

**For discussion  
on 23 March 2004**

**LEGISLATIVE COUNCIL PANEL  
ON PLANNING, LANDS AND WORKS**

**Land Registration Ordinance  
Removal of Stopped Deeds**

**PURPOSE**

This paper reports on the Administration's review of the issue of stopped deeds.

**BACKGROUND**

2. During deliberation on the Land Registration (Amendment) Bill 2000 (the Bill), it was agreed that the Land Registrar should be empowered to remove from the land register the entries of deeds withheld from registration due to mistakes or other problems. This was proposed at the request of the Law Society. The existence of stopped deeds presents problems during conveyancing because copies of stopped deeds were not available for search, thus leading to uncertainty over title to properties. The stopped deeds may also hinder owners from engaging in property transactions.

3. Agreement could not be reached, however, on how to make provisions to deal with the priority of instruments if the Courts ordered reinstatement of a removed deed. In order not to delay passage of other important measures in the amendment bill, the provisions on removal of stopped deeds were deleted, except for those that allowed the Registry to take copies of these deeds and make them available for public search. The Bill was enacted on 11 July 2002. The Administration undertook to carry out further research and to revert on how to deal with the removal of stopped deeds after consultation with the legal profession.

4. The provision to allow for public search of copies of stopped deeds was retained in the Bill and was brought into effect in December 2002. Solicitors are now able to assess what legal effect deeds that have been stopped after that time may have and to advise their clients accordingly.

5. A LegCo Panel Paper (LC Paper No. CB(1) 192/02-03(03)) was issued on 8 November 2002 proposing amendments to the regulations made under the Land Registration Ordinance (LRO) to deal with the removal of stopped deeds. These regulations were supported by the Law Society. The views of the Legal Service Division of the LegCo Secretariat were set out in a Paper (LC Paper No. LS 22/02-03). They were of the view that whilst it seemed that the power of the Land Registrar to make regulations for the removal of stopped deeds and for review of the decision of the Land Registrar by the court is provided in the Ordinance, they had reservations as to whether there was any express or implied power for the Land Registrar to make regulations providing for priority of instruments in the manner as proposed. The Administration was asked to undertake further review of the matter.

## **REVIEW**

6. The Administration has categorized all 2,374 stopped deeds outstanding as at 31.12.2002. The categories of stopped deeds and the reasons for withholding the stopped deeds from registration are set out in the tables in Annexes 1 and 2 respectively. A detailed study of 60 long outstanding stopped assignments has also been undertaken. The aim of the study was to establish whether there is a real risk of loss to any party if the stopped deeds were simply removed without the consequent need to deal with the question of priority.

## **FINDINGS**

7. The Land Registry found that -

- (a) in all 60 cases included in the detailed investigation, lodging solicitors have not responded to the Land Registry requisitions;
- (b) subsequent instruments were registered in 21 cases out of the 60 cases; and
- (c) there have been six cases where subsequent instruments have been withheld from registration due to the stopped assignments.

8. It can be seen from Annex 2 that the major reasons for stopping deeds are either minor discrepancies that the solicitor should easily be able to rectify or that the instrument is not one that affects land and should be withdrawn. The detailed study of certain assignment cases also shows that it may be possible to disregard the stopped deeds and register subsequent instruments. But, the six cases noted in (c) above indicate that this is not always the case and there may still be risks to parties if stopped deeds are simply removed without any appeal mechanism.

## **LEGAL ADVICE**

9. The Administration sought further legal advice on this issue. The Department of Justice (D of J) has advised that any scheme for the removal of stopped deeds would need to provide for the following -

- (a) power and procedures of removal;
- (b) appeal against the Land Registrar's decision of removal;
- (c) reinstatement of stopped deeds onto the land register by the Court if the removal decision is wrong and priority of reinstated deeds; and
- (d) compensation if there is no reinstatement.

10. D of J has also advised that it is not appropriate to make provisions determining priority in the regulations. Such provisions should more appropriately be effected by amendments to the LRO.

## **CIVIL REMEDIES**

11. The Administration has considered whether the parties affected by stopped deeds have recourse to other remedies. The position on the civil remedies available to the parties affected by stopped deeds is -

**(a) Common law**

**(i) Breach of contract**

If a party to a stopped deed considers that there is any breach of contract involved in withholding of the instrument from registration, he may sue the other contracting party who commits the breach. In this regard, it appears that there are possibly two kinds of contractual relationship involved, i.e. contract between the parties to the instrument and contracts between the parties and their respective solicitors.

**(ii) Tort of negligence**

If the withholding of the relevant instrument or the failure to comply with the LRO is due to a breach of legal duty of care owed by someone to any of the parties to the stopped deed, and if any party suffers damage as a result of the breach, such innocent party may have a cause of action in negligence against the one who is guilty of the breach. In this regard, a solicitor always owes a legal duty of care to his clients to take reasonable care to avoid acts or omissions which he can reasonably foresee are likely to injure his clients. It will always be a matter of fact as to whether the defendant owes the plaintiff a duty of care on the

particular facts of the case.

**(b) Statutory claim**

Section 23A of the LRO provides that if the Land Registrar wilfully or negligently fails to comply with Section 23, he shall be liable for any loss or damage thereby caused. Hence, the parties to a stopped instrument may claim under Section 23A if it is proved that the Land Registrar has wilfully or negligently failed to register the stopped deed in question.

**(c) Parties at fault / Affected parties**

If the reasons for the withholding of deeds or failure of registration is due to conduct on the part of the parties to the deed, it is a matter of fact as to whether there will be any legal remedies available to such defaulting party. For example, if the failure is due to a lack of instruction on the part of the defaulting party, it appears unlikely that he will have a course of action under contract or the tort of negligence. Further, apart from the immediate parties to the stopped deed, the withholding may affect the interests of some person who is not a party to the deed. Generally speaking, subject to the particular facts of the case, the above causes of action discussed in sub-paragraphs (a) and (b) may be available to these interested parties provided that they can satisfy the requisite legal requirements.

## **WAY FORWARD**

12. Further deliberations given to the matter over the past year have indicated that despite the small number of stopped deeds and some existing remedies available, there is still a case to amend the law to provide for the removal of stopped deeds and to safeguard interests of parties affected, and to consider the need to make provisions for appeal, reinstatement and compensation. It has been further clarified that to effect the above, amendments to the principal legislation are required.

13. In the light of the heavy legislative programme for the remainder of the current LegCo session and the Land Registrar's commitments relating to the Land Titles Bill (which is a piece of important legislation affecting the whole land registration system in Hong Kong and on which 26 meetings of the Bills Committee and extensive consultations have been undertaken), it has not been possible for the Administration to accord priority to this legislative proposal. We intend to introduce the necessary changes to the Land Registration Ordinance to provide for removal of stopped deeds in the next legislative session. We will consult Members on the draft legislative changes in due course.

14. Meanwhile, we will continue with efforts to get solicitors either to redeliver amended deeds so that registration can be completed or to withdraw them.

#### **ADVICE SOUGHT**

15. Members are invited to note the outcome of the Administration's review and its intention to proceed with legislative amendments in due course.

*Housing, Planning and Lands Bureau  
March 2004*

**Categories of Stopped Deeds**

<b>Categories</b>	<b>No. of Stopped Deeds</b>
1. Agreement for Sale and Purchase including Supplemental Agreement for Sale & Purchase, Sub-Sale Agreement, Provisional Agreement for Sale & Purchase, etc.	421
2. Assignment including Deed of Gift, Vesting Assignment, Assent etc.	182
3. Mortgage including Legal Charge, Debenture, Deposit of Title Deeds, Transfer of Mortgage, Deed of Variation of Mortgage, Charge, Sub-mortgage, Collateral Mortgage, Agreement for Mortgage, Supplemental Mortgage, Second Mortgage, Third Mortgage, Building Mortgage, etc.	174
4. Further Charge/Further Legal Charge/Building Further Charge/ Rental Assignment, Assignment of Sale Proceeds	10
5. Reassignment including Receipt on Discharge, Release and Satisfaction, etc.	91
6. Court Order and Judgment	727
7. Certificate under Sec.33(1) of the Building Ordinance, Memorandum of Outstanding Management Fees/Charges, etc.	9
8. Declaration of Trust	10
9. Lease/Tenancy Agreement/Agreement for Lease/Sub-lease Agreement for Tenancy Agreement	100
10. Probate and Letters of Administration	36
11. Undertaking	11
12. Partial Reassignment/Partial Release, etc.	7
13. D.M.C./Management Agreement/Deed of Mutual Grant/ Sub-D.M.C./ Management Undertaking	15
14. Power of Attorney	24
15. Deed of Exchange/ Partition/Division	6
16. Appointment of Manager (all Tso/Tong matters)	3
17. Re-registration of instruments	139
18. Miscellaneous Equitable Mortgage, Memorandum of release/satisfaction of management fees/satisfaction of management charges, various Letters etc.	409
<b>Total</b>	<b>2374</b>

**Annex 2**

<b>Reasons for Stoppage</b>	<b>No. of deeds stopped</b>
1. Instruments not affecting land	576
2. Non-compliance with Stamp Duty Ordinance	128
3. Non-compliance with LRCM 102/108 (for re-registration cases)	146
4. Discrepancy of information between instrument and memorial or missing information/clerical errors found in instrument or memorial	797
5. Non-compliance with LRCM 15/96 (in respect of paper size and colour & etc)	38
6. Address in memorial does not comply with LRCM 6/95 (which specifies the address format to be presented in memorial under various situations)	31
7. Defect in solicitor's certification (eg. missing signature, incorrect date & etc) of memorial	40
8. Extra/Missing copy of instrument or part thereof (eg. schedule, execution page & etc) or plans	26
9. Non-compliance with LRCM 3/99 (for party's name)	42
10. Instruments lodged are not original or in acceptable form of copy	60
11. Incorrect Registration fee	11
12. Other document(s) should lodge for registration/ re-registration prior to registration of the subject instrument	53
13. Query on whether the parties have the capacity to hold land	85
14. Others	341
<b>Total</b>	<b>2374</b>