

T I T L E 29

Property Law

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P A R T I

Real Property

***Chapter 1. INSTRUMENTS AFFECTING
OR RELATING TO REAL PROPERTY;
PROBATE AND REGISTRATION***

- § 1. Form of instruments affecting or relating to real property.
- § 2. Probate of conveyance or mortgage.
- § 3. Procedure for probate.
- § 4. Registration.
- § 5. Penalty for registration before probate.
- § 6. Failure to probate and register.

§ 1. Form of instruments affecting or relating to real property.

Every instrument affecting or relating to real property shall be signed by the grantor if a deed poll, and by the parties thereto if an indenture, in the presence of at least two witnesses.¹

§ 2. Probate of conveyance or mortgage.

All persons acquiring any interest affecting or relating to real property shall appear in person or by attorney-at-law before the Probate Court for the County or territory in which such real property is situated, or should there be no Probate Court in the area where such real property is situated, then he shall appear before the nearest Probate Court to the area involved, within four months of the date of execution of the instrument, and have the deed, mortgage or other instrument affecting or relating to the real property publicly probated; provided, however, that this provision shall not apply to persons acquiring an interest

1. Prior legislation: Rev. Stat. (adopted L. 1929, ch. VII), § 1298.

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affecting or relating to real property prior to October 1, 1962.

In order to be valid and probated, a deed, mortgage or other instrument shall be witnessed by at least two witnesses.²

§ 3. Procedure for probate.

The instrument to be probated shall be presented to the Probate Court with a request that the Court make an order directing the Registrar of Deeds to register such instrument.

The ministerial officer of the Court shall give *viva voce* notice at the door of the courtroom that such instrument has been presented for probate. If any objection is made to the probate thereof, the Court shall hear and determine such objection. If the Court decides that such instrument is entitled to probate, he shall write thereon the words, "Let this be registered," and shall sign his name thereto officially. He shall direct the clerk to enter upon the record the character of the instrument and the date and hour of its probate, and to forward the instrument to the Registrar of Deeds to be registered.³

§ 4. Registration.

The Registrar of Deeds shall register all deeds, mortgages or other instruments forwarded to him by the clerk of the court and shall

2. CHAPTER XLIII, AN ACT TO AMEND THE PROPERTY LAW WITH RESPECT TO THE PROBATE AND REGISTRATION OF INSTRUMENTS, amended section 2 to its current wording. The Act enacting the Section was approved January 19, 1962, and became effective, under its provision, immediately after it became law.

Prior legislation: L. 1861, 90, §§ 1, 2; 1839 Acts, Bill to prevent fraud in management of estates, art. 5, 6, 2 Hub. 1391.

Cross Reference:

Instrument subject to stamp tax not valid or receivable in evidence unless it bears cancelled revenue stamps, *see* Revenue and Finance L., § 573.

3. *Prior legislation:* Rev. Stat. (adopted L. 1929, ch. VII), § 1299; L. 1881, 91, § 2.

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return them to the clerk. The clerk shall make out the bill of costs, including the fee of the Registrar, payable by the holder of the instrument, and shall pay over to the Registrar his fee for registration.⁴

§ 5. Penalty for registration before probate.

Any Registrar of Deeds who shall register any deed, mortgage or other conveyance not endorsed by the Probate Judge with the words, "Let this be registered," over his signature is guilty of a misdemeanor and punishable by a fine not exceeding one hundred dollars and by dismissal from office.⁵

§ 6. Failure to probate and register.

If any person shall fail to have any instrument affecting or relating to real property probated and registered as provided in this Chapter within four months after its execution, his title to such real property shall be void as against any party holding a subsequent instrument affecting or relating to such property, which is duly probated and registered.⁶

Chapter 2. LANDLORD AND TENANT

§ 20. Leases to foreigners.

§ 20-A. Leases to foreign businesses and business concerns.

4. *Prior legislation:* Rev. Stat. (adopted L.1929, ch. VII), § 1300; L. 1861, 90, § 5; OBB 113, Judiciary, Art. II, § 2.

5. *Prior legislation:* Crim. Code, § 137; Rev. Stat. (adopted L. 1929, ch. VII), § 1301; L. 1861, 90, § 3.

6. *Prior legislation:* Rev. Stat. (adopted L.1929, ch. VII), § 1302; L. 1861, 90, § 5.

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§ 20. Leases to foreigners.

A Liberian citizen shall not lease real estate to any foreign person or foreign concern for a term longer than twenty-one years; provided, however, that the provisions of this section shall not prevent a citizen from granting to a foreigner or foreign concern a lease of real estate for two optional periods of twenty-one years each in addition to the twenty-one year period of a term certain, but for each additional term there shall be an increase of the rentals fixed for the term certain of not less than ten per cent.

A lease agreement between a citizen and a foreigner contrary to the provisions of this section shall be voidable, and the lessee shall lose all benefits of such agreement and the lessor shall forfeit to the Government his rights and title to such real estate.⁷

§ 20-A. Leases to foreign businessmen and business concern.

A Liberian citizen may lease land to a foreign businessman or foreign business concern for a period longer than 21 years certain on the following conditions:

- (a) Where a foreign businessman or foreign business concern desires to lease land upon which to construct a building or buildings for business, residential or other purposes and the investment is to the extent of \$150,000.00, he may do so for a maximum period of 25 years certain, with an option of renewal for a further period of years as may be agreed to by the parties; provided, however, that such renewal period shall not exceed 25 years;

⁷ *Prior legislation:* L. 1951-52, ch. XXXVIII; L. 1897-98, 11 (3rd); L. 1897-98, 36; L. 1899-1900, 50.

Cross reference:

Lease of public lands, *see* Public Lands L., § 70.

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(b) Where the investment is for more than \$150,000.00 but less than \$250,000.00 he may do so for a maximum period of 35 years certain, with an option of renewal for a further period of years as may be agreed to by the parties, provided, however, that such renewal period shall not exceed 35 years.

(c) Where the investment is for more than \$250,000.00 but less than \$350,000.00 he may do so for a period of 40 years certain, with an option of renewal for a further period of years as may be agreed to by the parties, provided, however, such renewal period shall not exceed 40 years; and

(d) Where the investment is for more than \$350,000.00 he may do so for a maximum period of 50 years certain, with an option of renewal for a further period of years as may be agreed to by the parties, provided, however, that such renewal period shall not exceed 50 years.

Plans and specifications in respect of development of such leased property shall be submitted to the Ministry of Public Works for determination that the investment contemplated by the lessee or sub-lessee shall not be less than the amounts stipulated in the provisions of this Section before construction activities are undertaken.⁸

Chapter 3. ALIEN MORTGAGE GUARANTY ACT

§ 30. Title of Act.

§ 31. Loans by aliens secured by mortgage.

§ 32. Rights and remedies of alien creditor.

8. CHAPTER LVII, AN ACT TO AMEND CHAPTER 2 OF THE PROPERTY LAW WITH RESPECT TO LEASES TO FOREIGN BUSINESSMEN AND FOREIGN BUSINESS CONCERNS, amended the Property Law by the adding thereto the current section 20-A, which Act was approved April 23, 1966. Section 2 of the Act provided that: "This Act shall take effect immediately upon publication in hand-bills."

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- § 33. Security by Republic of Liberia.
- § 34. Payment of deficiency by the Republic.
- § 35. Suit by alien mortgagee.
- § 36. Alien mortgagee rights extended to certain Liberian corporations.

§ 30. Title of Act.

This Chapter may be cited as the Alien Mortgage Guaranty Act.⁹

§ 31. Loans by aliens secured by mortgage.

Any foreign person may lend money to any Liberian citizen or Liberian private corporation or to any foreign corporation engaged in business in Liberia and the borrower or any person or corporation acting as surety or guarantor may give security to the foreign lender for the repayment of such loan and the interest accruing thereon, by mortgage, upon any real property or interest therein belonging to such borrower or to such surety or guarantor.

Such a loan may be for such period and upon such lawful terms and conditions and shall bear such interest, simple or compound, not to exceed the legal authorized rate, as may be agreed upon by the parties.¹⁰

§ 32. Rights and remedies of alien creditor.

All suit, actions, proceedings and rights now or hereafter available to any other mortgagee for the probate and registration of mortgages, the foreclosure of mortgages, and the recovery of the amount due thereunder or of any deficiency remaining after the foreclosure

9. Prior legislation: L. 1948-47, ch. XVII, § 6.

10. Prior legislation: L. 1946-47, ch. XVII, §§ 1, 2.

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sale, shall be equally available to a foreign mortgagee, except the right to bid in and acquire the mortgaged property at the foreclosure sale.¹¹

§ 33. Security by Republic of Liberia.

A loan made and secured, as provided in section 31, may be further secured by the Republic of Liberia by the approval of such loan in writing by the Minister of Finance in substantially the following form:

Whereas _____ (name of borrower) desires to borrow from _____ (name of lender), an alien person (or an alien corporation) the sum of _____ (specify amount), lawful money of the Republic of Liberia, for the term of _____ years from the _____ day of _____ 19____ such loan to bear interest at the rate of _____ per annum, and to be secured by mortgage upon real property in the Republic of Liberia, all as shown by the copies of the promissory note of the said borrower (and his sureties, if any) and of the deed of mortgage to secure the borrower's obligation hereunto appended and made a part hereof, marked for identification exhibits A and B respectively;

Now, therefore, the said mortgage loan is hereby approved, on behalf of the Republic of Liberia, and in consideration of the making of said loan the repayment hereof is hereby guaranteed by the Republic of Liberia to the extent and in the manner authorized by the provisions of the Alien Mortgage Guaranty Act.

Done at Monrovia, Liberia, this _____ day of _____ 19____
For the Republic of Liberia:

¹¹ *Prior legislation:* L. 1946-47, ch. XVII, § 3.

(SEAL)

 MINISTER OF FINANCE ¹²

§ 34. Payment of deficiency by the Republic.

If the net amount, if any, realized by the alien mortgagee upon the termination (whether successful or unsuccessful) of foreclosure proceedings on the mortgaged property shall be insufficient to repay the amount due upon the loan, plus accrued and unpaid interest, court costs, and taxes, if any, on the mortgaged property paid by the mortgagee, and if, within one year from the date of the judicial confirmation of the foreclosure sale or the date of unsuccessful termination of the foreclosure proceedings, the mortgagee shall have been unable to recover the deficiency from the mortgagor, or from his surety or sureties, if any, then and in that event the Republic of Liberia shall forthwith pay to the mortgagee the amount still due and unpaid upon the mortgage debt, whether arising from principal, interest, taxes or costs. The Republic shall thereupon become subrogated to the right of the mortgagee to recover such deficiency from the mortgagor or from his surety. ¹³

§ 35. Suit by alien mortgagee.

Any differences which may arise as to the amount, if any, due from the Republic to an alien mortgagee under the provisions of this Act shall be determined by suit by the claimant pursuant to the provisions of sections 66.1 through 66.6, inclusive, of the Civil Procedure Law (of the Liberia Code of Laws Revised).¹⁴

12. *Prior legislation:* L. 1946-47, ch. XVII

13. CHAPTER II, AN ACT TO AMEND THE ALIEN MORTGAGE GUARANTY ACT, approved November 25, 1958, amended section 34 to its current wording.
Prior legislation: L. 1946-47, ch. XVII, § 4.

14. *Prior legislation:* L. 1948-47, ch. XVII, § 5.

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§ 36. Alien Mortgagee rights extended to certain Liberian corporations.

A Corporation chartered by, or organized under the Laws of the Republic of Liberia of which more than fifty per centum (50%) of the voting stock is owned by an alien person or alien corporation shall be entitled to all the rights and benefits accorded a foreign corporation by this Act, and each reference in this Act to a foreign corporation, foreign lender, foreign mortgagor, alien mortgagee and alien person shall be deemed to refer also to any such foreign owned Liberian corporation.¹⁵

15. The section was a new one added to the title by an amendment to said title, approved November 25, 1958, to take effect immediately upon passage and to be published in hand-bills.

P A R T II

Particular Proceedings Relating to Real Property¹⁶

Chapter 5. FORECLOSURE OF MORTGAGE

- § 60. Mortgages to which this chapter applies.
- § 61. Notice of foreclosure sale.
- § 62. Contents of notice.
- § 63. Place of sale; purchase by mortgagee.
- § 64. Effect of sale.
- § 65. Statement of publication of notice by clerk of circuit court.
- § 66. Statement of sale by sheriff.
- § 67. Execution of deed.
- § 68. Payment of surplus moneys to mortgagor.

§ 60. Mortgages to which this chapter applies.

A mortgage of real property which gives a power to the mortgagee, or any other person, to sell the mortgaged premises upon default being made in any condition of the mortgage, may be foreclosed in the manner provided in this chapter if the mortgage has been duly registered, if some default in a condition of the mortgage has occurred, and if no action at law of any kind whatsoever against the mortgagor in connection with such mortgage is pending.¹⁷

16. Cross references:

Escheat, see Public Lands L., ch. 8.

Ejectment, see Civil Procedure L., ch. 23.

Condemnation of private property for public use, see Civil Procedure L., ch. 16, subch. E, §§ 16.71 to 16.76

17. Prior legislation: Rev. Stat. (adopted L. 1929, ch. VII), § 1392 (1).

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§ 61. Notice of foreclosure sale.

Notice that such mortgage will be foreclosed by a sale of the mortgaged premises with the date and hour of such sale shall be given as follows:

(a) The clerk of the Circuit Court shall publish such notice at least once in a newspaper, if any be published in the county;

(b) The Sheriff shall post such notice in front of the court house of the Circuit Court in which the foreclosure action is brought, and in at least two other conspicuous public places, and on the premises to be sold, for a period of at least thirty days prior to the day of the sale; and shall serve a copy of such notice upon the mortgagor, or his legal representative, and upon all grantees taking title to said property subsequent to the recording of the mortgage and up to the date of such notice.¹⁸

§ 62. Contents of notice.

The notice shall contain the names of the mortgagor and the mortgagee, the date of the mortgage and where recorded, the amount claimed to be due thereon or the condition claimed to be forfeited, and a description of the mortgaged premises, conforming substantially with that contained in the mortgage.¹⁹

§ 63. Place of sale: purchase by mortgagee.

The sale by the sheriff shall be at public auction in the day time in the county in which the mortgaged property is situated. The mortgagee, his assigns or legal representatives may purchase the

18. *Prior legislation:* Rev. Stat. (adopted L. 1929, ch. VII), § 1392 (2).

19. *Prior legislation:* Rev. Stat. (adopted L. 1929, ch. VII), § 1392 (3).

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property.²⁰

§ 64. Effect of sale.

Every such foreclosure sale shall have the same effect as if done under the decree of a court of equity, and shall bar all claims or equity of redemption of the mortgagor, his heirs and legal representatives and all persons claiming under him or them by virtue of any interest subsequent to such mortgage, and the claim of any other person whatsoever arising in any manner subsequent to such mortgage.²¹

§ 65. Statement of publication of notice by clerk of Circuit Court.

A written statement of the publication of the notice required by this chapter shall be made by the clerk of the Circuit Court, to which he shall annex a copy of the notice posted publicly and a copy of the notice published in a newspaper, if one was published.²²

§ 66. Statement of sale by sheriff.

A written statement of the fact of sale shall be made by the sheriff, stating the time and place of sale, the sum bid for the property, and the name of the purchaser. Such statement shall be verified and filed with the clerk of the Circuit Court immediately following the sale.²³

20. *Prior legislation:* Rev. Stat. (adopted L. 1929, ch. VII), § 1392 (4).

Cross reference:

No right in alien mortgagee to bid in property at foreclosure sale, see sec. 32 of this Title.

21. *Prior legislation:* Rev. Stat. (adopted L. 1929, ch. VII), § 1392 (5).

22. *Prior legislation:* Rev. Stat. (adopted L. 1929, ch. VII), § 1392 (6).

23. *Prior legislation:* Rev. Stat. (adopted L. 1929, ch. VII), § 1392 (7).

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§ 67. Execution of deed.

The statements made by the clerk and by the Sheriff prescribed by sections 65 and 66 shall be presented to the judge of the Circuit Court in chambers. If he finds such statements sufficient in form and content he shall direct the Registrar of Deeds of the county to draw, execute and register a deed in favor of the purchaser.²⁴

§ 68. Payment of surplus moneys to mortgagor.

If a mortgage is foreclosed to recover moneys due, any surplus resulting from the foreclosure sale shall be paid to the mortgagor by order of the judge of the Circuit Court.²⁵

Chapter 6. PARTITION

§ 80. When partition available.

§ 81. Filing petition for partition.

§ 82. Determination of issue; appointment of commissioners.

§ 83. Oath of commissioners; filling of vacancy.

§ 84. Duties of commissioners.

§ 85. Confirmation or setting aside of report; direction to sell.

§ 86. Confirmation of partition sale.

§ 80. When partition available.

When several persons hold and are in possession of any lands or premises as joint tenants, or as tenants in common, one or more of them having estates of inheritance, or for life or lives, or for years, any one or more of such persons may apply for partition of such

24. *Prior legislation:* Rev. Stat. (adopted L. 1929, ch. VII), § 1392 (8).

25. *Prior legislation:* Rev. Stat. (adopted L. 1929, ch. VII), § 1392 (9).

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lands or premises or for a sale of such premises if it appears that partition cannot be made without great injury to the interests of the owners.²⁶

§ 81. Filing petition for partition.

A petition for partition shall be filed in the Circuit Court of the county in which the property is situated, and the clerk shall issue a writ of summons commanding the parties to appear and answer the petition within ten days after the service of said writ. A copy of the petition shall be served on each party with the writ of summons. The petition shall clearly describe the lands sought to be partitioned, and shall set forth the rights of the parties.²⁷

§ 82. Determination of issue; appointment of commissioners.

The petition may be heard and disposed of by the judge of the Court in chambers. If the petitioner is entitled to have the property partitioned, the judge shall by order appoint as commissioners three reputable and disinterested freeholders for the purpose of making such partition, which order shall specify the lands to be partitioned and the time at which the commissioners shall report.²⁸

§ 83. Oath of commissioners; filling of vacancy.

The commissioners so appointed shall subscribe to an oath before entering upon their duties that they will faithfully, honestly and impartially discharge their duties. The judge shall fill any vacancy by

26. *Prior legislation:* Rev. Stat. (adopted L. 1929, ch. VII), § 1398.

27. *Prior legislation:* Rev. Stat. (adopted L. 1929, ch. VII), § 1398 (1).

28. *Prior legislation:* Rev. Stat. (adopted L. 1929, ch. VII), § 1398 (2).

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appointment.²⁹

§ 84. Duties of commissioners.

The commissioners shall partition the property, designating the part of each party in interest with posts, stones, or other permanent monuments. They may employ a surveyor with necessary assistants to aid them in such partition.

If partition cannot be made without great injury to the interests of the owners, the commissioners shall so report, stating fully and amply all the facts in the case, and the reason why in their judgment such partition cannot be made.³⁰

§ 85. Confirmation or setting aside of report; direction to sell.

Upon the filing of the report of the commissioners the judge may confirm the same, or he may set aside the report and appoint as often as may be necessary new commissioners, who shall proceed in the manner herein provided. Upon confirmation of a report that partition cannot be made without great injury to the interests of the owners, the judge may by order direct the commissioners to sell the estate at public auction to the highest bidder, and shall prescribe the time and manner of giving notice of such sale.³¹

§ 86. Confirmation of partition sale.

The sale shall be subject to confirmation by the court. If it is confirmed, the court shall direct the commissioners to execute and deliver a deed to the purchaser, and to distribute the proceeds of the

29. *Prior legislation:* Rev. Stat. (adopted L. 1929, ch. VII), § 1398 (3).

30. *Prior legislation:* Rev. Stat. (adopted L. 1929, ch. VII), § 1398 (1), (2), (4).

31. *Prior legislation:* Rev. Stat. (adopted L. 1929, ch. VII), § 1398(3), (4).

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sale to and among the parties after deducting such fees, costs, and allowances as are provided by law or as the court may allow.³²

Chapter 7. ADMEASUREMENT OF DOWER³³

- § 90. Filing of petition.
- § 91. Determination of issue; appointment of commissioners.
- § 92. Oath of commissioners; filling of vacancy.
- § 93. Duties of commissioners.
- § 94. Confirmation or setting aside of report.
- § 95. Determination of rental value in lieu of laying off of property.
- § 96. Writ of possession.

§ 90. Filing of petition.

A petition for the admeasurement of dower may be filed by a widow in the Probate Court of the county in which the property is situated, within one year after the death of her husband. A copy of the petition shall be served upon the heirs of her husband at the time of filing, or, if they are not the owners of the property claimed to be subject to dower, then upon the owners of such property claiming a freehold estate therein, or their legal representative. The petition shall clearly describe the property sought to be admeasured, and shall set forth the rights of the parties interested therein. The petition shall be dealt with as any other pleading under the laws providing for proceedings in civil cases.³⁴

§ 91. Determination of issue; appointment of commissioners.

The petition may be heard and disposed of by the judge of the court

32. *Prior legislation:* Rev. Stat. (adopted L. 1929, ch. VII), § 1398(4).

33. *Cross reference:* Recovery of dower by ejectment, *see* Civil Procedure L., § 1121.

34. *Prior legislation:* Rev. Stat. (adopted L. 1929, ch. VII), § 1386 (1).

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sitting in chambers. If he determines that the petitioner is entitled to have her dower admeasured, he shall by order appoint three reputable and disinterested freeholders as commissioners for the purpose of making such admeasurement, describing the property in which dower is to be admeasured and fixing the time at which the commissioners shall report.³⁵

§ 92. Oath of commissioners; filling of vacancy.

The commissioners so appointed shall subscribe to an oath, before entering upon their duties, that they will faithfully, honestly and impartially discharge their duties. The judge shall fill any vacancy by appointment.³⁶

§ 93. Duties of commissioners.

The commissioners shall take such evidence as may be relevant. They shall lay off one-third part of such lands as the dower of the widow, designating such part with posts, stones, or other permanent monuments. They may employ a surveyor with necessary assistants to aid them in such admeasurement.

If it is not possible to admeasure and lay off one-third part of such property without great injury to the interests of the parties concerned, the commissioners shall so report, stating fully and amply all the facts in the case and the reasons why in their judgment such admeasurement cannot be made.³⁷

§ 94. Confirmation or setting aside of report.

35. *Prior legislation:* Rev. Stat. (adopted L. 1929, ch. VII), § 1386 (2).

36. *Prior legislation:* Rev. Stat. (adopted L. 1929, ch. VII), § 1388 (3).

37. *Prior legislation:* Rev. Stat. (adopted L. 1929, ch. VII), § 1386 (1).

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Upon the filing of the report of the commissioners laying off one-third part of the property, the judge may confirm the same, or he may set aside the report and appoint, as often as may be necessary, new commissioners, who shall proceed in the manner herein provided.³⁸

§ 95. Determination of rental value in lieu of laying off of property.

Upon confirmation of the report of the commissioners that it is not practicable, or that it is not for the best interests of all the parties, that one-third of the property should be admeasured and laid off, the judge upon competent evidence being adduced as to the net rental value of such property, shall order that a sum equal to one-third of the net rental value be annually or oftener paid over to such widow during the term of her natural life as her dower in such property. The widow may sue for, recover and collect such sum of money from the owner or person in possession of such property.

If at any time it shall appear to the judge, upon the application of any interested party and upon a hearing of all parties in interest after due and proper notice, that the net rental value of such property has materially increased or diminished, he shall order that the sum to be paid such widow as dower be correspondingly increased or diminished, as the case may be.³⁹

§ 96. Writ of possession.

At the expiration of thirty days from the date of confirmation of the report of the commissioners laying off one-third part of the property, unless an appeal is taken, the widow shall be entitled to a

38. *Prior legislation:* Rev. Stat. (adopted L. 1929, ch. VII), § 1336(3), (4).

39. *Prior legislation:* Rev. Stat. (adopted L. 1929, ch. VII), § 1386(3), (4).

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writ of possession for such part of the property, and shall hold the same during her natural life, subject to the payment of all taxes, assessments, and other charges accruing thereon subsequent to her taking possession.⁴⁰

Chapter 8. THE REGISTERED LAND LAW

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- § 8.2. Purpose.
- § 8.3. Definitions.
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Subchapter B. ADJUDICATION OF LAND AND ESTATES, RIGHTS AND INTERESTS THEREIN

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- § 8.11. Minister of Lands and Mines to designate selected

40. *Prior legislation:* Rev. Stat. (adopted L. 1929, ch. VII), § 1386(4).

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including actions to set aside final registration orders.

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**AN ACT TO AMEND THE PROPERTY LAW TO
PROVIDE A
NEW SYSTEM FOR REGISTRATION OF LAND
AND FOR DEALINGS IN LAND SO REGISTERED**

It is enacted by the Senate and House of Representatives of the Republic of Liberia, in Legislature Assembled:

SECTION 1. The Property Law is hereby amended by adding thereto a new chapter to follow Chapter 7, to be designated Chapter 8 and to read as follows:

CHAPTER 8. REGISTRATION OF LAND, DEALINGS IN LAND SO REGISTERED AND MATTERS CONNECTED THEREWITH

***Sub-chapter A.* PRELIMINARY MATTERS**

§ 8.1. Short title and application.

The provisions of this chapter may be cited as the Registered Land Law and shall be of application throughout the Republic.

§ 8. 2. Purpose.

The purpose of the Registered Land Law is to substitute as expeditiously and as relatively inexpensively as possible, with the highest regard for due process, for the present system of recording rights to and over land a system of land registration.

§ 8. 3. Definitions.

As used in this chapter and in any rules and regulations made thereunder, the following terms have the indicated meanings unless the context otherwise requires:

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“adjudication area” means an area of land to which the provisions of this chapter has been applied under section 8.11;

“adjudication record” means the record prepared in accordance with the provisions of section 8.51 in respect of an adjudication section;

“adjudication section” means a part or the whole of an adjudication area declared to be an adjudication section under section 8.31;

“Application Book” means the application book kept under section 8.61(d);

“charge” means an interest in land securing the payment of money or money’s worth or the fulfilment of any condition, and includes a surcharge and the instrument creating a charge;

“chargee” means the owner of a charge;

“chargor” means the owner of charged land, or of a charged leasehold, or a charge;

“dealing” includes disposition and transmission;

“Demarcation and Recording Officer” means an officer appointed under the provisions of section 8.22;

“Demarcation Plan” means a demarcation index diagram prepared under section 8.45(c) in respect of an adjudication section;

“disposition” means any act *inter vivos* by an owner whereby his rights in or over his land, leasehold or charge are affected, but does not include an agreement to transfer, lease or charge;

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“easement” means a right attached to a parcel of land which allows the owner of the parcel either to use the land of another in a particular manner or to restrict its use to a particular extent, but does not include a profit;

“file” as a verb means to place in a relative parcel file required to be maintained under section 8.61(1)(c);

“instrument” includes any deed, judgment, decree, order or other document capable of registration under the provisions of this chapter;

“interest in land” means any right or interest in or over land which is capable of being registered under the provisions of this chapter, and includes absolute ownership of land;

“land” includes land covered with water, all things growing on land, and buildings and other things permanently affixed to land;

“Land Commissioner” means the Land Commissioner appointed in a county under section 1 of the Public Lands Law;

“Land Register” means the Land Register compiled under section 8.71;

“Land Registry”, known alternately herein as a Registry, is part of the Registrar of Deed's office engaged in the registration of land under the provisions of this chapter established under section 8.7 (1) and (2);

“lease” means the grant by the owner of land of the right to exclusive possession of his land, and includes the right so granted and any sublease, but does not include an agreement for lease;

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"leasehold" means the area of land comprised in a lease;

"lessor" means the owner of leased land;

"license" means a permission given by the owner of land or leasehold, which allows the licensee to do some act in relation to the land or leasehold which would otherwise be a trespass, but does not include an easement or a profit;

"local government area" means the area of a township, city, commonwealth district or municipal district, as the case may be;

"memorial" means a short note, abstract or memorandum which is contained in the order or directive of a Probate Court Judge and entered on the register;

"Minister" means the Minister of Lands and Mines;

"owner" means the person registered under the provisions of this chapter as the owner of land, or a leasehold or a charge;

"parcel" means an area of land separately delineated first on a "Demarcation Plan" and finally on a "Registry Map" and given a number;

"Precise" when used in referring to surveys made pursuant to the provisions of this chapter, means such measurements as the Minister of Lands and Mines, upon consultation with the Director of Lands and Surveys, shall determine to be most appropriate for measuring a particular area;

"Probate Court Judge" means the judge of the Probate Court whose territorial jurisdiction encompasses the area of land

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involved;

"profit" means the right to go on the land of another and take a particular substance from the land, whether from the soil or products of the soil;

"Referee" means the judicial officer appointed to adjudicate claims to land and rights and interests in land within an area under section 8.21;

"register", used as a noun, means the leaf of the Land Register kept in respect of a parcel of land or of a registered leasehold;

"register", used as a verb, means to make an entry, notation or memorial record in the register under the provisions of this chapter, and "registered", "unregistered" and "registration" bear a corresponding meaning;

"Registrar of Deeds" means the Registrar of Deeds appointed for a county under section 20.58 of the Executive Law;

"Registrar" means the Registrar of Land whose jurisdiction extends over the land area involved;

"Registrar of Land" means the Registrar of Deeds when acting in his capacity of Registrar of Land under section 8.7 or his deputy;

"Registry" means a land registration office whose jurisdiction encompasses the area of land involved;

"Registry Map" means the map or series of maps referred to in section 8.5;

"Survey Officer" means a Survey Officer appointed under

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section 8.23;

“Survey plan” means a survey plan prepared under section 8.47(b);

“transfer” means the passing of land, a leasehold or a charge by act of the parties and not by operation of law, and also the instrument by which such passing is effected, but does not include an agreement to transfer;

“transmission” means the passing of land, a leasehold or a charge from one person to another by operation of law on death or insolvency, or bankruptcy or similar devolution, and includes the compulsory acquisition of land by condemnation or otherwise;

“unregistered land” refers to land, and every estate, right and interest therein which, though recorded in accordance with the probate procedure contained in Chapter 1 of the Property Law, has not been “registered” in accordance with the provisions of this chapter.

§ 8.4. Registered land subject to same rights and burdens as unregistered land.

Land registered under the provisions of this chapter and every estate, right and interest therein shall be in all respects subject to the same rights, burdens and incidents as unregistered land, except as otherwise expressly provided in this chapter or any amendment thereof.

§ 8.5. Minister of Lands and Mines to establish adjudication area priorities and national registry map survey system.

The Minister of Lands and Mines is charged with establishing the

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priorities with respect to the areas of land within the Republic which shall be subject to adjudication and registration under the provision of this chapter. He shall establish a national system of survey monuments and cause to be prepared and thereafter maintained a series of cadastral maps of all lands in the Republic by means of surveys of parcels of land, co-ordinated wherever possible to national monuments, to be called Registry Maps. The Registry Maps and the basic surveys therefor shall be made and prepared upon the request of the other agencies of the Republic charged with the operation of the Registered Land Law and copies made available to them as required, in accordance with the provisions of this chapter with reference thereto.

§ 8.6. Special parts established in probate courts for registration proceedings.

A special part is hereby established in the Monthly and Probate Court of Montserrado County and in each of the Provisional Monthly and Probate Courts and probate divisions of the Circuit Court, with jurisdiction within their respective territorial areas over all proceedings and matters in connection with the registration of land and any estate, right and interest therein, and with respect to dealings therein, authorized by the provisions of this chapter. For that purpose, the said courts shall be always open and its orders, judgments and decrees in proceedings coming under the provisions of this chapter may be made and entered as well in vacation as in term time. The proceedings thereunder shall have the effect of proceedings *in rem* against the land and final orders of the court shall have the effect of final judgments in an action and shall operate directly on the land and vest title thereto when the same is registered. When the volume of business with respect to the probating and registering of instruments makes it necessary, there shall be appointed by the Chief Justice of the Supreme Court, to serve in the probate courts, upon a full or part time basis as required, law assistants to aid the Probate Court Judge in the

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handling of such matters. No one, however, shall be appointed as such law assistant unless he has the qualifications necessary for the position. The practice of law or equivalent experience in conveyancing of titles to land and other estates, rights and interests therein shall be taken into consideration in determining their qualifications.

The clerks of the probate courts shall keep the files and records in adjudication proceedings, and in the matters coming before the Probate Court Judge under the provisions of this chapter subsequent to initial registration, in such manner as to facilitate the purpose of such proceedings and in accordance with such aim they shall consult with the Director of National Archives and Records for his aid in establishing an efficient system. The Chief Justice of the Supreme Court shall provide by rules of practice for the conduct, in said parts, of the business coming under the provisions of this chapter.

§ 8.7. Registrars of Deeds to be Registrars of Land; Director of National Archives and Records Service to supervise national center and local Land Registries.

1. Designation of Registrars of Deeds as Registrars of Land; appointment of deputy registrars. The Registrars of Deeds in the several counties, in addition to performing their duties as registrars of deeds, shall also be "Registrars of Land" in their respective counties and perform the applicable duties with respect thereto set forth in the provisions of this chapter. That part of a Registrar of Deed's office engaged in the registration of land under the provision of this chapter shall be known as the Land Registry and its territorial jurisdiction shall be co-extensive with the county in which it is located unless sub-offices are established in the county in accordance with the provisions of paragraph 2, in which event it is limited to the territory within the county which is outside the territorial jurisdiction of any such sub-office. In any county where

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the business coming under the provisions of this chapter so warrants, the Minister of Foreign Affairs, with the approval of the President, may appoint on a part time or full time basis, as needed, as many deputies as are required to assist in the registration of land hereunder. No one, however, shall be appointed as such deputy unless he has the qualifications necessary for the position. The practice of law or equivalent experience in conveyancing of titles to land and other estates, rights and interests therein shall be taken into consideration in determining their qualifications. Deputies may perform any and all duties of the Registrar of Land under the provisions of this chapter in the name of the Registrar and the acts of such deputies shall be held to be the acts of the Registrar.

2. Registration sub-offices to be established when land registration business so warrants. In any county where Provisional Monthly and Probate Courts have been established and the business coming under the provisions of this chapter so warrants, sub-offices of the Registrar of Deeds office may be established in the cities where such provisional courts exist, to be used as a Land Registry for the registration of land under the provisions of this chapter, to be staffed by a deputy or deputies and such clerks as may be required. Their territorial jurisdiction shall be co-extensive with that of the provisional courts under whose jurisdiction the sub-offices are placed.

3. Director of National Archives and Records Service in charge of Registries; appointment of Chief Registrar of Land. The Director of National Archives and Record Service, in the exercise of his delegated responsibility for overseeing the Registrars of Deeds in the performance of their duties, shall establish a section in his office for the supervision of land registries throughout the Republic to be headed by a Chief Registrar of Land. The section shall be responsible for establishing, maintaining and operating a national registration of land center with duplicate copies of the registry records and registry maps of each land registry systematically indexed and organized for convenience in searching.

Subchapter B. ADJUDICATION OF LAND AND ESTATES, RIGHTS AND INTERESTS THEREIN.

Part I. Designation of Adjudication Areas.

§ 8.11. Minister of Lands and Mines to designate selected adjudication areas in petition to probate court having territorial jurisdiction.

Whenever it appears expedient to the Minister of Lands and Mines that the ascertainment of the estates, rights and interests in the registration of land in any area of the Republic shall be effected, the Minister may file a petition in the probate court having territorial jurisdiction over such land praying for adjudication and registration with respect to the separate parcels of land contained in the said area and of the ascertainable estates, rights and interests therein in accordance with the provisions authorized therefor and contained in this chapter. The said area shall be known as an adjudication area. The petition shall set forth, in addition to other proper allegations, the exact outer boundaries of the area of land involved and, where feasible, an accurate map thereof should be annexed, with the names of the streets or roads upon which the land referred to abuts, or if it abuts upon none, under the names of the streets or roads which are nearest to it, setting forth the distance from any such streets or roads. In any case, however, where there exist an official land map of the area involved dividing it into numbered blocks, such map shall be annexed to the petition and if any system of parcel numbers is used thereon, the parcel numbers should also be shown.

§ 8.12. Notice of petition and of pendency of proceeding to be filed, posted and published.

1. Contents and copies to be furnished for filing and posting. At the time when the petition for adjudication and registration of land

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is filed as provided in section 8.11, the Minister of Lands and Mines shall also cause a notice to be filed in the office of the clerk of the probate court in which the matter is pending and of the Circuit Court having civil jurisdiction in the county where the land in the adjudication area is situated and in the appropriate land registry, which notice, as far as feasible shall be made in the manner prescribe for a notice of pendency of a civil action (Civil Procedure Law, Chapter 7, Subchapter F) and such notice, which for the purposes of this chapter shall be known as a notice of pendency, shall constitute notice of the pendency of the petition and of the proceeding and shall be governed in all respects by the same rules as a notice of pendency of a civil action, except that the description of the land involved shall be exactly as that set forth in the petition and there shall further be included beneath such description an exact copy of any map required to be annexed to the petition.

Such notice need not contain a designation of the names of the parties against whom the notice is directed, and in lieu of the indexing of such names, sufficient additional copies shall be supplied to the several clerks of court and the Registrar of Land with whom the notice is required to be filed, for the purpose of posting them for a period of at least 60 days from the day of their receipt at a conspicuous place in their respective courthouses and in the appropriate registry where like notices are usually posted. The notice shall contain a further statement substantially in the following form:

"Take further notice that the above described adjudication area or such lesser adjudication sections as determined by the Referee to be appointed in this proceeding in accordance with the provisions of section 8.12 of the Registered Land Law (chapter 8 of the Property Law), will be subject to demarcation of parcel boundaries and adjudication of provisional titles thereon, on and after (here set forth last date for

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publication of notice)."

2. Minister to cause notice to be posted at situs of adjudication area. Immediately after the filing of the notice of pendency, the Minister of Lands and Mines shall cause copies thereof to be posted conspicuously along and within the boundaries of the adjudication area affected by the proceeding for a period of at least 60 days, in such number and in such places as will be most effective in bringing the contents of the notice to the attention of all persons affected thereby. Other means of broadcasting the information contained in the notice may be employed in the discretion of Minister.

3. Minister to cause notice to be published. Immediately after the filing of the notice of pendency, the Minister of Lands and Mines shall cause a copy of such notice to be published in a recognized newspaper having a general circulation in the adjudication area involved at least once in each of four successive weeks. The first publication shall be made within seven days after the filing of the notice of pendency.

4. Proof of compliance with posting and publishing requirements to be filed. Upon the conclusion of the minimum period required for posting copies of the notice of pendency, certificates of the clerks of court, the Registrar of Land and the person charged by the Minister of Lands and Mines with the posting of such copies that such copies have been duly posted in accordance with the provisions of this section shall be filed in the proceeding with affidavits in support thereof; and upon the conclusion of the required publication of such notice, proof thereof shall be made in the proceeding by the filing of a copy of the publication accompanied by the affidavit of the publisher or printer or foreman of the paper in which publication was made so certifying.

**PART II. Appointment and General Powers of Officers
Engaged in Adjudication.**

**§ 8.21. Appointment of Referee for adjudication area; scope of
appointment and supervisory powers.**

1. Chief Justice of Supreme Court to make appointment. Immediately upon the filing of a petition for adjudication and registration of land in accordance with the provisions of section 8.11, the clerk of the probate court shall notify the Chief Justice of the Supreme Court of the filing thereof. The Chief Justice shall then make an order to be entered in the probate court proceeding, referring the matter to a Referee to be appointed by him to carry out the duties and exercise the powers imposed upon him under the provisions of this chapter for the demarcation of parcels and the adjudication of claims to land and rights and interests in land within the adjudication area designated by the Minister of Lands and Mines in his petition. In addition to qualifying under the provisions of section 24.3 of the Civil Procedure Law, in appointing such referee, the Chief Justice shall take into consideration, among other things, his knowledge and experience in conveyancing and dealings in land. In the event that the volume of hearings coming before the Referee become too numerous, so that determinations are too long delayed, the Chief Justice may assign the Probate Court Judge, if available, to aid in disposing of the hearing calendar, and if necessary, may appoint an additional Referee to aid in disposing of the hearing calendar in connection with an adjudication area.

The Chief Justice, when it is deemed necessary to assist the Referee in the examination of adjudication records, may also assign the law assistants appointed pursuant to section 8.6 to aid the Referee.

2. Scope of appointment. The Referee shall be an officer of the probate court in which the proceeding is pending and shall be in charge of the adjudication and shall have jurisdiction of all claims

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made under the provisions of this chapter relating to the land in the designated adjudication area, with power to determine any question or dispute that may need determination in connection with such claims and generally for this purpose shall have all the powers of a referee under the provisions of section 24.6 of the Civil Procedure Law and in addition, when no question or dispute arises, or when the question or dispute is settled upon the consent of all the parties in interest, to enter *ex parte* orders thereon. The Referee's term of office shall expire upon the entry of the final order or orders of adjudication as hereinafter provided, with respect to all the parcels of land contained within the adjudication area designated in the petition, unless sooner removed. However, a Referee may be appointed as referee of another adjudication area concurrently with or subsequent to the termination of his appointment.

3. *Supervisory powers.* The Referee shall exercise supervision and control over the Demarcation and Recording Officers and Survey Officers appointed pursuant to the provisions of sections 8.22 and 8.23, in furtherance of the purposes of the business coming under the provisions of this chapter and may issue such general or special directions to them in connection therewith as he thinks necessary.

It shall be lawful and also his duty, when circumstances warrant, to attend at the site of adjudication sections to assist at settling claims by agreement of the parties in interest rather than by trial of disputed issues. He may also exercise all or any of the powers given under the provisions of this chapter to Demarcation and Recording Officers and may carry out any of their duties.

§ 8.22. Appointment of Demarcation and Recording Officers.

The Chief Justice of the Supreme Court shall appoint such Demarcation and Recording Officers as may be necessary for performing the duties and exercising the powers imposed and conferred upon them under the provisions of this chapter for the carrying out of the

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demarcation of parcels and the adjudication of claims to land and rights and interests in land within an adjudication area designated by the Minister in his petition. They shall be officers of the Probate Court in which the adjudication proceeding is pending until the termination thereof. Demarcation and Recording Officers shall be legally competent to administer oaths and take affidavits in any enquiry made by them and with the approval of the Referee to issue and serve subpoenas requiring the attendance of such persons, or production of such documents as they may consider necessary for carrying out the demarcations and adjudications under their supervision, in accordance with the applicable provisions of chapter 14 of the Civil Procedure Law and section 24.5 thereof.

§ 8.23. Appointment of Survey Officers.

The Minister of Lands and Mines shall appoint such Survey Officers as may be necessary for performing the duties and exercising the powers imposed and conferred upon them under the provisions of this chapter for the making of surveys and the preparation of plans of land within an adjudication area designated by the Minister in his petition. Such officers shall be selected from the Minister's staff and when selected, they shall be released from their regular duties for such time as is necessary to perform their duties hereunder.

8.24. Rights of Demarcation and Recording Officers, Survey Officers and assistants to enter on land.

Demarcation and Recording Officers, Survey Officers and any of their assistants may at any reasonable time enter upon any land within an adjudication area for the purpose of demarcating or surveying any parcel therein and may require any person who can give information regarding the boundaries of any such parcel to attend and point out the boundaries.

Part III. Designation of Adjudication Sections, Supplementary Notices of Pendency and Matters in Connection therewith.

§ 8.31. Order of Referee designating adjudication sections; contents and required filings, posting, publication and service of supplementary notice of pendency.

1. *Directives regarding adjudication sections.* With all reasonable dispatch after the completion of the notice of pendency required under section 8.12, and upon consultation with the Demarcation and Recording Officers appointed to assist in the proceeding, the Referee shall enter an *ex-parte* order declaring the division of the adjudication area into two or more adjudication sections, or declaring therein the whole adjudication area to be a single adjudication section. He shall give each section a distinctive name or number.

2. *Supplementary notices of pendency; contents, where filed and number of copies.* Simultaneously with the filing of the *ex-parte* order designating adjudication sections the Referee shall cause to be filed in the same offices in which were filed copies of the notice of pendency in accordance with section 8.12, sufficient copies of a supplementary notice of pendency with respect to each adjudication section designated by the Referee and in each notice the Referee shall set forth the following:

(a) Specify as nearly as possible the location and limits of the adjudication section and in addition, provide for the printing beneath such description that portion of the map, if any, printed in the petition initiating the proceeding which coincides with the area included in the adjudication section and with the same details;

(b) Declare that all interests in the land included within the adjudication section will be ascertained and registered in

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accordance with the provisions of this chapter;

(c) Taking into account the required period of publication of this notice, fix a period of time within which and specify the place and manner whereby any person claiming any right or interest in land within the adjudication section is required to present his claim to the Referee, either in writing by way of a declaration as set forth in section 8.41, or orally in person or by his duly authorized agent, which oral claim shall be reduced to writing by the Referee and verified by the claimant or his duly authorized agent under oath and shall contain the same representations as required in a declaration;

(d) Require claimants to land within the adjudication section, in such manner and before such date as shall be specified by the Demarcation and Recording Officer in charge, to mark out at their own expense and indicate the boundaries of the land claimed by them.

3. Posting, publication and service of copies of supplementary notice and proof of compliance. The Referee shall cause the supplementary notice of pendency to be posted and published in the same manner and for the same period of time as the notice of pendency was required to be posted and published in accordance with the provisions of paragraphs 2 and 3 of section 8.12. Proof of compliance shall be evidenced in the same manner as is required for a notice of pendency in paragraph 4 of section 8.12.

§ 8.32. Effect of filing of supplementary notice of pendency on actions and proceedings affecting land within adjudication sections.

1. Where action or proceeding not commenced. Except upon the consent in writing of the Referee, on the filing of a supplementary notice of pendency, no action or proceeding affecting land or any

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right or interest in land within a designated adjudication section may be commenced. The suspension of the right to commence such action or proceeding shall continue until the proceeding under the provisions of this chapter has been completed, and the period of the suspension thereof shall be taken into account in tolling the statute of limitations, if applicable, as if and when such action or proceeding is commenced.

2. *Pending actions or proceedings.* An action or proceeding affecting land or any right or interest in land within a designated adjudication section which has been commenced prior to the filing of supplementary notice of pendency, subject to the directives set forth in paragraph 3, shall be stayed pending the completion of the proceeding instituted under the provisions of this chapter, unless the Referee consents in writing that such action or proceeding be permitted to continue in the court where instituted, except that the court having jurisdiction over such action or proceeding other than in an action for the recovery of premises, may transfer the matter to the Referee to hear and determine.

3. *Directives where trial or hearing in progress.* Where a trial or hearing in a pending action or proceeding affecting land or any right or interest in land within a designated adjudication section is in progress at the time of the filing of a supplementary notice of pendency, where practicable, it should be permitted to continue if it can be reasonably foreseen that such action or proceeding may be finally concluded before adjudication of all rights and interests in the adjudication section are determined by the Referee in the proceeding instituted under the provisions of this chapter.

4. *Filing of claims in adjudication and registration proceedings not precluded.* The suspension or stay of any action or proceeding as provided in this section shall not preclude the assertion of the claim contained therein in the adjudication and registration proceeding instituted under the provisions of this chapter, nor shall such

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suspension or stay enlarge or extend any rights contained in such action or proceeding beyond those stated in this section.

Part IV. Presentation of Claims and Demarcation of parcels.

§ 8.41. Time and manner of presenting claims.

1. Directives of supplementary notice of pendency to be followed. Every person claiming any land or right or interest in land within an adjudication section shall make his claim in the manner and within the period of time fixed in the supplementary notice of pendency issued pursuant to the provisions of section 8.31.

2. Form. If the claim is made in writing, it shall be made on a declaration form to be supplied by the Director of National Archives and Record Service which shall contain or be verified by a written declaration that it is made under the penalties for perjury as set forth in the Penal Law. It shall set forth, in addition to the facts of the claim, the facts concerning every charge, lien, easement, lease, profit or other incumbrance known to exist against the land included in the claim, to the best of the claimant's knowledge and belief. If the claim is orally made, it shall set forth the same facts as are required on the declaration form and shall be verified under oath when reduced to writing. Such claim shall be subject to the same penalties for perjury as a claim filed by way of a written declaration.

§ 8.42. Timely notice to be given of demarcation schedule; proof of service on parties in interest.

At least seven days before the demarcation of land in an adjudication section is begun, to be computed in accordance with section 1.7 of the Civil Procedure Law, the Demarcation and Recording Officer in charge shall give notice of the intended demarcation of

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the parcels of land in that section or in a part of that section, and of the time and place at which it shall begin, in such manner as the Referee shall deem to be most likely to bring the matter to the knowledge of the persons to be affected by that demarcation. Such notice shall require every claimant to indicate the boundaries of the land affected by his claim in the manner specified in the notice. A copy of such notice and proof of the manner in which such notice was given to parties in interest shall be filed in the proceeding.

§ 8.43. Attendance of claimants when required; procedure on default.

Every person whose presence is duly requested by the Referee or Demarcation and Recording Officer shall attend in person or by a duly authorized agent, at the time and place specified by such officer, and shall, when duly requested, produce any deed, certificate or other instrument affecting any land within the adjudication section, for which he shall be given a receipt if such instrument is required for the adjudication record. If, however, any such person fails to attend in person or by a duly authorized agent, the demarcation, registration or adjudication, as the case may be, may proceed in his absence.

§ 8.44. Safeguarding of rights of Government in public lands and of persons in default in filing presumably valid claims; appointment of guardians ad litem for minors and incompetents.

1. Public lands. As soon as conveniently possible after an adjudication section has been designated, the Demarcation and Recording Officer in charge of such section shall consult with the Land Commissioner of the area involved and examine such of the records in his office as are relevant to the location of public lands in the adjudication section. A schedule of any such public lands shall be made by the Demarcation and Recording Officer for inclusion in

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the Demarcation plan described in section 8.45(c). Neither the Government nor the Land Commissioner shall be required to file claims to protect the Government's rights thereto. The Land Commissioner, however, shall attend on behalf of the Government, whenever a notice of demarcation of land is issued which will affect public land. However, any person aggrieved by the designation of any parcel of land as public land may challenge such determination by way of the appeal procedure provided in this chapter.

2. Private lands in general. If the Referee or the Demarcation and Recording Officer in charge is satisfied that any person who has not made a claim to any interest in land within the adjudication section presumably has a valid claim to any right or interest therein, he shall proceed as if a claim had been made and if possible ascertain the extent thereof. In this connection, he may request the Director of National Archives and Record Service to make a search in the archives for copies of documents of title relevant thereto and, if any such are found, he may requisition certified copies of them for filing in the proceeding.

3. Protection of unrepresented claims of minors and incompetents. If the Referee or the Demarcation and Recording Officer in charge is satisfied that a claim which has not been presented, might be established by a minor or an incompetent and that no person has been appointed to represent the minor or the incompetent, a guardian *ad litem* shall be appointed to represent such minor or incompetent in the proceeding. The appointment shall be made by the Referee *sua sponte*, or by way of application to the Referee.

§ 8.45. Duties of Demarcation and Recording Officer.

Subject to any general or particular directions issued by the Referee, the Demarcation and Recording Officer in charge of an adjudication section shall have the following duties therein:

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(a) To see that the boundaries of each separate parcel of land, which is the subject of a claim, are indicated or demarcated in accordance with the requirements set forth in the notice given under section 8.42;

(b) To indicate or cause to be indicated the boundaries of public lands, public roads and public rights of way;

(c) To prepare or cause to be prepared a demarcation index diagram of the land demarcated (hereinafter called the "Demarcation Plan") on which shall be shown every separate parcel of land, whether privately or publicly owned, each identified by a distinguishing number and so set forth in the index, stating its approximate areas except that public roads and rights of way, which shall be so denominated on the plan, shall not be required to be identified by number.

§ 8.46. Special powers of Demarcation and Recording Officers.

In the performance of his duties, a Demarcation and Recording Officer shall have the following powers:

(a) He may divide the adjudication section into blocks which shall be given distinctive numbers or letters, or combinations of numbers and letters and may then identify the parcels in each bloc by distinguishing numbers;

(b) With the written consent of the owners concerned, he may adjust the boundaries of any land in the adjudication section or re-allot any land therein, to ensure more easily surveyable boundary lines or a greater beneficial occupation thereof or to effect a more suitable subdivision thereof;

(c) He may make any reservations he considers necessary for the purposes of defining existing roads and paths, or for

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the better drainage of land;

(d) He may make a declaration of existing rights of way over any land in the adjudication section and may define the manner in which such rights of way have been and are to be exercised and in such case he shall direct that such rights of way be recorded in the adjudication record in respect of the dominant land and the servient land;

(e) He may demarcate any right of way necessary to give access to a public road in favor of any parcel of land completely surrounded by other parcels.

§ 8.47. Duties of Survey Officers.

Subject to any general or particular directions issued by the Referee, the duties of a survey Officer shall be as follows:

- (a) To make a precise survey or cause to be precisely surveyed, separately or as a whole, the land in the adjudication section to which he has been assigned, in accordance with the boundaries indicated on the Demarcation Plan as finally adjusted;
- (b) To prepare or cause to be prepared, a survey plan of the adjudication section to which he has been assigned based on the Demarcation Plan as finally adjusted and to make a schedule of the areas of the parcels of land within the adjudication section, all with the purpose of having such survey plan and schedule included in a Registry Map of the adjudication area of which the section is a part;
- (c) Notwithstanding, the provisions of any law for the time being in force relating to units of quantity (weight and measure), to use units according to the Systems Interna-

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tional d'Unites for the surveying of land and the measurement of areas for the purposes of the registration of land.

Part V. Preparation of Adjudication Record.

§ 8.51. Investigation, consideration and determination of claims.

1. Investigation of claims by Demarcation and Recording Officer.

At the expiration of the period fixed in the supplementary notice of pendency for the filing of claims, the Demarcation and Recording Officer shall consider all the claims presented in compliance with the notice and those to be considered under the provisions of section 8.44, and upon consultation with the Referee and subject to his general or particular directions, he shall make such investigations as may be necessary to determined their *bona fides* and pertinency. Based upon his investigations, he shall prepare a record in accordance with the provisions of section 8.54 (hereinafter called the "adjudication record") comprising a separate record form in respect of each parcel of land shown on the Demarcation Plan. Determinations and orders made by the Referee with respect to any rejected or disputed claim shall be included by the Demarcation and Recording Officer in the adjudication record.

2. Recording of non-disputed claims. Claims which have been investigated by the Demarcation and Recording Officer and found to be satisfactory, and in which there is no dispute, shall be recorded forthwith in the adjudication record.

3. Rejection of unsatisfactory claims and method of obtaining hearings thereon. Persons who have filed claims which, upon investigation by the Demarcation and Recording Officer, have been found to be unsatisfactory, shall be notified of their rejection by the Referee within five days after the Referee has been notified of such

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finding. A statement of the reasons therefore shall accompany such notice. Such claimants within ten days after receipt of the notice of rejection of claim may file a petition for a hearing thereon before the Referee, who shall then fix a time and place for the hearing. A copy of the petition together with notice of the time and place of the hearing shall be served on all parties in interest at least five days before the date fixed for the hearing or any adjourned date.

4. Hearing before Referee on disputed claims. In the following cases, unresolved disputes among claimants shall be referred to the Referee to hear and determine in accordance with law pursuant to the provisions of section 8.21 (2):

- (a) Where there is a dispute as to any boundary, whether indicated to the Demarcation and Recording Officer in charge or after having been demarcated or readjusted by him;
- (b) Where there are two or more claimants to any interest in land and the Demarcation and Recording Officer in charge is unable to effect agreement between them;
- (c) Where any act done or decision made by a Demarcation and Recording Officer under the powers conferred upon him by section 8.46 is disputed by any party in interest.

Such hearings shall be heard by a jury of the vicinity where the land is located. The Demarcation and Recording Officer shall submit written particulars of the unresolved disputes to the Referee who, upon receipt thereof, shall fix a time and place for the hearings. The Referee shall then cause copies of the particulars, together with a notice of the time and place of hearing to be served on all interested parties at least five days before the date fixed for the hearing or any adjourned date.

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5. *Special powers of Referee at hearings.* In the course of a hearing on an unresolved disputed claim, the Referee shall have the following special powers:

- (a) The Referee may direct that the owner of the land shall demarcate the boundaries thereof in a permanent manner to be prescribed by him, including the erection of a boundary wall or fence, or the growing of a hedge to enclose the land;
- (b) Where devisees or distributees of a deceased person or other persons claim land as co-owners, whether comprising a number of parcels or consisting of one parcel which is held in undivided shares, the Referee may order a partition of the land among the co-owners in accordance with any agreement between the co-owners approved by him or in the absence of an agreement a circuit court in the county where such land is located sitting in equity may order the partition of the land among the co-owners as it may determine is just in the premises.

A party shall have the right of appeal to the Supreme Court from any decision or ruling of a Referee or Circuit Court.

§ 8.52. Principles of adjudication.

In preparing and reviewing adjudication records and upon hearings authorized under the provisions of this chapter, the Referee shall be bound by the following:

- (a) If he is satisfied that a person has good documentary title to the parcel of land and that no other person has acquired or is in the course of acquiring title thereto

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under the law relating to prescription, and that such person would succeed in maintaining and defending such title against any other person claiming title thereto, he shall record that person tentatively as the owner of the parcel. Good documentary title means a title evidenced by documents which establishes that a person is entitled to the parcel of land in fee simple, commencing with an effective grant, allotment, conveyance, prescription or mortgage.

- (b) If he is satisfied that a person is in open and peaceable possession of a parcel of land and has been in such possession, by himself or his predecessors in title, for an uninterrupted period of twenty years or more, he shall record that person tentatively as the owner of the parcel. A person is deemed to be in possession of land if he does not acknowledge the title of any other person to that land and by himself, his agents, tenants or servants, has the use of the land to the exclusion of the public.
- (c) If he is satisfied that a person, although in possession of a parcel of land, has not sufficiently shown that he is entitled to be recorded as the provisional owner of the parcel under the provisions of subparagraph (b), he may nevertheless record such person tentatively as the owner of the parcel subject to divestment upon his failure, within six months from the date of such provisional registration of ownership, to prove the sufficiency of his possessory title.

Accordingly, in such case there shall also be recorded the following:

- (i) The date on which the possession of such person shall be considered to have begun; and

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- (ii) The particulars of any deeds, instruments or other documents by virtue of which some estate, right or interest adverse to or in derogation of the title claimed by such person might exist; and
 - (iii) Any other qualification which affects the title to the parcel of land involved.
- (d) If he is satisfied that a parcel of land is entirely free from any private rights, or that the rights existing in or over it would be insufficient to entitle a person to be registered as owner of the parcel under the provisions of this chapter, he shall record the parcel of land tentatively as public land. If such land is part of a Tribal Reserve or communal holding, he shall further record the fact that such public land is subject thereto and, if feasible, shall describe the boundaries of the reserve or communal holding and the name or names of the tribe or tribes entitled to Tribal Reserve rights or holdings therein.
- (e) If he is satisfied that a parcel of land is subject to any right which is registrable as a lease, mortgage, charge lien, easement, profit, restrictive covenant, or other incumbrance or interest under the provisions of section 8.121, he shall record such particulars as shall enable the right and the name of the person entitled to the benefit thereof to be recorded tentatively as part of the adjudication record.

§ 8.53. Additional adjudication guidelines.

In preparing and reviewing adjudication records, and upon hearings authorized under the provisions of this chapter the Referee shall be guided by the following:

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- (a) Except as otherwise provided in section 8.44, all unclaimed land shall be deemed to be public land until the contrary is proved.
- (b) The exercise by any person of any rights in or over one or more parcels of land shall not be taken as a presumption in his favor of any rights in or over any greater extent of land than that in or over which such rights are exercised.
- (c) Where two or more persons have rights in a parcel of land, a determination should be made and the record show whether such persons are joint owners or owners in common and, in the case of owners in common, the share of each such owner.
- (d) Where clerical errors or any error or omission not materially affecting the interest of any person are found in an adjudication record, such errors may be corrected at any time.
- (e) Where a material alteration in a completed adjudication record is considered to be necessary, such alteration cannot be effected until every person whose interest is affected has been given reasonable notice thereof and an opportunity to be heard.

§ 8.54. Adjudication record forms; certification by Demarcation and Recording Officer and claimants; review by Referee and survey of qualifying parcels.

1. Contents. Each of the forms which comprise the adjudication record shall show the following particulars:

- (a) The number of the parcel of land as shown on the

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Demarcation Plan and its approximate area, which number and area shall be replaced by the number of the parcel as shown on the survey plan and by its area as listed in the schedule of areas, when the survey plan and schedule of areas, as provided in paragraph 3 have been prepared;

- (b) Either the name and description of the person entitled to be registered as the owner of the parcel, with particulars of any restriction on his power of dealing with it, indicating whether it is privately held or the fact that the parcel is public land;
- (c) Any lease, mortgage, charge, lien, easement, profit, restrictive covenant or any other incumbrance or interest registrable under the provisions of section 8.121 affecting the parcel, together with the name and description of every person entitled to the benefit thereof and particulars of any restriction on their powers of dealing with it;
- (d) If any owner or other person in interest is under a legal disability, whether by reason of age, incompetency or otherwise, the name and address of his guardian, if any has been appointed;
- (e) The list of documents, if any, produced to the Demarcation and Recording Officer and retained by him for the purpose of adjudication and for which a receipt was delivered to the person producing such documents;
- (f) The date on which the form is completed.

2. Certification by Demarcation and Recording Officer as to completion of record; acknowledgment as to acceptance by owners.

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Each form when completed shall be signed by the Demarcation and Recording Officer and certified by him as containing a complete record and, where possible, each owner of a recorded interest in privately held land or his duly authorized agent, and the Land Commissioner concerned, if public land is involved, shall be required to sign and acknowledge that he accepts the record.

3. Completed adjudication record forms to be delivered to Referee for review; request for official survey. Upon the completion of a record form as provided in paragraph 21 the Demarcation and Recording Officer shall deliver it to the Referee for review. If upon reviewing its contents, the Referee finds that the record fully complies with the provisions contained in this chapter with regard thereto, he shall request the Survey Officer appointed pursuant to the provisions of section 8.23 to survey the parcel of land described in the record in such manner that it can be included on the Registry Map of the adjudication area involved as required by the provisions of section 8.47(a) and to report his survey findings to him for insertion in the adjudication record as part of the final record. Upon the completion of the last parcel to be surveyed, the Survey Officer shall prepare or cause to be prepared the survey plan and schedule of areas required by the provisions of section 8.47(b).

§ 8.55. Notice of completion of adjudication record; contents and manner of giving notice of opening of record for certain delinquent claimants.

1. Contents. When the adjudication record in respect to any adjudication section and the survey plans and schedule of areas in connection therewith compiled pursuant to the provisions of section 8.47(b) have been completed, the Referee shall sign and date a certificate to that effect and shall forthwith give notice of the completion thereof, which shall contain an accurate description of the area of the adjudication section affected and shall indicate the hours during which and the place or places at which the record or a

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copy thereof can be inspected, together with the survey plans in connection therewith.

2. Additional notice requirement addressed to certain delinquent claimants. The notice shall contain an additional statement substantially in the following form:

"Take further notice that any person who has a claim with respect to any right or interest in any parcel of land within the adjudication section described herein and can prove that he had no knowledge of the within proceeding to adjudicate the rights and interests the parcels of land contained therein prior to the last date for filing claims pursuant to section 8.31(2) of the Registered Land Law (chapter 8 of the Property Law), may file such claim with the undersigned Referee in conformity with the provisions of section 8.41 of said Registered Land Laws within 60 days from the date of this notice.

Such claims will be heard and determined in accordance with the provisions of section 8.56 of said Registered Land Law."

3. Manner of giving notice. The Referee shall cause copies of such notice to be filed in the same offices in which copies of the supplementary notice of pendency with reference to the adjudication section involved were filed and shall further cause copies of such notice to be posted and published in the same manner and for the same periods of time as the said supplementary notice of pendency was required to be posted and published. Proof of compliance shall be evidenced in the same manner.

§ 8.56. Filing of claims by certain delinquent claimants and procedure on hearings thereon.

1. Delinquent claimants defined. Any person who has a claim with

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respect to any right or interest in any parcel of land within an adjudication section for which a notice regarding the completion of the adjudication record and of the survey plans in connection therewith has been filed, posted and published in accordance with the provisions of section 8.55 and can prove that he had no knowledge of the proceeding to adjudicate the rights and interests in parcels of land in the adjudication section involved prior to the last date for filing claims therein pursuant to section 8.31(2), may file such claim with the Referee appointed in the proceeding within 60 days from the date of such notice of completion, in the same manner as claims filed pursuant to section 8.41, except that the claimant shall, in addition, declare therein that he had no knowledge of the proceeding to adjudicate the rights and interests in parcels of land in the adjudication section involved prior to the last date for filing claims therein pursuant to section 8.31(2) of the Registered Land Law (chapter 8 of the Real Property Law).

2. Procedure for hearings. Upon the timely filing of a claim hereunder, the Referee shall fix a time and place for a hearing thereon and copies of the claim together with notice of the time and place of the hearing shall be served on all parties in interest. For the purpose of the hearing, the claimant shall be presumed to have had knowledge of the proceeding prior to the last day for filing claims pursuant to the provisions of section 8.31(2). At the hearing, in addition to proving his claim, he must overcome such presumption. In all other respect the procedure and substantive law applicable to unresolved disputed claims shall prevail. Amendments of the adjudication record, when required, shall be made in accordance with the determinations made by the Referee on claims filed hereunder.

§ 8.57. When adjudication record becomes final; order thereon directed to Registrar.

After the expiration of 60 days from the date of the notice provided

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for in section 8.55, upon the certificate of the clerk of the Probate Court in which the adjudication proceedings are pending, based upon a search of the adjudication record involved, that all claims filed in accordance with the provisions of section 8.56 have been heard and determined by the Referee, the adjudication record, subject to any appeal as provided in section 8.58, shall become final and shall be the record from which registrations in the Land Register shall be prepared under the provisions of subchapter C. An order shall be entered thereon by the Referee directing the Registrar of Land having jurisdiction of the area involved to make the appropriate entries in the Land Register and then properly index it against the names of the owners of land, leaseholds and charges adjudicated on the record. A certified copy shall be served on such Registrar and a copy of the adjudication record and of the Registry Map pertaining thereto delivered to him.

§ 8.58. Actions to set aside final registration orders based on fraud; time limitation.

Any registration of land, or any estate, right or interest therein, procured by or as the result of fraud may be set aside, in the same manner and by the same proceedings as in the case of a deed obtained by fraud, provided that such proceedings for setting aside the registration shall not injuriously affect the rights of an innocent purchaser or incumbrancer of the land after such registration, for value and without actual notice of the fraud, and provided further that the action or other proceeding to set aside such registration be commenced within ten years from the date when the final order of registration was entered in the records of the court in which the registration proceedings were held.

§ 8.59. Appeals in adjudication proceedings; time limitation including actions to set aside final registration orders.

1. Time limitation in actions to set aside or appeal; exception. No

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action or proceeding or appeal shall lie or be commenced, except upon the ground of fraud as provided in section 8.58, to set aside or appeal from any final order of registration or to modify or alter such registration, or for the recovery of registered land or any estate, right or interest in or lien upon such land or any part thereof, or to make any entry thereon adversely to the interest registered therein, as directed by a final order of registration, unless such action or proceeding or appeal is commenced or taken within thirty days after a certified copy of such order is filed with the Registrar pursuant to the provisions of section 8.57.

2. Manner of taking appeal. An appeal may be taken from a final order of registration by any person aggrieved thereby, including the Republic, by and through any Land Commissioner concerned or any other authorized agent, in accordance with the provisions of section 123.1 of the Probate Court Procedure Code. A notation as to the filing of an appeal shall be included as part of the adjudication record of the parcel of land involved. Any disposition pertaining to any interest with regard to the land involved in the appeal shall be subject to such notice.

Subchapter C. ORGANIZATION, ADMINISTRATION AND OPERATION OF LAND REGISTRIES.

Part I. Land Registries; Manner and things to be kept and maintained therein.

§ 8.61. Books of record, indexes, maps and files.

1. *In local registries.* There shall be kept and maintained in each Land Registry the following:

- (a) A Land Register, to be kept in accordance with the

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provisions set forth in section 8.71;

- (b) A map, known as the Registry Map, compiled in accordance with the provisions set forth in section 8.91;
- (c) Parcel files containing the instruments which support subsisting entries in the Land Register, and any other relevant documents and filed plans;
- (d) A book, to be known as the Application Book, in which shall be kept the initial record of the presentation of applications for the probate and registration of documents affecting rights and interests in land. The documents presented shall be numbered consecutively in the order in which they are presented at the registry, which information, together with any other pertinent data thereon which the Chief Registrar of Land may require, shall be entered in the Application Book record;
- (e) An index or indexes in alphabetical order, of the names of the owners of land, leaseholds and charges, showing the numbers of the parcels of land in which they are interested as set forth on the Registry Map;
- (f) A register and file of powers of attorney in connection with the registration of land and any rights or interests and dealings therein.

2. *In National Registration of Land Centers.* Commencing with the initial registration of any parcel of land, as soon as feasible, after entries therein have been made, each Registrar shall forward to the National Registration of Land Center, for the purposes expressed in section 8.7(3), exact duplicate certified copies of the current register entries and other records made in each record book and index required to be kept and maintained by him pursuant to the

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provisions of paragraph 1. Similarly, upon the filing of the first Registry Map and when any change has been made or a plan has been filed with respect thereto, he shall forward an accurate copy to the National Registration of Land Center. Parcel files (subparagraph 1(c)) and files containing powers of attorney (subparagraph 1(g)), however, shall be retained and shall only be sent to the National Registration of Land Center in due course in conformity with the directives contained section 20.52(2) of the Executive Law.

§ 8.62. Official seals.

Each land registry and the National Registration of Land Center shall have an official seal and every instrument purporting to bear the imprint of such a seal shall be received in evidence and, unless the contrary is shown, shall be deemed without further proof to be issued by or under the direction of such registry, or the Chief Registrar of Land, as the case may be.

Part II. The Land Register.

§ 8.71. Composition of registers.

A Land Register shall comprise a register in respect of each parcel of land, the rights and interests in which have been adjudicated in accordance with the proceeding authorized by the provisions of subchapter B and wherein there shall be entered all initial and subsequent registrations of rights and interests in registered land.

Each register shall show whether the land is private or public land and in respect of private land, whether the interest is absolute or provisional, and shall be divided into three sections as follows:

- (a) The property section, containing the survey description of the land or if a leasehold, a brief description of the

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area involved, together with particulars of its appurtenances and, where the registration is provisional, of the information recorded in the adjudication record pursuant to the provision of section 8.52(c), and a reference to the Registry Map and filed plan, if any;

- (b) The ownership section, containing the name and where possible the address of the owner and a notation or memorial of any inhibition or caveat affecting his right of disposition, except that no such ownership entry shall be required where land is described as public land;
- (c) The incumbrances section, containing a notation or memorial of every incumbrance and every right adversely affecting the land or leasehold indicating their respective priorities and the names and if possible, the addresses of the person in whose favor they run.

§ 8.72. Compilation of Land Register.

1. Initial registration. Whenever an adjudication record has become final under the provisions of section 8.57 and the Referee in the adjudication proceeding has delivered a copy of the adjudication record and the Registry Map pertaining thereto to the Registrar having jurisdiction over the area involved, such Registrar shall prepare a register for each parcel of land in the adjudication record and for any leasehold required to be registered and shall register therein any of the particulars in the adjudication record which requires registration. When the Registrar is in doubt as to the entry to be made, the matter should be referred to the Referee for a written decision prescribing the form of the entry, and if the Referee's appointment has terminated, the application should be made to the Probate Court Judge sitting in the part of the Probate Court having jurisdiction over registrations of land.

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2. *Subsequent registrations.* Except when directed by an order of another court of competent jurisdiction concerning land registered under the provisions of this chapter or concerning any instrument affecting such land or any right or interest therein, in which event, however, a Registrar shall obtain a written directive regarding the contents of the register entry thereon from the Probate Court Judge, all register entries subsequent to the initial registration with respect to any instrument concerning land registered under the provisions of this chapter or affecting any right or interest therein, shall be effected by way of a written directive of the Probate Court Judge in the probate proceeding provided for under the provisions of chapter 1 of the Property Law. It shall direct the cancellation of the entry, if any, which it replaces. Such probate proceeding are hereby made binding upon all persons acquiring any interest affecting or relating to land registered under the provisions of this chapter, except that orders directing registration of the instruments involved and the directives concerning the form and content of the register entries shall be directed to the Registrar of Deeds in his capacity of Registrar of Land.

Every notation or memorial or cancellation thereof made on any register shall be signed by the Registrar or his duly authorize deputy or clerk. The instruments so probated and the order of the Probate Court Judge containing the directives shall not be returned to the clerk of the Probate Court but shall be placed in and retained in the appropriate parcel files. The clerk of the Probate Court, however, shall make out the bill of costs, including the fee of the Registrar, payable by the holder of the instrument, and shall pay over to the Registrar, his fee for registration as provided in section 4 of the Property Law.

3. *Special powers of Probate Court Judge with respect to registration.* A Probate Court Judge in the performance of his duties under the provisions of this section, in addition to any other powers conferred upon him, may exercise the following powers:

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- (a) He may require any person to produce any instrument, certificate or other document, or any map or plan relating to the land, leasehold or charge in question;
- (b) He may cause any person to be subpoenaed to appear and give any information or explanation respecting land, a leasehold, or charge or any instrument, certificate or other document, or any map or plan, relating to the land, leasehold or charge in question;
- (c) He may require that testimony in any proceeding, or any information or explanation given hereunder, affecting registration under the provisions of this chapter, including the authenticity of documents produced pursuant to the provisions of paragraph 3(a), be verified on Oath or by way of statutory declaration under penalty of perjury and he may administer such oaths or take a declaration in lieu thereof;
- (d) He may, after consultation with the Registrar and upon giving notice to the parties in interest, direct the cancellation of any entry in the register which he is satisfied has ceased to have any effect and may, when appropriate, direct the opening of a new edition of a register showing only subsisting entries and omitting therefrom all entries that have ceased to have any effect.

§ 8.73. Contents of register; owner's certificates of registration and receipt therefor.

1. Contents of register on initial registration. The initial registration of the ownership of a parcel of land shall be effected in accordance with the provisions of section 8.71. The Registrar shall enter on the register every estate, right or interest to be registered by him pursuant to the terms of the certified copy of the order served

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on him under the provisions of section 8.57. Such register shall bear the date of its issue and be signed by the Registrar. If the owner is a minor, it shall state his age; if he is under any other disability, it shall state the nature of such disability. The Registrar, pursuant to such order, shall make proper notations or memorials on the register, showing in such manner as to set forth and preserve their priorities, the particulars of all the estates, mortgages, trusts, liens and other incumbrances or charges, to which such owner's interest is subject. No such notation or memorial shall be more than one folio (one hundred words) in length; it may refer to covenants, restrictions and trusts by reference to the instruments thereof in the parcel files rather than by a notation or memorial thereof.

2. Owner to receive certificate of registration. The Registrar, at the same time that he enters the particulars of an initial registration on the register, shall make a certificate which shall be an exact duplicate thereof, with the notations and memorials thereon noted, which shall be delivered to the owner and shall be known as the owner's certificate of registration. Any owner's certificate of registration, or certified copy of a certificate, shall be plainly stamped or otherwise indicated as such across its face.

3. Owner to sign receipt for certificate of registration. For the purpose of preserving evidence of the signature of the owner of any registered land, right or interest, it shall be the duty of the Registrar to take from such owner, in every case where it is practicable so to do, his receipt for the certificate of registration, or whatever registration paper shall be issued to him, signed by such owner in person. When such receipt is signed in the Registrar's office it may be witnessed by the Registrar or some deputy. If signed elsewhere, it may be acknowledged before any officer authorized to take acknowledgments of deeds. When so signed and witnessed such receipt shall be prima facie evidence of the genuineness of such signature.

§ 8.74. Leasehold register; content and form; receipts for register copies; registration copies of leases; registration subsequent to initial registration.

1. Opening of separate leasehold register on initial registration. If a lease for a term of three years or more is included in the adjudication record to be registered in accordance with the directives contained in the order served pursuant to the provisions of section 8.57, it shall appear on the register pertaining to the land leased as an incumbrance, and there shall be opened a separate register in respect of the leased land in the name of the lessee as owner of the leasehold, stating the operative terms of the lease and giving a brief description of the area covered by it.

2. Contents and form of initial certificate of leasehold register. The contents and form of the register appearing on the initial leasehold register shall, as nearly as is feasible, be the same as that made applicable to a register for land as set forth in section 8.73

3. Delivery of initial leasehold certificates of registration and registration copied of leases to lessors and lessees. The notations and memorials appearing on the initial leasehold register shall be signed by the Registrar and a duplicate thereof shall be prepared and delivered to the lessee as owner of the leasehold. The lessee shall sign a receipt for the leasehold certificate of registration received by him in the same manner and for the same purpose as set forth in section 8.73(3) for certificates of registration. In addition the Registrar shall deliver to the lessor and to the owner of the leasehold, respectively, a certified copy of the registered lease certified to be a "registration copy."

4. Registrations subsequent to initial registration. Subsequent to the initial registration of land, leases shall be registered in accordance with the procedures set forth in this paragraph. After the probating of a lease, upon the production of the owner's certificate

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of registration, the Registrar shall note upon the lease presented to be filed in the parcel file, the number of the register pertaining to such land, and shall enter on the register containing the registration of such land and upon the owner's certificate of registration the memorial directed to be made concerning the lease and the date of filing the application for probate and registration of the instrument of lease with a reference to its Application Book presentation, number which memorial shall then be entered on the leasehold register to be opened therefor. Registration copies of the leases shall be delivered respectively to the lessor and to the lessee as owner of the leasehold in the same manner as set forth in paragraph 3. In addition, a leasehold certificate of registration shall be delivered to the lessee as owner of the leasehold.

5. Surveys for leases covering only part of registered land. If a lease, registrable under the provisions of this section, covers only part of the area comprised in registered land under lease, the Probate Court Judge shall require the demarcation of the boundaries of the area covered by such lease and shall order a survey thereof for insertion on the Registry Map and for use in the leasehold register, before directing the opening of the register in respect of such lease.

§ 8.75. Registration of mortgages and other liens and charges created by instruments or under judicial or statutory authority.

1. In general. Any mortgage, or other instrument intended to create a lien, incumbrance, trust or charge on registered land or any right or interest therein, or any judgment, decree, attachment, execution, mechanic's lien or other like lien or charge thereon established under judicial or statutory authority, may be registered as provided in this section.

2. On initial registration of land. If any instrument, or lien or

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charge established under judicial or statutory authority described in paragraph 1 is included in the adjudication record to be registered in accordance with the directives contained in the order served pursuant to the provisions of section 8.57, it shall appear on the register on the initial registration in accordance with the notations or memorials to be entered pursuant to the provisions of section 8.73(1) relating thereto. The notations or memorials shall be signed by the Registrar who shall deliver to the person entitled thereto a certified copy of the instrument or certificate on which it is based, certified to be the "registration copy", and in addition, a duplicate copy of the certificate of registration of the parcel involved, upon which shall be indicated the particular security interest or lien or charge it represents, shall be delivered to the chargee.

3. Proceedings to register instruments effective subsequent to initial registration of land. After the probating of an instrument creating a mortgage or other lien, incumbrance, trust or charge, upon the production of the owner's certificate of registration, the Registrar shall note upon the instrument presented and to be filed in the parcel file, the number of the register pertaining to the land involved and shall enter on the register and upon the owner's certificate, the memorial directed to be made and the date of filing the application for probate and registration of the instrument with a reference to its Application Book presentation number, which memorial shall be signed by the Registrar, who shall deliver to the person who presented each instrument a certified copy of such instrument, to be the "registration copy", and a duplicate copy of the certificate of registration of the parcel involved upon which shall be indicated the particular security or other interest it represents.

4. Subsequently effective judgments, decrees, attachments and other liens to be noted on register. No judgment, decree, attachment, execution, mechanic's lien, or other like lien or charge established under judicial or statutory authority which may affect or be a lien or

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charge upon any registered land, shall be or become a lien or charge on any such land, or any right or interest therein, unless a transcript, or certified copy, or other duly made or certified document, which is by law proper evidence in a court of record, of such judgment, decree, attachment, mechanic's lien, or other like lien or charge, shall be duly filed with the Registrar for presentation to the Probate Court Judge for directives as to the proper memorial to be made and upon receiving such directives such Registrar shall enter the memorial upon the register applicable to the land involved. Such transcript, or certified copy, or other duly made or certified document so filed shall have plainly written or otherwise indicated thereon the number of the register of the land to be affected and bound by virtue of such memorial.

It shall be the duty of the Registrar to present such document to the Probate Court Judge for his directives immediately upon receipt of the same. Upon completion of the memorial, which he shall sign, he shall deliver to the person who presented such document for filing, a duplicate copy of the certificate of registration of the land involved upon which shall be indicated the particular lien or charge it represents. A discharge, cancellation, or modification of any judgment, decree, attachment, mechanic's or other like lien or charge, so noted on the register shall not affect or be binding upon the registered land, right or interest, unless on like evidence and by like procedure, a memorial thereof shall be made by the Registrar on such register.

§ 8.76. Registration of easements.

1. Permissible registrable easements. In the following instances easements in land may be created:

- (a) An owner of registered land or a registered leasehold by a written instrument may grant an easement over his land or the land comprised in his leasehold, to the owner or lessee

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of other land and for the benefit of that other land.

(b) Any owner transferring or leasing registered land or a registered leasehold, may in the transfer or lease grant an easement for the benefit of the land transferred or leased, over the land or leasehold retained by him, or reserve and easement for the benefit of the land or leasehold retained by him.

2. *Contents of instruments creating easements.* An instrument creating any easement described in paragraph 1, to be registrable under the provisions of this chapter, shall clearly specify the following:

(a) The nature of the easement, the period for which it is granted and any conditions, limitations or restrictions intended to affect its enjoyment; and

(b) the land burdened by the easement and the land which enjoys the benefit of the easement; and

(c) If so required by the Probate Court Judge on the application to probate and register the instrument, it shall include a plan sufficient to define the easement.

3. *Probate and registration.* After the instrument has been probated, the grant of reservation of the easement shall be completed by its registration in accordance with the directives of the Probate Court Judge as an encumbrance in the register of the land or leasehold burdened and in the property section of the land or leasehold which benefits, and by filing the instrument in the parcel file properly identified and noting on the respective owners' certificates the character of the easements granted or reserved and delivering to them such certificates together with "registration copies" of the instrument creating the easement.

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§ 8.77. Registration of restrictive agreements.

Where an instrument, other than a lease or charge, contains an agreement, hereinafter referred to as a restrictive agreement, by one owner of registered land, restricting the building on or the user or other enjoyment of his land for the benefit of the owner of other registered land, and such instrument is presented for probate and registration, if such instrument is in order, the Probate Court Judge shall direct the Registrar to note the restrictive agreement in the encumbrances section of the register of the land or leasehold burdened by the restrictive agreement, either by entering particulars of the agreement or by referring to the instrument containing the agreement. The Registrar shall then file the instrument in the parcel file properly identified and note on the owners' certificates, the character of the restriction, and deliver to the owners such certificates together with "registration copies" of the instrument creating the restriction. Unless such instrument is noted in the register, a restrictive agreement is not binding on the owner of the land or leasehold burdened by it or on anybody acquiring the land or leasehold.

§ 8.78. Registration of instruments granting a profit.

The owner of registered land or a registered leasehold, by an instrument in writing, may grant a profit. The instrument shall indicate clearly the nature of the profit, the period for which it is to be enjoyed, and whether it is to be enjoyed in gross, or as appurtenant to other registered lands or leaseholds, and whether it is to be enjoyed by the grantee exclusively or by him in common with the grantor or others. After the instrument has been probated, the grant of the profit shall be completed by its registration in accordance with the directives of the Probate Court Judge as an incumbrance in the register of the land or leasehold which it affects, and where it is appurtenant to other registered lands or leaseholds, in the property sections of the registers of the lands or leaseholds to which it is appurtenant, and by filing the instrument in the parcel file properly

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identified and noting on the owners' certificates the character of the profit granted and delivering a copy of the certificate of registration to the grantee. There shall further be delivered to the grantor and grantee respectively, "registration copies" of the instrument creating the profit.

§ 8.79. Registration of releases extinguishing easements, restrictive agreements and profits.

1. By instrument. Upon the presentation for probate and registration of a duly executed release of an easement, restrictive agreement or profit, the Probate Court Judge shall direct the Registrar to cancel such incumbrance on the register or registers containing them and the easement, restrictive agreement or profit involved shall thereupon be extinguished. The release properly identified shall be filed in the appropriate parcel file.

2. By application based on events. On the application of any person affected thereby made to the Probate Court Judge, upon due reasonable notice to all persons concerned and opportunity to be heard, the Registrar may be directed to cancel the registration of easement, restrictive agreement or profit, upon proof to the satisfaction of the Probate Court Judge that (a) the period of time for which such incumbrance was intended to subsist has expired, or (b) the event upon which it was intended to terminate has occurred, or (c) it has been abandoned.

§ 8.80. Registration of interests in land effected by notice, designation or other declaration.

Any estate, right or interest in land created by or requiring a notice, designation or other declaration to come into existence, including but not limited to homestead rights under the provisions of section 44.28 of the Civil Procedure Law, the constitutional and statutory right of election of a surviving spouse under the provisions of

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section 4.1 of the Decedents Estates Law, the right of a surviving spouse to purchase the matrimonial home under the provisions of section 4.1 of the Decedents Estates Law, the designation of public and private cemeteries under the Public Health Law, shall not become effective against registered land unless such notice, designation or other declaration is probated and registered in accordance with the provisions with reference thereto contained in this chapter.

Part III. Map, Parcels and Boundaries.

§ 8.91. Compilation of Registry Maps.

- 1. To be taken from survey plans and show local government areas.* The Registry Map shall be compiled from the survey plans prepared pursuant to the provisions of section 8.47(b) and whereon shall be shown the boundaries of the local government areas encompassed therein; the local government areas shall be divided into blocks or sections which, so far as it is possible, shall be given the same numbers or letters or combinations of numbers and letters as are given on the survey plans.
- 2. Identification of parcels in blocks or sections.* The parcel in each block or section shall be numbered consecutively following, so far as it is possible, the numbering in the adjudication record finally approved, and the name of the local government area, or other distinctive name given to the area and the number or letter of the block or section and the number off the parcel shall together be a sufficient reference to any parcel.
- 3. Filing of subsidiary plans.* A plan may be filed in respect of a particular parcel to augment the information available from the Register Map and the filing of the plan shall be noted in the register.
- 4. Redesignations of blocks and sections.* On the application of the

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Registrar, in consultation with the Director of the Bureau of Lands and Surveys and upon approval of the application by the Minister of Lands and Mines, the Probate Court Judge may cause blocks and section to be combined or divided, or cause their boundaries to be varied.

§ 8.92. Correction of Registry Maps and new editions.

The Probate Court Judge, on the application of the Registrar made after consultation with the Director of the Bureau of Lands and Survey, upon the approval of the Minister of Land and Mines, may cause a survey to be made of any land for the purposes of the provisions of this chapter and after notifying every person affected thereby and giving him an opportunity to be heard, may cause the Registry Map encompassing the area involved to be corrected as a result of such survey and direct a Registrar to make notations in the appropriate registers that the boundaries of the parcels invoked have been so fixed. Similarly the Probate Court Judge may direct the preparation of a new Registry Map or any part thereof; and there may be omitted therefrom any matter which the judge considers obsolete. Any survey required for the purposes of the provisions of this chapter shall be made by surveyors employed in the Bureau of Lands and Surveys.

§ 8.93. Mutations; procedure upon division of land at request of owners.

On the application of the owner of registered land, and subject to the agreement of all persons affected thereby, the Probate Judge may direct the Registrar, under the direction of the Director of the Bureau of Lands and Surveys, to cause the alteration of a Registry Map, but no such alteration shall be effected except upon the written directive of the Probate Court Judge on a form to be prescribed by the Director of National Archives and Record Service, to be known as a mutation form, which mutation form shall be filed in

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the appropriate parcel file after the particulars have been entered on the appropriate registers by the Registrar.

§ 8.94. Fixing of disputed boundaries.

Where any uncertainty or dispute arises as to the position of boundary in respect to a parcel, upon the application of any interested person to the Probate Court Judge and upon the giving of due and timely notice to the owners and occupiers of the land adjoining the boundary in question and to all persons appearing by the register to be affected of the intention to ascertain and fix such boundary, and giving all such persons an opportunity to be heard, on such evidence as the Judge considers relevant, he may by an order to be duly entered cause to be defined, by survey to be conducted by surveyors employed in the Bureau of Lands and Surveys, or by inspection or otherwise, the precise position of the boundaries in question and cause a map to be prepared and filed containing the necessary particulars and also cause a notation to be made in the appropriate register that the boundary has been so fixed and thereupon the map shall be deemed to define accurately the boundary in question. In addition, he shall direct that the appropriate Registry Map be altered accordingly.

§ 8.95. Change of parcel number upon its alteration on Registry Map.

Whenever the boundary of a parcel of land is altered on a Registry Map, the parcel number shall be cancelled and the parcel of land given a new number. Provision shall be made for tracing prior parcel numbers in the register entry applicable to the land designated by the new parcel number.

§ 8.96. Maintenance of boundary features.

Every owner of land shall care for and maintain in good order the

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fences, hedges, stones, pillars, walls, survey marks and other features which demarcate his boundaries, whether established pursuant to an order of a Probate Court Judge or any other law, or of the owner's own accord. Should any question of responsibility arise, upon the application of any interested person made to the Probate Court Judge and upon due and timely notice to all interested parties concerned, and upon giving such parties an opportunity to be heard, the judge may order which of the adjoining owners shall be responsible for the care and maintenance of any features demarcating a common boundary. Any owner of land responsible under the provisions of this section for the care and maintenance of any boundary feature, who allows such feature or any part of it to fall into disrepair or to be destroyed or removed shall be liable to a civil penalty not exceeding fifty dollars to be paid into the Bureau of Internal Revenues of the Republic.

§ 8.97. Combining and subdividing parcels; procedures and exceptions.

Subject to the provisions hereinafter set forth, applications for the combination and subdivision of parcels of land may be made to the Probate Court Judge under the following circumstances:

(a) Where contiguous parcels are owned by the same owner and are subject in all respects to the same rights and obligations, the Probate Court Judge, on application of the owner, may order a survey for amendment of the Registry Map and thereafter may direct the Registrar to combine those parcels by closing the registers relating to them and opening a new register or registers in respect of the parcel or parcels resulting from the combination;

(b) Where an owner of a parcel of land desires to divide his parcel into two or more parcels, the Probate Court Judge, upon application of the owner, may require the demarcation

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of new boundaries and order a survey for the amendment of the Registry Map, and thereafter direct the Registrar to effect the division by closing the register relating to the parcel and opening new registers in respect of the parcels resulting from the division and recording in the new registers all subsisting entries appearing in the closed register; provided that:

(i) nothing shall be done under this section which would be inconsistent with the provisions of this chapter or any other law;

(ii) No parcel which is subject to a lease shall be subdivided so as to subdivide the land comprised in the leasehold;

(iii) Where an owner is subdividing his parcel for the purpose of a building development, the judge shall require him to submit a copy of the Registry Map showing the proposed subdivisions thereon, certified by the appropriate authority as conforming with the requirements of any planning law or regulation for the time being in force.

Upon the completion of the new registers and upon the delivering up of the certificate or certificates of registration pertaining to the registers closed hereunder, the Registrar shall issue and deliver to such owners a new owner's certificate of registration for each new register opened and upon issuing any such new certificate of registration, said Registrar shall indorse on the last previous register the memorial directed by the Probate Court Judge, setting forth the occasion of the cancellation thereof and referring to that number or numbers of the new certificates of registration so issued.

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§ 8.98. Procedure for changing arrangement of contiguous parcels upon consent of owners.

The Probate Court Judge, on the application of the owners of contiguous parcels who are desirous of changing the arrangement of their parcels, and with the consent in writing of all other persons in whose names any right or interest in such parcels is registered, and of any person who has filed a caveat with respect thereto, may direct the Registrar to cancel the registers relating to such parcels and to prepare new registers in accordance with revised arrangement after requiring the demarcation of new boundaries and ordering a survey to be made for the amendment of the Registry Map; provided that, where in the opinion of the Probate Court Judge, a proposed re-parcelling involves substantial changes of ownership which should be effected by transfers without invoking the provisions of this section, he may in his discretion refuse to effect such re-parcelling. If such re-parcelling is accomplished, the new parcels shall, notwithstanding the provisions of section 8.141, vest in the persons in whose names they are registered by virtue thereof.

Part IV. Searches of Register Records.

§ 8.111. Searches and copies.

1. Inspections. Any person, on application in the prescribe form and on payment of the prescribed fee, may inspect during official hours of business any register and any sheet of the Registry Map or any filed instrument or plan.

2. Certified copies. Any person, on application in the prescribed form and on payment of the prescribed fee, shall be entitled to obtain a certified copy of any register or part of the Registry Map or any instrument or plan filed in the registry.

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3. *Official searches.* Any person, on application in the prescribed form and on payment of the prescribed fee, may require an official search in respect of any parcel, and the Registrar shall issue a certificate of official search setting forth particulars of the subsisting entries in the register of that parcel.

§ 8.112. Register entries as evidence.

1. *Certified copies.* A certified copy of the register or part of a Registry Map or any instrument or plan filed in the Registry shall be admissible in evidence in all actions and proceedings and between all persons or parties therein, to the same extent as the original.

2. *Original entries; when produced.* No process compelling the production of the register, or of the Registry Maps or of any filed instrument or plan, shall issue from any court or quasi-judicial instrumentality, without leave of such court or quasi-judicial instrumentality, which leave shall not be granted if a certified copy will suffice.

***Subchapter D.* EFFECT OF REGISTRATION**

§ 8.121. Rights of owners of registered private land; exceptions; encumbrances and transfers to be filed.

1. *Statement of rights.* Subject to the provisions of section 8.127, the registration of a person as the registered owner of parcel of land shall vest in that person the absolute ownership of that parcel together with all the rights and privileges belonging or appurtenant thereto and he shall hold the same free from all encumbrances, charges, trusts, liens, transferal conditions, restrictions and all other interests and claims whatsoever, except those, if any, shown on the register and any of the following which may exist:

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(a) Liens, claims, or rights arising or existing under the laws or constitution of the Republic, which the statutes of this Republic do not require to appear on record;

(b) Any tax, water rate, tar assessment which becomes a lien on the land after initial registration and for which a sale under proceedings to foreclose such lien has not been made;

(c) Any lease or agreement for a lease made after or pending registration, for a period not exceeding three years, where there is actual occupation of the land under the lease or agreement.

2. *Incumbrances which require registration to be effective.* Except as specified in the statement of exceptions set forth in paragraph 1, no incumbrance, charge, trust, lien, transfer, condition, restriction or other interest or claim shall take effect upon or over land, which has been registered under the provisions of this chapter, unless the instrument creating and setting forth such interest or claim has been registered in accordance with the provisions of this chapter and a notation or memorial thereof as directed by the Probate Court Judge made upon the register covering the parcel involved.

§ 8.122. Effects of registration of and as private land under provisional ownership.

Subject to the provisions of section 8.127, the registration of any person as the provisional owner of a parcel shall not affect or prejudice the enforcement of any right or interest adverse to or in derogation of the interest of that owner arising before such date or under such instrument or in such manner as is specified in the register of that parcel; but save as aforesaid, such registration shall have the same effect as the registration of a person as absolute owner.

§ 8.123. Effect of registration of land as public land.

The registration of land as public land, subject to any registered incumbrances, which shall include without limitation, interests in and rights over such land granted in concession and other agreements made under authority of law, and by way of delineation of Tribal Reserve areas and communal holdings, shall enable such land to be disposed of in accordance with the provisions relating thereto contained in the Public Lands Law and in any other law providing for dispositions of public lands, by a disposition registrable under the provisions of this chapter.

§ 8.124. Registered land not affected by prescription or adverse possession.

On and after the initial registration of land under the provisions of this chapter, no interest in registered land in derogation of that of the registered owner shall be acquired by prescription or adverse possession.

§ 8.125. Effect of registration of leaseholds.

Subject to the provisions of section 8.127, the registration of a person as the owner of a leasehold shall vest in that person the leasehold interest described in the lease noted on the register and filed in the parcel file assigned to the registered land affected thereby, together with all implied and expressed rights and privileges belonging or appurtenant thereto and subject to all implied and expressed agreements, liabilities and incidents of the lease; provided that if the lessor is registered as a provisional owner of the land, the enforcement of any right or interest affecting or in derogation of the right of the lessor to grant the lease shall not be prejudiced.

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§ 8.126. Effect of registration of charges.

Subject to the provisions of section 8.127, the registration of a person as the owner of a charge on land, or on a leasehold or charge shall vest in that person the security interest noted on the register as an incumbrance thereon in accordance with the provisions of the instrument creating such security interest and filed in the parcel file assigned to the registered land or registered leasehold or charge affected thereby. An owner whose land or leasehold or charge is subject to a charge may create a second or subsequent charge thereon in the same manner as the first charge and the same provisions concerning the vesting of ownership in each such security interest shall apply thereto as herein stated, but any sale under the power expressed or implied in any such charge shall be subject to all prior charges unless all those charges have been discharged.

§ 8.127. Effect of transfers acquired without valuable consideration.

Every owner who has acquired land, a leasehold or a charge by transfer without valuable consideration, shall hold it subject to any unregistered rights or interests subject to which the transferor held it, and subject to the provisions of any law relating to insolvency, bankruptcy, or dissolution provisions contained in the Associations Law, but save as aforesaid such transfer when registered shall in all respects have the same effect as a transfer for valuable consideration.

***Subchapter E.* DISPOSITIONS, TRANSFERS AND DEALINGS**

Part I. General Matters.

§ 8.131. Subsequent dealings after initial registration.

Subsequent to the initial registration, no land, leasehold or charge shall be capable of being disposed of except in accordance with the provisions of this chapter, and every attempt to dispose of such land leasehold or charge otherwise than in accordance with the provisions of this chapter shall be ineffectual to create, extinguish, transfer, vary or effect any right or interest in land, leasehold or charge. Nothing in this section, however, shall be construed as preventing any unregistered instrument concerning the disposition of any interest in land from operating as a contract for such dispositions, if otherwise entered in accordance with law.

§ 8.132. Register entries to constitute actual notice.

Every owner acquiring any land, leasehold or charge registered under the provisions of this chapter shall be deemed to have had actual notice of every entry in the register relating to the land, leasehold or charge, at the time of acquisition.

§ 8.133. Purchasers have no duty to inquire into bona fides; not bound by knowledge of unregistered interest; except-ions.

Except in cases of fraud and except also as herein otherwise provided, no person taking a transfer of any registered land or of any estate or interest therein or lien or charge thereon from the registered owner shall be required to search any record made under the Property Law, or to inquire into the circumstances under which or the consideration for which such owner or any previously registered owner had the land or any estate or interest therein, or lien or charge thereon, registered, or to see to the application of any consideration or any part thereof paid therefor, nor shall such transferee be affected with notice, actual or constructive, of any unregistered trust, lien, claim, demand or interest whatever; and the

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knowledge that an unregistered trust, lien, claim, demand or interest is in existence shall not of itself be imputed or treated as fraud.

§ 8.134. Additional fee to be charged for delayed registration.

Where an instrument executed for any of the purposes set forth in the provisions of this chapter is presented for registration more than four months from the date of execution of the instrument, instead of the provisions of section 6 of the Property Law being invoked, an additional fee equal to the registration fee shall be payable for each four months which have elapsed since that date and added to the original registration fee; provided that in no such case shall the additional fee exceed five times the original registration fee.

§ 8.135. Priority of registered interests.

1. Instruments presented directly to registry. Interests appearing in the register shall have priority according to the order in which the instruments which led to their registration were presented to the registry, irrespective of the dates of the instruments and notwithstanding that the actual entry in the register may be delayed; provided that where an instrument is prepared in the registry, it shall be deemed to have been presented on the date on which application for its preparation was made to the registrar.

2. Instruments presented by post or under cover. Instruments sent by post or under cover and received at a registry during the hours of business shall be deemed to be presented simultaneously immediately before the closing of the registry office on that day, and instruments so sent but received between the time of closing and the next opening of the office for business shall be deemed to be presented simultaneously immediately after such opening.

§ 8.136. Suspension of registration to facilitate pending dealings.

1. Stay upon application to Probate Court Judge. When any person proposing to deal with registered land has, with the consent in writing of the owner, made a request for an official search and made application to the Probate Court Judge stating therein the particulars of the proposed dealing, the Judge may order that the registration of any instrument or document affecting the land to be comprised in or affected by the proposed dealing be stayed for a period (hereinafter referred to as the "suspension period") of fourteen days from the time at which the application was made and direct that a notation be made in the register accordingly.

2. Priority of suspended instrument. If within the suspension period a properly executed instrument or document affecting the proposed dealing is presented for registration, such instrument or document shall have priority over any other instrument or document which may be presented for registration during the suspension period, and shall be registered notwithstanding any caveat or other entry for which application for registration may have been made during the suspension period.

3. Priority of instruments not affecting proposed dealings. Subject to the provisions of paragraph 2, any instrument or document for which application for registration is made during the suspension period other than that affecting the proposed dealing shall be dealt with in the same manner, shall have the same priority and shall be as effectual as if no stay of registration had been obtained.

§ 8.137. Mergers of registered parcels; when permitted.

Where, upon the registration of a dealing, the interest of (a) a lessor and lessee, or (b) a chargor and chargee, or (c) the owner of a parcel which is burdened with an easement, profit or restrictive agreement

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and the owner of a parcel which benefits therefrom, vests in the same owner, such interests shall not merge unless on the probate of the instruments effecting the dealing a surrender or discharge is directed to be registered, or the parcels are directed to be combined, or there is probated a declaration of merger, which may be contained in the instrument evidencing the dealing.

Part II. Transfers.

§ 8.141. Transfers of ownership to registered land.

Subject to the provisions set forth in section 8.127, a registered owner of land, in order to transfer his whole estate or interest therein, or any part or parcel thereof, or any undivided interest therein, shall execute to the intended transferee a deed or instrument of conveyance in any form authorized by law. Such deed or instrument of conveyance shall have recited therein a statement or reference setting forth the source of the ownership of the grantor or the circumstances under which such ownership was acquired by him.

Upon the probate of such deed or other instrument and the surrender to the Registrar of the owner's certificate of registration, the Registrar shall, in accordance with the directive to be issued by the Probate Court Judge on the probate, delete the transferor's name on such certificate and on the register pertaining thereto and enter in place thereof the name of the transferee. The Registrar shall obtain the signature of the transferee as required in an original registration under the provisions of section 8.74(3). Ownership to such land shall not pass by such transfer until the transfer is registered as prescribed by this section.

§ 8.142. Registration of certificates when land is wholly transferred in separate parcels or part remains after transfer.

When land comprised in a register is wholly transferred in separate

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parcels, or when only part of the land comprised in a register is transferred, or some estate or interest therein is to remain in the transferor, no such transfer shall be effective unless the transferor first makes application to subdivide the land in accordance with the provisions of section 8.97 and new registers have been opened in respect of each subdivision, except where part of the land remains in the transferor and if the land is so described as to permit it, the land transferred may be cancelled on the certificate of the transferor without the opening of a new register for the part remaining or the issuance of a new certificate for the residue.

§ 8.143. When a transfer is deemed to be registered.

Every transfer of registered land shall be deemed to be registered under the provisions of this chapter when the name of the transferee shall have been entered in the register as in the case of initial registration; and all other dealings shall be considered as registered when the notation or memorial thereof shall have been entered on the register pertaining to the registered land.

§ 8.144. Assignments of mortgages, leases, or other liens or charges.

The holder of any mortgage, lease, or other lien or charge on registered land, in order to transfer the same or any part thereof shall execute an assignment of the whole or any part thereof; and after the probate of such assignment and upon the production of the registration copy of the instrument or other document, if any, which created the mortgage, lease or other lien or charge and which is held by the assignor, and the production of the duplicate certificate issued upon the registration thereof, the Registrar shall enter on the proper register or registers the memorial of such transfer directed to be made by the Probate Court Judge, with a reference to the assignment by its Application Book file number; he shall also note the transfer upon the duplicate certificate produced and deliver it,

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together with a "registration copy" of the instrument of assignment and the "registration copy" of the instrument or document which created the lien or charge, to the assignee.

§ 8.145. Release, discharge or surrender of charge or incumbrance in whole or in part.

A release, discharge or surrender of a charge or incumbrance or any part thereof, or of any part of the land charged or encumbered, may be effected in the same way as is provided in the case of a transfer under the provisions of section 8.144. The amount secured, the method of repayment, the rate of interest or the term of a charge may be varied by the registration of an instrument of variation executed by the parties to the charge, but no such variation shall affect the rights of the owner of any charge subsequently registered unless he has consented to the variation in writing on the instrument of variation. In case only a part of the charge or only a part of the land charged is to be released, discharged or surrendered' the entry shall be made accordingly, but when the whole is released, discharged or surrendered, the Registrar shall be directed by the Probate Court Judge to plainly indicate across the instrument or other document on file, and on the duplicate certificate of registration and the registration copy produced, the word "cancelled" and shall sign the same.

***Subchapter F.* REGISTRATION INSTRUMENT**

§ 8.151. Quantity of instruments to be presented for registration.

1. With respect to land. Every instrument for the disposition of registered land shall be presented for registration in duplicate. When such an instrument has been registered a note to this effect shall be made on the duplicate thereof and the duplicate returned to

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the person who presented it.

2. *With respect to leases or charges.* Every instrument for the disposition of a lease or a charge shall be presented for registration in triplicate. When such an instrument has been registered, particulars of registration shall be noted on the duplicate and the triplicate thereof, which are herein referred to as "registration copies," and the duplicate and the triplicate returned to the person who presented them for delivery to the persons entitled to them.

§ 8.152. Replacement of lost certificates and registration copies.

If any duplicate certificate of registration of land, leasehold, charge or other register entry, or any registration copy delivered in accordance with provisions of this chapter is lost, or destroyed, or cannot be produced, the registered owner or other party in interest may make an application to the Probate Court Judge, setting forth the facts relating thereto. Upon such application, after due notice and hearing, the Judge may direct the Registrar to issue a new duplicate certificate of registration of land, leasehold, charge or other register entry, or any registration copy delivered in accordance with provisions of this chapter, containing a memorandum of the fact that it is issued in place of the lost duplicate certificates or other register entry or registration copy, which shall be entitled to like faith and credit as the original.

§ 8.153. Disposal of registered instruments.

Except for instruments returned pursuant to the provisions of section 8.151, instruments registered by the Registrar pursuant to the provisions of this chapter shall be retained in the registry for as long as they support a current entry in the register and for six years thereafter.

§ 8.154. Powers of attorney to be filed and registered.

Before any person can convey, charge, encumber or otherwise deal with any registered land, or any estate, right or interest therein, as attorney in fact for another, the deed or instrument empowering him so to act shall be presented for probate and registration and if found by the Probate Court Judge to be in order he shall direct the Registrar to enter a memorial thereof in the register pertaining to the land or leasehold involved in like manner as in the case of a charge or incumbrance. The instrument shall be filed in the parcel file and a duplicate certificate of the register, indicating its character, issued and delivered to the person presenting the instrument and, if possible, the same receipt as is provided for in section 8.73(3) shall be signed by him and retained in the parcel file. A revocation of such power of attorney may be registered in like manner as such power of attorney was registered.

Subchapter G. TRANSMISSIONS AND TRUSTS

§ 8.161. Transmission on death of joint owner.

If one of two or more joint owners of any registered land, leasehold or charge dies, an application may be made to the Probate Court Judge by the survivor or survivors, and on proof to his satisfaction of the death, he shall direct the Registrar to delete the name of the deceased from the appropriate register or registers and to issue new duplicate certificates.

§ 8.162. Transmission on death of sole owner or of an owner owning land in common.

1. Substitution of representative's name on register. If a sole owner of registered land or an owner who owns registered land in common with others dies, his personal representative may make an

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application to the Probate Court Judge and upon producing to him a certificate of letters certifying to his appointment as such representative, or if he is the curator of the deceased's estate, proof of his appointment as such, the Judge shall direct the Registrar that such personal representative be registered by transmission as owner in place of the deceased with the addition after his name of the words as executor under the will ofdeceased" or "as administrator of the estate ofdeceased, or as "curator of the estate of deceased," as the case may be.

2. *Registration of representative's transfer without substitution of name on register.* In the case set forth in paragraph 1, upon the application for probate and registration thereof, the Probate Court Judge, upon the production of the certificate of letters or other proof of appointment as a personal representative, may direct that any transfer by the personal representative of any registered land owned by the deceased, or any surrender by him of any registered leasehold owned by the deceased, or any discharge by him of any charge held by the deceased, be registered by the Registrar on the register by transmission, without requiring the personal representative to be registered.

§ 8.163. Transmission to distributees or devisees, of registered land on death of owner.

1. *Procedure.* Upon the death of an owner of registered land or any estate, right, or interest therein, his distributees or devisees, at any time after the due entry of a decree of the Probate Court, probating his will and granting letters testamentary thereon, or if he died intestate, granting letters of administration, or in case of an appeal from such decree at any time after the entry of a final decree, may make an application to the Probate Court Judge for an order directing the Registrar in what manner and in whose name or names the land shall be registered and a new register or registers made therefor. Two or more distributees or devisees may unite in one

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such application. A copy of such application shall be directed to be filed with the Registrar who shall be further directed to memorialize said copy upon the register to which it relates, which memorial shall have then same effect as a notice of pendency of an action under the Civil Procedure Law. On such applications, the Probate Court Judge after due notice to all parties in interest and after a hearing, if necessary or proper, may enter an order prescribing the name or names and the manner in which the ownership shall be registered by the Registrar. On such application, the certificate of registration of the deceased owner or a duplicate copy thereof, shall be sufficient and conclusive evidence of his ownership at the time of his death and no other evidence thereof as to that time shall be required to be produced.

2. Notice of limitation on ownership of heirs pending judicial settlement of estate. The register and any new certificate of registration made and entered as prescribed in paragraph 1 before the final judicial settlement in the Probate Court of the estate of the deceased owner of the registered land, shall state expressly that it is made and entered because of the transmission of ownership by descent or devise, and that such estate is in process of settlement.

3. Cancellation of limitation, if directed, upon final judicial settlement. After the final judicial settlement of such estate in the Probate Court, or after the time allowed in the Probate Court Procedure Code for bringing a proceeding for the disposition of the land of the deceased owner for the payment of his debts, the distributees or devisees may apply to the Probate Court Judge for an order directing the cancellation by the Registrar of said memorial upon the register which memorial showed that the estate was in the course of settlement, and the Probate Court Judge, after being satisfied by due proof that said estate is completely settled or that said time to apply for disposition of the said land to pay debts has expired, shall make an order directing the cancellation of said memorial by the Registrar; but the liability of distributees or

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devises of registered land, or of such land itself, for claims against deceased or his estate shall not in any way be diminished or changed by the provisions of this section.

§ 8.164. Transmissions when persons are acting in representative capacities other than those described in section 8.162.

1. Substitution of representative's or fiduciary's name on register. Upon his appointment, an application may be made to the Probate Court Judge, by a person acting in a representative or fiduciary capacity, except a representative of fiduciary described in section 8.162, and whose estate contains registered land, such as a guardian of the estate of a minor or incompetent, a trustee of an *inter vivos* or testamentary trust. or in the case of a transfer of registered ownership or nominal change of ownership by process of law or otherwise, such as in the case of a receiver in insolvency, or trustee in bankruptcy, or a receiver upon the dissolution of a corporation or partnership and upon producing to the judge proof of his appointment in such capacity, such judge shall direct the Registrar that such representative or fiduciary be registered by transmission on the register as owner in place of the person or entity over whose estate he is acting in a representative or fiduciary capacity, with the addition after his name of the following words, as the case may be, "as guardian of the estate of a minor", "as guardian of the estate of an incompetent", for fiduciaries, "as trustee", for representatives owning registered land by process of law, "as receiver of an insolvent", "as trustee of, a bankrupt", "as receiver of..... in dissolution".

2. Transmission on termination of representative or fiduciary capacity. Upon the coming to age, or freedom from disability of a person whose guardian is a registered owner of registered land as described in paragraph 1, or upon a termination of the powers and duties of a trustee or other person acting in a fiduciary capacity, or upon any other termination of registered ownership or nominal

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change of ownership by process of law as described in paragraph 1 or in any like case not otherwise provided for in this section, an application may be made to the Probate Court Judge for an order directing the Registrar as to the persons in whose name or names and in what manner such registered land shall be registered; and the Probate Court Judge, on such application and on due notice to the persons who in his opinion are parties in interest, and after a hearing at which satisfactory proof shall be adduced as to the termination of the estate for which such representative or fiduciary is acting, and if deemed necessary or proper, shall enter an order prescribing the name or names and the manner in which the land shall be registered by the Registrar.

§ 8.165. Transmission by power of eminent domain or by judgment of court.

Where the Republic or any person has become entitled to any registered land, leasehold or charge under any law or by virtue of any order or certificate of sale made or issued under any law, an application may be made to the Probate Court Judge by any interested person and if supported by such evidence as he may desire, he may direct the Registrar to register the Republic or the person entitle as owner thereof.

Subchapter H. RESTRAINTS ON DISPOSITIONS

Part I. Inhibitions.

§ 8.171. Power of Probate Court Judge to inhibit registered dealings.

The Probate Court Judge, upon the application of any person interested in any registered land, leasehold or charge, for good cause, may make an order (hereinafter referred to as an "inhibition") inhibiting for a particular time, or until the occurrence of a parti-

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cular event, or generally until further order, the registration of any dealing with any registered land, leasehold or charge. A certified copy of the inhibition, with particulars of the land, leasehold or charge affected thereby, shall be sent to the Registrar with directions to register it in the appropriate register. No inhibition shall bind the registered land, leasehold or charge described in the order therefor until it has been registered.

§ 8.172. Effect of inhibition.

So long as an inhibition remains registered, no instrument which is inconsistent with it shall be registered.

§ 8.173. Cancellation of inhibitions.

The registration of an inhibition may be cancelled by the Registrar on order of the Probate Court Judge made after an application by any person affected by it, in the following cases and in no others:

- (a) On the expiration of the time limited by the inhibition; or
- (b) On proof to the satisfaction of the Probate Court Judge of the occurrence of the event specified in the inhibition; or
- (c) On the sale by a chargee of the land, leasehold or charge.

Part II. Caveats.

§ 8.176. Lodging of caveats.

1. Persons who may lodge caveats. Any of the following persons may make an application to the Probate Court Judge to direct the Registrar to lodge a caveat forbidding the registration of dispositions of the registered land, leasehold or charge concerned and the making of register entries affecting the same:

- (a) A person who claims any unregistrable interest whatsoever

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in registered land, or a leasehold, or a charge; or

(b) A person who is entitled to a license; or

(c) A person who has presented an insolvency or bankruptcy petition against the owner of any registered land, leasehold or charge.

2. *Contents of application.* An application for the lodging of a caveat shall state the interest claimed by the caveator among other applicable allegations therein.

3. *Contents of caveat order.* An order permitting the lodging of a caveat, if granted, may direct that the caveat either (a) forbid the registration of dispositions and the making of entries altogether, or (b) forbid the registration of dispositions and the making of entries to the extent therein expressed. The order shall direct that the caveat be registered in the appropriate register and that the persons affected by it be notified thereof.

§ 8.177. Notice and effect of caveat.

Upon registration, the Registrar shall give notice in writing of the lodging of a caveat to the owner whose registered land, leasehold or charge is affected by it. So long as a caveat remains registered no disposition which is inconsistent with it shall be registered except upon the direction of the Probate Court Judge *sua sponte*, or with the consent of the caveator.

§ 8.178. Withdrawal and removal of caveats.

1. *Withdrawal by person lodging caveat.* Upon application to the Probate Court Judge, a caveator may obtain a directive to the Registrar to have the same marked “withdrawn” on the register.

2. *Removal on application of a person affected.* On the application of any person interested, the Probate Court Judge may direct the

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Registrar to serve notice on a caveator, warning him that his caveat will be removed at the expiration of the time stated in the notice. If at the expiration of the time stated, the caveator has not objected, and such circumstance has been demonstrated to the Probate Court Judge, the judge may direct the Registrar to remove the caveat from the register. If, however, the caveator objects to the removal of the caveat, he shall so notify the Registrar and within the time specified in the notice, make an application to the Probate Court Judge setting forth his objections therein and requesting that his caveat be retained on the register. The Probate Court Judge, after giving the parties an opportunity of being heard, shall make such order in the premises as he thinks fit and may in the order make provision for the payment of costs.

3. Cancellation of caveat not to affect liability for damages incurred thereby. On the withdrawal or removal of a caveat, its registration shall be cancelled by the Registrar in accordance with the directive of the Probate Court Judge, but any liability of the caveator incurred under the provisions of section 8.179 shall not be affected by the cancellation.

§ 8.179. Liability for lodging of wrongful caveats.

Any person who wrongfully and without reasonable grounds therefor, causes a caveat to be lodged or maintained, shall be liable in an action for damages at the suit of any person who has thereby sustained damage.

Part III. Restrictions.

§ 8.181. Probate Court Judge may restrict dealings to prevent fraud.

1. Grant of power to restrict. For the prevention of fraud, improper dealing or for any other sufficient cause, the Probate Court Judge,

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sua sponte or on the application of any person interested in registered land, leased or charge, after directing such inquiries to be made and notices to be served on the parties in interest and hearing such persons as he deems necessary, may take an order (hereinafter referred to as "restriction") prohibiting or restricting dealings with any particular registered land, leased or charge and directing the Registrar to enter a memorial thereof in the appropriate register. In particular, he may order a restriction to be entered in any case where it appears to him that the power of the owner to deal with the registered land, leasehold or charge involved is restricted.

2. *Contents of restriction orders.* A restriction may be expressed to endure (a) for a particular period, or (b) until the occurrence of a particular event, or to until the occurrence of a further order, and may prohibit or restrict all dealings or only such dealings as do not comply with specified conditions. It shall direct the Registrar to give notice thereof to the persons affected by it.

§ 8.182. Notice and effect of restriction.

Upon registration, the Registrar shall, give notice of the entry of the restriction on the register to the owner whose registered land, leasehold or charge is affected by it. So long as any restriction remains registered, no instrument which is inconsistent with it shall be registered except upon the direction of the Probate Court Judge.

§ 8.183. Removal and variation of restriction.

The Probate Court Judge may *sua sponte* or upon application of any person interested, including an owner of registered land, leasehold or charge affected by a restriction, after giving the parties affected thereby an opportunity of being heard, for good cause, order the removal or variation of a restriction, or stake such other order in the premises as he deems necessary and may make an order as to cost.

Subchapter I. RECTIFICATION AND INDEMNITY

§ 8.191. Probate Court Judge's power to rectify errors in register records.

Upon application of the Registrar or any other interested person, or *sua sponte*, a Probate Court Judge in the following cases may direct a Registrar to rectify the register or any instrument presented for registration:

(a) In formal matters and in the case of errors or omissions not materially affecting the interests of any owner;

(b) In any case and at any time with the consent of all persons interested;

(c) Where, upon resurvey, a dimension or area shown in the register or Registry Map is found to be incorrect, but in such case the Probate Court Judge shall first give notice to all persons appearing by the register to be interested or affected by the proposed rectification and an opportunity to be heard thereon;

(d) Upon proof by an owner of the change of his name or address.

§ 8.192. Cancellation or amendment of register entries because of fraud or mistake.

1. Power of Probate Court Judge. Subject to the provisions of paragraph 2, a Probate Court Judge, after a hearing thereon held after due and timely notice given to all persons concerned, may order rectification of the register by directing that any registration made under the provisions of this chapter be cancelled or amended where he is satisfied that any registration (including an initial registration) has been obtained, made or omitted by fraud or mistake.

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2. *Bona fide interests protected.* The register shall not be rectified so as to affect the interest of an owner who is in possession, or is in receipt of the rents or profits and acquired the registered land, leasehold or charge for valuable consideration, unless such owner had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought, or caused such omissions, fraud or mistake or substantially contributed to it by his act, neglect or default.

§ 8.193. Right of indemnity.

1. *General rule.* Subject to the provisions of paragraph 2 and any statute relating to the limitation of actions, any person suffering damage by reason of any of the following circumstances, shall be entitled to be indemnified by the Republic:

- (a) Any rectification of the register under the provision of this chapter, provided that if notice of the intended rectification was required thereunder, such person through inadvertence was not given such notice;
- (b) Any mistake or omission in the register which cannot be rectified under the provisions of this chapter, other than a mistake or omission on an initial registration; or
- (c) Any error in a certificate of official search by the Registrar or in a copy of or extract from the register or in a copy of or extract from any document, map or plan certified under the provisions of this chapter.

2. *Exception.* No indemnity shall be payable under the provisions of this section to any person who has himself caused or substantially contributed to the damage by his fraud or negligence or who derives his interest (otherwise than under a registered disposition made *bona fide* for valuable consideration) from a person who caused or

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substantially contributed to the damage.

§ 8.194. Amount of indemnity.

Where an indemnity is awarded in respect of the loss of any interest in registered land pursuant to the provisions of section 8.193, it shall not exceed the following limitations set forth in subsections (a) and (b):

- (a) Where the register is not rectified, the value of the interest at the time when the mistake or omission which caused the damage was made; or
- (b) Where the register is rectified the value of the interest immediately before the time of rectification.

§ 8.195. Procedure for claiming indemnity.

The Permanent Claims Commission established pursuant to section 56.1 of the Executive Law may, on the application of any interested party and pursuant to the provisions of chapter 66 of the Civil Procedure Law, determine whether a right to indemnity has arisen under the provisions of this subchapter and, if so, award indemnity thereunder. The Commission may add thereto any costs and expenses properly incurred in relation to the matter.

§ 8.196. Recovery by Republic of indemnity paid.

Where any moneys are paid by way of indemnity under the provisions of this subchapter, the Republic shall be entitled to recover by suit or otherwise the amount so paid from any person who has caused or substantially contributed to the loss by his fraud or negligence, and to enforce any express or implied agreement or other right which the person who is indemnified would have been entitled to enforce in relation to the matter in respect of which the indemnity has been paid.

§ 8.197. No indemnity generally for errors in survey; exception.

1. None allowed against Republic. As between the Republic and an owner, no claim to indemnity shall arise and no suit shall be maintained on account of any surplus or deficiency in the area or measurement of any registered land disclosed by a survey showing an area or measurement differing from the area or measurement disclosed on any subsequent survey or from the area or measurement shown in the register or on the Registry Map.

2. As between private owners, none allowed after one year from date of registration. As between an owner and any person from or through whom he acquired the registered land, no claim to indemnity shall be maintainable on account of any surplus or deficiency in the area or measurement above or below the area or measurement shown in the register or on the Registry Map, after a period of one year from the date of registration of the instrument under which the owner acquired the land.

***Subchapter J. APPEALS FROM DECISIONS,
DETERMINATIONS, ORDERS AND DIRECTIVES***

§ 8.201. Appeal to Supreme Court.

1. In general. Subject to the provisions of paragraph 2, any person aggrieved by any decision, determination, order or directive made by a Probate Court Judge pursuant to the provisions of this chapter, including the Republic by and through any Land Commissioner concerned or any other duly authorized agent of the Republic, may appeal to the Supreme Court within the time and in the manner provided therefor in section 123.1 of the Probate Court Procedure Code for like matters.

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2. *Additional requirement.* Within the time allowed for filing a notice of appeal pursuant to the requirements of the Probate Court Procedure Code, a duplicate copy of the notice of appeal shall be filed with the Registrar and a notation thereof entered on the register affected by the appeal pursuant to the directive of the Probate Court Judge to whom such notice has been proffered by the Registrar for such purpose, and any disposition pertaining to any interest on such register shall be subject to such notice.

Subchapter K. MISCELLANEOUS

§ 8.211. Probate Court Judge to direct memorial of all pending hearings to be placed on registers affected.

In every case under the provisions of this chapter wherein a Probate Court Judge is required to hold a hearing and give notice of such hearing to any party in interest, the Judge shall, immediately upon the giving of such notice, make an order directing the Registrar to enter in the registers affected by the matters to be heard, an appropriate memorial thereof as contained in said order. Upon the conclusion of the hearing, the Probate Court Judge shall by order direct the Registrar to enter an appropriate memorial as to his determination thereof, which shall refer to any appeal, if any, announced thereon.

§ 8.212. Postal addresses to be furnished by registrants.

Any person who under the provisions of this chapter submits any caveat or any other instrument for registration, or is the owner of any registered land, leasehold or charge, shall furnish to the Registry in writing, for entry against his name in the appropriate register, a postal address within Liberia for the purpose of service upon him of any notice required pursuant to the provisions of this chapter.

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§ 8.213. Service of notices.

A notice under the provisions of this chapter shall be deemed to have been served on or given to any person, if served in accordance with any of the following means:

- (a) If served on him, personally; or
- (b) If served on an attorney in fact holding a power of attorney whereunder such attorney is authorised to accept such service; or
- (c) If sent by registered post to him at his last known postal address in Liberia and a receipt purporting to be signed by him has been received in return; or
- (d) If service cannot be effected in one of the above-mentioned ways, by displaying it in a prominent place on the land effected and by publishing it in such newspaper or newspapers as the Probate Court Judge may decide.

§ 8.214. Fees for registration services.

For all matters subsequent to initial registration, there shall be payable in respect of copies of the register, maps, instruments, certificates of search, filing of instruments indexing and all other matters connected with registration, including surveys required under the provisions of this chapter, such fees as shall be from time to time prescribed by the Director of National Archives and Records Service in consultation with and upon the approval of the Minister of Lands and Mines, based upon the reasonable cost to the Government of the services rendered.

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§ 8.215 . Enforcement of rights in registered land.

1. General rule. Rights relating to the ownership of land, or to a leasehold or charge, registered under the provisions of this chapter, or to any interest in such land, leasehold or charge shall be enforced, and civil suits and proceedings relating thereto shall be conducted, as allowed by law at the time this Registered Land Law takes effect and by any amendments to such law thereafter enacted, except as otherwise provided in paragraph 2.

2. Additional requirement when suit requires notice of pendency. Where the relief sought requires a procedural device, until a duplicate copy of the required notice of the pendency of suit is filed in the Registrar's office and a memorial entered on the register pertaining to the land involved pursuant to the directive of the Probate Court Judge to whom such notice has been proffered for such purpose by the Registrar, the pendency of such suit shall not be notice to the Registrar or to any person dealing with the land or any right or interest therein.

§ 8.216. Indemnity of officers.

No officer in exercise or supposed exercise of the powers conferred under the provisions of this chapter or any rules or regulations made thereunder shall be liable in any civil action or proceeding for or in respect of any matter done or omitted to be done in good faith.

Section 2. This act shall take effect immediately upon publication.

Any law to the contrary notwithstanding.

Approved May 20, 1974.

P A R T III

Personal Property

Chapter 10. CHATTEL MORTGAGE ACT

- § 140. Title of Act
- § 141. Personal property which may be mortgaged.
- § 142. Chattel mortgage; definition.
- § 143. Probate and registration.
- § 144. Form of chattel mortgage.
- § 145. Execution of chattel mortgage by corporation or partnership.
- § 146. Description of mortgaged property.
- § 147. Property covered by chattel mortgage; stock of merchandise.
- § 148. Discharge of mortgage by deposit of payment with clerk of Circuit Court.
- § 149. Removal of property from county.
- § 150. Sale or pledge of mortgaged property.
- § 151. Second mortgage, recital of first.
- § 152. Penalty for violation of three preceding sections.
- § 153. Endorsement of payments on mortgage instrument.
- § 154. Record of discharge or mortgage.
- § 155. Foreclosure proceeding.
- § 156. Title of purchaser upon foreclosure.
- § 157. Duties of registrar.
- § 158. Fees of Registrar.
- § 159. Action for deficiency.
- § 160. Action in lieu of foreclosure.
- § 161. Redemption of mortgaged property.
- § 162. Remedies of third parties.
- § 163. Right of pledge unaffected by this Act.

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§ 164. Record in county to which property removed.

§ 165. Tardy probate or recording; effect.

§ 140. Title of Act.

This chapter may be cited as the Chattel Mortgage Act.⁴¹

§ 141. Personal property which may be mortgaged.

All personal property shall be subject to mortgage, agreeably to the provisions of this Act, and a mortgage executed in pursuance thereof shall be termed a chattel mortgage. The provisions of law concerning personal property exempt from execution shall not be applicable to the foreclosure of chattel mortgages upon such property.⁴²

§ 142. Chattel mortgage; definition.

A chattel mortgage is a conditional sale of personal property as security for the payment of a debt, or the performance of some other obligation specified therein, the condition being that the sale shall be void upon the mortgagor paying to the mortgagee a sum of money or doing some other act named. If the condition is performed according to its terms, the mortgage immediately becomes void, and the mortgagee is thereby divested of his title.⁴³

§ 143. Probate and registration.

A chattel mortgage shall not be valid, except as to the mortgagor, his executors or administrators, unless the mortgage is probated and registered. A chattel mortgage shall be probated and registered in the

41. *Prior legislation:* L. 1936, ch. II, § 1.

42. *Prior legislation:* L. 1936, ch. II, § 2, 25.

43. *Prior legislation:* L. 1936, ch. II, § 3.

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same manner as that provided by law for the probate and registration of instruments relating to real estate in the county, district, or territory in which the mortgagor resides at the time of the transaction; provided, however, that if the property or any part of it, is situated in a different county, district or territory, or in different counties, districts or territories, from that in which the mortgagor resides, the mortgage shall be probated and registered in the county, district or territory in which the mortgagor resides and where there is no Probate Court or Registrar in the area where the mortgagor resides, the mortgage shall be probated and registered in the county or territory nearest the area where there is no Probate Court or Registrar, and in each county, district or territory in which any part of the property is situated.

A chattel mortgage shall not be valid, except as to the mortgagor, his executors or administrators, unless the mortgage is presented to the proper court for probate within ten days from the date thereof, or unless presented to the Registrar for record as herein provided, within five days from the date of probate. It shall be the duty of the Clerk of the Court to note upon each chattel mortgage presented for probate the date of the presentation, and the date of probate, if probate is granted.⁴⁴

§ 144. Form of chattel mortgage.

Chattel mortgages shall be executed in duplicate. Such mortgages shall be signed in duplicate by the person or persons executing the same, as mortgagor and mortgagee respectively, in the presence of two witnesses, who shall sign the mortgage as witnesses to the

44. CHAPTER VI, AN ACT TO AMEND THE PROPERTY LAW IN RELATION TO CHATTEL MORTGAGES, approved January 19, 1962, amended the section to its current wording. The Act amending the section provided as to its effective date that "This Act shall be published in hand-bills immediately after it becomes law.

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execution thereof.⁴⁵

§ 145. Execution of chattel mortgage by corporation or partnership.

When a corporation is a party to such mortgage it may be made and subscribed in the name of the corporation by its general manager or any officer thereunto authorized by its Articles or Bylaws, or by an officer or any other person so empowered by resolution of the Board of Directors. When a partnership is a party to a mortgage, the mortgage may be executed on its behalf by any person authorized by the partnership.⁴⁶

§ 146. Description of mortgaged property.

The description of the mortgaged property shall be such as to enable the parties to the mortgage, or any other person, after reasonable inquiry and investigation, to identify the same.

If the property mortgaged be cattle, the description shall include a statement of the brands, class, sex, age, or other marks of ownership or identification of the mortgaged animal or animals.⁴⁷

§ 147. Property covered by chattel mortgage: stock of merchandise.

A chattel mortgage shall cover only the property described therein and not like or substituted property thereafter acquired by the mortgagor; provided, however, that a chattel mortgage of stock of merchandise in the place of business of a merchant, fully described

45. *Prior legislation:* L. 1936, ch. II, § 6.

46. *Prior legislation:* L. 1936, ch. II, § 7.

47. *Prior legislation:* L. 1936, ch. II, § 8.

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in a valued inventory appended to and made a part of the instrument of mortgage, shall be valid and the lien of the mortgage shall attach to new goods of the same general character purchased for replenishment by the mortgagor from time to time and placed in stock to take the place of goods disposed of by him in the ordinary course of trade and which are on hand when the mortgage matures; but provided further, that the lien of such mortgage shall attach only to an amount of goods not exceeding in value those described in the mortgage, on hand in the mortgagor's place of business upon the maturity of the obligation secured by the mortgage.⁴⁸

§ 148. Discharge of mortgage by deposit of payment with clerk of circuit court.

If the mortgagee, or the person who has succeeded to his rights, fails or refuses to accept the amount due under the mortgage, upon tender thereof when due, and to execute a release therefor, the mortgagor may deposit the amount due, as shown by the mortgage, with the clerk of the circuit court of the county in which the mortgagee resides or in which the property or any part thereof was situated at the time of the execution thereof, and shall by such payment be released from all further liability to the mortgagor. The Clerk shall issue his official receipt for all sums so paid him, and shall forthwith give notice to the mortgagee, by registered mail, that the same is available to him for payment on demand.⁴⁹

§ 149. Removal of property from county.

Except as provided in section 150 of this Title, no personal property upon which a chattel mortgage is in force shall be removed from the county in which it is located at the time of the execution of the mort-

48. *Prior legislation:* L. 1938, ch. II, § 9.

49. *Prior legislation:* L. 1938, ch. II, § 10.

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gage, or to which it has been lawfully removed thereafter, without the written consent of the mortgagee, his executors, administrators or assigns endorsed upon the mortgagee's duplicate copy of the mortgage.⁵⁰

§ 150. Sale or pledge of mortgaged property.

A mortgagor of personal property shall not sell or pledge such property mortgaged by him, or any part thereof, without the consent of the mortgagee endorsed in writing upon the mortgagor's duplicate copy of the mortgage; provided, nevertheless, that if the mortgagor is a merchant, and the goods mortgaged constitute a moving stock of merchandise in the mortgagor's ordinary place of business, sales may be made therefrom by the mortgagor in the ordinary course of his business, as in this Act provided, and purchasers in good faith shall take title to such merchandise free from the lien of the mortgage.⁵¹

§ 151. Second mortgage, recital of first.

A mortgagor shall not execute a second or subsequent mortgage of personal property while the same is subject to the previously existing mortgage given by such mortgagor unless the existence of such previous mortgage is set forth in the subsequent mortgage.⁵²

§ 152. Penalty for violation of three preceding sections.

If a mortgagor violates any of the provisions of sections 149, 150, or 151, he shall be guilty of a misdemeanor and punishable by a fine of double the value of the property so wrongfully removed from the county, sold, pledged or mortgaged, one-half to the use of the party

50. *Prior legislation:* L. 1938, ch. II, § 11.

51. *Prior legislation:* L. 1936, ch. II, § 12.

52. *Prior legislation:* L. 1936, ch. II, § 13.

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injured and the other half to the use of the Treasury of the Republic of Liberia, or by imprisonment for a period not exceeding six months, or by both such fine and imprisonment.⁵³

§ 153. Endorsement of payments on mortgage instrument.

All payments of interest or on account of principal of the secured debt shall be endorsed upon the mortgagee's original and upon the mortgagor's duplicate original of the instrument of mortgage; and it shall be presumed, in the absence of satisfactory proof to the contrary, that no payments not so evidenced have been made.⁵⁴

§ 154. Record of discharge of mortgage.

Upon payment of the entire amount due upon the mortgage, as shown by the endorsements or by the receipt of the clerk of the court for any payment made to him by the debtor, as provided in section 148, or by such endorsements and receipt, the Registrar, upon presentation to him of such proof of payment, shall make a note upon the transcription of the mortgage in his books, showing that the same has been satisfied and cancelled, and shall make a similar notation upon the mortgagor's duplicate of the mortgage; and upon such cancellation the lien of the mortgage upon the property therein described shall be wholly discharged.⁵⁵

§ 155. Foreclosure proceeding.

If the principal amount secured by the mortgage and the interest thereon or any part of such principal and interest be not paid at the original date of maturity, as therein stated, or any extension of such

53. *Prior legislation:* L. 1936, ch. II, § 14.

54. *Prior legislation:* L. 1936, ch. II, § 15.

55. *Prior legislation:* L. 1936, ch. II, § 16.

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maturity granted by the mortgagee and noted in writing by him upon the mortgagor's duplicate of the instrument, the mortgage may be foreclosed in the following manner:

(a) The mortgagee shall file his duplicate of the mortgage in the Circuit Court of the jurisdiction where the property is situated at the time of the foreclosure of the mortgage, with a statement in writing as to the amount then due and owing thereon, and shall state further that no extension of time has been granted the mortgagor by the mortgagee, and demand that the mortgage be foreclosed.

(b) If the amount due as shown by the mortgage and the endorsements thereon be not less than that so stated by the mortgagee, the judge of the Circuit Court sitting in chambers shall order a summons to be issued for the mortgagor to appear in or out of term time, and to show cause why the mortgage should not be foreclosed and the judge shall simultaneously make an order in writing, together with the said writ of summons, directing the sheriff or any officer of court to take possession forthwith of the mortgaged property or such part thereof as he can find, and make returns as to how he has executed the writ and the order. The property shall then be immediately turned over to the mortgagee upon his executing an indemnity bond in one and a half times the amount of the value of the property so seized to secure the mortgagor against any injury or damage he may sustain by reason of the failure of the mortgagee to successfully prosecute said foreclosure proceedings. After the appearance of the mortgagor or, in case of failure to appear, within three days after service of the summons, the judge shall proceed to hear and determine said case and render final judgment thereon.

(c) The officer of court, at the time of taking possession of the

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mortgaged property, shall give the person in whose possession it is found a receipt for same, a copy of the mortgage and a copy of the order of the court.

(d) If it appears from the return of the officer of court that the mortgaged property or any part thereof has been brought into custody of the court, the court shall set a day for the mortgagor to show cause why the mortgaged property should not be sold at public auction in keeping with this Act.

(e) If the mortgagor fails to appear as prescribed in subdivision (d) supra, the court shall render judgment by default in favor of the mortgagee.

(f) If the mortgagor appears and contests the right of the mortgagee to foreclose the mortgage, the court shall hear the cause summarily and render judgment according to the law and facts presented by the parties.

(g) The sale of the mortgaged property, after judgment has been rendered by the court, shall be made in the same manner and upon such publication of notice as that prescribed by law for sale of property seized under execution for the satisfaction of final judgment of court.

(h) The net proceeds of the sale, after deduction of costs allowable upon sales of such personal property on execution, including necessary costs of transportation and storage, shall be paid to the mortgagee to the extent necessary to discharge the indebtedness, and the balance, if any, shall be paid to the mortgagor.

(i) Upon completion of the foreclosure proceeding, the court shall issue and send forthwith to the Registrar a certificate thereof with (1) a description of the property which has been

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sold on foreclosure; (2) the names of persons to whom it has been sold; (3) the price received for each separate article or group of article; (4) the total amount paid to the mortgagee; and (5) the balance, if any, still remaining unpaid; or (6) a declaration that the mortgage has been satisfied if the net amount realized from the sale is not less than the amount then due the mortgagee.⁵⁶

§ 156. Title of purchaser upon foreclosure.

The purchaser of mortgaged chattels, upon the foreclosure sale thereof in any manner authorized by this Act, shall take title thereto to the same extent as does the purchaser of such chattels upon a sale thereof under a valid writ of execution.⁵⁷

§ 157. Duties of Registrar.

Every Registrar shall:

- (a) Keep a book of records of chattel mortgages authenticated by a sealed certificate of the clerk of the Probate Court showing the number of pages in the book, each of which shall be signed at the foot by the clerk;
- (b) Certify in writing upon each duly probated instrument or chattel mortgage presented to him for registration, the date when the same was presented for probate, and the date when the same was presented to him for record;
- (c) Record in such book, by verbatim transcription, all chattel mortgages presented to him for record, and all annotations

⁵⁶. *Prior legislation*: L. 1950-51, ch. XXVI, § 2; L. 1938, ch. II; § 17.

⁵⁷. *Prior legislation*: L. 1938, ch. II, § 18.

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thereon concerning the probate thereof;

(d) Note upon his records and upon the original or duplicate original of such mortgage any subsequent modification thereof by the parties;

(e) Record all duly probated instruments of assignment of chattel mortgages;

(f) Record all instruments of cancellation of recorded chattel mortgages authenticated by the mortgagee;

(g) Record all certificates concerning foreclosure issued by a Circuit Court judge pursuant to the provisions of this Act;

(h) Issue certified copies of the record concerning any chattel mortgage to any person requesting the same; and

(i) Permit his record book of chattel mortgages to be inspected and read, at all reasonable hours, by any person whomsoever.⁵⁸

§ 158. Fees of Registrar.

For the services required of him, the Registrar shall receive as his perquisites:

(a) For recording each chattel mortgage, twenty-five cents per page;

(b) For recording each release of a chattel mortgage, twenty-five cents;

58. Prior legislation: L. 1950-51, ch. XXVI, § 3; L. 1938, ch. II, § 19.

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- (c) For recording an assignment, twenty-five cents per page;
- (d) For recording any modification of a recorded chattel mortgage, twenty-five cents per page;
- (e) For issuing certified copies of his record, twenty-five cents per page, including certificate;
- (f) For permitting an inspection of his book of record, ten cents.⁵⁹

§ 159. Action for deficiency.

If the sale or foreclosure of property mortgaged to secure a money obligation should not produce a net amount sufficient to satisfy the amount due the mortgagee, the latter may enforce payment of such deficiency by action against the mortgagor.⁶⁰

§ 160. Action in lieu of foreclosure.

At the option of the mortgagee, in lieu of the foreclosure proceedings herein authorized, suit may be brought upon the indebtedness evidenced by the mortgage, and the judgment recovered, if any, satisfied by the sale on execution of the mortgaged property, which shall continue until so sold, subject to the lien of the mortgage. The deficiency, if any, after such sale, may be satisfied by execution levied upon and sale of other property of the debtor.⁶¹

⁵⁹. *Prior legislation*: L. 1938, ch. II, § 20.

⁶⁰. *Prior legislation*: L. 1936, ch. II, § 21.

⁶¹. *Prior legislation*: L. 1936, ch. II, § 22.

§ 161. Redemption of mortgaged property.

The mortgagor may redeem mortgaged property at any time before the sale thereof by the payment of the full amount of the debt and all costs paid or incurred by the mortgagee in the foreclosure proceeding.⁶²

§ 162. Remedies of third parties.

Any person claiming adversely to the mortgagor and mortgagee, any property taken into the custody of a Circuit Court upon foreclosure proceedings under the provisions of this Act, shall be entitled to the same remedies in respect thereof, as those available to third party claimants of property seized upon writs of attachment or execution.⁶³

§ 163. Right of pledge unaffected by this Act.

Nothing in this Act contained shall be construed as affecting the right of the owner of personal property to make a valid pledge thereof in accordance with the law relating to a contract of pledge.⁶⁴

§ 164. Record in county to which property removed.

When, with the consent of the mortgagee, mortgaged chattels are removed from one county to another, the lien of the mortgage shall cease, except as between the parties thereto, unless the mortgagee, within ten days from the date of the endorsement upon his duplicate of the instrument of mortgage, shall present the same for record to the Registrar of such county, who shall forthwith record the same upon

62. *Prior legislation:* L. 1936, ch. II, § 23.

63. *Prior legislation:* L. 1936, ch. II, § 24.

64. *Prior legislation:* L. 1936, ch. II, § 28.

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the authority of the original order of probate noted thereon.⁶⁵

§ 165. Tardy probate or recording; effect.

Chattel mortgages probated or recorded after the expiration of the terms herein prescribed shall not be valid except as against the mortgagor, his executors and administrators, and against persons claiming an interest in the mortgaged chattels accruing later than ten days after the date of recordation of the mortgage in the county in which the mortgaged chattels were situated at the time of the execution of the mortgage or to which they have been lawfully removed thereafter.⁶⁶

Chapter 11. REPEALERS

§ 170. Repealers.

§ 170. Statutes repealed.

The following statutes are hereby repealed:

Acts 1839, A bill to prevent frauds, arts. 5, 6, 2 Hub. 1391	secs. 1286, 1298-1302, 1392, 1391 L. 1936, ch. II
Acts 1843, An Act pertaining to lands and reservations, sec. 5, insofar as it prohibits dealing with natives for lands, 2 Hub. 1463	L. 1943-44, ch. VI L. 1946-47, ch. XVII L. 1950-51, ch. XXVI L. 1951-52, ch. XXXVIII
Rev. Stat. (adopted L. 1929, ch. VII),	

65. *Prior legislation:* L. 1938, ch. II, § 28.

66. *Prior legislation:* L. 1936, ch. II, § 27.