

CHAPTER 229

LAND REGISTRATION

1979-8

Parts I and II of this Act came into operation on 1st February, 1988 by Proclamation (S.I. 1985 No. 5).

Parts III to XX of this Act came into operation on 8th September, 1988 by Proclamation (S.I. 1988 No. 72).

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Amended by:

<i>1979-44</i>	<i>1988-12</i>	<i>2000-24</i>
<i>1980-2</i>	<i>1990-19</i>	<i>2002-26</i>
<i>1982-54</i>	<i>1997-11</i>	

Law Revision Orders

The following Law Revision Order or Orders authorized the insertion and removal of pages as the case may be under the Law Revision Act Cap.2 now repealed:

1985	1991	2002
1989	1998	

Guide to symbols in historical notes:

- indicates an amendment made by an Act

/ indicates an amendment made by statutory instrument

CHAPTER 229

LAND REGISTRATION 1979-8

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**BARBADOS**

LAND REGISTRATION

1979-8

An Act to make provision for the registration of titles to land and for dealings in land so registered, for the administration of the unregistered system of dealing in titles at the Land Registry, and for purposes connected therewith.

[Commencement: 1st February, 1988 Parts I and II]

[Commencement: 8th September, 1988 Parts III to XX]

[Commencement: 13th November, 1989 Part XXI]

PART I

PRELIMINARY

Short title

1. This Act may be cited as the *Land Registration Act*.

Interpretation

2. For the purposes of this Act,
“application book” means a book kept for the purposes of section 4;

“adjudication record” has the meaning assigned to it by section 2 of the *Land (Adjudication of Rights and Interests) Act*, Cap. 228A;

“attorney-at-law” has the meaning assigned to it by section 2 of the *Legal Profession Act*, Cap. 370A;

[1980-2]

“boundary mark” includes a triangulation station, traverse station, bench mark, fence, hedge-stone, pillar, peg, pin, tubewall or other mark approved by the Chief Surveyor for the demarcation of land boundaries;

“charge” means an interest in land securing the payment of money or money’s worth or the fulfilment of an obligation, whether arising out of a condition or a contract, and includes a sub-charge and the instrument creating a charge;

“chargee” means the proprietor of a charge;

“chargor” means the proprietor of charged land, or of a charged lease or charge;

“Chief Surveyor” has the meaning assigned to it by section 2 of the *Land Surveyors Act*, Cap. 370;

[1980-2]

“Commissioner of Titles” has the meaning assigned to it by section 2 of the *Land (Adjudication of Rights and Interests) Act*, Cap. 228A;

“court” means the High Court;

“dealing” includes disposition and transmission;

“demarcation plan” has the meaning assigned to it by section 2 of the *Land (Adjudication of Rights and Interests) Act*, Cap. 228A;

“disposition” means any act *inter vivos* by a proprietor whereby his rights in or over his land, lease or charge are affected, but does not include an agreement to transfer, lease or charge;

“instrument” includes any deed, judgment, decree, order or other document requiring or capable of registration under this Act and a declaration requiring registration under the *Condominium Act*, Cap. 224A;

“interest in land” includes absolute ownership of land;

“land” means the surface of the earth, the space above it and the things below it and includes

- (a) houses and other structures whatsoever and parts of structures, whether the division is horizontal, vertical or made in any other way;
- (b) mines and minerals, whether or not held apart from the surface;
- (c) land covered by water,
- (d) a legal estate, whether or not it gives a right to possession of the soil,
- (e) a legal interest in land,
- (f) an equitable interest in land,
- (g) an undivided share in land;

“Land Registry” means the Land Registry established under section 4;

“lease” means the grant with or without consideration by the proprietor of land of the right to exclusive possession of his land, and includes the right so granted and the instrument granting it, and also includes an under-lease, but does not include an agreement for a lease, under-lease or tenancy;

“lessee” means the holder of a lease;

“lessor” means the proprietor of a leasehold;

“licence” means a permission granted by a proprietor of land or lease which allows the licensee to do some act in relation to the land which would otherwise be a trespass, but does not include an easement or a profit;

“local newspaper” means a newspaper printed and published in Barbados;

“Minister” means the Minister responsible for Lands;

- “mutation record” means a record of changes in the registry map kept by the Registrar under section 4;
- “overriding interests” means all the encumbrances, interests, rights and powers not entered on the register, but subject to which registered dispositions are by this Act to take effect as specified in section 31;
- “parcel” means any land which is separately delineated on the registry map and given a number;
- “periodic tenancy” means a tenancy from year to year, half year to half year, quarter to quarter, month to month, week to week or the like;
- “proprietor” means the person registered under this Act as the owner of land or a lease or a charge who, but for the operation of this Act, would have been the owner of a legal estate in fee simple absolute in possession, or a term of years absolute, or a legal mortgage, as the case may be, under the *Property Act*, Cap. 236;
- “possession” includes the receipt of or the right to receive rents and profits;
- “register” means the register of land under section 4;
- “registered land” means land or any estate or interest in land, the title to which is registered under this Act;
- “registration area” means a subdivision of a registration district;
- “registration district” means a division of Barbados for the purpose of registration of title under this Act;
- “Registration Officer” has the meaning assigned to it by section 2 of the *Land (Adjudication of Rights and Interests) Act*, Cap. 228A;
- “Registrar” means the Registrar of Titles appointed in accordance with section 5;
- “registry map” means a map or series of maps kept under section 4;

“transfer” means the passing of land or an interest in land, a lease or a charge by act of the parties and not by operation of law, and also the instrument by which such passing is effected, but does not include an agreement to transfer;

“transmission” means the passing of land, a lease or charge from one person to another by operation of law on death or insolvency or otherwise, and includes the compulsory acquisition of land under any enactment;

“trustee” includes personal representative;

“valuable consideration” includes marriage, but does not include a nominal consideration.

Reconciliation with other laws

3.(1) Except as otherwise provided in this Act, no other enactment 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 contained in this Act shall be construed as permitting any dealing which is forbidden by any other enactment or as overriding any provision of any other enactment requiring the consent or approval of any authority to any dealing.

(3) This Act, except Part XXI, applies only to land, or interests in land or dealings in land registered under this Act.

[1990-19]

PART II

ESTABLISHMENT OF LAND REGISTRY AND APPOINTMENT OF OFFICERS

Establishment of Land Registry

4.(1) There shall be established a Land Registry in which a register shall be kept.

- (2) The register kept for the purposes of subsection (1) shall comprise
- (a) a register of titles to land;
 - (b) a land registry map;
 - (c) parcel files containing the instruments, plans and documents relating to subsisting entries in the register;
 - (d) a book containing a record of all applications to the Registrar;
 - (e) a mutation record book containing all changes made in the register;
 - (f) an index containing all parcels, leases and charges and the proprietors thereof; and
 - (g) a register of powers of attorney.
- (3) Applications shall appear in the application book in the order in which they are received by the Registrar.
- (4) The names listed in the index of proprietors of land, leases and charges shall be in alphabetical order and the index shall also contain the number of parcels of land owned by each proprietor.

Registrar and Deputy or Assistant Registrar

5.(1) There shall be a Registrar of Titles who shall be responsible for the administration of the Land Registry, and he shall be assisted by such number of Deputy or Assistant Registrars and of Registration Officers as are necessary for the purpose of carrying out his functions under this Act.

(2) A person may not be appointed as Registrar of Titles unless he has been practising as an attorney-at-law for not less than 7 years.

[1979-44]

(3) A person may not be appointed a Deputy Registrar unless he has been practising as an attorney-at-law for not less than 5 years.

[1990-19]

Delegation of functions

6. Where a function is by this Act or any other enactment required or permitted to be preformed by the Registrar, that function may be performed by a Deputy or Assistant Registrar or some other officer authorised in that behalf by the Registrar.

Powers and duties of Registrar

7.(1) The Registrar may

- (a) require any person to produce any instrument, plan, certificate or other document relating to any land, lease, or charge;
- (b) summon any person to appear before him and give information relating to any land, lease or charge, or any instrument, certificate or other document relating to the land, lease or charge in question;
- (c) refuse an application for registration where any instrument, certificate, plan or other document has not been produced pursuant to paragraph (a) or where an act required by the Registrar to be performed has not been performed;
- (d) administer oaths or affirmations;
- (e) require that any proceedings, information or explanation be conducted or given on oath, as the case may be;
- (f) make orders respecting costs incurred by him or by another person in connection with an investigation or a hearing held in accordance with his functions under this Act.

(2) *The Registrar is a Notary Public for the purpose of carrying out his functions under this Act or under any other enactment under which he is required to perform a function.*

[Act 1988-12 came into operation on 17th July, 1989 by S.I. 1989/64.]

[1988-12]

(3) *The Registrar shall charge such fees as may be prescribed for the performance of any duties appertaining to the office of Notary Public as contemplated by subsection (2).*

(4) *In this section Registrar includes the Deputy Registrar and an Assistant Registrar of Titles.*

[1988-12]

Power of registrar to correct errors etc.

8.(1) Subject to this Act, the Registrar may correct errors in the register, or entries made therein or in duplicate certificates or instruments, and supply entries omitted to be made or required to be made under this Act or any other enactment.

(2) In the correction of any such error the Registrar may not erase or render illegible the original words, and he shall affix the date on which such correction was made or entry supplied and place his signature thereto.

(3) Every error corrected and every entry supplied in accordance with this section shall be valid and shall have effect as if such errors had not been made and such entries supplied.

Registrar's seal

9. The Registrar shall have a common seal and every document bearing the seal of the Registrar shall, until the contrary is proved, be deemed to have been authenticated by the Registrar.

Indemnity of officers

10. The Registrar or any other officer of the Land Registry is not liable to any action or proceedings in respect of any act done or omitted to be done in good faith in exercise of his powers under this Act.

PART III
THE LAND REGISTER

Form of register

11.(1) The register shall contain an entry relating to the title to every parcel of land

(a) that has been adjudicated under the *Land (Adjudication of Rights and Interests) Act*, Cap. 228A; or

(b) that is entered in the Condominium Land Register kept under the *Condominium Act*, Cap. 224A.

[2002-26]

(2) The register shall consist of such number of folios as the Registrar determines.

(3) A folio shall be divided into

(a) a property section containing

(i) a brief description of the land or lease, together with particulars of its appurtenances;

(ii) where the title is provisional, the information recorded in the adjudication record under section 27 of the *Land (Adjudication of Rights and Interests) Act*, Cap. 228A;

[2002-26]

(iii) a reference to the registry map and any plans filed in the registry;

(b) a proprietorship section containing the name and address of the proprietor and a note of any inhibition, caution, or restriction affecting his right of disposition; and

(c) an encumbrances section containing a note of every encumbrance or right adversely affecting the land or lease.

(4) No entry is required in the proprietorship section respecting land that is described as Crown Land.

Compilation of register from adjudication records

12. When an adjudication record is finalised under section 30 of the *Land (Adjudication of Rights and Interests) Act*, Cap. 228A, and the Commissioner has delivered the adjudication record to the Registrar, the Registrar shall prepare a folio for each parcel shown in the adjudication record and for any lease required to be registered and shall register therein any of the particulars of the adjudication record that require registration.

Compilation of Condominium Land Register

13.(1) For the purpose of compiling the register under section 11 (1)(b) the Registrar shall have power to alter, amend, modify or otherwise adapt the form of that register so as to bring it as nearly as possible into conformity with the entries to be kept for the purposes of paragraph (a) of that subsection.

(2) Every body corporate, unit owner and mortgagee under the *Condominium Act*, Cap. 224A, shall be given notice by the Registrar in writing that the particulars of his registration under that Act have been transferred to the register compiled under this Act, and thereupon the provisions of this Act shall apply to his unit to the extent of any inconsistency with the *Condominium Act*, Cap. 224A.

(3) On receipt of such notice the unit owner or mortgagee shall surrender the deeds relating to his unit to the Registrar, and shall, if he so requests, be given a certificate under this Act without payment of any prescribed fee.

[2002-26]

14. [Repealed by 2002-26.]

15. [Repealed by 2002-26.]

15A. *[Repealed by 2002-26.]*

Registration

16.(1) The first registration of a parcel shall be effected by the preparation of a register in accordance with section 11 and the signing by the Registrar of the particulars of the ownership and the encumbrances, if any, appearing in the register.

(2) Every subsequent registration shall be effected by an entry in the register in such form as the Registrar determines, and by the cancellation of the entry, if any, which it replaces.

Cancellation of obsolete entries

17. Where the Registrar is satisfied that an entry in the register has ceased to have effect, he may cancel that entry.

New edition of register

18.(1) Where, by reason of the nature or number of entries in a register, the Registrar is satisfied that a new edition of a register should be made in addition to or substitution for existing folios, he may open a new edition of the register.

(2) A new register shall contain such entries as the Registrar determines, and all entries that have been determined or ceased to have effect may be omitted from a new register.

Maps, parcels and boundaries

19.(1) The Registrar shall cause a map, called the registry map, to be prepared by the Chief Surveyor.

(2) A registry map shall

- (a) incorporate any demarcation plans which have been made under the *Land (Adjudication of Rights and Interests) Act, Cap. 228A*;

- (b) show the boundaries of all parcels; and
 - (c) contain such other information as the Registrar directs.
- (3) A registry map shall be drawn to scale and shall consist of as many sheets as the Registrar, on the advice of the Chief Surveyor, determines.
- (4) The Registrar may cause a registration district to be further subdivided into areas, sections or blocks.
- (5) Where a registration district is subdivided into registration areas, sections or blocks, the Registrar shall cause the divisions to be shown on the registry map, and shall identify those subdivisions by distinctive names or by such other distinguishing mark as he considers appropriate.
- (6) A plan shall be filed in respect of a particular parcel to augment the information available from the registry map, and the filing of the plan shall be noted in the register.

Survey amendment of boundary and new edition of registry map

- 20.(1)** The Registrar may
- (a) cause a survey of any land to be made for any of the purposes of this Act; and
 - (b) with the consent of any person affected by the survey, alter or replace the registry map or part thereof.
- (2) Instructions given by the Registrar respecting the alteration of a boundary shown on the registry map shall be in writing on the prescribed form, in this Act called the “mutation form”, and a copy of that form shall be filed in the Land Registry.
- (3) Where the boundary of a parcel of a parcel is altered, the number of that parcel shall be cancelled and a new number substituted therefor.

-
- (4) The Registrar may
- (a) cause a new edition of a registry map or any part thereof to be prepared; and
 - (b) omit therefrom any matter that is, in his opinion, obsolete.

Disputes respecting boundaries

21.(1) A registry map is not conclusive evidence of the precise position of a boundary.

(2) Where uncertainty or a dispute arises respecting the position of a boundary, the Registrar shall

- (a) on the application of any person interested, give to all other persons appearing to the Registrar to be interested an opportunity of submitting evidence; and
- (b) after considering such evidence as may be submitted, decide the position of the boundary, and direct the Chief Surveyor to cause the boundary to be fixed accordingly.

(3) Where a boundary is fixed under subsection (2), the Registrar shall

- (a) make a note on the registry map and in the appropriate folio of the register; and
- (b) record and file his decision on a plan or description.

(4) A court may not entertain an action relating to a dispute respecting the boundaries of registered land before the dispute has been determined by the Registrar under this section.

(5) Public roads and the verges abutting on public roads shall be recorded on the registry map as separate from the parcels adjoining such verges or public roads whether or not the title to such verges or to the whole or part of the public roads is vested in the proprietors of such parcels.

Maintenance of boundary marks

22.(1) Every proprietor of land shall maintain in good order any marks which demarcate his boundaries, whether established in accordance with the requirements of this Act or any other enactment, of the proprietor's own accord.

(2) The Registrar may in writing order the demarcation within the specified time of any boundary in a manner specified in the *Land Surveyors Act*, Cap. 370.

(3) Where the proprietor who is directed under this section to maintain a boundary mark fails to keep that mark in good repair, he is guilty of an offence and liable on summary conviction to a fine of \$100.

Damaging or removing boundary marks

23.(1) Any person who unlawfully damages, removes or otherwise interferes with a boundary mark is guilty of an offence and liable on summary conviction to a fine of \$100, or imprisonment for a term of 3 months, or both.

(2) Where a person is convicted under subsection (1) the cost of repairing the boundary mark referred to in that subsection is recoverable from him as a civil debt in a court of competent jurisdiction at the suit of the person incurring that cost.

Joining and subdivision of parcels owned by same proprietor

24.(1) Where contiguous parcels owned by the same proprietor are subject to the same rights and obligations, the Registrar may, on the application of that proprietor, join those parcels by closing the folio relating thereto and opening a new folio in respect of the parcel resulting from the joinder.

(2) The Registrar may, upon the application of a proprietor of a parcel, subdivide that parcel by closing the folio relating thereto and opening new folios in respect of the new parcels resulting from the subdivision, and recording in the new folios all subsisting entries appearing in the closed folio.

Subdivision or alteration of boundaries of contiguous parcels

25.(1) Where contiguous parcels of land are owned by different proprietors, the Registrar may, on the application of those proprietors and with the consent in writing of a caveator or any person in whose name any right or interest in the land is registered, subdivide or alter the boundaries of those parcels.

(2) A subdivision or alteration under subsection (1) shall be effected by means of a mutation record, a cancellation of the relevant folio and the preparation of a new folio.

(3) Where an alteration of contiguous parcels involves substantial changes in ownership, the Registrar may refuse an application under subsection (1).

(4) A subdivision under this section operates to vest the parcels in the persons in whose names they are registered.

(5) Nothing shall be done under this section or section 24 which is inconsistent with this Act or any other enactment to which any provision of this Act is subject, that is to say

- (a) no parcel which is subject to a lease may be subdivided so as to subdivide the land comprised in the lease; and
- (b) where a proprietor is authorised to subdivide his parcel for the purposes of development, the Registrar shall require him to submit a plan of the proposed subdivision prepared by a surveyor licenced under the *Land Surveyors Act, Cap. 370*, and certified by the competent authority as conforming with the requirements of the *Town and Country Planning Act, Cap. 240*.

PART IV
EFFECT OF REGISTRATION

Effect of registration with absolute title

26.(1) Subject to section 30, the registration of a person as the proprietor with absolute title to a parcel shall vest in that person the absolute ownership of that parcel together with all rights and privileges belonging or appurtenant thereto, free from all other interests and claims, but subject to

- (a) the leases, charges and other encumbrances and the conditions and restrictions, if any, shown in the register; and
 - (b) unless the contrary is expressed in the register, the liabilities, rights and interests affecting the parcel and declared by section 31 not to require noting on the register.
- (2) Nothing in subsection (1) shall be construed as relieving a proprietor of any duty or obligation to which he is subject as a trustee.
- (3) The registration of any person under this Act shall not confer on him rights to any minerals or to any mineral oils unless the same are expressly referred to in the register.

Effect of registration with provisional title

27. Subject to section 30, the registration of a person as a proprietor with a provisional title to a parcel shall not affect or prejudice the enforcement of any estate, right or interest adverse to or in derogation of the title or that proprietor arising before the date under the instrument or in any manner specified, with respect to that parcel in the register, but in every other respect shall have the same effect as registration of that person with an absolute title.

Effect of registration of a lease

28. Subject to section 30, the registration of a person as the proprietor of a lease shall vest in that person the leasehold interest described in the lease,

together with all implied and expressed rights and privileges appurtenant thereto and subject to all implied and expressed agreements, liabilities and incidents of the lease, but where the title of the lessor is a provisional title, the enforcement of any estate, right or interest affecting or in derogation of the right of the lessor to grant the lease shall not be prejudiced.

Effect of registration as Crown land

29. The registration of land as Crown land shall, subject to any registered encumbrance, vest the absolute ownership of that land in the Crown.

Voluntary transfer

30. A person who has acquired by transfer without valuable consideration any land, lease or charge holds it subject to

- (a) any unregistered rights or interests subject to which the transferor held;
- (b) the provisions of the *Bankruptcy Act*, Cap. 303; and
- (c) Division B of Part III and Part IV of the *Companies Act*, Cap. 308,
[1982-54]

but such transfer when registered shall in all respects have the same effect as a transfer for valuable consideration.

Liability of registered land to overriding interest

31.(1) All registered land is, unless the contrary is expressed in the register, subject to such of the following overriding interests as may subsist in reference thereto without their being noted in the register, namely

- (a) easements and profits not being equitable easements-required to be protected by a note on the register;
- (b) natural rights of light, air, water and support;
- (c) water rates and any other charge, other than land tax, where that charge is created by statute;

- (d) subject to this Act, rights acquired or in the course of being acquired under the *Limitation and Prescription Act*, Cap. 232;
 - (e) rights of every person in actual occupation of the land or in receipt of the rents and profits thereof, except where enquiry is made of such person and the rights are not disclosed;
 - (f) in the case of registration with provisional title, all estates, rights, interests and powers excepted from the effect of registration; and
[1979-44]
 - (g) rights of compulsory acquisition, resumption, entry, search, user or limitation of user conferred by any other enactment.
- (2) Notwithstanding subsection (1), the Registrar may cause any of the liabilities, rights and interests referred to in subsection (1) to be registered as he thinks fit.

Conversion of provisional to absolute title

32.(1) An interested person or a proprietor registered with a provisional title may at any time apply to the Registrar to be registered or to have the proprietor registered, as the case may be, with an absolute title.

- (2) Where an applicant under subsection (1) satisfies the Registrar that
- (a) the qualification to which the provisional title is subject has ceased to be of effect; or
 - (b) a period of time has elapsed since the date of first registration with a provisional title that, when added to the period from which the possession of the proprietor is construed to have begun, exceeds 12 years,

the Registrar shall, after publication of such advertisements as he thinks fit, make an order for the registration of that applicant as proprietor with an absolute title.

(3) On the making of an order under subsection (2), the Registrar shall substitute in the register the words, “absolute title” for the words, “provisional title”.

Notice

33. Any person acquiring land, a lease or charge shall be deemed to have had notice of every entry in the register relating to that land, lease or charge.

PART V

CERTIFICATE AND SEARCHES

Certificate of title

34.(1) The Registrar shall, where he registers a person as proprietor, issue to him on payment of the prescribed fee a certificate of title in the prescribed form, in this Part referred to as “a certificate”, containing all the subsisting entries in the register affecting any land or lease to which the certificate relates, together with a copy of the plan filed under section 19(6).

(2) The Registrar may not issue

(a) more than one certificate under subsection (1) in respect of any land or lease; or

(b) a certificate in respect of a lease unless the lease is for a period certain and the unexpired term of the lease exceeds 21 years.

(3) A certificate is only *prima facie* evidence of the matters contained therein, and the land or lease is subject to all entries in the register, whether or not those entries are shown on the certificate.

(4) Where there are more than one proprietor respecting the same certificate, those owners shall agree among themselves as to who shall receive the certificate, and where there is no such agreement, the certificate shall be filed in the Land Registry.

(5) The date of issue of a certificate shall be noted in the register.

Production certificates

35.(1) Where a certificate has been issued by the Registrar, then, unless it is filed in the Land Registry or the Registrar dispenses with its production, that certificate shall, on the registration of any dealing with the land or lease to which the certificate relates, be produced to the Registrar, and a note of the registration of the dealing shall be made on the certificate.

(2) Where the dealing is a transfer, the certificate, if produced, shall be destroyed, and a new certificate shall be issued to the new proprietor.

(3) Where the dealing is a charge, the certificate, if any, shall be filed in the Land Registry.

Copies of lease or charge

36.(1) On the registration of a disposition of a lease or charge

- (a) the disponent shall produce to the Registrar the duplicate and triplicate copies of the lease or charge; and
- (b) the Registrar shall note particulars of the disposition on the copies and on the filed lease or charge.

(2) Notwithstanding subsection (1), the Registrar may dispense with production of the duplicate and triplicate copies of the lease or charge, where he is satisfied that they cannot be found.

Lost or destroyed certificates

37.(1) Where a certificate is lost or destroyed, the proprietor of the parcel to which the certificate relates may make an application to the Registrar for the issue of a new certificate, the application being accompanied by evidence that satisfies the Registrar of the loss or destruction of the previous certificate.

(2) The Registrar shall require an applicant under subsection (1) to make a statutory declaration respecting the loss or destruction of a certificate.

(3) Where the Registrar is satisfied that a certificate is lost or has been destroyed, he may, after publication of such notices as he thinks fit, cancel the previous certificate and issue a new certificate in the name of the proprietor.

(4) Where, after the issue of a new certificate, the previous certificate is found, the previous certificate shall be delivered to the Registrar for destruction.

Searches and copies of documents

38.(1) A person may, after making an application in the prescribed form and a payment of the prescribed fee

- (a) inspect any sheet of the registry map or any filed instrument at all convenient times;
- (b) obtain from the Registrar a certified copy of any folio contained in the register, part of the registry map, plan, or instrument filed in the Land Registry; or
- (c) require an official search in respect of a parcel of land.

(2) Where an official search is made pursuant to subsection (1) (c), the Registrar shall issue a certificate setting forth the particulars of subsisting entries in the register respecting the parcel to which the search relates.

Evidence

39.(1) The original or a certified copy of the register, part of the registry map, a plan, or an instrument, filed in the registry is admissible in evidence in all proceedings, and a signature purporting to be that of the Registrar shall, until the contrary is proved, be deemed to be the signature of the Registrar.

(2) A trustee, personal representative or any other fiduciary owner or an attorney-at-law is not liable for any loss occasioned by any inaccuracy appearing in a certified copy referred to in subsection (1).

(3) A process for compelling the production of the register, registry map, or a field instrument or plan may not issue from a court except with the leave of that court and

- (a) the leave shall not be granted where a certified copy will suffice; and
- (b) any process issued shall bear thereon a statement that it is issued with the leave of the court.

PART VI DISPOSITIONS

Disposing of registered land

40. After the coming into force of this Act, land, a lease or a charge registered under this Act may not be disposed of except in accordance with this Act, and any disposition, except under this Act, for the purpose of creating, extinguishing, transferring, varying or affecting any estate, right or interest in any land, lease or charge is of no effect.

Contracts respecting land to be in writing

41.(1) Nothing in section 40 shall be construed as preventing an unregistered instrument from operating as a contract, but no action may be brought upon any contract for the sale or other disposition of land or any interest in land, unless the agreement upon which such action is brought or some memorandum or note thereof is in writing and signed by the party to be charged or by some other person thereunto by him lawfully authorised.

(2) This section applies to contracts whether made before or after the commencement of this Act, and does not affect the law relating to part performance or sales by the court.

Protection of persons dealing in registered land

42.(1) A person purchasing, for valuable consideration, from a proprietor shall not be concerned or required

- (a) to inquire into the circumstances in or the consideration for which that proprietor or any previous proprietor was registered;
- (b) to see to the application of the consideration; or
- (c) to search any deeds index book, deeds counter index book, or deeds register kept by the Registrar.

(2) Where a proprietor of land, lease or a charge is a trustee, he shall, upon his dealing therewith, be deemed to be the absolute proprietor thereof, and no disposition by such trustee is defeasible by reason only that it amounted to a breach of trust.

Additional fee for delayed registration

43. Where an instrument is submitted for registration later than 3 months from the date of the instrument, then, as well as the registration fee, an additional fee equal to the amount of the registration fee shall be payable for each 3 months that have elapsed since such date, but that additional fee shall not exceed 5 times the amount of the original registration fee.

Power to compel registration

44.(1) Where a person has failed or refused to register an instrument that is registrable under this Act, the Registrar may, by notice in writing, order him to submit the instrument for registration within the time specified in the notice, and thereupon the registration fee and any additional fee payable under section 43 shall become due and payable, whether the instrument is submitted for registration or not.

(2) A person who fails to comply with a notice under subsection (1) is guilty of an offence and liable on summary conviction to a fine not exceeding \$50 or imprisonment for a term not exceeding 1 month, or both.

Priority of registered interests

45.(1) The interests appearing on the register shall rank in priority according to the order in which the instrument relating to those interests are submitted to the Registrar.

(2) Where an instrument is prepared in the Land Registry, it shall be deemed to have been submitted on the date on which application for its preparation was made to the Registrar.

(3) Instruments sent by post or under cover and received during the hours of business shall be deemed to have been submitted simultaneously immediately before the closing of the Land Registry on that day, and instruments received between the closing of the Land Registry and the re-opening for business the next day shall be deemed to have been submitted simultaneously immediately after such re-opening.

(4) Where more than one instrument or application, as the case may be, are submitted to the Registrar on the same day or on different days but at such short intervals that, in the opinion of the Registrar, there is doubt as to their order or priority, the Registrar may refuse registration until he has heard and determined the rights of the parties interested.

Stay of registration

46.(1) Where a person proposing to deal with registered land has, with the consent in writing of the proprietor, applied for an official search and has stated in his application the particulars of the proposed dealing, the registration of any instrument affecting the land to be comprised in or affected by the proposed dealing shall be stayed for a period of 14 days, in this Act referred to as the “suspension period”, from the time at which application for the search was made, and a note shall be made in the register accordingly.

(2) If within the suspension period an instrument effecting the proposed dealing is submitted for registration, that instrument

- (a) shall be registered; and
- (b) shall have priority over any other instrument submitted for registration during the suspension period,

notwithstanding any caution or other entry for which application for registration is made during the suspension period.

(3) Subject to subsection (2), an instrument or document for which application for registration is made during the suspension period, other than the instrument or document effecting the proposed dealing

- (a) shall be dealt with in the same manner;
- (b) shall have the same priority; and
- (c) shall be as effectual,

as if no stay of registration had been obtained.

Merger of registered interests

47.(1) Where, upon the registration of a dealing, the interest of

- (a) a lessor and lessee;
- (b) a chargor and chargee; or
- (c) a proprietor or a parcel which is burdened with an easement, restrictive covenant or profit and the proprietor of a parcel which benefits therefrom,

vest in the same proprietor, those interests shall merge if a surrender or discharge is registered, the parcels are combined or there is a declaration of merger.

(2) A declaration of merger referred to in subsection (1) may be contained in the instrument attesting to the dealing.

PART VII

LEASES

Leases

48.(1) A proprietor of land may grant a lease of land or part thereof for a term of years absolute.

(2) A grantor of a lease may reserve an easement, right or privilege over the land subject to the lease.

(3) A lease for a term not exceeding 21 years to take effect in possession or within 1 year from the date thereof at a rent without taking a fine may be granted and takes effect under this section notwithstanding that a caution, notice of deposit of a certificate, restriction, or inhibition (other than a bankruptcy inhibition) may be subsisting, but subject to the interests intended to be protected by any such caution, notice, restriction, or inhibition.

(4) Where only part of a parcel is leased, the lease shall be accompanied by a plan or other description which the Registrar, in his absolute discretion, deems adequate to identify the part leased.

Periodic tenancy

49.(1) Where

(a) no term is specified in a lease; or

(b) no provision is made for the giving of notice terminating a tenancy,

the lease shall be deemed to have created a periodic tenancy.

(2) Where a proprietor permits the exclusive occupation of land or any part thereof by another person at a rent but without an agreement in writing, that occupation shall be deemed to have constituted a periodic tenancy.

Duration and termination of periodic tenancy

50.(1) The duration of a periodic tenancy created by section 49 shall be the period by reference to which the rent is payable, and the tenancy may be determined by notice given by either party, the length of the notice being not shorter than the period of the tenancy.

(2) Notice given under subsection (1) shall expire on the day on which rent is payable.

Form of certain leases

51.(1) A lease

- (a) for a period exceeding 2 years;
- (b) containing an option whereby the lessee may require the lessor to grant him a further term that together with the original term exceeds 2 years,

shall be in the prescribed form.

(2) A lease of land for a term of years absolute may be in any form that sufficiently refers to the registered land.

Registration of lease

52.(1) Where application for the registration of a lease is submitted to the Registrar, he may

- (a) compile a register in respect of the lease in the name of the lessee;
- (b) file the lease; and
- (c) note the lease, in the encumbrances section of the register.

(2) Subject to section 41, a lease shall be of no effect unless it is registered in accordance with this Act.

Consent of lessor to dispose of lease

53. Where a lease containing an agreement, express or implied, by the lessee that he will not transfer, sublet, charge, or part with possession of the land being the subject of the lease or any part thereof without the consent in writing of the lessor is registered, the agreement shall be noted in the register and no dealing with the lease shall be registered until the written consent of the lessor has been submitted to the Registrar.

Consent to registration of certain leases

54. Where land is subject to a charge, no lease of that land may be registered without the prior consent in writing of the proprietor of the charge, unless the charge expressly dispenses with the necessity for that consent.

Date of commencement of lease

55.(1) Where the period of a lease is expressed as commencing on a particular day, that day shall not be included in the computation of the period.

(2) Where no commencement date is specified in a lease, the period of the lease commences on the day after the date of execution of the lease.

(3) Where the period of a lease is a year or a number of years, in the absence of an express agreement to the contrary, the lease shall continue throughout the whole of the anniversary of the day on which such period commences.

Future leases

56. A lease may be granted to take effect in possession not later than 12 months after its date, or in reversion after an existing lease having not more than 7 years to run at the date of the new lease.

Holding over

57.(1) Where a person having lawfully entered into occupation of land as a lessee continues, with the consent of the lessor, to occupy that land after the

termination of the lease, he shall, in the absence of evidence to the contrary, be deemed to be a tenant holding that land on a periodic tenancy on the same conditions as those in the lease, so far as such conditions are appropriate to a periodic tenancy.

(2) For the purposes of this section, the acceptance of rent in respect of any period after the termination of a lease shall, if the former lessee is still in occupation and subject to an agreement to the contrary, be evidence of consent to the continued occupation of the land.

Lessor's implied covenants

58. There shall, subject to any provisions to the contrary, be implied in every lease a covenant by the lessor with the lessee —

- (a) to give quiet enjoyment of the land forming the subject matter of the lease without interruption by the lessor or any person rightfully claiming through him;
- (b) not to use or permit the use of adjoining or neighbouring land in the possession or control of the lessor in a manner that renders the leased land unfit for the purpose for which it is leased;
- (c) to keep in repair the roof, main walls and main drains and where part only of the building is leased, the common passage and common installations;
- (d) in the case of a lease of a dwelling house or part thereof, that the house or the part thereof is fit for human habitation at the commencement of the tenancy;
- (e) to repair the leased premises in the case of destruction by fire, earthquake, hurricane, flood or riot;
- (f) to pay the rates, taxes, and other outgoings.

Lessee's implied covenants

59. There shall, subject to any provisions to the contrary, be implied in every lease a covenant by the lessee with the lessor

- (a) to pay the rent reserved by the lease;
- (b) in the case of a lease of agricultural land, to farm that land in accordance with the rules of good husbandry;
- (c) to keep the interior of the leased premises in good repair, reasonable wear and tear excepted;
- (d) when the lease is of furnished premises, to keep the furniture in as good condition as it was at the commencement of the lease, reasonable wear and tear only excepted, and to replace such articles as are lost, destroyed or so damaged as to be beyond repair with articles of equal value to those so lost, destroyed or damaged;
- (e) to permit the lessor or his agent to enter and inspect the premises;
- (f) not to transfer, charge, sublet or otherwise part with the possession of the leased premises or any part thereof without the written consent of the lessor.

Repair

60.(1) For the purposes of this Act, "repair" means the state of repair in which a prudent owner might reasonably be expected to keep his property, due allowance being made for the age, character and location of the premises at the commencement of the lease.

(2) Nothing in this section shall be construed as requiring a lessee to put a building in a better state of repair than that in which it was at the commencement of the lease.

Forfeiture

- 61.(1)** The right of forfeiture may
- (a) be exercised, where neither the lessee nor any person claiming through or under him is in occupation of the land, by entering upon the land and remaining in possession thereof; or
 - (b) be enforced by action before a court.
- (2) A lessor may, subject to section 63 and any provision to the contrary in the lease, forfeit the lease if the lessee
- (a) commits a breach of an agreement or condition on his part expressed or implied in the lease;
 - (b) is adjudicated bankrupt; or
 - (c) being a company, goes into liquidation.
- (3) The right to forfeit shall be construed as having been waived where the lessor
- (a) accepts rent that has become due since the breach that gave rise to forfeiture;
 - (b) by some positive act shows an intention to treat the lease as subsisting, and
- is, or should by reasonable diligence have become, aware of the commission of the breach.
- (4) The acceptance of rent after the lessor has commenced an action by virtue of subsection (1) shall not be construed as being a waiver of the right of forfeiture.
- (5) The forfeiture of a lease terminates every sublease or other interest relating to that lease appearing on the register.

(6) Notwithstanding subsection (5)

(a) where the forfeiture is set aside by the court on grounds of fraud on the sublessee; or

(b) where the court grants relief against forfeiture under section 63,

every sublease or other interest relating to that lease shall be deemed to be subsisting.

Notice before forfeiture

62. Notwithstanding anything to the contrary contained in a lease, a lessor is not entitled to exercise the right of forfeiture for the breach of any agreement or condition in the lease until

(a) the lessor has served on the lessee a notice

(i) specifying the breach complained of,

(ii) if the breach is capable of remedy, requiring the lessee to remedy the breach within such reasonable period as is specified in the notice, and,

(iii) in any case other than of non-payment of rent, requiring the lessee to make compensation in money for the breach; and

(b) the lessee has failed

(i) to remedy the breach within a reasonable time, if it is capable of being remedied, or

(ii) to make reasonable compensation in money.

Relief against forfeiture

63.(1) A lessee upon whom a notice has been served under section 62 or against whom the lessor enforces his right of forfeiture by action or re-entry may apply to the court for relief, and the court may, having regard to

(a) the proceedings;

- (b) the conduct of the parties; and
 - (c) all the circumstances of the case,
- grant relief on such terms as it thinks fit.
- (2) The court may, on the application of any person claiming as sublessee or chargee any interest in the property comprised in the lease for which forfeiture is sought, make an order vesting the property so claimed in that sublessee or chargee for the period of the lease.
- (3) Nothing in subsection (2) applies to a forfeiture arising from a breach
- (a) to which the sublessee is a party; or
 - (b) of an express provision against subletting, parting with possession or disposing of the property leased.

Variation and extension of leases

64.(1) Subject to section 62, the conditions contained in or implied by a registered lease may be varied or negated, and the term of such lease may be extended by an instrument executed by the parties.

(2) A lease extended under subsection (1) shall be registered under this Act before the commencement of a period of extension.

Substitution of leases

65. Where a lease respecting land is submitted to the Registrar for registration and the Registrar is satisfied that the lessee is the person registered as the proprietor of a prior lease in respect of the same land, he shall cancel the registration of the prior lease and register the new lease subject to the encumbrances registered against the prior lease.

Underleases

66.(1) A proprietor of a registered lease may, subject to that lease, grant an underlease in the prescribed form for any period less than the remainder of the registered lease.

(2) Except as otherwise expressly provided in this Act, the provisions of this Act affecting leases apply to subleases, sublessors and sublessees with such adaptations as are necessary.

(3) Where a lease is terminated by the operation of law or act of the parties, any underlease relating to that lease thereupon terminates.

(4) In addition to the agreements specified by this Act to be implied in leases, there shall be implied in every sublease under this Act an agreement by the sublessor that he will, during the continuance of the sublease, pay the rent reserved by the lease under which the sublessor holds, and observe and perform the agreements and conditions thereof.

(5) Where a sublessee has paid to the sublessor's lessor the rent or any part of the rent payable by the sublessor under the lease under which the sublessor holds, the sublessee shall be entitled to set off any sum so paid against the rent payable by him to the sublessor in respect of the sublease.

Surrender of lease

67.(1) Where a lease is surrendered by agreement of parties, the lessee shall submit to the Registrar

- (a) an instrument in the prescribed form; or
- (b) the lease or a copy thereof containing an inscription indicating the surrender.

(2) Upon receipt of the instrument, lease or copy thereof referred to in subsection (1), the Registrar shall cancel the registration of the lease with effect from the date of the surrender.

(3) A lease that is subject to a charge or under-lease may not be surrendered without the written consent of the estate owner of the charge or under-lease.

Determination of leases

68.(1) A lease and every other interest relating to that lease appearing on the register terminates where

- (a) the period for which the property is leased expires;
- (b) an event upon which a lease is expressed to terminate occurs;
- (c) a lessor lawfully re-enters; or
- (d) a notice terminating the lease has expired and the lessor has recovered possession of the property,

and the lessor may apply in writing to the Registrar for cancellation of registration of that lease or interest.

(2) An application under this section shall contain a recital of the matter giving rise to the determination, and the Registrar on being satisfied of the matters set forth in the notice shall cancel the registration of the lease.

Compliance with prescribed form

69. Where application is made to the Registrar to register a lease, he shall so register it if

- (a) it is in the prescribed form or such other form as he approves; and
- (b) in the case of a sublease, every lease superior thereto complies with paragraph (a) and is registered in priority to the sublease.

PART VIII
CHARGES

Form of charge

70.(1) A proprietor may, by instrument in the prescribed form, charge his land, lease or charge for the purpose of securing the payment of an existing, future or contingent debt or other money or money's worth or the fulfilment of a condition.

(2) A date on which the money secured by a charge is to be repaid may be specified in the charge, but where no such date is specified or repayment is not demanded by the chargee on the date specified, the money shall be deemed to be repayable within 3 months after the service of a demand in writing by the chargee.

(3) There shall be included in an instrument securing the fulfilment of a condition or the payment of an annuity or other periodical payment, not in the nature of interest on a capital sum, such provisions as the parties think fit for disposing, subject to section 84, of the money that may accrue from the exercise by the chargee of his power of sale.

(4) The provisions referred to in subsection (3) may include

- (a) the setting aside of the proceeds of sale or part thereof and the investment thereof for the purpose of making future periodical payments; or
- (b) the payment to the chargee of part of the proceeds equal to the amount of the estimated capital value of the chargee's interest.

Registration of charge

71. The Registrar shall, on an application being made to him for registration of a charge

- (a) file the instrument by which the charge is created;

- (b) register the charge as an encumbrance respecting the charged property; and
- (c) *issue the applicant on payment of the prescribed fee a certificate of charge containing all the subsisting entries in the Register affecting the land or lease to which the certificate relates together with a copy of the plan filed under section 19(6).*

[Act 1988-12 which adds paragraph (c) to section 71 has not been proclaimed.]

[1988-12]

Effect of charge

72. A charge has effect as a security only, and does not operate as a transfer.

Second or subsequent charges

73.(1) A person whose land, lease or charge is subject to a charge may create a second or subsequent charge on that land, lease or charge.

(2) A second or subsequent charge shall be in accordance with section 70, except that a sale under a power expressed or implied in a charge shall be subject to all prior charges unless they have been discharged.

Payment of interest and principal

74. Where a payment is made by a chargor in respect of the charge, the payment shall be applied towards the satisfaction of interest due and payable at the time of the payment, and the excess, if any, towards satisfaction of the principal money.

Covenants implied in a charge

75. There shall be implied in every charge, subject to express provisions to the contrary, agreements by the chargor with the chargee

- (a) to pay the principal money on the day therein appointed, and, so long as the principal money or any part thereof remains unpaid, to pay interest thereon or on the part remaining unpaid, as the case may be, at the rate and in the manner therein specified;
- (b) to pay the rates, taxes and other outgoings that are at any time payable in respect of the charged property;
- (c) to repair and keep in repair all buildings and other improvements on the charged land or comprised in the charged lease, and to permit the chargee or his agent to enter at all reasonable times and inspect the state of such building or improvements thereto;
- (d) to insure to the full replacement cost thereof in the joint names of the chargor and chargee with insurers approved by the chargee all buildings on the charged land or comprised in the charged lease against loss or damage by fire, hurricane or earthquake;
- (e) in the case of a charge of agricultural land, to farm the land in accordance with the rules of good husbandry;
- (f) not to lease the charged land or any part thereof or sublease the whole or any part of the land comprised in the charged lease for any period longer than 1 year without the prior consent in writing of the chargee, which consent shall not be unreasonably withheld;
- (g) not to transfer the charge, land or lease charged, or any part of the land, without the prior consent in writing of the chargee, which consent shall not be unreasonably withheld;

- (h) during the continuance of a charge of a lease
 - (i) to pay the rent reserved by the lease, observe the agreements and perform the conditions thereof,
 - (ii) to keep the chargee indemnified against all proceedings, expenses or claims on account of the non-payment of rent or any part thereof or of breach of those agreements or conditions, and
 - (iii) if the lessee has an enforceable right, to renew the lease;
- (i) where the charge is a second or subsequent charge, that the chargor will pay the interest accruing due on each prior charge when it becomes due, and will, at the proper time repay and the principal money due on each prior charge. and
- (j) where the chargor fails to comply with any of the agreements implied by paragraph (b), (c), (d), (e), (h), or (i), that the chargee may spend such money as is necessary to remedy the breach, and the amount so spent shall be deemed to be part of the principal money secured by the charge, but shall be payable on demand.

Chargee's consent to transfer

76. Where a charge contains an agreement, express or implied, by the chargor with the chargee that he will not transfer the land or any part thereof, the lease or charge without the written consent of the chargee, the agreement shall be noted in the register and no transfer by the chargor shall be registered until the written consent of the chargee has been submitted to the Registrar.

Variation of charges

77. The amount secured, method of repayment, rate of interest or terms of the charge may be varied by the registration of an instrument of variation executed by the parties to the charge, but no such variation shall affect the rights

of the proprietor of any subsequent charge unless he has consented to the variation in writing on the instrument of variation.

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Right of redemption

78.(1) A chargor may on

- (a) payment of all money due and owing under the charge at the time of payment;
- (b) fulfilment of any obligation, whether arising out of a condition or a contract; and
- (c) payment of any costs or expenses properly incurred by the chargee in exercising a power conferred on him by section 80,

redeem the charged land, lease or charge at any time before it is sold under section 83, and any agreement or provision that purports to deprive a chargor of his right of redemption is void.

(2) For the purposes of this section, land, a lease or charge, shall be deemed to have been sold where a bid is accepted at a sale by auction.

(3) A chargor may redeem a charge, a lease, or land subject to a charge before the date for payment specified in the charge, if he pays to the chargee in addition to any other money then due and owing under the charge, the interest on the principal money secured thereby for the unexpired portion of the term of the charge.

(4) Where a chargor desires to redeem the charged land, lease or charge after the date specified in the charge, or where no such date is specified, he shall

- (a) give to the chargee 3 months' notice; or
- (b) pay to the chargee 3 months' interest in lieu of notice.

(5) Where a chargor desires to repay the money secured by a charge and the chargee is beyond the seas or cannot be found, or the Registrar is satisfied that

the charge cannot be discharged otherwise, the chargor may deposit the amount due with the Registrar in trust for the person entitled thereto, and

- (a) the obligations of the chargor under the charge shall thereupon cease; and
- (b) the Registrar shall
 - (i) cancel the registration of the charge, and
 - (ii) pay the amount deposited to the chargee, if he applies therefor within 6 years of the date on which the deposit is made.

(6) Where after the expiration of 6 years the deposit referred to in subsection (5) has not been paid to the chargee, the Registrar shall pay it into the Consolidated Fund.

Right of third party to transfer of charge

79. Any

- (a) person, other than a chargor, having an interest in the charged lease, land or charge;
- (b) surety for the payment of the amount secured by a charge; or
- (c) creditor of a chargor in possession of an order for the sale of the charged land, lease or charge,

may, on tendering to the chargee the amount that would have been payable to the chargee in redemption of the charge under section 78, require the chargee to transfer the charge to him.

Remedies of chargee

80.(1) Where default is made in

- (a) the payment of the principal money, interest thereon or other periodical payment or part thereof; or

- (b) the performance or observance of an agreement expressed or implied in a charge,

and in either case, the default continues for a period exceeding 30 days, a chargee may serve on a chargor a notice in writing requiring him to pay the money owing, or perform or observe the agreement.

(2) Where a chargor fails, within 3 months, to comply with a notice served on him under subsection (1), the chargee may appoint a receiver of the income of the charged property, or, subject to subsection (3), sell that property.

(3) Where a chargee has appointed a receiver, a power of sale under subsection (2) is not exercisable before a period of 6 months has elapsed since service of the notice under subsection (1).

(4) The money secured by a charge is recoverable at the suit of a chargee where

- (a) by any cause, other than the wrongful act of the chargor or chargee, the property charged is destroyed or damaged;
- (b) the security is rendered insufficient and the chargor has failed to provide, within a reasonable time, other sufficient security; or
- (c) the chargee is deprived of the whole or part of the security by or in consequence of the wrongful act or default of the chargor.

Appointment, powers, duties and remuneration of receiver

81.(1) The appointment of a receiver in accordance with subsection 80(2) shall be in writing signed by the chargee, and a copy thereof shall be filed with the Registrar.

(2) The appointment of a receiver in accordance with subsection (1) may be revoked at any time by notice given in writing, and a new receiver appointed in his place.

(3) A receiver appointed in accordance with this section shall be the agent for the chargor for the purposes for which he is appointed, and the chargor shall be

responsible for the act or default of the receiver unless the charge otherwise provides.

(4) A receiver may demand and recover in the name of the chargor all the income with respect to which he is appointed receiver and give receipts therefor.

(5) A person paying money to a receiver shall not be concerned to inquire into the validity of his appointment.

(6) Subject to subsection (8), a receiver is entitled to retain out of money received by him all costs, charges and expenses incurred by him as a receiver, and a commission at a rate not exceeding 10 per cent on the gross amount of all moneys received, or such other rate as the chargor and chargee and other chargees, if any, agree, or the court, on application made for that purpose by the receiver, allows.

(7) A receiver shall apply insurance money in making good any loss or damage in respect of which that money is received.

(8) Notwithstanding subsection (7), a receiver shall apply all moneys received by him in the following order

- (a) in discharge of all rents, rates, taxes, and outgoings affecting the property charged;
- (b) in making payments towards all annual sums or other payments, and the interest on all principal sums having priority to the charge;
- (c) in payment of his commission, costs, charges, expenses, the premiums on the insurance of the property and costs of executing repairs directed in writing by the chargee;
- (d) in payment of the interest accruing due in respect of the principal money due under the charge; and
- (e) in or towards the discharge of the money secured by the charge, if so directed in writing by the chargee, and

shall pay the residue, if any, of the money received by him to the person who, but for the appointment of the receiver, would have been entitled to receive the income or who is otherwise entitled to the charged property.

Chargee's power of leasing

82.(1) A proprietor of a charge on land or a lease who has appointed a receiver under this Part may, except the charge otherwise provides

- (a) grant leases in respect of the property charged;
 - (b) for the purposes of enabling a lease authorised by subsection (2) to be granted, accept the surrender of leases; and
 - (c) for the purposes of this section, execute in the stead of the chargor any instrument required to effect such lease or surrender.
- (2) A lease granted by a chargee shall
- (a) take effect in possession within 12 months after its date;
 - (b) reserve the best rent obtainable without the taking of a fine;
 - (c) be for a term not exceeding 21 years; and
 - (d) contain a declaration by the chargee that he has appointed a receiver on the date specified in the declaration.

Chargee's power of sale

83.(1) Where a chargee exercises his power of sale, he shall act in good faith and have regard to the interest of the chargor.

(2) Where a chargor is in possession of charged land or land comprising the subject-matter of a lease, the chargee, upon the acceptance of a bid at a sale by auction, becomes entitled to obtain possession of the land.

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(3) A transfer by a chargee in exercise of his power of sale shall be in the prescribed form and shall be filed with the Registrar within 14 days of the date of the transfer.

- (4) A transfer by a chargee in the prescribed form is sufficient evidence that the power of sale has been properly exercised, and any person suffering damage by an irregular exercise of the power has a remedy in damages against the person exercising the power.
- (5) Upon the registration of a transfer under subsection (3), the interest of the chargor as described therein vests in the transferee free of all encumbrances arising out of the charge or to which the chargee has priority, other than any lease, easement, or profit subsisting at the time when the charge was effected or to which the chargee consented in writing.
- (6) A chargee, in exercising his powers of sale, has the same rights and powers respecting easements and restrictive covenants as are conferred on a proprietor by sections 98 and 99.

Application of purchase money

84. A chargee who has sold the charged property shall, on receiving the purchase money, discharge all prior encumbrances to which the sale has not been made subject, or pay into court a sum sufficient to discharge all such encumbrances, and the remainder of the purchase money, if any, shall be applied in the following order

- (a) in payment of all costs and expenses properly incurred by the sale;
- (b) in accordance with any express provision in the charge, or, in the absence of such provision, in the discharge of the money due to the chargee at the date of the sale;
- (c) in payment of subsequent charges, if any, in the order of their priority; and
- (d) in payment of the residue to the person who immediately before the sale was entitled to redeem the charged land, lease or charge.

Discharge of charge

85.(1) A charge may be discharged by instrument in the prescribed form.

(2) Where a charge is discharged, the instrument of discharge or the endorsement executed by the chargee shall be filed in the Land Registry, and the Registrar shall thereupon cancel the charge in the register.

Satisfaction of charge

86. Where the Registrar is satisfied

- (a) that all money due under a charge has been paid to the chargee or by his direction; or
- (b) that there has occurred the event upon which, in accordance with the provisions of the charge, the money thereby secured ceases to be payable,

he shall cause an entry cancelling the charge to be made in the register.

Tacking and further advances

87. Where a charge contains provisions for the making of further advances or the giving of credit to the chargor on a current or continuing account, such further advances or credit shall rank in priority to any subsequent charge if provisions to that effect have been noted in the register, or the written consent of the proprietor of the subsequent charge is given.

Consolidation

88. A chargee may consolidate his charges where

- (a) the right to consolidate is reserved in one or more of the charges; and
- (b) the right is noted in the register against all of the charges so consolidated.

No lien by deposit only of certificate

89. Subject to subsection 41(1), a certificate may be deposited with any person with the intention of creating an equitable interest over the land, lease or

charge referred to therein, but a deposit so made shall have no effect against the land, lease or charge until a caution in the prescribed form has been registered.

PART IX TRANSFERS

Transfers

90.(1) A proprietor may, by instrument in the prescribed form, transfer, with or without consideration, his land, lease or charge to any other person.

(2) A transfer is of no effect unless the instrument creating the transfer is filed with the Registrar.

(3) Where an instrument of transfer and the prescribed fee are submitted to the Registrar, he may register the transferee as the proprietor of the property transferred.

(4) A transferee of a charge may require the chargor to execute the transfer for the purpose of acknowledging the amount due under the charge at the date of execution of the transfers.

Unregistrable transfers

91. A transfer to take effect on the occurrence of an event, on the fulfilment of a condition or at a future time is not registrable.

Void limitation

92. A limitation purporting to restrain absolutely a transferee or any person claiming through him from disposing of the interest transferred to him is void.

Transfer of part

93.(1) A proprietor who wishes to transfer part of his land shall first subdivide that land.

(2) A transfer under subsection (1) is of no effect unless new folios have been opened in the register in respect of each subdivision.

Warranty and agreement on transfer of lease

94. There shall be implied on a transfer of a lease, unless the contrary is expressed in the transfer

- (a) a warranty on the part of the transferor that the transferor has paid the rent, performed the agreements and observed the conditions on his part up to the date specified in the transfer, or, if no such date is specified, the date of the transfer; and
- (b) an agreement on the part of the transferee to pay the rent from the day following the date specified in the transfer or the date of the transfer, as the case may be, and to perform and observe the agreements and conditions in the lease.

Effect of transfer on agreements in lease

95.(1) Subject to subsection (2), a transferee from a lessor or lessee shall possess all the rights and be subject to all the liabilities, express or implied, in the lease or arising thereunder, of the lessor or lessee, as the case may be, and the transferor shall, upon the transfer being made, cease to be under any obligation or possessed of any right in respect of the lease.

(2) Nothing in subsection (1) affects the rights or liabilities of the lessor or lessee, as the case may be, in respect of a breach of any of the agreements expressed or implied in a lease that occurred before the transfer.

Transfer subject to charge

96. There shall be implied in a transfer of land or a lease subject to a charge an agreement by the transferee with the transferor

- (a) to pay the interest secured by the charge at the rate, at the times and in the manner, specified in the charge; and

- (b) to keep the transferor indemnified against
 - (i) the principal sum secured by the charge, and
 - (ii) all liability in respect of any of the agreements on the part of the transferor therein contained or implied,

unless there is express provision to the contrary.

Transfer subject to lease

97. A transfer of land that is subject to a lease is valid notwithstanding that the lessee has not acknowledged the transferee as lessor, but nothing in this section

- (a) affects the validity of any payment of rent by the lessee to the transferor; or
- (b) renders the lessee liable, on account of his failure to pay rent to the transferee for any breach of agreement to pay rent,

before notice of the transfer is given to the lessee by the transferee or transferor.

PART X

EASEMENTS, PROFITS, RESTRICTIVE COVENANTS AND LICENCES

Easements

98.(1) A proprietor may, by an instrument in the prescribed form, grant an easement over his land or the land comprised in his lease to the proprietor or lessee of other land for the benefit of that other land.

- (2) A person transferring a lease or granting a lease of land may, in the transfer or lease
 - (a) grant, for the benefit of the land transferred or leased, an easement over; or

(b) reserve an easement for the benefit of,
the land retained by him.

(3) An instrument creating an easement shall, in relation to that easement, specify

- (a) the nature thereof;
- (b) the period for which it is granted;
- (c) the restrictions on its enjoyment;
- (d) the servient tenement;
- (e) the dominant tenement, and

if, the Registrar so requires, include a plan that satisfactorily defines the easement.

(4) A grant or reservation of an easement shall be completed by

- (a) its registration in the encumbrances section of the servient tenement and in the property section of the dominant tenement; and
- (b) the filing of the instruments.

(5) An easement granted by the proprietor of a lease is capable of existing only during the subsistence of the lease.

Restrictive covenants

99.(1) Where an instrument, other than a lease or charge, containing a covenant by one proprietor restricting the enjoyment of his land for the benefit of the proprietor of other land is submitted to the Registrar, he shall

- (a) note the restrictive covenant in the encumbrances section of the register of the servient land by
 - (i) entering particulars of the covenant, or
 - (ii) referring to the instrument containing the covenant; and

- (b) file the instrument.
- (2) A restrictive covenant is void as against a purchaser for value unless it is noted in the register in accordance with subsection (1).
- (3) The note of a restrictive covenant in the register does not give the restrictive covenant any greater force or validity than it would have had if it had not been registrable under this Act and had not been noted.
- (4) In so far as a restrictive covenant is capable of taking effect, not only the proprietor, but also their successors in title shall be entitled to the benefit and subject to the burden of it, unless the instrument otherwise provides.

Profits

- 100.(1)** A proprietor of land or a lease may, by an instrument in the prescribed form, grant a profit to another person.
- (2) An instrument containing a grant of a profit shall specify
 - (a) the nature of the profit;
 - (b) the period for which it is to be enjoyed;
 - (c) whether it is to be enjoyed in gross or appurtenant to other land or a lease; and
 - (d) whether it is to be enjoyed by the grantee exclusively or in common with the grantor.
 - (3) Subject to section 41(1), an instrument creating a profit is of no effect unless it is registered in accordance with this Part.
 - (4) Where an application for registration of a profit is made to the Registrar, he shall
 - (a) register the profit in the register as an encumbrance of the land or lease that it affects;

- (b) where it is appurtenant to other land or a lease, register the profit in the property section of the register of the land or lease to which it is appurtenant; and
 - (c) file the instrument.
- (5) A profit which is not appurtenant to land may be dealt with as if it were land.
- (6) A profit granted by the proprietor of a lease shall be capable of subsisting only during the subsistence of the lease.

Extinguishment of easements, profits and restrictive covenants

101.(1) Where a release executed in the prescribed form is submitted to the Registrar, he shall cancel the registration of the easement, profit or restrictive covenant specified in the release, and thereupon that easement, profit or restrictive covenant, as the case may be, shall be extinguished.

(2) A person affected by the registration of a restrictive covenant may apply in writing to the Registrar for cancellation or modification of such registration where the court has made an order in relation to a restrictive covenant under section 196 of the *Property Act*, Cap. 236; and the Registrar shall cancel or modify the registration on production of the order.

Licences

102. Notwithstanding section 129, a licence is not registrable, but a licence relating to land is of no effect against a *bona fide* purchaser for valuable consideration unless the licensee has protected his interest by lodging a caution under that section.

Natural rights

103. Nothing in this Act shall be construed as derogating from the natural right to support, light, air or access to a highway appertaining to any land nor

from such ancillary rights as are necessary for effective enjoyment of an easement.

PART XI
CO-OWNERSHIP AND PARTITION

Registration of co-owners

104.(1) Two or more persons may be registered as the proprietors of land, a lease or charge.

- (2) An instrument made in favour of co-owners shall specify
- (a) whether the proprietors hold jointly or in common; and
 - (b) where the proprietors are proprietors in common, the share of each proprietor.
- (3) The number of persons that may be registered as co-owners shall not exceed 4, and the interests of co-owners not registrable under this Act take effect in equity.

Joint proprietorship

105.(1) Where land, a lease or charge is owned jointly, a co-owner is not entitled to a separate share in the land, lease or charge, and

- (a) a disposition thereof may be made only by all the joint proprietors; and
 - (b) on the death of a co-owner his interest shall vest jointly in the surviving proprietors.
- (2) A sole proprietor may transfer the land, lease or charge jointly to himself and any other person.
- (3) A joint proprietor may transfer his interests in land, a lease or charge to the other joint proprietors.

(4) Joint proprietors, not being trustees, may, by an instrument in the prescribed form, sever the joint proprietorship, and the Registrar shall thereupon

- (a) enter the names of the several proprietors as proprietors in common in equal shares in the register; and
- (b) file the instrument.

Proprietorship in common

106.(1) Where land, a lease or charge is owned in common, each proprietor is entitled to an undivided share in the whole, and on the death of a proprietor his share shall be administered as part of his estate.

(2) A proprietor in common may with the consent of the other proprietors, deal with his undivided share in favour of any other person, and that consent shall not be unreasonably withheld.

Partition of land owned in common

107.(1) Subject to the *Town and Country Planning Act*, Cap. 240, an application for partition of land owned in common may be made in the prescribed form to the court

- (a) by any one or more of the proprietors; or
- (b) by any person in whose favour an order of a court has been made for the sale of an undivided share in land.

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(2) Where land is partitioned, the Registrar shall

- (a) cancel the registration of that land;
- (b) effect separate registration of the respective proprietors in accordance with their agreement, or, in the absence of agreement, in such manner as he may direct; and

- (c) file the order referred to in subsection (1)(b) or the agreement referred to in subsection (2)(b).

Order for sale

108.(1) Where

- (a) a proprietor in common makes an application to the Registrar for a partition of any land for the purpose of selling his share in the land; and
- (b) in the opinion of the Registrar or the Chief Town Planner, partition would adversely affect the use of that land,

the Registrar shall, in default of any agreement between the proprietors in common, value the land and the shares therein and order a sale of the land or the shares therein by public auction, or make such other order as he thinks fit.

- (2) A proprietor in common is entitled to purchase, at an auction or by private treaty, land or any share referred to in subsection (1).

Partition of common property under the Condominium Act

109. Nothing in section 106 or 107 shall override the provisions of section 31 of the *Condominium Act*, Cap. 224A, in relation to the partition of common property within the meaning of the expression in that Act.

PART XII

INSTRUMENTS

Form of instrument

110.(1) Every disposition of land, a lease or charge shall be effected by an instrument

- (a) in the prescribed form; or
- (b) in a form approved by the Registrar.

- (2) A lease or charge shall be submitted for registration in triplicate.
- (3) An instrument by which a disposition or charge is effected shall contain a true statement of the amount or value of the purchase price or loan or other consideration and an acknowledgement of the receipt of the consideration.

Execution of instrument

- 111.(1)** An instrument by which a disposition of land is effected or that is evidence of such disposition shall be executed by
- (a) all the persons shown by the register to be proprietors of the interest affected; and
 - (b) all other parties to the instrument.
- (2) The Registrar may, if he thinks fit, dispense with execution by a party, other than a donee under a disposition by way of gift.

Disposal of instruments

- 112.(1)** Subject to subsection (2) and section 114, an instrument submitted to the Registrar shall be retained in the Land Registry while it continues to be evidence of an entry in the register and for 6 years thereafter.
- (2) Where a lease or charge is registered, particulars of the registration shall be noted on the duplicate and triplicate thereof, and the duplicate and triplicate shall be returned to the person by whom they were submitted.
- (3) Nothing prevents the Registrar from ceasing to retain an instrument after 6 or more years have expired since the entry to which the instruments relate has been superseded or has ceased to have effect.

PART XIII
MINORS, AGENTS AND PERSONS UNDER DISABILITY

Minors

113.(1) A minor may be registered as proprietor on the first registration under this Act or on transmission.

(2) Nothing in this section enables a minor to make a disposition of land or any interest in land by virtue of a registration under subsection (1).

(3) The Registrar shall, where to his knowledge a minor is registered as an estate owner under this Act, enter a restriction against any dealing with the land.

(4) The registration of a disposition by a person whose minority was not disclosed to the Registrar may not be set aside on grounds only of such minority.

Person under disability

114.(1) The Registrar may, subject to subsection (2), accept any document or application submitted to him on behalf of a minor, a person of unsound mind, or a person under any other disability, by a guardian of that person.

(2) Where a document is submitted by a guardian referred to in subsection (1), the Registrar shall

- (a) satisfy himself that the guardian is entitled to execute that document or make the application; and
- (b) file a note of the explanation on which he relies or a copy of the appointment of the guardian.

Gift to a person under disability

115. A person under a disability who has been registered as a proprietor of land, a lease or charge, acquired by him by way of a gift may, within 6 months

after he ceases to be under disability, repudiate the gift if he has not already disposed of the subject-matter thereof, but no such repudiation is effective until

- (a) he has transferred the land, lease, or charge to the donor or his personal representative; and
- (b) the transfer is registered.

Power of attorney

116.(1) Where the donor or donee of a power of attorney that contains a power to dispose of an interest in land applies to the Registrar for registration of the power, the Registrar shall make an entry in the register of the names of the donor and donee of the power, and file the power or a certified copy thereof.

(2) A power of attorney shall be in the prescribed form.

(3) The donor of a power filed in accordance with subsection (1) may give notice to the Registrar that he has revoked the power and thereupon

- (a) the Registrar shall file the notice; and
- (b) the power ceases to have effect.

(4) Any interested person may give notice in writing to the Registrar that a power of attorney filed under subsection (1) has been revoked by the death, bankruptcy or disability of the donor, or by the death or disability of the donee.

(5) A notice given under subsection (4) shall be accompanied by such evidence as the Registrar requires.

(6) The Registrar may enter a revocation in the register and file the notice relating to the revocation.

(7) Subsections (3), (4), (5) and (6) do not apply to a power of attorney given for valuable consideration if that power is, by virtue of its terms, irrevocable.

Effect of registration of power of attorney

117.(1) A power of attorney that is registered in accordance with section 116 and with respect to which no notice of revocation is registered under that section shall be construed as subsisting with respect to any person acquiring land or any interest in land affected by the exercise of the power for valuable consideration without notice of revocation of the power, or to any other person deriving title through such person.

(2) A person making a payment or doing an act in pursuance of or in reliance on a power of attorney registered under section 116 is not liable in respect of the payment or act by reason only of the prior death, disability or bankruptcy of the donor of the power or the prior revocation of the power, if the fact of death, disability, bankruptcy or revocation was not at the time of the payment or act known to the person making or doing the payment or act, and such act or payment is accordingly as effectual as if none of the said events had occurred.

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PART XIV
TRANSMISSIONS

Transmission on death of co-owner

118.(1) The Registrar shall, on submission to him of evidence of the death of a joint proprietor of land, a lease or a charge, delete from the register the name of that proprietor.

(2) The Registrar may, on application to him in the prescribed form and on submission of a grant of probate of a will or of letters of administration

- (a) register by transmission as proprietor in place of the deceased a personal representative; or
- (b) register
 - (i) a transfer by the personal representative, or

- (ii) a surrender of a lease or discharge of a charge by the personal representative,

without registering the personal representative.

Transmission by death

119. Where pursuant to a will or upon the intestacy of a deceased person land, a lease or charge is registered in the name of, or is acquired by, a beneficiary or personal representative of the deceased, the person registered shall, for the purpose of any dealing with the land, lease or charge, be deemed to have acquired it for valuable consideration, and the land, lease or charge may be dealt with and shall be subject to all unregistered liabilities, rights or interests affecting the title of, or created or imposed under the will of, the deceased owner.

Transmission on bankruptcy

120.(1) Where a trustee in bankruptcy submits to the Registrar a certified copy of an order of a court adjudging a proprietor bankrupt, or directing that the estate of a deceased proprietor shall be administered according to the laws of bankruptcy, the Registrar shall

- (a) register that trustee as proprietor of the land, lease or charge of which the bankrupt or deceased was proprietor; and
- (b) file the copy of the order in the Land Registry.

(2) A trustee in bankruptcy shall hold any land, lease or charge in respect of which he is registered as proprietor subject to

- (a) the law relating to bankruptcy;
- (b) an order of the court; and
- (c) any liabilities, rights or interests that are unregistered, but nevertheless enforceable and subject to which the bankrupt or deceased proprietor held,

but for the purpose of any dealing with that land, lease or charge, the trustee in bankruptcy shall have all the rights and be subject to all the limitations conferred or imposed on a proprietor who has acquired land, a lease or a charge for valuable consideration.

Liquidation

121.(1) A liquidator shall, where a company is being wound up, produce to the Registrar the resolution or order containing his appointment, and the Registrar shall thereupon

- (a) register the liquidator in respect of any land, lease or charge of which the company is registered as proprietor; and
 - (b) file in the Land Registry a copy of the resolution or order.
- (2) An instrument
- (a) executed by or on behalf of a company in liquidation; and
 - (b) delivered for registration after the appointment of a liquidator has been registered under subsection (1),

shall be sealed with the common seal of the company and affixed and attested by the liquidator.

Transmission by compulsory acquisition or order of court

122. Where the Crown or a person is entitled to land, lease or charge under an enactment or by virtue of an order of a court, the Registrar shall, upon receipt of a notice in such form as he approves, register the Crown or that person as the proprietor of the land, lease or charge.

PART XV

TRUSTS

Trusts

123.(1) The Registrar shall, when registering a fiduciary owner of any land, lease or charge, make a note that such owner holds as a trustee, but the Registrar shall not enter in the register the particulars of the trust.

(2) An instrument creating a trust or a copy thereof certified by the Registrar may be deposited for safe custody in the Land Registry, but such instrument or copy is not part of the register.

(3) Where a proprietor of land, a lease or charge is a trustee, he shall hold the land, lease or charge subject to any unregistered liabilities, rights or interests to which that land, lease or charge is subject by virtue of the instrument creating the trust, but for the purposes of any registered dealing —

- (a) he shall be deemed to be the absolute proprietor;
- (b) a person dealing in good faith for valuable consideration shall not be deemed to have notice of the trust; and
- (c) a breach of trust shall not create a right to indemnity under this Act.

Survivorship of trustee

124. Where two or more persons are registered jointly as trustees and on the death of the other trustees the surviving trustee is not entitled to the sole exercise of the powers vested in him, the Registrar shall enter a restriction in the register.

Law relating to settlements

125. Part III of the *Property Act*, Cap. 236, applies to any land, lease or charge registered under this Act where the land, lease or charge is the subject of a settlement.

PART XVI
INHIBITIONS, CAUTIONS AND RESTRICTIONS

Power of court to inhibit registered dealings

126.(1) The court may make an order (hereinafter referred to as “an inhibition”) prohibiting, for a specified time or generally until a further order, the registration of any dealing with any land, lease or charge.

(2) A copy of an inhibition under the seal of the court shall be served upon the Registrar, who shall thereupon register it, and no inhibition shall affect the land, lease or charge until it is registered.

Effect of inhibition

127. Where an inhibition is registered, the Registrar may not register an instrument that is inconsistent with the inhibition.

Cancellation of inhibition

128. Where an application for cancellation of an inhibition is made to the Registrar in a form approved by him, he shall cancel the inhibition if

- (a) the time limited by the inhibition has expired;
- (b) an event expressed in the inhibition as determining the inhibition has occurred;
- (c) the land, lease or charge affected by the inhibition is sold, such sale not being prohibited by the inhibition; or
- (d) the court orders the cancellation.

Lodging of cautions

129.(1) A person who

- (a) claims an unregistrable interest in land, a lease or a charge;

- (b) is entitled to a licence;
- (c) has presented a bankruptcy petition against the proprietor of land, a lease or a charge,

may lodge a caution with the Registrar forbidding altogether or to the extent therein expressed the registration of dispositions of, or the making of entries affecting the land, lease or charge.

- (2) An application for the registration of a caution
 - (a) shall be in the prescribed form;
 - (b) shall specify the interest claimed by the person in whose favour the caution is registered;
 - (c) shall be supported by a statutory declaration; and
 - (d) shall be accompanied by a copy of the instrument.
- (3) The Registrar may refuse an application for the registration of a caution where he considers registration to be unnecessary.

Notice and effect of caution

130.(1) Where the Registrar registers a caution, he shall give notice thereof in writing to the proprietor whose land, lease or charge is affected by the caution.

(2) A registration of a disposition inconsistent with a caution may not be made by the Registrar except with the consent of the person on whose behalf the caution is registered or by order of the court.

Withdrawal or removal of caution

- 131.**(1) A caution may be withdrawn from the register
- (a) on the application of the person on whose behalf the caution is registered;
 - (b) by order of the court; or

- (c) subject to subsections (2), (3) and (4), by the Registrar.
- (2) The Registrar may, on the application of an interested person, serve notice on the person on whose application a caution was made that the caution will be removed from the register at the expiration of the time specified in the notice.
- (3) A person referred to in subsection (2) may
- (a) in writing addressed to the Registrar, object to the notice within such time as the Registrar specifies in the notice; and
 - (b) serve a copy of the notice on all the parties.
- (4) The Registrar shall, after giving all the parties an opportunity to be heard, make such order as he thinks fit, including an order as to payment of costs.
- (5) The Registrar shall, on the registration of a transfer by a chargee in exercise of his powers of sale under section 83, remove a caution that purports to prohibit any dealing by the chargor that was registered after the charge by virtue of which the transfer is effected.
- (6) Where a caution is withdrawn or ordered by the court to be removed, the Registrar shall cancel the caution, but any liability incurred by the applicant for registration of the caution under section 133 is not affected by the cancellation of the caution.

Second or subsequent caution by same person

132. The Registrar shall refuse to register a second or subsequent caution by the same person or on his behalf where the caution relates to the same matter as the first caution.

Liability for damage respecting certain cautions

133. A person who, without reasonable cause, lodges or maintains a caution is liable at the suit of the injured party to pay compensation for any damage resulting from registration of the caution.

Restrictions

134.(1) Where the Registrar is satisfied that the power of a proprietor to deal with his land, lease or charge is restricted, he may, of his own motion or on the application of an interested person, make an order prohibiting or restricting any dealing with any land, lease or charge specified in the order, after

- (a) giving directions respecting the inquiries to be made; and
- (b) serving such notices and hearing such person as he thinks fit.

(2) A restriction may be expressed to endure

- (a) for a particular period; or
- (b) until the occurrence of a particular event; or
- (c) until the making of a further order,

and may prohibit or restrict all dealings or only such dealings as do not comply with specified conditions.

(3) The Registrar shall order a restriction to be entered in any case where it appears to him that the power of the proprietor to deal with the land, lease or charge is restricted.

Notice and effect of restrictions

135.(1) Upon the entry of a restriction the Registrar shall give notice thereof in writing to the proprietor affected thereby.

(2) Where any restriction is registered, no instrument which is inconsistent with it shall be registered except by order of the court or of the Registrar.

Removal or variation of restriction

136.(1) The Registrar may

- (a) upon application by any interested person or of his own motion; and

- (b) after giving the persons affected by the restriction an opportunity of being heard,

order the removal or variation of a restriction.

- (2) The court may, upon application of a proprietor whose land, lease or charge is affected by a restriction, order that the restriction be varied or removed, and the order may include other conditions, including an order respecting payment of costs.

PART XVII

LIMITATION AND PRESCRIPTION

Application of *Limitation Act*

- 137.** The *Limitation Act*, Cap. 232 applies to registered land.

[1997-11]

Application to register title acquired by adverse possession

- 138.(1)** A person may apply to the Registrar to be registered as the proprietor of land acquired by adverse possession.

- (2) On an application being made under this section, the Registrar shall
- (a) publish, in such terms as he thinks fit, a notice in 3 issues of each of the local newspapers and in one issue of the *Official Gazette*; and
 - (b) give notice of the application to all persons who will, in his opinion, be affected by the notice.

- (3) After the expiration of 1 month from the giving of the notice under subsection (2)(b), the Registrar shall, on being satisfied with respect to the title of the applicant to the land, register him as proprietor with an absolute or provisional title, but without prejudice to any interests protected by an entry in the register.

PART XVIII
RECTIFICATION AND INDEMNITY

Rectification by Registrar

139.(1) The Registrar may rectify the register or any instrument submitted to him for registration where that rectification relates to

- (a) errors or omissions not materially affecting the interests of a proprietor;
- (b) the acquisition of an interest in land under Part XVII; and
- (c) a consent to rectification or indemnity by all the parties interested.

(2) Where, upon a re-survey of land described in the register or registry map, it is established that there is a mistake respecting the area of that land, the Registrar shall, after giving notice to all persons interested, rectify the register.

(3) The Registrar shall, upon notice in writing being given to him of a change of the address of a proprietor, record that change in the register.

Rectification by court

140.(1) Subject to subsection (2), the court may, where it is satisfied that a registration was obtained, made or omitted by fraud or mistake, order that the registration be cancelled or amended.

(2) The register shall not be rectified in such a manner as to affect the title of a person who

- (a) is in possession or is in receipt of the rents and profits; and
- (b) acquired the land, lease or charge for valuable consideration,

unless he had knowledge of the omission, fraud or mistake in consequence of which rectification is sought, or caused or contributed to that omission, fraud or mistake by his act, neglect or default.

Compensation

- 141.(1)** Subject to subsection (2), a person who suffers damage by reason of
- (a) a rectification of the register under this Part;
 - (b) a mistake in or omission from the register that cannot be rectified under this Act; or
 - (c) an error in
 - (i) a certificate of search issued by the Registrar,
 - (ii) a copy of or extract from the register, or
 - (iii) a copy of an extract from any document or plan certified under this Act,

may apply in writing to the Registrar for compensation out of moneys provided for that purpose by Parliament.

(2) No application for the recovery of compensation may be submitted under this section where more than 6 years have elapsed since the applicant knowingly suffered the damage.

(3) No compensation shall be payable under this Act to any person who has himself caused or substantially contributed to the damage by his fraud or negligence, or who derives title, otherwise than under a registered disposition made *bona fide* for valuable consideration from a person who so caused or substantially contributed to the damage.

Amount of compensation

- 142.(1)** Where compensation is awarded in respect of the loss of an interest in land, it shall not exceed
- (a) where the register is not rectified, the value of the interest at the time of the making of the mistake or omission causing the damage; or

(b) where the register is rectified, the value of the interest immediately before the time of rectification.

(2) Where the Registrar awards compensation under this Part, he may also award costs properly incurred in relation to the matter.

Recovery of compensation

143. Any money paid by way of compensation under this Part is recoverable before a magistrate for District “A” at the suit of the Registrar from the person by whose act, fraud or negligence the loss was caused; notwithstanding that the amount thereof may exceed the normal monetary limit on the jurisdiction of a magistrate’s court.

Restriction on claim for compensation

144. A claim for compensation may not be brought against the Registrar at any time for any damage suffered on account of a discrepancy between the area of land shown in consequence of a survey and the area shown in the register or registry map.

PART XIX

APPEALS

Statement of case by Registrar

145. The Registrar may, of his own motion or if so required by an aggrieved party, state a case to the court, whose decision shall be final.

Appeals

146.(1) A person aggrieved by a decision or direction given, or an award, determination or order made by the Registrar may, within 30 days of that decision, direction, award, determination or order, give notice of appeal in the prescribed form to the Registrar.

- (2) The Registrar shall, within 21 days after the submission to him of a notice of appeal, transmit to the court and all the parties affected by the appeal a record of the proceedings or the reasons for his decision.
- (3) The parties to the appeal may appear in person or be represented by their respective attorneys-at-law.
- (4) The court may, after hearing the appeal, make such order as justice requires, including an order as to costs, which shall be in the discretion of the court.

Effect of appeal on disposition

147. The decision of a court on an appeal under this Part does not affect a disposition in good faith and for valuable consideration and registered before delivery to the Registrar of the notice of appeal.

Registration of appeal

148. The Registrar shall, upon the submission to him of a notice of appeal, make an entry in the register.

PART XX

MISCELLANEOUS

Cesser of application of certain documents

149. No document relating to any registered land, lease or charge coming into effect after the date of the registration of such land, lease or charge, shall be required to be registered, recorded or copied under the *Property Act*, Cap. 236, the *Condominium Act*, Cap. 224A or the *Registration Office Act*, Cap. 33.

Address of certain persons

150. A person who under this Act submits any document to the Registrar or is a proprietor of any land, lease or charge shall notify the Registrar of his address and any change thereof unless the Registrar otherwise directs.

Offences

151.(1) A person who

- (a) knowingly submits to the Registrar any document containing any false statements;
- (b) fraudulently issues, makes or procures the making of any document;
- (c) fraudulently makes or causes to be made any alteration to the register;
- (d) fraudulently uses any document purported to be issued by the Registrar;
or
- (e) causes the defacement, obliteration or mutilation of any entry made in the register or of any document filed in the Land Registry,

is guilty of an offence and liable on summary conviction to a fine of \$2 000 or imprisonment for a term of 12 months, or both.

(2) Where a person to whom a summons to appear before the Registrar or to produce any document is issued fails to comply with that summons, he is guilty of an offence and liable on summary conviction to a fine of \$100 or imprisonment for a term of 1 month, or both.

Enforcement of order by Registrar

152. An order for the payment of money or the doing of any act made by the Registrar has the same force and effect as an order made by the court, and may be enforced accordingly.

Regulations

153.(1) The Minister may make regulations

- (a) prescribing the fees that are by this Act required to be prescribed; and
- (b) prescribing the forms to be used for the purposes of this Act.

(2) Without prejudice to subsection (1), the Minister may make regulations generally for the carrying out of the purposes of this Act.

[1988-12]

(3) Regulations made under this section shall be subject to negative resolution.

[Act 1988-12 which adds subsection (3) to section 153 has not been proclaimed.]

Saving of rights of Crown

154. Nothing in this Act shall prejudice the rights, interests, powers and privileges of the Crown conferred by any other Act.

Other law

155. Any matter not provided for in this Act or in any other enactment in relation to land, leases and charges registered under this Act shall be decided in accordance with the principles of common law and equity.

Crown

156. Subject to any modifications or qualifications provided for in the regulations in respect of prescribed fees, this Act and the regulations bind the Crown.

PART XXI

ADMINISTRATION OF UNREGISTERED LAND

Recording of deeds relating to unregistered land

157.(1) After 13th November, 1989 all deeds and other instruments relating to unregistered land, including powers of attorney, shall be recorded at the Land Registry.

(2) For the purposes of this Part “unregistered land” means land or any estate or interest in land, the title to which is not registered under Part III of this Act.

[1990-19]

Condition for the recording of certain deeds and instruments

158.(1) Subject to subsection (2), the Registrar shall not record a deed or instrument relating to unregistered land unless it is signed by an attorney-at-law in the manner provided by section 10(4) of the *Legal Profession Act*, Cap. 370.

[1990-19]

(2) Subsection (1) does not apply to

- (a) an instrument drawn and prepared by a public officer or an officer of a statutory board acting in the course of his duty;
- (b) a will or other testamentary instrument;
- (c) an agreement under hand only;
- (d) a letter or power of attorney; or
- (e) any form prescribed by or under the *Town and Country Planning Act*, Cap. 240.

Assistance in recording or copying documents

159.(1) The Registrar may obtain at a cost not exceeding such amounts as may from time to time be specified in the *First Schedule* any assistance he considers necessary for recording or copying documents.

[1990-19]

(2) Any expenditure properly incurred pursuant to subsection (1) shall be paid by the Accountant-General on the certificate of the Registrar from moneys provided from time to time by Parliament for that purpose.

(3) The Minister responsible for Lands may by order, amend, vary or revoke the *First Schedule*.

Fees

160.(1) The Registrar shall, in respect of the several matters specified in the *Second Schedule*, charge the fees specified in that *Schedule*.

[1990-19]

(2) All fees received by the Registrar shall be paid by him into the Consolidated Fund.

(3) A full, accurate and detailed account of all such fees received shall be kept by the Registrar, and the said account and all books at the Land Registry relating thereto shall be examined and audited quarterly by the Auditor-General.

(4) The Registrar may, with the approval of the Minister responsible for Finance, by order amend, vary or revoke the *Second Schedule*.

Validation

161. Any fees charged or collected by the Registrar, or any act done by the Registrar, in connection with the administration of the unregistered system of dealing in titles to land on or after the 13th November, 1989 and before the 19th

July, 1990 shall be deemed to have been validly and lawfully charged, collected or done, as the case may be.

[1990-19]

FIRST SCHEDULE*(Section 159)*

The cost of any assistance which may be obtained by the Registrar under section 159 shall not exceed:

	\$ ¢
(a) For copying a plot	50.00
(b) For recording any document other than a plot, per folio of 90 words	.55
(c) For copying any document other than a plot, per folio of 90 words	.50
(d) For examining the record of any document referred to in paragraph (b), per folio of 90 words	.15
(e) For examining the copy of any document referred to in paragraph (c), per folio of 90 words	.15

[1990-19]

SECOND SCHEDULE*(Section 160(1))**GENERAL*

	\$ ¢
1. For recording each certificate, affidavit or affirmation annexed to any instrument wherever executed or made, the folio of 70 words	.80
2. For recording a plot by filing a duplicate copy thereof	10.00
3. For recording a plot, such fee as may be fixed by the Registrar having regard to the size and nature of the plot, not exceeding	250.00
4. For recording a receipt to a sale or to any other document	2.50
5. For recording papers of any kind, other than those hereinafter mentioned, the folio of 70 words	.80
6. Correcting errors in deeds and recording same	25.00
7. Office copies of any document or papers, the folio of 70 words	.60
8. Search of any record by any person, other than an attorney-at-law or his clerk on his behalf, for each year	5.00
9. The perusal of any record by any person, other than an attorney-at-law or his clerk on his behalf	20.00
10. Certificate of search made for each year	2.50

Notarial

11. For affixing seal of office only to any certificate administering oath, if required	20.00
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Miscellaneous

12. For recording documents or papers other than those particularly mentioned in this Schedule, the folio of 70 words	.80
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	\$ ¢
13. For recording or cancelling certificates of loan under the <i>Barbados National Bank (Transfer and Vesting of Assets) Act</i> , Cap. 322A	5.00

[1990-19; 2000-24]