

INTRODUCTION

This manual is designed especially for the Turks & Caicos Islands Land Registry. It is intended to supplement a basic dealings training course and can be utilised as a source of reference on technical and procedural matters when carrying out basic dealings drafting duties. This manual contains details of the register drafting process and how the register is amended prior to applications being referred to the Registrar of Lands for signing off. This manual describes the risks and consequences associated with making errors in the register and emphasises the need for accuracy and attention to detail in the drafting process.

The Land Registry is governed by the Registered Land Ordinance (RLO) 1968 which provides the detail behind the work of the Registry. This manual provides the detail as to the procedural matters with which all Registry Staff are concerned in implementing the Registered Land Ordinance on basic dealings on a daily basis.

This manual is arranged in sections covering all aspects of an application, Sections 2 – 7 cover lodgement, initial checking, stamp duty, parts of the register, procedures on making entries on the register, fees and execution and verification. The remaining Sections contain technical information on basic dealing topics as well as instructions on how to amend the register manually prior to presentation to the Registrar of Lands.

This manual has a short selection of legal terms that are commonly used in the Land Registry. Most Land Registry staff will learn the meaning of these terms quickly but this collection may be of use to beginners. Most of all, some of these terms will not be familiar to members of the general public and can serve as a guide in explaining them when dealing with enquiries from them.

This manual supplements not replaces The Land Registration Procedures Manual which was prepared several years ago by Alice Williams, Registrar of Lands and updated in 2011 by Andy Gale, Registrar of Lands and contains much useful information and detail on Land Registry internal practice and procedure.

D A Evans October 2015

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This Basic Dealing Manual was produced in 2015 and has been revised in minor form several times. It is due for review and will be updated on completion of this review. The contents of this Manual were prepared for use by clerical staff internal to the Land Registry. The content of this Manual constitutes general direction to staff given by the Registrar in accordance with section 11(2) of the Registered Land Ordinance. Nothing in this Manual constitutes legal advice or commentary provided to members of the public or attorney. In case of any conflict with the content of this policy and legislation or developing case law then the legislation and/or common law prevails.

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SECTION 1 Glossary of terms

Some legal terms in common use in the Land Registry

Appurtenance: A right which benefits and is appurtenant to, i.e. attached to, land or a lease, even though the ownership of the land or lease may change.

Charge: An interest in land held as security for a loan.

Easement: A right enjoyed by the owner of land (the dominant tenement) over the land of another person (the servient tenement), e.g. a right of way over the other person's land. (An easement, so long as it subsists, is appurtenant to, i.e. attached to, the land comprising the dominant tenement and is an incumbrance on the land comprising the servient tenement even though ownership of the tenements may change).

Incumbrance: A claim, lien, of liability attached to land (thereby encumbering title to that land).

In gross: Used in relation to profits, a profit which exists independently, i.e. is not attached to land, the dominant tenement.

Joint Ownership: Ownership of land which is simultaneously vested in more persons than one and which passes on the death of one joint proprietor to the surviving joint proprietor(s). (See ownership in common).

Lease: A contract by which exclusive possession of land is granted by its owner (the lessor) to a tenant (the lessee) for a consideration, usually in the form of rent.

Lessor: Landlord and owner of an estate (freehold or leasehold) out of which a lease is granted.

Lessee: Tenant and owner of the leasehold estate granted out of a superior title.

Licence: A permit to do something on a person's land, which would otherwise be wrongful or illegal. (Licences are not registerable, but can be protected by lodging of a caution RLO s. 98).

Overriding interest: Interest in land which 'override' the register, i.e. which have legal force even though they are not registered. (They are listed in RLO s. 28).

Ownership in common: Ownership of land which is simultaneously vested in more persons than one, each being entitled to an undivided share, expressed as a fraction of the whole, which on his death goes to his heirs, not to the surviving co-owners. (See Joint Ownership).

Prescription: The gaining of ownership or other rights over land by lapse of time (see RLO s. 135) through peaceable open uninterrupted possession for a period of 20 years.

Profit (profit a prendre): A right to take produce or part of the soil from the land of another person. A profit may be enjoyed 'in gross' (see above) or 'as appurtenant to other land or lease' (see appurtenance).

Restrictive Agreement: An agreement whereby one owner for the benefit of another restrict the use or development of his land in a particular way.

Servient Tenement: Land burdened by a right, e.g. by an easement.

Tacking: The right of a chargee, who makes a subsequent advance, to 'tack' i.e. to add, it to his first advance and recover both before any intervening chargee can recover anything.

Transmission: The involuntary passing of an interest in land by operation of law (e.g. a compulsory acquisition), insolvency or death.

Voluntary Transfer: A transfer made without valuable consideration i.e. without demanding material monetary payment and often in terms of 'natural love and affection'. (A voluntary transfer is subject to the conditions in RLO s. 27)

Mutation: When the boundary of any parcel is altered on the registry map, the parcel number shall be cancelled and the parcel given a new number or numbers.

SECTION 2 Preliminary receipt of applications

Outline	2.1 Introduction	2.4 Example checking process
	2.2 Prescribed format	2.5 Applications Book
	2.3 Checking process	

2.1 Introduction

On receipt of applications by post or at the front counter it is Land Registry practice to examine the documents lodged against the register and or Registry Map to ensure that the application can be accepted for processing.

2.2 Prescribed format

The document must be in a form prescribed by the Registered Land Ordinance, if so provided for. If not provided for, then the Registrar must approve the document before acceptance.

If the document is not in a prescribed format and has not been approved by the Registrar then it should not be accepted for registration (RLO s106) as it can be deemed to be not legally valid and could be challenged in a court of law. The registration of an invalid document could lead, possibly, to a claim for compensation on the indemnity fund so extreme care must be taken in checking the validity of a document lodged for registration.

2.3 Checking process

Other details which must be checked include:-

- Parcel number and property description
- Name of proprietor(s) on register against that given in the document. These must agree or suitable evidence lodged in support, e.g. marriage certificate
- Capacity of party on register e.g. as trustee or executor, is correctly stated in the document
- Is there any impediment on the register to prevent the application proceeding e.g. a caution or restriction
- If a certificate has been issued, has it been surrendered for destruction (on transfers) or filing (on charges)
- That the document has been executed and verified correctly
- Address of transferees or lessees entered on the document
- All relevant parts of the document completed correctly – if, in a transfer to more than one person, does the document indicate whether they hold jointly or in common
- If relevant, if a deed has been signed under a Power of Attorney, the PA number should be quoted
- Checking to see that the correct Stamp Duty has been paid – a printed receipt lodged in support of this should be included

- Checking to see that the correct Land Registry fee has been paid – a printed receipt lodged in support of this should be included

2.4 An example of the checking process on the form and execution of instrument

The form of the instrument itself should then be further scrutinized to ensure that it has been correctly prepared and executed. The following matters should be checked:

- Is it presented on the correct RL printed form, where one is prescribed? Where no form is prescribed, has the Registrar approved the form?
- Have all the parties concerned, as shown on prescribed forms signed the instrument, or if a party is a body corporate, has the instrument been executed in accordance with RLO s. 107?
- Have all signatures been witnessed?
- Has the date of execution been entered on the instrument?
- Has the address of transferees or lessees been entered?
- Have all relevant parts of the instrument been completed (e.g. in a transfer to two or more persons does the instrument indicate whether they are to hold jointly or in common)?
- If another person has signed the instrument on behalf of any of the parties, is there a subsisting power of attorney registered empowering him to do so? If there is, note the PA number on the instrument, if not already shown.

If there are errors of form under (a) to (f) they can be corrected at the counter if the parties are present. Otherwise, and if there is no subsisting power of attorney registered, the instrument should be rejected and returned, and no application book number accorded.

2.5 Applications Book

If everything is in order then, and only then, can the application be accepted and entered in the Application Book which has been maintained exclusively (since 2018) in electronic form (ELROS).

The Application Book contains a record of every application (instrument, order of the court or of the Registrar) presented in order of acceptance of the application, provided that it is an application which will lead to an entry or note on the register. Each page of the application book is divided into columns for the serial number of the application; date; reference of the parcel affected by the application; name of grantor/applicant; name of grantee, if applicable; nature of the application; (e.g. transfer, further charge, inhibition); monetary consideration involved, if applicable e.g. for transfers or charges; stamp duty assessed and paid; registration fee paid; number of receipt, that the valuation office have seen Transfer for monetary consideration, who entered the application in the book, who made entry on the register and the signature of Registrar on completion of the application.

Applications presented and accepted are given their serial number in sequence of acceptance, starting from 1 at the beginning of each financial year, followed by the year e.g. 1253/93. This serial number is also the serial number of the application itself (instrument or order) to which reference will be made in the register and being known as the Instrument number.

The number allocated to each application is endorsed on the document being lodged and the Application Book forms a very important record of applications, both subsisting and historic, and can be used to produce statistical analysis of the efficiency of the registration system.

SECTION 3 The register of title

Outline	3.1 Introduction	3.5 The parts of the register
	3.2 Three types of register	3.6 A Register
	3.3 Parcel references	3.7 B Register including Cautions, Restrictions and Inhibitions
	3.4 Parcel Block Identifier	3.8 C Register

3.1 Introduction

The Land Register consist of separate pages which are called 'registers', one for every parcel shown on the Registry Map, one for every lease or sublease of a parcel or of a strata lot, which is capable of registration. The format of these registers is prescribed by law (Registered Land Rules (Revised) 1968, section 158 Registered Land Ordinance and First Schedule).

3.2 Three types of registers:

Register types		
Freehold register for ownership of a parcel	Leasehold register for a lease or sublease of a parcel	Strata register for ownership of a strata parcel

For administrative convenience the three types are differentiated by the colour of the paper on which they are printed, (yellow for ownership titles whether crown, absolute or provisional; pink for leasehold titles; and white for strata titles. Each register has different parcel referencing.

3.3 Parcel references

Parcel references are based on the Registry Maps. The Registry Maps for the whole land area of the Turks and Caicos Islands are divided into a number of registration sections. Each Island has its own initial reference number and these are:-

- 1 Grand Turk and Salt Cay
- 2 South Caicos
- 3 East Caicos
- 4 Middle Caicos
- 5 North Caicos
- 6 Providenciales
- 7 West Caicos and Southern Cays

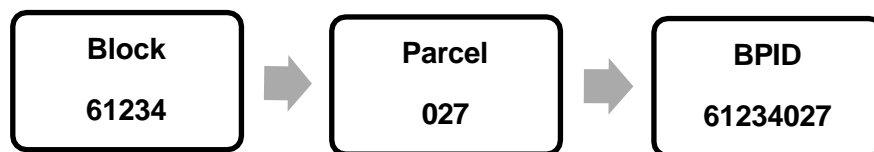
Registration sections are then further divided into registration blocks each sheet of the Registry Map comprising one block. Parcels with a registration block were then numbered consecutively from 1 in the Islands initial adjudication process and retain the same numbers

unless there has been a subsequent mutation (change of boundaries or subdivisions of original block).

The traditional full reference to any parcel is the name of the Islands, Registration Section, the Block map reference and the number of the parcel, for example Title Number 10308/7, Central Grand Turk means parcel 7 in the 8th block of the Central Section of Grand Turk. In practice, as a result of the referencing system of block maps adopted in the Turks and Caicos Islands, the block reference and parcel number is sufficient reference. However, the addition of the Registration section can be useful occasionally if applicants present the wrong block number or do not know it.

3.4 Block Parcel Identifier

The Block Parcel Identifier or BPID is a development of the traditional reference to any parcel. The first five digits are the Island, Section and Block (collectively called ‘the Block number’) in which the parcel is located and the last three digits correspond to the parcel number in a three figure format. For example in the example graphic below, the Block number is 61234 and parcel number 27 is shown as “027”. When combined they form the BPID 61234027.



Matching records and data between departments and computerisation is now a much simpler task since the BPID does not use any special characters (such as the slash “/” character) and is always has a predictable number of digits. This also aids simple error checking.

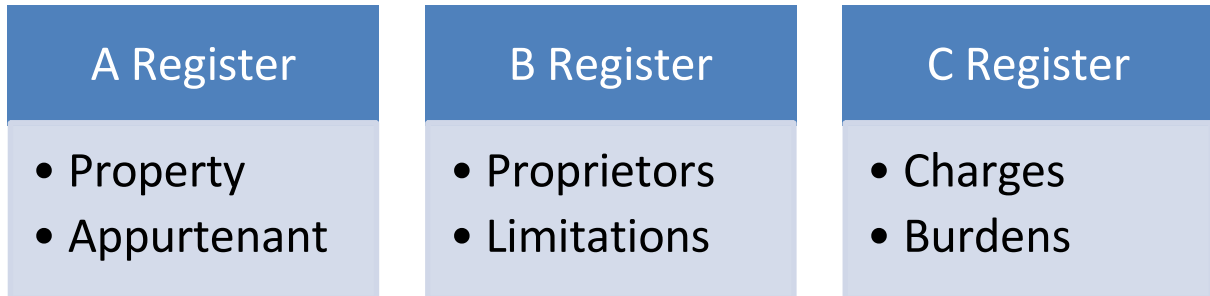
Further details on how parcel numbers are allocated to other types of registrations (e.g. under leases) are contained in the Land Registry Procedures Manual.

3.5 The parts of the register

By virtue of RLO s 9(1) - “The Land Register shall comprise a register in respect of every parcel

By virtue of RLO s 9(2) - “Each register shall show whether the land is private or Crown land ... and shall be divided into three sections ...”

The register is split up into three distinct parts, each part containing specific items unique to it. The three parts are:



3.6 A. Property Section

In this part of the register will appear sufficient detail to identify the property including the parcel number and Island together with a description, for example, “Low lying and swampy area at head of North Creek.” The area of land is included in the description, for example “14 acres”.

On leasehold properties details of the lease under which the land is held will appear. Appurtenant rights, that is an easement which benefits the property, will appear here, for example “A right of way over the passageway on the North side of the property leading to the highway.”

3.7 B. Proprietorship Section

As the name suggests details of the owner(s) of the property will appear here; details will include the name(s) and address (es) of the owner(s) and any details relating to the ownership of shares in the property.

Limitations on the powers of the owner(s) will appear, for example, not to transfer without the chargee’s consent. A chargee is an individual or company who has a mortgage over the property. If such a limitation appears then Land Registry must ensure that its terms are complied with when processing a transaction. If there is a limitation on the title not to transfer the property without the chargee’s consent then that would prevent a transfer of the property but would not prevent another charge (mortgage) being registered.

It is important, therefore, to read the terms of the limitation to establish whether or not the application you are processing is “caught” by the limitation.

Cautions, restrictions and inhibitions will also be recorded in the Proprietorship Section – these all relate to interests which third parties may have in the property. The wording of such entries is quite specific and each type of entry is instantly recognizable:-

Caution

CAUTION: Evans US Bank of California, USA claims an interest as lenders being a bank, having advanced monies on a current account in this parcel and forbid the registration of dealings and the making of entries in the register relating thereto to the following extent – until repayment of the sum of US\$715,000.00 no disposition by the registered proprietor is to be registered without our consent until this caution has been withdrawn by us or removed by an order of the court or Registrar.

For a transaction to be processed by the Land Registry the terms of the caution need to be complied with. In this example we will need either a withdrawal of the caution from the Bank, the consent of the Bank to the transaction or an order of the court or of the Registrar of Lands.

Restriction

RESTRICTION: No disposition by the registered proprietor made within 5 years of 26 June 2012 is to be registered without the consent of The Turks and Caicos Islands Government or by an order of the court or of the Registrar.

For a transaction to be processed by the Land Registry the terms of the restriction will need to be complied with. In this example the consent of The Turks and Caicos Islands Government will need to accompany the transaction if dated within 5 years of 26 June 2012. Alternatively, a court order or an order by the Registrar of Lands will need to accompany the transaction. In this example the restriction ceases to have any effect after 26 June 2017.

Inhibition

INHIBITION: Pursuant to Supreme Court Order POCO No RO1/11 dated 23 June 2011 a restraint order in favour of the Crown. No dispositions or dealings shall be registered without an order of the court.

With such an entry on the register no transaction can be processed by the Land Registry. An order of the court would need to accompany any application lodged for processing and would need to specifically mention the transaction being registered. The court order could, alternatively, be one to lift the inhibition.

3.8 C. Incumbrances Section

Here will appear various interests which “burden” the property such as:

Charges

These are covered in detail in a later Section.

Leases

These are covered in detail in a later Section.

Subjective rights and easements

If another property has, say, a right of way or right of access over another property then it is noted as an incumbrance. "The land is subject to a right of access over the passageway included in the title".

Restrictive Agreements and Covenants

These are restrictions on the use of the property. For example, the property may not be used for commercial business but only as a residential unit.

Government Charges

These are covered in detail in a later Section.

SECTION 4 Execution and verification

Outline	4.1 Introduction	4.5 Attestation by Justice of the Peace/Notary Public
	4.2 Execution	4.6 Signing by a Company
	4.3 Signature by persons	4.7 Verification
	4.4 Execution by Agents	4.8 Rule 5 RLO s158

4.1 Introduction

With a few exceptions a legal interest in land cannot be conveyed or created without a formal instrument in the prescribed form, section 83(1) Registered Land Ordinance refers. To be an instrument for Land Registry purposes it:

- must be in writing
- must be validly executed as an instrument by the person making it or one or more of the parties to it

4.2 Execution

Section 107(1) Registered Land Ordinance states that

“Every Instrument evidencing a disposition shall be executed by all persons shown by the register to be proprietors of the interest affected by and by all other parties to the instrument”.

This section also gives the Registrar discretion with regards to execution by all parties

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

Generally the circumstances in which such a broad discretion may be exercised are quite rare. It appears that historically the Registrar took a relax attitude to this requirement. Following advice from the Attorney General’s Chambers compliance with section 107(1) is required in all but exceptional circumstances.

Subject to section 120(2) Registered Land Ordinance, an instrument shall be deemed to have been executed only:

- (a) by a natural person, if signed by him, or
- (b) by a corporation (a company for example)

4.3 Signature by persons

To be validly executed as an instrument by an individual, they must sign the document. Making one’s mark on a document is treated as signing it. The signature should be on the

document itself in the space provided and the words of execution should name the signatory or otherwise make clear who has signed the document. For obvious reasons, the signature should be in ink or some other indelible medium. The individual must sign manually, not in facsimile.

4.4 Execution by Agents or by persons under a disability

Section 112 Registered Land Ordinance provides that:

“(1) Except as provided in subsection (3) of this section 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 107 and 108 of the Registered Land Ordinance

(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 the Registered Land Ordinance 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 purpose of the Registered Land Ordinance

(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.”

In practice if the person signing is acting on behalf of the proprietor e.g. under a Power of Attorney then we must have evidence of their authority to sign on behalf of the registered proprietor. Such evidence varies, in the case of execution under a Power of Attorney then the original or certified copy of the Power must be lodged in support of the application. Also check to see if the Power of Attorney itself is recorded in the Land Registry list of Powers of Attorney – a PA number may be quoted in a document if this has been done.

Persons of unsound mind, the elderly and infirm, visually impaired persons etc. may not be able to execute instruments and so will need someone to sign on their behalf. If any person signs on a registered proprietor's behalf then the Land Registry will need to see additional evidence to support such execution – this evidence may take the form of a Court Order authorizing the method of execution, a statement from a lawyer as to the form of execution or even an endorsement on an instrument “Signed by the registered proprietor, being registered blind, after having the contents of the document fully explained ...”

Any unusual form of execution of an instrument must be brought to the attention of the Registrar of Lands to consider and, if necessary, take further action to validate.

4.5 Attestation by a Justice of the Peace or Notary Public

The individual should sign “*in the presence of a Justice of the Peace or Notary Public who attests the signature*”. The Land Registry will look to see that a Justice of the Peace or Notary Public has signed the instrument and that their signature clearly records the witnessing of the signing of the instrument by the individual concerned. Exceptionally a non JP or NP may act as the witness (but not perform the RL27 formalities)

4.6 Signature by company

To be validly executed as an instrument by a company, there are two common ways available depending on the Memorandum and Articles of Association (its way of operating) of the company. The Memorandum and Articles of Association can specify that an instrument must either:-

(a) **be executed by using the seal of the company** - the common seal of the corporation should be affixed thereto in the presence of and attested by its clerk, secretary or other permanent officer and by a member of the board of directors, council or other governing body of the corporation

(b) **that the company seal need not be used** - 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 Registrar.

Company in liquidation

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 120 (1) Registered Land Ordinance 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 108 Registered Land Ordinance.

4.7 Verification

Verification of execution of instruments by both parties is required by law, RLO s. 108. The form of verifications and the persons who are authorized to verify are prescribed by RL 27 and RLO 108. Verification of instruments provides the best possible means of guarding against impersonation or fraud, for Registry Staff cannot possibly check that signatures of parties are authentic. In checking certificates of verification, staff should ensure that certificates in respect of both parties (where applicable) have been completed and signed and that the person signing is authorized under RLO s.108 to do so.

There is no power to delegate this authority. No instrument should be accepted without a certificate(s) of verification, although the Registrar may in limited circumstances dispense with the certificate. This will be on the Registrar's discretion. Verification can, however, be carried out in the Registry, if the party (or parties) is present and is known to the Registrar, but the actual certificate should be signed by the Registrar before the instrument is accepted.

Section 108 of the Registered Land Ordinance sets out the processes for verifying the execution of instruments:

“(1) Subject to subsection (3) of this section, a person executing an instrument shall appear before the Registrar or such public officer or other person as prescribed and, unless he is known to the Registrar or such public officer or other person, shall be accompanied by a credible witness for the purpose of establishing his identity.

(2) The Registrar or public officer or other person shall satisfy himself as to the identity of the person appearing before him and ascertain whether he freely and voluntarily executed the instrument, and shall complete thereon a certificate to that effect.

(3) An instrument which is required to be executed by or on behalf of the Crown, shall be deemed to be executed when it has been signed by the Governor.

(4) 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 recorded on the document his reasons for dispensing with the appearance of the parties.

(5) No instrument executed by out of the islands shall be registered unless it has endorsed thereon or attached thereto a certificate in the prescribed form completed -

(a) if the instrument was executed in the Commonwealth, by a Judge, Magistrate, Justice of the Peace, Notary Public, Commissioner for Oaths or administrative officer.

(b) If the instrument was executed in a foreign country, by a British Consular Officer or Pro-Consul, a Notary Public or such other person or class of persons as the Governor may determine.”

4.8 Rule 5 RLO s158

Rule 5 of Registered Land Rules (made under section 158 Registered Land Ordinance) which prescribes the form of the certificate to be given is set out below:-

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

.....
(Signature and designation of the person certifying)

SECTION 5 Stamp Duty

Outline	5.1 Introduction	5.3 Instalments
	5.2 Current rates	

5.1 Introduction

The Stamp Duty Ordinance 1998 provides the legislation for the payment of stamp duty in respect of land transactions.

As with many legal documents throughout the world a duty has to be paid on property transactions. This is referred to as Stamp Duty and can also be called Property Tax, Stamp Duty Land Tax, and Property Levy etc. The duty is usually paid on completion of a transaction and in TCI is payable to the Collector of Stamp Duty in the Finance Department. The Land Registry, as part of the checking process on applications (see Section 2 above), checks to ensure that the correct stamp duty has been paid.

Any discrepancies will need to be rectified before registration of the transaction can be completed and the payment of stamp duty must be evidenced by way of a receipt from the Finance Department. The full title of the Registrar is “The Registrar of Lands and Assistant Collector of Stamp Duty” so this authorises the Land Registry to request payment of underpaid stamp duty or to agree to payment in instalments.

Stamp Duty is an important source of revenue to the TCI Government and raises millions of dollars each year for the Island economy. A transaction with a value of \$50 million on Providenciales, for example, will attract stamp duty of \$5 million.

5.2 Current stamp duty rates

The current Stamp Duty rates for transfers came into effect on 1 July 2013. The \$/Rate is applied after rounding the consideration to the nearest \$100.

ISLAND	Consideration Band \$	\$ Rate
Grand Turk, Salt Cay, South Caicos, Middle Caicos, North Caicos	25,000 – 100,000	5.0 per
	Above 100,000	6.5
Providenciales, West Caicos, East Caicos	25,000 – 250,000	6.5
	250,001 – 500,000	8.0
	Above 500,000	10.0

A rate of 1% is payable on the money borrowed under a charge and on any additional monies paid under a variation of a charge.

A standard payment of \$10 is payable on a Collateral charge when the full rate of duty has been paid on the head Debenture. Evidence of the payment of duty on the monies advanced under the Debenture should be lodged with the Collateral charge.

5.3 Stamp duty payable in instalments – Discontinued on 1 July 2013

Until the introduction of the new stamp duty rates referred to above transferees were able to apply to pay their stamp duty in instalments over a period up to 4 years. This had to be agreed with the Ministry of Finance and a letter to that effect would have accompanied the application.

In order to protect the Government's interest in this unpaid stamp duty the transferee would have also lodged a formal application to pay stamp duty in instalments and that the application contained an acknowledgement and consent by the transferees to the entry of a restriction on the register.

This application was be recorded in the application book and was accorded its own instrument number. The restriction which was entered in the B. Proprietorship section with its own entry number was as follows:-

'RESTRICTION: No disposition of the property shall be registered unless all outstanding stamp duty is paid in full prior to or at the point of disposition of the property'

The Transfer which accompanied this application was be stamped with a Stamp Duty stamp that recorded instalment payments and each instalment would be initialed by the Registrar as Assistant Collector of Stamp Duty. Further payments of instalments were lodged in subsequent years and these additional payments would again be recorded on the original Transfer retained within the parcel file of the title concerned.

Where this arrangement exists further instalments will be received and will be dealt with as above.

Since the revised Stamp Duty rates came into effect it is no longer possible to use the instalment method of paying Stamp Duty.

SECTION 6 FEES

Outline 6.1 to 6.29 Fees on all applications

Land Registry fees are payable under the Registered Land Fees Rules

1. Application for alteration of Registry Map (s. 16(1))	\$100.00 per parcel
2. Application for determination and indication of uncertain or disputed boundary (s. 17(2))	\$250.00 per application
3. Application for ascertainment and fixing of boundaries (s. 18(1))	\$250.00 per application
4. Application for combination of parcels (s. 21(1))	\$100.00 per parcel
5. Application for division of parcel (s. 21(1))	\$100.00 per parcel as divided
6. Application for change of layout of parcels (s. 22(1))	\$100.00 per parcel
7. Application for conversion of provisional title to absolute title (s. 29(1))	\$50.00 per application
8. Application for land certificate or certificate of lease (s. 31(1))	\$50.00 per application
9. Application for new certificate (s. 34(1))	The like fee as would be payable in respect of an application for the certificate lost or destroyed
10. Application to inspect any register, Registry Map or filed instrument or plan (s. 35(1))	\$25.00 per application
11. (a) Certified copy of any register or filed instrument or plan (s. 35(2))	\$25.00 for 1 st page, 25c letter size page and 50c Legal size page thereafter.
(b) Certified copy of the register, issued by the Land Registrar, following registration of a change of ownership of land	\$25.00
(c) Certified copy of the part of the Registry Map	\$50 per copy
12. Application for official search (s. 35(3))	\$20.00 per application
13. Application for cancellation of registration on surrender or other determination of lease (ss. 61(1) and 62(1))	\$25.00
14. Registration of charge or subsequent charge, variation of a charge, transfer of a charge and discharge of a charge (ss. 64, 65, 69, 71 and 79)	\$50.00 per application
15. Registration of lease or transfer (ss. 46 and 83)	\$25.00 per application

16. Registration of easement other than an easement reserved by a transfer or lease which is itself registered (s. 93(4))	\$25.00 per parcel affected
17. Registration of note of restrictive agreement, other agreement contained in a lease or charge (s. 94(1))	\$25.00 per application
18. Registration of grant of a profit (s. 95(3))	\$25.00 per application
19. Application for cancellation of registration of an easement, profit or restrictive covenant (s. 96(2))	\$25.00 per application
20. Application for partition of land owned in common (s. 103(1))	\$25.00 per application
21. Registration of power of attorney (s. 114(1))	\$25.00 per application
22. Notice of revocation of power of attorney (s. 114(4))	\$10.00 per application
23. Deletion of name of deceased joint proprietor (s. 116)	\$25.00 per application
24. Lodging of caution (s. 127(1))	\$100.00 per application
25. Application for restriction (s. 132(1))	\$25.00 per application
26. Application for registration as proprietor by prescription (s. 135(2))	\$25.00 per application
27. Application for registration of easement or profit acquired by prescription (s. 138(2))	\$25.00 per application
28. Survey carried out on behalf of Registrar for the purpose of subsection (2) of section 17, subsection (1) of section 18, subsection (1) or (2) of section 21 or subsection (1) of section 103	\$50.00 per surveyor per hour
29. Any application not specifically referred to above, e.g. withdrawal of a caution or restriction, registration of change of address, etc.	\$25.00 withdrawal of caution or restriction. No fee on change of address

SECTION 7 Procedures applicable to entries in the register

Outline	7.1 Method of making entries	7.7 Validity of entries
	7.2 Correction of entries	7.8 Date of register entries
	7.3 Cancellation of entries	7.9 Noting on the register
	7.4 Erasures	7.10 Wording and positioning of Notes
	7.5 Names in capitals	7.11 New editions of the register
	7.6 Entry numbers	7.12 Table of Notes

7.1 Method of making entries in registers

All entries in the registers with the exception of corrections, cancellations and in certain cases 'notes' are typed in black on initial compilation and all subsequent entries are written by hand in black ink in order to avoid the necessity of removing the register from its binder with the consequent possibility of loss or misplacement when it is returned to its binder.

7.2 Corrections of entries

Corrections (as opposed to cancellation) of entries are made in black by striking out the incorrect word(s) or figure(s) by a single bold line so that what was entered previously remains legible and by inserting the correct word or figure(s) above or alongside. If the correction is to reflect that a whole entry was made incorrectly then the entry should again be struck through in black with the words 'Entered in error' being written above or alongside. All corrections should be initialled and dated by the Registrar.

7.3 Cancellation of entries

Cancellations (as opposed to corrections) of entries are made in red by drawing a single bold line through the whole of the entry and by writing above or alongside the number of the instrument or order affecting the cancellation (i.e. the number of the instrument or order given in the application book). Cancellations should be initialled by the Registrar.

7.4 Erasures

Under no circumstances may any erasure or use of 'liquid paper' be made in a register or certificate. If this rule is inadvertently broken the Registrar should open a new edition of the register if the erasure is of material matter, e.g. a figure or a name.

7.5 Names of persons to be in capital letters

Names of all persons holding an interest in the land, strata lot or lease are written in capital letters. Where such persons are registered as executors, administrators, trustees etc. their names are written in capital letters, but the names of the person(s) on whose behalf they are acting are written in small letters.

Example:-

HENRY ALEXANDER SMITH as executor of the will of Oliver Henry Smith (deceased) of Front Street, Grand Turk, Turks and Caicos Islands.

Always enter the full name of a person in an entry. Never use mere initials and leave gaps to be completed sometime in the future. If you are aware that a person has two Christian names but only have their middle initial then make an enquiry of the person lodging the application for the details.

ANTON J.... SELVER	X
ANTON JAMES SELVER	✓

7.6 Entry Numbers

Every separate entry in the Proprietorship or Incumbrances sections of the Register must be accorded a separate entry number in sequence in the appropriate column.

7.7 Validity of entries

No entry in the Proprietorship or Incumbrances sections of a register has validity until it is signed in the last column by the Registrar. It follows that no instrument presented, which relates to an unsigned entry, should be accepted by Registry Staff until that entry is signed.

7.8 Date of register entries

The date of registration entered in column 2 of the Proprietorship and Incumbrances section of a register must always be the date on which the instrument was accepted, as shown by the application book, not the date on which the entry is actually made in the register.

7.9 Noting on the register

The law requires certain matters to be noted on the register. Notes are entered in black and may be typed or hand written; they should be initialled and dated by the Registrar. Notes are not accorded an entry number as set out above.

7.10 Wording and positioning of notes

There should be consistency in both the wording, which should be as brief as possible, and position of notes on a register. See table below for a list of notes recorded on the registers.

7.11 New editions of registers

In the top left hand corner of every register is a box in which is shown the number of the edition and the date on which it is opened. The Registrar may open a new edition whenever he considers it necessary to do so for any reason. When a new edition is opened only entries in the old register which still have effect must be entered in the new register, all cancelled entries being omitted. The entry number in the first column of the proprietorship and incumbrances sections should begin again at 1. The old register with the word

'CLOSED' written in red diagonally across in large letters should be placed in the parcel filed. Cancelled registers should not be destroyed under the six year rule. (RLO s110).

7.12 Table of Notes recorded on the register

RLO	Wording	Positioning
31	Land certificate issued (similar note on surrender, e.g. cert returned and destroyed or cert. Returned and filed, with date)	Proprietorship section
47	No assignment without lessor's consent (RLO 47)	Proprietorship section of Leasehold register (para 4.28)
68	Not to transfer without consent of or charge (RLO 68) (If charge is charged): Not to transfer without consent of charge	Proprietorship section of land or lease (para 4.29) Incumbrances section containing the charge charged and name of its proprietors (para 5.13)
81	Chargee has right to tack	Incumbrances section (para 5.7)
82	Chargee has right to consolidate (if both rights are reserved): Chargee has right to tack and consolidate	Incumbrances section (para 5.7)
93	Easement	Incumbrances section of parcel burdened (servient tenement)

SECTION 8 Charges

Outline	8.1 Definition	8.6 Stamp Duty
	8.2 Effect of charge	8.7 Fee
	8.3 Form RL9	8.8 TCI Government charge
	8.4 Components of a charge	8.9 B and C Register entries
	8.5 Registration	8.10 Checklist

8.1 Definition

A proprietor may by an instrument in a prescribed form (RL9) charge his property to secure the payment of debt. It is clear from section 64(4) that such a charge is not a 'Mortgage' in the sense of English jurisprudence and the form and effect of a Charge are creations of the Registered land Ordinance.

The Registered Land Ordinance (RLO) contains a prescribed form of wording for such a deed – Form R.L.9 – and charges lodged for registration must comply with such format. It is acceptable to the Land Registry provided it contains the essential headings and wording prescribed in Form R.L.9. Applicants are required to provide the Principal sum, a repayment date (if there is one -in the absence of which it is payable on demand) and the interest rate. If a charge incorporates other terms by reference then the instrument containing these terms must also be submitted.

8.2 Effect of a charge

Once a charge is registered it acts as a burden on the land and will usually restrict the owner of the property in how they can deal with the land. This is a major reason behind checking that the details relating to parcel number and description are correct and that the borrowers under the charge are all of the registered proprietors.

Usually the owner would need to seek the permission of the lender to, for example, grant a lease, carry out extensive works to the property or borrow further money using the property as a security. The lender will not want the borrower to anything to the property which may decrease its value as it has, after all, been used as security for the loan and if it decreases in value the lender may not be able to recoup the money advanced.

If the borrower does carry out some act without the lender's permission then, under the terms of the charge, it is within the power of the lender to demand full repayment of the monies advanced under the charge or even to sell the property to recoup the monies advanced plus interest. If the lender does take such action then it will lead to an application to the Land Registry to register the subsequent transaction.

The charge deed also gives the lender legal powers to act if, for example, the owner defaults on making repayments under the terms of the loan – a major consequence of not making the repayments is that the lender can "exercise a power of sale" which effectively means that the lender is entitled to sell the property to recoup the monies owed. Transfers in exercise of Power of Sale are covered elsewhere in this Manual.

For a charge to be enforceable it must first be registered and RLO s 64(3) states “The charge shall be completed by its registration as an incumbrance ...” It is always in the best interests of the lender to ensure that the charge is registered against the property as this gives the lender certain rights and powers including the power of sale already mentioned.

Other powers a lender has includes the right to sue for recovery of the amount borrowed, the power to appoint a receiver of the property to handle monies relating to the property instead of the actual owner.

The lender cannot effect foreclosure but has the ability to buy-in at a public auction or by private treaty if this is sanctioned by the Court.

If a charge is not registered then the lender, who, after all has a lot to lose, has limited powers and, most importantly, would not have the power of sale referred to earlier. The registration of a charge gives legal notice of it to all persons interested in the property and not registering it could mean that they cannot exercise the powers he has under the charge.

If there is more than one charge appearing on the register then the order in which they appear on the register is also of importance, especially to the lenders. The main reason for this is that when a bank lends a large sum of money it needs to know which charge will be paid out first if the borrower defaults on payment on one or more of the registered charges.

This is of particular importance when the value of the property is less than what is secured on it. The order in which registered charges are registered is the order in which they receive payment when a chargee exercises his power of sale and this is why it is important to register charges in the order in which they are received for registration irrespective of the dates of the charges. Section 76 RLO states that:-

“The purchase money received by a chargee who has exercised his power of sale Shall be applied ... in payment of any subsequent charges in the order of their priority.”

If, because a lender was late in registering their charge, a charge of a later date is registered prior to one of an earlier date, then the priority “rule” is decided on the order of registration not the actual date of the charges.

8.3 Form R.L.9

A copy of Form RL9 is contained in the Appendix.

Charges are an incumbrance on the property and are, therefore, recorded in the C. Incumbrances Section of the register. A typical entry of a charge is:-

“ CHARGE: FIRSTCARIBBEAN INTERNATIONAL BANK (BAHAMAS) LIMITED of Front Street, Grand Turk. Principal sum \$120,000.00 payable of demand with interest at the rate of 13 per centum over the Bank’s Turks and Caicos United States Dollar base lending rate.”

The information relating to the amount advanced and the interest rate can be extracted from the deed itself upon registration and it is essential that these details are always entered accurately on the register to avoid costly follow up correspondence to correct the register.

Most of the mainstream lenders have their own versions of R.L.9 and the relevant information is readily visible on the deed itself to enable accurate extraction and entry on the register.

The name of the proprietor of the charge and the address and other details relating to the charge recorded in lower case. It is important that the details are recorded accurately as if the Land Registry needs to get in touch with the Bank or other lender we have the correct address to send communications to.

8.4 Component parts of a legal charge

Charging clause

All legal charges **must** contain a charging clause to make the intention of the deed clear – “I Anthony Proprietor Hereby Charge my interest in the above mentioned parcel to secure the payment to

- The owner of the land who is the one actually taking out the mortgage and borrowing the money is often referred to as “the mortgagor” or “the chargor” or “the borrower” and these terms are often used in charge deeds.
- The institution(Bank, Building Society etc.) advancing the money under the mortgage is often referred to as “the mortgagee” or “the chargee” or “the lender”
- Check that the spelling of proprietor(s) names are correct
- Check that all registered proprietors listed on the register are parties to the deed. The charge cannot be a legal one if not all of the proprietors charge the land.

If the instrument does not contain such a charging clause then it cannot be registered as such. This, potentially, can affect the interest of the lender/mortgagee/chargee in the property.

No transfer without consent

Most charges will contain an agreement between borrower and lender that the borrower will not transfer the land without the written consent of the lender. A typical phrase to show this is:

“The Chargor will not transfer or part with the possession or the right to possession of the charged property or any part thereof without the previous consent of the Bank ...”

A note to this effect must be added to the B. Proprietorship Register:-

“NOTE: No transfers without the consent of chargee ”

The Note is added to the B Proprietorship Register as the agreement is a limitation on the powers of the registered proprietor.

All other Notes in respect of charges are added to the C. Incumbrances Section of the register.

Section 72 acknowledgement

The charge will contain an acknowledgement that the chargor understands the effect of Section 72 of RLO which relates to what occurs if default is made in payment of the amount advanced under the charge.

An example of the wording to signify this is:-

“And I the above-named Chargor hereby acknowledge that I understand the effect of Section 72 of the Registered Land Ordinance, 1967”

No action by the Land Registry is necessary in respect of the wording other than to ensure that it is present. The wording is actually included in the prescribed Form RL9 so it must be incorporated into all charges lodged for registration.

The wording of Section 72 sets out the procedures to be followed where a borrower defaults on the payment of the monies due under the charge and what the lender must do to try and recoup the monies prior to taking more serious legal actions which can result in lender selling the property in exercise of his legal power of sale.

It is important that the lender understands the effects of Section 72 as a borrower is given opportunities to remedy the situation by paying the missing payments before the lender resorts to more serious actions. Transfers in exercise of power of sale are covered elsewhere in this Manual.

Date of repayment

The charge may contain a date for repayment of the money advanced e.g. one month after the date of the deed. If no such date is given then it is deemed payable three months after the service of a demand in writing by the lender in accordance with RLO s64 (2).

Date and execution

The charge must be dated and properly signed and witnessed by the parties. Verification of execution of a charge is covered in Section 4 of this manual. If the date is not present on a charge lodged for registration then it should either be amended at the front counter or rejected.

The importance of correct verification of the execution of deeds is illustrated in ***CIBC Mortgages plc v Pitt [1993]*** – a husband and wife jointly owned a property and were taking out a mortgage to, so the husband said, pay off an existing loan and to buy a holiday home.

In reality, the husband was intending to gamble the money on stocks and shares but had not been truthful with his wife who signed the mortgage deed not realising the deceit. A lawyer verifying the signatures on the mortgage deed might have picked the deception up in discussing the document with the husband and wife.

Further advances/tacking

Many charges by mainstream lenders contain provision for further money to be advanced or to give credit to the chargor on a current or continuing account under the deed. This is referred to as “making further advances” or “tacking” and is very commonly encountered – if so a suitable note must be added to the entry of the charge:-

“NOTE: Chargee has the right to tack”

It is essential that such clauses are not missed and that the Note is entered on the register to the entry of the charge. It is of particular importance in determining the priority of charges and the amounts of monies owing under each one.

Where the Note relating to RLO s 81 has been entered this effectively means that the value of the charge is not only of the money advanced upon its registration but also of any further monies advanced at a later date.

For example, the original amount of \$165,000.00 was advanced to purchase the property and then the borrower wishes to extend the property to add extra rooms and a garage to the house. If the charge contains the right to tack then the lender will advance the extra \$35,000.00 so that the extension can be built.

The total amount borrowed will then be \$200,000.00 which will be secured under the existing charge so would be payable ahead of any subsequently registered charges. To omit the entry of the Note would mean that according to the register the lender would only have first call of \$165,000.00 in the event of a power of sale occurring.

Consolidation

Some charges contain a provision to consolidate with other registered charges of the lender. This occurs when the borrower obtains two or more charges from the same lender. The lender might insist that either both of the charges are paid off (redeemed) at the same time

or none of them is redeemed. This is sometimes seen in a commercial situation where a borrower owns several properties (e.g. shops and warehouses) and mortgages them all to the same lender. To alert potential purchasers of this provision in a charge so that the purchaser is aware that the seller would have to redeem a charge (or charges) on other titles as well as on the title being sold a Note is added to the entry of the charge in the C. Register:-

“NOTE: Chargee has the right to consolidate”

It is important that such notes relating to consolidation are entered on the registers of all parcels affected as they alert not only the Land Registry but also any prospective purchasers of the fact that one or more other charges have to be paid off at the same time as the charge on the title. It is vital to the lender, who would most likely would have advanced a large sum of money, to ensure that his investment is protected and that the entire amount loaned on, say, 4 properties is repaid on the sale of any one or more of them.

Tack and consolidate

Quite often a charge will contain provisions to both tack and consolidate – if so one combined note can be added to the entry of the charge:-

“NOTE: Chargee has the right to tack and to consolidate”

Note: this should be typed on one line of the register.

8.5 Registration of charges

Instruments of charge should be lodged in triplicate, the original is retained in the Parcel File and the duplicates returned to the applicants.

The deed may describe the charge as:-

Charge

- ✓ This would imply that it is the first charge on the property

Further charge

- ✓ This means that it is one to secure a further sum under a subsisting charge by the same lender.

Collateral charge

- ✓ This means that the charge is being used to secure the registered property as additional security along with other properties charged to the same lender. The details of the other parcels affected must be supplied – these may be listed on the charge itself or may be contained in a separate document, for example in a Debenture which relates to the other properties of the borrower. See also under “Stamp Duty” below for duty paid on a Debenture.

Second (or third etc.) charge

- ✓ This happens when there are existing registered charges on the register and another one is lodged for registration.

8.6 Stamp Duty

A rate of 1% is payable on the money borrowed under a charge. A charge lodged for registration must be checked for the appropriate endorsement of payment of stamp duty. A standard payment of \$10.00 is payable on a collateral charge when the full rate of duty has been paid on the head Debenture.

Evidence of the payment of duty on the monies advanced under the Debenture should be lodged with the collateral charge. A Debenture is a document which relates to one or more properties of the borrower, especially where a company is the owner, and is a document which may record the total amount of money advanced by a bank or other lending institution.

8.7 Fee

A fee of \$50.00 is payable for the registration of a charge. The charge should be examined to ensure that it bears the appropriate stamp as evidence of the fee payment.

8.8 Charge in favour of TCI Government

On registration of a Transfer from the Crown to a TC Islander, there will often be a discount given to the transferee which should then form the basis of a Charge. The transferee will execute a Charge deed in form RL9 with the Crown to reflect this charge and this will be entered on the register in a similar manner to any other charge.

8.9 Examples of charge entries

C. INCUMBRANCES SECTION

No	Date of Registration	Instrument Number	Particulars
1	27.9.10	2173/10	CHARGE: BRITISH CARIBBEAN BANK LIMITED of Leeward Marina, Leeward, Providenciales,
			Principal sum \$276,000.00 payable on demand
			with interest at the rate of 4%p.a
			NOTE: Chargee has the right to tack and consolidate
7	13.6.11	2008/11	CHARGE: FIRST CARIBBEAN INTERNATIONAL BANK (BAHAMAS) LIMITED of P.O.Box 236 The Beatrice
			Butterfield Building, Butterfield Square, Leeward Highway, Providenciales. Principal sum \$126,000 payable on 1 January
			2013. Interest at 5% variable in accordance with the terms and
			Conditions of the charge instrument.
			NOTE: Chargee has the right to tack
16	20.3.12	1876/12	SECOND CHARGE: BANK OF NOVA SCOTIA of Front Street
			Grand Turk, Turks and Caicos Islands. Principal sum
			\$250,000.00 @ 3%p.a. over the Bank's Grand Turk United
			Dollar base lending rate.

Example of B Register Note

No.	Date of Registration	Instrument Number	Nature of Instrument	Name and Address of Proprietor(s)
1	30.3.07	9972/07	Transfer	ANTON JAMES SELVER of Front Street, Grand
				Turk, Turks and Caicos Islands.
				NOTE: Not to transfer without the consent of chargee

8.10 CHECKLIST TO REGISTER A CHARGE

- ✓ Title number – must agree
- ✓ Property description – must agree
- ✓ Proprietor name(s) – all proprietors on register must be named
- ✓ Proprietor address – check with register entry. Update?
- ✓ Lender name and address – for entry on the register
- ✓ Date – must be dated
- ✓ Execution – must be executed by parties to instrument
- ✓ Verification – all signatures must be verified
- ✓ Charging clause – must contain one otherwise cannot be registered
- ✓ Amount of borrowing – for entry on the register
- ✓ Interest rate – for entry on the register
- ✓ Further borrowing etc. without chargee's consent – may result in a B Register Note
- ✓ Tacking – may contain provisions and, if so, a C Register Note is required
- ✓ Consolidation – may contain provisions and, if so, a C Register Note is required
- ✓ Application for notes – make appropriate Notes as applied for
- ✓ Stamp Duty – check correct rate paid and endorsed
- ✓ Land Registry fee – check correct fee paid and endorsed
- ✓ Instrument number – for entry on the register

SECTION 9

Discharge of charge

Outline	9.1 Introduction	9.7 Section 80 RLO
	9.2 B Register entries	9.8 Form RL10
	9.3 C Register entries	9.9 Checklist
	9.4 Section 79 RLO	9.10 Cancellation
	9.5 Section 70(4) RLO	9.11 Fee/Stamp Duty
	9.6 Power of sale	

9.1 Introduction

When all repayments under a charge have been made and the debt cleared by the registered proprietor an application will be made to the Land Registry to remove the charge from the register.

The lender will complete and execute a Discharge of Charge in Form RL10 prescribed in RLO to evidence the settlement of the debt. The Form RL10 will then be lodged with the Land Registry for processing.

It is important to check that the details of the charge as given in the Form RL10 correspond to the details appearing on the register especially when more than one charge is recorded.

It is possible to discharge a part only of the debt under a registered charge but a Form RL10 will have to specify this so peruse the wording of the Discharge carefully.

When checking the details we must also consider are there any other entries on the register relating to the charge which should also be cancelled at the same time. Peruse the register carefully as there may be related entries:-

9.2 B. Proprietorship Register

“NOTE: No transfers without consent of chargee ”

N.B. Take care when cancelling an entry with this wording particularly where there is more than one charge appearing on the register – cross check the application number with that of the charge being cancelled to ensure the correct entry is being cancelled.

9.3 C. Incumbrances Section

“NOTE: Chargee has the right to tack and/or consolidate ”

Any Variation of charge entries

Any change of name or transfer of charge entries

Any entries relating to the priority of the charge – “NOTE: The charge shall rank pari passu with that of”

9.4 Section 79 RLO

The use of Form RL10 is extremely common and we see many such applications in the Land Registry. There are, however, other ways in which the entry of a charge will be cancelled:-

Section 79 of RLO states “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.”

This means that we can accept such an endorsement on a charge deed in lieu of a Form RL10.

9.5 RLO Section 70(4)

On rare occasions, particularly where the lender cannot be traced, the borrower may deposit the amount outstanding under a charge with the Registrar of Lands in trust for the person entitled to the money. The charge effectively ceases and the Registrar can order the charge to be cancelled from the register. This procedure is governed by Section 70(4) RLO and as far as Registry staff recall it has never been used.

9.6 Power of sale

This is a legal process under which a lender can actually transfer the land by taking the place of the registered owner. The transfer is in a prescribed form, RL4, and is called “Transfer in exercise of power of sale” and is easy to differentiate from a normal transfer on sale. This process happens after the owner/borrower defaults on the mortgage payments for a period and legal proceedings against the owner are begun. This type of application is covered elsewhere in this manual.

9.7 RLO Section 80

Upon proof supplied to the Registrar that all money due under a mortgage has been paid to the lender or that events have occurred that the money secured ceases to be payable then the Registrar has the power, pursuant to Section 80 RLO, to order that the charge be cancelled from the register.

9.8 Form RL10

A copy of Form RL10 is contained in the Appendix

9.9 Checklist to discharge a charge

- ✓ Title number – must agree
- ✓ Property description – must agree
- ✓ Charge date – ensure correct charge being cancelled if more than one registered
- ✓ B and C Register entries – cancel all related entries as well as the charge
- ✓ RL10 is executed by the lender and verified in the usual manner

9.10 Cancellation of charge from register

The charge entry should be struck through **in red** on the register and the application number entered, **also in red**, to show that the entry is cancelled.

No	Date of Registration	Instrument Number	Particulars	App # 4012/12 DAE
1	27.9.10	2173/10	CHARGE: BRITISH CARIBBEAN BANK LIMITED of Leeward Marina, Leeward, Providenciales, Turks and Caicos Islands. Principal sum \$276,000.00 with interest at the rate of 1% p.a.	
			NOTE: Chargee has the right to tack and consolidate (RLO Secs 81 & 82)	
				App # 312/13 DAE
2	13.6.11	2008/11	CHARGE: FIRST CARIBBEAN INTERNATIONAL BANK (BAHAMAS) LIMITED of P.O. Box 236 The Beatriee Butterfield Building, Butterfield Square, Leeward Highway, Providenciales, Turks and Caicos Islands. Principal sum \$126,000.00 with interest at the rate as the terms and conditions set out in Schedule A hereto.	
			NOTE: Chargee has the right to tack (RLO Sec 810)	
3	20.3.12	1876/12	SECOND CHARGE: BANK OF NOVA SCOTIA of Front Street Grand Turk, Turks and Caicos Islands. Principal sum \$250,000.00 @ 3% over the Bank's Grand Turk United States Dollar base lending rate.	

Example of B Register Note

No.	Date of Registration	Instrument Number	Nature of Instrument	Name and Address of Proprietor(s)
1	30.3.07	9972/07	Transfer	ANTON JAMES SELVER of Front Street, Grand Turk, Turks and Caicos Islands.
				NOTE: Not to transfer without the consent of chargee (RLO Sec 68)

9.11 Fee and Stamp Duty

A discharge of charge attracts a fee of \$50.00 and no stamp duty is payable.

SECTION 10 Variation of charge

Outline	10.1 Introduction	10.5 Fee
	10.2 Section 69 RLO	10.6 Stamp Duty
	10.3 Deed of variation	10.7 Checklist
	10.4 Entries	10.8 Register entries

10.1 Introduction

After a charge has been drawn up and registered the lender or borrower may decide to amend the terms of the charge. For example there may be an increase to the amount borrowed, the interest rate stated in the original charge, or some other amendment relating to an omission or other change in detail contained in the deed.

10.2 Section 69 RLO

“The amount secured, the method of payment, 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.”

10.3 Deed of variation

To legally amend a charge after registration requires a deed of variation executed by both borrower and lender which is then lodged for registration. There is no prescribed form for a deed of variation but the wording of the document will make this clear. Check for correct execution and verification as for all instruments.

10.4 Entries

As the variation relates to an existing charge the entry is made in the C. Incumbrances Section of the register. The entry could summarise a simple variation:-

“Variation of Charge (entry 4): Sum secured increased to \$150,000.00” or “Variation of interest from 12.5% p.a. to 13% p.a.”

If the variation is more complex then the following entry may be more appropriate:-

“For variation(s) see instrument”

10.5 Fee

A fee of \$50.00 is payable to register a variation of a charge.

10.6 Stamp Duty

A rate of 1% is payable on any further money advanced under a variation. So, for example, if the charge was originally for \$200,000.00 and is being varied to an amount of \$250,000.00 then duty of 1% will need to be paid on \$50,000.00. So \$500.00 needs to be collected.

10.7 Checklist

- ✓ Title number – must agree
- ✓ Property description – must agree
- ✓ Proprietor of land and of charge – must agree
- ✓ Charge being varied - details in deed if more than one registered charge

10.8 Register entries

No	Date of Registration	Instrument Number	Particulars
1	27.9.10	2173/10	CHARGE: BRITISH CARIBBEAN BANK Limited of
			Leeward Marina, Leeward, Providenciales, Turks and Caicos
			Islands. Principal sum \$276,000.00 (2008/11) with interest at
			the rate of 4% p.a. 3124/11
			.
			NOTE: Chargee has the right to tack and consolidate
			(RLO Secs 81 & 82)
2	26.6.11	2008/11	VARIATION OF CHARGE (ENTRY NO 1)
			Sum secured increased to \$350,000
3	30.8.11	3124/11	VARIATION OF CHARGE (ENTRY NO 1)
			Variation of interest from 12.5% p.a. to 13% p.a.
4	2.9.11	3222/11	VARIATION OF CHARGE (ENTRY NO 1)
			For variation(s) see instrument
16	20.3.12	1876/12	SECOND CHARGE: BANK OF NOVA SCOTIA of Front Street
			Grand Turk, Turks and Caicos Islands. Principal sum
			\$250,000.00 @ 3% p.a. over the Bank's Grand Turk United
			States Dollar base lending rate.

SECTION 11

Transfer of charge

11.1 Introduction

Outline	11.1 Introduction	11.5 Stamp Duty
	11.2 Form RL3	11.6 Register entries
	11.3 Processing	11.7 Checklist
	11.4 Fee	

An owner of a charge – the lender – can transfer it to a third party. This is often done in financial restructuring of an organisation or when a lender sells off a portfolio of loans. As far as registered land is concerned an application will be made using a prescribed form RL3 to transfer the charge.

11.2 Form R.L.3

A copy of Form RL3 is contained in the Appendix

11.3 Processing

The detail of the charge in the C. Incumbrances Section must be checked against the detail in Form RL3 to ensure that a legally valid transfer takes place.

The transfer deed must be validly executed and signatures verified as normal. The registered proprietor of the land need not execute the transfer as it a transfer of charge between lenders. Sometimes the registered proprietor will execute such a transfer for the purpose of acknowledging the amount due under the charge at the date of execution of the transfer. (RLO s 83 (3) refers)

The existing proprietor to the charge (the transferor in RL3) will be deleted from the register and the transferee in the transfer, who has acquired the charge, entered on the register.

In the entry of the charge being transferred cancel in red the name of the proprietors of the charge referring to the application number of the transfer of charge document. Then make a new entry with new entry number; in the column headed 'Particulars' enter 'Transfer of charge'; and a reference to the charge (i.e. It's entry number in the Incumbrances section followed by the new proprietor's (chargee's) name and address.

11.4 Fee

This type of application will attract a fee of \$50.00.

11.5 Stamp duty

No stamp duty is payable on this type of application.

11.6 Register entries

No	Date of Registration	Instrument Number	Particulars	App# 1567/15 DE
1	27.9.10	2173/10	CHARGE: BRITISH CARIBBEAN BANK Limited of Leeward Marina, Leeward, Providenciales, Turks and Caicos Islands. Principal sum \$276,000.00 with interest at the rate of 4% p.a.	
			NOTE: Chargee has the right to tack and consolidate (RLO Secs 81 & 82)	
2	3.6.15	1567/15	TRANSFER OF CHARGE No 1 HSBC TURKS AND CAICOS ISLANDS of Leeward Highway, Leeward, Providenciales, Turks and Caicos Islands.	

11.7 Checklist

- ✓ Form RL3 used
- ✓ Transferor/Vendor/Seller – check name with charge entry.
- ✓ Check date of charge in RL3 and on register correspond – particularly if more than one charge is registered.
- ✓ Execution and verification on RL3.

SECTION 12 Transfer of whole for value to private individuals

Outline	12.1 Introduction	12.6 Transferee - joint
	12.2 Form RL1	12.7 Register entries
	12.3 RLO s83	12.8 Fees
	12.4 Transfer for value	12.9 Stamp Duty
	12.5 Transferee – single	12.10 Checklist

12.1 Introduction

When land is bought and sold a deed is drawn up to legally transfer the interest in the land. This deed is called a Transfer and is, perhaps, the most common document encountered in the Land Registry.

This Section covers all matters relating to the registration of a Transfer of the whole of a parcel of land to private individuals (as opposed to Companies, Corporations, Governments etc.) for valuable consideration.

12.2 Form RL1

A copy of Form RL1 is contained in the Appendix

12.3 RLO s83

RLO s83 states:-

83. (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.

12.4 Transfer for value

Before processing an application to register a Transfer the deed itself must be inspected to ensure that the interest in land is legally and validly transferred to the new owners.

The title number and property description must be compared with the register to ensure accuracy and that the correct property is being transferred.

The Transfer must be dated.

All registered proprietors must transfer the land so compare the sellers' details on the RL1 with the B Proprietorship entry to confirm this. Any discrepancy must be resolved – for example, two people on the register but only one of them is the seller. There may be several reasons for this; one of the owners may have died or the transfer may only be of a share in the property so use caution when comparing names. There could also be a discrepancy relating to a name, for example, a proprietor could have changed their name on marriage. Ensure that the appropriate evidence accompanies the application or we may need to request the Marriage Certificate to complete the application.

The price paid for the property must be stated – ensure that this is completed on the RL1 and words and figures and the currency (US\$ for example) agree. Stamp Duty is assessed on the consideration so this is an important element to check. Ensure that the correct Stamp Duty has been paid – there must be a receipt from the Finance Section to confirm payment.

The RL1 must be executed by all the registered proprietors/transferees and all signatures verified in accordance with Section 4 of this manual.

12.5 The Transferee – single owner

The transferee (or buyer or purchaser) in the transfer is the person in whose name the land will be registered to in the B. Proprietorship Register.

A single purchaser is registered by entering their name and address in the register and cancelling, **in red**, the entry of the existing registered proprietor.

In this example, Hugh Durham and Mary Durham are transferring the property to Tuva Jensen and the RL1 has been checked as mentioned above and everything is in order. This is how the register will look after registration of the transfer:-

No.	Date of Registration	Instrument Number	Nature of Instrument	Name and Address of Proprietor(s) <i>App#1867/15 DE 13/5/15</i>
1	30.3.07	9972/07	Transfer	HUGH DURHAM and MARY DURHAM of 3 Front Street, Grand Turk, Turks and Caicos Islands as joint proprietors. <i>DAE 31/3/07</i>
2	13.5.15	1867/15	Transfer	TUVA JENSEN of 5 Leeward Highway, Providenciales, Turks and Caicos Islands. <i>DAE 13/5/15</i>

Note that the name of the proprietors are always entered in capital letters and their addresses written in lower case. The entry should be clear and legible and all columns completed with care and accuracy. The date of registration is the date the application is entered in the Applications Book.

12.6 The Transferees – Joint owners

Joint transferees are entered on the register with qualification as to their ownership status and this is stated in the RL1 itself:-

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

Proprietors in common

This means that the proprietors own shares in the property and, as we will see in a later Section, these shares can be sold by way of transfer. A typical example would arise when, three people buy a house for US\$ 250,000.00 but provide differing amounts of money for the purchase :-



In this instance the transfer would state:-

“The Transferees hereby declare that they hold the land as proprietors in common in the following undivided shares :-

Tuva Jensen 40%
 Erica Jensen 40%
 Marcel Jensen 20%”

Joint Proprietors

This means that all owners own the whole with none of them holding any shares. This is a very popular way of holding land and, provided there are no issues to upset the holding, if one of the joint owners dies then the whole becomes vested in the survivors but there are rules and laws to cover the situation in the event of a transfer for value.

In the instance of the joint proprietor situation the RL1 wording will read:-

“The transferees hereby declare that they hold the land as joint proprietors”

12.7 Register Entries

The way the proprietors are entered on the register differs depending on whether they are holding as proprietors in common in undivided shares or as joint proprietors. The proprietors above who hold shares in the property would be entered as follows:-

No.	Date of Registration	Instrument Number	Nature of Instrument	Name and Address of Proprietor(s) <i>App#1867/15 DE 13/5/15</i>
1	30.3.07	9972/07	Transfer	HUGH DURHAM and MARY DURHAM of 3 Front Street, Grand Turk, Turks and Caicos Islands as joint proprietors <i>DE 31/3/07</i>
2	13.5.15	1867/15	Transfer	TUVA JENSEN of 5 Leeward Highway, Providenciales, Turks and Caicos Islands. 40% Share ERICA JENSEN of 3 Front Street, Grand Turk, Turks and Caicos Islands 40% Share and MARCEL JENSEN of 18 Cairns Drive, Markham, Ontario L3P, Canada 20% Share as proprietors in common. <i>DAE 13/5/15</i>

If, however, the proprietors declare themselves to be joint proprietors in the Form RL1 they would be entered as follows:-

2	13.5.15	1867/15	Transfer	TUVA JENSEN of 5 Leeward Highway, Providenciales, Turks and Caicos Islands, ERICA JENSEN of 3 Front Street, Grand Turk, Turks and Caicos Islands and MARCEL JENSEN of 18 Cairns Drive, Markham, Ontario L3P, Canada as Joint Proprietors <i>DAE 13/5/15</i>
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12.8 Fees

The fee payable on a Transfer for value is \$25.00

12.9 Stamp Duty

Stamp Duty is assessed on the consideration in the Form RL1 and the amount is calculated in accordance with the current Stamp Duty Ordinance.

12.10 Checklist

- ✓ Title number and property description correspond
- ✓ Name(s) of sellers in RL1 correspond to B. Proprietorship Register – resolve all discrepancies
- ✓ Stamp Duty paid – Receipt in application
- ✓ RL1 executed and verified
- ✓ If transferred to more than one person – joint proprietor/proprietors in common stated in RL1
- ✓ Record shares or “as joint proprietors” in B Register entry
- ✓ All names in block capitals on B Register
- ✓ Delete old proprietor in red
- ✓ Check entries carefully!

SECTION 13

Transfer of whole not on sale

Outline 13.1 Introduction
13.2 Form RL1
13.3 Processing
13.4 Register entries

13.5 Fee
13.6 Stamp Duty
13.7 Checklist

13.1 Introduction

Property, like any other commodity, can be transferred by way of gift or family arrangement or other arrangements for no consideration. Form RL1 is used for such transfers and the consideration is quite often stated as “In consideration of natural love and affection”

13.2 Form RL1

A copy of Form RL1 is contained in the Appendix.

13.3 Processing

The details on the RL1 are checked in the usual way – title number, property description, transferors’ name(s), execution and verification. The RL1 must be executed by all parties as usual in accordance with RLO s107.

Evidence of any family arrangement may be lodged to show connections between the parties to the RL1 such as birth certificates, marriage certificates or even Deeds of Family Arrangement. The connection or arrangement may also be described in documentation endorsed by a legal representative lodged with the application.

In addition, the RL1 must have been approved by the Permanent Secretary at the Ministry of Finance; this is evidenced usually by an endorsement on the RL1 signed by the Permanent Secretary or in a covering letter from the Ministry. The application is referred to the Ministry of Finance for consideration when lodged in the Land Registry and is returned duly endorsed as soon as possible.

13.4 Register Entries

Old proprietor entry deleted in red as normal and new entry made as normal.

No.	Date of Registration	Instrument Number	Nature of Instrument	Name and Address of Proprietor(s)
1	30.3.07	9972/07	Transfer	FUVA JENSEN of 26 Leeward Highway, Providenciales, Turks and Caicos Islands. DE 31/3/07
2	26.6.14	4567/14	Transfer	ERNEST JENSEN of 2 Front Street, Grand Turk, Turks and Caicos Islands. DAE 27/6/14

13.5 Fee

The fee for a Transfer not on sale is \$25.00

13.6 Stamp Duty

Stamp Duty is payable on a Transfer not on sale based on the value of the property as opposed to the consideration. Exemption are commonly approved by the Ministry of Finance.

13.7 Checklist

- ✓ RL1 refers to “Natural love and affection” and not a cash amount
- ✓ Check execution and verification of RL1
- ✓ Check title number and property description
- ✓ Check RL1 for endorsement by Permanent Secretary to Ministry of Finance
- ✓ Read through any documentation illustrating any detail of family arrangement

SECTION 14 Transfer of share for value and not for value

Outline	14.1 Introduction	14.5 Fee
	14.2 RLO s102 (2)	14.6 Stamp Duty
	14.3 Processing	14.7 Checklist
	14.4 Register entry	

14.1 Introduction

When land is in the ownership of proprietors in common (i.e. in shares) then it is quite common to receive an application to record the change in the ownership of shares. An individual owning a share in a property can choose to sell it or gift it as with any other valuable asset. This is done by using Form RL1, a copy of which is in the Appendix, and may be for a valuable consideration or by way of gift, family arrangement or transmission on death. The share in the property will form part of the owner's estate and can be passed on by will in the usual way.

14.2 RLO s102 (2)

Pursuant to RLO s102 (2) property held by proprietors in common is subject to a condition that each share can only be dealt with if it passes to another of the co-owners. If the share is to be passed on to another person who is not a co-owner then the consent of the other co-owner(s) is required to enable a transfer of that share to be recorded in the register.

14.3 Processing

The RL1 must be perused to establish the type of transaction to be achieved. An application form or other covering letter may very well indicate the nature of the transaction to be registered.

Ensure that the transferor in the RL1 is one of the persons on the register and, therefore is able to pass on his share. If the transferee receiving the share is a co-owner then the application is able to proceed. If, however the transferee is not an existing co-owner then the application may only proceed with the consent of the other co-owner(s). If they have joined in and executed the RL1 then their consent may be implied and the application accepted. Alternatively a separate, written consent signed by the co-owner(s) is acceptable to enable the application to proceed.

The other consideration on the application is whether or not the share is being transferred for valuable consideration or by way of gift etc.

If the transaction is by way of gift etc., then the application with the appropriate evidence must first be approved by the Permanent Secretary of the Ministry of Finance and suitably endorsed as mentioned in the Section "Transfer of whole not on sale" of this manual.

Once everything has been checked and found to be in order then the register can be updated.

14.4 Register entry

The later transfer (Instrument # 4567/14) transferred the $\frac{1}{4}$ shares of Bert Fleury and Jean Dubois to Eric Jensen. This meant that Tuva Jensen held a $\frac{1}{4}$ share and Eric Jensen now held a $\frac{3}{4}$ share in the property.

No.	Date of Registration	Instrument Number	Nature of Instrument	Name and Address of Proprietor(s) <i>App#4567/14 DE 27/6/14</i>
1	30.3.07	9972/07	Transfer	TUVA JENSEN, share $\frac{1}{4}$ BERT FLEURY, share $\frac{1}{4}$ ERIC JENSEN, share $\frac{1}{4}$ and JEAN DUBOIS, share $\frac{1}{4}$ Of 209 Leeward Highway, Providenciales, Turks and Caicos Islands as proprietors in common. DE 1/4/07
2	26.6.14	4567/14	Transfer	TUVA JENSEN, share $\frac{1}{4}$ and ERIC JENSEN, share $\frac{3}{4}$ Of 209 Leeward Highway, Providenciales, Turks and Caicos Islands as proprietors in common. DE 27/6/14

The amount of the shares in the ownership can also be expressed in percentage terms, as in the following example entry:-

No.	Date of Registration	Instrument Number	Nature of Instrument	Name and Address of Proprietor(s) <i>App # 4567/14 DE 27/6/14</i>
1	30.3.07	9972/07	Transfer	JEAN COLLIS, share 25% MARC COLLIS, share 25% PAUL DEVERE, share 25% and JON FRY, share 25% Of 209 Leeward Highway, Providenciales, Turks and Caicos Islands as proprietors in common. DE 1/4/07
2	26.6.14	4567/14	Transfer	JEAN COLLIS, share 25% and JON FRY, share 75% Of 209 Leeward Highway, Providenciales, Turks and Caicos Islands as proprietors in common. DE 27/6/14

The amount of the shares in the ownership might also be expressed in words as in the following example entry:-

No.	Date of Registration	Instrument Number	Nature of Instrument	Name and Address of Proprietor(s) <i>App # 4567/14 DE 27/6/14</i>
1	30.3.07	9972/07	Transfer	JEAN COLLIS, quarter share, MARC COLLIS, Quarter share, PAUL DEVERE, quarter share and JON FRY, quarter share of 209 Leeward Highway, Providenciales, Turks and Caicos Islands proprietors in common. DE 1/4/07
2	26.6.14	4567/14	Transfer	JEAN COLLIS, quarter share and JON FRY, three Quarter share of 209 Leeward Highway, Providenciales, Turks and Caicos Islands as proprietors in common. DE 27/6/14

It is good practice to be consistent when entering ownership shares on the register and the styles should not be mixed in the same entry. If there is any element of confusion the Registrar of Lands should cause a new edition be opened with all shares entered in a common denominator i.e. all in percentages or fractions but never mixed.

14.5 Fee

The fee for a transfer of a share whether on sale or for no consideration is \$25.00

14.6 Stamp Duty

Stamp Duty on a transfer of a share for value is assessed in accordance with the Stamp Duty Ordinance.

No Stamp Duty is payable on a transfer of a share not for value unless the Permanent Secretary at the Ministry of Finance directs otherwise.

14.7 Checklist

- ✓ Check title number and property description
- ✓ Check that the transferor(s) to the transfer correspond to those on the register
- ✓ Ensure that the transferee receiving the share already appears on the register – if not then all registered proprietors must sign the RL1 or give their consent in writing
- ✓ If the transfer of the share is not on sale check that an endorsement has been made by the Permanent Secretary at the Ministry of Finance either on the RL1 or by way of letter.
- ✓ Check the execution and verification of signatures
- ✓ Ensure that the share amounts are consistent – fractions, percentages or words. Do not mix the descriptions

SECTION 15

Transmission on death

Outline	15.1 Introduction	15.6 Proprietor in common
	15.2 Supporting evidence	15.7 Transfer by personal representatives
	15.3 Form RL19	15.8 Fee
	15.4 Sole proprietor	15.9 Stamp Duty
	15.5 Joint proprietor	15.10 Checklist

15.1 Introduction

When an individual dies it becomes the duty of their representative(s) to inform various organisations of the death of that person so that appropriate records can be updated. How we, in the Land Registry, process this information depends on whether or not the deceased is a sole owner of the land, one of joint proprietors or one of proprietors in common.

The application to record the death is most likely to be made by the personal representative(s) of the deceased and they must lodge the appropriate evidence in support to prove their position.

15.2 Supporting evidence

The death certificate of the deceased should be lodged but alternatively the Grant of Probate or Letters of Administration may be lodged. A Grant of Probate will be issued by the Court when the deceased has left a valid will but if the deceased dies intestate (without making a valid will) then the Court will issue Letters of Administration.

Where a will is in existence the personal representatives will have been appointed by the deceased and, quite often are family members or the family lawyer or a combination of them. Where there is no will the family or their lawyer will make application to the Court and the Court will make the appointment of the representatives based on the application details.

Both of these documents evidence the appointment of the personal representatives of the deceased and thereafter the estate (possessions, land, money, etc.) held by the deceased may be legally dealt with.

15.3 Form RL19

Form RL19 has been designed to be used for such applications and a copy is contained in the Appendix.

15.4 Death of a sole proprietor

If a sole owner dies then, upon production of Form RL19 supported by the Grant of Probate or Letters of Administration, the personal representative(s) can be registered by transmission as proprietor in place of the deceased. (RLO s.117 (1) refers).

The entry of the personal representative(s) name must, however, be qualified with the capacity under which the land is held, in this instance the deceased left a valid will, as in the following example:-

No.	Date of Registration	Instrument Number	Nature of Instrument	Name and Address of Proprietor(s) <i>App#6789/15 DE 27/6/15</i>
1	30.3.07	9972/07	Transfer	EDWIN BABIK of 18 Cairns Drive, Markham, Ontario, Canada L3P DE 31/3/2007
2	26.6.15	6789/15	Transmission	CHRISTINE EVA BABIK of 18 Cairns Drive, Ontario, Canada L3P as executor of the will of Edwin Babik, deceased DAE 27/6/15

If the deceased did not leave a valid will (i.e. died intestate) then the register will look slightly different with the qualification of the proprietor referring to “administrator of” as in the following example:-

No.	Date of Registration	Instrument Number	Nature of Instrument	Name and Address of Proprietor(s) <i>App#6789/15 DE 27/6/15</i>
1	30.3.07	9972/07	Transfer	EDWIN BABIK of 18 Cairns Drive, Markham, Ontario, Canada L3P DE 31/3/2007
2	26.6.15	6789/15	Transmission	CHRISTINE EVA BABIK of 18 Cairns Drive, Ontario, Canada L3P as administrator of the estate of Edwin Babik, deceased. DAE 27/6/15

The registration of any such executor or administrator will take effect from the date of death of the registered proprietor, if known, and in the column headed ‘Date of Registration’ it should be that date not the date of acceptance of the instrument (s.118 (2) RLO). The date of the death will be stated on the Grant of Probate or Letters of Administration and will, therefore, be available to use.

15.5 Death of a joint proprietor

It is unlikely that an application for a transmission on death will be lodged where the proprietors are registered as joint proprietors. The reason for this is because, at law, the property of a deceased proprietor automatically passes to the surviving proprietor(s) and no evidence of the passing of the interest is required as a consequence.

The Section of this Manual entitled “Death of Proprietor or Joint Proprietor”, contains instructions on how to process an application to record the death of a joint proprietor.

15.6 Death of a proprietor in common

In this example the proprietors are registered as proprietors in common as opposed to joint proprietors as follows:-

No.	Date of Registration	Instrument Number	Nature of Instrument	Name and Address of Proprietor(s)
1	30.3.07	9972/07	Transfer	JOHN DOUGLAS HAYES, share 25% of 6 Front Street, Grand Turk, Turks and Caicos Islands and
				DEVINDRA ALLAHAD, share 75% of 234 Leeward Highway, Providenciales, Turks and Caicos Islands, as proprietors in common.
				DAE 31/3/2007

As a result of the application the register will look as follows:-

No.	Date of Registration	Instrument Number	Nature of Instrument	Name and Address of Proprietor(s)
1	30.3.07	9972/07	Transfer	JOHN DOUGLAS HAYES, share 25% of 6 Front Street, Grand Turk, Turks and Caicos Islands and
			App #	DEVINDRA ALLAHAD, share 75% of 234 Leeward Highway, Providenciales, Turks and Caicos Islands,
			234/15	as proprietors in common DAE 31/3/2007
			DAE	SUNITA ALLAHAD, share 75% of 12 Middle Street Grand Turk, Turks and Caicos Islands, as executor of the will of Devindra Allahad, deceased. DE 26/6/15

Where land is held as proprietors in common then the share does not automatically pass to the surviving proprietor(s) as it would if they were joint proprietors. The share has to be passed on by the personal representative(s) and that is why the entry is worded to refer to this qualification. The qualification could read as above where the deceased left a will or, if no will was left, the qualification would read "as administrator of the estate of Devindra Allahad, deceased."

15.7 Transfer by personal representative(s)

It is quite common for applications to be received where the personal representatives transfer the property using Form RL1 supported by the Grant of Probate or Letters of Administration. This is perfectly acceptable provided the evidence is lodged and under the circumstances the Registrar will dispense with registration of the personal representative(s) and register the transfer by entering the name of the new purchaser(s). RLO s. 117 allows for this.

15.8 Fee

The fee for a transmission on death is \$25.00

15.9 Stamp Duty

No Stamp Duty is payable on a transmission on death.

15.10 Checklist

- ✓ Check details of the deceased given on RL19 and in Grant of Probate/Letters of Administration/Death Certificate agree exactly with register entry. Resolve any discrepancy
- ✓ Confirm whether land is held by sole proprietor or by more than one
- ✓ If jointly held, ascertain whether held as joint proprietors or proprietors in common
- ✓ If sole proprietor – update register as in 15.4 above. Qualify the entry accordingly
- ✓ If held as joint proprietor see 15.5 above
- ✓ If held as proprietors in common – update register as in 15.6 above. Qualification of the new personal representative will be necessary
- ✓ The actual date of the death can be used as the Date of Registration in the appropriate column
- ✓ Check signatures/verification on RL19 as normal

SECTION 16

Transfer in exercise of power of sale

Outline	16.1 Introduction	16.4 Fee
	16.2 Form RL4	16.5 Stamp Duty
	16.3 Processing	16.6 Checklist

16.1 Introduction

When a borrower defaults on payments under a charge and doesn't respond to the chargee's demands for the monies owed the chargee usually has the power to "exercise a power of sale" – this means that the lender can put the property up for sale and, from the proceeds of such a sale, recover what he is owed (and reasonable costs) to settle the debt. The lender is then under an obligation to settle further debts including second or subsequent charges with any monies left over.

16.2 Form RL4

RLO s. 75 directs that a Prescribed Form RL4 must be used for a Transfer by Chargee in Exercise of Power of Sale and a copy is contained in the Appendix

The Form RL4 needs to be completed with all the usual details relating to title number, property description, name of chargee exercising the power of sale and the entry number of the charge under which the power arises. These details, as always, need to be checked thoroughly and all discrepancies rectified.

The RL4 must be executed by the chargee and signatories verified in the usual way. It is unlikely that the registered proprietor will join in the RL4 as a party as the chargee does have the full authority to sell the property at this stage.

16.3 Processing

The chargee exercising his power of sale is authorised under section 75 RLO to deal with subsequent registered charges and will distribute monies to discharge the debts owing under these incumbrances.

Consequently, when a Transfer in Exercise of Power of Sale (Prescribed Form RL4) is received any registered charges appearing on the register **after** the defaulted charge may be cancelled along with any associated entries.

The new purchaser takes free from any other incumbrance to which the charge has priority other than a lease, easement or profit subsisting at the time the charge was effected or to which the chargee has consented in writing.

Effectively then, all inferior registered charges and/or monetary interests can be cancelled from the C. Incumbrances Register unless the chargee exercising the power of sale states otherwise – i.e. that the Transfer is made subject to a particular registered interest.

The incumbrances should be deleted in red therefore and the application number of the Transfer in Exercise of Power of Sale entered in the usual manner.

For the sake of clarity there is no need for any Form RL10 – Discharge of Charge to be lodged in respect of the inferior charges.

The transferee in Form RL4 should be entered in the B. Proprietorship Register in the usual manner.

Any new mortgage should be inspected and registered in the usual manner and the usual notes etc. which it may contain entered as normal.

16.4 Fee

The fee on a Transfer in Exercise of Power of Sale is \$25.00 as for normal transfers.

16.5 Stamp Duty

Stamp Duty, as usual, is payable on the consideration in the transfer.

16.6 Checklist

- ✓ Form RL4 must be used
- ✓ Transfer executed and verified in normal manner
- ✓ Chargee should be the Transferor
- ✓ The charge under which the power is exercised should be the first subsisting charge on the register
- ✓ Check details of title number, property description
- ✓ Check entry number of charge in RL4 agrees with register entry
- ✓ Delete all inferior charge entries in normal manner – no need for RL10

SECTION 17

Change of name/address of proprietor

Outline	17.1 Introduction	17.4 Fee
	17.2 Change of name	17.5 Stamp Duty
	17.3 Change of address	17.6 Checklist

17.1 Introduction

It is of vital importance that the register of title is as accurate and as up to date as possible and many applications to update information relating to owners' names and addresses are received. Evidence, when lodged, needs to be checked carefully to ensure accuracy and that no fraud is being perpetrated. These instructions cover proprietors entered in B. Registers and C. Registers. Addresses must be addressed in the Islands (s150 RLO) and ought not to be references to Islands alone or large areas "Blue Hills, Providenciales" unless the applicant is of no fixed abode.

17.2 Change of name of registered proprietor

The application to change a proprietor's name on the register will need to be made by the registered proprietor or his or her lawyer and the appropriate evidence – for example a certificate of marriage, properly certified, lodged in support. A person's name can also be changed by Deed Poll. It is not uncommon for a proprietor's name on the register to be incomplete because a middle name was missed out of the transfer to them; a copy of their birth certificate would resolve this type of issue.

A change in the name of a proprietor may also be picked up when registering a deed, for example a new charge, and relevant evidence lodged with the application to account for the change of name.

Care must always be taken when registering deeds – always check the names of the parties against that on the register and account for any discrepancy by asking for further documentation. Even slight changes to spelling should be accounted for – it has been known for slightly different spelling of a name upon investigation to turn out to be another individual.

The following illustrates how an application relating to a change of name by Deed Poll may be entered on the register:-

No.	Date of Registration	Instrument Number	Nature of Instrument	Name and Address of Proprietor(s)
1	30.3.07	9972/07	Transfer	ANTON JAMES SELVER of 26 Leeward Highway, Providenciales, Turks and Caicos Islands. DE 31/3/07
				See App#4567/14 DAE
2	26.6.14	4567/14	Change of name	ANTON JAMES SELVER is now known as ANTON MAURICE SELVER. DAE 27.6.14

The following illustrates how a correction of name application, supported by a Birth Certificate may be entered on the register:-

No.	Date of Registration	Instrument Number	Nature of Instrument	Name and Address of Proprietor(s)
1	30.3.07	9972/07	Transfer	HUGH DURHAM and MARY DURHAM of 3 Front Street, Grand Turk, Turks and Caicos Islands. DAE 31/3/07
				See App#4567/14
2	26.6.14	4567/14	Correction of name	The correct name of MARY DURHAM is MARY JANE DURHAM DAE 27.6.14

17.3 Change of address of registered proprietor

It is important for a proprietor to keep the Land Registry informed of any change to their address so that we can contact them for any reason, for example on the service of a notice. The change of address can also be picked up from a deed lodged for registration as part of the checking process on applications. Care should be taken, therefore when comparing all names and addresses between deeds and the register. The following illustrates how a change of address may be entered on the register:-

No.	Date of Registration	Instrument Number	Nature of Instrument	Name and Address of Proprietor(s)
1	30.3.07	9972/07	Transfer	ERICA MARCEL of 23 Breezy Brae, Grand Turk, Turks and Caicos Islands DAE 30/3/07
				See App# 2796/12 DAE
2	3.12.12	2796/12	Change of address	East House, Lighthouse Road, Grand Turk DAE 3/12/12

17.4 Fee

No fee is payable on any application relating to a change of name or address.

17.5 Stamp Duty

No Stamp Duty is payable on change of name or change of address applications.

17.6 Checklist

- ✓ Compare names and addresses in deeds with those appearing on the register carefully
- ✓ Obtain further evidence of discrepancies
- ✓ Check evidence in support for legality and accuracy
- ✓ Original documentation or properly certified/verified copy documentation
- ✓ Enter details clearly on the register

SECTION 18

Death of Proprietor or Joint Proprietor

Outline	18.1 Introduction	18.4 Fee
	18.2 Evidence	18.5 Stamp Duty
	18.3 Procedure	18.6 Checklist

18.1 Introduction

When a title is registered the B Register contains details of the owner or owners of the property. Subsequently to registration it may be necessary to record the death of a proprietor to keep the register as up to date as possible. Lawyers and other applicants may decide to inform us of such events as part of an application to, say, transfer the property. As part of the checking process on applications it may be noticed that in a Transfer there is only one seller mentioned but there are two registered proprietors. The register may, however, be updated at any time to record such details.

These instructions apply to both B. Register and C. Register entries.

18.2 Evidence

To remove a proprietor from the register following their death the Land Registry will need to see evidence of the death of the proprietor. The original death certificate or a properly certified copy thereof must be lodged in support of the application. This evidence will need to be lodged if the sole application is to record the death with the Land Registry or, alternatively, is part of an application to register a transfer of the property by the remaining proprietor.

18.3 Procedure

1. Sole Proprietor

If the only application is to record the death of a sole proprietor then a simple entry is required in the B. Proprietorship Section:-

No.	Date of Registration	Instrument Number	Nature of Instrument	Name and Address of Proprietor(s)
1	30.3.07	9972/07	Transfer	TUVA JENSEN of 26 Leeward Highway, Providenciales, Turks and Caicos Islands. DE 31/3/07
2	13.5.14	4567/14		TUVA JENSEN died on 13.5.14

The date of death is taken directly from the Death Certificate or other evidence of death lodged in support of the application. In the Date of Registration column enter the actual date of death and **not** the date it was lodged for registration.

An application of this type relating to a sole proprietor would not be common – it is more likely that an application to record a Transmission on death will be made to register a personal representative. Transmission on death is covered elsewhere in this Manual.

2. Joint Proprietors

Where the deceased is one of joint proprietors then, because the interest of the deceased automatically passes to the surviving proprietor(s), the name of the deceased as well as the wording “as joint proprietors” is struck through in red as in the following example:-

No.	Date of Registration	Instrument Number	Nature of Instrument	Name and Address of Proprietor(s) <i>App # 4567/14 DE 3/6/14</i>
1	30.3.07	9972/07	Transfer	TUVA JENSEN and ERICA JENSEN of Front Street, Grand Turk, Turks and Caicos Islands as joint Proprietors. <i>DE 30/3/2007</i>

3. Proprietors in common

Where the deceased is one of two or more proprietors in common then the death of one of them is noted on the register as in the following example:-

No.	Date of Registration	Instrument Number	Nature of Instrument	Name and Address of Proprietor(s) <i>App #4567/14 DE 4/7/14</i>
1	30.3.07	9972/07	Transfer	TUVA JENSEN 40% share and ERICA JENSEN 60% Share of Front Street, Grand Turk, Turks and Caicos Islands as proprietors in common. <i>DE 31/3/2007</i>
2	26.6.14	4567/14	Death	ERICA JENSEN died on 26.6.2014

The deceased’s share does not automatically pass to the surviving proprietor(s) as it would for joint proprietors. Instead the share would pass via his personal representative and it is more likely that a Transmission on death application would be lodged to update the register. Transmission on death is covered elsewhere in this Manual.

18.4 Fee

A fee of \$25.00 is payable on any application to record the death of a joint registered proprietor.

18.5 Stamp Duty

There is no Stamp Duty payable on an application to record the death of a registered proprietor.

18.6 Checklist

- ✓ Death Certificate is original or properly certified/verified copy
- ✓ Name of deceased on Death Certificate is **identical** to that on register – any discrepancy, however trivial, must be resolved

SECTION 19

Leases

Outline	19.1 Introduction	19.8 Incumbrances on lessor's title
	19.2 Sec 46 RLO	19.9 Fee
	19.3 Form RL8	19.10 Stamp Duty
	19.4 Grant of new lease	19.11 Registration procedure
	19.5 Component parts of lease	19.12 Lease of Crown Land
	19.6 Registration of lease	19.13 Checklist
	19.7 Charge on lessor's title	

19.1 Introduction

A lease can be defined as “A demise or letting of lands or tenements ... by one person, called the lessor or landlord, to another, called the lessee or tenant, for a term of years or life usually with the reservation of a rent.”

To be capable of registration a lease should be in writing by way of a deed and in the form prescribed by the Registered Land Ordinance – Form RL8.

To be capable of registration a lease must be for a specified period exceeding two years and must have a definite end date or is for the life of the lessor (landlord) or of the lessee (tenant) or for a period which though indefinite may be terminated by the lessor or lessee often by way of notice – s46 RLO. A court action ***Lace v Chantler [1944]*** dealt with a lease granted to a tenant “for the duration of the war” was not valid because it was not for a fixed period as no one could predict in advance when the war would end.

The lease would have been valid had the term been expressed to be, say, for 10 years determinable on notice if the war ended within this period. Therefore, a lease must have a definite term or at least one that can be determined by service of notice if the term is not precisely identified – if not then it cannot be registered

A lease can be made for a period to commence at a time in the future but must be within 21 years of the date the lease is executed – s50 (2) RLO. If the lease is to start more than 21 years in the future then it is deemed to be void and therefore is not capable of registration. For example if a lease is granted on 26 June 2015 for a term to commence on 10 August 2037 (22 years in the future) then it is void. If, however, the lease was for a term to commence on 10 August 2035 (20 years in the future) then that would constitute a valid grant.

The extent of the lease must be defined clearly by reference, for example, to the landlord's parcel number if of the whole or, if it is of a part of the landlord's title, by reference to a plan attached to the lease. If the extent of any lease is not clear then it is not capable of registration.

Once a lease has been granted and is capable of registration the appropriate application should be made to the Land Registry to register it. The lease, as it creates a new estate in land, is allocated a new parcel number as detailed in this section and, in addition, is noted in the C. Charges Register of the landlord's title as it is an incumbrance on that title. When a lease is granted then the value of the landlord's title is decreased because the valuable asset now is the tenant's title. The tenant is granted exclusive possession of the property

which means that the landlord can only gain entry either with the permission of the tenant or under the terms of the lease itself, for example, to carry out a yearly inspection of the internal state of the property.

If exclusive possession of the property is not granted in the lease then the lease is invalid. A court case ***Marchant v Charters [1977]*** related to a lease of apartments which were provided with a resident housekeeper who cleaned the rooms daily and changed the linen weekly. This took away exclusive possession and at law meant that the persons occupying were lodgers and not tenants and considered to be licensees and consequently, the lease was invalid.

Leases, once granted, can be terminated or determined in a number of ways; merger, expiry, surrender, upon notice and in several other ways. These are discussed in the next Section of this Manual in more detail.

19.2 Sec 46 RLO

Section 46 RLO states:-

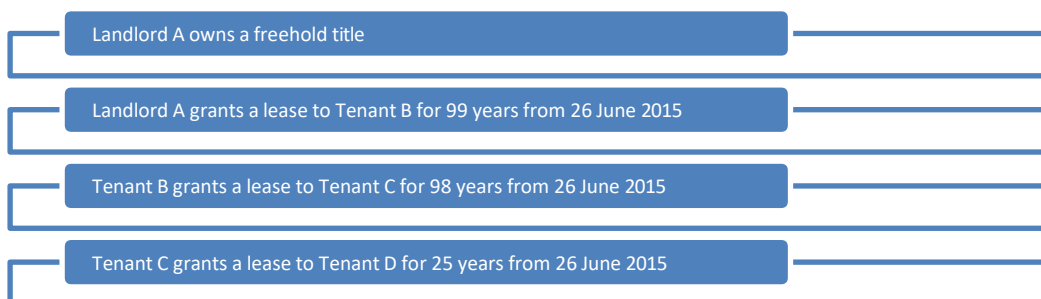
“A lease for a specified period exceeding two years, or for the life of the lessor or of the lessee, or a lease which contains an option whereby the lessee may require the lessor to grant him a further term which, together with the original term, exceed two years, shall be in the prescribed form, and 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 incumbrances section of the register of the lessor’s land or lease.”*

To be capable of registration a lease must be for a term exceeding two years.

The lease is most often granted out of a freehold title by its owner but a lease can also be granted out of a leasehold title provided the term of the new lease is less than term of the lease out of which it is granted.

The following is a possible scenario:-



In each instance the grant of the new lease is for a term less than that of its lessor.

The first lease is often called the Head lease, the second lease an Under lease and the third lease a Sub Under lease.

This type of tier of leases is often seen in shopping malls – The freehold could be owned by Turks & Caicos Investments Limited who grant a head lease of the whole mall to Mall Developments Limited. Mall Developments then grant a lease of one of the units on the site to Mr Dee’s Supermarket TCI Limited.

The golden rule in situations like this is that if a lease is granted then its term must be less than the title out of which it is granted. So a freeholder can grant a lease of his property for any term because his title is perpetual i.e. it lasts for ever. If a leasehold owner grants a sub-lease then the term of the sub-lease must be less than the term under which the land is held. For example if the freeholder grants a lease to a tenant A for 99 years from 26 June 2015 then that tenant, if he wishes and is allowed to, can grant a lease of the same property to tenant B for 98 years from 26 June 2015 or 99 years less one day from 26 June 2015.

The new lease must be for a term less than its grantor’s title. This process of granting further terms may continue indefinitely as long as each subsequent lease ends before the term of the person who granted it. So, for example, tenant B having been granted a lease for a term of 98 years from 26 June 2015 mentioned above can then grant a lease to tenant C for a term of 75 years from 26 June 2015. This is also demonstrated in the example above illustrated above.

19.3 Form RL8

The Registered Land Ordinance contains a prescribed form for a lease, RL8. A copy of Form RL8 is contained in the Appendix.

19.4 Grant of a new Lease

When a new Lease is granted it acts to create a new estate in land and within the Land Registry is allocated its own parcel number. As the Lease is granted out of a superior title (be that freehold or leasehold) it is also noted as an incumbrance against the superior title out of which it was granted. The Land Registry has a template register for use on Leasehold titles which makes provision to record the details of the lease –

- Date of lease
- Start date
- Expiry date
- Term
- Rent payable
- Date of payment

The register relating to the lease will be filed immediately after the register of its superior title so minimum detail of the existence of the lease needs to appear on the superior title – usually the new title number and the word “Lease” is sufficient to be entered in the C. Incumbrances Section.

Instructions on how to prepare the new leasehold register and on how to note it as an incumbrance are set out later on in this section.

19.5 Component parts of a Lease

1. Date

To be effective as a legal deed the instrument must be dated

2. Start date

The start date is nearly always stated in the Lease.

If no day of commencement is stated then the term of the lease commences on the date of execution of the lease. RLO s.49 contains detail concerning duration of leases and calculation of its exact term under certain circumstances.

A lease may be made for a period to commence on a future date – for example 3 years from now as a new property is being constructed in that 3 year period – this type of lease is known as a reversionary lease and, although not often seen, can be accepted for registration. If, however, the start date is a date more than 21 years from the date of the lease then it is void and cannot be registered (RLO s.50). Refer any such lease if you are in doubt or wish to cancel/reject the registration application.

3. Expiry date

The expiry date is more often than not stated or can be implied – for example 99 years from 26 June 2012 will expire at the stroke of midnight on the evening of 26 June 2111.

A lease can be granted for the life of the lessor or the life of the lessee – at the time of its grant it is not, therefore, possible to insert a date of expiry. Usually the words “For the life of” will suffice for the entry on the register. These types of leases usually make provision for a notice to be served upon the death of the lessor or lessee on the other party and will make provision that the lease terminates after, say, 28 days from the date the notice is served on the appropriate party.

4. Term

This is usually apparent from the lease as mentioned above. If no term is specified and no provision is made for the giving of notice to terminate the tenancy then RLO s.45 (1) deems that a periodic tenancy is created. Refer to the Registrar if this is the case.

5. Rent payable

Usually this is a monetary sum and will be clearly stated in the body of the lease. There are usually provisions in the lease outlining what action will be taken if the rent is unpaid by the lessee; the actions that may be taken may lead to the lease coming to an end in certain circumstances. There will almost always be a legal procedure to be followed before this can happen and detail of the procedure to be followed will, most likely, be outlined in the wording of the lease.

6. Date of payment

The lease will usually specify when the rent under a lease becomes due; it may be payable monthly, three monthly or annually for example. The lease will contain provisions relating to what action will be taken by the lessor if the payment is delayed.

7. Restriction on the lessee's power

Quite often a lease will contain an agreement that the lessee will not transfer, sub-let, charge or part with possession of the whole or part of the land leased without the written consent of the lessor. This is done so that the lessor can ensure that the property is leased to responsible and reliable tenants and that the property is not devalued in any way during the term of the lease.

This restriction on the lessee will be noted in the register of the lease pursuant to RLO s.47 and, once noted, no dealing with the lease can be registered unless accompanied by the written consent of the lessor verified in the usual manner in accordance with RLO s.108.

The entry made on the Leasehold register after the entry of the lease is:-

“RESTRICTION: No assignment without Lessor's consent.”

8. Implied agreements in leases

Unless a lease contains wording to the contrary every lease granted has certain agreements implied without them actually having to be set out in the body of the lease. The agreements bind both the lessor and the lessee and the actual wordings are set out in:-

RLO s52 – Agreements binding the lessor, and

RLO s53 – Agreements binding the lessee.

19.6 Registration of lease application

Instruments of lease are required to be presented with three copies of the lease; the original is retained in the parcel file and the duplicate and triplicate copy leases returned suitably endorsed by The Registrar of Lands.

The process of registering a new lease is governed by **RLO s.46** which states:-

“A Lease for a specified period exceeding two years, or for the life of the lessor or of the lessee, 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 two 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 incumbrances section of the register of the lessor's land or lease"

This effectively means that the process is a double one inasmuch as the Lease is registered under its new title number and the lease is also noted as an incumbrance against the freehold or other superior title.

The new title number allocated to the lease is created out of its freehold or other superior title:-

Freehold = 10101/4 Leasehold – 10101/4/1

19.7 Charge on lessor's title

Where a lessor's title is subject to a charge, RLO s.48 prescribes that no lease granted shall be registered without the previous consent in writing of the proprietor of the charge, verified as usual in accordance with RLO s.108. It is essential, therefore, that such consent accompanies an application for a lease and illustrates the need to check the lessor's register carefully before proceeding with the application.

19.8 Incumbrances on lessor's title

As well as charges on the lessor's title always check for restrictions, cautions or inhibitions appearing on the superior title. Check the application also for suitable consents referring to the grant of the new lease or withdrawals or releases of the incumbrances.

19.9 Fee

Registration of a lease attracts a fee of \$25.00 under the LR Fees Rules.

Registration of a Crown Lease attracts a fee of \$10.00

19.10 Stamp Duty

Stamp duty on a lease is assessed on the consideration (price paid) in the lease and the amount is governed by the Land Registration Fees Rules. If any part of the consideration is rent then duty is payable at the rates contained in the Stamp Duty Ordinance and is dependent on the amount of rent and the length of the term of the lease – refer to the Schedule to the Ordinance for full details.

19.11 Registration procedure

New Leasehold Register

The details from the lease are entered on the leasehold register as appropriate and a template register is contained in the Appendix.

The registered proprietor of the new leasehold title – the tenant in the lease – is entered in the B Register of the new leasehold register as normal.

Lessor's Title Register

The new lease is noted as an incumbrance on the superior title C. Register with a simple entry:-

3	21.11.11	1931/11	Lease 10101/11/1
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19.12 Lease of Crown Land

When Crown Land is leased for a period exceeding 2 years the Director of the Crown Land Unit, under the provisions of s 38 of the Crown Land Ordinance 2012, must register the lease under the Registered Land Ordinance. The lease will be executed using the public seal. The Director may add the cost of the registration of the lease to the costs payable by the person acquiring the lease.

If the lease of Crown Land subsequently comes to an end, for whatever reason, then the Director of the Crown Land Unit must make an application to the Registrar of Lands to record the cancellation or other determination of the lease – s 40 of the Crown Land Ordinance 2012 refers.

19.13 Checklist for registration of a lease

- ✓ Lease – Lessor (Landlord) is owner of superior title
- ✓ Lease – Execution and verification as usual
- ✓ Lease – Whole of lessor's title or just part
- ✓ Lease – Dated
- ✓ Lease – Term stated and starts within 21 years
- ✓ Lease – Rent
- ✓ Lease – Stamp Duty
- ✓ Lease – Restriction on lessee's (Tenant's) power; make B Register Note
- ✓ Lessor's title – Charge(s) registered; consent(s) necessary if so
- ✓ Lessor's title – Any other restrictions, cautions or even an inhibition on title
- ✓ Lessor's title – any other lease(s) registered

SECTION 20

Termination of Lease

Outline	20.1 Introduction	20.8 Lawful re-entry
	20.2 Merger	20.9 Notice
	20.3 Merger considerations	20.10 Substitution
	20.4 Processing	20.11 Operation of law
	20.5 Surrender	20.12 Fee
	20.6 Expiry	20.13 Stamp Duty
	20.7 Specified event	20.14 Checklist

20.1 Introduction

There are several ways in which a leasehold interest can come to an end and this section looks at each of those ways and the evidence that the Registrar of Lands requires in support of the application to cancel the lease. This section covers:-

- Merger
- Surrender
- Expiry
- Specified event
- Lessor's lawful re-entry
- Notice
- Substitution
- Operation of law

The effect of an application to cancel a lease is two-fold; firstly, the leasehold title itself is closed and, secondly, the notice of the lease on its lessor's title is deleted. Remember the leasehold title is referred to as the lessee's or tenant's title and the title out of which the lease is granted is referred to as the lessor's or landlord's title. The term lease is used throughout this Section for ease of reference but everything in this particular Section applies equally to sub-leases, under leases etc.

20.2 Merger

When a lessor's and lessee's title come into the same ownership it is possible to merge the interests and close the lessee's title. This results in the lessee no longer having to pay the rent under the lease – if a lessee acquires the lessor's title then effectively he pays the rent due under the lease to himself which would be a bizarre situation. Merger of a leasehold title is a matter of intent and an application to merge must be made in writing so that there is no doubt that the parties wish to merge the titles. The end result of a merger application is that the leasehold title is closed and the notice of the lease in the C. Incumbrances Section of the freehold or superior register is cancelled. This is why we in the Land Registry **must** have a clear intention to merge the titles as it would be time consuming and inconvenient to re-instate a wrongly processed application.

RLO s 43 states:-

“Where, upon the registration of a dealing, the interest of – (a) lessor and lessee ... vest in the same proprietor, such interests shall not merge unless a surrender ... is registered or ... there is a declaration of merger, which may be contained in the instrument evidencing the dealing.”

20.3 Merger considerations

The titles must be in the same ownership and this may have been achieved by way of a transfer of one or other or both of the titles into the same ownership. Any transfers must be checked for accuracy of title number, property description, seller and purchaser names, execution and verification as normal.

There must be a covering letter or clear request, maybe in the RL1, to merge the titles.

Both of the titles must be checked for any incumbrances to the merger, for example charges, restrictions, cautions and inhibitions etc. Consider each incumbrance individually and ensure that charges have been released or consents under restrictions or cautions have been given otherwise the merger application cannot proceed. Any incumbrances of this nature act as a bar to the merger application and must be taken up with the applicant or their legal representative to resolve. An Inhibition must be removed before any title affected can be processed in any way.

20.4 Processing

This, as already stated, is a two part process:-

1. Lessee's title

The leasehold register must be cancelled by writing the word **CLOSED** in large red letters diagonally across each page for clarity. Anyone making subsequent enquiries on the parcel number will be in no doubt whatsoever that the interest has determined. The cancelled lease (or sublease) register should then be removed from the binder and filed in its parcel file.

2. Landlord's title

The entry relating to the lease must be struck through in the C. Incumbrances Section of the freehold register and the application number of the merger must be entered as illustrated below:-

4	26.6.13	2007/13	Lease 12345/3/4 DE 27/6/13 App#2345/14 DAE
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If there are entries relating to the variation of the lease then these must be struck through also as they no longer have any relevance.

20.5 Surrender of Lease

During the subsistence of a lease the lessor and lessee may agree that the lease be determined, often prior to a new lease between them being granted. This method of determination is known as a surrender and is governed by RLO s 61.

A deed of surrender in prescribed form RL11, a copy of which is in the Appendix, made between the lessor and lessee is drawn up and properly executed and verified pursuant to RLO s108. Alternatively, the word "Surrendered" can be endorsed on any one of the three copies of the lease and executed by both the lessor and lessee and duly verified.

The lessee's title will then be closed and the register removed from its binder and endorsed "**CLOSED**" boldly in red. The note of the lease in the C. Incumbrances Section of the lessor's title will also be deleted as in the above illustration. If the application is accompanied by one of the copies of the lease with "Surrendered" endorsed then that instrument must be retained and filed in the leasehold parcel file. Similarly, if the application is made using a Deed of Surrender then that too must be filed in the leasehold parcel file.

If the lessee's title is subject to a charge or a sublease then no surrender can take place without the consent in writing of the proprietor of the charge or of the sublease as provided for under RLO s 61 (2).

20.6 Expiry of lease

Once the term of a lease has run then the lease itself is determined. For example, a lease originally granted for 25 years from 26 June 1975 will expire at midnight on 26 June 2000. An application is made to the Land Registry by the lessor to cancel the registration of the lease title and, pursuant to RLO s 62 (2), such application should be accompanied by sufficient evidence of the circumstances of the determination. This may be in the form of a covering letter or may even be supported by a Statutory Declaration setting out the facts.

A typical Statutory Declaration would state the date and term of the lease, the fact that the term has come to an end, the lessor has recovered possession of the property (for example by obtaining the keys of the property from the lessee), confirmation that the lessee is not holding over (see below) and that there is a desire to close the title and a copy of the lease would be attached to the declaration along with any other relevant documents. In any event there **must be a request** to close the title as the Registrar of Lands cannot assume that because the term has come to an end that the lease is to terminate.

Sometimes a lessee will continue to occupy the property and pay the rent even after his term of occupancy is over; this may be done with the express permission of the lessor and is called "holding over" and RLO s 51 provides for this.

If, for example, a Crown Lease has come to the end of its term and the lessee continues to pay the rent and TCIG continues to accept the rent paid then TCIG cannot afterwards deny the existence of a tenancy if they wanted the land to be free from a lease.

The lessee's title must be closed by endorsing "**CLOSED**" in red on each page of its title register and the notice of the lease struck through in red on the lessor's title. Any supporting evidence, e.g. Form RL11 or other instrument or Statutory Declaration, should be filed in the lessor's parcel file.

20.7 Specified event in lease occurs

Quite often provisions are included within leases for them to terminate upon the happening of certain events in the future such as the bankruptcy, liquidation or other incapacity of the lessee. The content of the lease will outline the circumstances clearly and these conditions will need to be perused carefully upon an application to determine a lease in this manner. The application, most likely made by the lessor will need to be supported by sufficient evidence of

the bankruptcy, liquidation or happening of any specific event under which the lease is being determined. Such evidence could be by way of a Statutory Declaration setting out the event which has occurred, reciting the particular clause in the lease and attaching a copy of the relevant documentation e.g. the Court Order adjudging the lessee bankrupt or a copy of a resolution appointing an individual as a liquidator of a company.

In a lease for life (mentioned in the Section of Leases) the Declaration would recite the details of the lease, the clause relating to the event and attached would be the evidence of death of the lessee and copies of the notices served as required by the original lease. If the Registrar is satisfied with such evidence then the leasehold title will be closed and the note of the lease deleted from the lessor's title register.

The lessee's title must be closed by endorsing "**CLOSED**" in red on each page of its title register and the notice of the lease struck through in red on the lessor's title. Any supporting evidence such as the Statutory Declaration would be filed in the parcel file relating to the lessor's title.

20.8 Lawful re-entry

RLO s 55 gives a lessor the authority to forfeit (that is to bring to an end) a lease if a lessee commits any breach of, or omits to perform, any agreement or condition on his part expressed or implied in the lease. For example, a lessee must keep the property in a reasonable state of repair and redecorate inside and out every 5 years.

If the lessee lets the property deteriorate then he is in breach of covenants in the lease and the lessor is entitled to commence forfeiture proceedings. Other reasons for forfeiture may include the lessee being adjudged bankrupt or, if the lessee is a company, going into liquidation.

Forfeiture can be defined as:-

"A punishment annexed by law to some illegal act or negligence, in the owner of lands, tenements, or hereditaments, whereby he loses all his interest in them, and they go to the party injured, as a recompense for the wrong which either he alone, or the public together with himself, has sustained, in a breach of covenants in a lease."

The right of forfeiture may be exercised by the lessor by either lawful re-entry of the property or by taking enforcement action in court. The lessor will serve notice on the lessee of any proposed forfeiture as part of the legal process which must be followed in this type of action.

Lawful re-entry can be exercised by the lessor entering upon and remaining in possession of the property provided the lessee is not in occupation of the property at the time of proposed re-entry.

If the lessee is in occupation then court action will be necessary.

Applications to determine a lease following forfeiture must be referred to the Registrar as the law in this area is complex. RLO ss 55 to 57 contain the relevant authority for the Land Registry to consider such applications and make reference to right of forfeiture and its effect on subleases, notice before forfeiture and relief against forfeiture.

Evidence lodged in support of an application to close a leasehold title in this way would consist of a Statutory Declaration setting out the sequence of events leading up to the forfeiture and would be supported by copies of the Court Orders and other papers used in the action against the lessee.

If the Registrar is satisfied with all the evidence lodged in support of a forfeiture application then the leasehold title and any sublease titles will be closed and the note of the lease on the superior title will be deleted.

The forfeiture of Crown Land leases is governed by Crown Land Ordinance 2012 s 40 which sets out the procedure to be followed by the Director of the Crown Land Unit if it appears or becomes known to him that the lessee is in breach of a condition of the lease or that the leased land is being damaged or misused in any way. Under the stated procedure the Governor has the power to cancel the lease and the Director may enter upon the land after obtaining a court order for possession. An application will then be made to the Land Registry to cancel the lease registration.

The lessee's title must be closed by endorsing "**CLOSED**" in red on each page of its title register and the notice of the lease struck through in red on the lessor's title. Any supporting evidence such as the Statutory Declaration would be filed in the parcel file relating to the lessor's title.

20.9 Service of Notice

A lease can contain provision for it to be determined following the service of a notice from the lessor on the lessee in most instances. The conditions in the lease will specify on how the notice is to be served on the lessee – put into the post or personally handed to the lessee by the lessor or even affixed to the property itself. The notice will usually give the recipient a suitable time period – usually specified in the lease –to vacate the property or to reply before the lease is determined.

The application to the Land Registry by the lessor should be in writing and suitable evidence lodged in support, for example, a Statutory Declaration reciting the details of the lease and the clause detailing the service of the notice, a copy of the notice served on the lessee and confirmation that it was served as directed in the lease conditions. If the Registrar is satisfied with such evidence then the leasehold title will be closed and the note of the lease deleted from the lessor's title register.

Any notice served to bring a lease to an end **must** be served in accordance with the terms and conditions specified in the lease otherwise it is not deemed to have been served correctly and any tenant could claim that because the notice was not served correctly that he is not bound to leave the property and give up his lease.

The service of notices on Crown Land leases is also governed by Crown Land Ordinance s 49 which is quite specific in how a notice is deemed to be served correctly. It is one of the reasons that an address for service of a proprietor is kept as up to date as possible on the register so that no notices are missed by the proprietor. S 49 (3) of that Ordinance states that

the notice is deemed to be correctly served if sent to an address for service given by that proprietor.

The lessee's title must be closed by endorsing "**CLOSED**" in red on each page of its title register and the notice of the lease struck through in red on the lessor's title. Any supporting evidence such as the Statutory Declaration would be filed in the parcel file relating to the lessor's title.

20.10 Substitution of Leases

RLO s 59 states:-

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

This effectively means that upon an application to register a new lease to the existing lessee of the same land but probably for a different term or different conditions the Registrar of Lands, once satisfied of the new extent and of the existing lessee, can cancel the "old lease" and register the new one in its place. The "new lease" would be registered under a new parcel number.

The application form should make it clear that there is a substitution of an existing lease as well as the fact that a new lease is lodged for registration.

Consequently, the notice of the "old lease" on the lessor's title will be deleted and the "new lease" entered so that the register is up to date.

The lessee's title must be closed by endorsing "**CLOSED**" in red on each page of its title register and the notice of the lease struck through in red on the lessor's title.

20.11 Operation of Law

A lease can be determined by operation of law when one party to a lease acts in a certain way. For example, a lessor can grant to the existing lessee a new lease of the same property for a longer term and the lessee accepts the new lease. The intention to determine the existing lease is therefore quite apparent from the actions of the parties. It would be usual for a deed of surrender to be entered into but is not, strictly, essential. Evidence of the actions of the parties and written request should accompany any application to determine a lease in this way.

Another example of this would be where a lessee hands back the keys of a property to the lessor and vacates the premises at the same time. Written evidence of the actions of the parties, usually by way of Statutory Declaration, must be produced in support of the application to determine the lease in this fashion.

If the Registrar is satisfied with the written evidence of the actions of the parties, then the leasehold title will be closed and the note of the lease deleted from the superior title.

The lessee's title must be closed by endorsing "**CLOSED**" in red on each page of its title register and the notice of the lease struck through in red on the lessor's title. Any supporting evidence such as the Statutory Declaration would be filed in the parcel file relating to the lessor's title.

20.12 Fee

A fee of \$25.00 is payable on a termination of lease application

No fee is payable to close a Crown Lease title.

20.13 Stamp Duty

No Stamp Duty is payable to close a leasehold title but any Transfer of a leasehold title would attract Stamp Duty as usual.

20.14 Checklist

- ✓ Merger - Both titles in same ownership – Transfer executed and signatures verified as usual
- ✓ Merger - Intention to merge made clear – letter or on an application form, even wording in the transfer
- ✓ Merger - Incumbrances – Charges, restrictions, cautions, inhibitions – accounted for
- ✓ All other applications – See under the individual headings for evidence requirements
- ✓ All applications - Cancel notice of lease as an incumbrance on lessor's title
- ✓ All applications - Close leasehold title register by endorsing CLOSED in red diagonally on register. File cancelled register in parcel file.

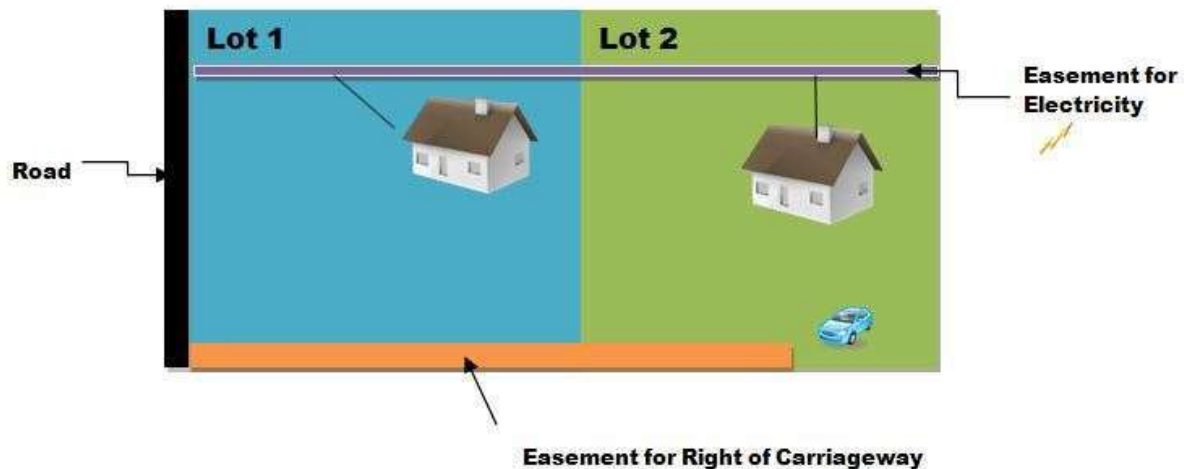
SECTION 21

Easements and rights

Outline	21.1 Introduction	21.7 Public easements
	21.2 Essentials of an easement	21.8 Prescription
	21.3 RLO s 93	21.9 Variation and release
	21.4 Grant or reservation	21.10 Fees
	21.5 Register entries	21.11 Stamp Duty
	21.6 Easements in leases	21.12 Checklist

21.1 Introduction

An easement is a right that one piece of land has over another as illustrated in the following example:-



Lot 1, which is owned by Nathan, abuts a roadway and there is a driveway in existence to enable Lot 2, which is owned by Leroy, to drive his vehicle into his property. Also, an electricity cable supplies both properties with power.

Lot 2 has an easement (or right) to drive over the access way shown to get to their land. This easement is “appurtenant” to Lot 2 and Lot 1 is “subject” to the right. Similarly with the electricity cable serving both properties Lot 2 has the right to run the cable over or under Lot 1 to connect into the local electricity supply.

21.2 Essentials of an easement

There must be a dominant title and a servient title – often referred to as the dominant tenement and servient tenement. In the example above, in respect of the access way, Lot 2 is the dominant as the right benefits Leroy. Lot 1 is the servient as the easement is over Nathan’s land.

The easement must accommodate (or benefit) the dominant tenement. In the example this is clearly the case as Leroy can drive his car and run the electricity cable over Nathan’s land.

The dominant and servient tenements must be owned or occupied by different persons – in this instance that is the case as Nathan and Leroy are the owners.

The right or easement must be capable of forming the subject matter of a grant. That means that they can be contained in a valid deed to evidence the easement. In this instance it could be by way of a simple deed of grant by Nathan granting a right of way to Leroy.

An easement must be granted either for a set period of years or in perpetuity (for ever) and must have a definitive start date which is usually the date of the instrument granting or reserving it. If an instrument grants an easement along the lines of **“a right of way over the pathway shown green on the plan until such time as an alternative right of way is provided”** then this is invalid as an easement on the grounds that it is not known how long it will be until the alternative right of way is provided.

Similarly, an easement **“a right of way over the access way shown orange on the plan to commence upon the completion of the said access way by the grantor”** would be invalid as an easement as it is not possible to know when the construction of the access way will be completed”.

An individual cannot grant an easement to himself over land that he owns. If Maurice owns a house with a large garden and he has a garden shed at the foot of the garden and a pathway leads to the shed then he cannot grant himself a right of way over the pathway to create an easement capable of registration.

This type of situation could be called a quasi-easement which is not capable of being entered on the register. If, however, Maurice sold a portion of his garden to Dimitri and his pathway crossed the land then Maurice would reserve a right of way across Dimitri’s land to get to his shed – this would be a valid legal easement capable of entry on the register.

21.3 RLO s. 93

Section 93 of the RLO prescribes for the granting of easements to ensure that where one is created certain conditions are followed.

S. 93 (1) prescribes the use of Form RL12 for the grant of an easement and a copy of the Form is contained in the Appendix.

S. 93 (2) allows for an easement to be created in a Lease or in a Transfer as well as in Form RL12.

S. 93 (3) prescribes that the instrument creating the easement must state clearly:

- The nature of the easement (e.g. a right of way with or without vehicles)
- The period for which it is granted (could be 25 years, 99 years etc. or in perpetuity – forever)
- Any conditions, limitations or restrictions to the easement (e.g. may be exercised only on foot)
- The land burdened by the easement and, if necessary the part affected (in the example above it would be the driveway or electricity cable on Nathan’s land)
- The land enjoying the benefit of the easement (in the example this is Leroy’s land)
- If required, a plan showing the easement must be provided

21.4 Grant or reservation

In the above example the easement could be **granted** by Nathan by way of a simple deed of grant setting out the prescribed requirements under RLO s.93 above.

Alternatively, the easement could have been **reserved** in a Transfer of the land in Lot 1. If Leroy owned both Lot 1 and Lot 2 and then subdivided and built a house on Lot 1 then he could have sold the land but reserved the right of way and electricity cable easement over the land in Lot 1 for his benefit.

Whether granted or reserved, the easement, if following RLO s. 93, will be a valid one and capable of being entered on the registers of the dominant and servient titles.

The person granting the easement is sometimes referred to as the grantor, and the person having the benefit of the easement is sometimes referred to as the grantee

21.5 Register entries

The entry of the easement on the register is governed by RLO s. 93 (4) which states:-

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

This means that the easement is entered on each of the titles affected but in different parts of the respective registers. It is customary that all matters benefitting a title are entered in the A. Property Section and all matters burdening a title are entered in the C. Incumbrances Section.

Having established the nature of the easement and ascertained the dominant title and the servient title, entries can be made on the registers of the:-

Dominant title, having the benefit of the easement, the entry appears in the A. Property Section in the Appurtenances box:-

APPURTENANCES
1.26.7.02 1015/02 EASEMENT: See Documents in Parcel File 10202/15
DAE

Servient title, having the burden of/being subject to the easement, the entry appears in the C. Incumbrances Section:-

No	Date of Registration	Instrument Number	Particulars
1	26.6.2015	4567/15	Grant of easement: Right of way benefitting 10203/066
			shown on filed map

The subjective entry above is used where the grant is a straightforward, simple grant. The benefitting land, 1203/066 is clearly identified so that any owner is aware of who is entitled to exercise the easement. The rule here is not to summarise the wording of the easement if the grant is a bit more complicated. If so then an entry as follows should be made:-

No	Date of Registration	Instrument Number	Particulars
1	26.6.2015	4567/15	Grant of easement: See documents in parcel file 12345/8

As can be seen from the wording of the entries above it is important to make sure that the documents relating to the easement grant or reservation are retained in the parcel file referred to in the entry. If any future owner of the property needs further information regarding the easement and how it is to be exercised and further details of any limitations or restrictions then they can inspect the filed documentation for clarification.

21.6 Easements in Leases

RLO s. 93 (5) states that:-

“an easement granted by the proprietor of a lease shall be capable of existing only during the subsistence of the lease.”

This effectively means that where an owner holds land under the terms of a lease for, say 99 years, then any easements granted by the lease e.g. rights of access, drainage, connection to power, water and drainage etc., only subsist and are exercisable for the term of the lease i.e. for 99 years only. When the lease expires then the easements granted by that lease also expire and are no longer in existence.

21.7 Public easements

An easement is always appurtenant to land which, in accordance with RLO s 93 (3), must be clearly stated.

Consequently public easements, for example a public right of way over a sidewalk or track, are not capable of registration as the benefit of it is for the public at large and not for any particular parcel of land.

However, public rights of way are shown on the Registry Map, and this is a useful service. There is no objection, however, to noting the existence of a public right of way in the Incumbrances section of the parcel burdened only upon an application to do so and you may, therefore, encounter such an entry on a title. The note should be worded in such a way as to make it clear that it is not a 'grant of easement' (and in such cases there is no instrument number) e.g. 'Public footpath to beach as shown on Registry Map.'

21.8 Acquisition of easements by prescription

Easements can be acquired by prescription by peaceable, open and uninterrupted enjoyment for a period of 20 years (RLO s.138). This is accomplished, for example, if the landowner uses land adjoining his property as an access way and regularly drives his car over the land and/or walks over it as if he actually owned it. If no-one challenges his usage for a period of 20 years prescribed by RLO s.138 then he can make an application to the Registrar to enter the easement acquired on the register. This type of easement is sometimes referred to as one acquired by long user.

If the easement is less obvious, for example the use of underground drainage pipes, then it might not satisfy the criteria of open use and the application may, therefore, not be accepted by the Registrar. It is important, therefore, that all applications of this type are referred to the Registrar. Any application lodged to request registration of such an easement should be supported by an affidavit setting out the details as to the use of easement and this will be the instrument recorded in the application book. All such applications should be referred to the Registrar to consider the supporting evidence.

If the Registrar is satisfied to the evidence lodged in support of the application, the Registrar will serve notice on the registered proprietor(s) and any chargee(s) of the servient land. The Registrar may also order that the application is advertised, e.g. in the Gazette, a local newspaper, both the Gazette and newspaper, etc.

Following service of notice and any advertisement, if no objection is lodged the notice of the easement or profit should be entered in the C. Incumbrances Section of the register of the land affected (the servient land) and, in the A. Property Section of the dominant land.

21.9 Variation and release of easements

Easements can be varied or released, usually by way of a deed or instrument made between the dominant and servient land owners.

Such applications should be referred to the Registrar to consider the evidence relating to the variation or release. The Registrar will then direct what action needs to be taken.

Easements can also be released by operation of law, for example, if the dominant and servient land comes into the same ownership. The easement then comes to an end under “unity of seisin” rather like when a freehold and leasehold title come into the same ownership. There are several other ways in which easements are extinguished and all such applications should be referred to the Registrar to consider.

21.10 Fees

The fee for registration of an easement is \$25.00 per parcel affected. If the easement is contained in a Transfer deed or in a Lease then no additional fee is payable

The fee for the cancellation/release/variation of an easement is \$25.00 per title affected.

The fee for registration of an easement based on long user (prescription) is \$25.00

21.11 Stamp Duty

The grant or reservation of an easement does not attract any stamp duty.

21.12 Checklist

- ✓ Ensure Form RL12 is correctly completed as to title number, property description etc., and is properly executed and verified
- ✓ Read easement through and understand its effect
- ✓ Identify the dominant and servient titles as entries go in different parts of the title registers
- ✓ Make entry in A Register of dominant title and C Register of servient title
- ✓ Is the easement straightforward or do we need to use the “documents filed in parcel file method”?

APPENDIX

Form RL1	Transfer of land
Form RL3	Transfer of charge
Form RL4	Transfer in exercise of power of sale
Form RL8	Lease
Form RL9	Charge
Form RL10	Discharge of charge
Form RL11	Surrender of Lease
Form RL12	Grant of Easement
Form RL19	Application to be registered as proprietor by Transmission
Register	Freehold Register
Register	Leasehold Register
Register	Incumbrances Section

**FORM
RL1**

Form R.L.1

TRANSFER OF LAND

TITLE NUMBER	SECTION	ISLAND
.....
.....

I/WE

.....
in consideration of
..... (the receipt
whereof is hereby acknowledged) HEREBY TRANSFER
to

..... of
.....
..... the land (and the buildings or other permanent structures
thereto)* comprised in the above-mentioned parcel.

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

The transaction effected by this instrument does not form part
of a larger transaction or series of transactions involving the
conveyance on sale of other immovable property in the Turks
and Caicos Islands. ***

Dated this Day of.....20

Signed by the }
Transferor in the }
presence of—

Signed by the }
Transferee in the }
presence of—

Form R.L.3

TRANSFER OF CHARGE

TITLE NUMBER	SECTION	ISLAND
.....
....

I/WE

.....
 In consideration of
 (the
 receipt whereof is hereby acknowledged) **HEREBY
 TRANSFER**
 to

..... of

 the charge shown as entry numberin the
 encumbrances section of the register relating to the above-
 mentioned parcel.

The Transferor hereby declares that the amount of principal and
 interest owing by the Chargor at the date hereof is...
(and the Chargor hereby acknowledges that is
 the amount due by him).

Dated this day of 20

Signed by the }
 Transferor in the }
 presence of—

Signed by the }*
 Transferee in the }*
 presence of—

Signed by the }
 Chargor }
 in the presence of—

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

Form R.L.4

TRANSFER BY CHARGE IN EXERCISE OF POWER OF SALE

TITLE NUMBER	SECTION	ISLAND
--------------	---------	--------

.....
.....

I/WE

.....
 having exercised the power of sale conferred upon me/us by
 the charge shown as entry number in
 the encumbrances section of the register relating to the above-
 mentioned parcel, in consideration of

(The receipt whereof is hereby acknowledged) **HEREBY**
TRANSFER to..... of

.....
 ... the interest charged by the said charge.

The Transferees declare that they hold the said interest as
 proprietors in the following undivided shares—

(or as joint proprietors)

Dated this day of.....20

Signed by the }
 Transferor in the
 presence of

Signed by the }
 Transferee in the
 presence of—

**FORM
RL8**

Form R.L.8

LEASE

TITLE NUMBER	SECTION	ISLAND
.....
....

I/WE

.....

... **HEREBY** **LEASE** to

.....

.....

..... the land comprised in the above-mentioned parcel (*or*) that portion of land comprised in the above-mentioned parcel which is shown [on the registry map as parcel number] *or* [on the filed plan as number] for the term of..... from the day of at the rent of payable.

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

(*or as joint proprietors*).

Dated this day of.....20

Signed by the }
Lessor in the }
presence of—

Signed by the }
Lessee in the }
presence of—

**FORM
RL9**

Form R.L.9

CHARGE

TITLE NUMBER	SECTION	ISLAND
.....
....

I/WE
.....

HEREBY CHARGE my/our interest in the above-mentioned parcel [or the charge shown as entry number in the encumbrances sections of the register relating to the above-mentioned parcel] to secure the payment to of
.....
... of the principal sum of with interest at the rate of *per centum per annum* payable.

The principal sum shall be repaid on the day of together with any interest then due and I/we the above named Chargor(s) hereby acknowledge that we understand the effect of section 72 of the Registered Land Ordinance.

Dated this day of
19/20.....

Signed by the Chargor in the presence of— }

Signed by the Chargee in the presence of— }

DISCHARGE OF CHARGE

TITLE NUMBER

SECTION

ISLAND

.....
.....

I/WE

.....
HEREBY DISCHARGE the Charge shown as entry number
..... in the encumbrances section of the register
relating to the above-mentioned parcel wholly (or in relation to
.....).

Dated this..... day of..... 20

Signed by the }
Chargee in the
presence of—

**FORM
RL11**

Form R.L.11		
SURRENDER OF LEASE		
TITLE NUMBER	SECTION	ISLAND
.....
.....
I/WE		
.....		
in	consideration	of
..... (the receipt		
whereof is hereby acknowledged) HEREBY SURRENDER the		
lease comprised in the above-mentioned parcel and the Lessor		
HEREBY ACCEPTS the said surrender.		
Dated this day of 20...		
Signed by the Lessee in the presence of—	}	
Signed by the Lessor in the presence of—	}	

**FORM
RL12**

Form R.L.12

GRANT OF EASEMENT

TITLE NUMBER	SECTION	ISLAND
.....
.....

I/WE
.....
in consideration
of..... (the
receipt whereof is hereby acknowledged) HEREBY GRANT
to..... of
..... the proprietor of the
interest comprised in the following easements—

Dated this day of.....20.....

Signed by the }
Grantor in the
presence of—

Signed by the }
Grantee in the
presence of—

Form R.L.19

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

TITLE NUMBER SECTION ISLAND

.....
.....

I/WE

.....
.. as personal representative of
..... deceased HEREBY
APPLY to be registered by transmission as proprietor in place
of the deceased of his interest in the land comprised in the
above-mentioned parcel and in support thereof attach the Grant
as required by section 117 of the Registered Land Ordinance.

Dated this day of
20..

Signed by the }
Representative in the
presence of —

Leasehold register

Edition No.
 Opened.....

TURKS & CAICOS ISLANDS

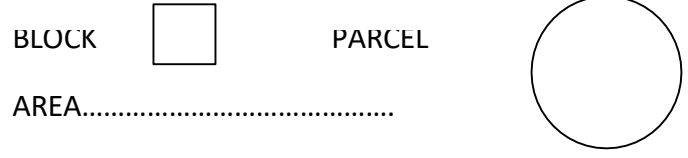
LEASEHOLD REGISTER

TITLE No.....

A. PROPERTY SECTION

ISLAND.....REGISTRATION SECTION.....

SUMMARY OF LEASE
 LESSOR.....
 LESSEE.....
 DATE OF LEASE.....From.....
 FOR A PERIOD OF.....Expiring.....
 AT A RENT OF.....PAYABLE ON.....



SURVEY REF :

SUBJECT TO THE CONDITIONS CONTAINED IN THE FILED LEASE

B. PROPRIETORSHIP SECTION

No	Date of Registration	Instrument Number	Nature of Instrument	Name and Address of Proprietor(s)

ANY ENTRIES STRUCK THROUGH IN RED ARE NO LONGER SUBSISTING

