest paid on an indemnity under rules under paragraph 9.

**Interpretation**

11 For the purposes of this Schedule, references to a mistake in something include anything mistakenly omitted from it as well as anything mistakenly included in it.

**SCHEDULE 2**

(sections 29 and 30)

**UNREGISTERED INTERESTS WHICH OVERRIDE FIRST REGISTRATION**

**Leasehold estate**

1 A leasehold estate granted for a term not exceeding the threshold term from the date of the grant, except for a lease the grant of which falls within section 24(1)(c).

**Interests of persons in actual occupation**

2 An interest belonging to a person in actual occupation, so far as relating to land of which the person is in actual occupation, except for a beneficial interest under a trust.

**Easements and profits à prendre**

3 A legal easement or profit à prendre.

**Public rights**

4 A public right (i.e. a right exercisable by anyone, whether he or she owns land or not, merely by virtue of the general law).

**SCHEDULE 3**

(section 33)

**FIRST REGISTRATION - ANCILLARY MATTERS**

**Phased introduction of voluntary registration**

1 For the purposes of allowing the phased introduction of voluntary registration of title in Bermuda, the following sub-paragraphs have effect—

- (a) sections 21 and 23 only apply to applications that fall within a category in respect of which the registrar has given notice under sub-paragraph (b);
- (b) where the registrar is satisfied that there are adequate arrangements within the LTRO for dealing with applications falling within a particular category, the registrar may give notice publicising the arrangements;
- (c) a notice under sub-paragraph (b) shall be given in such manner as the registrar considers appropriate;
- (d) applications to which a notice under sub-paragraph (b) applies may be categorised in the notice in such manner as the registrar considers appropriate, including—
  - (i) by reference to one or more specified geographical areas in which the land to which the applications relate is located; and
  - (ii) by reference to the nature of the registrable estate held by the applicant or to which the applicant is entitled;
- (e) a notice given under sub-paragraph (b) may not be withdrawn except where it is replaced by a further notice that publicises arrangements for dealing with all the categories of application referred to in the withdrawn notice, whether or not it also publicises arrangements for dealing with any additional category of applications; and
- (f) a notice that publicises arrangements for dealing with any category of applications that has not previously been included in a notice under sub-paragraph (b) shall specify a date from which the arrangements will be in place in relation to those applications, such date to be no earlier than three months after the date on which the notice is given.

**Phased introduction of the requirement of registration**

2 For the purposes of allowing the phased introduction of the requirement of registration of title to Bermuda, the following sub-paragraphs have effect—

- (a) section 24 only applies to applications that fall within a category in respect of which the registrar has given notice under sub-paragraph (b);

- (b) where the registrar is satisfied that there are adequate arrangements within the LTRO for dealing with applications falling within a particular category, the registrar may give notice publicising the arrangements;
- (c) a notice under sub-paragraph (b) shall be given in such manner as the registrar considers appropriate;
- (d) applications to which a notice under sub-paragraph (b) applies may be categorised in the notice in such manner as the registrar considers appropriate, including—
  - (i) by reference to one or more specified geographical areas in which the land to which the applications relate is located; and
  - (ii) by reference to whether the applications fall within one or more specified subsections or paragraphs of section 24;
- (e) a notice given under sub-paragraph (b) may not be withdrawn except where it is replaced by a further notice that publicises arrangements for dealing with all the categories of application referred to in the withdrawn notice, whether or not it also publicises arrangements for dealing with any additional category of applications;
- (f) a notice that publicises arrangements for dealing with any category of applications that has not previously been included in a notice under sub-paragraph (b) shall specify a date from which the arrangements will be in place in relation to those applications, such date to be no earlier than three months after the date on which the notice is given; and
- (g) the registrar may not give notice under sub-paragraph (b) in relation to a category of applications unless the applications are also ones to which a notice given under paragraph 1(b) applies, or will apply from a date that is no later than the date specified in the notice under sub-paragraph (b).

**Planning permission for the subdivision of land**

3 Where—

- (a) in accordance with Part VI of the Development and Planning Act 1974 a person wishing to effect the subdivision of any land is required to apply for planning permission for such subdivision; and
- (b) the land is located in an area in respect of which section 21 applies to the registration of unregistered freehold estates by virtue of a notice given under paragraph 1,

such person may not lodge any application for planning permission under section 35C of the Development and Planning Act 1974 unless his estate in the land has been registered under this Act.

### **Primary family homesteads**

4 Where—

- (a) an individual wishes to apply to the person appointed as Tax Commissioner to designate his or her residential property as his or her primary family homestead within the meaning of section 1 of the Stamp Duties Act 1976; and
- (b) the land comprising the property is located in an area in respect of which section 21 applies to the registration of unregistered freehold estates by virtue of a notice given under paragraph 2,

such individual may not apply for that purpose under section 47A of the Stamp Duties Act 1976 unless the estate in the land has been registered under this Act.

### **Condominiums**

5 Where—

- (a) a person desires to organize land as a condominium under the Condominium Act 1986; and
- (b) the land is located in an area in respect of which section 21 applies to the registration of unregistered freehold estates by virtue of a notice given under paragraph 2,

such person may not make application under section 5(2) of that Act unless his estate in the land has been registered under this Act.

### **Assigning tenant's entitlement to evidence of landlord's title**

6 Where, in relation to a qualifying estate that is a term of years absolute, the requirement of registration applies by virtue of section 24(1)(a)(i) to (vii), the following provisions apply—

- (a) section 16(2) and (3) of the Conveyancing Act 1983 shall not apply;
- (b) the transferor of the qualifying estate shall, prior to the conveyance or transfer of the qualifying estate, produce to the transferee—
  - (i) such evidence of the transferor's title to the qualifying estate as is available to the transferor; and
  - (ii) such evidence relating to the title to the freehold estate and any estates intermediate between the freehold estate and the qualifying estate as

- the transferor may hold or can require to be produced under sub-paragraphs (c) and (d);
- (c) the transferor is entitled to require—
    - (i) the person holding the freehold estate in the land comprised in the estate required to be registered; and
    - (ii) any person holding an estate intermediate between the freehold estate and the qualifying estate held by the transferor,  
to produce to the transferor such evidence of the title to the estate held by that person as is available to that person;
  - (d) the transferor may only exercise an entitlement under sub-paragraph (c) upon the transferor agreeing to pay the reasonable costs of producing the required evidence of title incurred by the person who is subject to the requirement;
  - (e) the transferor is entitled to require any person holding a leasehold estate superior to the qualifying estate to disclose to him the identity of that person's landlord and the latest address of the landlord known to that person.

**New tenant's entitlement to evidence of landlord's title**

7 Where the requirement of registration applies by virtue of section 24(1)(b) or (c), the following provisions apply—

- (a) section 16(2) and (3) of the Conveyancing Act 1983 shall not apply;
- (b) the grantor of the estate required to be registered shall, prior to the grant of the estate required to be registered, produce to the grantee—
  - (i) such evidence of his title to the qualifying estate out of which the estate required to be registered is granted as is available to him; and
  - (ii) such evidence relating to the title to the freehold estate and any estates intermediate between the freehold estate and the qualifying estate as the grantor may hold or can require to be produced under sub-paragraphs (c) and (d);
- (c) if the qualifying estate held by the grantor is not a freehold estate, the grantor is entitled to require—
  - (i) the person holding the freehold estate in the land comprised in the estate required to be registered; and
  - (ii) any person holding an estate intermediate between the freehold estate and the qualifying estate held by the grantor;

to produce to him such evidence of the title to the estate held by that person as is available to that person;

- (d) the grantor may only exercise an entitlement under sub-paragraph (c) upon his agreeing to pay the reasonable costs of producing the required evidence of title incurred by the person who is subject to the requirement;
- (e) if the qualifying estate held by the grantor is not a freehold estate, the grantor is entitled to require any person holding a leasehold estate superior to the qualifying estate to disclose to him the identity of that person's landlord and the latest address of the landlord known to that person.

### **Entitlement to hold land in Bermuda**

8 (1) Any person who applies to the registrar to be registered as the registered owner of an unregistered registrable estate shall produce with the application such evidence as the registrar may require for the purpose of satisfying the registrar that—

- (a) he is authorized to hold land in Bermuda; and
- (b) any person who, if the application is completed, would (apart from the effect of sub-paragraph (3)) be registered as owner of a registered charge, is authorized to hold a mortgage over land in Bermuda,

under the Bermuda Immigration and Protection Act 1956 or the Companies Act 1981, as the case may require.

(2) Where a person referred to in sub-paragraph (1) fails to satisfy the registrar in accordance with sub-paragraph (1)(a), the registrar may refuse to proceed with the application and may cancel it.

(3) Where a person referred to in sub-paragraph (1) satisfies the registrar in accordance with sub-paragraph (1)(a) but fails to satisfy the registrar in accordance with sub-paragraph (1)(b) in relation to a particular person, the registrar may, if the application proceeds, refuse to register that person as the owner of a registered charge.

### **Unregistered land held under a settlement**

9 (1) Subject to sub-paragraph (3), rules may provide for the application of Part 7 to the first registration of land which—

- (a) is not a registrable estate; and
- (b) is held under the terms of a settlement,

with such modifications as the Minister thinks appropriate to enable an estate less than the fee simple absolute in the land to be registered in such a manner and on such terms as the Minister considers sufficient for the purpose of safeguarding the interests of the settlement beneficiaries following registration of the estate.

(2) Without prejudice to the generality of sub-paragraph (1), rules made under that sub-paragraph may provide for—

- (a) the conversion, under sub-paragraph (1), of any settlement into a trust for sale upon such terms as the Minister considers requisite for giving effect to the rights of the settlement beneficiaries;
- (b) the vesting of the estate in land in any person as trustee;
- (c) the conversion of the interest of any settlement beneficiary holding an estate less than the fee simple absolute into a registrable estate;

(3) Rules made under sub-paragraph (1) may not provide for the registration of any estate other than a registrable estate.

(4) The affirmative resolution procedure shall apply to rules made under sub-paragraph (1).

#### **Systematic registration - initiation**

10 (1) The Minister, by order published in the Gazette, may declare that the system of systematic registration, for which provision is made by paragraphs 11 to 14, is to apply.

(2) Subject to sub-paragraph (3) the affirmative resolution procedure shall apply to an order made under sub-paragraph (1).

(3) Before making an order under sub-paragraph (1), the Minister shall consult such persons as the Minister considers appropriate.

#### **Systematic registration - procedure for ascertaining ownership and for registration**

11 (1) Following the making of an order under paragraph 10(1), the following sub-paragraphs of this paragraph have effect.

(2) The registrar may, by notices published in the Gazette from time to time, designate one or more areas of land in Bermuda as areas of systematic registration.

(3) A notice under sub-paragraph (2) shall specify a date from which it is to have effect.

(4) The date specified in the notice under sub-paragraph (3) shall not be earlier than six months after the date on which the notice is published in the Gazette.

(5) A notice under sub-paragraph (2) may not designate an area of land as an area of systematic registration unless and until the registrar is satisfied that the LTRO has the capacity to carry out the procedures referred to in sub-paragraphs (7) to (12) in relation to all unregistered freehold estates in the area within a period of three years from the date on which the notice has effect.



(6) Where an area has been designated as an area of systematic registration, none of the following dispositions of any unregistered freehold estate in land in that area that is capable of being the subject of an application under section 21 shall have any effect after the date specified in the notice under sub-paragraph (3)—

- (a) a conveyance, transfer or assignment of the estate;
- (b) the grant out of the estate of a term of years exceeding the threshold term;
- (c) a mortgage of the estate;
- (d) the grant of an easement out of the estate;
- (e) the grant of a profit à prendre out of the estate.

(7) Following the publication of a notice under sub-paragraph (2), the registrar shall take such steps as the registrar considers appropriate to—

- (a) bring the attention of the public to the fact that the notice has been published;
- (b) explain to the public the effect of the notice; and
- (c) invite any persons who own any unregistered freehold estate situated in the area of systematic registration designated in the notice, or who have knowledge of the identity of such a person, to contact the registrar for the purpose of confirming the fact of their ownership, or the identity of the owner, as the case may be.

(8) Where the registrar has taken the steps required by sub-paragraph (7) but there remain areas of land within the area of systematic registration designated by the notice under sub-paragraph (2) in relation to which the registrar has been unable to ascertain the identity of the owner of the freehold estate, the registrar shall make such enquiries as the registrar considers appropriate and reasonable of—

- (a) any person who appears to the registrar to be in occupation of the land;
- (b) the registered owner of any registered leasehold estate that affects the land;
- (c) any public authority that the registrar considers may hold records containing information which may be of assistance;
- (d) any other person whom the registrar considers may possess information which may be of assistance,

for the purpose of ascertaining the identity of the person who is the owner for the time being of the freehold estate.

(9) Where, in relation to any land in an area of systematic registration the freehold estate in which is unregistered, the registrar is able to ascertain the identity of the owner

of that estate, the registrar shall issue to that owner an invitation to lodge with the LTRO, within a period specified in the notice, such deeds and documents or other evidence of title to the estate as the owner is able to produce for the purpose of enabling the registrar to register the estate.

(10) Where, in response to an invitation issued under sub-paragraph (9), the owner lodges with the LTRO the deeds and documents or other evidence of title referred to in that sub-paragraph, the registrar shall proceed in all respects as if the owner had lodged an application for registration of the freehold estate under section 21.

(11) Where, in response to an invitation issued under sub-paragraph (9), the owner refuses to lodge with the LTRO the deeds and documents or other evidence of title requested, or the owner does not respond to the invitation by lodging with the LTRO the deeds and documents or other evidence of title referred to in that sub-paragraph within the period specified in the invitation, the registrar may serve a notice on the owner to the following effect, namely—

- (a) that unless the owner lodges with the LTRO the evidence of his title to the freehold estate in the land available to him within the period of three months from the date on which the notice is issued, the registrar is required to register the freehold estate in the land with the Government as registered owner of the estate;
- (b) that thereafter the owner will cease to be the owner of the freehold estate unless and until application is made for alteration of the land title register to replace the Government as registered owner of the title, accompanied by satisfactory evidence that the applicant was the owner of the freehold estate immediately before registration of the title, or is the person who, but for the registration, would have been the estate owner at the time of the application; and
- (c) as to the effect of paragraph 13(13) on the amount of any compensation that may become payable to the owner under paragraph 13 if the freehold estate in the land is subsequently registered with the Government as the registered owner in accordance with sub-paragraph (12).

(12) Following the registrar issuing a notice under sub-paragraph (11), if the owner fails to lodge with the LTRO the deed and documents or other evidence of title available to him within the period of three months from the date on which the notice was issued to him, the registrar—

- (a) shall register the freehold estate in the land with the Government as registered owner; and
- (b) may include in the register such entries as the registrar considers appropriate to reflect the fact that no evidence of title to the land has been produced.

**Systematic registration - registration of Government after three years**

12 (1) If, on the date three months before expiry of the period of three years after the date specified in a notice declaring an area to be an area of systematic registration as the date on which the notice is to have effect, there remains any land in that area in relation to which—

- (a) the freehold estate remains unregistered; and
- (b) the registrar has been unable to ascertain the identity of the estate owner,

the registrar shall publish in the Gazette at least two months before expiry of the three year period, a notice complying with sub-paragraph (2).

(2) The notice referred to in sub-paragraph (1) shall—

- (a) provide details of all the land within the area of systematic registration to which the notice relates in which the freehold estate remains unregistered;
- (b) contain a warning that where, after expiry of the three year period—
  - (i) the freehold estate in any such land remains unregistered; and
  - (ii) no person has claimed ownership of the estate, or any person claiming ownership has been unable to produce sufficient evidence of the person's title to the estate to enable the registrar to register the estate with the person as the registered owner,

the freehold estate in such land will be registered with the Government as the registered owner; and

- (c) advise that, thereafter, the ownership of any other person in the freehold estate will cease, subject to the right, whilst the Government remains the owner of the estate, of any person who has thereby lost title to the estate to apply for alteration of the register so as to be registered as owner of the title in place of the Government, if the person produces evidence sufficient to satisfy the registrar that the person was the owner of the freehold estate immediately prior to the registration of the title, or is the person who, but for the registration, would have been the estate owner at the time of the application.

(3) Subject to sub-paragraph (4), where, after expiry of the three year period referred to in sub-paragraph (1), there remains any land in the area of systematic registration referred to in that sub-paragraph in respect of which the freehold estate is unregistered, the registrar—

- (a) shall register the freehold estate in that land with the Government as registered owner; and

- (b) may include in the register such entries as the registrar considers appropriate to reflect the fact that no evidence of title to the land has been produced.

(4) Where, before expiry of the three year period referred to in sub-paragraph (1), any person claims ownership of any of the land, details of which are contained in the notice referred to in sub-paragraph (2)—

- (a) the registrar may postpone registration of the freehold estate in the land in accordance with sub-paragraph (3) until that person's claim to the land has been considered;
- (b) if the registrar is satisfied as to that person's claim, the land shall be excluded from the requirements of sub-paragraph (3) and the registrar shall instead register the freehold estate in the land with the claimant as registered owner, subject to such entries as the registrar considers appropriate to reflect the evidence of title produced by the claimant.

**Systematic registration - Government registered as owner**

13 (1) The following sub-paragraphs of this paragraph apply where the Government has been registered as owner of any registered freehold estate by virtue of the operation of paragraphs 11 and 12.

(2) Subject to sub-paragraphs (7) and (14), a person may apply to the registrar for alteration of the register to the freehold estate, so as to be registered as owner of the title in place of the Government, if—

- (a) he claims to be the owner of the freehold estate immediately prior to the registration of the title, or to be the person who, but for the registration, would have been the estate owner at the time of the application; and
- (b) he produces evidence sufficient to satisfy the registrar as to the validity of his claim.

(3) Following receipt of an application in accordance with sub-paragraph (2), the registrar shall give notice to the Government that—

- (a) confirms receipt of the application;
- (b) identifies the title to which the application relates;
- (c) encloses copies of the evidence of title produced by the applicant; and
- (d) warns that, if no objection to the application is received on or before one month after the date of the notice, the application will be completed and the applicant will be registered as owner of the title in place of the Government.

(4) If, on or before one month after the date of the notice referred to in sub-paragraph (3), the Government objects to the application, the provisions of section 92 shall apply to the objection, except that, if the objection is not one which the registrar is satisfied is groundless and it is not possible to dispose of the objection by agreement, the registrar may not require the objection to be disposed of by adjudication in accordance with section 93 but shall require it to be disposed of by reference to the court in accordance with section 94.

(5) In addition to any other grounds that may be available, the Government may object to an application made under sub-paragraph (2) on the grounds that it has, since its registration as owner of the freehold estate in the land, dealt with the estate in such a manner that its removal from the register as owner would expose it to liability to a third party.

(6) Where, following its registration as owner of the freehold estate by virtue of the operation of paragraph 11 or 12, the Government has effected a disposition of the estate in such a way that—

- (a) it has retained ownership of the estate; but
- (b) the value of the estate has been diminished as a result of the disposition,

a person entitled to apply for alteration under sub-paragraph (2) may also apply for compensation in accordance with sub-paragraph (8).

(7) Where, following its registration as owner of the freehold estate in land by virtue of the operation of paragraph 11 or 12, the Government has effected a disposition of the estate in such a way that it no longer retains ownership of the estate, no application for alteration may be made under sub-paragraph (2) but a person who, apart from the operation of this sub-paragraph, would otherwise be entitled to apply for alteration under sub-paragraph (2) may instead apply for compensation in accordance with sub-paragraph (8).

(8) Subject to sub-paragraph (14), where a person may apply for compensation under sub-paragraph (6) or (7), the Government shall, upon a claim being made in the prescribed manner, pay to that person compensation in an amount calculated in accordance with sub-paragraphs (9) to (13).

(9) Subject to sub-paragraphs (11) and (12), where the entitlement to compensation arises under sub-paragraph (6) the amount of the compensation shall be the lesser of—

- (a) the diminution in the value of the estate resulting from the disposition referred to in sub-paragraph (6); and
- (b) the amount received by the Government, by way of consideration or otherwise, as a consequence of having effected the disposition referred to in sub-paragraph (6).

(10) Subject to sub-paragraphs (11) and (12), where the entitlement to compensation arises under sub-paragraph (7) the amount of the compensation shall be the amount received by the Government, by way of consideration or otherwise, as a consequence of having effected the disposition referred to in sub-paragraph (7).

(11) The Government shall be entitled to deduct from any compensation payable under sub-paragraphs (6) to (10) any costs or expenditure it has incurred in effecting any disposition or otherwise in relation to the management of the land during its ownership but, if it does so, it shall give credit for any income it has received from the land in the course of its ownership of the freehold estate as a result of owning that estate.

(12) Any compensation payable under sub-paragraphs (6) to (11) shall carry interest at the same rate from time to time as is payable under section 8(2) of the Acquisition of Land Act 1970 on compensation agreed or awarded for land of which possession is taken under section 8(1) of that Act.

(13) Any compensation payable under sub-paragraphs (6) to (12) shall be reduced by 50 per cent in any case where the freehold estate in the land in question was registered with the Government as the registered owner in circumstances where, before such registration—

- (a) the registrar was able to ascertain the identity of the owner of the unregistered freehold estate;
- (b) the registrar issued to that owner an invitation to lodge with the LTRO such deeds and documents or other evidence of title to the estate as the owner was able to produce in accordance with paragraph 10(9);
- (c) that owner refused to lodge with the LTRO the deeds and documents or other evidence of title requested or did not respond to the invitation issued by the registrar; and
- (d) the registrar served on that owner a notice in accordance with paragraph 10(11).

(14) No application under sub-paragraph (2), or claim for compensation under sub-paragraph (6) or (7), may be made after the expiry of twenty years after the date upon which title to the freehold estate in question was first registered with the Government as the registered owner.

#### **Systematic registration - settlements**

14 (1) Rules may provide for the application of paragraphs 11 to 13 to an estate in land which—

- (a) is not registered land; and
- (b) is held under the terms of a settlement,

with such modifications as the Minister thinks appropriate to enable the freehold estate in the land to be registered in such a manner and on such terms as the Minister considers sufficient for the purpose of safeguarding the interests of the settlement beneficiaries following registration of the estate.

(2) Without prejudice to the generality of sub-paragraph (1), rules made under that sub-paragraph may provide for—

- (a) the conversion of any settlement into a trust for sale of the freehold estate upon such terms as the Minister considers requisite for giving effect to the rights of the settlement beneficiaries;
- (b) the vesting of the freehold estate in any person as trustee;
- (c) the conversion of the interest of any settlement beneficiary holding an estate less than the fee simple absolute into a registrable estate.

(3) The affirmative resolution procedure shall apply to rules made under sub-paragraph (1).

#### **Certificates of legal effect**

15 (1) The following sub-paragraphs apply where application is made for the registration of an unregistered registrable estate under section 21 and the application is lodged with the registrar on the applicant's behalf by an attorney acting for him in the normal course of the attorney's practice.

(2) The registrar may require the attorney, when lodging the application, to confirm in writing whether or not—

- (a) the attorney;
- (b) any employee of the attorney;
- (c) any person with whom the attorney practices; or
- (d) any other person engaged by the attorney for the purpose,

has examined the deeds, documents and other evidence of title relating to the applicant's title to the registrable estate sought to be registered for the purpose of assuring the applicant of the sufficiency.

(3) Where the attorney confirms that the deeds, documents and other evidence of title have been examined as referred to in sub-paragraph (2), the registrar may require the attorney to provide a certificate of legal effect signed by the attorney, in which the attorney confirms, subject only to such qualifications as may be contained in the certificate, that, as a result of the examination carried out, the attorney is of the opinion that the applicant's title to the estate is such as a willing buyer could properly be advised by a competent professional adviser to accept.

(4) In deciding—

- (a) whether to accept the applicant's title for registration; and
- (b) the class of title (if any) to be granted under section 28,

the registrar may rely upon the certificate of legal effect given by the attorney.

(5) In a case where the applicant's title is to be registered with provisional title, the registrar may have regard to any qualifications included by the attorney in the certificate of legal effect when deciding in what terms any estate, right or interest is to be recorded in the register as being excepted from the effect of registration.



**SCHEDULE 4**

(section 46)

**REGISTRABLE DISPOSITIONS: REGISTRATION REQUIREMENTS**

**PART 1**

**REGISTERED ESTATES**

**Introductory**

1 This Part deals with the registration requirements relating to those dispositions of registered estates which are required to be completed by registration.

**Transfer**

2 (1) In the case of a transfer of whole or part of a registered estate, the transferee, or his successor in title, shall be entered in the register as the owner.

(2) In the case of a transfer of part, such details of the transfer as rules may provide shall be entered in the register in relation to the registered estate out of which the transfer is made.

**Leases of estates in land**

3 (1) This paragraph applies to a disposition consisting of the grant out of an estate in land of a term of years absolute.

(2) In the case of a disposition to which this paragraph applies—

(a) the grantee, or his successor in title, shall be entered in the register as the owner of the lease; and

(b) a notice in respect of the lease shall be entered in the register.

**Creation of independently registrable legal interest**

4 (1) This paragraph applies to a disposition consisting of the creation of—

(a) a rentcharge in possession issuing out of or charged on land being either perpetual or for a term of years absolute; or

(b) a profit à prendre in gross in or over land for an interest equivalent to an estate in fee simple absolute in possession or a term of years absolute,

other than one created for, or for an interest equivalent to, a term of years absolute not exceeding the threshold term from the date of creation.

(2) In the case of a disposition to which this paragraph applies—

- (a) the grantee, or his successor in title, shall be entered in the register as the owner of the interest created; and
- (b) a notice in respect of the interest created shall be entered in the register.

**Creation of other legal interests**

- 5 (1) This paragraph applies to a disposition which—
- (a) is not one to which paragraph 4 applies; and
  - (b) consists of the creation of—
    - (i) an easement, right, or privilege in or over land for an interest equivalent to an estate in fee simple absolute in possession or a term of years absolute;
    - (ii) a rentcharge in possession issuing out of or charged on land being either perpetual or for a term of years absolute;
    - (iii) rights of entry exercisable over or in respect of a term of years absolute, or annexed, for any purpose, to a legal rentcharge.
- (2) In the case of a disposition to which this paragraph applies—
- (a) a notice in respect of the burden created shall be entered in the register; and
  - (b) if the interest is created for the benefit of a registered estate, the benefit shall be registered in the register.
- (3) Rules may provide for sub-paragraph (2) to have effect with modifications in relation to a right of entry over or in respect of a term of years absolute.

**Creation of legal charge**

- 6 In the case of the creation of a legal charge, the chargee, or his successor in title, shall be entered in the register as the owner of the charge.

**PART 2**

**REGISTERED CHARGES**

**Introductory**

- 7 This Part deals with the registration requirements relating to those dispositions of registered charges which are required to be completed by registration.

**Transfer**

8 In the case of a transfer, the transferee, or his successor in title, shall be entered in the register as the owner.

**Creation of sub-charge**

9 In the case of the creation of a sub-charge, the sub-chargee, or his successor in title, shall be entered in the register as the owner of the sub-charge.

**SCHEDULE 5**

(sections 48 and 49)

**UNREGISTERED INTERESTS WHICH OVERRIDE REGISTERED DISPOSITIONS**

**Leasehold estates**

1 A leasehold estate granted for a term not exceeding the threshold term from the date of the grant, except for—

- (a) a lease the grant of which falls within section 24(1)(c);
- (b) a lease to which the requirement of registration has applied but which has effect as a contract made for valuable consideration to grant or create the estate created by it under section 26(2)(b); or
- (c) a lease the grant of which constitutes a registrable disposition.

**Interests of persons in actual occupation**

2 An interest belonging at the time of the disposition to a person in actual occupation, so far as relating to land of which that person is in actual occupation, except for—

- (a) a beneficial interest under a trust or settlement;
- (b) an interest of a person of whom inquiry was made before the disposition and who failed to disclose the right when he could reasonably have been expected to do so;
- (c) an interest—
  - (i) which belongs to a person whose occupation would not have been obvious on a reasonably careful inspection of the land at the time of the disposition; and
  - (ii) of which the person to whom the disposition is made does not have actual knowledge at that time;
- (d) a leasehold estate granted to take effect in possession after the end of the period of three months beginning with the date of the grant and which has not taken effect in possession at the time of the disposition.

**Easements and profits à prendre**

3 (1) A legal easement or profit à prendre, except for an easement, or a profit à prendre which at the time of the disposition—

- (a) is not within the actual knowledge of the person to whom the disposition is made; and

(b) would not have been obvious on a reasonably careful inspection of the land over which the easement or profit is exercisable.

(2) The exception in sub-paragraph (1) does not apply if the person entitled to the easement or profit proves that it has been exercised in the period of one year ending with the day of the disposition.

**Public rights**

4 A public right (i.e. a right exercisable by anyone, whether he or she owns land or not, merely by virtue of the general law).

**SCHEDULE 6**

(section 83)

**ALTERATION OF THE REGISTER**

**Introductory**

1 References to rectification, in relation to alteration of the register, are to alteration which—

- (a) involves the correction of a mistake; and
- (b) prejudicially affects the title of a registered owner.

**Alteration pursuant to a court order**

2 (1) The court may make an order for alteration of the register for the purpose of—

- (a) correcting a mistake;
- (b) bringing the register up to date; or
- (c) giving effect to any estate, right or interest excepted from the effect of registration.

(2) Where an order under this paragraph is served on the LTRO it has effect to impose on the registrar a duty to give effect to it.

**Rectification pursuant to court order**

3 (1) This paragraph applies to the power under paragraph 2, so far as relating to rectification.

(2) If alteration affects the title of the owner of a registered estate in land, no order may be made under paragraph 2 without the owner's consent in relation to land in his possession unless—

- (a) he has by fraud or lack of proper care caused or substantially contributed to the mistake; or
- (b) it would for any other reason be unjust for the alteration not to be made.

(3) If in any proceedings the court has power to make an order under paragraph 2, it shall do so, unless there are exceptional circumstances which justify its not doing so.

(4) In sub-paragraph (2), the reference to the title of the owner of a registered estate in land includes his title to any interest which subsists for the benefit of the estate in land.

**Rules relating to alteration pursuant to a court order**

4 Rules may—

- (a) make provision about the circumstances in which there is a duty to exercise the power under paragraph 2, so far as not relating to rectification;
- (b) make provision about the form of an order under paragraph 2;
- (c) make provision about service of such an order.

**Alteration otherwise than pursuant to a court order**

5 The registrar may alter the register for the purpose of—

- (a) correcting a mistake;
- (b) bringing the register up to date;
- (c) giving effect to any estate, right or interest excepted from the effect of registration; or
- (d) removing a superfluous entry.

**Rectification otherwise than pursuant to a court order**

6 (1) This paragraph applies to the power under paragraph 5, so far as relating to rectification.

(2) No alteration affecting the title of the owner of a registered estate in land may be made under paragraph 5 without the owner's consent in relation to land in his possession unless—

- (a) he has by fraud or lack of proper care caused or substantially contributed to the mistake; or
- (b) it would for any other reason be unjust for the alteration not to be made.

(3) If on an application for alteration under paragraph 5 the registrar has power to make the alteration, the application shall be approved, unless there are exceptional circumstances which justify not making the alteration.

(4) In sub-paragraph (2), the reference to the title of the owner of a registered estate in land includes his title to any interest which subsists for the benefit of the estate in land.

**Rules relating to alteration otherwise than pursuant to a court order**

7 Rules may—

- (a) make provision about the circumstances in which there is a duty to exercise the power under paragraph 5, so far as not relating to rectification;

- (b) make provision about how the register is to be altered in exercise of that power;
- (c) make provision about applications for alteration under that paragraph, including provision requiring the making of such applications;
- (d) make provision about procedure in relation to the exercise of that power, whether on application or otherwise.

**Rectification and derivative interests**

8 The powers under this Schedule to alter the register, so far as relating to rectification, extend to changing for the future the priority of any interest affecting the registered estate or charge concerned.

**Costs in rectification cases**

9 (1) This paragraph applies where the register is altered under this Schedule in a case not involving rectification and a person ("the claimant") incurs any costs or expenses in connection with the alteration.

(2) The registrar may make a payment to the claimant of such amount, if any, as the registrar thinks fit in respect of the reasonable costs or expenses incurred by the claimant—

- (a) with the prior consent of the registrar; or
- (b) with the subsequent approval of the registrar where the registrar is satisfied—
  - (i) that the costs or expenses had to be incurred urgently; and
  - (ii) that it was not reasonably practicable to apply for prior consent.



**SCHEDULE 7**

(section 111)

**AUTHORIZED NETWORKS**

**Access to networks**

1 (1) A person who is not the registrar or a member of the LTRO may only have access to an authorized network under authority conferred by means of an agreement with the registrar.

(2) An agreement for the purposes of sub-paragraph (1) ("network access agreement") may authorize access for—

- (a) the communication, posting or retrieval of information;
- (b) the making of changes to the register;
- (c) the issue of official search certificates;
- (d) the issue of official copies; or
- (e) such other conveyancing purposes as the registrar thinks fit.

(3) Rules may regulate the use of network access agreements to confer authority to carry out functions of the registrar.

(4) The registrar shall, on application, enter into a network access agreement with the applicant if the applicant meets such criteria as rules may provide.

**Terms of access**

2 (1) The terms on which access to an authorized network is authorized shall be such as the registrar thinks fit, subject to sub-paragraphs (3) and (4), and may, in particular, include charges for access.

(2) The power under sub-paragraph (1) may be used, not only for the purpose of regulating the use of the network, but also for—

- (a) securing that the person granted access uses the network to carry on such qualifying transactions as may be specified in, or under, the agreement;
- (b) such other purpose relating to the carrying on of qualifying transactions as rules may provide; or
- (c) enabling network transactions to be monitored.

(3) It shall be a condition of a network access agreement which enables the person granted access to use the network to carry on qualifying transactions that the person shall comply with any rules for the time being in force under paragraph 5.

(4) Rules may regulate the terms on which access to a land registry network is authorized.

### **Termination of access**

3 (1) The person granted access by a network access agreement may terminate the agreement at any time by notice to the registrar.

(2) Rules may make provision about the termination of a network access agreement by the registrar and may, in particular, make provision about—

- (a) the grounds of termination;
- (b) the procedure to be followed in relation to termination; and
- (c) the suspension of termination pending appeal.

(3) Without prejudice to the generality of sub-paragraph (2)(a), rules under that provision may authorize the registrar to terminate a network access agreement if the person granted access—

- (a) fails to comply with the terms of the agreement;
- (b) ceases to be a person with whom the registrar would be required to enter into a network access agreement conferring the authority which the agreement confers; or
- (c) does not meet such conditions as the rules may provide.

### **Appeals**

4 (1) A person who is aggrieved by a decision of the registrar with respect to entry into, or termination of, a network access agreement may appeal against the decision to the court.

(2) On determining an appeal under this paragraph, the court may give such directions as it considers appropriate to give effect to its determination.

(3) Rules may make provision about appeals under this paragraph.

### **Network transaction rules**

5 (1) Rules may make provision about how to go about network transactions.

(2) Rules under sub-paragraph (1) may, in particular, make provision about dealings with the LTRO, including provision about—

- (a) the procedure to be followed; and
- (b) the supply of information (including information about unregistered interests).

**Overriding nature of network access obligations**

6 To the extent that an obligation not owed under a network access agreement conflicts with an obligation owed under such an agreement by the person granted access, the obligation not owed under the agreement is discharged.

**Presumption of authority**

7 Where—

- (a) a person who is authorized under a network access agreement to do so uses the network for the making of a disposition or contract; and
- (b) the document which purports to effect the disposition or to be the contract—
  - (i) purports to be authenticated by the person as agent; and
  - (ii) contains a statement to the effect that the person is acting under the authority of his principal,

the person shall be deemed, in favour of any other party, to be so acting.

**Management of network transactions**

8 (1) The registrar may use monitoring information for the purpose of managing network transactions and may, in particular, disclose such information to persons authorized to use the network, and authorize the further disclosure of information so disclosed, if the registrar considers it is necessary or desirable to do so.

(2) The registrar may delegate his functions under sub-paragraph (1), subject to such conditions as the registrar thinks fit.

(3) In sub-paragraph (1), “monitoring information” means information provided in pursuance of provision in a network access agreement included under paragraph 2(2)(c).

**Supplementary**

9 The registrar may provide, or arrange for the provision of, education and training in relation to the use of an authorized network.

**Rules**

10 (1) Power to make rules under paragraph 1, 2 or 3 is exercisable by the Minister after consulting such persons as he or she considers appropriate.

(2) In making rules under paragraph 1 or 3(2)(a), the Minister shall have regard, in particular, to the need to secure—

- (a) the confidentiality of private information kept on the network;

- (b) competence in relation to the use of the network (in particular for the purpose of making changes); and
- (c) the adequate insurance of potential liabilities in connection with use of the network.

**Interpretation**

11 In this Schedule—

“authorized network” means a network provided under section 111(1);

“network access agreement” has the meaning given by paragraph 1(2);

“network transaction” means a transaction carried on by means of a land registry network;

“qualifying transaction” means a transaction which—

- (a) involves registration; and
- (b) is capable of being effected electronically.

**SCHEDULE 8**

(section 122)

**MISCELLANEOUS AND GENERAL PROVISIONS**

**Dealings with estates subject to compulsory first registration**

- 1 (1) Rules may make provision—
- (a) applying this Act to a pre-registration dealing with an unregistered registrable estate as if the dealing had taken place after the date of first registration of the estate; and
  - (b) about the date on which registration of the dealing is effective.
- (2) For the purposes of sub-paragraph (1)—
- (a) an unregistered estate is registrable if a person is subject to the requirement of registration in relation to it; and
  - (b) a pre-registration dealing is one which takes place before the making of such an application.

**Regulation of title matters between sellers and buyers**

- 2 (1) Rules may make provision about the obligations with respect to—
- (a) proof of title; or
  - (b) perfection of title,
- of the seller under a contract for the transfer, or other disposition, for valuable consideration of a registered estate or charge.
- (2) Rules under this paragraph may be expressed to have effect notwithstanding any stipulation to the contrary.

**Implied covenants**

- 3 Rules may make provision about—
- (a) the form of provisions extending or limiting any covenant implied by virtue of section 19 of the Conveyancing Act 1983;
  - (b) the application of section 19(1) of the Conveyancing Act 1983 (implied covenants in conveyance subject to rents) to transfers of registered estates;
  - (c) reference in the register to implied covenants, including provision for the state of the register to be conclusive in relation to whether covenants have been implied.

**Notice**

4 (1) Rules may make provision about the form, content and service of notice under this Act.

(2) Rules under this paragraph about the service of notice may, in particular—

- (a) make provision requiring the supply of an address for service and about the entry of addresses for service in the register;
- (b) make provision about—
  - (i) the time for service;
  - (ii) the mode of service; and
  - (iii) when service is to be regarded as having taken place.

**Applications**

5 Rules may make provision—

- (a) about the form and content of applications under this Act;
- (b) requiring applications under this Act to be supported by such evidence as the rules may provide;
- (c) about when an application under this Act is to be taken as made;
- (d) about the order in which competing applications are to be taken to rank;
- (e) for an alteration made by the registrar for the purpose of correcting a mistake in an application or accompanying document to have effect in such circumstances as the rules may provide as if made by the applicant or other interested party or parties.

**Statutory statements**

6 Rules may make provision about the form of any statement required under an enactment to be included in an instrument effecting a registrable disposition or a disposition which triggers the requirement of registration.

**Residual power**

7 Rules may make any other provision which it is expedient to make for the purposes of carrying this Act into effect, whether similar or not to any provision which may be made under the other powers to make rules.

**SCHEDULE 9**

(section 126)

**CONSEQUENTIAL AMENDMENTS**

**Amends section 1 of Mortgage Registration Act 1786**

1 The Mortgage Registration Act 1786 is amended in section 1 by, immediately after subsection (3), inserting the following—

“(4) Subsections (1) to (3) shall not apply to any mortgage or conditional conveyance of property which is—

- (a) registered land within the meaning of the Land Title Registration Act 2011; or
- (b) an estate which is required to be registered under that Act by virtue of sections 24 and 25 of that Act.”.

**Amends section 55(5) of Companies Act 1981**

2 Section 55(5) of the Companies Act 1981 is amended—

- (a) in paragraph (a) by, immediately after the word “Bermuda”, inserting the words “to which paragraph (aa) does not apply”;
- (b) by, immediately after paragraph (a), inserting the following new paragraph—

“(aa) registered land within the meaning of the Land Title Registration Act 2011 or an estate which is required to be registered under that Act by virtue of sections 24 and 25 of that Act—

- (i) shall be registered or otherwise protected under the Land Title Registration Act 2011 and not under this Act; and
- (ii) the priority of such charge shall be determined in accordance with the Land Title Registration Act 2011;”.

**Amends section 39 of Conveyancing Act 1983**

3 The Conveyancing Act 1983 is amended in section 39 by, immediately after subsection (2), inserting the following—

“(3) Subsections (1) and (2) shall not apply to—

- (a) any disposition of registered land within the meaning of the Land Title Registration Act 2011; or

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- (b) any voluntary conveyance of an estate which is required to be registered under the Land Title Registration Act 2011 by virtue of sections 24 and 25 of that Act.”.

[Assent Date: 21 December 2011]