

## THE LAND TITLES (AMENDMENT) ACT 2001<sup>1</sup>

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THE main purpose of the Land Titles (Amendment) Act 2001 is to hasten the bringing of unregistered land under the Land Titles Act.<sup>2</sup> The Land Titles Ordinance 1956 came into effect in 1960 and till today there still are pockets of land which have not been brought under its coverage. For a start this is embarrassing. More important, to have two systems of land dealings, one at common law requiring deeds and the registration of the deeds under the Registration of Deeds Act, and the other under the Land Titles Act, operating simultaneously is clearly inconvenient and unnecessarily expensive. Moreover the interpretation of the Registration of Deeds Act has always been problematical, and the law is becoming more obscure. Therefore the dawning of the day when all land in Singapore is governed by the Land Titles Act is looked forward to with much anticipation.<sup>3</sup> The Land Titles (Amendment) Act also seeks to expedite the bringing of land under the Land Titles Act, and the lapsing of qualified titles. Pre-existing mortgages are specifically taken care of, enabling them to be notified on the register. Caveats registered under the Registration of Deeds Act are to be notified as caveats under the Land Titles Act. On the other hand pre existing restrictive covenants, which may well be out of tune with current planning and zoning laws, will lapse within a given period. Other amendments include minor amendments aimed at facilitating the administration of the Register.

### I. AMENDMENTS TO EXPEDITE THE BRINGING OF UNREGISTERED LAND UNDER THE LAND TITLES ACT

Under the Land Titles (Amendment) Act 2001, Part III of the LTA is now divided into three divisions instead of two. The new Division 1, with the heading "Bringing land under the Act on alienation," contains the original

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<sup>1</sup> No 25 of 2001. It came into force on 20 August 2001. See S390/2001.

<sup>2</sup> Cap 157, 1994 Rev Ed (referred to in this note as "the LTA").

<sup>3</sup> Whether this will hasten the day when a person can do his own conveyancing is another matter. But at least we can focus on the LTA and its construction.

sections 8-18. Division 2, under the heading "Applications and schemes to bring land under this Act," covers new sections 19 to 24A.<sup>4</sup> Division 3, under the heading "Qualified titles and caveats," comprises sections 25-27 as amended. With the amendments, land may be brought under the Land Titles Act as set out below.

#### *A. On alienation by the State*

Under section 8 on the alienation of land by the State in whatever tenure, the land will be alienated with a title issued under the LTA. The only change here relates to the removal of restraint on the length of the leasehold that an owner must have before he is qualified to apply.<sup>5</sup>

#### *B. On surrender of old title*<sup>6</sup>

Where fresh titles are required, usually on the proposed development of land, the owner may surrender his old titles to the State and have fresh titles issued. Where the titles surrendered are of different tenures, section 9 applies and where the titles surrendered are of the same tenure section 10 applies.

Under section 9 parcels of land under different tenure, whether registered or unregistered, may be surrendered to the State for reissue of one or more titles of the same tenure. Prior to the surrender, the owner may, with the consent of the authorities including the Registrar, effect a mortgage on the lands. Where the land is unregistered land the mortgagee may have his mortgage registered in the Registry of Deeds after which he may then apply to have his mortgage notified on the folio when the land becomes registered land.<sup>7</sup> Pending the creation of the new folio, the Registrar shall register the mortgage on the provisional register and on the land being brought under the LTA with the reissue of title, the Registrar shall notify the mortgage on the newly created folio. Such notified mortgages shall be regarded as a registered mortgage inasmuch as the powers of the mortgagee are concerned. Where land so mortgaged has been sold, the deed of transfer, with the consent of the Registrar, may be registered under the Registry of Deeds. The fresh title when issued will be done in the name of the purchaser.<sup>8</sup>

Where a title to unregistered land with subsisting caveats, registered under the Registration of Deeds Act, is surrendered, section 11 contains

<sup>4</sup> The former ss 19 to 24 LTA have been repealed.

<sup>5</sup> S 5 Land Titles (Amendment) Act.

<sup>6</sup> This part has not been amended and is included in this note for a more complete view of the provisions for bringing land under the LTA.

<sup>7</sup> Without such application the Registrar is not required to record a notification in the new folio when it is created. S 9(2)(d) LTA.

<sup>8</sup> S 9(2)(e) & (f) LTA.

provisions enabling these caveators to lodge a caveat under section 115 LTA before the issuance of a fresh title.<sup>9</sup> The fresh title when issued is freed from all interests in respect of which the caveats were registered under the Registration of Deeds Act.<sup>10</sup>

### C. Voluntary applications

This is under an entirely new division.<sup>11</sup> Sections 19-24 of the 1994 edition of the LTA have been repealed and substituted by new provisions and a new section 24A. These cover voluntary applications as well as those initiated by the Registrar and those activated by application for subdivision.

Unregistered land of any tenure, fee simple, estate in perpetuity or a leasehold, may be brought under the LTA.<sup>12</sup> The person claiming to be the owner either at law or in equity of unregistered land, or the trustees for sale of the land, may apply to have the land brought under the LTA.<sup>13</sup> A mortgagor may apply to have the land mortgaged brought under the LTA with the consent of the mortgagee.<sup>14</sup>

The title issued may be qualified or unqualified.<sup>15</sup> Any folio, whether qualified or unqualified, may be qualified as to boundaries.<sup>16</sup> The Registrar is required to notify on the folio all mortgages and other encumbrances existing at the time when the land is brought under the LTA.<sup>17</sup>

Notified mortgages are deemed to be registered mortgages under the LTA.<sup>18</sup> They are adequately protected. As provided by section 24(3), documents relating to other encumbrances such as trusts, probates and letters of settlement, continue to be governed by the Registration of Deeds Act. However this does not adequately protect the interests concerned even though the title issued may be a qualified one. Persons having interests under these documents should lodge caveats under section 115(1) LTA so that they remain protected under the caveat provisions even when the title becomes unqualified.<sup>19</sup>

<sup>9</sup> S 11 (1) LTA.

<sup>10</sup> S 11 LTA.

<sup>11</sup> S 7 Land Titles (Amendment) Act.

<sup>12</sup> Under the former provision, apart from fee simples and the estates in perpetuity, only leases of over ten years could be brought under the Act. Although under the current s 19(1) the leasehold may be of any duration, since s 46(1) provides that only a lease of over seven years need be registered for purposes of indefeasibility of title, it must be assumed that for a primary application only a lease of more than seven years will be given a folio.

<sup>13</sup> S 20(1) LTA, as amended.

<sup>14</sup> S 20(4) LTA, as amended.

<sup>15</sup> S 19 LTA, as amended.

<sup>16</sup> Ss 16 and 19(3) LTA, as amended.

<sup>17</sup> S 19(2) LTA, as amended.

<sup>18</sup> S 24(1) LTA, as amended. The protection of a notification applies only to mortgages and leases registered under the Registration of Deeds Act, this would cover equitable mortgages, charges and liens which are registered.

<sup>19</sup> S 25 LTA, as amended (see *infra*).

As a further protection for the person who claims a pre existing interest and who may not have lodged a caveat either under the Registration of Deeds Act or under section 115 LTA, section 25(3) LTA as amended enjoins the proprietor to lodge with the Registrar a statement setting out the particulars of any subsisting interest affecting the land which is known to him, and not already notified on the folio.<sup>20</sup>

#### D. Registrar's initiative

The Registrar may, if he thinks fit, have any unregistered land brought under the LTA.<sup>21</sup> Where he so decides he must notify the owner (as shown on the records of the Registry of Deeds) of his intention and he must require the owner to produce his documents of title for cancellation.<sup>22</sup> The Registrar may also bring land under the LTA where a deed on conveyance is presented for registration under the Registration of Deeds Act.<sup>23</sup>

The Registrar may issue a subsidiary certificate of title to the owner of a flat erected on unregistered land where the lease of the flat has been registered in the Registry of Deeds. This the Registrar may do from the records in the Registry, even though the owner is not able to produce the lease.<sup>24</sup> The subsidiary certificate of title shall also state the owner's share in the land on which the flat stands or the land appurtenant to the flat.<sup>25</sup> These situations for conversion of unregistered land were provided for under the 1994 edition, but the new provisions expressly give the Registrar wider powers to compulsorily bring the land under the LTA.<sup>26</sup>

There are no provisions for protecting existing mortgages and other encumbrances. This omission may well indicate that the Registrar will only so act to bring the land under the LTA if he is satisfied from the available records in the Registry of Deeds that there are no apparent encumbrances affecting the land. In any event if he should issue a qualified title then any existing encumbrance will be protected for as long as the title remains a qualified one.

Section 24A, which is new, empowers the Registrar to issue a subsidiary certificate of title in respect of a subsisting lease for a flat in a building erected on unregistered land. The title issued is to be based on existing records at the Registry of Deeds and the owner of the lease is not required to produce any document for cancellation.<sup>27</sup> Additionally where it appears

<sup>20</sup> Discussed under Qualified Titles, *infra*.

<sup>21</sup> S 21 LTA, as amended.

<sup>22</sup> S 21(2) & (3) LTA, as amended.

<sup>23</sup> S 21 (6) LTA, as amended.

<sup>24</sup> But he is required to have a notice to this effect in the daily newspaper and to notify the owner. See s24A(2) LTA, as amended.

<sup>25</sup> This is regardless of whether the owner of the flat has had a transfer of a share of the land to him. See s 24A (4) LTA, as amended.

<sup>26</sup> See *eg* s 21(3), (4) & (5) LTA, as amended.

<sup>27</sup> S 24A(1) & (2) LTA, as amended.

from the records in the Registry of Deeds that the owner has a share in the land on which the flat stands or a share in the land appurtenant to the flat which forms part of the development, the Registrar may so endorse on the subsidiary certificate of title notwithstanding any omission to transfer the relevant share of the land to the owner of the flat.<sup>28</sup>

#### E. *On subdivision*

Where permission under the Planning Act has been given for development and subdivision of unregistered land, the Registrar may, by refusing to register any assurance of the land or any part of it under the Registration of Deeds Act, indirectly compel the bringing of the land under the LTA under the provisions of either Division 1 or 2 of the LTA.<sup>29</sup> Unregistered land shall be exempt from being compulsorily converted where permission for subdivision was previously granted and an assurance of part of the subdivided building was registered under the Registration of Deeds Act 1968. However even in such a situation should the entire subdivided building become vested in one proprietor at any time on or after 15 May 1968, the Registrar may refuse to register any assurances under the Registration of Deeds Act and require the land to be brought under the LTA.<sup>30</sup>

The impact of the new provisions is that the Registrar has the power to bring the land under the Land Titles Act, sweeping aside any erstwhile obstacles, including that of lost documents of title.<sup>31</sup> As if to underscore the point that the Registrar will be generous in the exercise of his discretion to bring lands under the LTA and will not be overly concerned with niceties like proper description of the parcels of land, a new subsection (c) has been included in section 155. This absolves the Assurance Fund from loss sustained as a result of any incorrect description or the lack of a description or dimension of the parcels where no survey has been carried out.<sup>32</sup> The new provisions clearly show a determination to have the pockets of land still left under the old system brought under the LTA as soon as possible. Persons having pre existing encumbrances are given adequate protection, especially mortgages where the assurances are registered under the Registration of Deeds. In any event, qualified titles, which remain available, give limited protection to pre existing encumbrances. But even these are now no longer permitted to linger for too long a time.<sup>33</sup> Persons who have pre existing encumbrances should avail themselves of the caveat machinery. The LTA as amended also permits the Registrar to notify

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<sup>28</sup> S 24A (4) LTA, as amended.

<sup>29</sup> S 22(1) & (2) LTA as amended, replacing section 23 LTA, 1994 Rev Ed.

<sup>30</sup> S 22 (4) LTA, as amended.

<sup>31</sup> Ss21 (5) & 24A(1) & (4) LTA, as amended.

<sup>32</sup> S 31 Land Titles Amendment Act.

<sup>33</sup> See *infra*.

caveats registered under the Registration of Deeds Act as caveats lodged under section 115 LTA. Thus even though the registered title may be unqualified, pre existing encumbrances are given adequate protection.

## II. QUALIFIED TITLES

The Registrar may issue either a qualified or unqualified title.<sup>34</sup> Where the title is a qualified one there is a caution entered on the folio. The effect of the caution is that encumbrances such as leases and mortgages that were subsisting when the land was brought under the LTA continue to bind the title.<sup>35</sup> The continued binding effect of these pre existing encumbrances does not depend on any notification on the folio. But as soon as the title becomes an unqualified one, unless so notified, these pre existing encumbrances will lapse.<sup>36</sup>

Under the amended section 25 a caution can lapse on the happening of one of two eventualities.<sup>37</sup> First section 25(2)(a) LTA, as amended, provides that in favour of a purchaser, the qualified title will lapse on the expiration of five years from the date of the last deed cancelled by the Registrar on the creation of the folio.<sup>38</sup> Additionally the caution will now also lapse on the expiration of ten years from the creation of the folio or 24 months after the commencement of the Amendment Act, whichever is the later. In other words once a qualified title is issued it is only a matter of a maximum of 10 years or 24 months from the date of the commencement of the LT(Amendment) Act before the title will be an unqualified one. The caution then becomes a defunct one and the Registrar may cancel the caution either on application of the proprietor or on his own motion.<sup>39</sup> The cancellation by the Registrar is a consequence of the caution having become defunct, the cancellation is not the cause of its lapse. Once a title is unqualified pre existing encumbrances will be wiped out unless they have been notified on the folio.<sup>40</sup>

Section 25(2) as amended is welcomed. It is now clear that the lapsing of the caution whether in favour of the purchaser or simply through lapse of time causes the folio to be unqualified automatically and the title is henceforth indefeasible except as expressly provided in section 46.<sup>41</sup> In view of this, the retention of section 26, which permits a proprietor of land with a qualified title to apply for the cancellation of the caution on proof of

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<sup>34</sup> S19(2) LTA, as amended.

<sup>35</sup> S 25(1) LTA.

<sup>36</sup> S 25(5) LTA.

<sup>37</sup> S 8 Land Titles (Amendment) Act repealed the old subsect (2) and substituted for it a new one.

<sup>38</sup> This provision is similar to the former section 25(2) LTA, 1994 Rev Ed.

<sup>39</sup> S 25(4) LTA, as amended.

<sup>40</sup> S 25(5) LTA.

<sup>41</sup> S 25(5) LTA.

ownership for twelve years and on proof that there are no outstanding interests which have not been notified, is curious. Its continued presence, particularly with the decision of *Shell Eastern Pte Ltd v Goh Chor Cheok*,<sup>42</sup> causes unnecessary doubts to linger.

A pre existing encumbrance can come to the Registrar's attention in one of two ways. First the encumbrance may be protected by a caveat lodged under section 115, in anticipation of the land being brought under the LTA or for so long as the title remains a qualified one.<sup>43</sup> Second, the newly registered proprietor of the land is required to lodge with the Registrar a statement setting out the subsisting interests affecting the land which is known to him and which is not already notified on the folio.<sup>44</sup> These provisions are not new but the extension of these provisions to apply to even unqualified titles is.<sup>45</sup> Section 27(1) LTA enjoins the Registrar to enter a notification of interests protected by such caveats as well as those which came to his attention in any other way. The duty on a proprietor to lodge a statement of subsisting interests is supported by a provision making it an offence if he were to dispose of the land, knowing that there was such an interest, without making such a statement.<sup>46</sup> Once these subsisting interests are notified, they will be protected under section 46(1)<sup>47</sup>. If a subsisting interest is not so notified, it will not be enforceable against the proprietor when his title is an unqualified one. However with section 27 such a happening would be rare.

Section 27(3A) Land Titles Act<sup>48</sup> extends the continued protection of subsisting interests by allowing subsisting claims to an interest in respect of which a caveat under the Registration of Deeds Act has been registered, to be notified on the folio as if the caveator had lodged a caveat under section 115(2)(b) LTA. The effect is that a proprietor of the land may then not deal with the land without the consent of the caveator.

It would seem that the 2001 amendments have given more protection to subsisting interests in unregistered land when they are brought under the LTA. First, as before, subsisting interests may be notified so as to bind the registered title as a notification within section 46(1) LTA, examples are mortgages registered under the Registration of Deeds Act. Second, caveats registered under the Registration of Deeds Act, are to be notified on the relevant folio as if they were caveats lodged under section 115(2)(b) LTA. While such notifications are not within section 46(1) as exceptions to

<sup>42</sup> [2000] 1 SLR 45.

<sup>43</sup> S 27(2) LTA, as amended.

<sup>44</sup> S 27 (3) LTA, as amended.

<sup>45</sup> The word 'qualified' is deleted from s 27(1), (2) and (4) (and the marginal note) LTA. See s 9 Land Titles (Amendment) Act.

<sup>46</sup> S 27(4).

<sup>47</sup> S 25(5) LTA.

<sup>48</sup> S 9 Land Titles (Amendment) Act.

indefeasibility, the caveators are nevertheless given the protection of the caveat machinery.

These new provisions operate to further allay fears that subsisting interests will be wiped out when the land is brought under the LTA.

### III. AMENDMENTS AFFECTING DURATION OF RESTRICTIVE COVENANTS

While precautions are in place for noting pre existing encumbrances it is also evident that certain of these such as restrictive covenants may be outdated and so may hamper development of the land.

A new provision, section 141(1A) provides for the situation where the restrictive covenant was entered into before the land came under the LTA and the owner of the servient land is not the covenantor. In such circumstances the restrictive covenant shall lapse on one of three events, whichever be the later: (a) the expiry of 20 years from the date the covenant was entered into, (b) the expiry of 5 years from the date of notification of the covenant in the register, or (c) on the expiry of 24 months from the date when the Land Titles Amendment Act 2001 came into force. This serves to prevent restrictive covenants that have been made before the land was brought under the LTA, from cluttering the title unnecessarily. Section 141 (1B) states that the Registrar, either on his own motion or on the application of the covenantor, may cancel the notification on it lapse. Where the restrictive covenant is still relevant it may be extended.

The initial lifespan of a restrictive covenant is 20 years from the date of entry of the notification on the register.<sup>49</sup> This may be extended for a further 10 years<sup>50</sup> and further extensions for further periods of 10 years may be made where the restrictive covenant is still enforceable.<sup>51</sup> This law has not been changed.

### IV. AMENDMENTS RELATING TO REGISTRATION

The system of registration of title relies on accurate description of the property to be dealt with. Hence a new section 54A requires a proprietor who intends to sell a part of any land or building to obtain from the Chief Surveyor a lot or strata lot number or alternatively he must first have lodged with the Registrar a schedule and plan of the proposed subdivision showing the new property addresses.<sup>52</sup>

All instruments relating to dealings with registered land require the endorsement on the instrument of a certificate of correctness. Under the old section 59(3) LTA it was assumed that the parties to the dealing would be

<sup>49</sup> S 141(1) LTA, as amended by s 28 Land Titles Amendment Act.

<sup>50</sup> S 141(2) LTA 1994 Rev Ed.

<sup>51</sup> S 141(3) LTA 1994 Rev Ed.

<sup>52</sup> S 18 Land Titles Amendment Act.

represented by solicitors, and the occasion where the parties act or themselves is provided for as an exception. The old section 59(3) has been deleted and replaced by a new subsection 3, which provides for the occasion where the parties do not act through solicitors as an alternative rather than as an exception.<sup>53</sup> This is a clear indication that the hope is that solicitors may no longer be necessary as agents in dealings with land.

A new section 60A sets out clearly the manner for effecting service of any notice required to be sent under the Act.<sup>54</sup> The methods are by ordinary post, by facsimile transmission, the notice being left at the last known address of the addressee, and lastly by publishing a copy of the notice in one or more of the daily newspapers circulating in Singapore. The new provision also sets out the dates of service where the different method of service is used.

#### V. AMENDMENTS AFFECTING CO-OWNERSHIP

While the provision for a declaration converting a tenancy in common into a joint tenancy<sup>55</sup> and the converse for severing a joint tenancy into a tenancy in common<sup>56</sup> have been welcomed, there remained some uncertainty relating to the issue of the quantum of the interest that the other co owner must have in either case. Section 16, Land Titles (Amendment) Act now confirms that tenants in common who wish to convert their co ownership into a joint tenancy must be entitled in equal shares. In the same way where a joint tenant severs his joint tenancy by a unilateral declaration he will hold together with the remaining joint tenants in equal shares.<sup>57</sup>

The unilateral declaration must be registered to be effective under the LTA. However in order to register the instrument of declaration the proprietor must produce the duplicate certificate of title. This can be difficult where the certificate of title is kept by the other joint tenant, who is not happy about the severance. Where the instrument of title is not registered issues arise as to whether the severance is effective.<sup>58</sup> Such problems may well be obviated now with a new subsection 8 for section 53, which permits the Registrar to register the severance without the production of the duplicate certificate of title.<sup>59</sup>

<sup>53</sup> S 19 Land Titles (Amendment) Act.

<sup>54</sup> S 21 Land Titles (Amendment) Act. The old provision did not contain any clear instructions as to the manner of communication of notices under the LTA. But by implication from section 60(3) (now deleted by s 20 Land Titles (Amendment) Act) if it was sent by registered post, it would be presumed to have been served after two days from the date of posting.

<sup>55</sup> S 53(3) LTA and s 66A(1) Conveyancing and Law of Property Act.

<sup>56</sup> S 53(6) LTA and s 66A(4) Conveyancing and Law of Property Act.

<sup>57</sup> The nature of a joint tenancy necessitates equality of shares.

<sup>58</sup> *Diaz v Diaz* [1998] 1 SLR 361.

<sup>59</sup> S 16 Land Titles (Amendment) Act.

## VI. AMENDMENTS AFFECTING INDEFEASIBILITY AND THE LAND REGISTER

A significant amendment affecting the indefeasibility of the registered title is the deletion of 'bankruptcy proceeding' from the effect of notice in section 47.<sup>60</sup> This means a bankruptcy of a proprietor will affect a purchaser where he had notice of the bankruptcy proceeding. This then allows a registered title to be affected by the equitable doctrine of notice and not merely actual fraud. Arguably the justification for this crack in the mirror of the indefeasible title is the protection of creditors of the erstwhile proprietor who have no way of preventing the proprietor from disposing of his land.<sup>61</sup> The intending purchaser on the other hand can easily conduct a search on whether the vendor is a bankrupt or whether he is involved in on going bankruptcy proceedings.

In the registration of an assignment or a subletting of a lease, section 90 LTA states expressly that the Registrar is not concerned with whether the assignment is in breach of covenant. This is as it should be; even at common law an assignment or a subletting without consent where such is required is good. Prior to the amendment, however, the section went on to say that should the Registrar be given evidence that the dealing was with consent this should be noted in the memorial of registration. This part is now deleted by section 23 of the Land Titles Amendment Act. This makes quite clear that the land register is to be unconcerned with covenants.<sup>62</sup>

## VII. MISCELLANEOUS AMENDMENTS OF NOTE

One of the miscellaneous amendments worthy of note is that relating to the vesting of mortgages issued by a bank on its being merged with another. Where a bank merger has received a certificate of approval under section 14A Banking Act<sup>63</sup> the mortgages of the pre merger individual banks will be vested in the merged bank.<sup>64</sup> The new section 145(3) LTA simplifies the procedure for the Registrar to enter a memorial of the vesting on the register. He will so enter on the receipt of an application by the new merged bank.

The amendment of section 110 by the addition of subsection (1A) emphasises the necessity for the Official Assignee to have a transmission

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<sup>60</sup> S 15 Land Titles (Amendment) Act.

<sup>61</sup> This new law will not affect dealings including a contract with the proprietor dated before the Land Titles (Amendment) Act came into effect. S 35 Land Titles (Amendment) Act.

<sup>62</sup> Cf s166 LTA which permits a proprietor who is holding the land in a fiduciary capacity to be described as a trustee in the folio. But the terms of the trust shall be off the register. In any event any person dealing with the proprietor is not required to enquire into whether the sale or other disposition is within the powers of the trustee.

<sup>63</sup> Cap 19, 1999 Rev Ed.

<sup>64</sup> Para 4(c), Fifth Schedule, *ibid*.

registered in his favour of the bankrupt's land before they can be sold by him.