

**BILLS COMMITTEE ON  
LAND TITLES BILL**

**CERTIFICATE OF GOOD TITLE**

**Purpose**

This paper examines issues related to the requirement for a certificate of good title under the title registration system.

**Background**

2. Under the scheme proposed in the Land Titles Bill, an application for conversion of a property from the deeds register to the title register has to be accompanied by a certificate of good title issued by a solicitor. Verification of an owner's title before conversion of the property to the title registration system can take place is necessary in order to give reasonable protection to individual rights. The proposed requirement for solicitors to issue the certificate of good title seeks to maintain the efficiency of the existing conveyancing system and avoid the costs of additional procedures. (For details on the latter point, please see paper CB(1) 1464/02-03(04) "The Conversion Mechanism".)

**Need for a Certificate**

3. The requirement for a certificate of good title stems from the effect of registration. The act of bringing a property under the title registration system removes any unregistered interests unless these are overriding interests (except in the case of a transfer without valuable consideration). It also purges pre-existing defects in title. Generally this is a desirable outcome from which flow peace of mind, security and efficiency in future dealings in the property.

4. But, if no verification of title takes place, there is risk that apart from technical defects, real interests may also be taken away. It is necessary to take reasonable steps to safeguard those interests and to protect the parties processing

the transaction from claims arising if such interests are extinguished by the act of registration. This is provided through the process of title checking carried out by the solicitor. The certificate is the confirmation that the checks have been carried out and that the title appears to be good against challenge. Without such a process of checking and statement of professional judgement it would not be reasonable for the Land Registry to process the application and make the registration.

### **Issues uncovered by searches**

5. At present, during the process of title checking, a number of issues may be uncovered. Very broadly, they fall under the following categories:

- (a) obligations the present owner must discharge before transaction;**
- (b) matters that are resolvable;**
- (c) uncertainties on which judgement must be made; and**
- (d) matters that cannot be dealt with by either the solicitor's actions or those of the parties to the proposed transaction.**

6. Currently, except in the last case, the issues affecting title may be resolved and the transaction may then proceed. In the same way that these issues do not present insurmountable difficulty to the eventual transaction at present, they should not preclude the eventual issue of a certificate of good title under the title registration system.

7. The following paragraphs give examples of the kind of issues that may arise under each of these categories and how they might be considered at the time of application for title registration.

### ***Obligations requiring discharge***

8. Examples of obligations that an owner is required to discharge before a transfer can take place are:

- (a) Mortgages**

The vendor has a duty to discharge the mortgages on the property before completion of the sale.

In most cases this is straightforward. The vendor will discharge the mortgage for the transaction to proceed.

However, there may be old mortgages still registered for which there is no record of discharge. There is uncertainty as to whether these mortgages will still have legal effect. In such cases a solicitor may either advise that a Court declaration that there is no subsisting effect is required, or make a judgement as to whether the case is similar to ones in which the Courts have already declared that the mortgage was no longer subsisting or capable of taking effect. If a declaration has been given or if the solicitor is of the view that it is safe to proceed with the transaction, a certificate of good title may be issued.

**(b) Building Orders**

Where an order has been issued under the Buildings Ordinance (B.O.) - e.g. demolition order (section 24 of B.O.), closure order (section 27 of B.O.) and dangerous hillside order (section 27A of B.O.) - and has been registered, this will constitute an encumbrance on the title. This should be cleared by the vendor before completion of the transaction – unless the purchaser agrees to take over the liability under the order.

**(c) Other encumbrances**

Other encumbrances on the title such as charging orders and pending Court proceedings have to be resolved by the vendor to show good title.

Where a charging order has been registered against the property, the vendor must produce evidence of its discharge. Where a pending Court proceeding has been registered against the property, the vendor has to settle the Court proceeding before completion.

9. The barrier to an owner transferring a property without discharging obligations such as mortgages, Court orders or enforcement orders is an intended effect of registration rather than a defect. It has the effect of making people accountable for contracts they have entered into and creating incentive for them to respect the Courts and other legislation. A solicitor should ensure that all such obligations are discharged or properly dealt with before issuing a certificate of good title for conversion cases under the title registration system.

*Matters that are resolvable*

10. Examples of title problems which the owner may be able to resolve before a transfer can take place are:-

**(a) Unwritten equities in favour of a third party**

If a spouse has contributed to the purchase price of a property, he or she may acquire an equitable interest in the property under what is known as a “resulting trust”. This is a type of unwritten equity in the property. If that spouse makes written renunciation of this interest in the property, the vendor can show a good title to the property. The transaction may proceed and, in conversion cases under the title registration system, a certificate of good title may be issued.

**(b) Defective Power of Attorney**

The vendor has to produce a power of attorney authorising the execution in respect of any title document executed less than 15 years prior to the current transaction. The power of attorney must authorise the act in question and must have been properly executed.

If the power of attorney is defective, the donor of the power of attorney can be asked to confirm the instrument in question. If such confirmation is forthcoming, the transaction may proceed and, in conversion cases under title registration, a certificate of good title may be issued.

**(c) Unclear land boundary**

If the land boundary is unclear, the solicitor would have to advise the client to appoint a land surveyor to determine the exact land boundary. If there is a dispute over the land boundary with owners of adjacent lots, an agreement could be negotiated or an application made to the Court for determination. Once the agreement is obtained or determination is given, the transaction may proceed and, in conversion cases under title registration, a certificate of good title may be issued.

**(d) Discrepancies in signature and identification documents**

The solicitor can resolve these problems by requesting the signatory to make a statutory declaration concerning any discrepancies in signature and to provide satisfactory explanation over discrepancies in identification documents. Once these are obtained, the transaction may proceed and, in conversion cases under title registration, a certificate of good title may be issued.

***Uncertainties on which judgment must be made***

11. In some cases the solicitor checking title will have to make a judgment as to whether there is good title to the property, and exercise his judgment in advising his clients. Examples are:-

**(a) Ambiguity in wording of a will**

If there is ambiguity in a will as to whether the executor has the power to sell the property, the solicitor will have to make his own judgment as to whether the assignment by the executor is legally valid or may be open to successful challenge.

**(b) Property held by an occupier by right of adverse possession under a judgment in default.**

Where judgment is given in default of appearance of a party at the trial, it may later be set aside by the Court on the application of that party. The application must be made within seven days after the trial and the Court has power to extend the time.

Accordingly, the solicitor has to make a judgment as to the possibility of the judgment being set aside in the circumstances of the case to decide whether a certificate of good title may be issued.

***Defects that preclude issue of certificates of good title***

12. There are certain title defects that cannot be resolved by any action by the parties. The vendor cannot show good title where such defects exist. Examples are:-

**(a) Missing Government Lease**

Section 13(1) of the Conveyancing and Property Ordinance (Cap.219) requires the vendor to produce the Government lease or a certified copy to the purchaser for proof of title unless there is express contrary agreement. Without such agreement a transaction cannot proceed.

**(b) No prior consent from Housing Authority for assignment of Home Ownership Scheme flats**

Under the Housing Ordinance (Cap.283), an owner of a Home Ownership Scheme flat cannot assign the flat to a third party without the prior consent of the Housing Authority until a specified period has elapsed and a premium as assessed by the Director of Housing has been paid. The assignment will otherwise be void. A vendor, in showing good title, must produce the original or certified copy of any a letter from the Housing Authority acknowledging receipt of the premium and removal of the restriction on alienation. Without it, the transaction is invalid and hence, no certificate of good title may be issued under the title registration system.

**(c) Defective execution of important title documents**

The vendor must show that all documents produced by him have been properly executed. The most common example of an improper execution is where execution by a company in an assignment was attested by one director only whereas the company's articles of association provide for attestation by two directors.

**(d) Stopped Deeds**

Stopped deeds are instruments that have been withheld from registration under the Land Registration Ordinance (Cap.128) but have not been withdrawn or rectified by the parties to the instruments.

These deeds may affect title but they cannot be transferred to the Title Register since they have not been registered under Cap 128. The property affected by a stopped deed cannot be transferred to the Title Register until the uncertainty created by the stopped deed is resolved by registration or removal of the deed. In most cases stopped deeds are resolved quickly but over the years a number of cases have not been

cleared by the lodging parties. While it may be possible for parties to seek Court orders to remove such deeds in some cases, in others they will remain as obstacles to transactions.

### **The Certificate**

13. In general terms, when a solicitor issues a certificate of good title, he will be stating that he has examined all the title deeds produced by the vendor in accordance with section 13 of the Conveyancing and Property Ordinance and is satisfied that the vendor has good title to the property. As at present, therefore, he is expected to exercise professional care in his examination to establish good title. We will work out the detailed wording of the certificates of good title with the Law Society.

Housing, Planning and Lands Bureau  
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