

CHAPTER 19

REGISTRY PROCEDURE

1 Prefatory

1. In this chapter we propose to describe the course of a registered dealing from the moment an application for registration is made to the land registry until the final action is completed. The Registrar-General¹ of New South Wales kindly provided us with an account of 'bringing land under the Act' (as they term a first registration under the Torrens system), and also of the procedure on an ordinary transfer, as well as a 'transfer of part' (i.e. a transfer of part of land in a registered title, thus involving a subdivision).

1.2 We then sent this account to Mr N U A Hogg of the Nottingham District Land Registry in England who had also kindly agreed to help us. We invited him to describe the English procedure in the same manner, making any particular points of comparison or contrast that appeared to him to be of interest, especially to overseas readers of this book.²

1.3 Both these accounts, however, are of procedures where registered conveyancing not only proceeds side by side with 'unregistered conveyancing' (or 'general law conveyancing' as they call it in Australia) but also is almost invariably conducted with professional advice and assistance. These procedures include provision for first registration which in England and Australia is made in the Statute governing registration of title and is part of the day-to-day operation of the registry. We have therefore added a description of the procedure used where all the land in declared areas has been brought on to the register by a process of systematic adjudication as described in Chapter 15. In this procedure, it is envisaged that the parties to a transaction often will not seek legal advice but will rely on registry staff to fill in the necessary form on their behalf (as generally happens in the Sudan and West Malaysia). Finally, we give a brief account of 'instant registration', which is being tried in Victoria in British Columbia, Canada;³ the system has not yet been extended to other offices in that province.

¹ 'Mr J H Watson (who has visited land registries in no fewer than thirty-four different jurisdictions all over the world, though not as yet including tropical Africa) has shown great interest in our project and has been particularly helpful.

² For several years Mr Hogg has received at the Nottingham District Land Registry parties of post-graduate students from overseas studying land administration at the

Cambridge University Department of Land Economy, and he is therefore well familiar with what particularly interests them. He has also read and commented on a first draft of this book, and so understands our general purpose.

³ We are indebted to Mr H T Kennedy, Registrar of Titles in Victoria, for this account.

2 Bringing land under the New South Wales Real Property Act 1900¹

2.1 Land not subject to the Real Property Act 1900 may be brought under it in three ways: (1) registration of a grant from the Crown (Part VI), (2) voluntary application (or ‘primary application’, as it is called in the Act) (Parts IV and VA), or (3) compulsory conversion by the Registrar-General (Part IVA).

(1) REGISTRATION OF CROWN GRANTS

2.2 It is provided that “every Crown grant and certificate of title is duly registered” as soon as it has been allotted a volume number and a folio number and has been recorded in the Register (s32). This is the ‘automatic feed-in’ to the Torrens register that we have described in Chapter 11² and we need say no more about it here.

(2) VOLUNTARY APPLICATION

2.3 *Who may apply.* Any person having a power of appointment over or claiming to be entitled to an estate in fee simple either at law or in equity, or to an estate in possession, or in reversion, or in remainder, or a leasehold for a life or for lives or for a term with not less than twenty-five years still current, may apply to the Registrar-General to bring the particular estate under the provisions of the Act (s44(2)).³

2.4 *Form of application.* The application must be in the approved form. This is a statutory declaration by the applicant as to his ownership of the land delineated on an accompanying plan of survey, prepared for registration as a deposited plan (s114) unless it is already shown on a registered plan. The names and addresses of the owners and occupiers of all contiguous lands are set out, and in a schedule is a

¹ Writing in 1905, James Edward Hogg said that the New South Wales Real Property Act 1900 “must be regarded as the lowest and least improved type” of the Australasian statutes (Hogg *Australian Torrens System* 47). By 1970 this Act had been amended no fewer than fifteen times although it still retains its original long title – ‘An Act to consolidate the Acts relating to the declaration of title to land and the facilitation of its transfer’ – and therefore no new law would be expected in it but only a better presentation of the existing law (as contained in the original Act of 1862 and amending Acts of 1873, 1878, 1893 (two), 1894, and 1897). The amendments since 1900, however, have been substantial. For example, in 1967 qualified titles were introduced together with a process of compulsory registration for titles stemming from Crown grants made before 1 January

1863 (and so before the time when all Crown grants had to be registered). The change has also been made from bound to loose-leaf registers. It is evident that, down the years, a tremendous amount of energy and expertise has been devoted to the consideration of problems which are just as pressing in other Australian States and which grew from the same origins in much the same circumstances. In the neighbouring State of Victoria there was a brand new Act in 1954. It is as if each of the English district registries were to work out its own procedure and law, and it is a striking illustration of the wastefulness of the state rather than the federal approach, which we have already criticized (see 16.2.2-3).

² See 11.5

³ Only a close knowledge of the meaning of the technical terms of English land law will make this intelligible (see 3.5.3).

list in chronological order of all the deeds and other evidences of title upon which the claim is based. The application is liable to stamp duty.

2.5 Lodgement. The application is lodged by hand at the Examiners Branch together with the evidences of title upon which the applicant relies. The prescribed fees are paid, and the application is allotted an identification number.

2.6 Preliminary investigation by Survey Drafting Branch. The application is first referred to the Survey Drafting Branch where the application number is charted on relevant maps and plans and information (as to likely common chains of title already investigated and accepted by the Department) obtained for the guidance of the Search Branch. At this stage, prints of the application plan are also prepared and despatched, by way of early notice, to such Commonwealth and State Departments and statutory bodies as may own adjoining parcels of land or be otherwise interested in the application.

2.7 Search Branch. The application is then referred to Search Branch for the appropriate searches. Searches are made in various registers against the applicant and his predecessors in title for entries relating to interests which may affect the title. At present searches are made in the General Register of Deeds, the Register of Causes, Writs and Orders affecting land, the Register of Resumptions, and, in appropriate cases, indexes kept by the Equity Office of the Supreme Court of New South Wales and the Australian Bankruptcy Office.

2.8 Survey investigation. When searches have been completed, the case is referred back to Survey Drafting Branch where an investigating draftsman carries out his survey investigation of the application plan, makes requisitions, if need be, on the surveyor, checks the land descriptions in the applicant's deeds and examines the search papers. He then prepares a report for the Examiner of Titles on survey aspects of the applicant's title, the relevance of entries in the search papers and on other matters touching plan presentation and the manner of preparation of the certificate of title.

2.9 Title investigation, and advertisement. The application is next considered by an Examiner of Titles who investigates the title of the applicant. If title investigation proves satisfactory and survey requisitions (if any) have been satisfied, the application is advertised by the Registrar-General in the Government Gazette, and, in applications based on possession, in appropriate newspapers (s17(2)). The advertisement sets a period (of not less than one month – usually thirty-five days) for lodgement of caveats against the application; in certain circumstances the caveat period may be extended by the Registrar-General (s17(3)). Notice (accompanied by a print of the application plan) is also given to the relevant local government authority and to the owners and occupiers of contiguous lands specified in the application. If a caveat is lodged, further processing is suspended until the caveat is disposed of (ss25 and 26).

2.10 Final stage. When the advertisement period expires and all requisitions have been satisfied, the applicant makes a final declaration as to his title, the plan (if not already registered) is registered as a deposited plan, the certificate of title is prepared and, final searches proving satisfactory, issued. Land indexing, charting on relevant maps and plans, and cancellation of the common law documents of title complete the processing.

2.11 *Applications by statutory bodies* (Part VA). Where a statutory authority has compulsorily acquired an estate, the authority may apply for conversion (s31A). The application does not have to be in any prescribed form, but in practice applications are made in the form suggested by the Registrar-General. As the vesting is statutory, no searches are made and the application is not advertised. The applicant's title is considered by a legal officer who, when satisfied, directs issue of the certificate of title.

2.12 *Time taken*. At the beginning of 1974, there was a time lapse of some ten weeks between lodgement of a primary application and allotment to an examiner, and a time lapse of some twenty-eight weeks between lodgement and the issue of a certificate of title.

(3) COMPULSORY CONVERSION

2.13 *Qualified certificates of title*. In 1967 a new Part (Part IVA) was added to the Real Property Act to make provision for 'qualified certificates of title' to be issued when the land is adequately defined without need for further survey definition and to empower the Registrar-General, of his own motion, to convert land held on common law title (i.e. land alienated from the Crown in fee but not subject to the Act) to Torrens title by the issue of such a certificate. The qualified certificate of title is a title upon which has been entered a caution warning persons dealing with the registered proprietor that the land comprised therein is held subject to any subsisting interest, whether recorded thereon or not (s28J). The Registrar-General was also given power to issue a qualified certificate on a voluntary application (s28B), but almost invariably issues an ordinary (i.e. absolute) certificate; in other words, he has not found occasion to take advantage of this power.

2.14 *Removal of cautions*. Provision is made for the lapsing of a caution, after a period of six years, in favour of a registered proprietor who has acquired a qualified title for valuable consideration and without fraud (s28M(3)) and applies to the Registrar-General for the cancellation of the caution. A person in whose favour a qualified certificate was originally issued is not an eligible applicant, although of course there is nothing to prevent him from lodging a 'primary application'. The effect of cancelling a caution is that the certificate of title ceases to be qualified and emerges as a full Torrens title, subject only to such interests as may be notified thereon or are preserved by s42 of the Act (which sets out the exceptions to paramountcy).

2.15 The policy has been to initiate compulsory conversion upon lodgement for registration of

A. Conveyances and mortgages for value where the land is described in the deed as a lot or lots in a registered plan of acceptable survey standard, and

B. Plans of subdivision, where the plan is acceptable and the title of the subdividing owner is evidenced by a conveyance or mortgage for value.

2.16 It should be noted that it is not the practice to issue a qualified certificate of title where the owner's title contains manifest defects or is based upon possession

(though to English eyes these might appear to be just the occasions when a provisional title is indicated). Some 13,000 qualified certificates of title were issued in the first six years of the operation of this policy¹. The following is a description of the procedure.

A. *Action on retained deeds*

2.17 When a conveyance for value or a first mortgage (with an apparently acceptable land description) is lodged for registration under the Registration of Deeds Act 1897, it is retained and a file (with a progressive identification number) opened for subsequent processing. The case is then referred to Survey Drafting Branch where an investigating draftsman satisfies himself that the plan referred to in the deed is suitable for the issue of a qualified certificate of title. In his report to the legal officer he gives particulars of the original grant from the Crown and of any deed (not more than thirty years old) which affects the subject land and which has been previously investigated and accepted by the Department (see s28J(2)(3)) and draws attention to encroachments, mineral exceptions, incumbrances, interests and other relevant matters which have come to his attention in the course of his investigation.

2.18 A legal officer next considers the deed and the draftsman's report, and, if satisfied on the available evidence as to title, directs the despatch to the apparent legal owner of a notice pursuant to s28E, Real Property Act 1900. This notice is in form a questionnaire seeking confirmation of the addressee's title and information as to mortgages and other incumbrances, contracts, casements, restrictive covenants, mineral exceptions, persons in possession and the nature of their possession, etc.

2.19 If the legal officer, upon return of his questionnaire duly completed, is satisfied with the information furnished, he settles the notifications to be entered on the qualified certificate and directs its issue. A caution is entered on the certificate to warn persons dealing with the registered proprietor that the land comprised therein is held subject to any subsisting interest, whether recorded thereon or not (s28J); this caution may be amplified to refer to specific interests which have come to the notice of the Registrar-General. In appropriate cases (see e.g. s28F) the Registrar-General will also enter his caveat to protect the interests of a mortgagee, second and subsequent mortgagees, and purchasers under contract.

2.20 Immediately after issuing a qualified certificate of title the Registrar-General is required to issue a memorandum thereof to be registered in the General Register of Deeds kept under the Registration of Deeds Act 1897 (s28H(1)). The fact of issue is then advertised in a local newspaper and notice (accompanied by a print of the plan) given to the appropriate local government authority. The deed which initiated the action is returned to the lodging party; land indexing and final charting on maps and plans complete the processing.

¹ In Kenya the process of systematic adjudication described in Chapter 15 achieved, in ten years, the registration with

absolute title of 247,582 parcels of land (see 15.10.1).

B. Action on plans of subdivision

2.21 In the course of his investigation of a plan of subdivision of common law land, the investigating draftsman considers its suitability for the issue of qualified certificates of title. For this purpose he is furnished with a photocopy (from the records of Deeds Registration Branch) of the subdivider's latest title deed. If satisfied that the plan is suitable for Part IVA action he prepares a report for the legal officer and the case is thereafter dealt with as set out above.

3 Registration of a transfer under the New South Wales Real Property Act 1900

(1) TRANSFER OF WHOLE

3.1 *Receiving clerk.* A transfer is presented at the Receiving Counter of the Land Titles Branch and is accompanied by the relevant certificate of title and a 'receipt' by the lodging party showing his name, the type of instrument, and the fee to be paid. The date, hour and minute (electrically timed) are stamped on the instrument, which is given a cursory check by the Receiving Clerk who also indicates the fee to be paid, and initials the instrument as a receipt for the documents lodged with the transfer.

3.2 *Numbering clerk.* The transfer is then given a lodgement number (purely for identifying purposes, since in this system priority is determined by the time of lodgement), and this number is also placed on the receipt. The fee on the transfer is then checked with that shown on the receipt and, at this stage, the receipt is detached and sent for collection of the fee from the lodging party.

3.3 *Coding clerk.* The transfer then goes to the coding clerk whose function is to indicate the classification of the registration clerk who will undertake the examination of the transfer prior to registration.

3.4 *Punch card operator.* Next, a punch card machine operator punches on cards certain information extracted from the transfer. These cards are verified and separated from the transfer. The cards are machine-sorted and processed by computer to produce delivery sheets, final search sheets, lists of sections of the Register required by registration clerks in coded classifications, and various statistical information.

3.5 *Registration clerk.* The registration clerk compares the transfer with the relevant folio of the Register and checks

- (a) the reference to title,
- (b) the name of the registered proprietor,
- (c) that the estate or interest of the party transferring (fee simple, leasehold, tenants in common) is correctly set out,
- (d) that stamp duty has been paid,
- (e) that any encumbrances recorded on the Register have been noted in the memorandum of prior incumbrances,
- (f) that all parties or their legal representatives have signed the transfer,

- (g) that the correct fee has been paid,
 - (h) that the full postal addresses and occupations of the transferees have been shown,
 - (i) that the transfer is in the correct form and has been sealed.
- After satisfying himself that the transfer is in order the registration clerk directs registration.

3.6 *Memorial writer.* The transfer, together with the folio of the Register and certificate of title, is collected and allocated to a memorial writer who endorses particulars of the new registered proprietor, particulars of the transfer, and the date the memorial is entered, i.e. the date of registration. This date of registration is also shown on the back of the transfer.

3.7 *Signing officer.* The memorial is then checked by a signing officer who affixes the facsimile seal and signature of the Registrar-General to the memorial and to the certificate of registration on the back of the transfer (s38(4)). It is this act of 'signing' which registers the transfer. The signing officer then separates the transfer and the folio of the Register (which are filed) from the certificate of title which proceeds to the Delivery Section.

3.8 *Delivery Section.* On production of the lodgement receipt the certificate of title is delivered to the lodging party from whom a receipt is obtained. All action is then complete. In the ordinary course of events the time taken between lodgement and registration will have been five to six working days.

(2) TRANSFER OF PART

3.9 *Registration clerk.* In the case of transfer of part, the lodgement and examination procedure is identical with that outlined above up to the point where the registration clerk satisfies himself that all statutory requirements etc. have been fulfilled. At this point the registration clerk makes a note of the unregistered transfer in the margin of the folio of the Register and then sends the transfer to the Survey Drafting Branch.

3.10 *Survey Drafting Branch.* The description of the land in the transfer is checked against the certificate of title and relevant departmental map, and a 'draft' is drawn up from which the new certificate of title will be prepared in the name of the transferee.

3.11 *Registration clerk.* The transfer is then returned to the registration clerk who directs registration through the channels already described.

3.12 *Certificate of Title Issue Section.* After this action the case is forwarded to the Certificate of Title Issue Section where it is reconnected to the 'draft' of the new certificate of title which has been forwarded from Survey Drafting Branch. The Register copy of the new certificate of title is completed from the 'draft' by a typist and a photographic reproduction is made for the certificate of title (to be held by the proprietor).

3.13 *Delivery Section.* The old (superseded) certificate of title is detached and retained in the Department. The draft is forwarded to the Records Division to enable the memorial of the transfer on the Register to be noted with the new title reference

while the new certificate of title is sent to the Delivery Section for delivery in the manner already described. The transfer and the folio of the Register are then filed. All action is then complete.

3.14 SPECIAL NOTE. The registration procedure which we have just described for the transfer of part of the land in a certificate of title is now infrequently used because, since 1961, on the registration of a plan of subdivision a new certificate of title is issued for each lot in the subdivision, and each subsequent transfer of a lot thus becomes a transfer of the whole of the land in a certificate.

4 First registration in England and Wales

4.1 The only way in which land can become registered in England and Wales is as a result of an application by an estate owner for 'first registration', the process which in New South Wales is called 'bringing land under the Act'. There is nothing equivalent to the 'automatic feed-in' or the 'compulsory conversion' described in paragraphs 2.2 and 2.13 above. The Chief Land Registrar has no power of his own motion to register land.

4.2 Applications for first registration may be classified as 'compulsory', 'voluntary', and 'non-compulsory'. In certain areas which are termed 'compulsory areas',¹ registration is 'compulsory' on sale or on the grant of a lease for forty years or more. The remainder of the country is referred to as the 'non-compulsory areas'. A compulsory application is one relating to land in a compulsory area occasioned by a compulsory event, i.e. a sale or the grant of a long lease. The expression 'voluntary application' is kept for applications in a compulsory area not occasioned by such an event. A 'non-compulsory' application is any application in a non-compulsory area. Since 1966 applications in non-compulsory areas have been limited to certain specific classes prescribed by the Chief Land Registrar, the most prolific of which is building estates.

4.3 Most applications are sent by post to the appropriate District Land Registry by the applicant's solicitors, but whether sent by post or delivered by hand the course of the application is the same. It goes first to the Taking-in Section who check that the documents said to be lodged are in fact lodged. From there it goes to the section responsible for maintaining the card index of pending applications. Both the index itself and the section that keeps it are known as the Day List. Here, if the application is a first registration it is given a title number and a card with the number on it is inserted in the index. The title number and a short description of the land are also entered in a loose-leaf ledger called the Pending List. The function of the Pending List is to act as a temporary adjunct to the Index Map to cover the period between the application being taken in and the land being entered on the Index Map. As soon as the land has been indexed the entry in the Pending List is deleted. At high values and in certain other cases applications for first registration are advertised in the Land Gazette as a safeguard against fraud and departmental searches in the Land Charges Register against the applicants are bespoken.² This is also the responsibility of the Day List. Before the application leaves the Day List

¹ See 3.14

² See 4.4.8

its receipt is acknowledged and the applicant told the title number allotted and given an estimate of the time the application is expected to take to be completed.

4.4 An application for first registration is required to be made in one of a fairly extensive range of statutory forms. It is usually convenient to use the printed forms sold by the Stationery Office and by law stationers, although there is no obligation to do so. In the same way the list of documents lodged is prepared on a printed form (A 13). When the application has been scrutinized in the Taking-in Section the A13 (in triplicate) is stamped with a rubber 'received' stamp. When the acknowledgement is sent by the Day List one copy of the A13 is enclosed as a receipt for the documents lodged.

4.5 After leaving the Day List an application for first registration will go to a work group to be 'mapped' by a plans officer. This involves four distinct processes:

(1) Identifying the land in the assurance to the applicant (the deed inducing registration or DIR for short). Sometimes a survey may be necessary before the boundaries can be satisfactorily identified; sometimes the files of adjoining registrations must be consulted; sometimes a notice must be served upon an owner of adjoining unregistered land. (In the case of railways and canals it is the policy of the registry always to serve notice on the British Railways Board or British Waterways Board unless the Board's boundary has been established on an earlier application.)

(2) 'Indexing', i.e. entering the identified land on the Index Map. Where the land cannot be immediately identified with precision it is still usually possible to make a sufficient identification to enable a provisional indexing to be made and the Pending List cleared. In most built-up areas the Index Map is divided into sections drawn to a scale of 1/1,250. The actual indexing is then done in a 'parcels book' annexed to each such section.

(3) 'Abstracting', i.e. setting out for the benefit of the examiner which deeds include which parts of the land and any other relevant information from the deed plans. The plans officer will also give the title numbers of any previous registrations (including cautions against first registration).

(4) Lastly, the filed plan itself is prepared together with a copy to sew up in the Land or Charge Certificate.

4.6 After mapping, the case is sent to the examiner. Sometimes of course mapping cannot be completed – sometimes it cannot even be started – until the advice of the examiner on a particular point has been obtained. Although some non-professional officers of the registry have been trained to carry out the simpler examinations – and this trend is likely to be accelerated – the majority of first registrations are examined by qualified lawyers. The registry itself has a number of lawyers on its staff but this is quite insufficient for the task and it has for very many years been the practice to send the simpler and less valuable applications to 'outside counsel', i.e. barristers in private practice who have undertaken to do this work in return for fees and been specially trained in the registry to do it. This system is economical and flexible since, if the work load falls, idle staff do not have to be paid: whereas if it increases counsel may be prepared to work longer hours without any increase in the fee per title.

4.7 Examination of title in the registry for the purpose of seeing what class of title can be given differs fundamentally from the examination normally carried out by those advising purchasers of unregistered land. Not only must such an adviser ensure that the title deduced is a safe holding title but he must also see that it is a 'marketable' title. In other words he must be sure that subsequent purchasers or mortgagees cannot successfully raise technical objections to it. This latter task is much more exacting than the former, but it is a task with which the registry's examiners are not concerned. The Land Registration Act 1925 provides: "if the registrar, upon the examination of any title, is of the opinion that the title is open to objection, but is nevertheless a title the holding under which will not be disturbed, he may approve of such title."¹ This is because the registry does not run the risk of future purchasers successfully raising technical objections. Once the land has been registered all technical flaws in the earlier title are securely hidden behind the curtain of the register. The defects are 'cured' by registration. For this reason an examiner deducing title in (or for) the registry not only may, but, if the costs of registration are to be kept down, must ignore that very aspect of the title which is the major concern of examiners in unregistered conveyancing.²

4.8 The principal responsibilities of the examiner are (a) to see that the mapping has been done in accordance with the title deduced (he is not, of course, concerned with the technical aspects of the mapping, but must satisfy himself that the right deeds have been considered and that they have been correctly construed), (b) to say what class of title the applicant should be registered with, and (c) to give instructions for the drafting of the other entries to go on the register. He may need to raise requisitions with the applicant's solicitors before he can complete a case, but this is unnecessary in the majority of applications for first registration.

4.9 There are seven possible classes of title with which an applicant may be registered; absolute, qualified, or possessory freehold; and absolute, good, qualified, or possessory leasehold.³ The overwhelming majority of freehold registrations are with absolute title and, similarly, the overwhelming majority of leasehold titles are with either absolute or good leasehold title. An absolute title has much the effect that the word 'absolute' itself would suggest. It is guaranteed by the State against all comers and can only be rectified against a proprietor in possession in very limited circumstances. Good leasehold title has the same effect so far as the lease itself is concerned but it does not in any way guarantee the title of the lessor as an absolute leasehold title does. Qualified title, which is extremely rare, is given where there is some specific defect, e.g. a breach of trust, in the title deduced. Possessory title is given where, although there is exclusive possession, there is a more general want of title. The title offered may be too short, the deeds may have been lost in circumstances which are not adequately explained, or there may never have been any deeds (i.e. a squatter's title). All inferior titles may, in appropriate cases, be converted to absolute but only in the case of possessory title is conversion automatic with the passage of time provided that application is made.

¹ s13(c)

³ See 11.11.7

² This important fact should be particularly noted by adjudication officers who are reluctant to accept less than perfect titles.

If there is evidence of continued possession, possessory freehold will be converted to absolute after fifteen years and possessory leasehold to good leasehold after twelve years.

4.10 In giving his instructions for the entries to go on the register the examiner will be careful to see that all exceptions and burdens are entered and that no benefit is entered in wider terms than are justified. It is always much easier to amend the register by adding a benefit or deleting a burden than the other way round. But even in this respect the examiner must have regard to practical realities. Burdens imposed on other land with which the land being registered was once held should not be entered just because they might possibly in certain circumstances also affect the land being registered. The examiner should always be conscious of the fact that the register he is producing needs to be a practical and workmanlike document which will constitute an efficient and easily understood tool in the hands of the proprietor and his advisers.

4.11 When the examination stage is complete the case is returned to the work group where it was mapped to be drafted in accordance with the examiner's instructions, and it is checked to see that these instructions have been properly carried out. The case is then settled and the entries are typed on the register, compared with the draft entries and if necessary corrected. The Land or Charge Certificate is sewn up and placed together with those documents which are being returned (the DIR being suitably marked to show that the land has been registered) in an envelope ready for despatch. On the outside of the envelope is an instruction to the Day List to mark off the application. The last stage, therefore, is for the packet to be sent to Day List for this to be done before it goes to the Post Room to be bagged up with other mail ready for collection by the Post Office. The papers being retained (which include the application form, the form on which the examiner's instructions were given, the draft entry form, a copy of the DIR and any registered charge) pass through the Statistics Section to Filing Branch.

5 Registration of a dealing in England and Wales

(1) DEALING WITH WHOLE

5.1 There are occasions when an entry may be made in or deleted from the register of an existing title without an application being indexed in the Day List (e.g. where there has been a change of name of the parish in which the land is situated). These, however, are few and of no great significance: no substantial alteration is made to the register or the filed plan without an application being taken out and indexed. Such an application is described as a 'dealing'. A dealing is also required where there is an objection to another application and when a claim to compensation arises or may arise. The great majority of dealings are, of course, lodged by applicants or their solicitors; although a dealing may be initiated in the registry (e.g. where an application affecting one title requires a consequential amendment to another or where correspondence appears likely to lead to a claim for rectification or compensation). Special forms are available and are widely used for making applications. If, however, the application is made by letter, a suitable form is prepared in the registry.

5.2 Other applications, which are not classified as dealings, are for office copies of the register and/or the filed plan; for official searches of the register or the Index Map; for an official certificate of inspection of a filed plan; and for a Land or Charge Certificate to be placed on deposit to await another application. Of these only deposits and official searches of the register are entered on the Day List; the former for convenience so that it can easily be ascertained that the certificate is in the Department, the latter in order to preserve priority.

5.3 The commonest dealings are the transfer of whole, often with a discharge of an existing charge and a charge by the purchaser, and the transfer of part, again often with a discharge of part and a charge. The initial procedure for all dealings lodged at the registry is similar to that for first registrations. They go first to the Taking-in Section and then to the Day List, where an application number is allotted and a card (with this number on it and with the title number written in) is inserted in the index. If the application affects more than one title a separate card must be prepared breach with appropriate cross-references. All the cards in the Day List index are filed in sequence of title numbers. If the application is a transfer or charge of part a new title number as well as the application number will be allotted at this stage and a card inserted both for the 'old' and 'new' titles.

5.4 After Day List, transfers of whole go to be drafted in a work group. Unlike first registrations, where specific drafting instructions are given by examiners, dealings are normally drafted by clerical officers in accordance with general instructions. If the drafter is unsure how to proceed he can, of course, refer the matter to his superior. After the entries have been drafted the case is checked, settled, typed, compared and despatched as described in paragraph 4.11 above. Occasionally a dealing with the whole will need at some stage to be referred to the plans staff.

(2) TRANSFER OF PART

5.5 Transfers of part are invariably sent for mapping in much the same way as first registrations. Again, it is necessary to identify the land transferred, to amend the indexing, and to prepare the new filed plan and amend the old. Although there is not any 'abstracting' to be done as in first registrations the plans officer must say what markings (if any) on the old title filed plan affect the land transferred. When the first transfer of part out of a title is received an entry in the following form is made on the register of that title: "The land edged and numbered in green on the filed plan has been removed from this title and registered under the title number or numbers shown in green on the said plan." The land transferred is then surrounded with a green line on the old title filed plan and the new title number is written thereon in green.

5.6 This process of 'greening out' as it is called means that often no entry needs to be made on the old title register when subsequent transfers of part are registered. The application may, therefore, safely be marked off the Day List as soon as the mapping has been completed. This is advantageous because otherwise the Day List is filled with applications that are no longer effective but which must nevertheless be disclosed on subsequent applications and official searches. To assist this process all transfers of part are routed through an official known as the 'glossing officer'

after they leave Day List. It is his duty to look at the application to see whether any entry will be needed on the old title and also whether this is a routine or an extraordinary entry. Routine entries are those which need not be disclosed on subsequent applications because they do not adversely affect the land remaining in the old title. The glossing officer must therefore give one or other of the following instructions to the plans staff on every transfer of part: 'Mark off', 'Do not mark off (R)' or 'Do not mark off (E)'.

5.7 The remaining stages, after mapping, through which a transfer of part passes are similar to those described for other dealings. The considerations which arise on drafting are, however, often very different. Transfers of part frequently grant and reserve easements and impose new restrictive covenants. It is necessary to see that the land over which easements are granted remains in the old title, or, if it has already been removed, that the appropriate reservation was made. The drafter must also consider what entries must be carried forward from the old title to the new. To assist the drafter and to ensure uniformity on large developing estates, known as 'building titles', a record card is prepared by a senior officer which gives clear instructions on these matters. To reduce repetitive typing, use is made of stencilled entries wherever practicable.

5.8 Because of the interlocking nature of transfers of part out of the same title and in order to speed the clearing of the Day List it is necessary to maintain greater control over the passage of these cases through the Department than is justified in the case of other dealings. This is carried out by a section known as 'T/ P Control' which maintains a card index of Deposit Numbers. Since the Land or Charge Certificate of the old title must always be deposited to meet a transfer of part this provides a convenient means of control. A brief record of every dealing with the old title during the life of the deposit is maintained and circulates with the deposit in addition to the card index in T/P Control. If there is a record card this will also travel with the deposit.

5.9 Other measures taken to speed the flow of this work, particularly in the case of building titles, are the prior approval of the estate lay-out plan and of the draft of a common form of transfer. If this is done, and the lay-out plan and the form of transfer are adhered to throughout the development, many of the complications can be obviated. Searches of part can also be made by reference to the plot numbers on the approved estate plan, thereby reducing the number of plans required and so the cost.

6 Registration of a transfer under the Registered Land Act in Kenya

6.1 In this section we describe the procedure on registration of a transfer under an Act like the Registered Land Act described in Book 2. Under such an Act any land that is the subject of a dealing will already have been brought onto the register through a process of systematic adjudication, coupled in some instances with systematic conversion, by examination in the registry, of titles evidenced by

existing registers of deeds, or of titles already registered under other Acts.¹ We described systematic adjudication in detail in Chapter 15 and in Chapter 11 we gave an account of the conversion of a deeds register. There is therefore no need to describe the process of first registration, as in the preceding accounts of Australian and English registry procedures.

6.2 In our description of the procedure for registration of a transfer, however, we must take account of the effect of land control legislation. Where, as in Kenya, there is a Land Control Act like that described in Chapter 12, the consent of the land control board to transfers and other dealings in land must be obtained before the dealing may be registered. The obtaining of this consent is thus an integral part of the transfer procedure. Even where no land control legislation exists, subdivision of a parcel, which is necessary when part of the parcel is transferred, will usually require consent under planning legislation. The procedure for obtaining these consents varies from territory to territory. In some the consent may be obtained prior to the application for registration of the transfer; in others it may be obtained after application has been made. In Kenya the Registrar in charge of a district land registry is automatically the secretary of the land control boards operating within his district. Procedure in that country is that an application for registration of a transfer is presented to the Land Registry before the consent of the board has been obtained; the Registrar himself refers all outstanding applications to the appropriate board at its monthly meeting and the application is not processed until after consent has been accorded. This is the procedure we describe below, but it should be noted how very quickly and simply registration of transfers can be effected when the necessary consent has been obtained prior to the application for registration or when no land control legislation is in force. In many instances the whole process can be completed in a matter of minutes while the parties wait in the registry.

(1) TRANSFER OF WHOLE

6.3 *Application to register a transfer.* Application to register a transfer is made by presenting at the land registry either the ‘instrument of transfer’ prescribed by law, or a request for the preparation of such an instrument. The instrument of transfer is a simple document consisting of a printed form on which it is only necessary to insert the parcel reference number, the names and addresses of the transferor(s) and transferee(s), and the consideration. Thus the form can easily be completed without the services of a legal practitioner although the parties are of course at liberty to employ one if they so wish. It is, however, accepted practice, in several countries for registry staff to provide a free service to the less literate members of the public by helping them to complete the form in the registry at the time of application. The application is usually made by the parties in person (or by their legal representative) at the counter of the registry of the district in which the

¹ In Kenya, for example, the Registered Land Act 1963 s12(1) provides that the folios of the register kept under the Registration of Titles Act” shall be deemed to be registers under the Act” until replaced as opportunity

offers. Section 12(2) provides a process for the conversion of the deeds registers kept under the Government Lands Act and the Land Titles Act.

land is situated, though the statute also allows submission of the instrument to the registrar by post.

6.4 *Entry in the application book.* By whatever method the application is presented, the counter clerk (or whatever the clerk responsible for receiving applications is called) should cursorily examine the application to satisfy himself that it appears to be in order, and should forthwith enter the particulars in the 'application book', according to the application the next consecutive serial number. This serial number must then be inscribed on the instrument itself. Entry of the application in the application book establishes priority but does not, of course, carry any implication that the transfer will necessarily be registered. The consent of the land control board may not be forthcoming or there may be other considerations which prevent registration. If, however, the transaction is registered, then the date of registration is the date of presentation, not the date on which the entry is actually made in the register or the date of the instrument. Where instruments are sent by post, the statute provides that those received during office hours shall be deemed to have been presented simultaneously immediately before the closing of the office on that day; if delivered out of office hours they shall be deemed to be presented immediately after the office is next opened.¹ As we emphasized in Chapter 17² the application book has other advantages: the information in it can easily be extracted for statistical purposes, it shows at a glance the state of action on any particular application, and above all, if properly used, it ensures that no application can be overlooked.

6.5 *Examination of the register.* The next action is for the responsible clerk to examine the application against the register of the parcel concerned to make sure (a) that the applicant is in fact the registered proprietor, (b) that there are no cautions or restrictions that stand in the way of the proposed transfer, and (c) that any incumbrances have been taken into account — in other words, that the right person proposes to make a transfer to which, from the register, there appears to be no objection. In some registries this is a quick and simple process (e.g. where the registers are actually kept under the counter as in Wad Medani in the Sudan), but even if this examination entails a visit to a strong-room, it should be done at once, so that any query can be taken up with the applicant whilst he is still present.

6.6 *Surrender of land certificate.* In those jurisdictions (like Kenya) where provision is made for land certificates to be issued on request and the register shows that a land certificate has been issued, then if the proprietor has not already produced it, he must be informed that it must be surrendered before the transfer can be registered.

6.7 *Entry in 'instrument record'.* If the examination of the register indicates that the application is in order it is necessary to take action to ensure that no later application overtakes it whilst it is being processed (which can take several weeks where control legislation is involved). This action, as explained in Chapter 17, can take the form either of making a pencil note of the application number in the register itself or of noting the application number in an 'instrument record'.³ The important

¹ e.g. Kenya Registered Land Act s42(2)

² See 17.5

³ See 17.5.3

point is that no certified copy of the register should be issued and no entry should be made in the register without consulting this record. The pencil note on the register itself has evident advantages in this regard; it stands in the way of any further entry and cannot be overlooked.

6.8 *Verification of execution.* This could be called the key to the whole system. The statute provides¹ that a person executing an instrument shall appear before the Registrar or such public officer or other person as is 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. The Registrar or other person is required to satisfy himself as to the identity of the person appearing before him and to ascertain whether he freely and voluntarily executed the instrument, and the Registrar must sign a certificate to that effect on the instrument. The Registrar may, in certain circumstances, dispense with verification, but if he does, he must record his reasons for doing so. This is where the procedure we are now describing differs so markedly from the English and Torrens procedures described above, and it is on the faithfulness with which it is observed that depends the main safeguard against forgery and personation as we emphasized in Chapter 10². At which point in the process this verification takes place varies from country to country, and even from transfer to transfer, but in no circumstance should it be left to a subordinate officer to verify execution, with the Registrar signing later as a routine matter. The person signing the certificate on the instrument must be formally authorized to do so and he must be the person who actually conducts the verification; he should never shelve this responsibility.

6.9 *Land control board consents.* No further action can be taken on the application until the proposed transfer has been considered by the land control board. The counter clerk ensures that the application is referred to the appropriate board at its next meeting. If consent is given, the counter clerk records the fact on the instrument and in the application book, quoting the relevant minute of the board meeting.

6.10 *Fees and stamp duty.* Fees and stamp duty (if any) now become payable by the purchaser. First, there is the question of their assessment, which may necessitate a valuation of the property — or at least an inquiry by the Registrar — if the price declared as the consideration appears to be below the market value of the property. Secondly, there is the question of their payment. We have already emphasized the importance of providing facilities for the payment of fees in the registry.³ The amount of the fee and the number of the receipt should be entered in the relevant columns of the application book. If the Registrar is responsible for assessment and collection of stamp duty, the counter clerk should also calculate it and collect the duty from the transferor and stamp the instrument accordingly.

6.11 *Final check.* We now come to the stage when the entry to be made in the register can be drafted. As soon as this has been done a careful check must be carried out by one of the registry clerks (if possible by a clerk not hitherto concerned in the transaction) to ensure

¹ e.g. Kenya Registered Land Act 1963 s110

³ See 17.12.1

² See 10.6.4

- (a) that there is no impediment to registration;
- (b) that the particulars of the parcel are correct;
- (c) that the correct fee and stamp duty have been paid;
- (d) that the name of the transferor on the instrument accords with the particulars already on the register;
- (e) that the capacity in which he deals, e.g. as trustee, guardian etc., is correctly stated;
- (f) that there are no relevant restrictions on his power to deal, and that control board consent has been given, if applicable;
- (g) that, if the issue of a land certificate to the transferor has been noted on the register, the certificate has been surrendered;
- (h) that the instrument is in correct form and duly executed.

6.12 *Entry in register.* If this final examination shows everything to be in order, the registry clerk makes the appropriate entry. He cancels the name and address of the transferor in the proprietorship section of the register by ruling it through in red ink¹ and enters on a new line the name and address of the transferee, according this entry the next following entry number. If a land certificate has been issued, the note to that effect on the register must also be cancelled.

6.13 *Signature by Registrar.* All relevant documents, i.e. the instrument, land certificate (if any), the register, and the application book, are then submitted to the Registrar. If satisfied with the correctness of the transfer, the Registrar initials cancellations and signs the new entry on the register. It is important that this should not become just a matter of routine hastily done at the end of the day. It is the signature of the Registrar on the register which effects registration, although the date of registration is the date of presentation. He sees that the surrendered land certificate is destroyed. He also dates and signs the entry in the application book to indicate that action on registration of that particular application is complete.

6.14 *Disposal of documents.* When registration is complete the instrument of transfer will be filed in the parcel file.² The surrendered land certificate (if any) will have been destroyed when the Registrar signed the register.

6.15 *Index of proprietors.* An index of proprietors of land, leases, and charges is also required to be kept in the registry³. This usually consists of pages, secured in binders, or cards kept in alphabetical order of surnames, which show each proprietor's full name and address and the reference numbers of any land, leases or charges held by him. In the case of the transfer just described, one of the registry clerks would remove and destroy the page containing the name of the transferor, if he was the proprietor of only the land transferred; if he held other land, leases or charge, only the entry relating to the parcel transferred would be cancelled on his index page. A new page would be inserted for the transferee, or, if he already owned land or a lease or charge, the reference number of the parcel transferred would be added to his index page.

6.16 *New land certificate.* In those jurisdictions where the transferee can obtain a land certificate if he wishes, he can only do so after registration of the transfer is

¹ See 17.2.17

³ See 17.6

² See 17.4

complete and then only by a separate application on the prescribed form and on payment of the prescribed fee. The issue of this new certificate must be noted on the register. The issue of the new certificate thus forms no part of the procedure of transfer. Surrender and destruction of the transferor's land certificate, on the other hand, is an integral part of the procedure.

(2) TRANSFER OF PART

6.17 It is expressly provided in the Registered Land Act¹ that “no part of the land comprised in a register shall be transferred unless the proprietor has first subdivided the land and new registers have been opened in respect of each subdivision”. Under this Act, therefore, a proposal for the ‘transfer of part’ must begin with an application for subdivision. This is effected by the use of a ‘mutation form’ in the manner we described in Chapter 17.²

6.18 *Registration of the subdivision* is effected by “closing the register relating to the parcel and opening new registers in respect of the new parcels resulting from the division, and recording in the new registers all subsisting entries appearing in the closed register”.³ Specifically, the registry clerk should enter in the proprietorship section of the old parcel register the date and application number and the words ‘transfer to part’ with a reference to the number of the mutation form. The old parcel register is cancelled by writing the word ‘closed’ diagonally across it; it is removed from the binder and filed in its parcel file, which is also marked ‘closed’. Two new registers are then opened and inserted in their appropriate place in the binder. They contain the same entries, if still subsisting, as the old register, the only difference being in the space for the parcel reference number and origin of title, in which the number of the mutation form should be written.

6.19 At this point action on registering the subdivision is complete, subject of course to the final approval and signature of the Registrar. The transfer of the parcel comprising the part can now be registered in the way described above. Consent to the transfer will have been obtained prior to the subdivision; the instrument of transfer will have been submitted and fee and stamp duty collected. The transfer can therefore be effected at the same time as the subdivision by cancelling the transferor's name in the proprietorship section of the register and by entering the name of the transferee.

7 Instant registration in British Columbia

7.1 There is an interesting procedure in Victoria in British Columbia, which deserves brief mention, not least because it is called ‘instant registration’. Under ‘standard registration’ a team used to carry out a ‘preliminary inspection’ of the application for registration and the instruments presented therewith. If the application was found in order, it would then be time-stamped to give it priority, and entered as a pending application. The application would thereafter be finally ruled on by an examiner of titles.

¹ Kenya Registered Land Act s89

² See 17.3.6-7

³ e.g. Kenya Registered Land Act s25(1)

7.2 Under 'instant registration' the material goes straight to the examiners of title (whose ranks are now swelled by the former preliminary inspection clerks), and only after the examiners of title are satisfied that the material is fit for final registration does it receive the time stamp, at which point the registration becomes final (except that where a new title has to issue, the title must be typed and signed before registration can be considered complete). 'Pending applications' are virtually eliminated, and many titles are signed the day that the application comes in.