

VOLUME: V

DEEDS REGISTRY

Part ID: III Registration of Land (ss 19-45)

CHAPTER: 33:02

Transfer of Land (ss 19-31)

#### 19. Manner of dealing with State land

(1) The ownership of unalienated State land may be transferred from the State only by deed of grant, and except as hereinafter provided, having a diagram of the land annexed thereto.

(2) The ownership of land alienated from and reacquired by the State may be transferred from the State either by deed of grant or by deed of transfer, as the case may be, but in either case the deed of grant or transfer shall contain a reference to the title deed by which the State held the land and to the title deed to which the diagram of the land is annexed and shall set forth the conditions upon which the land is alienated and the rights to the land reserved by the State on this alienation.

(3) If any piece of unalienated State land has been surveyed and is represented on a diagram the Registrar shall, upon written application by any duly authorized person, accompanied by the diagram of the land in duplicate, enter particulars of the land in the appropriate registers and execute in the prescribed form and in accordance with the diagram, a certificate of registered State title thereof.

(4) Transfer of the ownership of land held by the State either under certificate of registered State title or certificate of registered title superseding such certificate of registered State title shall be effected by deed of grant, but it shall not be necessary to annex a diagram of the land thereto:

Provided that the grant shall contain a reference to the certificate under which the land is held and to the diagram annexed thereto.

(5) No deed (other than a deed of grant conveying ownership) purporting to create or deal with or dispose of any real right in any piece of unalienated State land shall be capable of registration until a certificate of registered State title has been executed in respect of that piece of land.

#### 20. Form and manner of execution of deeds of transfer

Deeds of transfer shall be prepared in the forms prescribed by regulation, and, except as provided in this Act or any other law or as ordered by the court in respect of deeds of transfer executed by the Registrar, shall be executed in the presence of the Registrar by the owner of the land described therein, or by a conveyancer authorized by power of attorney to act on behalf of the owner, and shall be attested by the Registrar.

#### 21. Transfer from joint estate

In any transfer lodged in the deeds registry relating to land which is an asset in a joint estate, the surviving spouse shall be joined in his personal capacity with the executor of the estate of the deceased spouse except-

- (a) where the executor is only dealing with the share of the deceased spouse;
- (b) where the land has been sold to pay the debts of the joint estate;
- (c) where there has been a massing of the joint estate and the surviving spouse has adiated;
- (d) where such transfer is in favour of the surviving spouse; or
- (e) where the surviving spouse has signed as executor, the power of attorney to pass such transfer.

#### 22. Transfer of two or more pieces of land by one deed

(1) Two or more persons each owning a different piece of land may not transfer those pieces of land to one or more persons by the same deed of transfer, unless such transfer is authorized by law or by an order of court.

(2) Two or more pieces of land may by one deed be transferred by one person or by two or more persons holding such pieces of land in undivided shares, to one person or to two or more persons acquiring such pieces of land in undivided shares.

(3) Each piece of land so transferred shall be described in a separate paragraph of the deed of transfer.

(4) Two or more portions of a piece of land may by one deed be transferred by one person or by two or more persons holding the whole of such piece of land in undivided shares to one person or to two or more persons acquiring such portions in undivided shares.

(5) Each portion so transferred shall be described in a separate paragraph in which reference is made to the diagram of that portion.

(6) The diagrams of all such portions shall be annexed to the deed.

## 23. Transfer of undivided shares in land by one deed

(1) Land held by one person may be transferred by one deed from that person to two or more other persons in undivided shares.

(2) Land held by two or more persons in undivided shares may be transferred by one deed from those persons to any other person, or to two or more other persons in undivided shares.

## 24. Special provisions relating to transfer of undivided shares

(1) No transfer of an undivided share in land which is intended or calculated to represent or purports to represent a defined portion of land shall be capable of being registered.

(2) If a piece of land is owned by two or more persons in undivided shares and one or more of such persons acquires the share or shares of the remaining owner or owners in a defined portion of that piece of land, all the owners jointly, including the owner or owners acquiring the share or shares, may transfer such portion to the person or persons acquiring it.

## 25. Transfer to unascertained children

(1) If land is donated or bequeathed to the children born or to be born of any person or of any marriage, transfer of the land on behalf of such children may be passed in the case of children born or to be born of a person, to that person, and in the case of children born or to be born of a marriage, to the person who would be the natural guardian of those children during their minority.

(2) If land is donated to the children born or to be born of any person or of any marriage, the person to whom transfer may be passed in terms of subsection (1) may, for the purposes of such transfer, accept the donation.

(3) When the identity of all such children has been established the Registrar shall make an endorsement on the transfer deed setting out their names, whereupon the transfer deed shall be deemed to be to and in favour of such children in the same manner as if the transfer had originally been passed to them by name.

## 26. Deeds of partition transfer

(1) If two or more persons who own in undivided shares the whole of any piece or pieces of land, have agreed to partition that land, the Registrar shall, on production to him of a power of attorney by such persons authorizing the passing of deeds of partition transfer of such land in accordance with the agreement of partition, which agreement shall be embodied in the power of attorney or annexed thereto, and on compliance with the further provisions of this section, attest deeds of partition transfer which shall be as nearly as practicable in the prescribed form conveying to the respective owners the land or shares therein awarded to them under the said agreement.

(2) In the power of attorney or agreement of partition referred to in subsection (1) there shall be described-

(a) the land to be partitioned;

(b) the share or shares registered in the name of each joint owner;

(c) the land or share therein awarded to each of the owners;

(d) the conditions (if any) affecting any land or share therein so awarded; and

(e) the consideration (if any) given for the purpose of equalizing the partition.

(3) There shall also be produced to the Registrar the title deeds of the land to be partitioned and the necessary diagrams:

Provided that no new diagram need be produced in respect of the whole or the remaining extent of any one of the pieces of land to be partitioned.

(4) Subject to the provisions of this section, the provisions of sections 20, 21, 22, and 23 shall mutatis mutandis apply in respect of deeds of partition transfer.

(5) Any deed of partition transfer attested under subsection (1) shall in respect of the land therein described take the place of the deed or deeds by which it was previously held, but the partition transfer shall not vary or affect the conditions of tenure of the said land or any other conditions affecting the said land generally, except in so far as such last-mentioned conditions may be varied, defined or limited by the agreement of partition or the consent of interested parties.

(6) The provisions of this section shall mutatis mutandis apply to a partition of land ordered by the court or determined by an award of arbitrators.

## 27. Requisites where share in land partitioned is mortgaged

(1) If the share or shares owned by any of the parties to a partition is mortgaged, the partition transfers shall not be attested unless the bond is produced to the Registrar together with the written consent of the legal holder of the bond to the partition and to the substitution of the land awarded on partition to the mortgagor for the share or shares mortgaged.

(2) In registering the transfer the Registrar shall-

(a) endorse on the bond that the land awarded to the mortgagor has been substituted for the share or shares mortgaged;

(b) make an entry of the substitution in the registers; and

(c) endorse on the transfer that the land described therein is, in accordance with this section, mortgaged by the bond.

(3) If only a fraction of the share or shares owned by any of the parties to a partition is mortgaged, the substitution referred to in this section shall only take place in respect of the fraction so mortgaged if from the agreement of partition or from other evidence it appears that a defined portion or share therein has been separately awarded in respect of such mortgaged fraction.

(4) Where more than one property is partitioned by the same partition and the whole of any one or more of the properties affected is awarded to an owner, such property or properties may be substituted under that owner's bond, if the bond is over his share in all the properties partitioned.

#### 28. Requisites where share in land partitioned is subject to other rights

(1) If the share or shares owned by any of the parties to a partition appear from the title deeds of the land partitioned to be subject to a lease, personal servitude or other real right, the written consent of the holder thereof, together with the deed, if any, by which the lease, servitude or real right is held, shall be produced to the Registrar.

(2) The land described in the deeds of partition transfer shall be made subject to the lease, servitude or real right to the same extent as the share or shares for which it is substituted, and the deed, if any, by which the lease, servitude or real right is held, shall be endorsed by the Registrar in the same manner as the bond mentioned in section 27.

(3) If there exists any bond by which the lease, servitude or real right is itself mortgaged, that bond shall also be produced to the Registrar, together with the written consent of the legal holder thereof and the Registrar shall make the endorsements and entries mentioned in section 27 on the bond, the deeds concerned and in the registers.

#### 29. Effect of compliance with sections 27 and 28

Upon completion of the endorsements and entries mentioned in sections 27 and 28 the land described in the deeds of partition transfer, and the lease, personal servitude or real right (if any) shall be deemed to be as fully and effectually mortgaged as if they had been hypothecated by the bond at the time of its execution and the said land shall be deemed to be as fully and effectually encumbered by the said lease, personal servitude or real right as if it had been encumbered thereby at the time of the registration thereof.

#### 30. Partition of land subject to fideicommissum

(1) Any piece of land the whole or any share of which is subject to a fideicommissum may, where partition has not been prohibited, be partitioned with the written consent of the fideicommissary heirs or successors if they are ascertained and are majors and otherwise competent; if they are ascertained but any of them are minors, the consent of the Master shall be produced in respect of the minors; if they are ascertained but any of them have been declared insolvent, or if they are under curatorship or otherwise under disability the consent of their trustees or curators or other legal representatives shall be produced on their behalf: if they are not ascertained or if they cannot be found, proof shall be produced to the satisfaction of the Registrar that the land awarded in the agreement of partition to the owner of any share subject to the fideicommissum is an equivalent of that share

(2) The land so awarded shall in the deed of partition transfer be made subject to the fideicommissum in the same manner as the corresponding share was in its title deed made subject thereto before partition.

#### 31. Registration of title by other than the ordinary procedure

(1) Any person who has acquired in any manner, other than by prescription or expropriation, the right to the ownership of immovable property registered in the name of any other person and who is unable to procure registration thereof in his name in the usual manner and according to the sequence of the successive transactions or successions in pursuance of which the right to the ownership of such property has devolved upon him, may in lieu of applying to the court, apply in writing to the Commission constituted in terms of this section for an order authorizing the registration in his name of such property.

(2) The Commission referred to in subsection (1) shall consist of the Registrar, the Director or his nominee, and the Master of the High Court.

(3) The Registrar shall be chairman of the Commission.

(4) The President may, by statutory instrument, make regulations prescribing the powers, jurisdiction and privileges of the Commission referred to in subsection (1).

(5) All applications under this section shall be made to the chairman of the Commission.

(6) The applicant shall submit, together with his application, sworn declarations and all available documentary evidence in support thereof.

(7) Particulars of any such application received by the chairman of the Commission shall be published at the expense of the applicant in three successive ordinary issues of the Gazette, and once every week during three successive weeks in one or more newspapers circulating in the district or other area in which the property concerned is situate.

(8) Any person objecting to the granting of such application shall within a period of two months from the date of the first publication in the Gazette or in a newspaper, whichever be the later date, or within such extended period as the Commission may on application allow, submit in writing to the chairman of the Commission full particulars of the grounds upon which his objection is based, together with any sworn declarations or documentary evidence which he may be able to produce in support of his objection.

(9) Upon the expiration of the period mentioned in subsection (8) the Commission concerned shall inquire into the

application and the objections, if any lodged thereto, and shall, if satisfied that the applicant is entitled to the ownership of the property to which the application relates, order the Registrar to register the said property in the name of the applicant subject to the conditions, if any, mentioned in the order.

(10) The Commission may make such order as to the costs of or in connection with the application or the objections thereto as it may deem just and such costs may be taxed and any such order enforced in the same manner as if the order were an order of court.

(11) Any order made under this section by the Commission to the Registrar shall be subject to an appeal to the court.

(12) Notice of such appeal shall be given, within 14 days of the date of the order, to the chairman of the Commission, the registrar of the court and any other party concerned.

(13) The Registrar shall not act thereon until the aforesaid period allowed for noting an appeal has expired, or, if an appeal has been noted, until such appeal has been determined in favour of the respondent or has been withdrawn.

(14) Subject to the terms of any order made under this section, any deed of transfer passed in pursuance of such order shall be passed subject to every condition, servitude, bond or other encumbrance to which, according to the records of the deeds registry the property to which the application relates, is subject, and the Registrar shall, in connection with such condition, servitude, bond or other encumbrance make the usual and proper entries and endorsements upon or in respect of such deed of transfer in the registry, before such deed is delivered to the applicant.

(15) A registration of immovable property made in the name of any person in pursuance of an order made under this section shall have the effect of vesting such person with a title to such property which shall be liable to be annulled, limited or altered on every ground on which the title of such person to such property would have been liable to be annulled, limited or altered if such property had been transferred to such person in the ordinary course.

(16) If in pursuance of any order made under this section the Registrar registers any property in the name of any person, such person shall be liable to pay such taxes, duties and fees of office in respect of such registration as he would have been liable to pay if such property had been transferred to him in the usual manner directly from the last registered owner thereof, and shall not be liable to pay any tax, duty, quit-rent or interest thereon which such owner or any intermediate holder of the right to such property may have become liable to pay, unless he has by agreement bound himself to pay such tax, duty, quit-rent or interest, or unless the delay in obtaining the registration in his name was due to the neglect or default of himself or his agent:

Provided that any person who has become liable to pay any such tax, duty, quit-rent or interest shall continue to be so liable notwithstanding that such property has, in pursuance of an order made under this section, been registered in the name of another person.

(17) Upon production to the Registrar of any order made under this section and of a certificate by the proper officer as to the payment of the transfer duty, if any, which the person named in the order is liable to pay, and on compliance with any other requirements which have under this Act or any regulations made thereunder, to be complied with, the Registrar shall register such property in accordance with the said order, by executing a deed of transfer thereof in the prescribed form in favour of the person named in the order.

## Substituted Title Deeds (ss 32-41)

### 32. Certificate of registered title of undivided share

(1) Any person who is the joint owner of a piece of land the whole of or shares in which is or are held by such person and others under one title deed, may, subject to the provisions of section 35, obtain a certificate of registered title of his undivided share in such land, and no transfer of a fraction only of his undivided share or hypothecation or lease of the whole or any fraction of his undivided share in the land shall be registered in the deeds registry unless a certificate of registered title of such undivided share is produced to the Registrar:

Provided that all the joint owners so holding under one title deed may together transfer an undivided share in the land or a fraction of the share held under such deed or hypothecate or effect the registration of a lease of the whole of such land or share without the production of such a certificate.

(2) If the title deed under which land or shares therein is held in joint ownership is lost or destroyed, any joint owner may, upon compliance with the prescribed requirements, obtain a certificate of registered title in respect of his share in the land without obtaining a certified copy of the deed which has been lost or destroyed.

(3) The provisions of subsections (1) and (2) shall apply where two or more pieces of land or shares therein are held in joint ownership by the same title deed:

Provided that all the pieces of land or the shares therein shall be included in the certificate of registered title and shall be described in separate paragraphs.

### 33. Certificate of registered title of aggregate share

Any person who is, by virtue of more than one title deed, the owner of undivided shares in one or more than one piece of land may, subject to the provisions of section 35, obtain a certificate of registered title in respect of his aggregate share in the land:

Provided that if there are two or more pieces of land the several pieces of land or shares therein shall be described in separate paragraphs.

### 34. Certificate of registered title of one or more properties held under one deed

Any person who holds two or more pieces of land, or undivided shares therein, by one title deed may, subject to the provisions of section 35, obtain a certificate of registered title in respect of one or more of such pieces of land or of the undivided share or shares held by him therein if at least one of the pieces of land or the share therein held by such deed remains held thereby.

### 35. Conditions governing the issue of certificates of registered title

(1) A certificate of registered title mentioned in section 32, 33 or 34 may be obtained upon written application by the owner from the Registrar accompanied, except as provided in section 32(2), by the title deed of the land and shall be as nearly as practicable in the prescribed form.

(2) If the property concerned is subject to a registered mortgage bond or to any registered deed of lease or other registered deed whereby any real rights in the land are held by other persons, that bond or other deed shall be produced to the Registrar by the holder thereof, upon the request and at the expense of the applicant for the certificate of registered title.

(3) Before issuing any such certificate the Registrar shall cause to be made upon the title deed or deeds in question and the registry duplicates thereof or in the case provided in section 32(2) upon the registry duplicate only, and upon the mortgage bond or other deed (if any) an endorsement that a certificate of registered title has, in accordance with the appropriate section of this Act been substituted for the said title deeds or deeds in respect of the property in question.

(4) The Registrar shall further make entries in the registers of the issue of the certificate and shall, if the property is mortgaged, endorse that fact upon the certificate.

(5) Any such certificate when issued shall in respect of the property described therein take the place of the title deed or deeds by which such property was previously held and the issue of the certificate shall not in any manner affect any right or obligation in connection with such property.

### 36. Certificate of registered title taking place of lost or destroyed deed

(1) If the title deed of any land has been lost or destroyed and the registry duplicate of such title deed has also been lost or destroyed, the Registrar shall, on written application by the owner of the land accompanied by a diagram of the land, if no diagram thereof is filed in the registry or in the office of the Director, execute a certificate of registered title in respect of such land in accordance with the diagram of the land.

(2) Before issuing the certificate the Registrar shall, at the expense of the applicant, publish in the prescribed form notice of intention to issue the certificate in two consecutive ordinary issues of the Gazette and in two consecutive issues of a newspaper printed in the district in which the land is situate, or if there is no such newspaper then in any newspaper circulating in such district.

(3) A draft of the proposed certificate and a copy of the diagram, if any, accompanying the application, shall be open for inspection in the registry free of charge by any interested person, for a period of six weeks after the date of the first publication of the notice in the Gazette, during which period any person interested may object to the issue of the certificate.

(4) Any person who has lodged with the Registrar an objection to the issue of the certificate may, in default of any arrangement between him and the applicant, apply to the court within one month after the last day upon which an objection may be lodged, for an order prohibiting the Registrar from issuing the certificate, and the court may make such order on the application as it may deem fit.

(5) A certificate of registered title issued under this section shall be as nearly as practicable in the prescribed form and shall take the place of the lost or destroyed title deed and shall embody or refer to every condition, servitude, bond, lease or other encumbrance which according to the records of the registry was embodied or referred to in the lost or destroyed title deed or in any endorsement thereon.

### 37. Certificate of registered title to correct error in registration

(1) If by reason of an error the same land has been registered in the names of different persons, the Registrar may, upon transfer of the land being given to one of them by the other or others, issue to the person to whom transfer is so given a certificate of registered title of the land held by him under the various title deeds.

(2) Any person who is the registered owner of any one or more defined portions of land under a registered deed reflecting conditions or servitudes which have lapsed by merger duly noted or which have been cancelled, may apply for the issue to him of a certificate of registered title in respect of such land free of such conditions or servitudes.

(3) The certificate of registered title referred to in subsection (2) shall be in the form prescribed and shall supersede the title under which the land was previously held.

(4) The provisions of section 35 shall mutatis mutandis apply in respect of the issue of such certificate.

### 38. Certificate of consolidated or amended title of two or more pieces of land

(1) If a diagram represents two or more pieces of land which are-

(a) contiguous to each other (or contiguous to any portions of each other notwithstanding that those portions have been separated from other portions by intervening deductions);

(b) owned by the same person or by two or more persons in the same undivided shares in each such piece of land; and

(c) registered in the same property register,

the title deed or deeds of the said pieces of land may on compliance with the requirements of this section be superseded by a certificate of consolidated title issued by the Registrar in the prescribed form.

(2) If a diagram represents such pieces of land as are mentioned in subsection (1) but includes any rectification to any common boundary therein found necessary in consequence of any survey or re-survey, the title deed or deeds of the said pieces of land may on compliance with the requirements of this section be superseded by a certificate of amended title issued by the Registrar in the prescribed form.

(3) Every such certificate shall be in accordance with the new diagram and shall be issued on written application by the owner or owners of the pieces of land in question accompanied by the title deed or deeds thereof and any bond thereon, together with the written consent of the holder of the bond.

(4) In registering the certificate, the Registrar shall endorse on the title deed or deeds that they have, in respect of the land described in the certificate, been superseded by the certificate, and on the certificate that the land therein described or the share thereof referred to in such endorsement, is mortgaged by such bond and shall make such endorsements on the bond and such entries in the registers as shall clearly indicate that the land is now owned by virtue of the certificate and that the land or such share thereof is subject to such bond.

(5) If a portion only of the land represented on the new diagram is mortgaged, a certificate may not be issued unless the bond is cancelled:

Provided that on the written application of the owner and with the consent of the mortgagee, all the land included in the new diagram may be substituted for the land originally mortgaged under the bond.

(6) If different portions of the land represented on the new diagram are mortgaged under different bonds, the certificate may not be issued unless the bonds are cancelled.

(7) If a portion only of the said land is subject to any registered deed of lease or other registered deed other than a bond, whereby any real right in the land is held by any other person, the certificate shall not be issued unless a diagram of such portion is already annexed to the said registered deed, or, if no such diagram is so annexed, unless a diagram in duplicate (or triplicate if required by the Registrar) of such portion is produced:

Provided that it shall not be necessary to produce a diagram of such portion if the diagram of the consolidated land shows that portion by dotted lines or in such other way as to identify it.

(8) The said diagram shall be annexed to the registered deed aforesaid and the registry duplicate thereof, and shall be mentioned in any endorsement made on or reference made in the certificate concerning such registered deed.

(9) No diagram representing a combination of portions of two or more pieces of land shall be accepted in the deeds registry for purposes of transfer until a certificate of consolidated or amended title has been issued for the land represented on such diagram.

(10) More than one combination of portions of two or more pieces of land, each of which combinations is represented on a separate diagram, may be included in one certificate of consolidated or amended title but each combination shall be described in a separate paragraph therein.

### 39. Certificate of amended title of one piece of land

(1) A certificate of amended title in the prescribed form may also be issued by the Registrar in respect of any one piece of land where rectification of title is required in consequence of a survey or re-survey of such land.

(2) The provisions of section 38(3) to (8) inclusive, shall mutatis mutandis apply in respect of such certificate.

### 40. Certificate of uniform title

(1) If the owner of two or more pieces of land which are-

(a) contiguous to each other;

(b) situate in the same district;

(c) registered in the same property register; and

(d) held on different conditions of tenure, or subject to different rights reserved in favour of the State,

desires to consolidate his title in respect of those pieces of land on uniform conditions of tenure or subject to the reservation of uniform rights in favour of the State, the title deeds of the said pieces of land may, with the written consent of the President and on compliance with the provisions of this section, be superseded by a certificate of uniform title issued by the Registrar, in the prescribed form, subject to such uniform conditions of tenure or to the reservation of such uniform rights in favour of the State as are set forth in such written consent.

(2) The provisions of section 38(3) to (8) inclusive shall mutatis mutandis apply in respect of such certificate.

(3) The President may agree with the owner as to the aforesaid uniform conditions of tenure or uniform rights in favour of the State, and may consent to the issue of a certificate of uniform title.

(4) If the said land is subject to any bond or if the said land or any portion thereof is subject to any registered deed of lease or other registered deed whereby any real right in the land is held by any other person, there shall be produced to the Registrar the written consent of the holder of any such bond, lease or right to the issue of the certificate of uniform title and to the uniform conditions of tenure or uniform rights in favour of the State, which may have been agreed upon.

### 41. Certificate of registered title of portion of a piece of land

(1) If a defined portion of a piece of land has been surveyed and a diagram thereof has been approved by the Director, the Registrar may on written application by the owner of the land accompanied by the diagram of such portion, the title deed of the land, any bond thereon and the written consent of the holder of any such bond, issue a certificate of

registered title in respect of such portion in the prescribed form.

(2) In registering the certificate the Registrar shall endorse on the title deed that it has been superseded by the certificate in respect of the land described in the certificate, and on the certificate that the land described therein is mortgaged by the bond, and shall make such endorsements on the bond and such entries in the registers as shall clearly indicate that the land is now owned by virtue of the certificate and is subject to such bond.

(3) The provisions of this section shall also apply where two or more defined portions of a piece of land have been surveyed and the diagrams thereof approved:

Provided that each of such portions shall be described in a separate paragraph in the certificate.

(4) No defined portion of a piece of land shall be mortgaged until the owner thereof has obtained a certificate of registered title in respect of such portion in accordance with the provisions of this section.

(5) Except in the case of a transfer of a whole piece of land, no owner of a township or settlement in whose title deed the individual pieces of land are not separately described, shall deal separately in any way with an individual piece of land in such township or settlement or any portion thereof or share therein until he has obtained a certificate of registered title of such piece of land in the prescribed form.

(6) The provisions of this subsection shall not apply in respect of State land.

#### Change of Title by Endorsement (ss 42-45)

##### 42. Rectification of title by endorsement

(1) If rectification of title is required in respect of any one piece of land in consequence of a survey or resurvey of such land or of the correction of any error in the diagram thereof approved by the Director, the Registrar may, on written application by the owner of the land accompanied by the title deed and the new or the corrected diagram thereof, any bond thereon and any registered deed of lease or other registered deed whereby any real right therein is held by any other person and the written consent of the holder of such bond, lease or right, endorse on the title deed in the prescribed form a description of the land according to the new or corrected diagram, which shall supersede the description already appearing in the title deed.

(2) If a new diagram is produced the Registrar shall in making the said endorsement substitute the new diagram for the old one in the manner prescribed.

##### 43. Transfer or cession by means of endorsement

(1) If immovable property or a bond is registered in the deeds registry in the name of the survivor of two spouses who were married in community of property or in the name of the joint estate of such spouses and such survivor has lawfully acquired the share of the deceased spouse in the property or bond, the Registrar shall on written application by such survivor or by the executor of the estate of the deceased spouse, accompanied by such other documents as may be prescribed, endorse on the title deeds of the property or on the bond that the survivor is entitled to deal with such property or bond, and thereupon such survivor shall be entitled to deal therewith as if he had taken formal transfer or cession into his own name of the share of the deceased spouse in the property or bond.

(2) If the immovable property mentioned in subsection (1) is hypothecated under a registered mortgage bond the endorsement provided for in the said subsection shall not be made unless-

(a) such bond is cancelled;

(b) the estate of the deceased spouse is released from liability under the bond; or

(c) the said bond has been passed by the survivor alone and a written consent (which shall be in duplicate, in the prescribed form and signed by the survivor and the legal holder of the bond) to the release of the estate of the deceased spouse from liability under the bond and to the substitution of the survivor as sole debtor in respect thereof, is produced to the Registrar together with the bond.

(3) The Registrar shall, in any case of release and substitution in terms of subsection (2)(c), when he endorses on the title deeds of the property that the survivor is entitled to deal therewith-

(a) make in the appropriate register an entry setting forth that the estate of the deceased spouse is released from liability in respect of the obligation secured by the bond and that the survivor has become sole debtor in respect of the bond;

(b) annex one duplicate of the written consent referred to in the said paragraph to the bond and file the other with the registry duplicate of the bond; and

(c) endorse on the bond that the estate of the deceased spouse is released from liability in respect of the obligation secured thereby and that the survivor has become sole debtor in respect of the bond.

(4) As from the date of the endorsement on the title deeds of the property in terms of subsection (1), the estate of the deceased spouse shall be absolved from any obligation secured by the bond and the survivor shall become sole debtor in respect thereof in the same manner as if he had passed the bond at that date.

##### 44. Endorsement of deeds where marriage dissolved by divorce

(1) If immovable property or a lease under any law relating to land settlement or a bond is registered in the deeds registry in the name of one of two spouses who were married in community of property but have been divorced, and the person in whose name such property, lease or bond is registered has lawfully acquired the share of his former spouse in the property, lease or bond, the Registrar may, on written application by that person, accompanied by such documents

as the Registrar deems necessary, endorse on the title deeds of the property or on the lease or the bond that such person is entitled to deal with such property, lease or bond, and thereupon such person shall be entitled to deal therewith as if he had taken formal transfer or cession into his name of the share of the former spouse in the property, lease or bond.

(2) If any immovable property referred to in subsection (1) is hypothecated under a registered mortgage bond, the provisions of section 43(2), (3) and (4) shall mutatis mutandis apply.

#### 45. Cancellation of State Grant upon occurrence of specified event

(1) Where any Deed of State Grant provides that on the happening or non-happening of any event the State may resume ownership of any land or require transfer to it of such land the President may, upon the happening or non-happening of such event as aforesaid, and after compliance with any conditions precedent to such resumption or transfer which may be imposed by the said Deed, serve on the owner of any real right in the land and shall publish in two successive issues of the Gazette and a newspaper circulating in Botswana a notice setting out details of the land to be forfeited, the reasons for the forfeiture, and calling upon any person who objects to such forfeiture to lodge a notice of objection with the Attorney-General within 30 days of such service or such publication setting out his reasons why the Deed of State Grant under which the land was held prior to the forfeiture shall not be cancelled by the Registrar.

(2) When a notice of objection has been lodged within the time, and in the manner, set out in subsection (1) and has not been withdrawn in writing by the person making the objection, the ensuing dispute shall be resolved by the High Court on the application of the State or any party to the dispute and the High Court may make such order therein as it may think fit:

Provided that an objection shall be deemed to have been withdrawn if the objector does not, within three months of the lodgement of his objection, make application to the High Court as aforesaid.

(3) On receipt of a certificate in writing by a person authorized by the President in terms of section 4 of the Cap. 32:01 State Land Act, to the effect that-

(a) the State is entitled to resume any land by virtue of the provisions of any State Grant; and

(b) that the notice required by subsection (1) has been given in respect of such land; and

(c) that either-

(i) no notice of objection has been lodged to the resumption; or

(ii) notices of objection have been received but that all objections have been withdrawn in writing by the person making the objection or are deemed to have been withdrawn by virtue of the provisions of the proviso to subsection (2), the Registrar shall cancel the Deed of State Grant issued in respect of that land and endorse his registers accordingly and, thereupon, the land shall be deemed to be State Land.

(4) The certificate prescribed in subsection (3) shall be accompanied by any written notice of the withdrawal of an objection which may have been given under subsection (2).