



ST HELENA

REVISED EDITION OF THE LAWS, 2017

LAND OWNERSHIP & USE

REGISTERED LAND ORDINANCE, 1980¹

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In force 26 June 1980*

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Subsidiary legislation:

REGISTERED LAND RULES, 1981

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AN ORDINANCE to make provision for the registration of land and for dealings in land so

registered and for connected purposes.

PART I PRELIMINARY

Short title

1. This Ordinance may be cited as the Registered Land Ordinance, 1980.

Interpretation

2. In this Ordinance, except where the context otherwise requires—
 - “**application book**” means the application book kept under section 4(d);
 - “**boundary feature**” means any structure of any kind designed, installed, or placed to mark the position of any boundary;
 - “**certified copy**” means a copy of any document bearing a certificate, under the hand of the Registrar or of some other person authorised by the Registrar, to the effect that the copy is a true copy of the original document;
 - “**charge**” means an interest in land securing the payment of money or money’s worth or the fulfilment of any conditions, and includes a subcharge and the instrument creating a charge;
 - “**chargee**” means the proprietor of a charge;
 - “**chargor**” means the proprietor of charged land or of a lease or charge;
 - “**Court**”, except as is otherwise expressly provided, means the Supreme Court;
 - “**dealing**” includes disposition and transmission;
 - “**Deputy Registrar**” means a Deputy Registrar of Lands appointed under section 5(3);
 - “**disposition**” means any act *inter vivos* by a proprietor whereby the proprietor’s rights in or over the proprietor’s land, lease or charge are affected, but does not include an agreement to transfer, lease or charge;
 - “**easement**” means a right attached to a parcel of land which allows the proprietor of the parcel either to use the land of another in a particular manner or to restrict its use to a particular extent, but does not include a profit;
 - “**to file**” means to place in relative parcel file;
 - “**guardian**” means any person responsible for protecting the interest of any person who is under a disability, whether by reason of age, unsoundness of mind or any other cause;
 - “**instrument**” includes any deed, judgment, decree, order or other document requiring or capable of registration under this Ordinance;
 - “**interest in land**” includes absolute ownership of land;
 - “**land**” includes land covered with water, all things growing on land and buildings and other things permanently affixed to land;
 - “**Land Register**” means the Land Register compiled under Division 2 of Part II;
 - “**lease**” means the grant, with or without consideration, by the proprietor of land of the right to the exclusive possession of the land, and includes the right so granted and the instrument granting it, and also includes a sublease, but does not include an agreement for lease;
 - “**lessee**” means the holder of a lease;
 - “**lessor**” means the party granting a lease, or the proprietor of the freehold land which is subject to a lease;
 - “**licence**” means a permission given by the proprietor of land or a lease which allows the licensee to do some act in relation to the land or the land comprised in the lease which would otherwise be a trespass, but does not include an easement or a profit;

- “**minor**” means a person under the age of 18 years;
- “**parcel**” means an area of land 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;
- “**personal representative**” means the executor of the will or administrator of the estate;
- “**profit**” means the right to go on the land of another and take a particular substance from that land, whether the soil or products of the soil;
- “**proprietor**” means the person registered under this Ordinance as the owner of land or a lease or a charge;
- “**the Register**” means a record of the transactions and matters required or permitted by this Ordinance to be registered at the Registry, compiled and maintained in whatever form the Registrar may from time to time deem appropriate;
- “**to register**” means to make an entry, note or record in the Register under this Ordinance, and “**registered**”, “**unregistered**” and “**registration**” bear corresponding meanings;
- “**Registrar**” means the Registrar of Lands appointed under section 5(1) and includes (unless the context requires otherwise) a Deputy Registrar;
- “**registration section**” means a registration section established under section 14;
- “**Registry**” means the Land Registry established under section 4;
- “**Registry Map**” means the map or series of maps referred to in section 14;
- “**transfer**” means the passing of 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 a charge from one person to another by operation of law on death or insolvency or otherwise howsoever, and includes the compulsory acquisition of land under any written law;
- “**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 Ordinance, no other law and no practice or procedure relating to land applies to land registered under this Ordinance so far as it is inconsistent with this Ordinance.

(1A) Unless a contrary intention appears, nothing in this Ordinance is to be construed as permitting any dealing which is forbidden by the express provisions of any other written law or as overriding any provision of any other written law requiring the consent or approval of any authority to any dealing or requiring the licence, consent or approval of the Governor or any other authority to hold land or a mortgage of land.

(2) The provisions of this Ordinance apply only to land, interests in land or dealings in land registered under this Ordinance.

PART II ORGANISATION AND ADMINISTRATION

Division 1 - Land Registries and Officers

Registration District

4. For the purposes of this Ordinance there is to be established and maintained in St Helena a land Registry in which there are to be kept—

- (a) a register, to be known as the Land Register, in accordance with Division 2 of this Part;
- (b) a map to be known as the Registry Map, in accordance with Division 3 of this Part;
- (c) parcel files containing the instruments which support subsisting entries in the Land Register and any filed plans and documents;
- (d) a book to be known as the application book in which is to be kept a record of all applications numbered consecutively in the order in which they are made at the Registry;
- (e) an index, in alphabetical order, of the names of the proprietors of land, leases and charges, showing the numbers of the parcels in which they are interested; and
- (f) a register and file of powers of attorney.

Registrar and Deputy Registrar

5. (1) The Governor may by notice in the *Gazette* appoint a public officer to be the Registrar of Lands.

(2) It is the duty of the Registrar to administer the land Registry in accordance with this Ordinance.

(3) The Governor may by notice in the *Gazette* appoint any public officer to be a Deputy Registrar of Lands.

(4) Subject to any general or special directions given by the Registrar, a Deputy Registrar possesses, and may exercise or enjoy, all the rights, privileges, powers and immunities of the Registrar.

(5) No Court may enquire into or otherwise entertain any question whether a Deputy Registrar has or has not acted in accordance with directions given to him or her under subsection (4).

(6) Subsection (5) does not prevent a Court from considering whether an instrument or document was or was not issued by a Deputy Registrar in circumstances in which the Court could entertain a question whether a similar instrument or document purporting to have been issued by the Registrar had been so issued.

General powers of Registrar

6. (1) In addition to any other powers conferred on the Registrar by this Ordinance, the Registrar may—

- (a) require any person to produce any instrument, certificate or other document or plan relating to the land, lease or charge in question, and that person must produce the same;
- (b) summon any person to appear and give any information or explanation respecting land, a lease or a charge, or any instrument, certificate or other document or plan relating to the land, lease or charge in question, and such person must appear and give such information or explanation;
- (c) refuse to proceed with any registration if any instrument, certificate or other

- document, plan, information or explanation required to be produced or given is withheld or any act required to be performed under this Ordinance is not performed;
- (d) administer oaths or make a declaration instead of an oath, and require that any proceedings, information or explanation are to be verified on oath or by statutory declaration;
 - (e) order that the costs, charges and expenses incurred by the Registrar or by any person in connection with any investigation or hearing held by the Registrar for the purpose of this Ordinance must be borne and paid by a person in a manner and in proportions as the Registrar thinks fit, the amount of any such costs, charges and expenses incurred by the Registrar being deemed to be a fee to which the provisions of sections 154 and 155 apply;
 - (f) order that any land be surveyed or resurveyed, and authorise any person to enter any land for the purposes of conducting such a survey.

(2) The Registrar (but not a Deputy Registrar) may, with the consent of the Governor, from time to time, and subject to any conditions or limitations the Registrar sees fit to impose, authorise any public officer (an “**Authorised Officer**”) to exercise on his or her behalf such functions of the Registrar as the Registrar specifies.

(3) An act of an Authorised Officer has the same effect as an identical act by the Registrar, and no Court may enquire into or otherwise entertain any question whether an Authorised Officer has or has not acted in accordance with any conditions or limitations imposed upon him or her pursuant to subsection (2).

(4) Subsection (3) does not prevent a Court from considering whether an instrument or document was or was not issued by an Authorised Officer in circumstances in which the Court could entertain a question whether a similar instrument or document purporting to have been issued by the Registrar had been so issued.

Indemnity of officers

7. Neither the Registrar nor any other officer of the Registry is liable to any action or proceeding for or in respect of any act or matter done or omitted to be done in good faith in the exercise or supposed exercise of the powers of this Ordinance, or any regulations made under it.

Seal of Registry

8. The Registry must have a seal, and every instrument purporting to bear the imprint of such seal must be received in evidence and, unless the contrary is shown, is deemed without further proof to be issued by or under the direction of the Registrar.

Division 2 - The Land Register

The Land Register

9. (1) The Land Register is to comprise-
- (a) a register in respect of every parcel; and
 - (b) a register in respect of each lease required by this Ordinance to be registered.

(2) Each register must show whether the land is private land or Crown Land and, in respect of private land, whether the title is absolute or provisional, and must be divided into three sections as follows—

- A. the property section, containing a brief description of the land or lease, together with particulars of its appurtenances and, if the title is provisional, of the reason or reasons for registering the title as provisional rather than absolute, and a reference to the Registry Map and filed plan, if any;
- B. the proprietorship section, containing the name, and, where possible, address of the proprietor and a note of any inhibition, caution or restriction affecting the proprietor's right of disposition;
- C. the incumbrances section, containing a note of every incumbrance and every right adversely affecting the land or lease.

(3) No entry is required in the proprietorship section of land which is described as Crown Land.

(4) The Registrar may, subject to subsections (5) to (8), cause all or any part or parts of the Land Register to be kept in the form of one or more computer databases and such databases are in this section referred to as “**electronic registers**”.

(5) The Registrar must ensure that electronic registers are designed, kept and maintained in such a way that permanent printed copies can be produced of all the documents required by this Ordinance to be kept as part of the Land Register.

(6) Section 141 (right to compensation) does not apply to an electronic register or to any information stored in it except in so far as such information is reproduced in a permanent printed form of a Land Certificate, official search, certified copy, or other document issued under the authority of this Ordinance.

(7) Without affecting subsection (4), the Registrar may cause or permit an electronic register to contain additional information (as defined in subsection (8)), or to be connected to one or more other computers which contain additional information so as to establish a geographical information system (as defined in subsection (9)) for St Helena.

(8) In subsection (7), “**additional information**” means information about the ownership, use, geography, topography, archaeology, geology or other characteristics of spatial locations in St Helena.

(9) In this section, “**geographical information system**” means an integrated system for capturing, checking, integrating, manipulating, analysing and displaying data related to spatial locations in St Helena.

(10) Rules made under section 158 may prescribe the circumstances (if any) in which data from the geographic information system may be made available to the public and for fees to be charged for making such data available.

Compilation of the Land Register

10. *Repealed*

Manner of registration

11. (1) The first registration of any parcel must be effected by the preparation of a register in accordance with section 9 and the entry by the Registrar of the particulars of the ownership and the particulars of any incumbrances on the parcel.

(2) Every subsequent registration must be effected by an entry in the Register in a form the Registrar from time to time directs, and by the cancellation of the entry, if any, which it replaces.

Cancellation of obsolete entries

12. The Registrar may cancel any entry in the Register which the Registrar is satisfied has ceased to have any effect.

New editions of Register

13. The Registrar may at any time open a new edition of a register showing only subsisting entries and omitting from it all entries that have ceased to have any effect.

Division 3 - Maps, Parcels and Boundaries

Registry Map

14. (1) The Registry Map is to comprise a map or series of maps identifying—
(a) the registration sections (if any) into which St Helena is divided;
(b) the blocks (if any) into which each registration section is divided; and
(c) every parcel in each registration section or block.

(2) The parcels in each registration section or block must be numbered consecutively, and the name of the registration section and the number or letter of the block (if any), and the number of the parcel are together a sufficient reference to any parcel.

(3) The Registrar may, at any time, cause registration sections or blocks to be combined or divided, or cause their boundaries to be varied.

(4) A plan may be filed in respect of a particular parcel to augment the information available from the Registry Map, and the filing of the plan must be noted in the Register.

Correction of the Registry Map and new editions

15. (1) The Registrar may cause to be made a survey of any land for the purposes of this Ordinance and, after informing every person affected by a correction, may cause the Registry Map to be corrected as a result of such survey.

(2) The Registrar may, at any time, direct the preparation of a new Registry Map or any part of it, and there may be omitted from it any matter which the Registrar considers obsolete.

Mutation

16. *Repealed.*

General boundaries

17. (1) Except where, under section 18, it is noted in the Register that the boundaries of a parcel have been fixed, the Registry Map and any filed plan are deemed to indicate the approximate boundaries and the approximate situation only of the parcel.

(2) If any uncertainty or dispute arises as to the position of any boundary, the Registrar, on the application of any interested party, must, on any evidence the Registrar considers relevant, determine and indicate the position of the uncertain or disputed boundary.

(3) If the Registrar exercises the power conferred by subsection (2), he or she must make a note to that effect on the Registry Map and in the Register and file any plan or description necessary to record that decision.

(4) No Court may entertain any action or other proceedings relating to a dispute as to the boundaries of registered land unless the boundaries have been determined as provided in this section.

(5) Except where, as aforesaid, it is noted in the Register that the boundaries of a parcel have been fixed, the Court or the Registrar may, in proceedings concerning the parcel, receive any evidence as to its boundaries and situation the Court or the Registrar thinks fit.

Fixed boundaries

18. (1) If the Registrar in his or her discretion considers it desirable to indicate on a filed plan, or otherwise to define in the Register, the precise position of the boundaries of a parcel or any parts of it, or if any interested person makes application to the Registrar, the Registrar must give notice to the owners and occupiers of the land adjoining the boundaries in question of the intention to ascertain and fix the boundaries.

(2) The Registrar must, after giving all persons appearing by the Register to be affected an opportunity of being heard -

(a) cause to be defined by survey the precise position of the boundaries in question; (b) file a plan containing the necessary particulars; and

(c) make a note in the Register that the boundaries have been fixed, and thereupon the plan is deemed to define accurately the boundaries of the parcel.

Maintenance of boundary features

19. (1) Every proprietor of land must maintain in good order any features which demarcate the boundaries of the land, whether established pursuant to the requirements of any written law or to an order of the Registrar or of the proprietor's own initiative.

(2) The Registrar may in writing order the demarcation within a specified time of any boundary in any permanent manner the Registrar direct.

(2A) A person who fails to comply with an order under subsection (2) commits an offence.

Penalty: A fine of £100.

(3) The Registrar may in writing order which of adjoining proprietors is to be responsible for the care and maintenance of any feature demarcating a common boundary.

(3A) A proprietor so ordered under subsection (3) to be responsible who allows the boundary feature or any part of it to fall into disrepair or to be destroyed or removed commits an offence.

Penalty: A fine of £100.

Interference with boundary features

20. (1) A person who wilfully defaces, removes, injures or otherwise impairs any boundary feature or any part of it unless authorised to do so by the Registrar commits an offence.

Penalty: A fine of £500 or imprisonment for 3 months, or both.

(2) Any person convicted of such an offence, whether or not any penalty for it is imposed on the person, is liable to pay the cost of restoring the boundary feature, and such cost is recoverable as a civil debt by any person responsible under section 19 for the maintenance of the feature.

Combinations and subdivisions

21. (1) If contiguous parcels are owned by the same proprietor and are subject in all respects to the same rights and obligations, the Registrar, on application by the proprietor, may combine those parcels by closing the Registers relating to them and opening a new register or registers in respect of the parcel or parcels resulting from the combination.

(2) Upon the application of the proprietor of a parcel for division of the parcel into 2 or more parcels, the Registrar must effect the division by closing the Register relating to the parcel and opening new registers in respect of the new parcels resulting from the division, and recording in the new registers all subsisting entries appearing in the closed register.

(3) This section is subject to the provisos that—

- (a)* nothing is to be done under it which would be inconsistent with this Ordinance or any other written law; and
- (b)* no parcel which is subject to a lease may be subdivided so as to subdivide the land comprised in such lease.

Reparcellation

22. (1) The Registrar may, on the application of the proprietors of contiguous parcels who wish to change the layout of their parcels, and with the consent in writing of all other persons in whose names any right or interest in such parcels is registered, and of any cautioner, cancel the Registers relating to such parcels and prepare new registers in accordance with the revised layout.

(1A) If in the opinion of the Registrar a proposed reparation involves substantial changes of ownership which should be effected by transfers without invoking this section, the Registrar may in his or her discretion refuse to effect a reparation under subsection (1).

(2) Upon any such reparation, the new parcels, notwithstanding section 37, vest in the persons in whose names they are registered.

PART III EFFECT OF REGISTRATION

Effect of registration with absolute title

23. (1) Subject to subsections (2) and (3) and to section 27, the registration of any person as the proprietor with absolute title of a parcel vests in that person the absolute ownership of that parcel together with all rights and privileges belonging or appurtenant to it, free from all other interests and claims whatsoever, but subject—

- (a) to the leases, charges and other incumbrances and to the conditions and restrictions, if any, shown in the Register; and
- (b) unless the contrary is expressed in the Register, to such liabilities, rights and interests as affect the same and are declared by section 28 not to require noting on the Register.

(2) Subsection (1) does not relieve a proprietor from any duty or obligation to which the proprietor is subject as a trustee.

(3) The registration of any person under this Ordinance does not confer on the person any right to any minerals or to any mineral oils unless the same are expressly referred to in the Register.

Effect of registration with provisional title

24. Subject to section 27, the registration of any person as the proprietor with a provisional title of a parcel does not affect or prejudice the enforcement of any estate, right or interest adverse to or in derogation of the title of that proprietor arising before a date or under an instrument or in any other manner specified in the Register of that parcel; but in all other respects the registration has the same effect as the registration of a person with absolute title.

Effect of registration of a lease

25. (1) Subject to subsections (2) and (3) and to section 27, the registration of a person as the proprietor of a lease vests in that person the leasehold interest described in the lease, together with all implied and expressed rights and privileges belonging or appurtenant to it and subject to all implied and expressed agreements, liabilities and incidents of the lease.

(2) If 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 is not prejudiced.

Effect of registration of Crown land

26. The registration of land as Crown Land enables the Governor, subject to any registered incumbrances, by a disposition registered under this Ordinance to dispose of such land, .

Voluntary transfer

27. Every proprietor who has acquired land, a lease or a charge by transfer without valuable consideration holds it subject to any unregistered rights or interests subject to which the transferor held it, and subject also to the provisions of any written law relating to bankruptcy and to companies, but in all other respects the transfer when registered has in all respects the same effect as a transfer for valuable consideration.

Overriding interests

28. (1) Unless the contrary is expressed in the Register, all registered land is subject to any of the following overriding interests that for the time being subsist and affect the land, without their being noted on the Register—

- (a) rights of way, rights of water and any easement or profit subsisting at the time of first registration under this Ordinance;
- (b) natural rights of light, air, water and support;
- (c) rights of compulsory acquisition, resumption, entry, search, user or limitation of user conferred by any written law;
- (d) periodic tenancies within the meaning of section 2;
- (e) any unpaid moneys which, without reference to registration under this Ordinance, are expressly declared by any written law to be a charge upon land;
- (f) rights acquired or in process of being acquired by virtue of any written law relating to the limitation of actions or by prescription;
- (g) the rights of a person in actual occupation of land or in receipt of the rents and profits of it save where inquiry is made of such person and the rights are not disclosed;
- (h) electric supply lines, telephone and telegraph lines or poles, pipelines, aqueducts, weirs and dams erected, constructed or laid in pursuance or by virtue of any power conferred by any written law.

(2) The Registrar may direct registration of any of the liabilities, rights and interests defined in subsection (1) in any manner the Registrar thinks fit.

Conversion of provisional into absolute title

29. (1) Any proprietor registered with a provisional title or any interested person 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) If the applicant satisfies the Registrar that the qualification to which the provisional title is subject has ceased to be of effect, the Registrar must make an order for the registration of the proprietor with absolute title after any advertisement the Registrar thinks fit.

(3) On the making of any such order or on the application of any interested party after the expiration of 15 years from the date of first registration with a provisional title, the Registrar must substitute in the Register the words “absolute title” for the words “provisional title” and the title of the proprietor thereupon become absolute.

(4) The Registrar may, if it appears to him or her to be expedient to do so in the interest of removing uncertainty as to the ownership of any parcel or parcels, without receiving any application under the foregoing provisions of this section, by notice in the *Gazette*, give notice that -

- (a) the Registrar proposes to convert to absolute title all provisional titles first registered before a date specified in the notice (being not less than 20 years prior to the date of publication of the notice); and
- (b) any person may object to the proposal by written notice to the Registrar within a period (being not less than 28 days) similarly specified.

(5) After giving a notice under subsection (4), and considering any objection received within the period specified in the notice, the Registrar may proceed in relation to any provisional title included in the notice as if an application had been made by the proprietor thereof under subsection (3).

Entries to constitute actual notice

30. Every proprietor acquiring any land, lease or charge is deemed to have had notice of every entry in the Register relating to the land, lease or charge.

PART IV CERTIFICATE AND SEARCHES

Land certificates

31. (1) The Registrar must, if requested by the proprietor of any land, lease, or charge, if no Land Certificate has already been issued to the proprietor, issue to the proprietor a Land Certificate in the prescribed form showing or referring to all subsisting entries in the Register affecting that land, lease, or charge.

- (1A) Subsection (1) is subject to the provisos that—
- (a) only one certificate may be issued in respect of each parcel of land or lease;
 - (b) if a charge is registered against any land or lease, the Land Certificate in respect of that land or lease must be filed in the Registry;

(2) A Land Certificate is only *prima facie* evidence of the matters shown in it, and the land or lease is subject to all entries in the Register whether they are shown on the certificate or not.

(3) When there is more than one proprietor, the proprietors must agree among themselves as to who is to receive the certificate, and failing agreement the certificate must be filed in the Registry.

- (4) The date of issue of a Land Certificate must be noted in the Register.

Production of certificate

32. If a Land Certificate has been issued, then, unless it is filed in the Registry, or the Registrar dispenses with its production, it must be produced on the registration of any dealing with the land, lease or charge to which it relates, and a note of such registration must be made on the certificate.

Disposition of leases and charges

33. *Repealed*

Lost or destroyed certificates

34. (1) If a Land Certificate is lost or destroyed, the proprietor may apply to the Registrar for the issue of a new certificate, and must produce evidence to satisfy the Registrar of the loss or destruction of the previous certificate.

(2) The Registrar may require a statutory declaration that the certificate has been lost or destroyed.

(3) The Registrar, if satisfied with the evidence as to the loss or destruction of the certificate, and after the publication of any notice the registrar thinks fit, may issue a new certificate.

(4) If a lost certificate is found, it must be delivered to the Registrar for cancellation.

Searches and copies

35. (1) Any person, on application in the prescribed form and on payment of the prescribed fee, may inspect during official hours of business any register or any filed instrument or plan.

(2) Any person, on application in the prescribed form and on payment of the prescribed fee, is entitled to a certified copy of any register or part of the Registry Map or any plan or instrument filed in the Registry.

(3) Any person, on application in the prescribed form and on payment of the prescribed fee, may require an official search in respect of any parcel, and the Registrar must issue a certificate of official search setting forth particulars of the subsisting entries in the Register of that parcel.

(4) Any person may inspect any sheet of the Registry Map at any time during the normal office hours of the Registry.

Evidence

36. (1) A certified copy of the Register or part of the Registry Map or any plan or instrument filed in the Registry is admissible in evidence in all actions and matters and between all persons or parties, to the same extent as the original, and a signature on any such certified copy purporting to be the signature of the Registrar is presumed to be the signature of

the Registrar until the contrary is proved.

(2) No legal practitioner, trustee, personal representative or other person in a fiduciary position is answerable in respect of any loss occasioned by the inaccuracy of any such certified copy as is referred to in subsection (1).

(3) No process for compelling the production of the Register, or of the Registry Map, or of any filed instrument or plan, may issue from any Court except with the leave of that Court, which leave must not be granted if a certified copy will suffice, and any such process, if issued, must bear thereon a statement that it is issued with the leave of the Court.

PART V DISPOSITIONS

Division 1 - General

Subsequent dealings

37. (1) No land, lease or charge registered under this Ordinance is capable of being disposed of except in accordance with this Ordinance, and every attempt to dispose of such land, lease or charge otherwise than in accordance with this Ordinance is ineffectual to create, extinguish, transfer, vary or affect any estate, right or interest in the land, lease or charge.

(2) This section does not prevent any unregistered instrument from operating as a contract, but no action may be brought upon any contract for the disposition of any interest in land unless the agreement upon which such action is brought, or some memorandum or note of it, is in writing, and is signed by the party to be charged or by some other person lawfully authorised for the purpose by that party.

(3) An action as contemplated by subsection (2) is not prevented only because of the absence of writing, if an intending purchaser or lessee who has performed or is willing to perform his, her or its part of a contract—

- (a) has in part performance of the contract taken possession of the property or any part of it; or
- (b) being already in possession, continues in possession in part performance of the contract and has done some other act which is exclusively referable to and in furtherance of the contract.

Protection of persons dealing in registered land

38. (1) No person dealing or proposing to deal for valuable consideration with a proprietor is required or is in any way concerned—

- (a) to inquire or ascertain the circumstances in or the consideration for which such proprietor or any previous proprietor was registered;
- (b) to see to the application of any consideration or any part of it; or
- (c) to search any register kept under any Ordinance replaced by this Ordinance.

(2) If the proprietor of land, a lease or a charge is a trustee, the proprietor is in dealing with the land deemed to be absolute proprietor of it, and no disposition by such trustee to a purchaser in good faith for valuable consideration is defeasible only because such

disposition amounted to a breach of trust.

(3) This section does not relieve a purchaser for valuable consideration of the obligation to search the Register.

Additional fee for delayed registration

39. If an instrument is presented for registration later 6 months after the date of the instrument, then, as well as the registration fee, an additional fee equal to the registration fee is payable for every 6 months that have elapsed since that date; but the additional fee must not exceed 5 times the original registration fee payable.

Effect of failure to register

40. (1) Every disposition requiring to be registered under this Ordinance is be incomplete and ineffective in law until so registered, but without affecting any equitable rights which might arise by virtue of the disposition.

(2) *Repealed*

Priority of registered interests

41. (1) Interests appearing in the Register have priority according to the order in which the instruments which led to their registration were presented to the Registry, irrespective of the dates of the instruments and even if the actual entry in the Register is delayed.

(2) Instruments sent by post or under cover and received during the hours of business are deemed to be presented simultaneously immediately before the closing of the office to business on that day, and instruments so sent but received between the time of closing and the next opening of the office for business are deemed to be presented simultaneously immediately after such opening.

(3) If more than one instrument or application is presented on the same day, or on different days but at so short an interval from each other that in the opinion of the Registrar there is doubt as to their order of priority, the Registrar may refuse registration until he or she has heard and determined the rights of the parties interested under the instrument or application.

Stay of registration

42. (1) If any person proposing to deal with registered land has applied for an official search and has stated in the 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 must be stayed for a period (“**the suspension period**”) of 14 days from the time at which application for the search was made, and a note must be made in the Register accordingly.

(2) If within the suspension period a properly executed instrument effecting the proposed dealing is presented for registration, such instrument has priority over any other instrument which may be presented for registration during the suspension period, and must be

registered despite any caution or other entry for which application for registration has been made during the suspension period.

(3) Subject to subsection (2), any instrument or document for which application for registration is made during the suspension period, other than that effecting the proposed dealing, must be dealt with in the same manner, has the same priority and is as effectual as if no stay of registration had been obtained.

Merger of registered interests

43. If, upon the registration of a dealing, the interests of—

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

vest in the same proprietor, such interests do not merge unless a surrender or discharge is registered or the parcels are combined or there is a declaration of merger, which may be contained in the instrument evidencing the dealing.

Division 2 - Leases

Leases

44. (1) Subject to this Ordinance and any other written law, the proprietor of land may lease the land or part of it to any person for a definite period or for a period which, though indefinite, may be terminated by the lessor or the lessee, and subject to conditions the proprietor thinks fit.

(2) If only part of the land is leased, the lease must be accompanied by a plan or other description which the Registrar, in his or her absolute discretion, considers adequate to identify the part leased.

Periodic tenancies

45. (1) If in any lease the term is not specified and no provision is made for the giving of notice to terminate the tenancy, the lease is deemed to have created a periodic tenancy.

(2) If the proprietor of land permits the exclusive occupation of the land or any part of it by any other person at a rent but without any agreement in writing, that occupation is deemed to constitute a periodic tenancy.

(3) The period of a periodic tenancy created by this section is the period by reference to which the rent is payable, and the tenancy may be terminated by either party giving to the other notice, the length of which must, subject to any other written law, be not less than the period of the tenancy and must expire on one of the days on which rent is payable.

Registration of leases

46. Every lease for a period over one year is completed by registration and by—

- (a) opening a register in respect of the lease in the name of the lessee;

- (b) filing the lease; and
- (c) noting the lease in the incumbrances section of the Register of the lessor's land or lease.

Lessor's consent to dealing with lease

47. Upon the registration of a lease containing an agreement, express or implied, by the lessee that the lessee will not transfer, sublet, charge or part with possession of the land leased or any part of it without the written consent of the lessor -

- (a) the agreement must be noted in the Register of the lease; and
- (b) no dealing with the lease may be registered until the consent of the lessor, verified in accordance with section 108, has been produced to the Registrar.

Lease of charged land

48. If any land is subject to a charge, no lease of the land may be registered without the previous consent in writing of the proprietor of the charge, verified in accordance with section 108, unless the charge expressly dispenses with the necessity for such consent.

Duration of leases

49. (1) If the period of a lease is expressed as commencing on a particular day, that day is excluded in computing that period.

(2) If no day of commencement is named, the period commences on the date of execution of the lease, and that day is excluded in computing that period.

(3) If 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 lasts during the whole anniversary of the day on which the period commences.

Future leases

50. (1) A lease may be made for a period to commence on a future date, not being later than 21 years from the date on which the lease is executed, but is of no effect unless it is registered.

(2) Any instrument purporting to create a lease to commence on a date more than 21 years after the date of the instrument, or to take effect on the fulfilment of any condition, is void.

Holding over

51. (1) If a person, having lawfully entered into occupation of any land as lessee, continues to occupy that land with the consent of the lessor after the termination of the lease, the person is, in the absence of any evidence to the contrary, deemed to be a tenant holding the land on a periodic tenancy on the same conditions as those of the lease so far as those 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 the lease is, if the former tenant is still in occupation, and subject to any agreement to the contrary, to be taken as evidence of consent to the continued occupation of the land.

Agreements implied in leases on part of lessor

52. Except as otherwise expressly provided, there is in every lease an implied covenant on the part of the lessor—

- (a) that so long as the lessee pays the rent and observes and performs the agreements and conditions contained or implied in the lease and on the lessee's part to be observed and performed, the lessee may peaceably and quietly possess and enjoy the leased premises during the period of the lease without any lawful interruption from or by the lessor or any person rightfully claiming through the lessor;
- (b) not to use or permit to be used any adjoining or neighbouring land of which the lessor is the proprietor or lessee in any way which would render the leased premises unfit or materially less fit for the purpose for which they were leased;
- (c) to keep the roof, main walls, main timbers and main drains, and, if part only of the building is leased, the common passages and common installations, in repair;
- (d) if any dwelling-house, flat or room is leased furnished, that such house, flat or room is fit for habitation at the commencement of the tenancy; and
- (e) that -
 - (i) if at any time the leased premises or any part of them are destroyed or damaged by fire, civil commotion or accident not attributable to the negligence of the lessee, or the lessee's servants or licensees, so as to render the leased premises or any part of them wholly or partially unfit for occupation or use, the rent or a just proportion of it according to the nature and extent of the damage sustained will be suspended and cease to be payable until the leased premises have again been rendered fit for occupation and use; but
 - (ii) if the leased premises have not been so rendered fit for occupation and use within 6 months of their destruction or damage as aforesaid, the lessee may at the lessee's option, and on giving one month's written notice of intention to do so, terminate the lease.

Agreements implied in leases on part of lessee

53. (1) Except as otherwise expressly provided there is in every lease an implied covenant on the part of the lessee—

- (a) to pay the rent reserved by the lease at the times and in the manner specified in it;
- (b) to pay all rates, taxes and other outgoings which are at any time payable in respect of the leased premises during the continuance of the lease unless they are payable exclusively by the lessor by virtue of any written law;
- (c) in the case of agricultural land - to farm it in accordance with the practice and rules of good husbandry and to yield up the land at the end of the term in good heart;
- (d) if a building or part of a building is leased - to keep the interior of the leased premises in repair, fair wear and tear excepted;
- (e) if the lease is of furnished premises - to keep the furniture in as good condition as it was at the commencement of the period, fair wear and tear only excepted, and to replace any articles that are lost, destroyed or so damaged as to be beyond repair with articles of equal value to those so lost, destroyed, or damaged;

- (f) to permit the lessor or the lessor's agent with or without workmen or others at all convenient times and after reasonable notice to enter on the leased premises and examine their condition;
- (g) to repair or otherwise make good any defect or breach of agreement for which the lessee is responsible and of which notice has been given by the lessor to the lessee, within a reasonable period specified in the notice;
- (h) not to transfer, charge, sublease or otherwise part with the possession of the leased premises or any part of them without the previous written consent of the lessor, which consent must not be unreasonably withheld; and
- (i) at the expiry or earlier termination of the lease promptly to surrender and yield up to the lessor the whole of the demised land (including any improvements made to it by the lessee) in a condition that is consistent with the lessee having faithfully performed the obligations of the lessee under the lease and under all relevant laws.

(2) Any rule of English law which (however expressed) confers on a lessee a right to the renewal or extension of a lease is inconsistent with paragraph (i) in subsection (1).

Meaning of "in repair"

54. (1) If an agreement is contained or implied in any lease to keep a building or a particular part of a building "**in repair**", it means, in the absence of an express provision to the contrary, in such state of repair as that in which a prudent owner might reasonably be expected to keep the owner's property, due allowance being made for the age, character and locality of the building at the commencement of the lease.

(2) There must not be read into an agreement mentioned in subsection (1) an undertaking to put any building into a better state of repair than that in which it was at the commencement of the lease.

Lessor's right of forfeiture and effect of forfeiture of subleases

55. (1) Subject to section 57 and to any provision to the contrary in the lease, the lessor has the right to forfeit the lease if the lessee—

- (a) commits any breach of, or omits to perform, any agreement or condition on the lessor's part expressed or implied in the lease;
- (b) is adjudicated bankrupt; or
- (c) being a company, goes into liquidation.

(2) The right of forfeiture may be—

- (a) exercised, if neither the lessee nor any person claiming through or under the lessor is in occupation of the land, by entering upon and remaining in possession of the land; or
- (b) enforced by action in the appropriate Court.

(3) The right of forfeiture is taken to have been waived if—

- (a) the lessor accepts rent which has become due since the breach of agreement or condition which entitled the lessor to forfeit the lease or has by any other positive act shown an intention to treat the lease as subsisting; and
- (b) the lessor is, or should by reasonable diligence have become, aware of the commission of the breach;

but the acceptance of rent after the lessor has commenced an action in Court under subsection (2) does not operate as a waiver.

(4) The forfeiture of a lease terminates every sublease and every other interest appearing in the Register relating to that lease, but if—

- (a) the forfeiture is set aside by the Court on the grounds that it was procured by the lessor in fraud of the sublessee; or
 - (b) the Court grants relief against the forfeiture under section 57,
- every such sublease and other interest is deemed not to have terminated.

Notice before forfeiture

56. Despite anything to the contrary contained in the lease, no lessor is entitled to exercise the right of forfeiture for the breach of any agreement or condition in the lease, whether expressed or implied, until -

- (a) the lessor has served on the lessee a notice—
 - (i) specifying the particular breach complained of;
 - (ii) if the breach is capable of remedy, requiring the lessee to remedy the breach within a reasonable period specified in the notice; and
 - (iii) in any case other than non-payment of rent, requiring the lessee to make compensation in money for the breach; and
- (b) the lessee has failed to remedy the breach within a reasonable time thereafter, if it is capable of remedy, and to make reasonable compensation in money.

Relief against forfeiture

57. (1) A lessee upon whom a notice has been served under section 56 or against whom the lessor is proceeding, by action or re-entry, to enforce the lessor's right of forfeiture, may apply to the Court for relief; and the Court may grant or refuse relief, as the Court, having regard to the proceedings and the conduct of the parties and the circumstances of the case, thinks fit, and, if it grants relief, may grant it on terms it thinks fit.

(2) The Court on application by any person claiming as sublessee or chargee of any interest in the property or part of the property comprised in the lease forfeited or sought to be forfeited, may make an order vesting the property or such part in such sublessee or chargee for the whole period of the lease or any shorter period, upon conditions the Court in the circumstances of the case thinks fit.

(2A) Subsection (1) does not apply in the case of a forfeiture arising from a breach to which the sublessee is a party or from the breach of an express agreement or condition against subleasing, parting with the possession of or disposing of the property leased.

(3) For the purpose of this section, a lease limited to continue as long only as the lessee abstains from committing a breach of agreement or condition is and takes effect as a lease to continue for any longer term for which it could subsist, but terminable by a proviso for re-entry on such breach.

(4) This section does not empower the Court to grant relief against forfeiture for non-payment of rent.

(5) This section has effect despite any stipulation or agreement to the contrary and whether the lease is registered or not.

Variation and extension of leases

58. The agreements and conditions contained or implied in any registered lease may be varied, rescinded or added to, and the period of any registered lease may from time to time be extended, by an instrument executed by the lessor and the lessee and registered before the expiration of the then current term of the lease.

Substitution of leases

59. If upon presentation of a lease for registration the Registrar is satisfied that the lessee is the person registered as the proprietor of a prior lease in respect of the same land, the Registrar must cancel the registration of the prior lease and register the new lease subject to the incumbrances registered against the prior lease.

Subleases

60. (1) Subject to any provision in the lease affecting the right of the proprietor to do so, the proprietor of a registered lease may, by a sublease in the prescribed form, sublease for any period which is less than the remainder of the period of the lease.

(2) Except as otherwise expressly provided in this Ordinance, the provisions of this Ordinance affecting leases, lessors and lessees apply to subleases, sublessors and sublessees, with any adaptations necessary.

(3) If a lease is terminated by operation of law or under any written law relating to bankruptcy or liquidation proceedings, the termination terminates the sublease.

(4) In addition to the agreements specified by this Ordinance to be implied in leases, there is implied in every sublease under this Ordinance an agreement by the sublessor that the sublessor 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 of it.

(5) If 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 is entitled to set off any sum so paid against the rent payable by the sublessee to the sublessor in respect of the sublease.

Surrender of leases

61. (1) If the lessor and the lessee agree that the lease is to be surrendered, it must be surrendered in the following manner—

- (a) an instrument must be prepared in the prescribed form, or else the word "surrendered" must be inscribed on the lease or on the duplicate of it;
- (b) the instrument or inscription must then be executed by the lessor and lessee;
- (c) the Registrar must then cancel the registration of the lease; and
- (d) the instrument or inscribed lease must then be filed,

and thereupon, or upon any earlier date expressed in the instrument or inscription, the interest

of the lessee ceases.

(2) A lease which is subject to a charge or a sublease must not be surrendered without the consent in writing of the proprietor of the charge or sublease.

Determination of leases

62. (1) If—

- (a) the period of a lease has expired;
- (b) an event upon which a lease is expressed to terminate has happened;
- (c) a lessor has lawfully re-entered; or
- (d) a notice duly given to terminate the lease has expired, and the lessor has recovered possession of the land leased,

the lease and every other interest appearing on the Register relating to the lease thereupon terminates, and the lessor may apply in writing to the Registrar to cancel the registration.

(2) An application under this section must be supported by any evidence of the matters giving rise to the termination and recovery of possession by the lessor as the Registrar requires, and the Registrar on being satisfied of the matters set forth in the application must cancel the registration of the lease.

Voluntary registration of leases

63. If application is made to the Registrar to register any lease which is not compulsorily registrable under this Ordinance but which is capable of registration, the Registrar must not register the lease unless—

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

Division 3 - Charges

Form and effect of charges

64. (1) A proprietor, may, by an instrument in the prescribed form, charge any land or lease or charge belonging to the proprietor to secure payment of an existing or a future or a contingent debt or other money or money's worth or the fulfilment of a condition.

(1A) An instrument referred to in subsection (1) must contain a special acknowledgement that the chargor understands the effect of section 72 of this Ordinance and the acknowledgement must be signed by the chargor or, if the chargor is a corporation, by one of the persons attesting the affixation of the common seal.

(2) A date for the repayment of the money secured by a charge may be specified in the charge instrument, and if no such date is specified, or repayment is not demanded by the chargee on the date specified, the money is deemed to be repayable 3 months after the service of a demand in writing by the chargee.

(3) The charge is completed by its registration as an incumbrance and the registration of the person in whose favour it is created as its proprietor and by filing the

instrument.

(4) A charge does not operate as a transfer but has effect as a security only.

(5) There are to be included in an instrument of charge securing the fulfilment of a condition or the payment of an annuity or other periodical payment not of the nature of interest on a capital sum any provisions the parties think fit for disposing, subject to section 76 of this Ordinance, of the money which may arise on the exercise by the chargee of the power of sale, either by setting aside the proceeds of sale or part of them and investing them to make future periodical payments, or by payment to the chargee of such proceeds or part of them to the extent of the estimated capital value of the chargee's interest, or otherwise.

Second or subsequent charge

65. A proprietor whose land or lease or charge is subject to a charge may create a second or subsequent charge in the same manner as the first charge and the same provisions apply to a second or subsequent charge, but any sale under the power expressed or implied in any such charge must be expressed to be subject to all prior charges unless all those charges have been discharged.

Presumption that money paid is interest

66. If any question arises whether any payment made by the chargor is in respect of principal or interest, the payment is presumed to be in respect of interest to the extent of all interest which is due and payable at the date of payment.

Agreements implied in charges

67. There is an implied covenant in every charge on the part of the chargor—
- (a) to pay the principal money on the day appointed in the charge and, so long as the principal money or any part of it remains unpaid, to pay interest on it, or on so much of it as for the time being remains unpaid, at the rate and on the days and in manner specified in the charge;
 - (b) to pay all rates, taxes and other outgoings which are at any time payable in respect of the charged property;
 - (c) to repair and keep in repair all buildings and other improvements upon the charged land or comprised in the charged lease and to permit the chargee or the chargee's agent, at all reasonable times and after reasonable notice to the chargor, to enter the land and examine the state and condition of such buildings and improvements;
 - (d) to insure and keep insured all buildings upon the charged land or comprised in the charged lease against loss or damage by fire in the joint names of the chargor and chargee with insurers approved by the chargee to the full value of the buildings;
 - (e) in the case of a charge of agricultural land, to farm the land in accordance with the practice and rules of good husbandry;
 - (f) in the case of a charge of land or of a lease, not to lease the charged land or any part of it, or sublease the whole or any part of the land comprised in the charged lease, without the previous consent in writing of the chargee which consent must not be unreasonably withheld;
 - (g) not to transfer the land, lease or charge, charged on any part of it without the previous written consent of the chargee which consent must not be unreasonably

- withheld;
- (h) in the case of a charge of a lease, during the continuance of the charge to pay the rent reserved by the lease and observe and perform the agreements and conditions of it, and to keep the chargee indemnified against all proceedings, expenses and claims on account of the non-payment of the said rent or any part of it, or the breach or non-observance of the said agreements and conditions or any of them, and, if the lessee has an enforceable right to renew the lease, to renew it;
 - (i) if the charge is a second or subsequent charge, to pay the interest from time to time accruing due on each prior charge when it becomes due, and to repay the principal money due on each prior charge; and
 - (j) if the chargor fails to comply with any of the agreements implied by paragraphs (b), (c), (d), (e) and (h), that the chargee may spend such money as is necessary to remedy the breach, and may add the amount so spent to the principal money, and that thereupon the amount is deemed for all purposes to be part of the principal money secured by the charge.

Chargee's consent to transfer

68. If a charge contains an agreement, express or implied, by the chargor with the chargee that the chargor will not transfer the land, lease or charge charged or any part of it without the written consent of the charge -

- (a) the agreement must be noted in the Register; and
- (b) no transfer by the chargor may be registered until the written consent of the chargee verified in accordance with section 108 has been produced to the Registrar.

Variation of charges

69. The amount secured, the method of repayment, the rate of interest or the term 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 affects the rights of the proprietor of any subsequent charge, unless the proprietor has consented to the variation in writing on the instrument of variation.

Right of redemption

70. (1) Subject to this section -

- (a) a chargor, on payment of all money due and owing under the charge at the time of payment or on fulfilment of any condition secured by the charge and on payment of any costs or expenses properly incurred by the chargee in exercising any power conferred on the chargee by section 72 may redeem the charged land or lease or charge at any time before it has been sold under section 75;
- (b) any agreement or provision which purports to deprive the chargor of this right of redemption is void; and
- (c) for the purposes of this subsection, land, a lease or a charge is deemed to have been sold when a tender has been accepted.

(2) If the chargor wishes to redeem the charged land or charge before the date for repayment specified in the charge, the charger may do so on payment to the chargee, in addition to any other money then due or owing under the charge, of interest on the principal sum as

prescribed in subsection (3).

(3) If the chargor seeks to redeem the charged land or lease or charge after the date specified in the charge, or if no such date is specified, the chargor must give the chargee 3 months' notice of the intention to redeem the charge or pay the charge 3 months' interest instead.

(4) If at any time the chargor is entitled and desires to repay the money secured by the charge, and the chargee is absent or cannot be found, or the Registrar is satisfied that the charge cannot be discharged otherwise -

- (a)* the chargor may deposit the amount due with the Registrar in trust for the person entitled to it;
- (b)* thereupon the obligations of the chargor under the charge cease; and
- (c)* the Registrar must cancel the registration of the charge and pay the amount deposited to the chargee if the chargee applies for it within 12 years after the date of the deposit,

and if the amount is not so paid it must be paid into the Court.

Right of third party to transfer of charge

71. On tendering to the chargee the sums that would have been payable to the chargee if the chargor had sought to redeem the charge under section 70, any of the following persons may require the chargee to transfer the charge to that person—

- (a)* any person, other than the chargor, who has an interest in the land or lease or charge charged;
- (b)* any surety for the payment of the amount secured by the charge; or
- (c)* any creditor of the chargor who has obtained a decree for sale of the charged land, lease or charge,

Chargee's remedies

72. (1) If default is made in payment of the principal sum or of any interest or any other periodical payment or of any part of it, or in the performance or observance of any agreement expressed or implied in any charge, and continues for one month, the chargee may serve on the chargor notice in writing to pay the money owing or to perform and observe the agreement, as the case may be.

(2) If the chargor does not comply with a notice served on the charger under subsection (1) within 3 months of the date of such service, the chargee may—

- (a)* appoint a receiver of the income of the charged property; or
- (b)* sell the charged property;

but a chargee who has appointed a receiver may not exercise the power of sale unless the chargor fails to comply with a further notice served on the chargor under subsection (1) within 3 months of the date of such service.

- (3)** The chargee is entitled to sue for the money secured by the charge only if—
 - (a)* the chargor is bound to repay the money;
 - (b)* by any cause other than the wrongful act of the chargor or chargee the charged property is wholly or partially destroyed or the security is rendered insufficient and the chargee has given the chargor a reasonable opportunity of providing further

security which will render the whole security sufficient, and the chargor has failed to provide such security;

(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.

(4) In the case specified in subsection (3)(a)—

(a) a transferee from the chargor is not liable to be sued for the money unless the transferee has agreed with the chargee to pay the money; and

(b) no action may be commenced until a notice served in accordance with subsection (1) has expired.

(5) The Court may, at its discretion stay a suit brought under subsection 3(a) or (b), despite any agreement to the contrary, until the chargee has exhausted all the other remedies against the charged property.

Appointment powers, remuneration and duties of receiver

73. (1) The appointment of a receiver under the powers conferred by section 72 must be in writing signed by the chargee.

(2) A receiver may be removed at any time and a new receiver appointed in writing signed by the chargee.

(3) A receiver appointed under this section is deemed to be the agent of the chargor for the purposes for which the receiver is appointed; and the chargor is solely responsible for the receiver's acts and defaults unless the charge otherwise provides.

(4) The receiver has power to demand and recover all the income of which the receiver is appointed receiver, by action or otherwise, in the name of the chargor, and to give effectual receipts accordingly for the same.

(5) A person paying money to the receiver does not need to inquire into the validity of the receiver's appointment.

(6) Subject to subsection (8), the receiver may retain out of any money received by the receiver -

(a) all costs, charges and expenses incurred by the receiver as receiver; and

(b) for the receiver's remuneration, a commission at a rate, not exceeding 5% of the gross amount of all moneys received, specified in the appointment, or if no rate is so specified, at the rate of 5% of that gross amount, or any other rate the chargor and chargee and other chargees, if any, agree or the Court thinks fit to allow on application made by the receiver for that purpose.

(7) The receiver must apply any insurance money in making good the loss or damage in respect of which the money is received.

(8) Subject to subsection (7), a receiver ('R') must apply all money received by R in the following order of priority—

(a) in the discharge of all rents, rates, taxes and outgoings whatever affecting the

- charged property;
- (b) in keeping down all annual sums or other payments, and the interest on all principal sums, having priority to the charge in right of which R is the receiver;
- (c) in payment of R's commission, costs, charges and expenses and of the premiums on fire, life and other insurance, if any, properly payable under the charge instrument or under this Ordinance, and the cost of executing necessary or proper repairs directed in writing by the chargee;
- (d) in payment of the interest accruing due in respect of any 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 must pay any residue of the money received by R to the person who, but for the appointment of R, would have been entitled to receive the income of which R is appointed receiver, or who is otherwise entitled to the charged property.

Chargee's powers of leasing

74. (1) The proprietor of a charge on land or a lease who has appointed a receiver under the powers conferred on the proprietor by section 72 may, in the absence of any express provision to the contrary contained in the charge, and subject to this Ordinance and any other written law—

- (a) grant leases in respect of the charged land or the land comprised in the charged lease or any part or parts of it; and
- (b) to accept a surrender of any lease so granted and of any lease created by the chargor, and may, for such purposes, execute in the place of the chargor any instrument required to effect such lease or surrender.

(2) Every lease granted by a chargee must—

- (a) be made to take effect in possession not later than 12 months after its date;
- (b) reserve the best rent that can reasonably be obtained, regard being had to the circumstances of the case, but without a fine or premium being obtained;
- (c) be for a term not exceeding 21 years; and
- (d) contain a declaration by the chargee that the charge has appointed a receiver, with the date of appointment.

Chargee's power of sale

75. (1) A chargee exercising a power of sale -

- (a) must act in good faith and have regard to the interests of the charger; and
- (b) may sell or concur with any person in selling the charged land, lease or charge, or any part of it, together or in lots, by public tender for a sum payable in one amount or by instalments, subject to any conditions of sale the chargee thinks fit, without being answerable for any loss occasioned by the sale.

(2) If the chargor is in possession of the charged land or the land comprised in the charged lease, the chargee becomes entitled to recover possession of the land upon a tender being accepted.

(3) A transfer by a chargee in exercise of a power of sale must be made in the prescribed form, and the Registrar may accept it as sufficient evidence that the power has been

duly exercised, and any person suffering damage by an irregular exercise of the power has a remedy in damages only against the person exercising the power.

(4) Upon registration of such a transfer, the interest of the chargor as described in the transfer passes to and vests in the transferee, freed and discharged from all liability on account of the charge, or on account of any other incumbrance to which the charge has priority (other than a lease, easement or profit subsisting at the time the charge was effected or to which the chargee has consented in writing).

(5) A chargee, in exercising a power of sale, has the same powers and rights in regard to easements and restrictive agreements as are conferred upon a proprietor by sections 93 and 94.

Application of purchase money

76. The purchase money received by a chargee who has exercised a power of sale after discharge of any prior incumbrances to which the sale is not made subject or after payment into Court of a sum sufficient to meet any such prior incumbrances, must be applied—

- (a) first, in payment of all costs and expenses properly incurred and incidental to the sale or any attempted sale;
 - (b) secondly, in accordance with any express provision in the charge (as required by section 64) for disposing of such money and, in the absence of any such express provision, in discharge of any money due to the chargee at the date of the sale; and
 - (c) thirdly, in payment of any subsequent charges in the order of their priority,
- and the residue of the money so received must be paid to the person who immediately before the sale was entitled to redeem the charged land, lease or charge.

Variation of powers

77. The provisions of sections 70(2) and (3), 72, 73, 74 and 75 may in their application to a charge be varied or added to in the charge; ~~provided that~~ but any such variation or addition must not be acted upon unless the Court, having regard to the proceedings and conduct of the parties and to the circumstances of the case, so orders.

No right of entry into possession or foreclosure

78. A chargee is not entitled to foreclose nor to enter into possession of the charged land or the land comprised in a charged lease nor to receive the rents and profits of the land only because default has been made in the payment of the principal sum or of any interest or other periodical payment or of any part of it or in the performance or observance of any agreement expressed or implied in the charge.

Discharge of charge

79. (1) A discharge, whether of the whole or of a part of a charge, must be made by an instrument in the prescribed form, and (if of the whole) the word “Discharged” may be endorsed on the charge or the duplicate and the endorsement executed by the chargee and dated.

(2) A discharge is completed by cancellation in the Register of the charge, or part of it as the case may require, and filing the instrument of discharge or the endorsed charge.

Satisfaction of charges

80. Upon proof to the satisfaction of the Registrar that—

- (a) all money due under a charge has been paid to the chargee or by the chargee's direction; or
- (b) there has occurred the event or circumstances upon which, in accordance with the provisions of any charge, the money secured by it ceases to be payable and that no money is owing under the charge,

the Registrar must order the charge to be cancelled in the Register, and thereupon the land, lease or charge ceases to be subject to the charge.

Tacking and further advances

81. (1) Provisions may be made in a charge for the chargee to make further advances or give credit to the chargor on a current or continuing account, but, unless that provision is noted in the Register, further advances do not rank in priority to any subsequent charge except with the consent in writing of the proprietor of the subsequent charge.

(2) Except as provided in this section, there is no right to tack.

Consolidation

82. A chargee has no right to consolidate a charge with any other charge unless the right is expressly reserved in the charges or in one of them and is noted in the Register against all the charges so consolidated.

Division 4 - Transfers

Transfers

83. (1) A proprietor, by an instrument in the prescribed form, may transfer the proprietor's land, lease or charge to any person with or without consideration.

(2) The transfer is completed by registration of the transferee as proprietor of the land, lease or charge and by filing the instrument.

(3) The 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 transfer.

Certificate as to payment of rates, taxes, etc.

84. *Repealed*

Conditional transfers not registrable

85. A transfer to take effect on the happening of any event or on the fulfilment of any condition or at any future time is not be capable of registration.

Conditions repugnant to interest transferred

86. (1) Any condition or limitation purporting to restrain absolutely a transferee or any person claiming under the person from disposing of the interest transferred is void.

(2) Any condition or limitation made in relation to a transfer which purports to determine the interest of the transferee on the happening of any future event or on the failure of a future event to happen is be void.

(3) Except as provided in Division 5 of this Part, no transfer of land may contain a direction that the land is to be used or enjoyed by the transferee in a particular manner.

Transfer of part

87. No part of the land comprised in a register may be transferred unless the proprietor has first subdivided the land and new registers have been opened in respect of each subdivision.

Transfer of leases

88. On the transfer of a lease, unless the contrary is expressed in the transfer, there is implied—

- (a)* a warranty on the part of the transferor that the rent, agreements and conditions on the part of the lessee to be paid, performed and observed have been so paid, performed and observed 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 said rent as 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 said agreements and conditions.

Effect of transfer on agreement in leases

89. (1) A transferee from a lessor or from a lessee possesses all the rights, and is subject to all the liabilities, of the lessor or lessee, as the case may be, expressed or implied in the lease, or arising or which have arisen under it, and the transferor ceases to be under any obligation or possessed of any rights in respect of the lease.

(2) Subsection (1) does not affect 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 the lease which occurred before the transfer.

Transfer of land or lease subject to charge

90. In every transfer of land or a lease subject to a charge, there is implied an agreement by the transferee with the transferor to-

- (a)* pay the interest secured by the charge at the rate and at the times and in the manner specified in the charge; and
- (b)* keep the transferor indemnified against the principal sum secured by the charge and from and against all liability in respect of any of the agreements on the part

of the transferor contained or implied in the transfer.

Transfer of land subject to lease

91. A transfer of land which is subject to a lease is valid without the lessee acknowledging the transferee as lessor, but this section does not—

- (a) affect the validity of any payment of rent made by the lessee to the transferor; or
 - (b) render the lessee liable, on account of the lessee's 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.

Transfer of unregistered leases

92. A transfer of a lease of registered land which lease does not require registration, and is not registered, does not itself require registration, but if application is made to the Registrar to register such transfer, the Registrar must not do so unless the transfer is in the prescribed form and the lease and prior transfers or other dealings with the lease have been registered.

Division 5 - Easements, Restrictive Agreements, Profits and Licences

Easements

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

(2) Any proprietor transferring or leasing land or a lease may in the transfer or lease grant an easement, for the benefit of the land transferred or leased, over land retained by the proprietor, or reserve an easement for the benefit of land retained by the proprietor.

(3) The instrument creating the easement must specify clearly—

- (a) the nature of the easement, the period for which it is granted and any conditions, limitations or restrictions intended to affect its enjoyment;
- (b) the land burdened by the easement and, if required by the Registrar, the particular part of it so burdened; and
- (c) the land which enjoys the benefit of the easement,

and must, if so required by the Registrar, include a plan sufficient in the Registrar's opinion to define the easement.

(4) The grant or reservation of the easement is completed by its registration as an incumbrance in the Register of the land burdened and in the property section of the land which benefits, and by filing the instrument.

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

Restrictive agreements

94. (1) If an instrument, other than a lease or charge, contains an agreement

(hereinafter referred to as “**a restrictive agreement**”) by one proprietor restricting the building on or the user or other enjoyment of the proprietor’s land for the benefit of the proprietor of other land, and is presented to the Registrar, the Registrar must-

- (a) note the restrictive agreement in the incumbrances section of the Register of the land or lease burdened by the restrictive agreement, either by entering particulars of the agreement, or by referring to the instrument containing the agreement; and
- (b) file the instrument.

(2) Unless it is noted in the Register, a restrictive agreement is not binding on the proprietor of the land or lease burdened by it or on anybody acquiring the land or lease.

(3) The note of a restrictive agreement in the Register does not give the restrictive agreement any greater force or validity than it would have had if it had not been registrable under this Ordinance and had not been noted.

(4) In so far as the restrictive agreement is capable of taking effect, not only the proprietors themselves but also their respective successors in title are entitled to the benefit and subject to the burden of it respectively, unless the instrument otherwise provides.

Profits

95. (1) The proprietor of land or a lease may, by an instrument in the prescribed form, grant a profit.

(2) The instrument must indicate clearly the nature of the profit, the period for which it is to be enjoyed and whether it is to be enjoyed—

- (a) in gross, or as appurtenant to other land or a lease; and
- (b) by the grantee exclusively or by the grantee in common with the grantor.

(3) The grant of a profit is completed—

- (a) by its registration as an incumbrance in the Register of the land or lease which it affects;
- (b) if it is appurtenant to other land or a lease - by its registration in the property section of the Register of the land or lease to which it is appurtenant; and
- (c) by filing the instrument.

(4) A profit which is not appurtenant to land may be dealt with as though it was land.

(5) A profit granted by the proprietor of a lease is capable of subsisting only during the subsistence of the lease.

Release and extinguishment of easements, restrictive agreements and profits

96. (1) Upon presentation of a duly executed release in the prescribed form, the registration of the easement, profit or restrictive agreement must be cancelled, and the easement, profit or restrictive agreement is thereupon extinguished.

(2) On the application of any person affected by it, the Registrar may cancel the registration of an easement, profit or restrictive agreement upon proof to the Registrar’s

satisfaction that—

- (a) the period of time for which it was intended to subsist has expired;
- (b) the event upon which it was intended to terminate has occurred; or
- (c) it has been abandoned.

Discharge and modification of easements, restrictive agreements and profits

97. The Court may, on the application of any person interested in land affected by an easement, restrictive agreement or profit, by order wholly or partially extinguish or modify any such easement, restrictive agreement or profit (with or without payment by the applicant of compensation to any person suffering loss in consequence of the order), on being satisfied that—

- (a) because of changes in the character of the property or the neighbourhood or other circumstances of the case which the Court considers material, the easement, restrictive agreement, or profit ought to be held to be obsolete;
- (b) the continued existence of the easement, restrictive agreement or profit impedes the reasonable user of the land for public or private purposes without securing practical benefits to other persons or as the case may be, will unless modified so impede such user; or
- (c) the proposed discharge or modification will not injure the person entitled to the benefit of the easement or restrictive agreement or profit.

Natural rights

98. Nothing in this Ordinance is to 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.

Licences

99. (1) Without affecting section 127, a licence is not capable of registration.

(2) A licence relating to the use or enjoyment of land is ineffective against a purchaser in good faith for valuable consideration unless the licensee has protected the licensee's interest by lodging a caution under section 127.

Division 6 - Co-proprietorship and Partition

Registration of more than one proprietor

100. (1) If any land is conveyed, transferred, devised, or devolves to 2 or more persons in their own right, such persons are deemed and taken to be proprietors in common, unless expressly declared to be joint proprietor; but all land conveyed, transferred or devised to executors or trustees is held by them as joint proprietors.

(2) Every instrument made in favour of 2 or more persons, and the registration giving effect to it, must show—

- (a) whether such persons are joint proprietors or proprietors in common; and
- (b) if they are proprietors in common - the share of each proprietor.

Characteristics of joint proprietorship and severance thereof

101. (1) If the land, lease or charge is owned jointly, no proprietor is entitled to any separate share in the land, and consequently—

- (a) dispositions may be made only by all the joint proprietors; and
- (b) on the death of a joint proprietor, that proprietor's interest vests in the surviving proprietor or the surviving proprietors jointly.

(2) Notwithstanding subsection (1)—

- (a) the sole proprietor of any land, lease or charge may transfer the same to that proprietor and another person jointly; and
- (b) a joint proprietor of any land, lease or charge may transfer that proprietor's interest to all the other proprietors.

(3) Joint proprietors, not being trustees, may execute an instrument in the prescribed form signifying that they agree to sever the joint proprietorship, and the severance is completed by registration of the joint proprietors as proprietors in common in equal shares and by filing the instrument.

Characteristics of proprietorship in common

102. (1) If any land, 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 that proprietor's share must be administered as part of that proprietor's estate.

(2) A proprietor in common must not deal with that proprietor's undivided share in favour of any person other than another proprietor in common of the same land, except with the consent in writing of the remaining proprietor or proprietors of the land, but such consent must not be unreasonably withheld.

Partition of land owned in common

103. (1) An application for the partition of the land owned in common may be made in the prescribed form to the Registrar by—

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

and subject to this Ordinance and any written law by or under which minimum areas or frontages are prescribed or the consent of any authority to a partition is required, the Registrar must effect the partition of the land in accordance with any agreement of the proprietors in common or, in the absence of agreement, in a manner the Registrar orders.

(2) Partition is completed by closing the Register of the parcel partitioned and opening registers in respect of the new parcels created by the partition and filing the agreement or order.

When Registrar may order sale

104. (1) If for any reason the land sought to be partitioned is incapable of

partition or the partition would adversely affect the proper use of the land, and a demand is made by the applicant or one or more of the other proprietors in common that the land or any share or shares in the land be sold, the Registrar must, in default of any agreement between the proprietors in common, value the land and the shares of the proprietors in common and order the sale of the land or the separation and sale of such shares by public tender or make any other order for the disposal of the application the Registrar thinks fit.

(2) A proprietor in common is entitled to purchase the land or any share so offered for sale, either by submitting a tender or at any time by private treaty.

Procedure if share is small

105. (1) If the land sought to be partitioned is capable of partition generally, but the resultant share of any particular proprietor in common would be less in area than any minimum prescribed by or under any written law, the Registrar must add such share to the share of any other proprietor or distribute the share between 2 or more other proprietors in a manner and in proportion that, in default of agreement, the Registrar thinks fit.

(2) If Where the Registrar proceeds in accordance with subsection (1) he or she must assess the value of the share added or distributed and order that there be paid to the proprietor of the share by each proprietor who has received an addition to that proprietor's share the value of such addition.

(3) If any sum is payable under subsection (2) by any proprietor in common to any other proprietor in common, the Registrar may order that such sum be secured by way of charge on the share of the person liable to pay it.

PART V INSTRUMENTS AND AGENTS

Form of instrument

106. (1) Every disposition of land, every lease and every charge must be effected by an instrument in the prescribed form or in any other form the Registrar in any particular case approves.

(2) *Repealed*

(3) Instruments must contain a true statement of the amount or value of the purchase price or loan or other consideration (if any), and an acknowledgement of the receipt of the consideration.

Execution of instruments

107. (1) Every instrument evidencing a disposition must be executed by all persons shown by the Register to be proprietors of the interest affected and by all other parties to the instrument; but the Registrar may dispense with execution by any particular party (other than the donor under a disposition by way of gift) if he or she considers that such execution is unnecessary.

(2) Subject to section 120(2), an instrument is deemed to have been executed only—

- (a) by a natural person, if signed by him or her;
- (b) by a corporation—
 - (i) if sealed with the common seal of the corporation, affixed to it in the presence of and attested by its clerk, secretary or other permanent officer and by a member of the board of directors, council or other governing body of the corporation; or
 - (ii) in the case of a corporation not required by law to have a common seal - if signed by the persons authorised for the purpose by any written law or by the Ordinance or charter of the corporation or, in the absence of any express provision, by the persons duly appointed in writing for that purpose by the corporation, evidence of which appointment has been produced to the satisfaction of the Registrar.

Verification of execution

108. (1) Subject to subsection (3), every person ('A') (other than one in whose favour the instrument operates) who executes an instrument must appear before the Registrar or any public officer or other person prescribed and, unless A is known to the Registrar or such public officer or other person, must be accompanied by a credible witness for the purpose of establishing A's identity.

(2) The Registrar or public officer or other person must be satisfied as to the identity of A appearing before him or her and ascertain whether A freely and voluntarily executed the instrument, and must complete on the instrument a certificate to that effect.

- (3) An instrument need not be verified under this section if either—
- (a) it effects a disposition of Crown Land and is executed by the Governor or by some person authorised by the Governor for the purpose; or
 - (b) the signature of the party whose signature is required to be verified is witnessed by a member of the staff of the Registry or by a Commissioner for Oaths, a Notary Public, a Solicitor, a Magistrate or a British Consular Officer.

- (4) The Registrar may dispense with verification under this section—
- (a) if he or she considers that it cannot be obtained except with difficulty and is otherwise satisfied that the document has been properly executed; or
 - (b) in cases in which to the Registrar's knowledge the document has been properly executed,

and must record on the document his or her reasons for dispensing with the appearance of the parties.

Stamps

109. An instrument required by law to be stamped must not be accepted for registration unless it is duly stamped.

Disposal of instruments

- 110.** (1) Subject to subsection (2) of this section and to section 112(2), all

instruments accepted by the Registrar must be retained in the Registry for as long as they support a current entry in the Register and for 6 years thereafter.

(2) The Registrar may, 6 years or more after an entry in the Register has been superseded or has ceased to have any effect, destroy any instrument which supported the entry.

Minors

111. (1) The name of a minor may be entered in the Register either on first registration or as a transferee or on transmission.

(2) This section does not enable any minor to deal with land or any interest in land by virtue of such registration, and if to the Registrar's knowledge a minor is registered, the Registrar must enter a restriction accordingly.

(3) If a disposition by a minor whose minority has not been disclosed to the Registrar has been registered, the disposition may not be set aside only on the grounds of minority.

Agents and persons under disability

112. (1) Except as provided in subsection (3), an instrument executed by any person as agent for any other person must not be accepted by the Registrar unless the person executing it was authorised for the purpose by a power of attorney executed and verified in accordance with sections 107 and 108.

(2) The original of a power of attorney required by subsection (1) or, with the consent of the Registrar, a copy of it certified by the Registrar, must be filed.

(3) If any person who, if not under a disability, might have made any application, done any act or been a party to any proceedings under this Ordinance or under any rules made under it is a minor, a person of unsound mind or a person under any other disability, the guardian of such person, or if there is no such guardian a person appointed under some written law to represent that person, may make any application, do any act and be party to any proceedings on behalf of that person, and must generally represent that person for the purposes of this Ordinance.

(4) Before accepting any document executed by a guardian or a person so appointed to represent a person under a disability, the Registrar must -

- (a) be satisfied that the person claiming to be the guardian is entitled to execute the document or require the production of the appointment of the person so appointed; and
- (b) file a note of the explanation which satisfied the Registrar, or a copy of the appointment, as the case may be.

Gift to person under disability

113. A person under a disability who has been registered as proprietor of land, a lease or a charge acquired by the person by way of gift may, within 6 months after the person ceases to be under a disability, repudiate the gift if he or she has not already disposed of the subject

matter of it, but no such repudiation is effective until—

- (a) the person has transferred the land, lease or charge to the donor, who is bound to accept it; and
- (b) the transfer has been registered.

Powers of attorney

114. (1) Upon the application of the donor or the donee of a power of attorney which contains any power to dispose of any interest in land, the power of attorney must be entered in the Register of powers of attorney and the original, or, with the consent of the Registrar a copy of it certified by the Registrar, must be filed in the file of powers of attorney.

(2) Every such power of attorney must be in the prescribed form or any other form the Registrar in any particular case approves, and must be executed and verified in accordance with sections 107 and 108.

(3) The donor of a power of attorney filed in accordance with subsection (1) may at any time give notice to the Registrar in the prescribed form that the power has been revoked, and thereupon the revocation must be entered in the Register of powers of attorney and noted upon the power, and the notice must be filed in the file of powers of attorney.

(4) Any interested person may give notice in writing to the Registrar that a power of attorney which has been registered under subsection (1) has been revoked by the death, bankruptcy or disability of the donor or the death or disability of the donee, accompanied by any evidence the Registrar requires, and thereupon the revocation must be entered in the Register of powers of attorney and noted upon the power, and the notice must be filed in the file of powers of attorney.

(5) Subsections (3) and (4) do not apply to a power of attorney given for valuable consideration during any time during which it is, by virtue of the terms of it, irrevocable.

(6) If owing to the length of time since the execution of a power of attorney or for any other reason the Registrar considers it desirable, he or she may require evidence that the power has not been revoked, and may refuse to register any disposition by the donee of the power of attorney until satisfactory evidence is produced.

Effect of registered power of attorney

115. (1) A power of attorney which has been registered under section 114 and of which no notice of revocation has been registered under that section is deemed to be subsisting as regards any person acquiring any interest in land affected by the exercise of the power, for valuable consideration and without notice of revocation and in good faith, or any person deriving title under such a person.

(2) Any person making any payment or doing any act in good faith pursuant to a power of attorney registered under section 114 is not liable in respect of the payment or act only because before the payment or act the donor of the power had died or become subject to a disability or become bankrupt, or had revoked 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.

PART VII TRANSMISSIONS AND TRUSTS

Transmission on death of joint proprietor

116. If one of 2 or more joint proprietors of any land, lease or charge dies, the Registrar, on proof to his or her satisfaction of the death, must delete the name of the deceased from the Register.

Transmission on death of sole proprietor or proprietor in common

117. (1) If a sole proprietor or a proprietor in common dies, his or her personal representative, on application to the Registrar in the prescribed form and on production to the Registrar of the grant, is entitled to be registered by transmission as proprietor in the place of the deceased with the addition after the deceased's name of the words "as executor of the will of (here insert name of deceased) deceased" or "as administrator of the estate of (here insert name of the deceased) deceased", as the case may be.

(2) Upon production of a grant, the Registrar may, without requiring the personal representative to be registered, register by transmission—

- (a)* any transfer by the personal representative;
- (b)* any surrender of a lease or discharge of a charge by the personal representative.

(3) In this section, "grant" means the grant of probate of the will or the grant of letters of administration of the estate of the deceased proprietor.

Effect of transmission by death

118. (1) Subject to any restriction of the power of disposing of the land, lease or charge contained in the appointment, the personal representative or the person beneficially entitled on the death of the deceased proprietor, as the case may be -

- (a)* holds the land, lease or charge subject to any liabilities rights or interests which are unregistered but are nevertheless enforceable and subject to which the deceased proprietor held the same; but
- (b)* for the purpose of any dealing is deemed to have been registered as proprietor of the land, lease or charge, with all the rights conferred by this Ordinance on a proprietor who has acquired land, a lease or a charge, as the case may be, for valuable consideration.

(2) If a person is deemed by subsection (1)(b) to be registered as proprietor, the registration relates back to and takes effect from the date of the death of the deceased proprietor.

Transmission on bankruptcy

119. (1) A trustee in bankruptcy must, upon production to the Registrar of a certified copy of the order of Court adjudging a proprietor bankrupt, or directing that the estate of a deceased proprietor is to be administered according to the law of bankruptcy, be registered as proprietor of any land, lease or charge of which the bankrupt or deceased proprietor is proprietor in place of the bankrupt or deceased proprietor, and a copy of the order must be filed.

(2) A trustee in bankruptcy must be described in the Register as “trustee of the property of (here insert name of bankrupt) a bankrupt”.

(3) The trustee in bankruptcy -

- (a) holds any land, lease or charge of which the trustee is registered as proprietor, subject to any restrictions contained in any written law relating to bankruptcy or in any order of Court and subject to any liabilities, rights or interests which are unregistered but are nevertheless enforceable and subject to which the bankrupt or the deceased proprietor held the same; but
- (b) for the purpose of any dealing with such land, lease or charge the trustee in bankruptcy has all the rights and is subject to all the limitations conferred or imposed by this or any other written law on a proprietor who has acquired land, lease or a charge for valuable consideration.

Liquidation

120. (1) If a company is being wound up, the liquidator must produce to the Registrar any resolution or order appointing the liquidator, and the Registrar must enter the appointment in respect of any land, lease or charge of which the company is registered as proprietor, and file the copy of the resolution or order.

(2) An instrument executed by or on behalf of a company in liquidation delivered for registration after the appointment of the liquidator has been entered under subsection (1) must be sealed with the common seal of the company and attested by the liquidator or, in the case of a company not required by law to have a common seal, must be signed by the liquidator, whose signature must be verified in accordance with section 108.

Transmission by compulsory acquisition or judgment of Court

121. If the Crown or any person has become entitled to any land, lease or charge under any written law or by virtue of any decision, judgment, order or procedure under the Land Acquisition Ordinance, 2006, Part 6 of the Immigration Ordinance, 2011 (Landholding by Immigrants), or under any other written law, the Registrar must, on the application of any interested person supported by any evidence the Registrar requires, register the Crown, or the person entitled, as the proprietor.

Trusts

122. (1) A person acquiring land or a lease or a charge in a fiduciary capacity may be described by that capacity in the instrument of acquisition and, if so described, must be registered with the addition of the words “as trustee”, but the Registrar must not enter particulars of any trust in the Register.

(2) An instrument which declares or is deemed to declare any trust, or a certified copy of such an instrument, may be deposited with the Registrar for safe custody; but such instrument or copy does not form part of the Register nor is it deemed to be registered.

(3) A proprietor of land, a lease or a charge who is a trustee must hold the land,

lease or charge subject to any unregistered liabilities, rights or interests to which it is subject by virtue of the instrument creating the trust, but for the purpose of any registered dealings is deemed to be the absolute proprietor of the land, lease or charge, and no person dealing in good faith for valuable consideration is deemed to have notice of the trust, nor does any breach of the trust create any right to indemnity under this Ordinance.

Survivor of trustees

123. Whenever 2 or more proprietors are registered jointly as trustees, and the survivor of such proprietors would not be entitled to exercise alone the powers which are vested in them, the Registrar must enter a restriction to that effect.

PART VIII RESTRAINTS ON DISPOSITION

Division 1 - Inhibitions

Power of Court to inhibit registered dealings

124. (1) The Court may make an order, (in this division referred to as an “**inhibition**”), inhibiting for a particular time, or until the occurrence of a particular event, or generally until further order, the registration of any dealing with any land, lease or charge.

(2) A copy of the inhibition under the seal of the Court, with particulars of the land, lease or charge affected by it, must be sent to the Registrar, who must register it in the appropriate register, and no inhibition binds or affects the land, lease or charge until it has been registered.

Effect of inhibition

125. So long as an inhibition remains registered, no instrument which is inconsistent with it may be registered.

Cancellation of inhibition

126. The registration of an inhibition must be cancelled in the following cases and in no other—

- (a) on the expiration of the period for which the inhibition is stated to last;
- (b) on proof to the satisfaction of the Registrar of the occurrence of the event specified in the inhibition;
- (c) on the land, lease or charge being sold by a chargee, unless such sale is itself inhibited; or
- (d) by order of the Court.

Division 2 - Cautions

Lodging of cautions

- 127. (1)** Any person who—
- (a) claims any unregistrable interest whatsoever, in land or a lease or a charge;

(b) is entitled to a licence;

(c) has presented a bankruptcy petition against the proprietor of any registered land, lease or charge; or

(d) being a bank, has advanced money to the proprietor of land or a lease or a charge, may lodge a caution with the Registrar forbidding the registration of dispositions of the land, lease or charge concerned and the making of entries affecting the land, lease or charge.

(2) A caution may forbid either—

(a) the registration of dispositions and the making of entries altogether; or

(b) the registration of dispositions and the making of entries to the extent expressed in it.

(3) A caution must be in the prescribed form and state the interest claimed by the cautioner, and the Registrar may require the cautioner to support it by a statutory declaration.

(4) The Registrar may reject a caution which he or she considers unnecessary.

(5) Subject to this section, the caution must be registered in the appropriate register.

Notice and effect of cautions

128. (1) The Registrar must give notice in writing of a caution to the proprietor whose land, lease or charge is affected by it.

(2) So long as a caution remains registered, no disposition which is inconsistent with it may be registered except with the consent of a cautioner or by order of the Court.

Withdrawal and removal of cautions

129. (1) A caution may be withdrawn by the cautioner or removed by order of the Court or, subject to subsection (2), by order of the Registrar.

(2) (a) The Registrar may, on the application of any person interested, serve notice on the cautioner warning the cautioner that the caution will be removed at the expiration of the time stated in the notice, which must not be less than 14 days after the service of the notice.

(b) If at the expiration of the time stated the cautioner has not objected, the Registrar must remove the caution.

(c) If the cautioner objects to the removal of the caution, the cautioner must notify the Registrar in writing of the objection within the time specified in the notice, and the Registrar after giving the parties an opportunity of being heard, must make any order he or she thinks fit, and may in the order make provision for the payment of costs.

(3) On registration of a transfer by a chargee in exercise of the chargee's power of sale under section 75 the Registrar must remove any caution which purports to prohibit any dealing by the chargor and which was registered after the charge by virtue of which the transfer has been effected.

(4) On the withdrawal or removal of a caution its registration must be cancelled, but any liability of the cautioner previously incurred under section 131 is not be affected by the cancellation.

Second caution in respect of the same matter

130. The Registrar may refuse to accept a further caution by the same person or anyone on that person's behalf in relation to the same matter as a previous caution.

Unreasonable cautions

131. Any person who lodges or maintains a caution without reasonable cause is liable, in an action for damages at the suit of any person who has sustained damage by the caution, to pay compensation to that person.

Division 3 - Restrictions

Restrictions

132. (1) For the prevention of any fraud or improper dealing or for any other sufficient cause, the Registrar may, either with or without the application of any person interested in the land, lease or charge, after directing inquiries to be made and notices to be served and after hearing persons as the Registrar thinks fit, make an order (in this Division referred to as a “**restriction**”) prohibiting or restricting dealings with any particular land, lease or charge.

- (2) A restriction may be expressed to endure—
- (a) for a particular period;
 - (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 any dealings that do not comply with specified conditions, and the restriction must be registered in the appropriate register.

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

Notice and effect of restrictions

133. (1) Upon the entry of a restriction the Registrar must give notice of it in writing to the proprietor affected by it.

(2) So long as any restriction remains registered, no instrument which is inconsistent with it may be registered except by order of the Court or of the Registrar.

Removal and variation of restrictions

134. (1) The Registrar may at any time, upon application by any person interested or on his or her own initiative, and after giving the parties affected by it an opportunity of being heard, order the removal or variation of a restriction.

(2) Upon the application of a proprietor affected by a restriction, and upon notice of the application to the Registrar, the Court may order a restriction to be removed or varied, or make any other order it thinks fit, and may make an order as to costs.

PART IX PRESCRIPTION

Acquisition of land by prescription

135. (1) The ownership of land may be acquired by peaceable, open and uninterrupted possession for a period of 15 years without the permission of any person lawfully entitled to such possession.

(2) Any person who claims to have acquired the ownership of land by virtue of subsection (1) may apply to the Registrar for registration as proprietor of the land.

Principles of possession

136. (1) If it is shown that a person has been in possession of land, or in receipt of the rents or profits of land, at a certain date and is still in possession or receipt of the rents or profits, it is presumed that the person has, from that date, been in uninterrupted possession of the land or in uninterrupted receipt of the rents or profits until the contrary is shown.

(2) Possession of land or receipt of the rents or profits of it by any person through whom a claimant derives possession is deemed to have been the possession or receipt of the rents or profits by the claimant.

(3) **If** from the relationship of the parties or from other special cause it appears that the person in possession of land is or was in possession on behalf of another, the person's possession is deemed to be or to have been the possession of that other person.

(4) If a person whose possession of land is subject to conditions imposed by or on behalf of the proprietor continues in such possession after the expiry of the term during which the conditions subsists, without fulfilment or compliance with them by such person and without any exercise by the proprietor of the proprietor's right to the land, such subsequent possession is deemed to be peaceable, open and uninterrupted possession within the meaning of section 135.

(5) For the purpose of subsection (4)—

(a) a tenancy at will is deemed to have terminated at the expiration of a period of one year from the commencement of the tenancy unless it has previously been determined;

(b) a periodic tenancy is deemed to have terminated at the expiration of the period; but if any rent has subsequently been paid in respect of the tenancy it is be deemed to have terminated at the expiration of the period for which the rent has been paid.

(6) Possession is interrupted—

(a) by physical entry upon the land by any person claiming it in opposition to the person in possession with the intention of causing interruption if the possessor loses possession by the physical entry;

- (b) by the institution of legal proceedings by the proprietor of the land to assert the proprietor's right to the land; or
- (c) by any acknowledgement made by the person in possession of the land to any person claiming to be the proprietor thereof that the claim is admitted.

(7) A person possessing land in a fiduciary capacity on behalf of another person does not acquire by prescription the ownership of the land as against that other person.

Procedure on application

137. (1) On application by any person for registration as proprietor under section 135 the application must be advertised by the Registrar at the expense of the applicant in a manner the Registrar directs.

(2) The Registrar must give notice of any such application to the proprietor of the land affected and to any other person who may, in the Registrar's opinion, be affected by the application.

(3) After 3 months have elapsed from the date of giving notice under subsection (2) the Registrar, on being satisfied that the applicant has acquired the ownership of the land claimed, may allow the application and register the applicant as proprietor of the land claimed, subject to any interests on the Register which have not been extinguished by the possession.

Acquisition of easements and profits by prescription

138. (1) Easements and profits may be acquired without registration by peaceable, open and uninterrupted enjoyment of them for a period of 20 years.

(1A) No easement or profit may be acquired under subsection (1) unless the proprietor of the land burdened by the easement or profit was, or by reasonable diligence might have been, aware of such enjoyment and might by the proprietor's own efforts have prevented it.

(2) A person who claims to have acquired an easement or profit by virtue of subsection (1) may apply to the Registrar for registration of the easement or profit, and the Registrar, on being satisfied as to the claim and subject to any notices, advertisements and conditions the Registrar directs, must register the easement or profit as an incumbrance on the Register of the land affected and, in the case of an easement, in the property register of the land which benefits.

PART X RECTIFICATION AND COMPENSATION

Rectification by Registrar

139. (1) The Registrar may rectify the Register or any instrument presented for registration in the following cases—

- (a) in formal matters and in the case of errors or omissions not materially affecting the interest of any proprietor;
- (b) if any person has acquired an interest in land by prescription under Part IX;

- (c) in any case and at any time with the consent of all persons interested;
- (d) if, upon resurvey, a dimension or area shown in the Register or Registry map is found to be incorrect, but in such case the Registrar must first give notice to all persons appearing by the Register to be interested or affected of the intention so to rectify.

(2) Upon proof of the change of the name or address of any proprietor, the Registrar must, on the written application of the proprietor make an entry in the Register to record the change.

Rectification by Court

140. (1) Subject to subsection (2) the Court may order rectification of the Register by directing that any registration be cancelled or amended if it is satisfied that any registration including a first registration has been obtained, made or omitted by fraud or mistake.

(2) The register must not be rectified so as to affect the title of a proprietor who is in possession or is in receipt of the rents or profits and acquired the land, lease or charge for valuable consideration, unless the proprietor had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought, or caused such omission, fraud or mistake or substantially contributed to it by the proprietor's own act, neglect or default.

Right of compensation

141. (1) Subject to this Ordinance and of any written law relating to the limitation of actions, any person suffering damage because of any—

- (a) any rectification of the Register under this Ordinance;
- (b) any mistake or omission in the Register which cannot be rectified under this Ordinance, other than a mistake or omission in a first registration; or
- (c) any error in a certificate of official search issued by the Registrar or in a copy of or extract from the Register or a copy of or extract from any document or plan, certified under this Ordinance, is entitled to be compensated by the Government out of money provided from the Consolidated Fund.

(2) No compensation is payable under this Ordinance to any person who has caused or substantially contributed to the damage by fraud or negligence, or who derives title (otherwise than under a registered disposition made for valuable consideration and in good faith) from a person who so caused or substantially contributed to the damage.

Amount of compensation

142. If compensation is awarded in respect of the loss of any interest in land, it must not exceed—

- (a) if the Register is not rectified - the value of the interest at the time when the mistake or omission which caused the damage was made; or
- (b) if the Register is rectified - the value of the interest immediately before the time of rectification.

Procedure for claiming compensation

143. The Registrar may, on the application of any interested party, determine whether a right of compensation has arisen under this Part and, if so, award compensation, and may add to the compensation any costs and expenses properly incurred in relation to the matter.

Recovery of compensation paid

144. If any money is paid by way of compensation under this Part, the Governor may

- (a) recover, by suit or otherwise, the amount so paid from any person who has caused or substantially contributed to the loss by the person's fraud or negligence; and (b) enforce any express or implied agreement or other right which the person who is compensated would have been entitled to enforce in relation to the matter in respect of which the compensation has been paid.

Errors in survey

145. (1) As between the Government and a proprietor, no claim to compensation arises and no suit may be maintained on account of any surplus or deficiency in the area or measurement of any land disclosed by a survey showing an area or measurement differing from the area or measurement disclosed on any subsequent survey or from the area or measurement shown in the Register or on the Registry Map.

(2) As between a proprietor and any person from or through whom the proprietor acquired the land, no claim to compensation is maintainable on account of any surplus or deficiency in the area or measurement above or below that shown in any other survey or above or below the area or measurement shown in the Register or on the Registry Map more than 6 months after the date of registration of the instrument under which the proprietor acquired the land.

PART XI DECISION OF REGISTRAR AND APPEALS

Power of Registrar to state case

146. Whenever any question arises with regard to the exercise of any power or the performance of any duty conferred or imposed on the Registrar by this Ordinance, the Registrar may, and must if required to do so by an aggrieved party, state a case for the opinion of the Court; and thereupon the Court must give its opinion on the case, which is binding upon the Registrar.

Appeals

147. (1) The Governor or any person aggrieved by a decision, direction, order, determination or award of the Registrar may, within 30 days of the decision, direction, order, determination or award, give notice to the Registrar in the prescribed form of an intention to appeal to the Court against the decision, direction, order, determination or award.

(2) On receipt of a notice of appeal, the Registrar must prepare and send to the Court and to the appellant, and to any other person appearing to the Registrar from the Register to be affected by the appeal, a brief statement of the question in issue.

(3) On the hearing of the appeal, the appellant and the Registrar and any other person who, in the opinion of the Court, is affected by the appeal may, subject to any rules of Court, appear and be heard in person or by a legal practitioner, recognised agent or advocate duly appointed to act on his behalf of the person or the Registrar.

(4) The Court may make any order on the appeal that the circumstances require, and every such order must be given effect to by the Registrar.

(5) The costs of the appeal are in the discretion of the Court.

Effect of appeals on disposition

148. (1) An appeal to the Court does not affect a disposition for valuable consideration made in good faith and registered before delivery of notice of the appeal to the Registrar.

(2) A note that an appeal is pending must be made in the Register affected by the appeal and any disposition is subject to such notice.

Appeal Rules

149. The Court may make rules of Court for regulating applications and appeals to the Court under this Ordinance, and for the fees to be paid in respect of such applications and appeals.

PART XII MISCELLANEOUS

Addresses

150. (1) Any person who under this Ordinance submits a caution or any instrument for registration or who is the proprietor of any land, lease or charge, must provide to the Registrar in writing a postal address within St Helena for service, and must notify the Registrar in writing of any change in that address:

(2) The Registrar may in his or her discretion dispense with the requirement in subsection (1) in regard to any particular registration or kind of registration.

Service of notices

151. A notice under this Ordinance is deemed to have been served on or given to any person if—

- (a) served on the person personally;
- (b) served on an attorney holding a power of attorney;
- (c) sent by registered post to the person at the person's last known postal address in St Helena or elsewhere and a receipt purporting to have been signed by the person

- has been received in return; or
- (d) service cannot be effected in one of the above mentioned ways - by displaying it in a prominent place on the land affected for a period of 3 weeks.

Meaning of “opportunity of being heard”

152. (1) Whenever by this Ordinance a thing is to be or may be done after giving a person an opportunity of being heard, that person is deemed to have been given such an opportunity—

- (a) if the person attends before the Registrar personally or by a legal practitioner or other agent, or advocate, and is given such an opportunity;
- (b) if the person intimates personally or by a legal practitioner or other agent or advocate, that the person does not wish to be heard; or
- (c) if the person fails to attend pursuant to a notice in writing indicating the nature of the thing to be done and appointing a day and time not less than 30 days after service of the notice at which the person will, if the person attends before the Registrar, be heard.

(2) If a person or a legal practitioner or other agent or advocate on a person’s behalf attends before the Registrar concerning a matter on which the person is entitled to an opportunity of being heard, or fails to attend pursuant to such notice mentioned in subsection (1)(c), the Registrar may, if he or she thinks fit, adjourn the hearing from time to time, and, despite the failure to attend, may, if he or she thinks fit, hear such person at any time.

(3) If by this Ordinance all persons interested are to be given an opportunity of being heard, it is sufficient if all persons who according to any subsisting entry in the Register, appear to be so interested or affected are given such opportunity.

Offences

153. (1) It is an offence for a person to—

- (a) knowingly mislead or deceive any person authorised by or under this Ordinance to require information in respect of any land or interest in land;
- (b) fraudulently issue or make, or fraudulently procure the issue or making, of any certificate or other document, or any registration, or any erasure or alteration in any certificate or other document or in any register;
- (c) fraudulently use, assist in fraudulently using or be privy to the fraudulent use of any instrument or form purporting to be issued or authorised by the Registrar;
- (d) cause any defacement, obliteration, mutilation or unauthorised entry or alteration to be made on or in any register or filed instrument; or
- (e) wilfully obstruct any officer engaged in the carrying out of any survey under the directions of the Registrar or otherwise for the purposes of this Ordinance.

Penalty: A fine, or imprisonment for 3 years, or both.

(2) It is an offence for a person, after the delivery to the person of a summons to attend before the Registrar or to produce any document, to neglect or refuse without reasonable cause to-

- (a) attend in accordance with the summons;
- (b) produce any document which the person is required by the summons to produce;
- or

- (c) answer upon oath or otherwise any question which is lawfully put to the person by the Registrar under the powers conferred by this Ordinance.

Penalty: A fine of £250.

Fees

154. There are payable in respect of Land Certificates, certificates of leases, searches, survey plans, printed forms and all other matters connected with registration the fees prescribed, and the Registrar must refuse registration until the fees are paid; but the Registrar may, in any case where he or she considers it just so to do, for special reasons, waive the payment of any fee.

Recovery of fees and expenses

155. Unpaid fees or expenses incurred by the Registrar constitute a civil debt recoverable by the Registrar.

Enforcement of Registrar's orders for payment

156. An order for the payment of a sum of money made by the Registrar under any power conferred by this Ordinance is deemed to be an order of the Magistrates' Court and is enforceable as such.

Jurisdiction of Court

157. Subject to any other law in force in St Helena, civil suits and proceedings relating to the ownership or the possession of land, or to a lease or charge registered under this Ordinance, or to any interest in any such land, lease or charge, being an interest which is registered or registrable under this Ordinance, or being an interest which is referred to in section 28, must be tried by the Court.

Rules

158. The Governor in Council may make rules generally to give effect to the purposes and provisions of this Ordinance, and in particular, and without limiting that power, for prescribing the forms to be used under this Ordinance and the fees payable for anything to be done under it, and for prescribing anything which under this Ordinance may be prescribed.

Savings of rights

159. Nothing in this Ordinance affects any of the interests, rights, powers and privileges conferred on the Crown or the Government by any other written law.

Ordinance to bind Crown and Government

- 160.** Subject to section 159, this Ordinance binds the Crown and the Government.

Other law

- 161.** Any matter not provided for in this Ordinance or in any other written law in

relation to land, leases and charges registered under this Ordinance and interests therein is to be decided in accordance with the principles of justice, equity and good conscience.

REGISTERED LAND ORDINANCE, 1980

REGISTERED LAND RULES, 1981

(Section 158)

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Citation

1. These Rules may be cited as the Registered Land Rules, 1981.

Interpretation

2. *Omitted*

Registers and certificates

3. The forms of Register and Land Certificate must be such ~~forms~~ as the Registrar (with the approval of the Governor) ~~may~~ from time to time approves.

Forms

4. (1) The forms (other than the Register and Land Certificate) required to be used under the Ordinance are as prescribed in the First Schedule to these Rules.

- (2) Subject to rule 3, the form to be used for any matter for which no form is provided in these Rules is such as the Registrar from time to time approves.

Verification of instruments

5. (1) A Judge, a Magistrate, a Justice of the Peace, a Commissioner for Oaths, a Notary Public, an Attorney-at-law, a Solicitor and a Barrister are public officers for the purposes of section 108(1) of the Ordinance.

- (2) The form of certificate prescribed for the purposes of section 108(2) of the

Ordinance is as follows—

“I HEREBY CERTIFY that the above-named appeared before me on the day of, 20....., and being identified by (being known to me) acknowledged the above signature (or marks) to be his (hers) (theirs) and that he (she) (they) had freely and voluntarily executed this instrument and understood its contents.”

Signature of public officer.

(3) A public officer certifying as above must write his or her name in block capitals below the signature and, if the officer has a seal or stamp of office, must affix an impression of such seal or stamp to the certificate.

Fees

6. The fees payable by virtue of section 154 of the Ordinance are as prescribed in the Second Schedule to these Rules; but that no fee may be charged for the preparation or registration of any business transacted by or on behalf of the Crown or Government.

Refund of fees

7. No fees paid under these Rules may be refunded except by written order of the Registrar.

Registry hours for public transactions

8. The Registry will be open for the transaction of business with the public at times the Registrar from time to time appoints by notice in the *Gazette*.

FIRST SCHEDULE

(Regulation 4(1))

FORMS

Form R.L.1	Transfer of land
Form R.L.2	Transfer of lease
Form R.L.3	Transfer of charge
Form R.L.4	Transfer by chargee in exercise of power of sale
Form R.L.5	Transfer of profit
Form R.L.6	Transfer of undivided share
Form R.L.7	Transfer by personal representative to person entitled under a will or on an intestacy
Form R.L.8	Lease/Sub-lease
Form R.L.9	Charge
Form R.L.10	Discharge of charge
Form R.L.11	Surrender of lease
Form R.L.12	Grant of easement
Form R.L.13	Grant of profit
Form R.L.14	Release of profit, easement or restrictive agreement
Form R.L.15	Severance of joint proprietorship
Form R.L.16	Application for partition

- Form R.L.17 Power of attorney
- Form R.L.18 Notice of revocation of a power of attorney
- Form R.L.19 Application to be registered as proprietor by transmission
- Form R.L.20 Caution
- Form R.L. 21 *Deleted*
- Form R.L.22 Application to inspect the register
- Form R.L.23 Application for certified copy
- Form R.L.24 Application for official search
- Form R.L.25 Certificate of official search
- Form R.L.26 *Deleted*

Form R.L.1
REGISTERED LAND ORDINANCE, 1980
 (Section 83)

TRANSFER OF LAND

Registration Section

.....
 Block

 Parcel

I/WE
 in consideration of
 (The receipt of which is hereby acknowledged) HEREBY TRANSFER
 to
 of
 the land comprised in the above mentioned title.

*The Transferees declare that they hold the land as proprietors in common in the following undivided shares—

(or as joint proprietors)

Dated this day of, 20.....

Signed by the Transferor in the presence of— }

Signed by the Transferee in the presence of— }

* Delete if not applicable

Form R.L.2
REGISTERED LAND ORDINANCE, 1980
 (Section 83)

TRANSFER OF LEASE

Registration Section

.....
 Block

Parcel

.....

I/WE
in consideration of
(The receipt of which is hereby acknowledged) HEREBY TRANSFER
to
of
the leasehold interest comprised in the above-mentioned title.

The Transferees declare that they hold the leasehold interest as proprietors in the following undivided shares:

(or as joint proprietors)

Dated this day of, 20.....

Signed by the Transferor in the presence of— }

Signed by the Transferee in the presence of— }

Delete if not applicable.

Form R.L.3
REGISTERED LAND ORDINANCE, 1980
(Section 83)

TRANSFER OF CHARGE

Registration Section

.....

Block

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Parcel

.....

I/WE
in consideration of
(the receipt of which is hereby acknowledged) HEREBY TRANSFER
to
of
the charge shown as entry number in the incumbrances
section of the Register relating to the above-mentioned title.

The Transferor hereby declares that the amount of principal and interest owing by the Chargor at the date hereof is

(And the Chargor hereby acknowledges that this is the amount due and owing by the Chargor)*

Dated this day of, 20.....

Signed by the Transferor in the presence of— }

Signed by the Transferee in the presence of— }

Signed by the Chargor in the presence of— }

* Delete these words if the Transferee does not require the Chargor to acknowledge.

Form R.L.4
REGISTERED LAND ORDINANCE, 1980
(Section 75)

**TRANSFER BY CHARGEE
IN EXERCISE OF POWER OF SALE**

Registration Section
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Block
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Parcel
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I/WE
having exercised the power of sale conferred upon me/us by the charge shown as entry
number in the incumbrances section of the Register to the
above-mentioned title, in consideration of
(the receipt of which is hereby acknowledged) HEREBY TRANSFER
to
of
the interest charged by the said charge.

*The Transferees declare that they hold the said interest as proprietors in common in the
following undivided shares—
(or as joint proprietors)

Dated this day of, 20.....
Signed by the Transferor in the presence of— }
Signed by the Transferee in the presence of— }

* Delete if not applicable.

Form R.L.5
REGISTERED LAND ORDINANCE, 1980
(Section 95)

TRANSFER OF PROFIT

Registration Section
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Block
.....
Parcel
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I/WE in
consideration of (the
receipt of which is hereby acknowledged) HEREBY TRANSFER
to

of
the profit shown as entry number in the incumbrances
section of the Register relating to the above-mentioned title.

*The Transferees declare that they hold the profit as proprietors in common in the following
undivided shares—

(or as joint proprietors)

Dated this day of, 20.....

Signed by the Transferor in the presence of— }

Signed by the Transferee in the presence of— }

* *Delete if not applicable.*

Form R.L.6
REGISTERED LAND ORDINANCE, 1980
(Section 101)

TRANSFER OF UNDIVIDED SHARE

Registration Section

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Block

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Parcel

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I/WE.....

in consideration of

(the receipt of which is hereby acknowledged) **HEREBY TRANSFER**

to

of

my/our undivided share(s) (respectively) in the
above-mentioned title.

*The Transferees declare that they hold the (combined) undivided share(s) as proprietors in
common in the following undivided shares—

(or as joint proprietors)

I/WE

the remaining proprietor(s) of the interest comprised in the above-mentioned title hereby
consent to this transfer.

Dated this day of 20.....

Signed by the Transferor in the presence of— }

Signed by the Transferee in the presence of— }

Signed by the remaining proprietor(s) }

in the presence of— }

**Delete if not applicable.*

Form R.L.7
REGISTERED LAND ORDINANCE, 1980

(Section 117)

**TRANSFER BY PERSONAL REPRESENTATIVE
TO PERSON ENTITLED UNDER A WILL OR ON AN INTESTACY**

Registration Section
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Block
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Parcel
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I/WE
as personal representatives of
deceased HEREBY TRANSFER to
of
(Being the person entitled to it under the Will (or on the intestacy) of the deceased) to the
interest of the deceased comprised in the Register relating to the above-mentioned title.

*The Transferees declare that they hold that interest as proprietors in common in the
following shares—
(or as joint proprietors)

Dated this day of, 20.....

Signed by the Transferor in the presence of— }

Signed by the Transferee in the presence of— }

* *Delete if not applicable.*

Form R.L.8
REGISTERED LAND ORDINANCE, 1980
(Section 46)

LEASE/SUB-LEASE

Registration Section
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Block
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Parcel
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I/WE
HEREBY LEASE/SUB-LEASE to
of
the land comprised in the above-mentioned title (or) that portion of land comprised in the
above-mentioned title which is shown on the Registry map as parcel number or on
the filed plan as number for the term of from
the day of at the rent of
payable subject to sections 52 to 55 of the above Ordinance,

unless hereby negatived, modified or added to. (Here set out any variation, or make reference to an attached document).

*The lessees declare that they hold the lease as proprietors in common in the following undivided shares—

(Or as joint proprietors)

Dated this day of, 20.....

Signed by the Lessor in the presence of— }

Signed by the Lessee in the presence of— }

**Delete if not applicable.*

Form R.L.9
REGISTERED LAND ORDINANCE, 1980
(Section 64)

CHARGE

Registration Section

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Block

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Parcel

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I/WE HEREBY CHARGE my/our interest in the above-mentioned title or the charge shown as entry number in the incumbrances section of the Register relating to the above-mentioned title to secure the payment to of of the principal sum of with interest at the rate of % per annum payable subject to section 67 of the above Ordinance, unless hereby negatived, modified or added to. (Here set out any variation, or make reference to an attached document.)

The principal sum will be repaid on the day of, 20..... together with any interest then due.

AND I/WE the above-named Chargor(s) hereby acknowledge that we understand the effect of section 72 of the above Ordinance.

Dated this day of, 20.....

Signed by the Chargor in the presence of— }

Signed by the Chargee in the presence of— }

Form R.L.10
REGISTERED LAND ORDINANCE, 1980
(Section 70)

DISCHARGE OF CHARGE

Registration Section

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Block

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Parcel

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I/WE HEREBY DISCHARGE the charge shown as entry number in the incumbrance section of the Register relating to the above-mentioned title wholly (or in relation to)

Dated this day of, 20.....

Signed by the Chargee in the presence of— }

Form R.L.11
REGISTERED LAND ORDINANCE, 1980
(Section 61)

SURRENDER OF LEASE

Registration Section

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Block

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Parcel

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I/WE in consideration of (the receipt of which is hereby acknowledged*) HEREBY SURRENDER the lease comprised in the above-mentioned title and the Lessor HEREBY ACCEPTS the said surrender.

Dated this day of, 20.....

Signed by the Lessee in the presence of— }

Signed by the Lessor in the presence of— }

* Delete if not applicable.

Form R.L.12
REGISTERED LAND ORDINANCE, 1980
(Section 93)

GRANT OF EASEMENT

Registration Section

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Block

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Parcel

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I/WE in consideration of (the receipt of which is hereby acknowledged)

HEREBY GRANT to of the proprietor of the interest comprised in the above title the following easement—

Dated this day of, 20.....

Signed by the Grantor in the presence of— }

Signed by the Grantee in the presence of— }

Form R.L.13
REGISTERED LAND ORDINANCE, 1980
(Section 95)

GRANT OF PROFIT

Registration Section

.....

Block

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Parcel

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I/WE in consideration of

(the receipt of which is hereby acknowledged) HEREBY GRANT

to

of the following profit to arise from the interest comprised in the above-mentioned title—

The profit is to be enjoyed in gross (or as appurtenant to the interest of the Grantee in title number))

Dated this day of, 20.....

Signed by the Grantor in the presence of— }

Signed by the Grantee in the presence of— }

Form R.L.14
REGISTERED LAND ORDINANCE, 1980
(Section 96)

RELEASE OF PROFIT, EASEMENT OR RESTRICTIVE AGREEMENT

Registration Section

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Block

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Parcel

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I/WE being the person(s) now entitled to the benefit of the (easement) (profit) (restrictive agreement) shown as entry number in the incumbrances section of the Register relating to the above-mentioned title HEREBY RELEASE the (easement) (profit) (restrictive agreement).

Dated this day of, 20.....

Signed in the presence of— }

Form R.L.15

REGISTERED LAND ORDINANCE, 1980

(Section 101)

SEVERANCE OF JOINT PROPRIETORSHIP

Registration Section

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Block

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Parcel

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I/WE

HEREBY SEVER our joint proprietorship of our interest in the land comprised in the above-mentioned title and apply to be registered as proprietors in common in the following shares—

Dated this day of, 20.....

Signed by the Proprietors in the presence of— }

Form R.L.16

REGISTERED LAND ORDINANCE, 1981

(Section 103)

APPLICATION FOR PARTITION

Registration Section

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Block

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Parcel

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I/WE HEREBY
APPLY for the land comprised in the above-mentioned title to be partitioned in the following
manner—

Dated this day of, 20.....
Signed by the Applicant in the presence of: }

Form R.L.17
REGISTERED LAND ORDINANCE, 1980
(Section 114)

POWER OF ATTORNEY

Registration Section
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Block
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Parcel
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I HEREBY
APPOINT
of to be
my attorney and generally in relation to my interest in the land comprised in the above-
mentioned title to do anything and everything that I myself could do, and for me and in my
name to execute all such instruments to do all such acts, matters and things as may be
necessary or expedient for carrying out the powers hereby given.

(If the power is to be limited to particular acts only delete everything after the word
“attorney” and set out below what powers are to be conferred.)

Dated this day of, 20.....
Signed by the Donor in the presence of— }

Form R.L.18
REGISTERED LAND ORDINANCE, 1980
(Section 114)

NOTICE OF REVOCATION OF A POWER OF ATTORNEY

Registration Section
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Block
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Parcel
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I
HEREBY GIVE NOTICE that the Power of Attorney filed in the Register of powers of
attorney as number has been revoked:

(a) by me

or
(b) by the (death) (bankruptcy) (disability) of the donor,
or
(c) by the (death) (disability) of the attorney,
(and I attach the following documents in support thereof)
Dated this day of, 20.....
Signed in the presence of— }

Form R.L.19
REGISTERED LAND ORDINANCE, 1980
(Section 117)

**APPLICATION TO BE REGISTERED
AS PROPRIETOR BY TRANSMISSION**

Registration Section

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Block

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Parcel

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I/WE as
personal representative of
deceased HEREBY APPLY to be registered by transmission as proprietor in place of the
deceased of his/her interest in the land comprised in the above-mentioned title, and in support
thereof attach the grant as required by section 117 of the above Ordinance.

Dated this day of, 20.....
Signed by the personal representative in the presence of— }

Form R.L.20
REGISTERED LAND ORDINANCE, 1980
(Section 127)

CAUTION

Registration Section

.....

Block

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Parcel

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I/WE
of
claim an interest as in the
land comprised in the above-mentioned title and forbid the registration of dealings and the
making of entries in the Register relating thereto (altogether) (or to the following extent—)

without my/our consent, until this caution has been withdrawn by me/us or removed by order of the Court or of the Registrar.

Dated this day of, 20.....
Signed in the presence of— }

Form R.L. 21
Deleted

Form R.L.22
REGISTERED LAND ORDINANCE, 1980
(Section 35)

APPLICATION TO INSPECT THE REGISTER

Registration Section

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Block

.....
Parcel

.....

I HEREBY APPLY to inspect the Register relating to the above-mentioned title.

Signature:

Address:

.....

.....

Date:

CONDITIONS:

1. Persons inspecting the Register may take brief notes in pencil but no document may be copied.
2. In no circumstances may any note or mark be made on any register, document or file produced for inspection.
3. The Registry clerk's duty does not extend to answering questions on matters of title, and no responsibility is accepted for any opinion which may be expressed by him/her

Form R.L.23
REGISTERED LAND ORDINANCE, 1980
(Section 35)

APPLICATION FOR CERTIFIED COPY

Registration Section

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Block

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Parcel

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I HEREBY APPLY for certified copy/ copies of the following—

Signature:

Address:

.....

.....

Date:

Form R.L.24

REGISTERED LAND ORDINANCE, 1980

(Section 35)

APPLICATION FOR OFFICIAL SEARCH

Registration Section

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Block

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Parcel

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I HEREBY APPLY for an official search of the Register relating to the above-mentioned title.

*I propose (or proposes)

to

Section 42 of the Ordinance and application is hereby made for a stay of registration in accordance with section 42(1) of the Registered Land Ordinance.

The written consent of the proprietor accompanies this application.

Dated this day of, 20.....

.....

Signature of applicant, his legal practitioner or agent.

Address:

* Delete if not applicable.

TO BE SUBMITTED IN DUPLICATE

Form R.L.25

REGISTERED LAND ORDINANCE, 1980

(Section 35)

CERTIFICATE OF OFFICIAL SEARCH

Registration Section

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Block

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Parcel

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On the day of, 20..... the following were subsisting entries on the Register relating to the above-mentioned title.

PART A—PROPERTY SECTION

PART B—PROPRIETORSHIP SECTION

PART C—INCUMBRANCES SECTION

The following applications are pending—

A stay of registration has been noted in the Register, which expires on the day of, 20.....

.....

Registrar of Lands

Form R.L.26

Deleted

SECOND SCHEDULE²
(Regulation 6)

FEEES

Fee No.	Description	Fee
1	On application for the registration of:	
	a. A transfer (of a freehold, leasehold or charge) for each parcel affected	£35.00
	b. A lease or sub-lease or easement for each parcel affected	£25.00
	c. A mortgage or charge:	
	(i) If presented at the same time as an instrument to which fee 1a or 1b applies	£10.00
	(ii) In every other case, the same fee as would apply on an application to register a transfer of the land or lease comprised in the charge.	
	d. A caution or restriction	£20.00
	e. Discharge and removal of a charge or caution	Nil
	f. Other instrument (including power of attorney presented under section 114)	£10.00
2	On filing any instrument, otherwise than for the purpose of registration	£5.00
3	On the issue of a Land certificate:	
	a. If issued in consequence of registration of an instrument for which a fee in item 1a or 1b applies	Nil
	b. In every other case	£15.00

² Second Schedule amended by L.N. 27 of 2020

4	Upon opening a new register in consequence of subdivision, partition or combination - for each new register: (Payable in addition to survey fees in item 8)	£5.00
5	On application to inspect a register or filed instrument or plan or registry map:	
	a. First document	£3.00
	b. Each additional document inspected	£2.00
6	On application for an official search	£5.00
7	On application for a certified copy of the register, filed instrument, plan or map:	
	a. First page	£3.00
	b. Each additional page	£2.00
8	On an application for subdivision, reparation or fixing a boundary, or any other application necessitating a survey (in addition to any other fee):	
	a. Standard service (within 90 days): For each hour (or part thereof) of survey work within the Standard service:	£5.00
	i. Trainee surveyor	£8.00
	ii. Surveyor	£11.00
	iii. Senior Surveyor	£14.00
	iv. GIS Manager	£14.00
	v. Crown Estates Officer	
	b. Premium service (within 21 days): Standard hourly fees in item 8a will be doubled	
	c. Economy service (within 180 days): Standard hourly fees in item 8a will be reduced by one third	
	d. For each beacon, post, or other boundary marker placed by the survey officers in the course of such survey	£3.00
9	Miscellaneous applications to the Registrar:	
	a. For rectification of the Register	£15.00
	b. For partition or sale of land owned in common	£25.00
	c. For registration as proprietor of land, or of an easement or profit, by prescription	£20.00 plus the cost of any advertisement the Registrar orders
10.	For any matter or thing for which no provision is specifically made in this Schedule	A fee the Registrar assesses but with a minimum of £25.00

REGISTERED LAND ORDINANCE, 1980

REGISTERED LAND (APPEALS) RULES, 1989

(Section 149)

TABLE OF CONTENTS

1. Citation
 2. Interpretation
 3. Application for case to be stated
 4. Notice of appeal
 5. Duties of Registrar
 6. Notice of interest
 7. Notice of hearing
 8. Non-appearance of parties
 9. Death of appellant
 10. Hearing
- Schedule: Forms

Citation

1. These Rules of Court may be cited as the Registered Land (Appeals) Rules, 1989.

Interpretation

2. In these rules, “**decision**” includes direction, order, determination and award.

Cases stated

Application for case to be stated

3. (1) A request under section 146 of the Ordinance by an aggrieved party to the Registrar to state a case for the opinion of the Supreme Court must be in Form R.L.A.1 set out in the Schedule, be signed by the aggrieved party or the advocate or lay advocate for the aggrieved party and be accompanied by the prescribed fee (if any).

(2) When the Registrar lodges a case with the Court in compliance with a request made under subrule (1)—

- (a) the Registrar must serve a copy of it on the aggrieved party; and
- (b) either the Registrar or the aggrieved party may, within 7 days thereafter, apply to the Registrar of the Supreme Court to set the matter down for argument.

(3) If an application has been made for a case stated to be set down for argument, the Registrar of the Supreme Court must, not later than 48 hours before the day fixed for the hearing, give notice of the hearing to the Registrar and to the aggrieved party.

Appeals

Notice of appeal

4. A notice of appeal under section 147 of the Ordinance must be in Form R.L.A.2 set out in the Schedule.

Duties of Registrar

5. On receipt of a notice of appeal, the Registrar must, as soon as practicable—
- (a) send to the Registrar of the Supreme Court, a brief statement of the question in issue, as required by section 147(2) of the Ordinance, together with extracts from the Register relating to the parcel or parcels concerned, copies of any relevant documents and, if the Registrar's decision was given after hearing evidence, a copy of the notes of evidence, if any, taken by the Registrar or under his or her direction;
 - (b) send to any person appearing to the Registrar from the Register to be affected by the appeal, a copy of the notice of appeal and copies of the documents referred to in paragraph (a).

Notice of interest

6. (1) A person who desires to be heard on the appeal, whether or not the person is a person to whom rule 4(b) applies, may give notice to the Registrar of the Supreme Court of such desire, setting out briefly the nature of the person's interest in the appeal.

(2) A notice under subrule (1) must be in Form R.L.A.3 set out in the Schedule.

Notice of hearing

7. The Registrar of the Supreme Court must give to the appellant and to the Registrar and to every person who has given notice under rule 6, not less than 14 days notice of the date fixed for the opening of the sessions at which the appeal will be heard.

Non-appearance of parties

8. (1) If on the date fixed, or on any other day to which the hearing is adjourned, the appellant does not appear when the appeal is called for hearing, the Court may order that the appeal be dismissed.

(2) If the appellant appears but some or all other parties do not appear, the appeal may be heard in their absence.

Death of appellant

9. An appeal does not abate on the death of the appellant but the Court must, on the application of any interested person, cause the personal representative of the deceased to be made a party in place of the deceased.

Hearing

10. At the hearing of the appeal, the appellant or the appellant’s representative must open the appeal, the persons who gave notice under rule 6 or their representatives must follow, in the order agreed or as, in the absence of agreement, as the Court decides, and then the Registrar may address the Court and the appellant has the right to reply

SCHEDULE
(Rules 3, 4 & 6)

FORMS

Form R.L.A.1
REGISTERED LAND (APPEALS) RULES, 1989

REQUEST THAT A CASE BE STATED
(Rule 3)

Registration section .

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Block

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Parcel

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TO the Registrar of Lands

I (Name)

of (Address)

being aggrieved by [Specify complaint]

hereby require you to state a case thereon for the opinion of the Supreme Court.

Dated this day of, 20.....

Signature of person aggrieved

Form R.L.A.2
REGISTERED LAND (APPEALS) RULES, 1989
NOTICE OF APPEAL
(Rule 4)

Registration section

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Block

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Parcel

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I (Name)

of (Address)

being dissatisfied with the decision/direction/order/determination/award of the Registrar of Lands given on the day of, 20....., appeal to the Supreme

Court against it.

My submissions are

Dated this day of 20.....

Signature of appellant

Form R.L.A.3
REGISTERED LAND (APPEALS) RULES, 1989

NOTICE OF INTEREST
(Rule 6(2))

Registration section

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Block

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Parcel

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Appeal No. brought by (Name)

I (Name)

of (Address)

having an interest in the above appeal, request an opportunity of being heard.

My interest in the matter is [Give particulars]

Dated this day of, 20.....

Signature
