

## Scott Swainson

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**From:** Reid, Debbie G.N. <dgnreid@gov.bm>  
**Sent:** Tuesday, 6 September 2016 12:20 PM  
**To:** Scott Swainson  
**Subject:** Land Title Registration.  
**Attachments:** LTR Amendment Bill 2016 - 2 September.pdf; Land Title Registration Act 2011.pdf

**Importance:** High

Hi Scott

We have now completed our amendments to the Land Title Registration Act, We have incorporated all the amendments requested in your letter dated 19th February 2014. However, you will note that in the draft legislation that there is no indemnity provided by the Government. In consultation with the Attorney General Chambers, it was agreed to remove the indemnity completely.

The Rules have been slightly changed, and this will be sent to you in due course. Along with a new Bill the Land Title Registrar (Recording of Documents) Bill 2016, which will allow this department to take over the unregistered Deeds at the Registry General Office and provide an electronic system for the Deeds and within the Land Title Registration Act there is provision for LTRO to take over the Judgment register held by the Supreme Court (Causes Book)

Please can you circulate the draft legislation to your colleagues on the Land Title Registration Subcommittee. The date for all comments to be returned to this office is 31st September 2016.

Kind regards

D G N Reid  
Land Registrar

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**A BILL**

**entitled**

**LAND TITLE REGISTRATION AMENDMENT ACT 2016**

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32        Inserts Schedule 10

WHEREAS it is expedient to amend the Land Title Registration Act 2011 to provide for surveyed rather than indicative boundaries, to establish a Land Title Registration Tribunal, to provide for the publication of rules by deposit for public inspection, and for related matters;

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

### **Citation**

1        This Act, which amends the Land Title Registration Act 2011 ("the principal Act"), may be cited as the Land Title Registration Amendment Act 2016.

### **Amends section 2**

2        Section 2 of the principal Act is amended by repealing paragraph (e).

### **Amends section 3**

3        Section 3(1) of the principal Act is amended—

- (a) by repealing the definition of "certificate of legal effect" and substituting—
  - “ “certificate of title” means a certificate of title referred to in section 3A(3); ”;
- (b) by deleting the definition of "Indemnity Fund";
- (c) by, in the definition of "prescribed", deleting "made by the Minister under this Act";
- (d) by, in the definition of "threshold term"—
  - (i) deleting "five" and substituting "21"; and
  - (ii) deleting "of at least three years"; and
- (e) by inserting the following definitions, each in its correct alphabetical place—
  - “ “first registration” or “first registered” means first registration, or first registered, under this Act;
  - “judgment”, in relation to the judgment register, means a final judgment or order of the Supreme Court, the Court of Appeal or the Judicial Committee of the Privy Council (on appeal from the Court of Appeal);

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“judgment register” means the register of judgments established and maintained under section 18(1)(c), which consists of the individual registers described in section 20A;

“rules” means rules made by the Minister under this Act;

“Schedule 10 assumptions and reservations” means such assumptions, or reservations, or both, regarding the title to a registrable estate as are set out in the Schedule 10;

“surveyed boundary”, in relation to an estate, means the boundary of that estate as identified in a survey report by reference to a survey plan;

“surveyor” means a land surveyor who is registered as such under the Professional Surveyors Registration Act 1997;

“survey plan”, in relation to an estate, means a plan prepared by a surveyor showing the exact boundaries of the estate;

“survey report”, in relation to an estate, means a report prepared by a surveyor which identifies the surveyed boundary of the estate;

“Tribunal” means the Land Title Registration Tribunal established under section 91A;”.

### **Inserts section 3A and 3B**

4 The principal Act is amended by inserting after section 3—

#### **“Attorney to provide certificate of title**

3A (1) The following subsections apply where an application is made under this Act for the registration of any—

- (a) unregistered registrable estate;
- (b) estate which is not a registrable estate if rules have been made under paragraph 9 of Schedule 3 (unregistered land held under settlement) for the first registration of such estate; or
- (c) disposition of a registered estate.

(2) The application shall be lodged with the registrar on the applicant’s behalf by an attorney acting for him.

(3) The registrar shall require the attorney lodging the application to provide to the registrar, in such form as the registrar may determine, a certificate of title signed by the attorney, in which the attorney—

- (a) confirms that—
  - (i) the attorney has examined the deeds, documents and other evidence of title relating to the title to the estate sought to be registered; and

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- (ii) subject only to such qualifications as may be contained in the certificate, as a result of the examination carried out, the attorney is of the opinion that the applicant's title to the estate is such as a willing buyer could properly be advised by a competent professional adviser to accept; and
- (b) certifies that title to the estate is good and marketable, in accordance with good conveyancing practice and in accordance with section 16 of the Conveyancing Act 1983, but subject to—
  - (i) the Schedule 10 assumptions and reservations; and
  - (ii) any estate, right or interest which overrides the registration or is otherwise excepted from the effect of the registration.
- (4) In deciding—
  - (a) whether to accept the applicant's title for registration; and
  - (b) the class of title (if any) to be granted under section 28,the registrar shall rely upon the certificate of title given by the attorney.
- (5) The registrar shall not be responsible for determining the accuracy of the certificate of title given by the attorney, and shall not be liable for any error or omission in it

(6) In a case where the applicant's title is to be registered with provisional title, the registrar shall have regard to any qualifications included by the attorney in the certificate of title when deciding in what terms any estate, right or interest is to be recorded in the register as being excepted from the effect of registration.

### **Claimant's title to registered estate extinguished after six years**

3B (1) Subject to sections 81, 108 and 109, after the expiration of six years from the date of registration of an estate, no action shall be brought by a person (a "claimant") to challenge the registered owner's title to the registered estate.

(2) If at the expiration of the six-year period referred to in subsection (1) no such action has been brought, any title that the claimant may have to the registered estate shall be extinguished.

(3) For the avoidance of doubt, subsections (1) and (2) do not affect or extinguish an estate, right or interest which overrides the registration, or is otherwise excepted from the effect of the registration.

(4) In this section, "action" includes any proceedings in a court."

### **Amends section 4**

5 Section 4(1) of the principal Act is amended by deleting "a Government Department" and substituting "an Office".

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### **Amends section 5**

6 Section 5(1)(g) of the principal Act is amended by deleting “by the registrar” and substituting “by the Tribunal”.

### **Amends heading of Part 3**

7 The heading of Part 3 is amended by deleting “AND INDEMNITY”.

### **Amends section 9**

8 Section 9 of the principal Act is amended by repealing paragraph (b).

### **Repeals sections 10, 11 and 12**

9 Sections 10 (Indemnity Fund), 11 (indemnities) and 12 (reinsurance arrangements) are repealed.

### **Amends section 15**

10 Section 15(4)(b) of the principal Act is amended by deleting “subject to section 17(2),”.

### **Amends section 17**

11 Section 17 of the principal Act is amended—

- (a) in the heading, by deleting “Indicative” and substituting “Surveyed”;
- (b) in subsection (1), by deleting “an indicative boundary” and substituting “a surveyed boundary indicated on a survey plan”; and
- (c) by repealing subsections (2) and (3) and substituting—

“(2) A survey report, and survey plan referred to in the report, shall be in such form as the registrar may determine, and shall include such information and meet such requirements as may be prescribed.

(3) Subsection (1) applies to the boundaries of any registered estate shown on the Index Map or any plan derived from the Index Map.”.

### **Amends section 18**

12 Section 18(1) of the principal Act is amended—

- (a) by deleting “two” and substituting “three”;
- (b) by deleting “and” at the end of paragraph (a);
- (c) by deleting the full stop at the end of paragraph (b) and substituting “; and”;
- and
- (d) by inserting after paragraph (b)—

“(c) the judgment register which shall consist of the individual registers described in section 20A.”.

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### **Inserts section 20A**

13 The principal Act is amended by inserting after section 20—

#### **“Judgment register**

20A (1) The judgment register shall include an individual register for each judgment that affects land and is registered in accordance with Schedule 1A.

(2) Each individual register shall include the following particulars—

- (a) a brief description of the judgment debt;
- (b) the date of registration of the judgment;
- (c) the date of the judgment;
- (d) the person against whom the judgment is given (“the judgment debtor”);
- (e) the person in whose favour judgment is given (“the judgment creditor”);
- (f) the amount of the judgment debt;
- (g) the amount paid in respect of the judgment debt; and
- (h) such other details as may be prescribed by rules.”.

### **Amends section 24**

14 Section 24(1) of the principal Act is amended—

(a) in paragraph (a), by repealing subparagraph (vi) and substituting—

“vi) giving effect to a partition of land held in co-tenancy—

(A) where equity money is paid; and

(B) in any such other case as may be prescribed;”;

(b) by repealing paragraph (b) and substituting—

“(b) the grant out of a qualifying estate of an estate in land for a term of years absolute of more than the threshold term from the date of the grant—

(i) in pursuance of an order of the court;

(ii) at a premium;

(iii) for valuable or other consideration; or

(iv) by way of gift;”;

(c) by repealing paragraph (d) and substituting—

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- “(d) the creation of a first legal mortgage of a qualifying estate that secures a principal sum of not less than—
- (i) \$750,000; or
  - (ii) such other amount (whether less or more than \$750,000) as may be prescribed.”.

### **Amends section 28**

15 Section 28 of the principal Act is amended—

- (a) by deleting subsection (2) and substituting—

“(2) A person may be registered with absolute title if the registrar has been provided with a certificate of title, a survey report and such other information as may be required by rules.”; and

- (b) by repealing subsection (3).

### **Amends section 32**

16 Section 32 of the principal Act is amended by deleting the full stop at the end of paragraph (c) and substituting a semi-colon and, after paragraph (c), inserting—

- “(d) make provision about the manner in which evidence of a contrary claim to an estate registered with absolute title, or provisional title, is to be produced to the registrar; and
- (e) make provision about publication in the Gazette of a notice of application for first registration.”.

### **Amends section 80**

17 Section 80(1) of the principal Act is amended by deleting “indicative” and substituting “surveyed”.

### **Inserts section 91A**

18 The principal Act is amended by, at the beginning of Part 15 “Objections and Adjudication” before section 92, inserting—

#### **“Land Title Registration Tribunal**

91A (1) For the purposes of this Act there shall be a tribunal to be known as the Land Title Registration Tribunal which shall consist of a Chairman and two other members selected by the Chairman from a panel of members.

(2) The Chairman of the Tribunal shall be a person appointed for the purpose by the Minister and shall hold office during the Minister’s pleasure.

(3) The panel of members of the Tribunal shall be not less than 5 or more than 9 persons appointed by the Minister and shall hold office during the Minister’s pleasure.



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(4) The Tribunal may be differently constituted for the adjudication of objections from time to time at the discretion of the Chairman.

(5) Where, in the course of adjudicating any objection, one of the members of the Tribunal is unable to continue to act as a member for any reason, then, if all parties concerned agree, the Tribunal may proceed with the adjudication of that objection in the absence of that member and shall be deemed to be duly constituted in so doing.

(6) The registrar shall be a party to all proceedings before the Tribunal.

(7) The registrar may for the purposes of a hearing before the Tribunal designate an officer of the LTRO to attend and act on his behalf.

(8) Fees shall be paid to members of the Tribunal in accordance with the Government Authorities (Fees) Act 1971.”.

### **Amends section 92**

19 Section 92 of the principal Act is amended—

(a) in subsection (7) by—

(i) in paragraph (a), after “adjudication”, inserting “by the Tribunal”; and

(ii) in paragraph (b), deleting “section 94” and substituting “section 95”; and

(b) by repealing subsection (8).

### **Amends section 93**

20 Section 93 of the principal Act is amended—

(a) in the heading, by inserting “by the Tribunal” after “Adjudication”;

(b) in subsection (1), by inserting “by the Tribunal” after “adjudication”;

(c) by repealing subsections (2), (3), (4) and (5); and

(d) in subsection (6)—

(i) by deleting “Subject to section 95(2), where the registrar has appointed an adjudicator under subsection (4) in relation to an objection, it is the function of the adjudicator to” and substituting “The Tribunal shall”; and

(ii) in paragraph (b), by deleting “his or her” and substituting “its”.

### **Amends section 94**

21 Section 94 of the principal Act is amended—

(a) in subsection (1)—

(i) by deleting “an adjudicator appointed to dispose of an objection under section 93(4)” and substituting “the Tribunal”; and

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- (ii) by deleting “the adjudicator” and substituting “the Tribunal”;
- (b) in subsection (2), by deleting “an adjudicator” and substituting “the Tribunal”;
- (c) in subsection (3)(c), by deleting “adjudicator” and substituting “Tribunal”;  
and
- (d) by inserting after subsection (3)—

“(4) Subject to this section, or any other provision of this Act or rules, the Tribunal may regulate its own practice and procedure.”.

### **Amends section 95**

22 Section 95 of the principal Act is amended—

- (a) in subsection (1)(b)—
  - (i) by deleting “him, an adjudicator appointed under section 93(4)—” and substituting “it, the Tribunal decides that the objection should be disposed of by reference to the court.”; and
  - (ii) repealing subparagraphs (i) and (ii);
- (b) by repealing subsection (2);
- (c) in subsection (3), by deleting “adjudicator” both times it appears and, in each case, substituting “Tribunal”; and
- (d) in subsection (4)—
  - (i) in paragraph (a), by deleting “any adjudicator” and substituting “the Tribunal”; and
  - (ii) in paragraph (b), by deleting “adjudicator” and substituting “Tribunal”.

### **Amends section 96**

23 Section 96(1) of the principal Act is amended by deleting “an adjudicator” and substituting “the Tribunal”.

### **Amends section 97**

24 Section 97 of the principal Act is amended by deleting “an adjudicator” and substituting “the Tribunal”.

### **Amends section 117**

25 Section 117 of the principal Act is amended by deleting “five” and substituting “21”.

### **Amends section 123**

26 Section 123 of the principal Act is amended by inserting after subsection (1)—

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“(1A) Rules shall, within one month after their filing with the Secretary to the Cabinet in accordance with section 2 of the Statutory Instruments Act 1977, be published by deposit for public inspection at the Land Title Registry Office, and shall have effect on the day that the Minister gives notice in the Gazette that the rules have been so deposited, or such later date as the Minister may in the notice appoint.”.

### **Amends Schedule 1**

27 Schedule 1 (Indemnities) to the principal Act is repealed.

### **Inserts Schedule 1A**

28 The principal Act is amended by inserting after Schedule 1—

#### **“SCHEDULE 1A**

(section 20A)

#### **REGISTRATION OF JUDGMENTS**

##### **No judgment to affect land, tenements or hereditaments until registered**

1 (1) Notwithstanding the Real Estate Assets Act 1787, no judgment obtained after the coming into operation of this Act shall affect any lands, tenements or hereditaments as to purchasers, mortgagees or judgment creditors unless and until—

- (a) on application in accordance with rules, a memorandum, in such form as the registrar may determine, containing the names of the persons in whose favour and against whom judgment is given, the date of such judgment and the amount of the debt, damages, costs or money thereby recovered or secured is registered with the registrar; and
- (b) a copy of such memorandum, certified as such by the registrar of the court, is lodged with the registrar, who shall issue a receipt, in such form as he may determine, in respect of each memorandum received.

(2) The registrar shall forthwith enter the same particulars in the judgment register in date order, by the name of the person against whom the judgment is given, and shall also insert in such register the year and the day of the month when the judgment is so registered.

(3) No stamp duty (within the meaning of the Stamp Duties Act 1976) is required in respect of a memorandum, or a copy of a judgment, that is required to be lodged with the registrar under this Schedule.

##### **Notice of any judgment not to affect purchasers etc if not registered**

2 No judgment shall affect any lands, tenements or hereditaments at law or in equity as to purchasers, mortgagees or judgment creditors unless and until the

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judgment is registered in accordance with paragraph 1, any notice of any such judgment to any such purchaser, mortgagee or judgment creditor notwithstanding.

### **Fees of registration may be levied under execution**

3 In every case of execution of a judgment, the party entitled to execution may levy any fees paid for registering the judgment over and above the sum recovered.

### **Priority not affected by difference between dates of registration**

4 The priority existing between different judgments by reason of the difference of the dates on which they were obtained shall not be affected by the difference between the dates of their registration.

### **Registration by one person to benefit all others interested in same judgment**

5 The registration of a judgment by any person or persons entitled only to a part of the monies thereby secured shall enure for the benefit of every person entitled to the remainder of such monies, notwithstanding such last-mentioned person may not have registered the judgment.

### **Application to remove from register judgment on which judgment debt discharged**

6 An application may be made to the registrar, in such form as the registrar may determine, to remove from the judgment register a judgment on which the judgment debt has been discharged. ”.

### **Amends Schedule 3**

29 (1) Paragraph 13(4) of Schedule 3 to the principal Act is amended by deleting “section 94” and substituting “section 95”.

(2) Paragraph 15 of Schedule 3 to the principal Act is repealed.

### **Amends Schedule 6**

30 Paragraph 5(b) of Schedule 6 to the principal Act is amended by inserting “upgrading the title to absolute title, or otherwise” before “bringing”.

### **Amends Schedule 9**

31 Schedule 9 to the principal Act is amended by inserting after paragraph 3—

“4

### **Amends First Schedule to Government Authorities (Fees) Act 1971**

4 Part B of the First Schedule to the Government Authorities (Fees) Act 1971 is amended by inserting in its correct alphabetical place—

“Land Title Registration Tribunal - established by section 91A of the Land Title Registration Act 2011”.

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### **Inserts Schedule 10**

32 The principal Act is amended by inserting after Schedule 9—

#### **“SCHEDULE 10**

(section 3(1))

#### **ASSUMPTIONS AND RESERVATIONS**

A certificate of title may be based on any or all of the following assumptions and reservations:

1. That the attorney giving the certificate has assumed that all documents produced to him have been validly executed, delivered by the parties thereto and are within the capacity of such parties.
2. That, although searches have been done of the mortgage register (kept pursuant to the Land Title Registrar (Recording of Documents) Act 2016) at the LTRO, and of the cause book (within the meaning of the Rules of the Supreme Court 1985) at the Supreme Court Registry in Bermuda (for judgments), such searches are not conclusive, and that the LTRO's records and the cause book would not reveal:
  - (i) details of matters which have been lodged for filing or registration which as a matter of best practice of the LTRO or the Supreme Court Registry would have or should have been disclosed on the mortgage register, or in the cause book, as the case may be, but for whatever reason have not actually been filed or registered or are not disclosed or which, notwithstanding filing or registration, at the date and time the search is concluded are for whatever reason not disclosed or do not appear therein;
  - (ii) details of matters which should have been lodged for filing or registration with the LTRO or at the Supreme Court Registry but have not been lodged for filing or registration at the date the search is concluded;
  - (iii) whether an application to the Supreme Court for a winding-up petition or for the appointment of a receiver or manager has been prepared but not yet been presented or has been presented but does not appear in the cause book at the date and time the search is concluded;
  - (iv) whether any arbitration or administrative proceedings involving the vendors are pending or whether any proceedings are threatened against them, or whether any arbitrator has been appointed.”.