

## Registration of Documents

Report No. 81

## REGISTRATION OF DOCUMENTS

The Registration Act 1908 is an important statute prescribing the kind/type of documents, required to be registered and the procedure for doing so. Under section 17 of the Act an instrument which purports or operates to create, declare, assign, limit or extinguish any right, title or interest to or in immovable property of the value of one hundred rupees and upward is compulsorily register-able. No document required to be registered under this Act shall operate, create and declare any right unless it has been so registered.

The registration of documents/deeds is an important legal obligation. The law protects the rights of the transferor and the assignee therefore, the deed should be free from legal defects to avoid complications and needless litigation, arising out of defective drafting. An example of avoidable litigation in the court of law due to defective drafting may be quoted. Two persons jointly purchased a commercial property in equal shares. In the conveyance deed it was mentioned that one half-portion falling towards north will be owned by A and the remaining half falling towards south will be owned by B. In the said conveyance deed, the boundaries were described as a road to the west, the house of Mr. X to the east, hotel to the south and the house of Mr. Y to the north, whereas the actual description should have been south west, north west, south east and north east. After sometime a dispute erupted between the parties which lead them to file suit for partition of the property. The misdescription of boundaries caused the dragging of the parties into futile litigation, which ultimately ended in a compromise. The litigation however lasted for 15 years. During this period, expenses were incurred in litigation and parties' and court's time was unnecessarily wasted. It happened only because of defective drafting of the sale deed.

Undoubtedly, deed writing is an important art and responsible job, but unfortunately, conveyance writing has never been given its due status as professional job in Pakistan. The Petition-writers who are engaged in this profession, have no legal background or training. It is only rarely when a lawyer is consulted for drafting a conveyance. In the large commercial cities, with the growth of general education and complexity of transactions, sometimes conveyances are drafted by qualified persons i.e. lawyers but the system is not fully established. In many other cities, mostly unskilled persons are engaged in this highly technical profession.

In order to regulate this profession and attract real capable persons in the field in the year 1942, the Registration Act 1908 was amended by inserting Part XIII A & B vide Bengal Touts Act 1942, adding Ss 80-A to 80-G and S.80-G relating to Deed-writers is as under:- *(Not part of present Registration Act)*

(1) The Inspector General shall have powers, from time to time, to make rules consistent with this Act-

- (a) prescribing the manner in which and the terms subject to which persons who write documents, outside the precincts of registration office, or who frequent the precincts of registration offices, for the purpose of writing documents, may be granted licenses;
- (b) prescribing the fees (if any) to be paid for such licenses; and
- (c) declaring the conditions under which persons who write documents outside the precincts of registration offices without licenses shall be deemed to be touts for the purposes of this Act.

The rules so made are required to be approved by the provincial government and there after published in the official gazette.

In England, Licensed Conveyancers are appointed under the Administration of Justice Act 1985 and a Council is established to ensure the standards of competence and professional conduct amongst persons licensed. The Council is also responsible for making rules relating to the education and training of those seeking to practice as licensed conveyancers. It is for the Council to satisfy itself that the applicant has complied with the prescribed rules and is fit and proper person to practice as a licensed conveyancer.

In the province of Punjab, the Petition-writers are performing the job of Deed-writers who are appointed by the High Court under Chapter 17 Part-B of High Court Rules, which are:

1. No person shall practice as a Petition-writer in the Punjab unless he has been duly licensed under these rules:-
  - (1) that any person licensed under any rule hitherto in force shall be deemed to have been licensed under these rules;
  - (2) that these rules shall not apply to any Advocate, Pleader or Mukhtar, in respect of a petition, written for presentation to a Court in which he is qualified to practice, whether such petition be written by himself or his clerk on his behalf:

Provided that in the latter case it be signed by the employer.

2. Writing of petition.- No petition shall be received by a Court or an officer of a court unless it is written by the party or his recognized agent, or by a legal practitioner, or by a Petition-writer, except in the case of an application filed by an accused person in custody, provided the name and status of the person writing the document appears on it. A legal practitioner's clerk may write such petition on behalf of his master, provided that it is signed by the latter.
3. License.- No person shall be licensed as a Petition-writer while he is in the service of Central or Provincial Government or of a Legal Practitioner.

According to Rule 2 of Part C of Chapter 17, a Petition-writer is appointed who is a Pakistani subject, above the age of twenty years, has passed the vernacular Final Middle School Examination...

In the Province of Sindh, the Petition-writers are appointed under Chapter III of Criminal Circular, and as per rule 26, the Chief Judge in consultation with the presiding Magistrate is required to appoint Petition-writers. A Petition-writer is appointed for one year on fulfillment of the following requirements:-

No person shall be licensed unless:-

- (i) He produces a certificate from the Magistrate to whose Court he seeks to be licensed certifying—
  - (a) that he is competent to do the work of writing complaints, applications, etc.; and
  - (b) that he is a person of good character.
- (ii) He also produce a certificate from the Honorary Secretary of the Bar Association of the District in which the Court to which he seeks to be licensed is situated, certifying that in the opinion of the Committee of the Association he has not within the past twelve months directly or indirectly received or demanded any commission for introducing business and that he does not associate with touts;
- (iii) He submits his petition for a license through the District Magistrate and Sessions Judge in whose jurisdiction the Court to which he seeks to be licensed is situated.

In the absence of any law regulating the qualifications of conveyance-writers, mostly unqualified persons have occupied this field. The ordinary Petition-writers who are not supposed to write Deeds are generally engaged in writing of conveyances of technical nature which require special proficiency as, there are so many other technical requirements incidental to registration process i.e. assessment of proper registration fee, to handle cases where Registrar refuses to admit document, payment of deficient and refund of access stamp duty, rectification of objections raised by the Registrar, etc. These functions obviously can not adequately be performed by an unqualified person, nor the job can be entrusted to unskilled persons. As the preparation of deeds/instruments writing requires specialized knowledge and skill, hence the profession needs to be regulated through amendment in law.

The matter was placed before the Commission in its meeting held on 25-26 September 1999 to consider the following two alternates:

- (1) Section 69 of the Registration Act which prescribe the power of Inspector General to superintend registration offices and make rules in this regard. It was suggested that he may also be given the power to frame rules prescribing the qualifications for deed writers and the manner in which deeds shall be written and filed by persons other than an advocate. Such

rules should also prescribe the fees (if any) to be paid for obtaining licenses for deed writing, and penalty for violation of the said rules; or

- (2) The respective Bar Councils may be assigned responsibilities to regulate and make arrangement for registration of advocates/group of advocates/firms who intend to engage themselves for legal documentation on the pattern of the Administration of Justice Act 1985 enforced in England or any other appropriate method proposed by the Bars/Bar Councils. Here it is worth mentioning that in Karachi, some advocates have formed law firms/companies and established their offices exclusively meant for legal documentation and conveyance writing.

The Commission considered the above-mentioned alternatives and approved the view that appropriate qualifications may be prescribed for conveyancers, so as to put an end to the nuisance of defective drafting of legal instruments/deeds, which result in mental agony, financial loss and litigation. The Commission also noted the incidents of fraud and misrepresentation in deeds and observed that appropriate measures, including the formulation of new rules, may be adopted so that qualified persons do conveyancing and drafting of instruments/deeds to enhance the sanctity of title documents and put an end to the incidents of fraud and misrepresentation. The Commission also observed that the fee structure for registration of deed/document might be rationalized to encourage people to go for registration, which can prove to be a source of revenue generation of the State. Accordingly, the Commission asked the Secretary, PLC to examine the issue and suggest an appropriate option for consideration of the Commission after consultation with the Deed Registration Offices and members of the bar.

Earlier, the Secretariat sent the draft proposal on 16 August 1999 to the Vice Chairman of Pakistan Bar Council and Provincial Bar Councils, the Provincial Law Departments, Joint Registrars at Lahore, Karachi, Peshawar and Quetta and Presidents of some District Bar Associations, with a view to obtain their views/comments on the issue. The Law Department of the Government of NWFP and the District Bar Association, Abbottabad have responded and supported the option that deed-writing be entrusted to lawyers. They stated that it will put an end to the problems of defective drafting and will relieve the general public of many hardships and unnecessary litigation.

Subsequently, reminders were sent on 22 January 2000, 28 July 2000 and 9 April 2001 to the concerned agencies/dependants for response. Very few responded. The Punjab Bar Council endorsed the second option of the Secretariat that the job be entrusted to the enrolled advocates/firms of advocates. The President, Lahore High Court Bar Association also supported the same view and suggested that appropriate amendments be made in the Registration Act to this effect. Meanwhile, the Ministry of Law, Justice and Human Rights forwarded a copy of the resolution passed by General House of the Lahore High Court Bar Association, Lahore for consideration. The resolution states –

“This house unanimously recommend to the Commission of the Law & Justice to make changes in the law regarding conveyancing and documentation of Gift, Hiba, Tamlik, Will, Bequest, Sale-Deed, Agreement to sell, etc in the registry branch of each District, Division, Sub-Division of every city to be handed over to the lawyers not less than 4 years of standing of the Bar.

The documentation of all these transaction shall be made, drawn, drafted and verified by the lawyers of the above mentioned standing and upon completion of the transaction a reasonable amount be fixed for completion, presentation, attestation and registration of such documents.

It is further recommended by this house that the assignment of the completion of these documents be made as solicitors-in-charge of registry branch.

The aforesaid amendments in the law will facilitate the documentation of transaction of transfer of sale, etc by legal expertise and shall eliminate the aspects of fraud, forgery and misrepresentation of the deed-writers.”

**(Justice ® Mrs. Fakhar-un-Nisa Khokhar)**

President,

Lahore High Court Bar Association,

**Lahore.**

The following notification is proposed by the Lahore High Court Bar Association:-

### **Proposed Notification**

“Whereas it is expedient to further regulate the practice of conveyancing and deed writing in the province of Punjab to safeguard the public interest.

Now, therefore, the Governor of the Punjab in exercise of powers under all enabling provisions to do, hereby directs as under:-

- i) Deeds of any kinds which are required under the law to be written on a stamp paper of value exceeding Rs. 100/- shall be drafted by an advocate whose name exists in the record of the Punjab Bar Council for which he shall be entitled to charge a fee according to a scale prescribed by the Government.
- ii) A certificate to the above effect shall be appended with the Deed under the stamp and signatures of the Advocate concerned, failing which, no court or authority shall admit such document in any manner what so ever.

- iii) The Punjab Bar Council shall issue a certificate in this connection to the advocate for this purpose.
- iv) In case of any defective and improperly drafted deed the court or authority may return the said-document to the executants.”

The Secretariat of the Commission re-examined the above referred alternative i.e. entrusting the job of deed-writing exclusive to the enrolled advocates or prescribing appropriate qualifications/experience for the Petition-writers/Deed-writers already engaged in this profession. It may be stated that a good numbers of people are engaged in this profession throughout Pakistan since long and putting a sudden ban on them is inappropriate. Besides they have acquired a certain amount of experience in the job. Further, they charge modest fee for their services. Their services may be utilized effectively and in appropriate way be amending the existing law prescribing minimum educational qualifications, experience, training and procedure for their enrollment and conduct of business.

It is therefore, suggested, that the first option of amending Section 69 of the Registration Act 1908, empowering the Inspector General, Registration to prescribe of minimum educational qualifications and the manners of enrollment of deed-writers may be considered to regulate and supervise the profession of deed-writing. The task can be assigned to the authority to eliminate unauthorized persons from entering this profession. Preferably, some measures may be suggested on the pattern of the Bengal Touts Act 1942 and the Inspector General may be given powers to prescribe terms and conditions, minimum qualifications for Deed-writers, beside the powers to superintend registration offices as he is already empowered under section 69 of the registration Act, and to make rules accordingly.

It is, therefore, proposed that:-

1. Section 69 of the Act may be amended and a new clause (aa) may be added as

under:-

(aa) regulating and supervising the profession of conveyance writing;

2. In the Act, a new section 81-A may be added as under:-

**81-A. Engagement as Conveyancer without license.-** Whoever, engages himself as Conveyancer without enrolment or license shall be liable to imprisonment of one month or fine of rupees five thousand or both;

3. The following Rules may be framed under section 69 of the Act:

**(i) Procedure for grant of license and enrolment.-** (1) Where, in the opinion of Inspector General of Registration, a person who fulfils the following conditions, namely:-

- (a) possesses the higher secondary school certificate from any recognized Board of Intermediate and Secondary Education; and
- (b) qualifies the prescribed course of deed writing conducted under these rules.

May granted him a license and enroll him as conveyancer, notifying his name in the official gazette.

(2) After every three years the conveyancer who was enrolled shall attend a prescribed refresher course followed by an evaluation test.

**(ii) Cancellation of License.-** if a conveyancer absents himself from or fails to qualify the refresher course or his conduct with public is not satisfactory, the Inspector General of Registration shall cancel his license and strike off his name from roll, after giving him an opportunity of show cause.

**(iii) Enrolment Fee.-** A conveyancer shall pay rupees five hundred as registration and rupee one hundred as annual renewal fee.

**(iv) Penalty.-** Any person who is engaged as conveyancer without enrolment or licence shall be liable to imprisonment of one month or fine of rupees five thousand on both.



## **A**

### **Bill**

Further to amend the Registration Act, 1908

Whereas it is necessary to amend the Registration Act 1908 for the purposes hereinafter mentioned;

It is hereby enacted as follows.

1. **Short title and extent.-** (1) This Act may be called the Registration (Amendment) Act, 2002.

(2) it shall come into force at once.

2. **Amendment of Section 69, Act XVI of 1908. -** In the Registration Act 1908 (XVI of 1908), hereinafter referred to as the said Act, in section 69, in sub-section (1), the existing clause (a) shall be renumbered as clause (aa) and before clause (aa) renumbered as aforesaid, the following new clause shall be inserted, namely:-

“(a) regulating and supervising the profession of conveyance writing”.

3. **Insertion of section 81-A, Act XV of 1908.-** In the said Act, after section 81, the following new section shall be inserted, namely:-

“81-A. Engagement as conveyancer without enrolment.- Whoever, engages himself as conveyancer without enrolment or license shall be liable to imprisonment of one month or fine of rupees five thousand or both”.

## **Notification**

S.R.O.\_\_\_\_\_/2002 dated \_\_\_\_\_ in exercise of the powers conferred by Section 69 of the Registration Act, 1908, the Inspector General of Registration, with the approval of the Provincial Government, is pleased to make the following Rules, namely:-

1. **Short title, Application and Commencement.-**
  - (1) These rules may be called the Enrolment Procedure and Qualifications for Conveyancer Rules, 2002.
  - (2) It shall apply to the whole of the province of \_\_\_\_\_
  - (3) They shall come into force at once.
2. **Definition.-** In these rules unless there is anything repugnant in the subject or context
  - (i) 'Act' means the Registration Act, 1908;
  - (ii) 'Conveyancer' means a person duly authorized under these rules to write conveyance deeds for the purpose of registration under the Act but does not include an advocate, firm of advocates or a legal practitioner enrolled under the Legal Practitioners and Bar Councils Act 1973;
  - (iii) 'Inspector General of Registration' means a person appointed under section 3 of the Act.
3. **Procedure for grant of licence and enrolment.-** (1) Where, in the opinion of Inspector General of Registration, a person who fulfils the following conditions, namely:-
  - (a) possesses the higher secondary school certificate from any recognized Board of Intermediate and Secondary Education; and
  - (b) qualifies the prescribed course of deed writing conducted under these rules.

May granted him a licence and enroll as conveyancer, notifying his name in the official gazette.

  - (2) After every three years the conveyancer who was enrolled shall attend a prescribed refresher course followed by evaluation test.
4. **Cancellation of License.-** If a conveyancer absents himself from or fails to qualify the refresher course or his conduct with public is not satisfactory, the Inspector General of Registration shall cancel his license and strike off his name from roll, after giving him an opportunity of show cause.
5. **Enrolment Fee.-** A conveyancer shall pay rupees five hundred as registration and rupee one hundred as annual renewal fee.

### **Commission's deliberation on 10.06.2006**

The working paper was considered by the Commission in its meeting held on 10.6.2006 and the following are the deliberations:-

The Commission considered the proposal to amend the provisions of the Registration Act 1908 and the rules made thereunder to regulate and supervise job of conveyance writing. The Commission was informed that presently the petition writers licenced by the High Courts, perform the job of deeds/conveyance writing that are not qualified for it. The defective deeds create a lot of hardships to the parties and give rise to litigation in the courts. The Commission also considered recommendation received from the Lahore High Court Bar Association that the lawyers may be assigned the job of conveyance/deed writing. The Chairman remarked that lawyers have studied the subject of conveyancing in the law course therefore, they will be better qualified for writing of deeds/ conveyance. The Secretary Ministry of Law and Justice Division expressed that lawyers are not competent for the deed writing unless they have some experience in the field. The Chief Justice High Court of Sindh observed that lawyers may receive fixed fee of Rs. 200/- for writing of conveyance /deeds. After these deliberations the Commission approved the proposal to amend the Registration Act 1908 and the rules made thereunder to regulate the enrolment and licencing of deed / conveyance writing by the Inspector General of Registration. The Commission added that lawyers, being eligible, must also continue to draft conveyances and deeds