
SECOND SUBMISSIONS ON LAND REGISTRATION (AMENDMENT) BILL 2000

(1) Introduction

1.1 This paper is in response to the Administration's response issued to the Bills Committee on 26th April 2001.

1.2 For ease of reference, the Law Society will adopt the same order of appearance as used in the Administration's response. Unless otherwise indicated, all references to paragraphs are those appearing in the Administration's response.

(2) Copy "stopped deeds"

2.1 There is no denying that with the implementation of the Proposed Regulations 15 and 15A, together with the Administration's proposal to reduced the 1 year period to 6 months (see Regulation 15(6)), the number of cases besetting owners whose property is affected by a stopped deed pending registration for more than 6 months will be few.

2.2 However, in a normal property transaction, the time span from the date of signing provisional agreement to the actual date of completion is just a month or two. Non-availability copy of a stopped deed will continue to create problems.

2.3 For one thing, the information available from the Land Search Records is not sufficient for the aggrieved owner to institute legal proceedings speedily. Without the address of the culprit, the aggrieved owner will have to apply to court for an order for substituted service, i.e. service of the legal process in other manner than delivering the same at the culprit's last known address. The time entailed for obtaining even the speediest judgment, namely, judgment on account of the culprit's failure to defence the case, is still 3 to 4 months. By which time, completion of the property transaction is long overdue.

2.4 The Administration is of the view that "the owner or his legal representative could easily approach the person who submitted the documents for copies of the documents" (see para 2(a)(iii)). The reality is otherwise. The person submitting a document for registration is usually a solicitor who cannot without client's permission supply a copy of the document on account of duty of confidentiality, breach of which will expose him/her to disciplinary proceedings. There are cases where the person submitting a document for registration is a Governmental authority, who understandably, will normally refuse to supply a copy of such document. It is just unrealistic to expect other Governmental authorities to

provide access while the Land Registry, as a public record office, does not set a good example.

- 2.5 The Administration stated that the number of Stopped Deeds is voluminous. For the reasons stated above, the Law Society does not agree that that should be the reason for rejecting an express power to be granted to the Land Registry to make copy of such documents. In a civilised Society, one should not sacrifice justice for resources or costs saving.
- 2.6 In response to para 2(b)(i) and (ii), the Law Society is of the view that it is quite an unwieldy task for the Land Registry to ensure the re-lodged instrument is exactly the same document, in the absence of a copy for comparison.
- 2.7 As to para 2(c), the Law Society is of the view that Principle 3 of Schedule 1 of the Personal Data (Privacy) Ordinance applies, because “at the time of collection of the data”, the purpose of registration was, inter alia, to convert the lodging instrument into a public document available for public inspection. Reference by the Administration (see para 2(a)(ii)) to S.5 of the Land Registration Ordinance, concerning priority of documents “duly registered” is not relevant.
- 2.8 Mistakes merely account for a major part of the instruments being withheld from registration. There are cases where instruments are returned to the lodging party simply because the Land Registry wishes to clarify the contents or the legal effect of the instruments. While accepting as the Law Society does that the main reason for stopped deeds being outstanding is due to the inaction or belated response from the lodging party (see para 2d(ii)), delay in completing the registration progress may also be attributable to the Land Registry’s failure to appreciate sound legal points or explanation advanced by the lodging party.
- 2.9 As to para 2(d)(iii), the Law Society is of the view that application for discovery again increases the time entailed for obtaining speedy judgment. The same argument in para 2.4 of this paper applies.

(3) Certified copy Instruments

- 3.1 The Law Society has no adverse comments on the Land Registry’s letter of 4th May 2001 so far as relating to certified copy instruments.

(4) Removal of stopped deeds

Persons Affected

- 4.1 The Law Society is of the view that both the owner and the mortgagee ought to be given a notice under the proposed Regulation 15(7)(a), given the vast number of negative property assets in existence.

Application to Court

- 4.2 The Law Society understands that the main purpose of defining the word “Court” is to provide for jurisdiction of the District Court and the Court of First Instance (see proposed Regulation 15A(6)). However, the orders to be made under the proposed Regulation 15A(3) are qualified by the word “Court”. As such, it is quite misleading with the result that one may misunderstand such orders under Regulation 15A(3) do not include those made by the appellate courts.
- 4.3 For clarity, the Law Society is of the view that the jurisdictional issue ought to be dealt with in the relevant High Court Ordinance and District Court Ordinance.

Priority of documents

- 4.4 S.3(1) of the Conveyancing and Property Ordinance (“CPO”) talks of “contract for sale or other disposition” rather than, “contracts or other dispositions” which appear in S.3(2) of CPO. It is quite apparent that S.3(1) of CPO refers to “contract for the sale” or “contract for other disposition”. That is why the word “sale” is defined in S.2 of CPO to include “the disposition of estate and interest” in land. The word “other” (see para 4(c)(ii)) as emphasized by the Administration, merely served to corroborate the fact that the definition “sale” shares similar meaning with “disposition”. Furthermore, “contract” is an agreement to dispose of a property which may not necessarily produce the subsequent disposition if it was cancelled by the parties subsequently. The Law Society therefore maintains its view to insert “or any contract therefor” in the proposed Regulations 15A(5).

The Law Society’s Property Committee
15th May 2001