

**REAL PROPERTY REGULATIONS 2015**

(CONSOLIDATED VERSION)

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## **REAL PROPERTY REGULATIONS 2015**

Regulations to govern the law of real property, to establish a system of real property registration and to make provision for matters relating to real property and real property registration.

Date of Enactment: 3 March 2015

The Board of Directors of the Abu Dhabi Global Market, in exercise of its powers under Article 6(1) of Law No. 4 of 2013 concerning the Abu Dhabi Global Market issued by His Highness the Ruler of the Emirate of Abu Dhabi, hereby enacts the following Regulations:

### **PART 1— REAL PROPERTY INTERESTS AND CONVEYANCES GENERALLY**

#### **Chapter 1— Types of Real Property Interests**

##### **1. Types of Real Property Interests**

The only estates or interests in real property which are capable of subsisting or of being Conveyed or created at law in the Abu Dhabi Global Market are the interests enumerated in subsections (a)-(j) below, with all other estates, interests and charges in or over real property taking effect as equitable interests—

- (a) notwithstanding anything to the contrary herein contained, freehold interests in land located within the geographical limits of the Abu Dhabi Global Market<sup>1</sup>;
- (b) freehold interests in real property (other than land), consisting of fee simple interests and life estate interests (the latter, as further provided in section 33 of these Regulations);
- (c) future interests – Interests in real property that become effective at a future date, including the following and as further provided in Part 5 of these Regulations—
  - (i) reversion interest – A right by the grantor of a freehold interest to the return of such interest upon the occurrence of a future event that is certain to occur;
  - (ii) possibility of reverter – A right by the grantor (or such grantor's heirs) of a freehold interest to the return of such interest upon the occurrence of a stated condition;
  - (iii) right of entry (or power of termination) – A right by the grantor of a freehold interest (or a third party) subject to condition subsequent to repossess or terminate such interest upon the occurrence of a stated condition;
  - (iv) remainder interest – A right of a person to receive the residue and remainder of a real property following the termination of a life estate or a leasehold interest; and

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<sup>1</sup> Amended on 5 May 2020



- (v) executory interest – A future interest held by a third party that is not one of the interests described in subsections (i)-(iv);
- (d) joint estates – Interests in real property held by more than one person simultaneously as described in Part 5 of these Regulations, including the following–
  - (i) joint tenancy – Two or more persons' (joint tenants) ownership of a real property interest on an undivided basis and with right of survivorship; and
  - (ii) tenancy in common – Two or more persons' (tenants in common) ownership of a real property interest in shares agreed among themselves, each tenant in common having the right to possess the entire real property interest;
- (e) leasehold – An interest in real property that gives a person (the tenant) the right to use and occupy real property owned or leased by another person (the lessor) pursuant to the terms and provisions of a lease as described in Part 8 of these Regulations. A leasehold interests hall include one or more sub-leasehold interests arising under a leasehold interest (and successive sub-leasehold interests of such sub-leasehold interests, at any tier of ownership). A leasehold interest does not include a license interest, including an occupational license interest, which is not an interest in real property;
- (f) strata interests – An interest in one or more Strata Lots pursuant to the Strata Title Regulations 2015;
- (g) mortgage – An interest in real property held by a lender (mortgagee) as security for repayment of indebtedness, where default under that indebtedness entitles the mortgagee to foreclose on the secured interest in real property pursuant to the terms and conditions of the mortgage instrument and other documentation relating to the indebtedness and as described in Part 9 of these Regulations;
- (h) statutory charge – A statutory charge established by or under applicable law that imposes a restriction on the use of or dealing with the real property as described in Part 10 of these Regulations;
- (i) easement – An interest in real property consisting of a non-possessory right of use or entry or benefit (such as light and air) in favour of the owner of one parcel of real property (the dominant tenement, or, in the case of an easement in gross, a person) over another parcel of real property (the servient tenement) as described in Part 11 of these Regulations; and
- (j) covenant – An agreement by the owner of real property for the benefit of another person that something is done, will be done, or will not be done in relation to the applicable real property which is intended to bind and burden the applicable real property and as further described in Part 12 of these Regulations.

## **Chapter 2— Types of Conveyances**

### **2. Types of Conveyances**

The following Conveyances of interests in real property shall be recognised in the ADGM—

- (a) a sale, assignment, lease (at any level) or granting of any real property interest described in subsections (a)-(j) of section 1 of these Regulations (or an assignment or termination thereof in whole or in part);
- (b) a gift of any real property interest described in subsections (a)-(j) of section 1 of these Regulations;
- (c) the taking effect of any future interest described in subsection (c) of section 1 of these Regulations;
- (d) a mortgage of real property (or foreclosure or discharge thereof in whole or in part) as described in subsection (g) of section 1 of these Regulations;
- (e) a statutory charge with respect to any real property as described in subsection (h) of section 1 of these Regulations;
- (f) a caveat with respect to any real property as described in Part 15 of these Regulations; and
- (g) a Conveyance of real property pursuant to powers of eminent domain as further described in Part 7 of these Regulations.

## **Chapter 3— Registrable Interests and Conveyances**

### **3. Registrable Interests and Conveyances**

- (1) The following matters shall be registrable in the Register as further described in Part 6 and elsewhere in these Regulations—
  - (a) any interest in real property described in Chapter 1 above;
  - (b) any agreement to create or transfer any interest in real property described in Chapter 1 above;
  - (c) a certificate or other instrument (including a memorandum or short-form agreement, which may omit commercially sensitive or proprietary information) evidencing any of the Conveyances described in Chapter 2 above;
  - (d) an agreement modifying any matter so registrable in the Register, including any agreement modifying the priorities of any interests or the rights of the parties having any interest described above, including any non-disturbance agreement as described in section 48(2)(b);
  - (e) registrations of personal representatives or of records of death of a registered owner of real property as described in Part 13 of these Regulations; and

- (f) a writ of execution in real property (or cancellation, discharge or satisfaction thereof).
- (2) In the event that, with respect to any question of ownership of any freehold interest in real property, there shall be a conflict between the register of the Municipality of Abu Dhabi and the Register created hereunder, the latter shall control to the extent of such inconsistency.

## **Chapter 4— General Principles**

### **4. General Principles**

- (1) Covenants against public policy void – Any covenants affecting real property which are adjudged by the Court to violate the public policy of the Abu Dhabi Global Market, the Emirate of Abu Dhabi or the UAE shall be void and of no force or effect.
- (2) Prohibition on waste – In the case of any life estate, joint tenancy or tenancy in common, any tenant in occupancy is prohibited from laying waste to the real property subject to the relevant interest. Unless otherwise contractually agreed, waste does not include reasonable wear and tear.
- (3) Non-merger – There shall not be any merger by operation of law of any estate in real property, the beneficial interest in which would not be deemed to be merged or extinguished in equity. Without limiting the foregoing, where on registration of a lease the interests of lessor and lessee vest in the same person, no merger occurs unless the lessor and lessee evidence a contrary intention in the instrument of transfer.
- (4) Interests required to be in writing – Subject to subsection (5), with respect to the creation of interests in real property by parol–
  - (a) no interest in real property can be created or disposed of except by writing signed by the person creating or Conveying the same, or by his agent thereunto lawfully authorised in writing, or by will, or by operation of law;
  - (b) a declaration of trust respecting any real property interest therein must be manifested and proved by some writing signed by some person who is able to declare such trust or by his will; and
  - (c) a disposition of an equitable interest or trust subsisting at the time of the disposition, must be in writing signed by the person disposing of the same, or by his agent thereunto lawfully authorised in writing or by will.
- (5) Parol – All interests in real property created by parol and not put in writing and signed by the persons so creating the same, or by agents thereunto lawfully authorised in writing, have, notwithstanding any consideration having been given for the same, the force and effect of interests at will only. Nothing in this subsection shall invalidate dispositions by will or affect the operation of the law relating to part performance.
- (6) Anti-abuse – Where these Regulations provide for a fee or a maximum term requirement (as in section 42), an attempt by a party to structure a transaction with an intention to defraud or misrepresent the Registrar for the purpose of avoiding the fee or requirement in question, the Registrar may request for the value of the transaction to be determined by an independent valuator at the expense of the parties involved in order for

the Registrar to be able to determine the applicable fees<sup>2</sup>.

- (7) Adverse possession disallowed – A person does not acquire any right or title to real property by any length of adverse possession.

## **PART 2— ADMINISTRATION**

### **Chapter 1— Appointment of the Registrar**

#### **5. Appointment of the Registrar and other officers**

- (1) The Registrar has been created as a department of the Abu Dhabi Global Market pursuant to Article (10) of the ADGM Founding Law.
- (2) A person dealing with the Registrar may assume that acts done or records made have been done or made within authority.

#### **6. Seal of office**

- (1) The Registrar shall have a seal of office.
- (2) Unless the contrary is shown, a document purporting to be issued by the Registrar and bearing the seal of the Registrar or a likeness of that seal is to be taken to be issued by the Registrar.

### **Chapter 2— Establishment of Register**

#### **7. The Registrar shall establish and maintain a real property register**

The Register shall be established and maintained by the Registrar.

#### **8. Contents of Register**

- (1) The Register consists of—
  - (a) folios;
  - (b) registered instruments;
  - (c) information registered by the Registrar in accordance with sections 9 and 10; and
  - (d) documents lodged with the Registrar that are not required to be registered.
- (2) The Register may be kept in any form (documentary or otherwise) the Registrar from time to time determines appropriate, including in the form of electronic files.
- (3) A folio shall be created for each lot now or hereafter existing in the Abu Dhabi Global Market Area.
- (4) The lots comprising the Abu Dhabi Global Market Area shall be defined by the Registrar with reference to the master plan of the Abu Dhabi Global Market Area in effect at the time

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<sup>2</sup> Amended on 6 June 2022

of such designation or such other plan deemed necessary or desirable by the Relevant Authorities.

## **PART 3— THE REGISTER**

### **Chapter 1— General**

#### **9. Information the Registrar shall register**

- (1) The Registrar shall register in the Register the information necessary to identify—
  - (a) every folio, and the lot or lots to which each such folio corresponds;
  - (b) every instrument registered by the Registrar, and the date and time it was registered;
  - (c) every instrument lodged with the Registrar, and when it was lodged; and
  - (d) the name of each present and past registered owner of each lot and the nature of their interest.
- (2) The Registrar shall also register in the Register anything else required to be registered in it by this Regulation.

### **Chapter 2— Registration of instruments**

#### **10. Duty to create instrument and lodge for registration**

- (1) A person may Convey property to himself or to himself and another person or persons.
- (2) A person who Conveys real property shall ensure that—
  - (a) the Conveyance is embodied in an instrument in the appropriate approved form, if applicable; and
  - (b) the execution and delivery of the instrument by that person is in accordance with these Regulations.
- (3) A person in whose favour real property is Conveyed shall ensure that—
  - (a) the Conveyance is embodied in an instrument in the appropriate approved form, if applicable;
  - (b) the execution and delivery of the instrument by that person is in accordance with these Regulations; and
- (4) Each person so Conveying or receiving such a Conveyance shall do their best to ensure that—
  - (a) all necessary consents or approvals required in connection with the Conveyance are obtained; and
  - (b) if those consents or approvals are obtained, the instrument is lodged for

registration as soon as practicable after completion of the transaction that gave rise to the Conveyance.

#### **11. Existing musataha and usufruct interests**

- (1) The parties to musataha and usufruct interests in existence as of the date of publication of these Regulations shall register such interests as leases pursuant to “memoranda of leases” pursuant to section 3(1)(c) above by not later than the later to occur of—
  - (a) the first anniversary of the date of publication of these Regulations; or
  - (b) any extended registration period for which provision may be made pursuant to transition regulations or arrangements effected by the Board pursuant to section 157(3) below. Unless the parties elect to convert the legal form of the underlying instrument from musataha or usufruct, as applicable, to a lease, the contractual rights and obligations arising under the underlying musataha or usufruct arrangement shall not be affected or modified by reason of such registration.
- (2) To the extent that any musataha or usufruct interest was previously registered and a fee paid therefor, the Registrar shall make reasonable efforts to provide that any initial registration pursuant to subsection (1) above shall not be subject to an additional fee.

#### **12. Registrar’s duty to register instruments**

- (1) Subject to section 12(2), if a person lodges for registration an instrument that affects real property and that is in approved form, if applicable, the Registrar shall register it.
- (2) Subsection (1) does not prevent a person from withdrawing an instrument lodged for registration before it is registered.
- (3) The Registrar shall record any disposition shown on any deed or other instrument ordered by a Court.
- (4) All instruments lodged for registration shall be in the English language and, where the original instrument was executed in a language other than the English language, an English translation must be provided. In the event of any conflict or inconsistency between the provisions, the English translation shall prevail.

#### **13. Registrar shall give distinguishing reference to each registered instrument**

- (1) On registering an instrument affecting real property, the Registrar shall—
  - (a) give the instrument a distinguishing reference sufficient to identify it; and
  - (b) register the reference in the folio for the lot or lots concerned.
- (2) An instrument is registered when the Registrar registers the distinguishing reference in the folio.

#### **14. Order of registration of instruments**

- (1) Instruments eligible for registration shall be registered in the order in which they are lodged for registration.

- (2) For the purposes of subsection (1), an instrument that is lodged for registration but is later withdrawn before registration or rejected by the Registrar, is not lodged until it is relodged.
- (3) Despite subsection (1), if an instrument ("instrument 2") affecting a lot is lodged after another instrument ("instrument 1") affecting the lot, instrument 2 may be registered before instrument 1 if the registration of instrument 2 cannot affect any interest that a person might claim under instrument 1.

**15. Registered owner may be an individual or a body corporate**

The registered owner of an interest in real property may be an individual or a body corporate.

**16. Registration after death of party executing instrument**

The death of a person after signing an instrument but before the instrument is registered, does not, of itself, prevent registration of the instrument.

**17. Priority of registered instruments**

Registered instruments have priority according to when they were registered, not according to when they were executed or delivered.

**18. Instrument of subordination**

- (1) A registered interest may, by a registered instrument of subordination executed by all parties to the interest, be subordinated to any other registered interest.
- (2) On registration of the instrument, the parties' interests rank in priority in the order expressed in the instrument.

**19. Conclusive evidence of information in Register**

The information about a registered instrument registered in the Register is conclusive evidence of—

- (a) the registration of the instrument;
- (b) when the instrument was registered; and
- (c) the contents of the instrument.

**Chapter 3— Consequences of registration**

**20. Need for registration**

Subject to section 27, an instrument which is required to be registered does not Convey an interest in real property until the instrument is registered.

**21. Effect of registration on interest**

On registration of an instrument that is expressed to transfer or create an interest in real

property, the interest–

- (a) is transferred or created in accordance with the instrument; and
- (b) vests in the person identified in the instrument as being entitled to the interest.

**22. Consideration not needed**

The benefits of registration apply to an instrument whether or not valuable consideration is given.

**23. Conclusive effect of registration: ownership**

- (1) The registration of a person as owner of an interest in real property is conclusive evidence that–
  - (a) the person is the owner of that interest; and
  - (b) the person's title to that interest is indefeasible (unless the instrument registered in the Register expressly specifies that such title is defeasible).

**24. Conclusive effect of registration: approved form**

The registration of an instrument is conclusive evidence that such instrument was in approved form, if applicable.

**25. Quality of registered interests**

- (1) A registered owner holds the registered interest subject to all prior interests registered in the folio for the relevant lot but free from all other interests.
- (2) In particular, neither the registered owner nor any person relying upon a certificate issued by the Registrar showing the registered owner of real property–
  - (a) is affected by actual or constructive notice of any unregistered interest affecting the lot;
  - (b) is affected by any interest that, but for these Regulations, might be held to be paramount or to have priority;
  - (c) is affected by any error or informality in any application or proceedings; or
  - (d) is liable to proceedings for possession unless the proceedings are brought by a person claiming a registered interest in the lot.
- (3) However, subsections (1) and (2) do not apply–
  - (a) to an interest or matter mentioned in section 26; or
  - (b) if the Registrar has reasonable suspicion that either the motivation or intent of either the transferor or the transferee in engaging in the underlying transaction was to participate in or further any money laundering or terrorism financing scheme.



## **26. Exceptions to section 25**

Neither a registered owner of an interest in real property nor any person relying upon a certificate issued by the Registrar showing the registered owner of real property obtains the benefit of section 25 in relation to the following interests or rights affecting the lot—

- (a) any easement or public right of way in existence when the real property became governed by these Regulations as and to the extent that the existence of same could be determined by an accurate survey or physical inspection;
- (b) any right in favour of any Relevant Authority to the extent binding on the registered owner;
- (c) any easement implied under sections 68 and 69;
- (d) any statutory charge under section 64;
- (e) any matter registered by the Registrar under section 9;
- (f) an equitable obligation binding the registered owner as a result of the registered owner's conduct; or
- (g) the interest of another registered owner, if two or more persons are registered as owners of the same interest (in which case the earliest-registered interest prevails).

## **Chapter 4— Unregistered instruments**

### **27. Nature and priority of unregistered instruments**

- (1) Nothing in these Regulations prevents an instrument not eligible for registration or lodged for registration but not yet registered from operating as a contract between the parties thereto, or from being otherwise enforceable according to its terms.
- (2) The lodgement of an instrument for which no approved form exists has the same effect as the lodgement of a caveat protecting the interest claimed under that instrument.
- (3) The benefit of subsection (2) is lost if the instrument is withdrawn from registration.

## **PART 4 — INITIAL REGISTRATION OF REAL PROPERTY AND TITLES**

### **Chapter 1 – Creation of folio**

### **28. Creation of folio on the Registrar's initiative**

- (1) Upon creating a folio pursuant to section 8(3), the Registrar shall—
  - (a) notify the person who, from records available to the Registrar, appears to be the freehold owner of the land; and
  - (b) require that person to produce all title documents substantiating ownership of the real property.

- (2) The owner's inability or refusal to produce the documents in subsection (1)(b) does not prevent the Registrar from creating the folio.

## **29. Creation of folio on primary application: general**

- (1) Unless within 180 days after publication of these Regulations the Registrar has made a notification under section 28(1)(a) as to any given lot, the persons listed in subsection (2) shall, on or prior to the first anniversary of the publication of these Regulations, lodge a primary application with the Registrar to create a folio.
- (2) The persons are—
  - (a) the person claiming to be the freehold owner of the real property; or
  - (b) the persons who collectively claim to be the freehold owners of the real property.
- (3) The persons in subsection (2) may, before lodging the primary application, ask the Registrar to advise whether the Registrar intends to create a folio on the Registrar's own initiative under section 28. If the Registrar replies in the affirmative, those persons need not lodge a primary application.
- (4) A primary application shall be—
  - (a) in the form required by the Registrar; and
  - (b) accompanied by title documents and other evidence the Registrar may require.
- (5) The Registrar may—
  - (a) require the applicant to advertise or otherwise notify persons that the application has been made; and
  - (b) refer the application to a legally qualified person to investigate the title of the applicant or applicants.
- (6) If the Registrar determines that the applicant is the freehold owner of the real property, or that the applicants collectively are the freehold owners of the real property or the owner of a leasehold interest, the Registrar shall grant the application by creating a folio.

## **30. Creation of folio on primary application: units in buildings**

- (1) The obligation to lodge a primary application under section 29 applies also in respect of a strata development, where the Relevant Authority has approved the strata plans and the building plans have been approved to the extent required by the Relevant Authority.
- (2) Where the requirements of subsection (1) are satisfied, the Registrar shall, instead of creating a single folio of the Register for the real property on which the building or buildings comprising the strata development are erected or proposed to be erected, create a folio of the Register for each Strata Lot in the building or buildings as if it were a separate lot, and shall subdivide the lots into sublots to the extent approved by the Relevant Authority.
- (3) Where the Registrar creates a folio of the Register for a Strata Lot, the Registrar shall

record in the folio for the applicable Strata Lot that ownership of the Strata Lot may be subject to the benefits and burdens created under the applicable Strata Title Documents.

### **31. Cancellation of title documents**

On creating a folio on a primary application, the Registrar—

- (a) may cancel all prior title documents or may return them to the person from whom the Registrar received them;
- (b) shall not destroy the documents without the consent of the Board; and
- (c) shall in all events maintain copies of all title documents registered or lodged with the Registrar for not less than 6 years.

## **Chapter 2— Information to be included in folio of Register**

### **32. Information to be included in folio**

- (1) When creating a folio, the Registrar shall register in the folio—
  - (a) as the freehold land owner, the person or persons whom the Registrar determines to be entitled to be registered as the freehold land owner; and
  - (b) as the owner of any other interest affecting the lot that is apparent to the Registrar or that is later brought to the Registrar's attention under this section, the person whom the Registrar determines to be entitled to be registered as a holder of that interest.
- (2) Further, when creating a folio, the Registrar shall, if it is the fact, register in the folio that ownership of the lot—
  - (a) may be subject to the benefits and burdens created under any Strata Development Documents, building sales agreement, co-owners association constitution, master community declaration, or similar document applicable to the lot; and
  - (b) may include shares in an owner's association associated with the development of which the building forms part.

## **PART 5 — JOINT HOLDERS**

### **33. Registering lift interests, reversions and remainders**

The Registrar may register a life estate and an interest in reversion or remainder. A life estate is an interest in real property that gives a person (the life tenant) the right to use and occupy the real property until the death of the life tenant, at which point ownership reverts to the original owner or passes to a remainderman.

### **34. Registering co-owners**

- (1) When registering persons as co-owners of real property or an interest therein, the Registrar shall register whether they hold at law as tenants in common or as joint tenants.

- (2) Unless the Registrar registers otherwise, tenants in common are presumed to hold in equal shares.
- (3) If an instrument does not show whether co-owners hold as tenants in common or as joint tenants, the Registrar shall register them as tenants in common at law in equal shares.

### **35. Severing joint tenancy**

- (1) A joint tenant of real property may unilaterally sever the joint tenancy by registered Conveyance to himself or herself.
- (2) On registration of the Conveyance, the joint tenancy is severed as regards the interest so transferred.
- (3) This section does not limit other ways in which a joint tenancy may be severed.
- (4) Upon severance, the interests of former joint tenants shall be converted to a tenancy in common with each tenant in common owning in equal shares of the total interests.

## **PART 6— TRANSFERS**

### **36. Registering transfer**

- (1) Subject to subsections (2) and (3), real property, or a registered interest in real property, may be Conveyed by registering a transfer.
- (2) Except as provided in these Regulations, a part of a lot cannot be transferred apart from the rest of the lot of which it is a part.
- (3) Subsection (2) does not prevent the acquisition of a part of a lot by a Relevant Authority or the approval of a subdivision by a Relevant Authority or the leasing of all or part of a lot.

### **37. Effect of registration of transfer**

- (1) On the registration of a transfer, all the transferor's rights, powers, and privileges in relation to the real property or the interest in the real property vest in the transferee.
- (2) On the registration of a transfer, all the transferor's obligations in relation to the real property or the interest in the real property are assumed by the transferee, without, however, unless otherwise expressly provided, releasing the transferor from such obligations.
- (3) The foregoing provisions of this section shall not limit the ability of the parties to a transfer to allocate risk and responsibility as between themselves in connection with the transfer.

## **PART 7— EMINENT DOMAIN**

### **38. Court to determine compensation on just terms**

If real property is acquired from a person by a public authority, and the Abu Dhabi Global

Market Regulations do not provide the person with compensation on just terms, then the Court shall determine the appropriate compensation payable.

**39. Court to order payment of compensation**

Upon making a determination pursuant to section 38, the Court may order the applicable public authority to make payment of such compensation.

**40. Transfer under statutory vesting or grant**

- (1) If real property has become vested in a person or public authority by or under any enactment, the Registrar—
  - (a) shall register in the Register any entries in relation to the real property that the Registrar determines necessary in connection with the vesting; and
  - (b) may cancel or create folios as the Registrar determines appropriate in consequence of the vesting.
- (2) The Registrar may exercise the powers conferred by subsection (1)—
  - (a) on application; or
  - (b) on the Registrar's own initiative.

**41. Right of Board to adopt eminent domain regulations**

The Board may make rules defining the circumstances in which compensation shall be paid, the manner of its payment and how to calculate such compensation.

**PART 8— LEASES**

**42. Lease of real property**

- (1) Real property may be leased in the Abu Dhabi Global Market for up to 99 years and the term of any such lease may be renewed or extended on one or more occasions and for such period or periods of time as the lessor and the lessee may agree in the lease, provided that in no event shall the aggregate term of any lease (inclusive of all such renewals or extensions) exceed 198 years.
- (2) A lease may comprise one or more lots or parts of lots.

**43. Obligation to register lease and renewal<sup>3</sup>**

- (1) A lessor shall, within 1 month of the date on which the lease is entered into, notify the Registrar of the identity of the lessee and provide any other details the Registrar requires<sup>4</sup>.
- (2) A lessor shall, within 1 month of the date on which a lease is renewed, notify the Registrar and provide any details the Registrar requires<sup>5</sup>.

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<sup>3</sup> Amended on 6 June 2022

<sup>4</sup> Amended on 6 June 2022

<sup>5</sup> Amended on 6 June 2022

- (3) A lessor complies with subsections (1) and (2) if the lease is lodged for registration, in approved form, within 1 month of the date on which the lease was signed by all parties to it<sup>6</sup>.

#### **44. Requirements for lease to be registered**

In order to be registered, a lease shall include a description sufficient to identify each lot or part lot to be leased, the lessor, the lessee, the term (including any renewals), the commencement date, and any applicable option to renew, purchase, or expand, such as rights of first offer or refusal. A memorandum of lease may be registered in lieu of a complete lease provided that it includes all of the elements listed in the previous sentence. Any lease or memorandum thereof which includes such elements shall be deemed to be an approved form of lease for purposes of the registration thereof.

#### **45. Variation of registered lease**

- (1) A registered lease may be varied by registering an instrument of variation of the lease.
- (2) However, the instrument of variation shall not—
- (a) add or remove a party to the lease; or
  - (b) be lodged after the term of the lease (including as extended by any option to renew) has expired.
- (3) A lease as varied by registration of an instrument of variation continues in force according to its terms and is not surrendered by virtue of the variation.
- (4) This section does not limit other ways in which a lease may be varied. If a lease is varied by other means, the Registrar may register variation in the folio on application by either lessor or lessee and supported by any evidence the Registrar may require.

#### **46. Expiry or termination of lease**

The Registrar may register in the folio that a registered lease has expired and shall do so upon the request of the lessor or lessee accompanied by evidence of such expiration acceptable to the Registrar.

#### **47. Termination of lease following lessee's default**

- (1) The registering of the termination of a lease does not release the lessee from liability for breach of a covenant, either express or implied, in the lease.
- (2) After the termination of a registered lease containing an option to renew or purchase—
- (a) the Registrar need not enquire whether the option has been exercised; and
  - (b) a person dealing with the lessor need not enquire whether any unregistered interest has been created in exercise of the option.

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<sup>6</sup> Amended on 6 June 2022

#### **48. Surrendering a lease**

- (1) A registered lease may be wholly or partly surrendered by registering a surrender of the lease or a variation evidencing a partial surrender executed by the lessor and the lessee.
- (2) On registration of the surrender—
  - (a) the lessee's interest vests in the lessor; and
  - (b) any sublease is to be taken to be a direct lease from the lessor if either (i) a non-disturbance instrument in approved form, if applicable, has been registered as to such sublease or (ii) the sublessee has agreed to attorn to the lessor as the lessor's direct tenant, and the lessor has agreed to accept such attornment. The Registrar may submit the matter to determination by the Court in the event of any uncertainty.
- (3) This section does not limit other means by which a lease may be surrendered. If a registered lease is surrendered by other means, the Registrar may register the surrender in the folio on application by either lessor or lessee and supported by any evidence the Registrar may require.

#### **49. Relief from forfeiture**

- (1) Nothing contained in these Regulations prevents a lessee from approaching the Court to seek relief against forfeiture of a lease, whether for alleged non-payment of rent or for alleged breach of any other term of the lease. The Court may suspend forfeiture pending judicial determination or grant other relief against forfeiture on terms that the Court considers appropriate, or may refuse relief.

### **PART 9— MORTGAGES**

#### **Chapter 1— General**

#### **50. Right to mortgage**

- (1) Real property or a registered interest in real property (including a registered lease) may be mortgaged by registering a mortgage.
- (2) Except as provided in these Regulations, a part of a lot cannot be mortgaged separate and apart from the rest of the lot.

#### **51. Requirements for mortgage**

- (1) In order to be registered, a mortgage shall include the following –
  - (a) a description sufficient to identify the real property;
  - (b) a description sufficient to identify the interest to be mortgaged;
  - (c) a description of the debt or liability secured by the mortgage; and
  - (d) a maturity date of the debt or liability secured by the mortgage.

- (2) Subsection (1) does not limit the matters that the approved form of mortgage may require to be included in order to permit registration.

## **52. Mortgage as charge only**

- (1) A mortgage of real property operates only as a charge on the real property for the debt or liability secured by the mortgage.
- (2) For the avoidance of doubt, the mortgagor is taken to have an equity of redemption, which may not be waived by agreement or otherwise clogged by the actions of the mortgagee; provided that the rights of redemption shall not preclude the parties from agreeing to prepayment premiums or restricting periods for repayment.

## **53. Variation of mortgage**

- (1) A registered mortgage may be varied by registering an instrument varying the mortgage.
- (2) A variation cannot add a party to, or remove a party from, the mortgage.
- (3) A variation does not affect prior registered mortgagees, and does not affect subsequent registered mortgagees unless they consent.

## **54. Discharge of mortgage**

- (1) A registered mortgage may be discharged by registering a discharge of mortgage.
- (2) A discharge of mortgage may discharge the debt or liability secured for—
  - (a) all or part of the mortgage; or
  - (b) one or more of the mortgagors.
- (3) On the discharge being registered—
  - (a) the mortgage is discharged; and
  - (b) the real property is released from the mortgage, to the extent shown in the discharge.

## **55. Extent of discharge of mortgage**

Whether the discharge releases the mortgagor from any personal obligation to repay the debt or from any other liability secured by the mortgage is a matter of construction of the discharge, the promissory note and any other instruments relating to the subject indebtedness.

## **Chapter 2— Mortgagee's powers and remedies**

## **56. Implied powers of mortgagees**

- (1) A registered mortgagee of real property has the following powers on default by the mortgagor—



- (a) to sell the whole or part of the real property or any interest in the real property by whatever means the mortgagee, acting reasonably, determines appropriate, including by tender, public auction or by private contract;
  - (b) to sever and sell fixtures apart from the balance of the real property;
  - (c) to sell any easement, right or privilege of any kind over or in relation to the real property;
  - (d) to enter into possession of the real property and receive the rents and profits from it, and, after obtaining possession, grant any easement, right or privilege of any kind over or in relation to the real property; and
  - (e) to foreclose.
- (2) The powers may only be exercised in accordance with the provisions of this Chapter, but otherwise (and subject to subsection (3)) may be supplemented, varied or negated by express provision in the mortgage.
- (3) A mortgagee may not exercise a power under subsection (1) without first serving on the persons listed in subsection (4) a notice giving the mortgagor 30 days in which to remedy the default. If within that time the default is remedied, then the mortgagee may not exercise a power for that default.
- (4) The persons on whom the notice shall be served are—
- (a) the mortgagor;
  - (b) any guarantor or surety of the mortgagor; and
  - (c) any other registered mortgagee or chargee.

#### **57. Exercise of power of sale**

In exercising a power of sale, the mortgagee shall take reasonable care to obtain the market value for the real property at the time of the sale.

#### **58. Injunction to restrain power of sale**

- (1) The mortgagor is entitled to seek an injunction to restrain the exercise of the power of sale.
- (2) The Court may make the order it determines appropriate, including (if it determines it appropriate) that the sale may be restrained, without the mortgagor having to offer to redeem the mortgage.

#### **59. Effect of transfer after sale by mortgagee**

- (1) If a transfer in purported exercise of a power of sale by a registered mortgagee is lodged for registration, the Registrar need not enquire whether the power of sale was validly exercised.

- (2) On registration of the transfer, the mortgagor's interest vests in the transferee, free from—
  - (a) any obligation to repay the debt secured by the mortgage; and
  - (b) any other interest registered after it, except an interest to which the mortgagee has consented in writing, to which the mortgagee is a party, or which otherwise binds the mortgagee.
- (3) Registration of the transfer is not prevented by a caveat or covenant, if the caveat or covenant relates to an interest over which the mortgage has priority.

#### **60. Application of proceeds of sale**

- (1) A mortgagee who has exercised a power of sale shall apply the money received from the sale—
  - (a) to discharge any prior registered interests to which the sale is not made subject; or
  - (b) by paying into Court a sum to satisfy the obligations under any prior registered interests.
- (2) Subject to subsection (1), the mortgagee holds the money on trust—
  - (a) first, to pay all costs and expenses properly incurred in the sale or any attempted sale;
  - (b) second, to discharge the principal, interest, costs, and any other money and liability secured by the mortgage in such order as may be provided in the mortgage or, if no such order is provided, as the mortgagee may determine in its sole discretion;
  - (c) third, to pay later registered interests in the order of their priority; and
  - (d) fourth, to pay any residue to the person who appears from the Register to be entitled to the mortgaged property or to be authorised to give receipts for the proceeds of its sale.

#### **61. Appointment of receiver**

- (1) If a mortgage entitles the mortgagee to appoint a receiver, and the mortgagee appoints a receiver as described in subsection (3) below, the receiver—
  - (a) may do anything in relation to the real property that the mortgagor could have done; and
  - (b) may act as the mortgagor's agent.
- (2) However, if the receiver sells the real property, the receiver is subject to the same duties and responsibilities as if the mortgagee were the seller.
- (3) If a mortgage entitles the mortgagee to appoint a receiver, the receiver will be appointed by the Court upon application by the mortgagee and subject to any other requirements set

forth in any other enactment.

## **62. Foreclosure**

- (1) On application by a registered mortgagee, the Court may make an order for foreclosure.
- (2) If the Court makes an order for foreclosure, the Registrar shall register the order if requested by a party to the proceedings or directed by the Court.
- (3) On registration of the order, the mortgagor's interest in the real property vests in the mortgagee, free from all liability under mortgages or other interests registered after the mortgage, except for leases and other interests that bind the mortgagee.

### **Chapter 3— Tacking of further advances**

## **63. Right to tack further advances**

- (1) Notwithstanding any other provision of these Regulations, a mortgagee (the "prior mortgagee") of real property may make further advances to rank in priority to later mortgages—
  - (a) where the prior mortgage expressly authorises the making of further advances and for the uses specified therein (and regardless of whether the prior mortgagee has notice of the later mortgage); or
  - (b) where the prior mortgage does not expressly authorise the making of further advances, if the later mortgagee agrees to further advances being made.
- (2) Subsection (1) applies only where the prior mortgage is registered (but regardless of whether the later mortgage is registered).
- (3) For the purposes of subsection (1), "further advance" includes the provision of further credit or accommodation (including on a current, revolving or continuing account), regardless of whether the mortgagor is a debtor or guarantor or surety for the further advance.
- (4) A prior mortgagee shall, upon request of any party holding an interest in the applicable real property, advise such party of any such further advances. Evidence of such further advances need not be registered.

### **PART 10— STATUTORY CHARGES**

## **64. Registration of statutory charges**

- (1) A person or Relevant Authority with the benefit of a statutory charge over real property may apply to the Registrar to have the charge registered in the folio.
- (2) On receiving the application, the Registrar shall register the charge.
- (3) The Registrar shall give notice of the registration to all persons who have a registered interest in the real property.

- (4) Registration does not give the statutory charge any greater effect than it would have without registration.

## **PART 11— EASEMENTS**

### **Chapter 1— General**

#### **65. Easements in gross permitted**

- (1) These Regulations permit the creation of easements in gross (that is, easements without benefited real property).
- (2) In the construction of this Part, a reference to an easement includes a reference to an easement in gross, unless the contrary appears.

#### **66. Easements by prescription or implication**

- (1) Except as provided in these Regulations, easements cannot be acquired over real property by prescription or implication.
- (2) However, nothing in these Regulations affects the principles under which there are implied into an easement whatever ancillary rights are necessary for the effective enjoyment of the easement.

#### **67. Rights to support of real property and structures**

- (1) A person shall not excavate or develop real property in a way that adversely affects the stability of adjoining real property or structures on it.
- (2) A person who breaches subsection (1) is liable to any person who suffers loss or damage as a result of the breach.

### **Chapter 2— Implied easements in developments and subdivisions**

#### **68. Implied easements for services in development**

- (1) Where two or more lots form part of a single development by one developer pursuant to a contractual scheme, there are implied under this section easements for services that benefit and bind each lot.
- (2) The easements implied under this section are easements for the passage of water, electricity, telephone, drainage, gas and sewerage through or by means of installations (including sewers, pipes, wires, cables or ducts), to the extent to which the installations are capable of being used in connection with the lot.
- (3) The easements implied under this section include the right for benefited party to enter the burdened real property at all reasonable times, and upon giving reasonable notice, to repair or renew the installations (but subject to the obligation to repair any damage caused to the burdened real property in the process of doing so).
- (4) The benefited party shall contribute a reasonable proportion of the cost of maintaining the installations, unless able to establish a legal entitlement to enjoy the easements free from

the liability to contribute.

- (5) Subsection (4) does not make a person liable to contribute to expenditure incurred at a time before becoming, or after ceasing to be, owner.
- (6) Unity of ownership of two or more lots does not destroy the easements implied under this section.
- (7) The easements implied under this section are enforceable without any need for registration. However, the Registrar may (but need not) make an appropriate registering in the Register about the existence of the easements.

#### **69. Implied easements of way and other rights shown in subdivision plan**

- (1) Where the Relevant Authority has approved the subdivision of real property into two or more lots, and the approved subdivision plan sets apart real property for the purposes of the easements referred to in subsection (2), there are implied under this section in favour of each lot that is used or intended to be used as a separate parcel of real property, the easements referred to in subsection (2).
- (2) The easements implied under this section are easements for drainage and the passage of water, gas, electricity, sewerage, telecommunications conduit and cabling, fiber-optic installations, telephone lines and other similar services (collectively, “Service Infrastructure”) to the lot, over or under the real property set apart for those purposes on the subdivision plan, as are necessary for the reasonable enjoyment of the lot and of any building on it at any time.
- (3) The benefited party shall contribute a reasonable proportion of the cost of maintaining the infrastructure of the easements. However, the obligation to maintain party walls binds only the owners of the lots on which the party walls stand.
- (4) Subsection (3) does not make a person liable to contribute to expenditure incurred at a time before becoming, or after ceasing to be, owner.
- (5) Unity of ownership of two or more lots does not destroy the easements implied under this section.
- (6) The easements implied under this section are enforceable without any need for registration. However, the Registrar may (but need not) make an entry in the Register about the existence of the easements.
- (7) A party exercising easement rights under this section shall be obligated to indemnify, defend and hold harmless the burdened party, against any loss or damage resulting out of such exercise, except to the extent the loss or damage is due to the owner of the land’s own gross negligence or willful misconduct.

### **Chapter 3— Registration of easements**

#### **70. Creation of easement by registration**

- (1) An easement may be created over real property by registering a grant or reservation of easement.

- (2) When registering an easement, the Registrar shall register the easement—
  - (a) in the folio for the lot burdened; and
  - (b) unless the easement is an easement in gross, in the folio for the lot benefited.
- (3) The Registrar may register as an easement a right to install and use the Service Infrastructure, even though the right amounts to exclusive possession or occupation of the area occupied by the Service Infrastructure.

#### **71. Requirements for easement**

- (1) In order to be registered, an instrument creating an easement shall—
  - (a) indicate clearly the nature of the easement, the rights granted or reserved under it, and the extent of the real property burdened by the easement;
  - (b) if required by the Registrar, include a plan of survey identifying the lot or part of the lot to be burdened by the easement, and (unless the easement is an easement in gross) the lot to be benefited by the easement; and
  - (c) in the case of an easement in gross, identify the persons having the benefit of the easement.
- (2) This section does not limit the matters that the approved form of easement may require to be included.
- (3) Where an easement relates to Service Infrastructure, the locations of which are difficult to describe with precision, the Registrar may accept for registration an instrument that contains only a general description of the location.

#### **72. Easement benefiting and burdening same registered owner's lots**

An easement may be registered even if the lot benefited and the lot burdened by the easement have the same freehold owner.

### **Chapter 4— Variation or extinguishment of easements**

#### **73. Variation or release of easement by parties**

- (1) A registered easement may be varied or wholly or partly extinguished by registering a variation or release of easement.
- (2) The variation or release—
  - (a) shall be executed by the party benefited by the easement; and
  - (b) shall be executed by the party burdened by the easement.

#### **74. Same person becoming registered owner of benefited and burdened lots**

- (1) If the same person becomes the registered owner of the lot benefited and the lot burdened by an easement, the easement is extinguished only if that owner requests the Registrar

to extinguish the easement.

- (2) A registered easement is not extinguished merely because the owner of the lot benefited by the easement acquires an interest, or a greater interest, in the lot burdened by the easement.

## **75. Cancellation of easement**

- (1) The Registrar shall cancel the registration of an easement on determining that—
  - (a) any period of time for which the easement was to subsist has expired; or
  - (b) an event on which the easement was to come to an end has occurred.
- (2) Regardless of whether an easement has been abandoned, if an easement has not been used for at least 12 years, then the registered owner of the burdened parcel may apply to the Registrar to have the easement cancelled, and—
  - (a) the Registrar shall notify the registered owner of the benefited real property (or, in the case of an easement in gross, the person having the benefit of the easement) that, unless the Registrar receives an objection to the application within 30 days of the notice, the Registrar intends to cancel the easement; and
  - (b) if the Registrar does not receive an objection within the 30 day period, or if the Registrar does receive an objection within that time but on application of the Registrar the Court determines it to be of insufficient merit, the Registrar may cancel the easement.

## **76. Court order varying or extinguishing easement**

- (1) The Court may, on application by any person interested in real property burdened by an easement, make an order wholly or partly varying or extinguishing the easement.
- (2) The Court may not make an order under subsection (1) unless satisfied that—
  - (a) by reason of a change in use of the burdened real property, as approved by the Relevant Authority, the continued existence of the easement will impede the development of the lot for public or private purposes; or
  - (b) the proposed variation or extinguishment will not materially injure a person entitled to the benefit of the easement.
- (3) When making an order under subsection (1), the Court may order the applicant to pay compensation to any person entitled to the benefit of the easement.
- (4) An order under subsection (1) binds all persons who are, or who may become entitled to, the benefit of the easement, regardless of whether they have been notified of, or participated in, the proceedings.
- (5) The Registrar shall register the Court order in the folios for the burdened real property and (except in the case of an easement in gross) the benefited real property.

## **Chapter 5– Meaning of certain types of easements**

### **77. Party walls**

- (1) In the construction of an instrument referring to a “party wall”, that expression means (unless the contrary intention appears) a wall severed vertically and longitudinally with separate ownership of the severed portions, and with cross-easements entitling each of the persons entitled to a portion of the wall to have its building supported by the whole wall.
- (2) Where real property is transferred by a person entitled to create easements in relation to a wall built on the common boundary of that real property and adjoining real property, and the transfer describes the wall as a party wall, then the transfer, when registered, operates to create an easement for a party wall.

## **Chapter 6– Easements created by Court order**

### **78. Easements created by Court order**

- (1) The Court may make an order, upon the application of any interested party (including the owner of any adjoining real property interest), imposing an easement over real property if the easement is reasonably necessary for the effective use or development of other real property that will have the benefit of the easement.
- (2) The Court may make an order under subsection (1) only if satisfied that–
  - (a) use of the real property having the benefit of the easement will not be inconsistent with the public interest;
  - (b) the registered owner of the real property to be burdened by the easement and each other person having a registered interest in that real property can be adequately compensated for any loss or other disadvantage that will arise from imposition of the easement; and
  - (c) all reasonable attempts have been made by the applicant for the order to obtain the easement or an easement having the same effect but have been unsuccessful.
- (3) The Court order is to specify the nature of the easement, and whatever information is required by section 71 to enable the easement to be registered. The order may limit the times at which the easement applies.
- (4) The Court order is to provide for payment by the applicant to specified persons of any compensation the Court determines appropriate, unless the Court determines that compensation is not payable because of the special circumstances of the case.
- (5) The applicant shall pay the costs of the proceedings, unless the Court orders otherwise.
- (6) The easement may be varied or released in accordance with the provisions of section 73.
- (7) Nothing in this section prevents the easement from being varied or extinguished under section 76.



## **Chapter 7— Contributions to repairs**

### **79. Contribution to repairs**

- (1) Where an easement relating to real property governed by these Regulations contains a covenant obliging one or more persons to contribute to the cost of constructing or repairing the subject matter of the easement, the obligation binds not only those persons but also their successors in title as if they had been a party to the instrument creating the easement, for as long as the easement subsists.
- (2) However, a person's liability under subsection (1) does not extend to expenditure made before the person became an owner, or after the person ceased to be an owner.

## **PART 12— COVENANTS**

### **Chapter 1— General**

### **80. Covenants in gross permitted**

- (1) These Regulations permit the creation of covenants in gross (that is, covenants without benefited real property).
- (2) In the construction of this Part, a reference to a covenant includes a reference to a covenant in gross, unless the contrary appears.

### **81. Positive covenants permitted**

- (1) These Regulations permits the creation of positive covenants as well as negative (restrictive) covenants.
- (2) In the construction of this Part, a reference to a covenant includes a reference to a positive covenant, unless the contrary appears.

### **Chapter 2— Registration of covenants**

### **82. Creation of covenant by registration**

- (1) A covenant may be created over real property by registering the instrument containing the covenant.
- (2) When registering a covenant, the Registrar shall register the covenant—
  - (a) in the folio for the lot burdened; and
  - (b) unless the covenant is a covenant in gross, in the folio for the lot benefited.

### **83. Requirements for covenant**

- (1) In order to be registered, an instrument creating a covenant shall—
  - (a) indicate clearly the nature of the covenant and the rights created under it;

- (b) include a description sufficient to identify the lot to be burdened by the covenant and (unless it is a covenant in gross) the lot to be benefited by the covenant; and
  - (c) in the case of a covenant in gross, identify the person or persons having the benefit of the covenant.
- (2) This section does not limit the matters that the approved form of covenant may require to be included.

**84. Covenant benefiting and burdening same registered owner's lots**

A covenant may be registered even if the lot benefited and the lot burdened by the covenant have the same owner.

**Chapter 3— Variation or extinguishment of covenants**

**85. Variation or release of covenant by parties**

- (1) A registered covenant may be varied or wholly or partly released by registering a variation or release of covenant.
- (2) The variation or release—
  - (a) shall be executed by the registered owner of the lot benefited by the covenant; and
  - (b) shall be executed by the registered owner of the lot burdened by the covenant.

**86. Same person becoming registered owner of benefited and burdened lots**

- (1) If the same person becomes the registered owner of the lot benefited and the lot burdened by a covenant, the covenant is extinguished only if that owner asks the Registrar to extinguish the covenant.
- (2) A registered covenant is not extinguished merely because the owner of the lot benefited by the covenant acquires an interest in, or a greater interest in, the lot burdened by the covenant.

**87. Duration of covenant**

- (1) These Regulations do not impose any express limitation on the duration of a covenant.

**88. Court order varying or extinguishing covenant**

- (1) The Court may, on the application of any person interested in real property burdened by a covenant, make an order wholly or partly varying or extinguishing the covenant.
- (2) The Court may not make an order under subsection (1) unless it is satisfied that—
  - (a) by reason of a change in use of the burdened real property, as approved by the Relevant Authority, the continued existence of the covenant will impede the development of the lot for public or private purposes; or

- (b) the proposed variation or extinguishment will not materially injure a person entitled to the benefit of the covenant.
- (3) When making an order under subsection (1), the Court may order the applicant to pay compensation to any person entitled to the benefit of the covenant.
- (4) An order under subsection (1) binds all persons who are, or who may become entitled to, the benefit of the covenant, regardless of whether they have been notified of, or participated in, the proceedings.
- (5) The Registrar shall register the Court order in the folios for the burdened real property and (except in the case of a covenant in gross) the benefited real property.

#### **89. Benefit of covenants relating to land**

- (1) A covenant relating to any land of the covenantee shall be deemed to be made with the covenantee and his successors in title and the persons deriving title under him or them, and shall have effect as if such successors and other persons were expressed.
- (2) For the purpose of this section in connection with covenants restrictive of the user of land, “successors in title” shall be deemed to include the owners and occupiers for the time being of the land of the covenantee intended to be benefited.

#### **90. Burden of covenants relating to land**

- (1) A covenant relating to any land of a covenantor or capable of being bound by him, shall, unless a contrary intention is expressed, be deemed to be made by the covenantor on behalf of himself his successors in title and the persons deriving title under him or them, and, subject as aforesaid, shall have effect as if such successors and other persons were expressed.
- (2) This subsection extends to a covenant to do some act relating to the land, notwithstanding that the subject-matter may not be in existence when the covenant is made.
- (3) For the purposes of this section in connection with covenants restrictive of the user of land, “successors in title” shall be deemed to include the owners and occupiers for the time being of such land.

#### **91. Covenants binding land**

- (1) The benefit or burden of every covenant running with the land, whether entered into before or after the commencement of these Regulations, shall vest in or bind all persons who have title to such land, or otherwise succeed to the title of the covenantee or the covenantor, as the case may be.
- (2) The benefit of a covenant relating to land entered into after the commencement of these Regulations may be made to run with the land without the use of any technical expression if the covenant is of such a nature that the benefit could have been made to run with the land before the commencement of these Regulations.
- (3) For the purposes of this section, a covenant runs with the land when the benefit or burden of it, whether at law or in equity, passes to the successors in title of the covenantee or the covenantor, as the case may be.

## **92. Effect of covenant with two or more jointly**

- (1) A covenant, contract, bond or obligation made with two or more jointly, to pay money or to make a Conveyance, or to do any other act, to them or for their benefit, shall be deemed to include, and shall, by virtue of these Regulations, imply, an obligation to do so the act to, or for the benefit of, the survivor or survivors of them, and to, or for the benefit of, any other person whom the right to sue on the covenant, contract, bond, or obligation devolves, and where made after the commencement of these Regulations shall be construed as being also made with each of them.
- (2) This section extends to a covenant implied by virtue of these Regulations.
- (3) This section applies only if and as far as a contrary intention is not expressed in the covenant, contract, bond, or obligation, and has effect subject to the covenant, contract, bond or obligation, and to the provisions therein contained.

## **PART 13— DECEASED ESTATES**

### **93. Registration of personal representative**

- (1) A person may lodge an application to be registered as personal representative of a deceased registered owner.
- (2) If the Registrar determines that the person is entitled to be so registered, the Registrar may register the person as owner in the capacity of personal representative.
- (3) The Registrar shall rely upon documentation bearing the seal or stamp of a UAE court as evidence of a person's authentic entitlement to such registration.

### **94. Dealings without registration of personal representative**

- (1) The Registrar may register a dealing by the personal representative of a deceased registered owner on behalf of such deceased registered owner, without requiring the personal representative to be registered if the Registrar determines it to be unnecessary or impractical to do so.
- (2) Before acting under subsection (1), the Registrar may require whatever evidence the Registrar determines necessary to protect the interests of those whom the Registrar determines to be entitled to the deceased's estate.

### **95. Notice of death or defeasance**

- (1) A person entitled to real property on the death of a joint tenant or life tenant may apply to the Registrar to register the death.
- (2) If the Registrar determines that the death has occurred, the Registrar may make the appropriate registering in the folio to indicate that the deceased's interest has determined and that the real property has vested in the survivor or in the person entitled to the reversion or remainder.
- (3) Where these Regulations make no express provision for registering the defeasance of an

interest in real property, the Registrar may register the defeasance in the way the Registrar determines appropriate.

## **PART 14— WRITS**

### **96. Request to register writ of execution**

The Registrar shall register a writ of execution relating to real property if—

- (a) a request to register the writ is lodged by the judgment creditor for whose benefit the writ was issued, together with an official copy of the writ; and
- (b) the request is lodged within 180 days of the date of issue of the writ.

### **97. How writ is registered**

The Registrar registers a writ of execution by registering the writ in the folio.

### **98. Effect of registering writ of execution**

#### **(1) A writ of execution—**

- (a) does not bind or affect real property until it is registered; and
- (b) binds or affects real property only if it is executed and put in force—
  - (i) by not later than the first anniversary of the date it is issued; or
  - (ii) within any extended time period allowed by the Court.

#### **(2) A registered writ of execution takes effect as if it were a registered mortgage securing the amount payable under the writ. A sale under the writ is treated as if it were a sale by a registered mortgagee in exercise of a power of sale.**

### **99. Cancellation of registration of writ**

The Registrar shall cancel the registration of a writ of execution if—

- (a) a request to cancel is lodged by the judgment creditor for whose benefit the writ was issued; or
- (b) the Registrar determines that the time or extended time for executing and putting the writ into force has expired.

### **100. Discharging or satisfying writ of execution**

- (1) If a registered writ of execution has been satisfied or discharged, the Registrar may register that fact in the folio.
- (2) The Registrar may act under subsection (1)—
  - (a) on the Registrar's own initiative;

- (b) on application by a registered owner; or
- (c) by order of the Court.

**101. Transfer of lots sold in execution**

If a lot is sold under a registered writ of execution, the appropriate officer of the Court may execute a transfer to the purchaser.

**PART 15— CAVEATS**

**Chapter 1— Lodging caveats**

**102. Who may lodge a caveat?**

- (1) A caveat may be lodged in relation to real property by any of the following persons or their agents—
  - (a) the registered freehold owner of the real property or another person claiming an interest in the real property; or
  - (b) a person who has the benefit of an injunction restraining a registered owner from dealing with the real property.
- (2) A caveat may also be lodged by the Registrar under section 130.
- (3) A caveat may take the form of a “memorandum of agreement”, in which event the requirements of clause (1)(b) of section 123 shall apply.

**103. Requirements of caveat**

- (1) A caveat lodged under section 102(1) shall be in the approved form.
- (2) In addition to any other requirements in the approved form, a caveat shall state –
  - (a) the name of the caveator;
  - (b) the interest claimed by the caveator;
  - (c) the grounds on which the interest is claimed;
  - (d) the real property affected by the caveat and, if the caveat relates to part only of a lot, a description of the part;
  - (e) the registered interest affected by the caveat;
  - (f) the extent of the prohibition on dealings;
  - (g) an address within the UAE where documents can be served on the caveator, including any documents in Court proceedings relating to the caveat; and
  - (h) unless the Registrar dispenses with it, the name and address of—

- (i) the registered freehold owner of the real property affected by the caveat; and
- (ii) each person known to the caveator whose interest or whose claim to registration of an instrument may be affected by the caveat.

#### **104. Registering a caveat**

If a caveat is lodged that complies with section 103, the Registrar shall register the caveat in the folio.

#### **105. Notifying caveat**

The Registrar shall give written notice of lodgement of a caveat to each person disclosed or known to the Registrar whose interest or whose claim to registration of an instrument may be affected by the caveat.

### **Chapter 2— Effect of caveat**

#### **106. Effect of lodging caveat**

- (1) A caveat prevents the registration of an instrument affecting the real property or interest in respect of which the caveat is lodged—
  - (a) to the extent stated in the caveat; and
  - (b) from the time the caveat was lodged.
- (2) Subsection (1) has effect for a caveat until the caveat lapses or is withdrawn, removed or cancelled.
- (3) The lodging of a caveat does not prevent registration of the following—
  - (a) an instrument specified in the caveat as an instrument to which the caveat does not apply;
  - (b) an instrument to the registration of which the caveator consents;
  - (c) an instrument executed by a mortgagee, if the mortgage was registered before the caveat was lodged;
  - (d) an interest that, if registered, would not affect the interest claimed by the caveator;
  - (e) an instrument that was lodged for registration before the caveat was lodged.
- (4) Where the Registrar registers an instrument that does not completely dispose of the interest of the registered owner to which the caveat relates, the caveat remains in force as to the balance of that interest.
- (5) Subject to section 110, the lodging of a caveat does not prevent the lodging of another caveat.

### **Chapter 3— Withdrawal, lapsing and removal of caveats**

#### **107. Withdrawal of caveat**

- (1) A caveat may be withdrawn by lodging a request to withdraw it.
- (2) The withdrawal takes effect at the time it is lodged.
- (3) The request may be lodged by—
  - (a) the caveator;
  - (b) where the caveator has died, the caveator's personal representative;
  - (c) where the caveators are joint tenants, by the surviving joint tenant or joint tenants;
  - (d) by any person authorised at law to act on the caveator's behalf.

#### **108. Lapsing of caveat**

- (1) This section applies to a caveat unless it is lodged by the Registrar under section 130.
- (2) A caveatee may serve on the caveator a notice requiring the caveator to start proceedings in the Court to establish the interest claimed under the caveat.
- (3) The caveatee shall notify the Registrar of the service on the caveator, within 14 days of the service of the notice.
- (4) If the caveatee has complied with subsection (3), the caveat lapses 30 days after notice is served on the caveator.
- (5) Despite subsection (4), the caveat does not lapse—
  - (a) if the caveator has started appropriate proceedings and the Registrar has been notified of the proceedings; or
  - (b) if the caveator notifies the Registrar within 30 days of being served with the notice under subsection (3) that the caveator does not want the caveat to lapse and that the caveator has started, or will start, proceedings to establish the interest claimed under the caveat.
- (6) If a caveator has notified the Registrar under subsection (5)(b) that the caveator will start proceedings, the caveat lapses 90 days after the notice under subsection (2) was served on the caveator unless, within that time, the caveator provides the Registrar with evidence that the proceedings have been started.
- (7) The Registrar may register in the folio that a caveat has lapsed.

#### **109. Removal of caveat by Court order**

- (1) A caveatee may at any time apply to the Court for an order that a caveat be removed.
- (2) The Court may make the order—



- (a) regardless of whether the caveator has been served with the application; and
- (b) on the terms it determines appropriate.

**110. Further caveat**

If a caveat lapses or is withdrawn or removed, the caveator may not lodge another caveat for the real property on the same, or substantially the same, grounds except with leave of the Court.

**111. Order for security**

In proceedings in relation to a caveat, the Court may order the caveator to give undertakings, or lodge security, or both.

**Chapter 4— Improper caveats**

**112. Compensation for improper caveat**

- (1) A caveator who lodges or continues a caveat without reasonable cause shall compensate anyone who suffers loss as a result.
- (2) In proceedings for compensation under subsection (1)—
  - (a) the caveator bears the onus of proving that the caveat was lodged or continued with reasonable cause; and
  - (b) the Court may include in any compensation a component for exemplary damages.

**Chapter 5— General**

**113. Notices to caveator**

- (1) A notice to a caveator under this Part is sufficiently served if left at or sent to the address mentioned in section 120.
- (2) If the Registrar determines that a notice will not reach the caveator if served in the way mentioned in subsection (1), the notice may be served in any other way the Registrar determines appropriate.

**114. Right to injunction not affected**

Nothing in this Part prevents a person from seeking an injunction to protect an interest in real property.

**PART 16— INSTRUMENTS**

**Chapter 1— Manner of execution of, and reliance on, instruments**

**115. Execution of certain instruments**

- (1) Subject to these Regulations, an instrument to transfer or create an interest in real property

shall be executed by–

- (a) the transferor or the person creating the interest; and
- (b) to the extent there are covenants or other obligations binding upon the transferee in the instrument, the transferee or the person in whose favour the interest is to be created.

- (2) A total or partial discharge of a mortgage need only be executed by the mortgagee.

#### **116. Indicating consent when required for dealing**

If the consent of a person is necessary for any dealing with real property, the consent shall be–

- (a) written or contained on, or form part of, the relevant instrument; or
- (b) if the Registrar determines it appropriate, lodged with the relevant instrument.

#### **117. Execution of instruments by business entities and natural persons**

- (1) For a corporation, an instrument relating to real property is validly executed if it is executed in a way in which instruments creating or transferring an interest in real property may be executed under any enactment.
- (2) Without limiting subsection (1), if an instrument relating to real property is executed before the applicable Relevant Authority, a person is entitled to assume that it is validly executed.
- (3) For a natural person, an instrument relating to real property is validly executed if –
  - (a) it is signed by the person; and
  - (b) the signature is witnessed in a manner approved by the Registrar, either for that instrument, or for instruments of that class, or for instruments generally.
- (4) An instrument shall be presumed to be delivered upon its being executed unless a contrary intention is proved.

#### **118. Execution of instrument under power of attorney**

- (1) An instrument relating to real property may be executed by a person's attorney duly authorised under a power of attorney, if the requirements of subsection (2) are met.
- (2) The requirements are that–
  - (a) the power of attorney shall be in writing;
  - (b) the power of attorney, or a certified copy of it, shall be lodged with the Registrar; and
  - (c) an affidavit that the power of attorney is in full force and effect shall be lodged with the Registrar contemporaneous with the lodgement of any instrument executed under that power of attorney.

## **Chapter 2— Suitability of instruments for registration**

### **119. When instrument capable of registration**

- (1) An instrument is able to be registered only if it—
  - (a) complies with these Regulations;
  - (b) is in the approved form;
  - (c) appears on its face to be capable of being registered; and
  - (d) is accompanied by any form of application or other document that may be required by the Registrar, and payment of any applicable fee.
- (2) Despite subsection (1)(b), the Registrar may register an instrument that is not in the approved form if—
  - (a) there is no approved form; or
  - (b) the Registrar determines that it is not reasonable to require the instrument to be in the approved form.

### **120. Address for service to be provided**

- (1) An instrument lodged for registration shall specify an address in the UAE for the service of notices on any person taking under the instrument.
- (2) A person referred to in subsection (1) shall ensure that the Registrar is notified of any change in the address for service.
- (3) The Registrar shall register in the Register—
  - (a) the address for service provided under subsection (1); and
  - (b) any change of address provided under subsection (2).

## **Chapter 3— The process of registering instruments**

### **121. Lodgement and deposit of instruments by electronic or other means**

The Registrar may—

- (a) permit instruments or documents to be lodged or deposited; and
  - (b) correct instruments that have been lodged or deposited,
- by any means, including electronic means.

### **122. Registrar's power to correct obvious errors in instruments**

- (1) Where the Registrar determines that an instrument lodged for registration contains an obvious error, the Registrar may correct the error by noting the correction on the

instrument.

- (2) The Registrar—
  - (a) may not act under subsection (1) unless the Registrar determines that the correction will not prejudice the rights of any person; and
  - (b) shall, as soon as practicable after making the correction, notify the person who lodged the instrument that the correction has been made.
- (3) An instrument corrected by the Registrar under this section has the same effect as if the error had not been made.

### **123. Registrar's requisitions**

- (1) Before registering an instrument, the Registrar may serve on the person who lodged it a notice requiring—
  - (a) the instrument to be re-executed, completed or corrected, if the Registrar determines it to be defective, incomplete or incorrect; or
  - (b) the person to supply information or produce documents the Registrar determines necessary or appropriate in order to register the instrument, including in the case of registration of a caveat or memorandum of an agreement, provide the Registrar an original copy of the agreement to which the memorandum relates or the agreement which is the subject of the caveat.
- (2) The Registrar may require any information supplied or document produced under subsection (1)(b) be verified by a declaration in a form prescribed by the Board in rules made by the Board or other form of sworn statement.

### **124. Rejecting instrument if requisitions not complied with**

- (1) If within 30 days of service of the notice under section 123, or any extended period the Registrar determines appropriate, the person does not comply with the notice, the Registrar may reject the instrument and any instrument that depends on it for registration.
- (2) An instrument rejected under subsection (1) loses its priority under section 25.
- (3) Where the Registrar rejects an instrument under subsection (1), the Registrar shall return it to the person who lodged it, and may endorse a note on the instrument that it has been rejected.

### **125. Right to relodge rejected instrument**

Section 124 does not prevent a rejected instrument from being relodged after the notice provided by the Registrar under section 123 has been complied with.

### **126. Requiring plan of survey to be lodged**

- (1) The Registrar may require a person who lodges an instrument for registration to lodge a plan, map or diagram of the lot or part of the real property to be affected by the instrument.

- (2) The plan, map or diagram shall comply with the Registrar's directives as to dimensions, scale and contents.

#### **Chapter 4— Standard terms incorporated into instruments**

##### **127. Standard terms documents**

- (1) The Registrar or another person may lodge a standard terms document and may amend the document by lodging a further standard terms document.
- (2) The Registrar shall give each standard terms document a distinguishing reference.
- (3) All or part of a standard terms document lodged under subsection (1) forms part of a registered instrument if the instrument says that it forms part of the instrument.
- (4) In this section, "standard terms document" means a document containing provisions that are intended to be incorporated into a registered instrument.

### **PART 17— POWERS OF AND PROCEEDINGS AGAINST THE REGISTRAR**

#### **Chapter 1— Powers**

##### **128. General powers of the Registrar**

The Registrar has the power to do whatever the Registrar determines necessary to carry out his or her functions under these Regulations.

##### **129. The Registrar may correct Register**

- (1) The Registrar may correct the Register if it determines that—
  - (a) the Register is incorrect; and
  - (b) the correction will not prejudice the rights of a registered owner or any other person.
- (2) The Register as corrected by the Registrar has the same effect as if the error had not been made.
- (3) For the purposes of subsection (1)(b), the rights of a registered owner are not prejudiced if the registered owner acquired or has dealt with a registered interest with actual or constructive knowledge that the Register was incorrect.
- (4) Before taking action under this section, the Registrar may give notice of the proposed action to any person to whom the Registrar determines prior notice should be given. However, no action lies against the Registrar for failure to give notice.

##### **130. The Registrar may prepare and lodge caveat**

- (1) The Registrar may prepare and lodge a caveat over a lot—
  - (a) to prevent a dealing that, in the Registrar's opinion, may prejudice a person who

- has an interest in the lot; or
  - (b) to give effect to a Court order directed to the Registrar; or
  - (c) whenever the Registrar determines it appropriate to do so to protect the integrity of the Register.
- (2) The caveat may be in the form the Registrar determines appropriate.

### **131. The Registrar may state a case**

- (1) Whenever a question arises concerning the performance of the Registrar's duties or the exercise of the Registrar's functions, the Registrar may state a case for the opinion of the Court.
- (2) The Court's decision binds the Registrar and any other parties to the case.

### **132. Payment of certain fees to the Registrar**

The Board may make rules requiring the payment of certain fees to the Registrar, as described in section 143. Fees received by the Registrar are to be paid into the account of the Registrar. Any fee which is owed to the Registrar under any provision made by such rules may be recovered as a debt due to the Registrar<sup>7</sup>.

### **133. The Registrar may approve forms**

The Registrar may approve forms for use under these Regulations.

## **Chapter 2— Proceedings against Registrar**

### **134. The Registrar may be summoned for refusal to perform duty**

- (1) A person who determines that the Registrar has refused to perform a duty under these Regulations may require the Registrar to state in writing the grounds of the refusal.
- (2) The Registrar shall state the grounds within 30 days of receiving the request.
- (3) On receiving the grounds, or if no grounds are received within the 30 days, the person may commence proceedings against the Registrar to substantiate those grounds or the refusal.
- (4) The Court may make the order it determines appropriate, and may give any directions it determines necessary for performance of the order.
- (5) The Court may make the order as to costs and expenses it thinks appropriate.

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<sup>7</sup> Amended on 6 June 2022

## **PART 18— SEARCHES**

### **135. Entitlement to search the Register<sup>8</sup>**

- (1) During normal business hours, the Registrar shall provide the relevant parties to the real property interest or conveyance adequate access<sup>9</sup>—
  - (a) to the Register; and
  - (b) to registered instruments or copies of them.
- (2) Access may be provided by way of certificate, statement, computer print-out or any other means the Registrar determines appropriate.
- (3) The Registrar shall provide access to the Register by way of an official search certificate where the request is in writing and accompanied by the prescribed fee.

### **136. Evidentiary effect of documents issued by Registrar**

- (1) A document issued by the Registrar conveying information relating to real property is to be taken to be correct, unless the contrary is shown.
- (2) A document issued by the Registrar purporting to be a certified copy of a registered instrument is to be taken to be an accurate copy unless the contrary is shown.

### **137. Official searches**

- (1) The relevant parties to the real property interest or conveyance may apply, on payment of the prescribed fee, for an official search to be made in the Register<sup>10</sup>.
- (2) The Registrar shall make the search and issue the applicant with a certificate of the result.
- (3) A lawyer acting for a person for whom an official search is obtained is not liable for any loss or damage that may arise from reliance on it.

## **PART 19—EXISTING RIGHTS**

### **138. Existing rights**

- (1) In relation to musataha and usufruct rights which remain in effect after the date of publication of these Regulations as described in section 11, the Courts shall apply the law of the Emirate of Abu Dhabi to issues regarding the interpretation of the musataha or usufruct instruments.

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<sup>8</sup> Amended on 6 June 2022 by deleting subsection 135(4)

<sup>9</sup> Amended on 6 June 2022

<sup>10</sup> Amended on 6 June 2022

## **PART 19A— CONTRAVENTIONS<sup>11</sup>**

### **138A. Contraventions and Fines<sup>12</sup>**

- (1) A person who is in contravention of sections 11(1), 29(1), 30(1), 43(1) or 43(2) on the date on which the Real Property Regulations (Amendment No. 1) 2022 comes into force, has 3 months to rectify such contravention with the Registrar. If such person does not rectify the contravention within this period, they shall be liable to a fine up to level 8 on the standard fines scale.
- (2) A person who contravenes sections 11(1), 29(1), 30(1), 43(1) or 43(2) after the date on which the Real Property Regulations (Amendment No. 1) 2022 come into force, commits a contravention of these Regulations and shall be liable to a fine up to level 8 on the standard fines scale.
- (3) The contravention by a person of any of sections 11(1), 29(1), 30(1), 43(1) or 43(2) continues until such time as the contravention of the obligation(s) stipulated in any of these sections is rectified by such person.
- (4) Each contravention of an obligation stipulated by any of sections 11(1), 29(1), 30(1), 43(1) or 43(2) will be considered an individual offence and it will attract a separate fine as stipulated in subsections (1) and (2) above.

## **PART 20— MISCELLANEOUS**

### **139. Words and expressions used in instruments**

- (1) Words and expressions used in instruments registered under these Regulations have the same meanings as they have in these Regulations.
- (2) The application of subsection (1) to an instrument may be displaced, wholly or partly, by a contrary intention appearing in the instrument.

### **140. Reference to instrument is reference to instrument completed in approved form**

In these Regulations, a reference to a particular type of instrument for which there is an approved form is a reference to the instrument completed in the approved form.

### **141. Service of notices**

- (1) A notice or document may be served on, or given to, a person by delivering it to—
  - (a) the person's address for service;
  - (b) in the case of an individual, the person's place of residence; or
  - (c) in the case of a corporation, the corporation's registered office or principal place of business.

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<sup>11</sup> Amended on 6 June 2022

<sup>12</sup> Amended on 6 June 2022



- (2) A person's address shown in any instrument by which the person became the registered owner, or the address for service stated in any caveat lodged by the person, may be treated as the person's address for service.
- (3) A notice or document may also be served on, or given to, a person by means of facsimile or other electronic transmission, if the same is permitted by the terms of the instrument by which the person became the registered owner.
- (4) This section does not limit the way in which notices may be served in court proceedings.

#### **142. Deemed receipt in certain cases**

- (1) Unless a contrary intention appears in the document, where a notice or document is served or given in accordance with section 141, on a day that is not a business day, or after 5pm on any day, then it is to be treated as being served or given on the next business day.
- (2) This section does not apply to notices to be served in court proceedings.

#### **143. Rules**

- (1) The Board may make rules relating to the requirements to be followed in relation to these Regulations.
- (2) In making the rules, the Board shall have regard to—
  - (a) the purpose of these Regulations; and
  - (b) the principle that a registered interest is not to be adversely affected except with the registered owner's consent.
- (3) Without limiting subsection (1), the rules made under this section may provide for—
  - (a) the form and content of and the requirements for instruments, documents and plans;
  - (b) the number of copies of instruments, documents and plans to be lodged;
  - (c) the need for lodging consents, certificates and other documents;
  - (d) the execution of instruments (including in electronic form);
  - (e) the practice of carrying forward registered interests onto new folios;
  - (f) the amount of fees and charges;
  - (g) the time and method of paying fees and charges; and
  - (h) the circumstances in which, and the methods by which, the Registrar publishes, or requires others to publish, notifications of actions the Registrar intends to take.
- (4) The Board's rules shall be complied with unless the Board or the Registrar dispenses with

compliance.

- (5) The Registrar may prepare a schedule of fees and charges to reflect rules as to fees and charges passed by the Board as described in section 132, which schedule may be amended or modified by the Registrar from time to time with the prior approval of the Board.

#### **144. Conveyances to be by deed**

- (1) All Conveyances of interests in real property are void for the purpose of Conveying or creating a legal estate unless made by instrument in approved form, subject to section 27.
- (2) This section does not apply to –
  - (a) Surrenders by operation of law, including surrenders which may, by law, be effected without writing;
  - (b) Vesting orders of the court or other competent authority; and
  - (c) Conveyances taking effect by operation of law.

### **PART 21 –PROVISIONS WITH REGARD TO PERSONAL AS WELL AS REAL PROPERTY**

#### **145. Release of powers simply collateral**

A person to whom any power, whether coupled with an interest or not, is given may by deed release, or contract not to exercise, the power.

#### **146. Disclaimer of power**

- (1) A person to whom any power, whether coupled with an interest or not, is given may by deed disclaim the power, and, after disclaimer, shall not be capable of exercising or joining in the exercise of the power.
- (2) On such disclaimer, the power may be exercised by the other person or persons or the survivor or survivors of the other persons, to whom the power is given, unless the contrary is expressed in the instrument creating the power.

#### **147. Protection of purchasers claiming under certain void appointments**

- (1) An instrument purporting to exercise a power of appointment over property, which, in default of and subject to any appointment, is held in trust for a class or number of persons of whom the appointee is one, shall not (save as hereinafter provided) be void on the ground of fraud on the power as against a purchaser in good faith, provided that, if the interest appointed exceeds, in amount or value, the interest in such property to which immediately before the execution of the instrument the appointee was presumptively entitled under the trust in default of appointment, having regard to any advances made in his favour and to any requirement of equitable distribution, the protection afforded by this section to a purchaser shall not extend to such excess.
- (2) In this section, a “purchaser in good faith” means a person dealing with an appointee of

the age of not less than twenty-five years for valuable consideration in money or money's worth, and without notice of the fraud, or of any circumstances from which, if reasonable inquiries had been made, the fraud might have been discovered.

- (3) Persons deriving title under any purchaser entitled to the benefit of this section shall be entitled to the like benefit.

#### **148. Abolition of the double possibility rule**

The rule of law prohibiting the limitation, after a life interest to an unborn person, of an interest in land to the unborn child or other issue of an unborn person is hereby abolished.

#### **149. Presumption of survivorship in regard to claims to property**

In all cases where two or more persons have died in circumstances rendering it uncertain which of them survived the other or others, such deaths shall (subject to any order of the court), for all purposes affecting the title to property, be presumed to have occurred in order of seniority, and accordingly the younger shall be deemed to have survived the elder.

#### **150. Abolishing contingent remainders**

- (1) Subject to subsection (2), the rules known as the common law contingent remainder rules are abolished.
- (2) Subsection (1) applies to any interest in property whenever created but does not apply if, before the commencement of this Part, in reliance on such an interest being invalid by virtue of the application of any of the rules abolished by that section—
  - (a) the property has been distributed or otherwise dealt with; or
  - (b) any person has done or omitted to do anything which renders the position of that or any other person materially altered to that person's detriment after the commencement of these Regulations.

#### **151. Abolishing of certain laws**

- (1) Any rule of law which does any of the following is abolished—
  - (a) restricts the substances on which a deed may be written;
  - (b) requires a seal for the valid execution of an instrument as a deed by an individual; or
  - (c) requires authority by one person to another to deliver an instrument as a deed on his behalf to be given by deed.

#### **152. Legal assignments of things in action**

- (1) Any absolute assignment by writing under the hand of the assignor (not purporting to be by way of charge only) of any debt or other legal thing in action, of which express notice in writing has been given to the debtor, trustee or other person from whom the assignor would have been entitled to claim such debt or thing in action, is effectual in law (subject

to equities having priority over the right of the assignee) to pass and transfer from the date of such notice—

- (a) the legal right to such debt or thing in action;
  - (b) all legal and other remedies for the same; and
  - (c) the power to give a good discharge for the same without the concurrence of the assignor.
- (2) Provided that, if the debtor, trustee or other person liable in respect of such debt or thing in action has notice—
- (a) that the assignment is disputed by the assignor or any person claiming under him; or
  - (b) of any other opposing or conflicting claims to such debt or thing in action; he may, if he thinks fit, either call upon the persons making claim thereto to interplead concerning the same, or pay the debt or other thing in action into court under the provisions of the Trustee Act, 1925.
- (3) This section does not affect the provisions of the Policies of Assurance Act, 1867.

### **153. Validation of appointments where objects are excluded or take illusory shares**

- (1) No appointment made in exercise of any power to appoint any property among two or more objects shall be invalid on the ground that—
- (a) an unsubstantial, illusory, or nominal share only is appointed to or left unappointed to devolve upon any one or more of the objects of the power; or
  - (b) any object of the power is thereby altogether excluded; but every such appointment shall be valid notwithstanding that any one or more of the objects is not thereby, or in default of appointment, to take any share in the property.
- (2) This section does not affect any provision in the instrument creating the power which declares the amount of any share from which any object of the power is not to be excluded.

## **PART 22— INTERPRETATION**

### **154. Rules of interpretation**

- (1) In these Regulations, a reference to registering an instrument or information in the folio is a reference to registering it in (or in the case of a folio kept in paper form, on) the folio of the Register for the lot or lots concerned.
- (2) In these Regulations, a reference to the “owner” or “registered owner” of real property (or terms of like import) shall not be deemed to imply only freehold or “fee simple” ownership interest in such real property.
- (3) Without limiting the obligations of the Registrar in these Regulations, a reference to the

Registrar making a determination as to a matter shall mean that the Registrar, based on information reasonably available, has concluded in its discretion that the matter in question is so.

- (4) In these Regulations, a reference to real property is a reference to real property located in the Abu Dhabi Global Market Area and for which a folio of the Register has been or could be created under the provisions of these Regulations.

## **155. Defined terms**

In these Regulations, unless the context indicates otherwise—

“Abu Dhabi Global Market Area” means the land situated on Al Maryah Island, and further bounded as described in the Cabinet of Ministers Resolution (4) of 2013, as the same may be further adjusted or modified in accordance with applicable law;

“approved form” means a form approved by the Registrar to permit an instrument to be registered on the Register, but, which for the avoidance of doubt, does not limit the terms which the parties to such instrument may determine to be included therein;

“caveatee” means the registered owner of a registered interest in real property described in a caveat;

“caveator” means the person by whom or on whose behalf a caveat is lodged;

“Convey”, together with the correlative terms “Conveyance”, “Conveying” and “Conveyed” means the creation, transfer, mortgage or assignment of an interest in real property as further described in Part 1, Chapter 2 of these Regulations;

“correct” used as a verb, includes correct by addition, omission or substitution;

“deposit” means file with the Registrar other than for registration;

“development” means a real property development pursuant to a plan filed and accepted in accordance with the Strata Title Regulations 2015;

“document” means paper or other material (including electronic material) containing writing, words, figures, drawings or symbols;

“electronic” means of or relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities;

“error” includes an error by omission;

“estate” has, with respect to real property, the same meaning and import as a reference to an “interest” in real property;

“folio” means a folio of the Register created under these Regulations;

“freehold” means an estate in real property, of indeterminate duration;

“instrument” includes (i) a document that relates to or may be used to deal with a lot; (ii) a map, survey or diagram; (iii) an order of the Court; or (iv) another document the Registrar

has determined to accept for registration pursuant to section 119(2);

“interest” in relation to real property, means any interest in the real property, and any permanent structure or improvement (known in English law as a “fixture”) on the real property;

“lodge” means file with the Registrar for registration;

“lot” means a separate, distinct parcel of real property within the Abu Dhabi Global Market Area;

“plan” means a strata plan or a development plan for a staged development scheme, each approved as required by the Strata Title Regulations 2015;

“power of sale” means all remedial powers of a mortgagee pursuant to section 56(1)(a)-(c);

“primary application” means an application made under sections 29 and 30;

“real property” means (i) land, buildings, and items located or placed in, on or under the soil with the intention that they should remain in position permanently or indefinitely, and (ii) any interest therein;

“register” in relation to a lot, interest, instrument or other thing, means record the particulars of the thing in the Register;

“Register” means the Register established pursuant to these Regulations;

“registered owner” means, in relation to a lot, a person recorded in the Register as owner of an interest in the lot, whether that interest is freehold or other than freehold;

“registered real property” means real property for which a folio has been created;

“Relevant Authority” means the authority within Abu Dhabi (including the Abu Dhabi Global Market) charged with the duty of implementing the policies of Abu Dhabi whose subject matter falls within its authority. Relevant Authority includes, without limitation, the Registrar and any other authorities established under the ADGM Founding Law, and also the Abu Dhabi Department of Municipal Affairs and any other governmental or quasi-governmental agencies or instrumentalities to which the Abu Dhabi Global Market may from time to time delegate rulemaking, adjudicatory or approval authority within the Abu Dhabi Global Market;

“renew” in relation to a lease, includes extend;

“Service Infrastructure” has the meaning set forth in section 69(2);

“Strata Development Documents” shall have the meaning set forth in the Strata Title Regulations 2015.

“Strata Lot” shall have the meaning set forth in the Strata Title Regulations 2015.

“statutory charge” means a charge on real property established by or under applicable law that imposes a restriction on the use of or dealing with the real property;

“UAE” means the United Arab Emirates; and

“writ of execution” means a writ or warrant of execution after judgment in a court.

## **PART 23— GENERAL**

### **156. Purpose of these Regulations**

- (1) These Regulations are intended to establish a system of registration for real property, and in particular—
  - (a) to provide assurances as to title to real property within the Abu Dhabi Global Market Area;
  - (b) to define the powers and functions of the Registrar in relation to real property within the Abu Dhabi Global Market Area; and
  - (c) in particular, provide for a system whereby the Registrar in furtherance of the Abu Dhabi Global Market Law, shall be permitted to create folios of the real property in order to facilitate dealings in such real property as of the date of the effectiveness of these Regulations.

### **157. Short Title, extent and commencement**

- (1) These Regulations may be cited as the Real Property Regulations 2015.
- (2) These Regulations apply to real property within the Abu Dhabi Global Market Area.
- (3) These Regulations shall come into force on the date of their publication. The Board may by rules make any transitional, transitory, consequential, saving, incidental or supplementary provision in relation to the commencement of these Regulations as the Board thinks fit.
- (4) The Board may, in its discretion, from time to time elect to assign, transfer and/or delegate to one or more Relevant Authorities its rights of review, approval, issuance of permits, licensing, and other municipal and/or governmental or quasi-governmental rights or functions which the Abu Dhabi Global Market would otherwise be entitled to exercise from time to time with respect to land use, building, construction, public safety and similar matters, and reserves the right to revoke or modify such assignments, transfers and/or delegations from time to time, thereby causing the Abu Dhabi Global Market to resume responsibility therefor by the Abu Dhabi Global Market or any instrumentality therefor or designating another or replacement Relevant Authority to perform such functions.