

# AS TABLED IN THE HOUSE OF ASSEMBLY

A BILL

entitled

LAND TITLE REGISTRATION AMENDMENT ACT 2017

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WHEREAS it is expedient to amend the Land Title Registration Act 2011 to provide for a register of judgments that affect land, to increase the threshold term for the registration of a lease to twenty-one years, to provide for notice of any application for first registration to be published in the Gazette, to provide for the publication of rules by deposit for public inspection, to facilitate the bringing into operation of that Act generally, and to make related amendments to other legislation;

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

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### Citation

1 This Act, which amends the Land Title Registration Act 2011 (“the principal Act”),  
2 may be cited as the Land Title Registration Amendment Act 2017.

### Amends section 3

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

(a) in the definition of “register”—

- (i) by deleting “and” at the end of paragraph (a);
- (ii) by inserting “and” at the end of paragraph (b); and
- (iii) by inserting after paragraph (b)—

“(c) in relation to a judgment registered under this Act, the judgment register;”;

(b) in the definition of “threshold term”—

- (i) by deleting “five” and substituting “twenty-one”; and
- (ii) by deleting “of at least three years”; and

(c) by inserting the following definitions, each in its correct alphabetical place—

“ “first registration” or “first registered” means first registration, or first registered, under this Act;

“judgment”, in relation to the judgment register, means a final judgment or order of the Supreme Court, the Court of Appeal or the Judicial Committee of the Privy Council (on appeal from the Court of Appeal);

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

“rules”, except in relation to “rules of court”, means rules made by the Minister under this Act.”.

### Inserts section 3A

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

“Application for registration of estate to be made by attorney

3A Where an application is made for the registration of any estate under this Act, the application shall be lodged with the registrar on the applicant’s behalf by an attorney acting for him.”.

### Amends section 18

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

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

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

Inserts section 20A

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

“Judgment register

20A (1) The judgment register shall include an individual register for each judgment that affects land and is registered in accordance with Schedule 10.

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

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

(3) The registrar may cancel any entry in the register on being satisfied that it has ceased to have any effect.”.

Amends section 24

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

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

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

(A) where equity money is paid; and

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

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

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

- (i) in pursuance of an order of the court;
- (ii) at a premium;
- (iii) for valuable or other consideration; or
- (iv) by way of gift;”.

Inserts section 25A

7 The principal Act is amended by inserting after section 25—

“Late penalty fee for non-compliance with section 25

25A If an application for registration that is required to be made under section 25(1) or (2) is not made within the period for registration referred to in section 25(3), the person required to make the application shall pay, in addition to the fee prescribed for such application, a late penalty fee of \$200 for every day or part thereof during which the application remains unmade.”.

Repeals sections 26 and 27

8 Section 26 (effect of non-compliance with section 25) and section 27 (liability for making good void transfers etc.) are repealed.

Amends section 30

9 The heading of section 30 of the principal Act is amended by inserting “first” before “registration”.

Inserts section 32A

10 The principal Act is amended by inserting after section 32—

“Notice of application for first registration to be published in Gazette

32A (1) The registrar shall as soon as practicable after receipt of an application for, or in anticipation of, first registration of an estate in land give notice by publication in the Gazette that the application has been made and that anyone who has an interest in the estate and wishes to object to the application (and declare his interest in the estate) must do so within 30 days after such publication in such form and manner as is specified in the notice.

(2) The notice under subsection (1) shall include a warning that, if no objection to the application is duly received by the registrar on or before 30 days after the date of publication of the notice in the Gazette, the application will be completed and the applicant may be registered as the owner of the estate.

(3) Rules may make further provision about the giving of notice under subsection (1).”.

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### Amends section 84

11 Section 84(1) of the principal Act is amended—

- (a) by deleting “or” at the end of paragraph (c); and
- (b) by inserting after paragraph (c)—

“(ca) the judgment register; or”.

### Amends section 85

12 Section 85(1) of the principal Act is amended—

- (a) by deleting “or” at the end of paragraph (c); and
- (b) by inserting after paragraph (c)—

“(ca) the judgment register; or”.

### Amends section 92

13 Section 92 of the principal Act is amended—

- (a) by inserting after subsection (1)—

“(1A) An objection under this section shall be made in accordance with such rules as may be made in this regard.”; and

- (b) in subsection (7)(b), by deleting “section 94” and substituting “section 95”.

### Amends section 96

14 Section 96(2) of the principal Act is amended by deleting “Rules may” and substituting “Rules of court”.

### Amends section 99

15 Section 99(3) is repealed and the following substituted—

“(3) In its application by virtue of subsection (1), section 25A (late penalty fee for non-compliance with section 25) has effect.”.

### Amends section 117

16 Section 117 of the principal Act is amended by deleting “five” and substituting “twenty-one”.

### Amends section 123

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

“(1A) Rules shall, within one month after their filing with the Secretary to the Cabinet in accordance with section 2 of the Statutory Instruments Act 1977,

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be published by deposit for public inspection at the Land Title Registry Office, and shall have effect on the day that the Minister gives notice in the Gazette that the rules have been so deposited, or such later date as the Minister may in the notice appoint.”.

### Amends Schedule 3

18 Schedule 3 to the principal Act is amended—

- (a) in paragraph 1(c), by deleting “in such manner as the registrar considers appropriate” and substituting “by publication in the Gazette, and the notice shall be subject to the negative resolution procedure”;
- (b) in paragraph 2(c), by deleting “in such manner as the registrar considers appropriate” and substituting “by publication in the Gazette, and the notice shall be subject to the negative resolution procedure”;
- (c) in paragraph 2(d)(ii), by deleting “or paragraphs” and substituting “, paragraphs, sub-paragraphs or clauses”;
- (d) in paragraph 13(4), by deleting “section 94” and substituting “section 95”; and
- (e) in paragraph 15—
  - (i) in sub-paragraph (1), by deleting “under section 21 and the application is lodged with the registrar on the applicant’s behalf by an attorney acting for him in the normal course of the attorney’s practice”;
  - (ii) in sub-paragraph (2), by deleting “registrar may require the attorney, when lodging the application, to confirm in writing whether or not” and substituting “attorney shall, when lodging the application, confirm in writing that”; and
  - (iii) in sub-paragraph (3), by deleting “Where the attorney confirms that the deeds, documents and other evidence of title have been examined as referred to in sub-paragraph (2), the registrar may require the attorney to” and substituting “The attorney shall”.

### Inserts Schedule 10

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

#### “SCHEDULE 10

(section 20A)

#### REGISTRATION OF JUDGMENTS

No judgment to affect land, tenements or hereditaments until registered

1 (1) A judgment granted after the coming into operation of this Schedule shall not affect any lands, tenements or hereditaments as to purchasers, mortgagees or judgment creditors unless and until—

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

notwithstanding anything to the contrary in the Real Estate Assets Act 1787, section 19 of the Supreme Court Act 1905, section 14 of this Act, any other provision of law, or any notice of any such judgment to any such purchaser, mortgagee or judgment creditor.

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

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

Fees of registration may be levied under execution

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

Priority not affected by difference between dates of registration

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

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

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

Application to remove from register judgment on which judgment debt discharged

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

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### Related amendments to other legislation

20 (1) Section 29A(2) of the Employment Act 2000 is amended by inserting after paragraph (o)—

“(oa) the Land Title Registrar;”.

(2) Section 55(2) of the Evidence Act 1905 is amended by deleting “or in” and substituting “the Registrar-General (Recording of Documents) Act 1955, the Land Title Registration Act 2011, or”.

(3) Section 18(1) of the Financial Intelligence Agency Act 2007 is amended by inserting after paragraph (d)—

“(da) the Land Title Registrar to discharge his functions under any statutory provision;”.

(4) Section 3(3) of the Good Governance Act 2012 is amended by inserting after paragraph (n)—

“(na) the Land Title Registrar;”.

(5) The Land Title Registrar (Recording of Documents) Act 2017 is amended—

(a) in section 3(4)(a)(ii), by deleting “the number and page of”; and

(b) by repealing section 4 (judgments index).

(6) The Recording of Documents Regulations 1965 are amended—

(a) by inserting in regulation 2, after the revoked paragraph (2)—

“(3) The form of documents in respect of memoranda relating to mortgages shall be in Form A in the Schedule, and the headings on the said form shall be spaced in conformity with the specimen copy obtainable from the office of the Registrar-General.”; and

(b) by inserting the following Schedule—

#### “SCHEDULE

(regulation 2(3))

#### Form A

#### MEMORANDUM OF MORTGAGE

(State whether first or subsequent Mortgage or Further Charge)

DATE:

MORTGAGOR (S) :

(add address if desired)



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MORTGAGEE (S) :

(add address if desired)

SUM SECURED: \$

RATE OF INTEREST: \$

INTEREST COMPUTED FROM (date)

DESCRIPTION OF PROPERTY MORTGAGED:".

(7) Subsection (6) is deemed to have come into operation immediately after the coming into operation of the Land Title Registrar (Recording of Documents) Act 2017.

Commencement

21 Subject to section 20(7), the provisions of this Act commence on such day as the Minister responsible for land title registration may by notice published in the Gazette appoint, and different days may be so appointed for different provisions or for different purposes.

## LAND TITLE REGISTRATION AMENDMENT BILL 2017

### EXPLANATORY MEMORANDUM

This Bill would amend the Land Title Registration Act 2011 (“the principal Act”) as follows.

Clause 1 is self-explanatory.

Clause 2 amends section 3 by adding certain definitions, particularly “judgment register” (see also clauses 5 and 19), and amending others, particularly “threshold term”, which refers to the unexpired term of a lease. Leases with less than the threshold term (which is currently five years) before they expire do not qualify for registration under the Act. The amendment would increase the threshold term from five to twenty-one years, but would still allow the term to be reduced by rules if and when it is found to be necessary. A definition is also added to make it clear that a reference in the Act to “rules” means rules made by the Minister.

Clause 3 inserts section 3A which requires an application for registration of an estate to be lodged on behalf of the applicant by an attorney.

Clause 4 amends section 18(1) to add a reference to another register, the judgment register. (See clauses 5 and 19.)

Clause 5 inserts section 20A which provides for the registrar to keep a judgment register in which judgments that affect land are to be registered. (See also clause 19.)

Clause 6 amends section 24(1) by splitting certain paragraphs into subparagraphs, and certain subparagraphs into clauses, so that each such subparagraph or clause is capable of being a “trigger” for compulsory registration. In this regard, see clause 18(c) which amends paragraph 2(d)(ii) of Schedule 3 to the principal Act.

Clause 7 inserts section 25A which provides that, if an application for registration that is required to be made is not made within the period for registration (two months or such longer period as the registrar may for good reason allow), the person required to make the application shall pay, in addition to the fee prescribed for such application, a late penalty fee of \$200 for every day or part thereof during which the application remains unmade.

Clause 8 repeals sections 26 and 27. Currently, section 26 provides that, if an application for registration that is required to be made is not made within the period for registration (two months or such longer period as the registrar may for good reason allow), the transfer, grant, or creation of the estate becomes void upon the expiration of that period; and section 27 provides who is liable to make good such void transfers, etc.

Clause 9 amends the heading of section 30 (effect of registration - leasehold estates) by inserting “first” before “registration” as section 30 deals with the effect of first registration of a leasehold estate.

Clause 10 inserts section 32A which provides that the registrar must give notice of an application for first registration by publishing notice thereof in the Official Gazette and

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inviting anyone who has an interest in the estate and wishes to object to the application to do so within 30 days after such publication.

Clause 11 amends section 84 (inspection of registers etc.) to include a reference to the judgment register.

Clause 12, similarly, amends section 85 (official copies of registers etc.) to include a reference to the judgment register.

Clause 13 amends section 92 to make it clear that objections are to be made in accordance with rules made in that regard, and to correct a cross-reference.

Clause 14 amends section 96 (appeals) to clarify that a person may, in accordance with rules of court (currently Order 55 of the Rules of the Supreme Court 1985), appeal to the Supreme Court against a decision of an adjudicator.

Clause 15 replaces subsection (3) of section 99 (compulsory registration of grants out of demesne land) to refer to section 25A (see clause 7) rather than section 26 (see clause 8).

Clause 16 amends section 117 (reduction in threshold term) as the “threshold term” for the registration of a leasehold estate is increased from five years to twenty-one years. (See clause 2(b).)

Clause 17 inserts a new subsection (1A) into section 123 so that rules made under the principal Act do not have to be published in the Gazette. The rules are to be published by deposit for public inspection at the Land Title Registry Office and shall come into effect by notice published in the Official Gazette.

Clause 18 amends Schedule 3 (first registration - ancillary matters). Clause 18(a) provides for the phased introduction of voluntary registration to be triggered (by category) by notice published in the Official Gazette. The notice is subject to parliamentary scrutiny by the negative resolution procedure. Similarly, clause 18(b) and (c) provides for the phased introduction of compulsory registration to be triggered (by category) by notice published in the Official Gazette. The notice is also subject to parliamentary scrutiny by the negative resolution procedure. Clause 18(d) corrects an incorrect reference to section 94 - the correct reference is to section 95. Clause 18(e) amends paragraph 15 (certificates of legal effect) of the Schedule to provide that where application is made for the first registration of an estate the attorney must provide the registrar with a certificate of legal effect.

Clause 19 inserts Schedule 10 (registration of judgments). This provides that no judgment granted after the coming into operation of the Schedule shall affect land unless and until the judgment is registered in the manner set out in paragraph 1 of the Schedule.

Clause 20 makes related amendments to other legislation.

Clause 21 provides for commencement by notice by the Minister published in the Gazette.