

Malawi

Registered Land Act

Chapter 58:01

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Malawi

Registered Land Act

Chapter 58:01

Commenced on 9 May 1967

[This is the version of this document as it was at 31 December 2014.]

[Note: This version of the Act was revised and consolidated in the Fifth Revised Edition of the Laws of Malawi (L.R.O. 1/2018), by the Solicitor General and Secretary for Justice under the authority of the Revision of the Laws Act.]

[6 of 1967; 32 of 1970; 18 of 1971; 1 of 1981]

An Act to make provision for the Registration of Title to Land, and for dealings in land so registered, and for purposes connected therewith

Part I – Preliminary

1. Short title

This Act may be cited as the Registered Land Act.

2. Interpretation

In this Act, except where the context otherwise requires—

"**Allocation Officer**" and "Allocation Record" have the meanings assigned to "Allocation Officer" and "Allocation Record" in the Customary Land (Development) Act;

[Cap. 59:01]

"**application book**" means the application book kept under [section 5\(d\)](#);

"**charge**" means an interest in land securing the payment of money or money's worth or the fulfilment of any condition, 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 charged lease or charge;

"**court**", save as is otherwise expressly provided, means the High Court or a subordinate court held by a Resident Magistrate;

"**dealing**" includes disposition and transmission;

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

"**easement**" means a right attached to a piece of land which allows the proprietor of the piece 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 the relative piece file;

"**guardian**" means any person responsible (whether under customary law or otherwise) for protecting the interests of any person who is under a disability, whether by reason of age, unsoundness of mind or any other cause;

"**incumbrance**" means a lease, charge, easement, restrictive agreement or profit;

"instrument" includes any deed, judgment, decree, order or other document requiring or capable of registration under this Act;

"interest in land" includes 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 his 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 proprietor of leased land;

"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;

"piece" 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 executor of the will or administrator of the estate or part of the estate;

"private land" bears the same meaning as in section 2 of the Land Act;

[Cap. 57:01]

"profit" means the right to go on the land of another and take a particular substance from that land;

"proprietor" means the person registered under this Act as the owner of land or a lease or a charge;

"the register" means the leaf of the land register kept in respect of a piece of land or of a registered lease;

"to register" means to make an entry, note or record in the register, and "registered", "unregistered" and "registration" bear a corresponding meaning;

"Registrar" means—

- (a) the Chief Land Registrar or the Deputy Chief Land Registrar, appointed under [section 6](#); or
- (b) where a Land Registrar or an Assistant Land Registrar has been authorized under [section 6](#) (4) to exercise or perform any particular power or duty, that Land Registrar or Assistant Land Registrar so far as concerns that power or duty;

"registration district" means a land registration district constituted under [section 4](#);

"registration section" means a division of a registration district established under [section 15](#) (3);

"registry" means a land registry established under [section 5](#);

"registry map" means the map or series of maps referred to in [section 15](#);

"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;

"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.

3. Reconciliation with other laws

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

Provided that, except where a contrary intention appears, nothing contained in this Act shall be construed as permitting any dealing which is forbidden by the express provisions of any other written law or as overriding any provision of any other written law requiring the consent or approval of any authority to any dealing.

Part II – Organization and administration

Division 1 - Land registries and officers

4. Registration districts

- (1) For the purposes of this Act, the Minister may, by order, constitute a part or parts of Malawi a land registration district or land registration districts and may at any time vary the limits of any such district.
- (2) The Minister in such order may exclude from registration any kind of land or dealing which he considers cannot conveniently be registered in any such district.

5. Land registries

There shall be maintained in each registration district a land registry, in which there shall be kept—

- (a) a register, to be known as the land register, in accordance with Division 2 of this Part;
- (b) a copy of the registry map;
- (c) piece 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 shall be kept a record of all applications numbered consecutively in the order in which they are presented to the registry;
- (e) an index, in alphabetical order, of the names of the proprietors of land, leases and charges, showing the numbers of the pieces in which they are interested; and
- (f) a register and a file of powers of attorney.

6. Appointment of officers

- (1) There shall be appointed a Chief Land Registrar, who shall be responsible for administering the land registries in accordance with this Act.
- (2) There may be appointed a Deputy Chief Land Registrar and so many Land Registrars and Assistant Land Registrars as may be necessary for the carrying out of this Act.
- (3) The Deputy Chief Land Registrar shall have all the powers and may perform all or any of the duties conferred and imposed on the Chief Land Registrar by this Act or by any rules made thereunder, except the power of authorization conferred by subsection (4).
- (4) The Chief Land Registrar may in writing authorize any Land Registrar or Assistant Land Registrar to exercise or to perform all or any of the powers or duties conferred or imposed on the Chief Land

Registrar by this Act or by any rules made thereunder, and may at any time revoke or vary any such authorization:

Provided that no such authorization shall be deemed to divest the Chief Land Registrar of any of his powers or duties, and he may, if he thinks fit, exercise and perform all his powers or duties notwithstanding any such authorization.

- (5) All officers exercising powers or performing duties conferred or imposed by this Act shall be subject to the general or special directions of the Minister.

7. General powers of Registrar

The Registrar may exercise the following powers in addition to any other powers conferred on him by this Act, that is to say—

- (a) he may 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 shall produce the same;
- (b) he may 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 shall appear and give such information or explanation;
- (c) he may refuse to proceed with any registration if any instrument, certificate or other document, plan, information or explanation required to be produced or given is withheld or any act required to be performed under this Act is not performed;
- (d) he may administer oaths or take a declaration in lieu thereof, and may require that any proceedings, information or explanation affecting registration shall be verified on oath or by statutory declaration;
- (e) he may order that the costs, charges and expenses incurred by him or by any person in connexion with any investigation or hearing held by him for the purposes of this Act shall be borne and paid by such persons and in such proportions as he may think fit.

8. Indemnity of officers

The Chief Land Registrar shall not, nor shall any other officer of the Registry, be liable to any action or proceedings 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 Act, or any rules made thereunder.

9. Seal of registry

Each registry shall have a seal, and every instrument purporting to bear the imprint of such a seal shall be received in evidence and, unless the contrary is shown, shall be deemed without further proof to be issued by or under the direction of the Chief Land Registrar.

Division 2 — The Land Register

10. The Land Register

- (1) The Land Register shall comprise a register in respect every piece required by this Act to be registered, and a register in respect of each lease required by this Act to be registered.
- (2) Each register shall show—
 - (i) whether the land is public land or private land; and

- (ii) where the land is private land, and the Adjudication Record prepared under the Adjudication of Title Act, 1971, so records, that the title is provisional.

[18 of 1971]

- (3) Each register shall 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, where the title is provisional, of the information recorded in the Adjudication Record under section 16 (1) (d) of the Adjudication of Title Act, 1971, and a reference to the registry map and filed plan, if any;

B — the proprietorship section, containing the name and, where possible, the address of the proprietor and a note of any inhibition, caution or restriction affecting his right of disposition;

C — the incumbrances section, containing a note of every incumbrance.

- (4) No entry shall be required in the proprietorship section of the register relating to any piece which is described as public land.

11. Compilation of Land Register

- (1) Whenever an Allocation Record has become final under section 27 of the Customary Land (Development) Act and the Allocation Officer has delivered the Allocation Record to the Land Registrar or Assistant Land Registrar in charge of the registration district concerned, such Land Registrar or Assistant Land Registrar shall prepare a register for each piece of intended private land, intended public land and recorded customary land shown in the Allocation Record and for any lease which requires registration and shall register therein any of the particulars in the Allocation Record which require registration.
- (2) Whenever an Adjudication Record has become final under section 23 of the Adjudication of Title Act, 1971, and the Adjudication Officer has delivered the Adjudication Record to the Registrar, the Registrar shall prepare a register for each piece shown in the Adjudication Record and for any lease required to be registered, and shall register therein any of the particulars in the Adjudication Record which require registration.

[18 of 1971]

[Cap. 59:01; 32 of 1970; 18 of 1971]

11A. Transitional provisions relating to rights, etc., acquired under charges, etc., registered under

Nothing in this Act shall affect the rights, liabilities and remedies of the parties under any mortgage, charge, equitable mortgage or other form of security which, immediately before the registration under this Act of the land affected thereby, was registered under the Deeds Registration Act, and such rights liabilities and remedies shall be exercisable and enforceable in accordance with the law which was applicable thereto immediately before the registration of the land under this Act.

[Cap. 58:02]

12. Manner of registration

- (1) The first registration of any piece shall be effected by the preparation of a register or registers in accordance with [section 10](#) and the signing by the Registrar of the particulars of the proprietorship and the particulars of incumbrances, if any appearing thereon.
- (2) Every subsequent registration shall be effected by an entry in the land register in such form as the Chief Land Registrar may from time to time direct, and by the cancellation of the entry, if any, which it replaces.

- (3) No subsequent registration shall be made in regard to land or a lease of land within a Land Control Division declared under the Local Land Boards Act unless the Registrar is satisfied that the dealing in such land or a lease which requires registration has been given the consent of a Local Land Board or that no consent is required or a general consent has been given by the Minister in accordance with such Act. The Registrar shall file a copy of any consent given by a Local Land Board.

[Cap. 59:02]

13. Cancellation of obsolete entries

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

14. New editions

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

Division 3 — Maps, parcels and boundaries

15. Registry map

- (1) The Director of Surveys shall, as soon as practicable, prepare and thereafter maintain a map or series of maps, to be called the registry map, for every registration district.
- (2) Where for any registration district, or for a part thereof, no map has been so prepared, the Registrar may himself cause a map or series of maps to be prepared for that registration district, or for that part, and thereafter maintained, and such maps or series of maps shall be deemed to be the registry map until the Director of Surveys prepares a map or maps under subsection (1) and delivers it to the Registrar.
- (3) On the registry map, every registration district shall be divided into registration sections, which shall be identified by distinctive names, and the registration sections may be further divided into blocks, which shall be given distinctive number or letters or combinations of numbers and letters.
- (4) The pieces in each registration section or block shall be numbered consecutively, and the name of the registration section and the number and letter of the block, if any, and the number of the piece shall together be a sufficient reference to any piece.
- (5) The Registrar may, at any time, cause registration sections or blocks to be combined or divided, or cause their boundaries to be varied.
- (6) A plan may be filed in respect of a particular piece to augment the information available from the registry map, and the filing of the plan shall be noted in the register.

16. Power to alter registry map and to prepare new editions

- (1) Where the Registrar is maintaining the registry map he may, or in any other case he may require the Director of Surveys to, correct the line or position of any boundary shown on the registry map with the agreement of every person shown by the register to be affected by the correction, but no such correction shall be effected except on the instructions of the Registrar in writing in the prescribed form, to be known as a mutation form, and the mutation form shall be filed:

Provided that the Registrar or the Director, as the case may be, may correct an error in the registry map which does not affect the interest of any person.
- (2) Whenever the boundary of a piece is altered on the registry map, the piece number shall be cancelled and the piece shall be given a new number.

- (3) Where the Registrar is maintaining the registry map he may, or in any other case he may require the Director of Surveys to, prepare a new edition of the registry map or any part thereof, and there may be omitted from the new map any matter which the Registrar considers obsolete.

17. Further surveys

The Registrar may cause a survey to be made for any purpose connected with this Act, but, where the registry map is maintained by the Director of Surveys such survey shall be used to amend the registry map only if it is approved by the Director of Surveys.

18. General boundaries

- (1) Except where, under [section 19](#), it is noted in the register that the boundaries of a piece have been fixed, the registry map and any filed plan shall be deemed to indicate the general boundaries only of the piece.
- (2) Where any uncertainty or dispute arises as to the position of any boundary, the Registrar, on the application of any interested party, shall, on such evidence as the Registrar considers relevant, determine and indicate the position of the uncertain or disputed boundary.
- (3) Where the Registrar exercises the power conferred by subsection (2), he shall make a note to that effect on the registry map and in the register and shall file such plan or description as may be necessary to record his decision.
- (4) No court shall 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 piece have been fixed, the court or the Registrar may, in any proceedings concerning the piece, receive such evidence as to its boundaries as it or he thinks fit.

19. Fixed boundaries

- (1) If the Registrar in his 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 piece or any parts thereof, or if any interested person makes application to the Registrar, the Registrar shall 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 shall, after giving all persons appearing by the register to be affected an opportunity of being heard, cause to be defined by survey the precise position of the boundaries in question, file a plan containing the necessary particulars and make a note in the register that the boundaries have been fixed, and thereupon the plan shall be deemed to define accurately the boundaries of the piece.
- (3) Where the dimensions and boundaries of a piece are defined by reference to a plan verified by the Director of Surveys, a note shall be made in the register, and the piece shall be deemed to have had its boundaries fixed under this section.

20. Maintenance of boundary features

- (1) Every proprietor of land shall maintain in good order the fences, hedges, stones, pillars, walls, survey marks and other features which demarcate his boundaries, whether established pursuant to the requirements of any other written law or pursuant to an order of the Registrar or of the proprietor's own accord.
- (2) The Registrar may in writing order the demarcation within a specified time of any boundary in such permanent manner as he may direct, and any person who fails to comply with such an order shall be liable to a fine of £10.

- (3) The Registrar may in writing order which of adjoining proprietors shall be responsible for the care and maintenance of any feature demarcating a common boundary, and any proprietor so ordered to be responsible who allows the boundary feature or any part of it to fall into disrepair or to be destroyed or removed shall be liable to a fine of £10.

21. Interference with boundary features

- (1) Any person who defaces, removes, injures or otherwise impairs any boundary feature or any part of it unless authorized to do so by the Registrar shall be liable to a fine of £100 and to imprisonment for two months.
- (2) Any person convicted of such an offence, whether or not any penalty therefor is imposed upon him, shall be liable to pay the cost of restoring the boundary feature, and such cost shall be recoverable as a civil debt by any person responsible under [section 20](#) for the maintenance of the feature.

22. Combinations and subdivisions

- (1) Where contiguous pieces 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 these pieces by closing the registers relating to them and opening a new register or registers in respect of the piece or pieces resulting from the combination.
- (2) Upon the application of the proprietor of a piece for the division of his piece into two or more pieces, the Registrar shall effect the division by closing the register relating to the piece and opening new registers in respect of the new pieces resulting from the division, and recording in the new registers all subsisting entries appearing in the closed register:

Provided that—

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

23. Change of boundaries

- (1) The Registrar may, on the application of the proprietors of contiguous pieces who are desirous of changing the layout of their pieces, and with the consent in writing of all other persons in whose names any right or interest in such pieces is registered and of any cautioner, cancel the registers relating to such pieces and prepare new registers in accordance with the revised layout:

Provided that, where in the opinion of the Registrar a proposed change of boundaries involves substantial changes of ownership which should be effected by transfers without invoking this section, he may in his discretion refuse to effect such change.

- (2) Upon any such change of boundaries, the new pieces shall, notwithstanding [section 31](#), vest in the persons in whose names they are registered.

Part III – Effect of registration

24. Interest conferred by registration

Subject to this Act—

- (a) the registration of a person as the proprietor of private land shall confer on that person the rights of owner of that land as private land;

- (b) the registration of a person as the proprietor of a lease shall vest in that person the leasehold interest described in the lease, subject to all implied and expressed agreements, liabilities and incidents of the lease:

Provided that if the title of the lessor is provisional the enforcement of any estate, right or interest affecting or in derogation of the right of the lessor to grant the lease shall not be prejudiced.

[18 of 1971]

24A. Effect of registration with provisional title

Subject to this Act, the registration of any person as the proprietor of a piece of private land with a provisional title shall 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 the date title of such registration, or under such instrument or in such other manner as is specified in the register of that piece, but save as aforesaid, such registration shall have the same effect as the registration of a person without such qualification.

25. Rights of proprietor

The rights of a proprietor, whether acquired on first registration or whether acquired subsequently for valuable consideration or by an order of court, shall be rights not liable to be defeated except as provided in this Act and the Land Act and shall be held by the proprietor, free from all other interests and claims whatsoever, but subject—

- (a) to the leases, charges and other encumbrances, if any, shown in the register; and
- (b) unless the contrary is expressed in Ute renter, Jo such liabilities, rights and interests as affect the same and are declared by [section 27](#) not to require noting on the register:

Provided that—

- (i) nothing in this section shall be taken to relieve a proprietor from any duty or obligation to which he is subject as a trustee, or as a family representative;
- (ii) the registration of any person under this Act shall not confer on him any right to any minerals or to any mineral oils as defined in the Mining Act and the Mining Regulation (Oil) Act respectively unless the same are expressly referred to in the register.

[Cap. 61:01; Cap. 62:01]

[Cap. 57:01]

26. Voluntary transfer

Every proprietor who has acquired land, a lease or a charge by transfer without valuable consideration shall hold it subject to any unregistered rights or interests subject to which the transferor held it, and subject also to the Bankruptcy Act and to the winding-up provisions of the Companies Act, but save as aforesaid such transfer when registered shall in all respects have the same effect as a transfer for valuable consideration.

[Cap. 11:01; Cap. 46:03]

27. Overriding interests

Unless the country is expressed in the register, all registered land shall be subject to such of the following overriding interests as may for the time being subsist and affect the same, without their being noted on the register—

- (a) natural rights of water and support;

- (b) rights of compulsory acquisition, sale, resumption, entry, search and user conferred by any other written law;
- (c) leases or agreements for leases for a term not exceeding three years, and periodic tenancies within the meaning of [section 39](#);
- (d) any unpaid rates and other moneys which, without reference to registration under this Act, are expressly declared by any written law to be a charge upon land;
- (e) rights acquired or in process of being acquired by virtue of any written law relating to the limitation of actions or by prescription;
- (f) the rights of a person in actual occupation of land or in receipt of the rents and profits thereof save where inquiry is made of such person and the rights are not disclosed;
- (g) electric supply lines, telephone and telegraph lines or poles, pipelines, aqueducts, canals, weirs and dams erected, constructed or laid in pursuance or by virtue of any power conferred by any written law:

Provided that the Registrar may direct registration of any of the liabilities, rights and interests hereinbefore defined in such manner as he thinks fit.

27A. Conversion of provisional title

- (1) Any proprietor registered with provisional title or any other interested person may at any time apply to the Registrar to remove the qualification to which such provisional title is subject, and if the Registrar is satisfied that such qualification has ceased to be of effect, and after such advertisement as the Registrar may think fit, the Registrar shall make an order that the title shall cease to be provisional.
- (2) On the making of an order under subsection (1) or on the application of the proprietor or of any other interested person after the expiration of twelve years from the date of first registration with a provisional title, the Registrar, subject to his being satisfied that the proprietor, or the successive proprietors, has, or have, been in possession during the said period, shall delete the word "provisional" from the register of the piece in question, and thereupon the title to such piece shall cease to be provisional.

[18 of 1971]

28. Entries to constitute actual notice

Every proprietor acquiring any land, lease or charge shall be deemed to have had notice of every entry in the register relating to the land, lease or charge.

Part IV – Searches and certificates

29. Searches and copies

- (1) Any person, on application in the prescribed form, may inspect during official hours of business any register and any sheet of the registry map or any filed instrument or plan.
- (2) Any person, on application in the prescribed form, shall be 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, may require an official search in respect of any piece, and the Registrar shall issue a certificate of official search setting forth particulars of the subsisting entries in the register of that piece.

29A. Land certificates and certificates of lease

- (1) The Registrar shall, if requested by any proprietor of land or of a lease where no land certificate or certificate of lease has been issued, issue to him a land certificate or a certificate of lease, as the case may be, in the prescribed form, showing all subsisting entries in the register affecting that land or lease:

Provided that—

- (i) only one such certificate shall be issued in respect of each piece of land or lease;
 - (ii) no certificate of lease shall be issued unless the lease is for a certain period exceeding five years.
- (2) A land certificate or certificate of lease shall be only *prima facie* evidence of the matters shown therein, and the land or lease shall be 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 may concur in nominating one of their number who shall receive the certificate, and failing such concurrence the certificate shall be filed in the registry.
- (4) The fact and date of the issue of a land certificate or certificate of lease shall be noted in the register.

[32 of 1970]

29B. Production of certificate

- (1) If a land certificate or a certificate of lease has been issued, then, unless it is filed in the registry or the Registrar dispenses with its production, it shall be produced on the registration of any dealing with the land or lease to which it relates.
- (2) A note of such registration shall be made in the certificate or the certificate may be destroyed and a new certificate may be issued to the new proprietor.
- (3) If the disposition is a charge, the certificate shall be filed in the registry until the charge has been discharged.

29C. Lost or destroyed certificates

- (1) If a land certificate or certificate of lease is lost or destroyed, the proprietor may apply to the Registrar for the issue of a new certificate, and shall 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 destruction or loss of the certificate, and after the publication of such notice as he may think fit, may issue a new certificate.
- (4) When a lost certificate is found, it shall be delivered to the Registrar for cancellation.

30. Evidence

- (1) A certified copy of the register or part of the registry map or any plan or instrument filed in the registry shall be 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 shall be 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 shall be answerable in respect of any loss occasioned by relying on the accuracy 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, shall issue from any court except with the leave of that court, which leave shall not be granted if a certified copy will suffice, and any such process, if issued, shall bear thereon a statement that it is issued with the leave of the court.

Part V – Dispositions

Division 1 – General

31. Subsequent dealings

- (1) No land, lease or charge shall be capable of being disposed of except in accordance with this Act and the Local Land Boards Act and every attempt to dispose of such land, lease or charge otherwise than in accordance with such Acts shall be ineffectual to create, extinguish, transfer, vary or affect any right or interest in the land, lease or charge.
- (2) Nothing in this section shall be construed as preventing 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 thereof, is in writing and is signed by the party to be charged or by some other person thereunto by him lawfully authorized:

Provided that such an action shall not be prevented by reason only of the absence of writing where an intending purchaser or lessee who has performed or is willing to perform his part of a contract—

- (a) has in part performance of the contract taken possession of the property or any part thereof; or
 - (b) being already in possession, continues in possession in part performance of the contract and has done some other act in furtherance of the contract.
- (3) The death of any person by or on behalf of whom any instrument of dealing has been executed shall not affect the validity thereof, and any such instrument may be presented for registration as if the death had not occurred.

[Cap. 59:02]

32. Protection of persons dealing in registered land

- (1) No person dealing or proposing to deal for valuable consideration with a proprietor shall be required or 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 thereof; or
 - (c) to search any register kept under the Deeds Registration Act.

[Cap. 58:02]

- (2) Where the proprietor of land, a lease or a charge is a trustee or family representative, no disposition by such trustee or family representative to a *bona fide* purchaser for valuable consideration shall be defeasible by reason of the fact that such disposition amounted to a breach of trust or did not conform with custom.

33. Additional fee for delayed registration

Where an instrument is presented for registration later than three months from the date of the instrument, then, as well as the registration fee, an additional fee equal to the registration fee shall be payable for each three months which have elapsed since such date:

Provided that—

- (a) in no such case shall the sum of the additional fees exceed five times the original registration fee payable;
- (b) the Chief Land Registrar may, in his sole discretion, remit any additional fee payable by virtue of this section, either in whole or in part.

34. Power to compel registration

- (1) If he is satisfied that any person, through his wilful default, has failed to register any instrument which is registrable under this Act, the Registrar may by notice in writing order such person to present such instrument for registration, and thereupon the registration fee and any additional fee payable under [section 33](#) shall become due and shall be payable whether the instrument is presented for registration or not.
- (2) Any person who fails to comply with an order of the Registrar under subsection (1) within one month of the service of the notice shall be liable to a fine of £25.

35. Priority of registered interests

- (1) Subject to subsection (3), interests appearing in the register shall 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 notwithstanding that the actual entry in the register may have been delayed:

Provided that where an instrument is prepared in the registry it shall be deemed to have been presented on the date on which application for its preparation was made to the Registrar.

- (2) Instruments sent by post or under cover and received during the hours of business shall be deemed to be presented simultaneously immediately before the closing of the office on that day, and instruments so sent but received between the time of closing and the next opening of the office for business shall be deemed to be presented simultaneously immediately after such opening.
- (3) Where more than one instrument or application are 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 has heard and determined the rights of the parties interested thereunder.

36. Stay of registration

- (1) Where any person proposing to deal with registered land has, with the consent in writing of the proprietor, applied for an official search and has stated in his application the particulars of the proposed dealing, the registration of any instrument affecting the land to be comprised in or affected by the proposed dealing shall be stayed for a period (hereinafter referred to as the suspension period) of fourteen days from the time at which application for the search was made, and a note shall be made in the register accordingly.
- (2) If within the suspension period a properly executed instrument effecting the proposed dealing is presented for registration, such instrument shall have priority over any other instrument which may be presented for registration during the suspension period, and shall be registered notwithstanding any caution or other entry for which application for registration may have 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 shall be dealt with in the same manner, shall have the same priority and shall be as effectual as if no stay of registration had been obtained.

37. Merger of registered interests

Where, upon the registration of a dealing, the interests of—

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

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

Division 2 — Leases

38. Leases

Subject to this Act 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 such conditions as he may think fit:

Provided that, if only part is leased, the lease shall be accompanied by a plan or other description which the Registrar, in his absolute discretion, deems adequate to identify the part leased.

39. Periodic tenancies

- (1) Where in any lease the term is not specified and no provision is made for the giving of notice to terminate the tenancy, the lease shall be deemed to have created a periodic tenancy.
- (2) Where the proprietor of land permits the exclusive occupation of the land or any part thereof by any other person at a rent but without any agreement in writing, that occupation shall be deemed to constitute a periodic tenancy.
- (3) The period of a periodic tenancy deemed to be created by this section shall be the period by reference to which the rent is payable, and the tenancy may be determined by either party giving to the other notice, the length of which shall, subject to any other written law, be not less than the period of the tenancy.

40. Registration of leases

A lease for a specified period exceeding three years, or a lease which contains an option whereby the lessee may require the lessor to grant him a further term or terms which, together with the original term, exceed three years, shall be in the prescribed form, and shall be completed by—

- (a) opening a register in respect of the lease in the name of the lessee; and
- (b) filing the lease; and
- (c) noting the lease in the encumbrances section of the register of the lessor's land or lease.

41. Lessor's consent to dealing with lease

Upon the registration of a lease containing an agreement, express or implied, by the lessee that he will not transfer, sub-let, charge or part with possession of the land leased or any part thereof without the written consent of the lessor, the agreement shall be noted in the register of the lease, and no dealing with the lease shall be registered until the consent of the lessor, verified in accordance with [section 105](#) has been produced to the Registrar.

42. Lease of charged land

Where any land or a lease is subject to a charge, no lease of such land or lease shall be registered without the previous consent in writing of the proprietor of the charge, verified in accordance with [section 105](#), unless the charge expressly dispenses with the necessity for such consent.

43. Duration of leases

- (1) Where the period of a lease is expressed as commencing on a particular day, that day is excluded in computing that period.
- (2) Where 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) Where the period is a year or a number of years, in the absence of an express agreement to the contrary, the lease shall last during the whole anniversary of the day on which such period commences.

44. Future leases

- (1) A lease may be made for a period to commence on a future date, not being later than twenty-one years from the date on which the lease is executed, but shall be of no effect unless it is registered.
- (2) Any instrument purporting to create a lease to commence on a date more than twenty-one years after the date of the instrument, or to take effect on the fulfilment of any condition, is void.

45. Holding over

- (1) Where 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 he shall, in the absence of any evidence to the contrary, be 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 shall, if the former tenant is still in occupation and subject to any agreement to the contrary, be taken as evidence of consent to the continued occupation of the land.

46. Agreements implied in leases on part of lessor

Save as otherwise expressly provided in the lease, there shall be implied in every lease agreements by the lessor with the lessee binding 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 his part to be observed and performed, the lessee shall and 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 him;

- (b) not to use or permit to be used any adjoining or neighbouring land of which he 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,

and such other agreements as the Minister may have prescribed prior to the execution of the lease.

47. Agreements implied in leases on part of lessee

Save as otherwise expressly provided in the lease, there shall be implied in every lease agreements by the lessee with the lessor binding the lessee—

- (a) to pay the rent reserved by the lease at the times and in the manner therein specified;
- (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 the same are payable exclusively by the lessor by virtue of any written law;
- (c) to permit the lessor or his 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;
- (d) 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 such reasonable period as may be specified in the notice; and
- (e) not to transfer, charge, sublease or otherwise part with the possession of the leased premises or any part thereof without the previous written consent of the lessor, but such consent shall not be unreasonably withheld,

and such other agreements as may have been prescribed by the Minister prior to the execution of the lease.

48. Meaning of "in repair"

Where an agreement is contained or implied in any lease to keep a building or a particular part of a building "in repair", it shall, in the absence of an express provision to the contrary, mean in such state of repair as that in which a prudent owner might reasonably be expected to keep his property, due allowance being made for the age, character and locality of the building at the commencement of the lease:

Provided that there shall not be read into such an agreement an undertaking to put any building into a better state of repair than that in which it was at the commencement of the lease.

49. Lessor's right of forfeiture

- (1) Subject to [section 52](#) and to any provision to the contrary in the lease, the lessor shall have the right to forfeit the lease if the lessee—
 - (a) commits any breach of, or omits to perform, any agreement or condition on his part expressed or implied in the lease;
 - (b) is adjudicated bankrupt; or
 - (c) being a company, goes into liquidation, except for the purpose of amalgamation or reconstruction.
- (2) The right of forfeiture may be—
 - (a) exercised, where neither the lessee nor any person claiming through or under him is in occupation of the land, by entering upon and remaining in possession of the land; or
 - (b) enforced by action in the court.

- (3) The right of forfeiture shall be 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:

Provided that the acceptance of rent after the lessor has commenced an action in the court under subsection (2) shall not operate as a waiver.

50. Effect of forfeiture on subleases

The forfeiture of a lease shall terminate every sublease and every other interest appearing in the register relating to that lease, but—

- (a) where 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) where the court grants relief against the forfeiture under [section 52](#),
- every such sublease and other interest shall be deemed not to have terminated.

51. Notice before forfeiture

Notwithstanding anything to the contrary contained in the lease, no lessor shall be entitled to exercise the right of forfeiture for the breach of any agreement or condition in the lease, whether expressed or implied, until the lessor has served on the lessee a written notice—

- (a) specifying the particular breach complained of;
- (b) if the breach is capable of remedy, requiring the lessee to remedy the breach within such reasonable period as is specified in the notice; and
- (c) in any case other than non-payment of rent, requiring the lessee to make compensation in money for the breach,

and 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.

52. Relief against forfeiture

- (1) A lessee upon whom a notice has been served under [section 51](#), or against whom the lessor is proceeding, by action or re-entry, to enforce his 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 such terms as it thinks fit.
- (2) The court, on application by any person claiming as sublessee or chargee 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 less period, upon such conditions as the court in the circumstances of the case thinks fit:

Provided that nothing in this subsection shall 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 shall be and take 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 shall have effect notwithstanding any stipulation or agreement to the contrary and whether the lease is registered or not.

53. Variation and extension of leases

Subject to [section 51](#), the agreements and conditions contained or implied in any registered lease may be varied, negated 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 for the time being and registered before the expiration of the then current term of the lease.

54. Substitution of leases

Where upon the 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, he shall cancel the registration of the prior lease and register the new lease subject to the incumbrances registered against the prior lease.

55. Subleases

- (1) Subject to any provision in his lease affecting his right to do so, the proprietor of a registered lease may be a sublease in the prescribed form, sublease for any period which is less than the remainder of the period of his lease.
- (2) Save as otherwise expressly provided in this Act, the provisions of this Act affecting leases, lessors and lessees shall apply to subleases, sublessors and sublessees, with such adaptations as are necessary.
- (3) If a lease is terminated by operation of law or under any law relating to bankruptcy or liquidation proceedings such termination shall terminate the sublease.
- (4) In addition to the agreements specified by or prescribed under this Act to be implied in leases, there shall be implied in every sublease under this Act an agreement by the sublessor that he will, during the continuance of the sublease, pay the rent reserved by the lease under which the sublessor holds, and observe and perform the agreements and conditions thereof.
- (5) Where a sublessee has paid to the sublessor's lessor the rent or any part of the rent payable by the sublessor under the lease under which the sublessor holds, the sublessee shall be entitled to set off any sum so paid against the rent payable by him to the sublessor in respect of the sublease.

56. Surrender of leases

- (1) Where the lessor and the lessee agree that the lease shall be surrendered, it shall be surrendered in the following manner—
 - (a) an instrument shall be prepared in the prescribed form, or else the word surrendered shall be inscribed on the lease or on the duplicate or triplicate thereof;
 - (b) the instrument or inscription shall then be executed by the lessor and lessee;
 - (c) the Registrar shall then cancel the registration of the lease; and
 - (d) the instrument or inscribed lease shall then be filed, and thereupon, or upon such earlier date as is expressed in the instrument or inscription, the interest of the lessee shall cease.
- (2) No lease which is subject to a charge or a sublease shall be surrendered without the consent in writing of the proprietor of the charge or sublease.

57. Determination of leases

- (1) Where—
 - (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 shall thereupon terminate, and the lessor may apply in writing to the Registrar to cancel its registration.
- (2) An application under this section shall be supported by such evidence of the matters giving rise to the termination and the recovery of possession by the lessor as the Registrar may require, and the Registrar on being satisfied of the matters set forth in the application shall cancel the registration of the lease.

58. Voluntary registration of leases

Where application is made to the Registrar to register any lease which is not compulsorily registrable under this Act but which is capable of registration, the Registrar shall not register such lease unless—

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

59. ***

[Repealed by 1 of 1981]

Division 3 — Charges

60. Form and effect of charges

- (1) A proprietor may, by an instrument in the prescribed form, charge his land or lease or charge to secure the payment of an existing or a future or a contingent debt or other money or money's worth or the fulfilment of a condition, and the instrument shall, except where [section 68](#) has by the instrument been expressly excluded, contain a special acknowledgement that the chargor understands the effect of that section, and the acknowledgement shall be signed by the chargor or, where 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 where no such date is specified or repayment is not demanded by the chargee on the date specified the money shall be deemed to be repayable three months after the service of a demand in writing by the chargee.
- (3) The charge shall be completed by its registration as an encumbrance and the registration of the person in whose favour it is created as its proprietor and by filing the instrument.
- (4) A charge shall not operate as a transfer but shall have effect as a security only.
- (5) There shall 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, such provisions as the parties think fit for disposing, subject to [section 72](#), of the money which may

arise on the exercise by the chargee of his power of sale, either by setting aside the proceeds of sale or part thereof and investing it to make future periodical payments, or by payment to the chargee of such proceeds or part thereof to the extent of the estimated capital value of the chargee's interest, or otherwise.

61. Second or subsequent charges

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 shall apply thereto, but any sale under the power expressed or implied in any such charge shall be expressed to be subject to all prior charges unless all those charges have been discharged.

62. Presumption that money paid is interest

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

63. Agreements implied in charges

There shall be implied in every charge, unless the contrary is expressed therein, such agreements by the chargor with the charge binding the chargor as may be prescribed by the Minister.

64. Chargee's consent to transfer

Where a charge contains an agreement, express or implied, by the chargor with the chargee that he will not transfer the land, lease or charge charged or any part thereof without the written consent of the chargee, the agreement shall be noted in the register, and no transfer by the chargor shall be registered until the written consent of the chargee, verified in accordance with [section 105](#), has been produced to the Registrar.

65. Variation of charge

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

66. Right of redemption

- (1) Subject to this section, 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 thereby and on payment of any costs or expenses properly incurred by the chargee in exercising any power conferred on him by [section 68](#), may redeem the charged land or lease or charge at any time before it has been sold under [section 71](#), and any agreement or provision which purports to deprive the chargor of this right of redemption shall be void. For the purposes of this subsection, land, a lease or a charge shall be deemed to have been sold when a bid has been accepted at the auction sale.
- (2) If the chargor wishes to redeem the charged land or lease or charge before the date specified in the charge for repayment, he shall be entitled to do so on payment to the chargee, in addition to any other money then due or owing under the charge, interest on the principal sum secured thereby for the unexpired portion of the term of the charge.
- (3) If the chargor seeks to redeem the charged land or lease or charge after the date specified in the charge, or where no such date is specified, he shall give the chargee three months' notice of his intention to redeem the charge or shall pay him three months' interest in lieu thereof.

- (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, the chargor may deposit the amount due with the Registrar in trust for the person entitled thereto, and thereupon the obligations of the chargor under the charge shall cease, and the Registrar shall cancel the registration of the charge and shall pay the amount deposited to the chargee if the chargee applies for it within six years of the date of deposit, and if the amount is not so paid it shall be paid into the Consolidated Fund.

67. Right of third party to transfer of charge

On his tendering to the chargee such sums as would have been payable to the chargee if the chargor had sought to redeem the charge under [section 66](#), any of the following persons, that is to say—

- (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, may require the chargee to transfer the charge to him.

68. Chargee's remedies

- (1) If default is made in payment of the principal sum or of any interest or any other periodical payment or of any part thereof, 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, within three months of the date of service, with a notice served on him under subsection (1), the chargee may—
 - (a) appoint a receiver of the income of the charged property; or
 - (b) sell the charged property:

Provided that a chargee who has appointed a receiver may not exercise the power of sale unless the chargor fails to comply, within three months of the date of service, with a further notice served on him under that subsection.

- (3) The chargee shall be entitled to sue for the money secured by the charge in the following cases only—
 - (a) where the chargor is bound to repay the same;
 - (b) where, 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) where the chargee is deprived of the whole or part of his security by, or in consequence of, the wrongful act or default of the chargor:

Provided that—

- (i) in the case specified in paragraph (a) of this subsection—
 - (a) a transferee from the chargor shall not be liable to be sued for the money unless he has agreed with the chargee to pay the same; and
 - (b) no action shall be commenced until a notice served in accordance with subsection (1) has expired;

- (ii) the court may, at its discretion, stay a suit brought under paragraph (a) or paragraph (b) of this subsection, notwithstanding any agreement to the contrary, until the chargee has exhausted all his other remedies against the charged property.

69. Appointment, powers, remuneration and duties of receiver

- (1) The appointment of a receiver under the powers conferred by [section 68](#) shall be in writing signed by the chargee.
- (2) A receiver may be removed at any time and a new receiver appointed by writing signed by the chargee.
- (3) A receiver appointed under this section shall be deemed to be the agent of the chargor for the purposes for which he is appointed; and the chargor shall be solely responsible for the receiver's acts and defaults unless the charge otherwise provides.
- (4) The receiver shall have power to demand and recover all the income of which he 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 shall not be concerned to inquire into the validity of the receiver's appointment.
- (6) Subject to subsection (8), the receiver shall be entitled to retain out of any money received by him all costs, charges and expenses properly incurred by him as receiver, and, for his remuneration, a commission at such rate, not exceeding five per cent of the gross amount of all moneys received, as is specified in his appointment, or if no rate is so specified at the rate of five per cent of that gross amount, or such other rate as the chargor and the 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 shall apply insurance money in making good the loss or damage in respect of which the money is received.
- (8) Subject to subsection (7), the receiver shall apply all money received by him in the following order of priority—
 - (a) in 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 whereof he is receiver;
 - (c) in payment of his 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 Act, 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;
 - (e) in or towards the discharge of the money secured by the charge, if so directed in writing by the chargee,

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

70. Chargee's powers of leasing

- (1) The proprietor of a charge of land or a lease who has appointed a receiver under the powers conferred on him by [section 68](#) shall, in the absence of any express provision to the contrary contained in the charge, have power, subject to this Act and any other written law—
 - (a) to grant leases in respect of the charged land or the land comprised in the charged lease or any part or parts thereof; 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 shall—
 - (a) be made to take effect in possession not later than twelve 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 twenty-one years; and
 - (d) contain a declaration by the chargee that he has appointed a receiver, with the date of appointment.

71. Power of sale

- (1) A chargee exercising his power of sale shall act in good faith and have regard to the interests of the chargor, and may sell or concur with any person in selling the charged land, lease or charge, or any part thereof, together or in lots, by public auction for a sum payable in one amount or by instalments, subject to such reserve price and conditions of sale as the Registrar may approve, with power to buy in at the auction and to resell by public auction without being answerable for any loss occasioned thereby.
- (2) Where the chargor is in possession of the charged land or the land comprised in the charged lease, the chargee shall become entitled to recover possession of the land upon a bid being accepted at the auction sale.
- (3) A transfer by a chargee in exercise of his power of sale shall 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 shall have his remedy in damages only against the person exercising the power.
- (4) Upon registration of such transfer, the interest of the chargor as described therein shall pass to and vest in the transferee freed and discharged from all liability on account of the charge, or on account of any other encumbrance to which the charge has priority (other than a lease, easement, restrictive agreement or profit subsisting at the time the charge was effected or to which the chargee has consented in writing).
- (5) A chargee, in exercising his power of sale, shall have the same powers and rights in regard to easements and restrictive agreements as are conferred upon a proprietor by [sections 89 and 90](#).

72. Application of purchase money

The purchase money received by a chargee who has exercised his power of sale, after discharge of any prior encumbrances to which the sale is not made subject or after payment into court of a sum sufficient to meet any such prior encumbrances, shall 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 60](#)) for disposing of such money and, in the absence of any such express provision, in discharge of the 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 shall be paid to the person who immediately before the sale was entitled to redeem the charged land, lease or charge.

73. Variation of powers

Sections [66](#) (2) and (3), [68](#), [69](#), [70](#) and [71](#) may in their application to a charge be varied or added to in the charge:

Provided that any such variation or addition shall 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.

74. No right of entry into possession or foreclosure

For the avoidance of doubt, it is hereby declared that the chargee shall not be entitled to foreclose, nor to enter into possession of the charged land or the land comprised in a charged lease or to receive the rents and profits thereof by reason only that default has been made in the payment of the principal sum or of any interest or other periodical payment or of any part thereof or in the performance or observance of any agreement expressed or implied in the charge.

75. Discharge of charge

- (1) A discharge, whether of the whole or of a part of a charge, shall be made by an instrument in the prescribed form, or (if of the whole) the word "Discharged" may be endorsed on the charge or the duplicate or triplicate and the endorsement executed by the chargee and dated.
- (2) A discharge shall be completed by cancellation in the register of the charge, or part thereof as the case may require, and filing the instrument of discharge or the endorsed charge.

76. Satisfaction of charges

Upon proof to the satisfaction of the Registrar—

- (a) that all money due under a charge has been paid to the chargee or by his direction; or
- (b) that there has occurred the event or circumstance upon which, in accordance with any charge, the money thereby secured ceases to be payable, and that no money is owing under the charge, the Registrar shall order the charge to be cancelled in the register, and thereupon the land, lease or charge shall cease to be subject to the charge.

77. Further advances

Provision may be made in the charge for a 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 shall not rank in priority to any subsequent charge except with the consent in writing of the proprietor of the subsequent charge.

78. Consolidation

A chargee has no right to consolidate his 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

79. Transfer

- (1) A proprietor, by an instrument in the prescribed form, may transfer his land, lease or charge to any person with or without consideration.
- (2) The transfer shall be 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.

80. Certificates as to payment of rates

The Registrar shall not register any instrument purporting to transfer or to vest any land, or a lease of land, situated within the area of a rating authority unless there is produced to the Registrar a written statement by the authority that all rates and other charges payable to the authority in respect of the land for the last twelve years have been paid, expressed to be available until the day upon which, or until a day not earlier than that upon which, the instrument was registered:

Provided that no such statement shall be required where the instrument relates to—

- (a) land which is subject to a lease, and the leasehold interest is, by virtue of any written law, the rateable property; or
- (b) a lease, and the land or another leasehold interest is, by virtue of any written law, the rateable property.

81. Transfer to take effect immediately

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

82. Conditions repugnant to interest transferred

- (1) Any condition or limitation purporting to restrain absolutely a transferee or any person claiming under him from disposing of the interest transferred shall be 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 any future event to happen shall be void.
- (3) Except as provided in Division 5 of this Part, no transfer of land shall contain a direction that the land shall be used or enjoyed by the transferee in a particular manner.

83. Transfer of part

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

84. Transfer of lease

On the transfer of a lease, unless the contrary is expressed in the transfer, there shall be 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 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.

85. Effect of transfer on agreements in lease

A transferee from a lessor or from a lessee shall possess all the rights, and be 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 thereunder, and the transferor shall cease to be under any obligation or possessed of any rights in respect of the lease:

Provided that nothing in this section shall 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.

86. Transfer subject to charge

In every transfer of land or a lease subject to a charge, there shall be implied an agreement by the transferee with the transferor to pay the interest secured by the charge at the rate and at the times and in the manner specified in the charge and to 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 therein contained or implied.

87. Transfer subject to lease

A transfer of land which is subject to a lease shall be valid without the lessee acknowledging the transferee as lessor, but nothing in this section—

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

88. Transfer of unregistered lease

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

Division 5 — Easements, restrictive agreements, profits and licences

89. Easements

- (1) The proprietor of land or a lease may, by an instrument in the prescribed form, grant an easement over his land or the land comprised in his lease, to the proprietor or lessee of other land for the benefit of that other land.
- (2) 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 him, or reserve an easement for the benefit of land retained by him.
- (3) The instrument creating the easement shall specify clearly—
 - (a) the nature of the element, 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 thereof so burdened;
 - (c) the land which enjoys the benefit of the easement,
- and shall, if so required by the Registrar, include a plan sufficient in the Registrar's estimation to define the easement.
- (4) The grant or reservation of the easement shall be completed by its registration as an encumbrance 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 shall be capable of existing only during the subsistence of the lease.

90. Restrictive agreements

- (1) Where 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 his land for the benefit of the proprietor of other land, and is presented to the Registrar, the Registrar shall note the restrictive agreement in the encumbrances 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 shall 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) If a restrictive agreement is noted in the Register, not only the proprietors themselves but also their respective successors in title shall be entitled to the benefit and subject to the burden of it respectively, unless the instrument otherwise provides.

91. Profits

- (1) Subject to the Mining Act and any other written law, the proprietor of land or a lease may, by an instrument in the prescribed form, grant a profit.
- (2) The instrument shall indicate clearly the nature of the profit, the period for which it is to be enjoyed and—
 - (a) whether it is appurtenant to other land or a lease or not; and
 - (b) whether it is to be enjoyed by the grantee exclusively or by him in common with the grantor.
- (3) The grant of a profit shall be completed—
 - (a) by its registration as an encumbrance in the register of the land or lease which it affects;
 - (b) where 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 were land.
- (5) A profit granted by the proprietor of a lease shall be capable of subsisting only during the subsistence of the lease.

[Cap. 61:01]

92. Release and extinguishment of easements, profits and restrictive agreements

- (1) Upon presentation of a duly executed release in the prescribed form, the registration of the easement, profit or restrictive agreement shall be cancelled, and the easement, profit or restrictive agreement shall thereupon be extinguished.
- (2) On the application of any person affected thereby, the Registrar may cancel the registration of an easement, profit or restrictive agreement upon proof to his 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.

93. Discharge and modification of easements, profits and restrictive agreement

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

- (a) that, by reason of changes in the character of the property or the neighbourhood or other circumstances of the case which the court deems material, the easement, profit or restrictive agreement ought to be held to be obsolete;
- (b) that the continued existence of the easement, profit or restrictive agreement 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) that the proposed discharge or modification will not injure the person entitled to the benefit of the easement, profit or restrictive agreement.

94. Licences

- (1) Without prejudice to [section 126](#), a licence is not capable of registration.
- (2) A licence relating to the use or enjoyment of land is ineffective against a *bona fide* purchaser for valuable consideration unless the licensee has protected his interest by lodging a caution under that section.

Division 6 — Co-proprietorship and partition**95. Registration of more than one proprietor**

- (1) Every instrument made in favour of two or more persons, and the registration giving effect to it, shall show—
 - (a) whether such persons are joint proprietors or proprietors in common; and
 - (b) where they are proprietors in common, the share of each proprietor.
- (2) The Minister may for any registration section prescribe either—
 - (a) the maximum number (whether one or a greater number) of persons who are allowed to be registered in the same register as proprietors; or

- (b) the maximum denominator of the vulgar fraction which expresses the share of any proprietor,
- or both of them, and no dealing shall be registered if its effect would be that that number or that denominator, as the case may be, would be exceeded.

96. Characteristics of joint proprietorship and severance thereof

- (1) Where 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, his interest shall vest in the surviving proprietor or the surviving proprietors jointly.
- (2) For avoidance of doubt, it is hereby declared that—
 - (a) the sole proprietor of any land, lease or charge may transfer the same to himself and another person jointly; and
 - (b) a joint proprietor of any land, lease or charge may transfer his interest therein 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 shall be completed by registration of the joint proprietors as proprietors in common in equal shares and by filing the instrument.

97. Characteristics of proprietorship in common

- (1) Where any land, lease or charge is owned in common, each proprietor shall be entitled to an undivided share in the whole, and on the death of a proprietor his share shall be administered as part of his estate.
- (2) No proprietor in common shall deal with his 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 shall not be unreasonably withheld.

98. Partition of land owned in common

- (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 Act 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 shall effect the partition of the land in accordance with any agreement of the proprietors in common, or, in the absence of agreement, in such manner as the Registrar may order:

Provided that the Registrar may require the production of plans of the sub-divided pieces or may cause plans of the sub-divided pieces to be prepared before effecting the partition of the land.

- (2) Partition shall be completed by closing the register of the piece partitioned and opening registers in respect of the new pieces created by the partition and filing the agreement or order.

99. When Registrar may order sale

- (1) Where 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 shall, 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 sale of such shares by public auction or make such other order for the disposal of the application as he thinks fit.
- (2) A proprietor in common shall be entitled to purchase the land or any share so offered for sale, either at the auction or at any time by private treaty.

100. Procedure where share small

- (1) Where 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 shall add such share to the share of any other proprietor or distribute such share amongst two or more other proprietors in such manner and in such proportions as, in default of agreement, he thinks fit.
- (2) Where the Registrar proceeds in accordance with subsection (1), he shall assess the value of the share added or distributed and shall order that there be paid to the proprietor of the share by each proprietor who has received an addition to his share the value of such addition.
- (3) Where 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.

101. Partition of family land

- (1) An application for the partition of family land may be made, in the prescribed form, to the Registrar by—
 - (a) the family representative;
 - (b) an adult member of the family; or
 - (c) the Minister.
- (2) The Registrar shall forward the application to the Local Land Board having jurisdiction, and the Local Land Board shall proceed in accordance with section 10 of the Local Land Boards Act.
[Cap. 59:02]
- (3) On receipt from the Local Land Board of the partition agreement or order the Registrar shall complete the partition by closing the register of the family land and opening registers in respect of the new pieces created by the partition and filing the agreement or order.

Division 7 — Succession on death**102. Succession on death**

Subject to Part VII, nothing in this Act shall affect the law of testate or intestate succession.

Part VI – Instruments and agents

103. Form of instruments

- (1) Every disposition of land, a lease or a charge shall be effected by an instrument in the prescribed form or in such other form as the Registrar may in any particular case approve, and every person shall use a printed form issued by the Registrar unless the Registrar otherwise permits.
- (2) Leases and charges shall be presented for registration in triplicate.
- (3) Instruments shall 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.

104. Execution of instruments

- (1) Every instrument evidencing a disposition shall be executed by all persons shown by the register to be proprietors of the interest affected and by all other parties to the instrument:

Provided that the Registrar may dispense with execution by any particular party (other than the donee under a disposition by way of gift) where he considers that such execution is unnecessary.

- (2) Subject to [section 117](#) (2), an instrument shall be deemed to have been executed only—
 - (a) by a natural person, if signed by him;
 - (b) by a corporation—
 - (i) if sealed with the common seal of the corporation, affixed thereto in accordance with section 43 (2) of the General Interpretation Act in the case of a statutory corporation, or in accordance with the articles of association in the case of a company; or
[Cap. 1:01]
 - (ii) in the case of a corporation not required by law to have a common seal, if signed by such persons as are authorized in that behalf by any law or by the statute 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.

105. Verification of execution

- (1) A person executing an instrument shall, subject to subsection (2), appear before the Registrar who shall verify the execution of the instrument as if he were an administrative officer authenticating a document in accordance with section 4 of the Authentication of Documents Act.

[Cap. 4:06]

- (2) The Registrar may accept for registration an instrument the execution of which has been verified—
 - (a) under subsection (1); or
 - (b) by such other person as may be prescribed who has endorsed on or attached to the instrument a certificate in the prescribed form.

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- (3) In the case of official documents, section 6 of the Authentication of Documents Act shall apply.
- (4) No instrument executed out of Malawi shall be registered unless it has been authenticated in accordance with Part V or section 16 of the Authentication of Documents Act.

- (5) The Registrar may dispense with verification under this section—
 - (a) if he considers that it cannot be obtained or can be obtained only with difficulty and he is otherwise satisfied that the document has been properly executed; or
 - (b) in cases in which to his knowledge the document has been properly executed,and shall record on the document his reasons for dispensing with the appearance of the parties.

106. Stamps

No instrument required by law to be stamped shall be accepted for registration unless it is duly stamped.

107. Disposal of instruments

Subject to subsection (2) and to [section 109](#) (2), all instruments accepted by the Registrar shall be retained in the registry for as long as they support a current entry in the register and for six years thereafter.

- (2) When a lease or charge is registered particulars of registration shall be noted on the duplicate and the triplicate thereof, and the duplicate and the triplicate shall be returned to the person who presented them.
- (3) Six years or more after an entry in the register has been superseded or has ceased to have any effect, the Registrar may destroy any instrument which supported the entry.

108. Minors

- (1) For the avoidance of doubt, it is hereby declared that the name of a person under the age of twenty-one years may be entered in the register either on first registration or as a transferee or on transmission.
- (2) Nothing in this section enables any such person to deal with land or any interest in land by virtue of such registration, and, where to his knowledge a minor is registered, the Registrar shall enter a restriction accordingly.
- (3) Where a disposition by a minor whose minority has not been disclosed to the Registrar has been registered, such disposition may not be set aside only on the grounds of minority.

109. Agents and persons under disability

- (1) Except as provided in subsection (3), no instrument executed by any person as agent for any other person shall be accepted by the Registrar unless the person executing it was authorized in that behalf by a power of attorney executed and verified in accordance with [sections 104 and 105](#).
- (2) The original of such power of attorney or, with the consent of the Registrar, a copy thereof certified by the Registrar shall be filed.
- (3) Where any person who, if not under a disability, might have made any application, done any act or been a party to any proceeding under this Act or under any rules made thereunder 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 proceeding on behalf of that person, and shall generally represent that person for the purposes of this Act.
- (4) Before accepting any document executed by a guardian or a person so appointed to represent a person under a disability, the Registrar shall satisfy himself 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 shall file a note of the explanation which satisfied him or a copy of the appointment, as the case may be.

110. Gift to person under disability

A person under a disability who has been registered as proprietor of land, a lease or a charge acquired by him by way of gift may, within six months after he ceases to be under a disability, repudiate the gift if he has not already disposed of the subject-matter thereof, but no such repudiation shall be effective until—

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

111. Powers of attorney

- (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, such power of attorney shall be entered in the register of powers of attorney and the original, or with the consent of the Registrar a copy thereof certified by the Registrar, shall be filed in the file of powers of attorney.
- (2) Every such power of attorney shall be in the prescribed form or such other form as the Registrar may in any particular case approve, and shall be executed and verified in accordance with [sections 104 and 105](#).
- (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 shall be entered in the register of powers of attorney and noted upon the power, and the notice shall 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 such evidence as the Registrar requires, and thereupon the revocation shall be entered in the register of powers of attorney and noted upon the power, and the notice shall 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 thereof, 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 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.

112. Effect of registered power of attorney

- (1) A power of attorney which has been registered under [section 111](#) and of which no notice of revocation has been registered under that section shall be 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 in pursuance of a power of attorney registered under [section 111](#) shall not be liable in respect of the payment or act by reason only that 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, trusts and family representation

113. Transmission on death of joint proprietor

If one of two or more joint proprietors of any land, lease or charge dies, the Registrar, on proof to his satisfaction of the death, shall delete the name of the deceased from the register.

114. Transmission on death of sole proprietor or proprietor in common

- (1) If a sole proprietor or a proprietor in common dies, his personal representative or personal representatives, on application to the Registrar in the prescribed form and on production to him of the grant or grants, shall be entitled to be registered by transmission as proprietor, or in the case of two or more personal representatives as joint proprietors, in the place of the deceased with the addition after his name or their names of the words "as personal representative of _____ deceased" or "as personal representatives of _____ deceased", as the case may be.
- (2) Upon production of a grant, the Registrar may, without requiring the personal representative or personal representatives to be registered, register by transmission—
 - (a) any transfer by the personal representative or personal representatives;
 - (b) any surrender of a lease or discharge of a charge by the personal representative, or personal representatives.
- (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, or an administration grant made by a Local Court under any written law.

115. Effect of transmission by death

- (1) A proprietor registered as personal representative, or, being a person beneficially entitled on the death of a proprietor, after transfer from a personal representative, shall hold 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 for the purpose of any dealing he shall be deemed to have taken such land, lease or charge, under a transfer for valuable consideration.
- (2) The registration of any person by transmission shall relate back to and take effect from the date of the death of the proprietor.

116. Transmission on bankruptcy

- (1) A trustee in bankruptcy shall, 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 shall 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 his place, and a copy of the order shall be filed.
- (2) A trustee in bankruptcy shall be described in the register as "trustee of the property of _____, a bankrupt".
- (3) The trustee in bankruptcy shall hold any land, lease or charge of which he is registered as proprietor subject to any restrictions contained in the Bankruptcy Act 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 for the purpose of any dealing with such land, lease or charge the trustee in bankruptcy shall have all the rights and be

subject to all the limitations conferred or imposed by this or any other written law on a proprietor who has acquired land, a lease or a charge for valuable consideration.

[Cap. 11:01]

117. Liquidation

- (1) Where a company is being wound up, the liquidator shall produce to the Registrar any resolution or order appointing him liquidator, and the Registrar shall enter the appointment in respect of any land, lease or charge of which the company is registered as proprietor, and shall 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) shall 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, shall be signed by the liquidator whose signature shall be verified in accordance with [section 105](#).

118. Transmission in other cases

Where the Government or any person has become entitled to any land, lease or charge under any law or by virtue of any order or certificate of sale made or issued under any law, the Registrar shall, on the application of any interested person supported by such evidence as he may require, register the Government or the person entitled as the proprietor.

119. Trusts

- (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, shall be registered with the addition of the words "as trustee", but the Registrar shall 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 thereof, may be deposited with the Registrar for safe custody; but such instrument or copy shall not form part of the register or be deemed to be registered.
- (3) Where the proprietor of land, a lease or a charge is a trustee, he shall hold the same 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, no person dealing in good faith for valuable consideration shall be deemed to have notice of the trust, nor shall any breach of the trust create any right to indemnity under this Act.

120. Co-trustees

- (1) Where two or more proprietors are registered as trustees or as trustees in bankruptcy, they shall hold as joint proprietors.
- (2) Where the survivor of two or more trustees or trustees in bankruptcy would not be entitled to exercise alone the powers which are vested in them, the Registrar shall enter a restriction to that effect.

121. Family representation

- (1) Where land is family land the head of the family shall be registered as the proprietor with the addition of the words "as family representative".
- (2) Where the proprietor of land, or a lease or a charge is a family representative he shall have the sole and exclusive right of dealing with the land, lease or charge:

Provided that nothing contained in this section shall preclude the family representative and family members from regulating the occupation of the land among themselves according to custom.

- (3) Nothing in this Act shall relieve any person registered as the family representative from any duty, customary or otherwise, to consult other members of the family. A person so registered shall be bound to exercise the powers vested in him by this Act on behalf of and for the collective benefit of the family, but any failure by such person to comply with such duty or obligation shall in no way concern or affect any person dealing with him in good faith for valuable consideration nor shall any such failure create any right to indemnity under this Act.

122. Replacement of family representative

- (1) The Registrar, on being notified by any member of a family of which the head is registered as family representative—
- (a) of the death of the family representative;
 - (b) that the family representative is unable to act by reason of mental or physical incapacity, absence from Malawi, imprisonment or detention; or
 - (c) that the family representative is no longer acceptable to the majority of the members of the family,
- shall refer the matter to the appropriate Local Land Board established under the Local Land Boards Act.
- [Cap. 59:02]*
- (2) Upon receipt from the Local Land Board of the nomination of a new family representative, the Registrar shall delete the name of the registered family representative and substitute the name of the new family representative, and shall file the nomination.

Part VIII – Restraints on disposition

Division 1 — Inhibitions

123. Power of court to inhibit registered dealings

- (1) The court may make an order (hereinafter 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 thereby, shall be sent to the Registrar, who shall register it in the appropriate register, and no inhibition shall bind or affect the land, lease or charge until it has been registered.

124. Effect of inhibition

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

125. Cancellation of inhibition

The registration of an inhibition shall be cancelled in the following cases and in no others—

- (a) on the expiration of the time limited by the inhibition;
- (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

126. Lodging of cautions

- (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 on a current account 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 same.
- (2) A caution may either—
 - (a) forbid the registration of dispositions and the making of entries altogether; or
 - (b) forbid the registration of dispositions and the making of entries to the extent therein expressed.
- (3) A caution shall be in the prescribed form and shall 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 considers unnecessary.
- (5) Subject to this section, the caution shall be registered in the appropriate register.

127. Notice and effect of caution

- (1) The Registrar shall 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 shall be registered except with the consent of the cautioner or by order of the court.

128. Withdrawal and removal of caution

- (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 him that his caution will be removed at the expiration of the time stated in the notice.
 - (b) If at the expiration of the time stated the cautioner has not objected, the Registrar may remove the caution.
 - (c) If the cautioner objects to the removal of the caution, he shall notify the Registrar in writing of his objection within the time specified in the notice, and the Registrar, after giving the parties an opportunity of being heard, shall make such order as he 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 his power of sale under [section 71](#), the Registrar shall 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 shall be cancelled, but any liability of the cautioner previously incurred under [section 130](#) shall not be affected by the cancellation.

129. Second caution in respect of same matter

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

130. Wrongful cautions

Any person who lodges or maintains a caution wrongfully and without reasonable cause shall be liable, in an action for damages at the suit of any person who has thereby sustained damage, to pay compensation to such person.

Division 3 — Restrictions

131. Restrictions

- (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 such inquiries to be made and notices to be served and hearing such persons as he thinks fit, make an order (hereinafter 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 such dealings as do not comply with specified conditions, and the restriction shall be registered in the appropriate register.

132. Notice and effect of restriction

- (1) Upon the entry of a restriction the Registrar shall give notice thereof in writing to the proprietor affected thereby.
- (2) So long as any restriction remains registered, no instrument which is inconsistent with it shall be registered except by order of the court or of the Registrar.

133. Removal and variation of restrictions

- (1) The Registrar may at any time, upon application by any person interested or of his own motion, and after giving the parties affected thereby 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 thereof to the Registrar, the court may order a restriction to be removed or varied, or make such other order as it thinks fit, and may make an order as to costs.

Part IX – Prescription

134. Acquisition of land by prescription

- (1) The ownership of land may be acquired by peaceable, open and uninterrupted possession without the permission of any person lawfully entitled to such possession for a period of twelve years:
Provided that no person shall so acquire the ownership of customary or public land.
- (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 thereof.

135. Principles of possession

- (1) Where it is shown that a person has been in possession of land, or in receipt of the rents or profits thereof, at a certain date and is still in possession or receipt thereof, it shall be presumed that he has, from that date, been in uninterrupted possession of the land or in uninterrupted receipt of the rents or profits until the contrary be shown.
- (2) Possession of land or receipt of the rents or profits thereof by any person through whom a claimant derives his possession shall be deemed to have been possession or receipt of the rents or profits by the claimant.
- (3) Where 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 his possession shall be deemed to be or to have been the possession of that other.
- (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 such conditions subsist without fulfilment or compliance with them by such person and without any exercise by the proprietor of his right to the land, such subsequent possession shall be deemed to be peaceable, open and uninterrupted possession within the meaning of [section 134](#).
- (5) For the purposes of subsection (4)—
 - (a) a tenancy at will shall be deemed to have terminated at the expiration of a period of one year from the commencement thereof unless it has previously been determined;
 - (b) a periodic tenancy shall be deemed to have terminated at the expiration of the period:
Provided that where any rent has subsequently been paid in respect of the tenancy it shall be deemed to have terminated at the expiration of the period for which the rent has been paid.
- (6) Possession shall be interrupted—
 - (a) by dispossession by a person claiming the land in opposition to the person in possession;
 - (b) by the institution of legal proceedings by the proprietor of the land to assert his right thereto; or
 - (c) by any acknowledgement made by the person in possession of the land to any person claiming to be the proprietor thereof that such claim is admitted.
- (7) No person possessing land in a fiduciary capacity on behalf of another may acquire by prescription the ownership of the land as against such other.

136. Procedure on application

- (1) The Registrar shall give notice of any such application to the proprietor of the land affected and to any other persons who may, in his opinion, be affected thereby; and may order that the application be advertised at the expense of the applicant in such manner as the Registrar may direct.

- (2) After one month has elapsed from the date of giving notice under subsection (1) the Registrar, on being satisfied that the applicant has acquired the ownership of the land claimed, may allow the application and register him as proprietor of the land claimed, subject to any interests on the register which have not been extinguished by the possession.

137. Acquisition of easements and profits by prescription

- (1) Except in respect of customary or public land, easements and profits may be acquired without registration by peaceable, open and uninterrupted enjoyment thereof for a period of twelve years:

Provided that no easement or profit shall be so acquired unless the proprietor of the land burdened by such easement or profit is, or by reasonable diligence might have been, aware of such enjoyment and might by his own efforts have prevented it.
- (2) Where any person claims to have acquired an easement or profit by virtue of subsection (1) he may apply to the Registrar for the registration thereof, and the Registrar, on being satisfied as to the claim and subject to such notices, advertisements and conditions as the Registrar may direct, shall register the easement or profit as an encumbrance 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 indemnity

138. Rectification by Registrar

- (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 interests of any proprietor;
 - (b) where any person has acquired an interest in land by prescription under Part IX;
 - (c) in any case and at any time with consent of all persons interested;
 - (d) where, upon resurvey, a dimension or area shown in the register or registry map is found to be incorrect, but in such case the Registrar shall first give notice to all persons appearing by the register to be interested or affected of his intention so to rectify.
- (2) Upon proof of the change of the name or address of any proprietor, the Registrar shall, on the written application of the proprietor, make an entry in the register to record the change.

139. Rectification by court

- (1) Subject to subsection (2), the court may order rectification of the register by directing that any registration be cancelled or amended where it is satisfied that any registration including a first registration has been obtained, made or omitted by fraud or mistake.
- (2) The register shall 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 such 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 his act, neglect or default.

140. Right to indemnity

- (1) Subject to this Act and any written law relating to the limitation of actions, any person suffering damage by reason of—
 - (a) any rectification of the register;

- (b) any mistake or omission in the register which cannot be rectified under this Act, 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 in a copy of or extract from any document or plan, certified under this Act,

shall be entitled to be indemnified by the Government out of moneys provided by Parliament.

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

141. Amount of indemnity

Where an indemnity is awarded in respect of the loss of any interest in land, it shall not exceed—

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

142. Procedure for claiming indemnity

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

143. Recovery of indemnity paid

Where any moneys are paid by way of indemnity under this Part, the Minister shall be entitled to recover by suit or otherwise the amount so paid from any person who has caused or substantially contributed to the loss by his fraud or negligence, and to enforce any express or implied agreement or other right which the person who is indemnified would have been entitled to enforce in relation to the matter in respect of which the indemnity has been paid.

144. Errors in survey

- (1) Subject to the proviso to section 28 (2) of the Customary Land (Development) Act as between the Government and a proprietor, no claim to indemnity shall arise and no suit shall 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 of 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 he acquired the land, no claim to indemnity shall be 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, after a period of six months from the date of registration of the instrument under which the proprietor acquired the land.

[Cap. 59:01]

Part XI – Decisions of Registrar and appeals

145. Power of Registrar to state case

Whenever any question arises with regard to the exercise of any power or the performance of any duty conferred or imposed on him by this Act, the Registrar may state a case for the opinion of the High Court; and thereupon the High Court shall give its opinion thereon, which shall be binding upon the Registrar.

146. Appeals

- (1) If any person is dissatisfied by the refusal of the Deputy Chief Land Registrar or any Assistant Land Registrar to effect or cancel any registration, he may, within thirty days of the refusal, appeal in the prescribed form to the Chief Land Registrar, and the Chief Land Registrar may direct that such registration be effected or cancelled, as the case may require, or may uphold the refusal.
- (2)
 - (a) The Minister or any person aggrieved by a decision, direction, order, determination or award of the Chief Land Registrar may, within thirty days of the decision, direction, order, determination or award, give notice to the Chief Land Registrar in the prescribed form of his intention to appeal to the High Court against the decision, direction, order, determination or award.
 - (b) On receipt of a notice of appeal, the Chief Land Registrar shall prepare and send to the Court and to the appellant, and to any other person appearing to him from the register to be affected by the appeal, a brief statement of the question in issue.
 - (c) On the hearing of the appeal, the appellant and the Chief Land 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.
 - (d) The Court may make such order on the appeal as the circumstances may require, and every such order shall be given effect to by the Chief Land Registrar.
 - (e) The costs of the appeal shall be in the discretion of Court.

147. Effect of appeal on disposition

- (1) An appeal to the Court shall 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 shall be made in the register affected by the appeal and any disposition shall be subject to such notice.

148. Appeal rules

The Chief Justice may make rules of Court for regulating applications and appeals to the Court under this Act, and for the fees to be paid in respect thereof.

Part XII – Miscellaneous

149. Addresses

Any person who under this Act submits a caution or any instrument for registration, or is the proprietor of any land, lease or charge, shall furnish to the Registrar in writing a postal address within Malawi for service, and shall notify him in writing of any change in that address:

Provided that the Registrar may in his discretion dispense with this requirement in regard to any particular registration or kind of registration.

150. Service of notices

A notice under this Act shall be deemed to have been served on or given to any person—

- (a) if served on him personally;
- (b) if left for him at his last known place of residence or business in Malawi;
- (c) if sent by registered post to him at his last known postal address;
- (d) if served in any of the above-mentioned ways on an attorney holding a power of attorney whereunder such attorney is authorized to accept such service;
- (e) if service cannot be effected in one of the abovementioned ways, by displaying it in a prominent place on the land affected.

151. Meaning of "opportunity of being heard"

- (1) Where by this Act a thing is to be or may be done after giving a person an opportunity of being heard, that person shall be deemed to have been given such an opportunity—
 - (a) if he attends before the Registrar personally or by a legal practitioner or other agent, and is given such an opportunity;
 - (b) if he intimates, personally or by a legal practitioner or other agent, that he does not wish to be heard; or
 - (c) if he 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 seven days after service of the notice at which he will, if he attends before the Registrar, be heard.
- (2) Where a person or a legal practitioner or other agent on his behalf attends before the Registrar concerning a matter on which he is entitled to an opportunity of being heard, or fails to attend pursuant to such a notice as aforesaid, the Registrar may, if he thinks fit, adjourn the hearing from time to time, and, notwithstanding failure to attend, may, if he thinks fit, hear such person at any time.
- (3) Where by this Act all persons interested or affected are to be given an opportunity of being heard, it shall be sufficient if all persons who, according to any subsisting entry in the register, appear to be so interested or affected are given such opportunity.

152. Offences

- (1) Any person who—
 - (a) knowingly misleads or deceives any person authorized by or under this Act to require information in respect of any land or interest in land;
 - (b) fraudulently issues or makes or fraudulently procures 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 uses, assists in fraudulently using or is privy to the fraudulent use of any instrument or form purporting to be issued or authorized by the Registrar; or
 - (d) causes any defacement, obliteration, mutilation or unauthorized entry or alteration to be made on or in any register or filed instrument,shall be liable to a fine of £200 and to imprisonment for three years.
- (2) If any person after the delivery to him of a summons to attend before the Registrar or to produce any document neglects or refuses without reasonable cause to attend in accordance with the

summons, or to produce any document which he is required by the summons to produce, or to answer upon oath or otherwise any question which is lawfully put to him by the Registrar under the powers conferred by this Act, he shall be liable to a fine of £20.

153. Fees

- (1) There shall be payable in respect of land certificates, certificates of lease, searches, surveys and survey plans, printed forms and all other matters connected with registration, such fees as shall from time to time be prescribed, and the Registrar may refuse registration until the fees are paid.
- (2) The Registrar may act notwithstanding that the prescribed fee or any part thereof has not been paid, but the unpaid fee or part of a fee shall be recorded in the register.
- (3) The Registrar may refuse to register a disposition of any land, lease or charge against which unpaid fees are recorded until such fees are paid.

154. Recovery of fees and expenses

Unpaid fees or expenses incurred by the Registrar shall constitute a civil debt recoverable by the Registrar in a magistrate's court.

155. Enforcement of Registrar's orders for payment

An order for the payment of a sum of money made by the Registrar under any power conferred by this Act shall be enforceable by a magistrate's court as if it were an order of that court.

156. Jurisdiction of courts

Civil suits and proceedings relating to the ownership or the possession of land, or to a lease or charge, registered under this Act, or to any interest in any such land, lease or charge, being an interest which is registered or registrable under this Act, or being an interest which is referred to in [section 27](#), shall, notwithstanding the Courts Act, be tried by the High Court, or, where the value of the subject matter in dispute does not exceed £200, by the High Court or a subordinate court held by a Resident Magistrate.

[Cap. 3:02]

157. Rules

The Minister may make rules generally to give effect to the purposes and provisions of this Act, and in particular, and without prejudice to the generality of the foregoing, for prescribing the forms to be used under this Act and the fees payable for anything to be done thereunder, and for prescribing anything which under this Act may be prescribed.

158. Savings of rights

Nothing in this Act shall prejudice any of the interests, rights, powers and privileges conferred on the Minister or the Government by any other written law.

159. Act to bind Government

Except as otherwise provided, this Act binds the Government.

160. Other law

Any matter not provided for in this Act, or in any other written law relating to land, leases and charges registered under this Act and interests therein, shall be decided in accordance with the principles of justice, equity and good conscience.