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Deeds Registry Regulations

Deeds Registry (Conveyancers and Notaries Public (Fees and Charges) Regulations

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PART I

Preliminary (regs 1-2)

1. Citation

These Regulations may be cited as the Deeds Registry Regulations.

2. Identity of persons

(1) The identity of persons shall be established by means of their names and dates of birth, or in lieu of the date of birth by a method approved by the Registrar, which shall be entered in the personal and other registers in which transactions relating to any one person are recorded.

(2) The date of birth shall be established by means of the birth or baptismal certificate or an affidavit produced to and filed by the Registrar.

(3) Where proof of the date of birth of any person has already been filed in the registry it will be sufficient to refer to such proof provided the conveyancer concerned certifies to or produces proof of the identity of the party.

(4) In recording the date of birth of any person in the appropriate register the Registrar shall cause

a note to be made therein indicating the document with which such proof is filed.

(5) The Registrar shall rectify any error made in connection with an entry or note of the date of birth of any person appearing in his Registry upon proof to his satisfaction that an error has been made.

(6) The Registrar shall have authority in connection with any deed or document tendered for execution, registration or record to call for evidence to establish the identity or non-identity of any party thereto with any person whose name appears in any register kept in the Registry.

PART II

Preparation of Deeds and Documents (regs 3-27)

3. Deeds, etc., to be written, etc., on paper approved by the Registrar

Deeds, powers, and other documents lodged for execution, registration, or record must be written, printed, or typed on paper approved by the Registrar.

4. Deeds, etc., to be neat

(1) All deeds, powers, and other documents lodged for execution, registration, or record must be neatly and plainly written or typed, or printed with black ink of good quality and a margin of at least 37,5 mm allowed for binding purposes.

(2) Copying ink must not be used, and no carbon copy of any deed, power, or other document shall be accepted for the purpose of being filed in the deeds registry.

(3) Alterations and interlineations will render a deed, power, or other document liable to rejection, but, if made, they must be initialled by the person or persons executing the deed, power, or other document, as the case may be, and also by the persons attesting the same.

(4) If, however, the alterations or interlineations are attested by persons other than the original attestors, such persons shall attach their signatures.

(5) If any signature to a document is written across a stamp, or with other than black ink of good quality, or encroaches on the margin, the Registrar may decline to allow it to be used for the purposes intended.

(6) All alterations and interlineations must, in the case of a deed attested by a notary, be initialled also by such notary.

(7) The upper half of the first page of deeds must not be used for writing, typing, printing, or any other purpose, but must be reserved for the purpose of deeds registry endorsements.

(8) Any of the provisions of this regulation may be relaxed by the Registrar at his discretion.

5. Spaces

Any spaces in a deed which have not been used shall be ruled through, and where a deed comprises more than one page the necessary catch-word shall be written at the foot of each page.

6. Registrar may decline to attest, etc.

If, in the opinion of the Registrar, the writing, typing, or printing in any deed, power, or other document lodged for attestation, execution or registration, or for any other purpose, is, owing to the faintness thereof, not calculated to secure durability, he may decline to attest, execute, register, or accept it, as the case may be.

7. Names, etc., of persons named in deeds

(1) Deeds, powers, and other documents must contain the full names and dates of birth of the persons named therein, excepting such persons who are acting in or are appointed to act in a representative capacity.

(2) The provisions of subregulation (1) may be relaxed by the Registrar in special circumstances in

his discretion.

(3) An addition of an "alias" to the description of any person by or to whom a deed lodged for execution or attestation in a deeds registry is to be passed shall not be permitted, and, if any such addition has been made in any other deed or power, or other document lodged for registration, the correct name only shall be recognized for the purpose of such registration.

(4) Deeds, powers, and other documents if expressed in a foreign language may, at the discretion of the Registrar, be accepted for registration or record if a translation duly certified by a person approved by the Registrar is lodged therewith.

8. Place and date of execution

Every deed and document executed in or lodged for registration or record in the deeds registry shall disclose the place and date of execution thereof.

9. Date and number granted, transfer, etc.

Every deed conferring title to land must quote the date and number of the grant, transfer or other title by which the land is held, and also the date and number of the grant, transfer or other title to which the diagram of the land is annexed or relates, as well as the name of the person in whose favour such last-mentioned grant, transfer, or other title was made.

10. Properties to be specified in separate paragraphs

(1) Where a deed conferring title to land includes more than one property, each piece of land shall be described in a separate paragraph, which shall be numbered, and each paragraph shall conform to the provisions of regulation 9.

(2) A separate registration clause must, if required by the Registrar, be inserted at the end of the deed in respect of each piece of land, which clause shall bear a number corresponding to the number of the paragraph in which the land is described.

(3) When two or more pieces of land are shown as separate figures on a single diagram each piece shall be described in the relevant deed in a separate paragraph, and may thereafter be transferred independently only upon the production of a further diagram thereof.

(4) It shall not be necessary, where separate diagrams of two or more pieces of land are annexed to one and the same deed of transfer and transfer is sought of any of such pieces, to procure from the Director of Surveys and Lands a copy of the diagram thereof for the purpose of annexure to the new transfer.

11. District or township to be named

(1) In describing land in a deed the name of the district in which it is situated shall be quoted and, in the case of land situate in a township, the district and the name of the township.

(2) The registered number, if any, of the land shall be given, and in deeds conferring title to land the usual extending cause shall be inserted.

(3) In describing land no reference shall be made in a deed conferring title to land or in a mortgage bond to any building or other property, movable or immovable, which may be on or attached to the land.

(4) When the description of the situation of land in an existing deed is defective or insufficient, and it is desired in connection with a further transfer of such land to amend the same, the Registrar may, subject, if he thinks necessary, to the production of a certificate from the Director of Surveys and Lands, permit such amendment to be made.

(5) It shall not be necessary to repeat the description (if any) of the boundaries mentioned in a diagram, provided that a suitable reference to such diagram is made in the relevant deed.

12. Extent of land to be expressed in words and figures

In the description of land conveyed or hypothecated in a deed or bond the extent thereof shall be expressed in words and figures.

13. Meaning of "share"

In the description of land the term "share" shall be employed when an undivided share in a piece of land is being dealt with, and such share shall be expressed in one fraction in its lowest terms, the method of arriving at the result being also given in complicated cases.

14. Registrar may require conveyancer to furnish statement

(1) If land to be transferred or hypothecated is held by several deeds the Registrar may require the conveyancer to furnish a statement containing particulars regarding the different fractional shares and describing in complicated cases the method by which the result was arrived at, and also, where there are two or more owners, to indicate in such statement the shares held by each.

(2) If the land is one of several pieces described in a transfer deed or mortgage bond the conveyancer shall furnish a reference to the paragraph therein which relates to such land.

(3) Where possible, in transferring a share in land from two or more titles under which shares are held, one or more titles shall be exhausted.

15. Diagram

No portion of any piece of land shall, except as provided by the Act, be transferred except upon a diagram thereof.

16. Minors

Where it is sought to transfer or cede immovable property to persons who have not attained the age of majority, such transfers or cessions shall, subject to the provisions of section 25 of the Act be made in the names of the minors, and not in those of their guardians, tutors, or curators, as the case may be.

17. Partnerships

(1) All deeds or documents executed by or on behalf or in favour of persons carrying on business as a firm or a partnership, or to which a firm may be a party, as also any power lodged or required in connection with such deeds or documents, must contain the full names of the partners constituting the firm.

(2) When property is registered in the name of persons carrying on business as a firm or a partnership it may, so long as the firm consists of the same partners, be transferred, hypothecated, or otherwise dealt with, as the case may be, on a power bearing the signature of the firm and of the partner who affixed the firm's signature.

(3) If any partner in a firm wishes to transfer his share in any property of the firm to the remaining partners or to the remaining partners and some other person or persons, or to some other person or persons alone, to the end that such remaining partners either alone or together with such other person or persons, as the case may be, shall form a new partnership to hold such property, such transfer shall not be passed unless the whole of the property, and not merely the share of the disposing partner, is transferred or ceded to the new partnership, and the deed, power, or other document necessary for the purpose shall be signed by each of the partners of the original firm or by his duly authorized agent.

(4) In like manner if a new partner is admitted into a firm, and if such new firm wishes to transfer or cede property taken over from the old firm such transfer or cession shall not be passed unless the said new firm has itself received transfer or cession of that property from the old firm.

(5) In the event of any property of a firm not being dealt with on dissolution in the manner described in subregulations (3) and (4), the deed, power or other document necessary for the transfer or cession to the partners thereof or such other persons to whom the same have been disposed of, shall be signed by each of the individual partners or by his duly authorized agent.

(6) If, during the continuance of a partnership any member thereof desires to register any transaction other than an endorsement pursuant to section 43 of the Act, affecting his share in any property registered in the name of the partnership, he shall not be permitted to do so until transfer has been passed to such member of the share to which he is entitled.

(7) When land has been sold by or to a firm or partnership the transfer duty receipt issued in

respect of the sale shall disclose the names of the members thereof.

18. Preparation of deeds

(1) The following procedure shall be observed in the preparation of deeds conferring title to land in regard to the conditions to which such land is or may be subject-

(a) where the land is subject to special conditions limiting the rights of the owner such conditions shall be repeated in every deed conferring title to such land, and where necessary be referred to as mentioned in the deed whereby they were created;

(b) where the land is subject to conditions other than those specified in paragraph (a) they shall, if the Registrar so requires, be repeated in every subsequent deed conferring title to such land, otherwise they shall be specially referred to as mentioned in the preceding deed, and their character be described in general terms;

(c) in any subsequent deed relating to land in connection with which the provisions of paragraphs (a) and (b), or either of them, have been applied, such deed shall follow substantially the preceding deed in its reference to the conditions and omit in this connection any mention of the preceding deed until such time as the land is made subject to further conditions, in which case such further conditions shall also be mentioned or specially referred to in the manner prescribed in such paragraphs;

(d) in every deed conferring title to land the rights of the State shall be expressly reserved;

(e) the number and the date of every deed to which reference is made in connection with conditions shall be quoted;

(f) should the provisions of this regulations not be applicable, the decision of the Registrar in regard to the procedure to be followed shall be observed.

(2) Where it appears from a deed that an owner of land has acquired any right of servitude over other land, such right should also be specially referred to or mentioned and described in every deed conferring title to the first-mentioned land.

(3) If a deed lodged for execution or registration reserves or grants an interest described as a life interest, except when such interest is created by will, the nature thereof shall be disclosed in such deed and in the relative power, if any.

(4) Conditions must, as far as practicable be embodied in the title-deed and appear immediately after the extending clause, and only in exceptional circumstances may they be contained in an annexure.

(5) No condition shall be included in any deed or bond which purports to impose upon a Registrar any duty or obligation not sanctioned by law.

19. Community of property

Where a husband married in community of property desires to deal with land registered in the name of his wife, the wife should affix her signature and the date thereof to the power of attorney in the presence of a witness as evidence that the marriage still subsists, and, if she omits to do so, other satisfactory proof of such subsistence shall be produced.

20. Rehabilitated insolvent

Where in the circumstances contained in the proviso to section 56(6) of the Act it is necessary to pass transfer to the rehabilitated insolvent such transfer may be passed upon a power of attorney signed by the Master.

21. Certificate of right to minerals

A certificate of rights to minerals in respect of the remainder of a township or settlement in terms

of section 68 of the Act shall be issued only on written application of the owner of such remainder or his duly authorized agent.

22. Authority for acts of Registrar

(1) The authority for the performance of any of the acts of registration specified in paragraphs (f), (g) and (h), cessions and cancellations specified in paragraph (j) and the cancellations specified in paragraph (q) of section 5 of the Act shall be given upon a separate sheet of paper by the holder of the bond or the parties to the prospecting contract or by his or their duly authorized agent and shall be signed and duly witnessed.

(2) Every such authority shall describe the bond or the contract and disclose the full name of the legal holder of the bond or of the parties to the contract and shall be retained by the Registrar.

23. Authority to be in duplicate

(1) The authority for the performance of the acts of registration referred to in regulation 22 shall be in duplicate with regard to paragraphs (f) and (h), the cessions and cancellations specified in paragraph (j) and the substitution specified in paragraph (g).

(2) If a duplicate is not furnished a Registrar may accept a copy certified by a conveyancer or notary.

(3) The original shall be retained by the Registrar and the duplicate, or certified copy as aforesaid, shall be annexed to the bond.

(4) When more than one bond is affected by the authority, an additional duplicate or a copy as aforesaid shall be furnished for annexure to each additional bond.

24. Conditions to be included in mortgage or to be referred to therein

(1) Where it is sought to mortgage land held under special conditions limiting the rights of the owner the Registrar may require those conditions to be set out in the bond or a suitable reference made thereto.

(2) Every mortgage bond must contain a full and clear description of the property to be hypothecated, including the extent thereof, and when two or more properties are to be hypothecated each property shall be described in a separate paragraph.

(3) The date and number, if any, of the deed by which the property is held must also be quoted in each paragraph, provided that where more than one property is held by one and the same deed, the date and number of the deed may be quoted after the description of the last of such properties.

(4) When bonds are lodged for the purpose of noting any part payment thereon such part payment need not be noted on the title-deed of the property affected.

(5) The deed of cession of a bond shall set forth the *causa* of such cession.

(6) Where application is made for the registration of a cession of a bond which has been previously ceded but such previous cession or cessions have not been registered, the applicant shall furnish the Registrar with all previous cessions or notarially certified copies thereof which previous cessions need not be registered.

(7) Where the cession of a bond has, prior to the commencement of these Regulations, been endorsed upon such bond the Registrar may accept for filing a duplicate original of the cession or an acknowledgement of such cession, in terms approved by him, signed by the cedent and duly witnessed, or a notarially certified copy of such cession.

(8) Any waiver of preference in respect of a registered real right in land (including rights mentioned in section 63 of the Act which may be contingent) to or in favour of the legal holder under a registered or registrable mortgage bond shall, if such bond has been registered, be contained in a notarial deed or in such bond as the owner of such right may elect.

(9) Every waiver registered in terms hereof shall be duly noted on the owner's title to such right, and in the case of a registered bond on such bond.

25. Consent of holders of bonds

(1) The consents of the legal holders of bonds referred to in sections 27 and 97 of the Act shall be furnished in duplicate.

(2) If a duplicate is not furnished, the Registrar may accept a copy certified by a conveyancer or notary.

(3) The original shall be retained by the Registrar and the duplicate or copy shall be annexed to the bond.

26. Deeds to be prepared by conveyancer

Every deed of transfer, certificate conferring title to immovable property or mortgage bond shall be prepared by a conveyancer and shall bear an endorsement signed by such conveyancer that it was prepared by him, and he shall also initial personally all alterations or interlineations in such transfer certificate or bond and every page thereof not requiring his signature if such transfer certificate or bond is written on separate sheets; and no such transfer certificate or bond shall be accepted for execution or registration which does not bear such endorsement and is not so initialled:

Provided, however, that in cases where the alteration or interlineation does not, in the opinion of the Registrar, require initialling by the preparing conveyancer, such alteration or interlineation shall be initialled by the executing conveyancer; this proviso does not apply to a certificate of title.

27. Powers of attorney

(1) Every power of attorney or other authority to perform an act in the deeds registry, every deed of partition, and every agreement or consent by a bondholder, owner of immovable property or holder of any real right prescribed by the Act or regulations, executed in Botswana after the commencement of these Regulations, and tendered for registration or record in a deeds registry, shall be prepared by a practising attorney, notary or conveyancer and shall bear an endorsement signed by the attorney, notary or conveyancer and shall bear an endorsement signed by the attorney, notary or conveyancer, who prepared such power, authority, deed, agreement or consent, that it was prepared by him; and no such power, authority, deed, agreement or consent, shall be accepted by the Registrar for registration or record which does not bear such endorsement.

(2) Any alteration or interlineation shall also be initialled by the person who prepared such document.

PART III

Lodgement and Execution of Deeds (regs 28-42)

28. Lodgement for examination

(1) All deeds, bonds, documents, and powers of attorney proper for execution or registration, as the case may be, in the deeds registry shall be lodged for examination by the owner or by an attorney, notary or conveyancer practising at the seat of the Registry with the receiving clerk (who shall note thereon the date of lodgement), at any other time during office hours.

(2) Powers of attorney shall be lodged singly, and all other deeds described in subregulation (1) shall be lodged in duplicate except where the Registrar otherwise directs.

(3) In the event of two or more mortgage bonds being passed on the same day by one and the same mortgagor over the same property, the Registrar shall, if each bond does not disclose the order in which it is to rank, note on each the exact time at which he affixed his signature thereto.

(4) Deeds lodged for execution by 5 p.m. on Tuesday in any week shall, if circumstances permit, be passed for execution or rejected by 5.15 p.m. on the following Friday.

(5) Deeds passed for execution shall be executed before the Registrar between such hours as the Registrar in his discretion may fix.

(6) The Registrar shall have discretion to reject deeds not executed within such time.

(7) Registration shall be deemed to have been effected upon entry in the appropriate register.

(8) Although a deed is to be fully examined in the first instance, if a defect of such a nature as to justify rejection is discovered in connection with any deed or other document lodged for execution or registration, the Registrar shall have power to direct that the further examination of the deed shall be postponed until the defect has been cured and to reject such deed in the ordinary course.

29. Time of cession

No cession of a balance due under any bond shall be registered until the amount paid in reduction thereof has been written off in the appropriate register, nor may any bond, part of the capital amount of which has been repaid be substituted under the provisions of section 55 of the Act until the part-payment has been so written off.

30. Production of documents

(1) Where application is made under the provisions of section 43 of the Act, there shall be produced, in addition to the title-deeds and bonds, the undermentioned documents-

- (a) proof of the appointment of the executor in the estate of the deceased spouse;
- (b) where transfer duty is payable, a receipt for such duty; a certificate, that all taxes, duties, and fees payable to the Government or local authority have been paid;
- (c) where the property or bond was bequeathed to such survivor, a copy of the will certified by the Master;
- (d) where the property was purchased from the estate by such survivor, being also the executor in the estate, an order of court confirming the sale;
- (e) where action is being taken under sections 47, 49 or 52 of the Cap. 31:01 Administration of Estates Act, a certificate of consent from the Master;
- (f) in circumstances where no consent or certificate of the Master is required, a certificate from the Master or a conveyancer that the liquidation account in the estate has lain for inspection, that no objection thereto has been received and that the endorsement to be made is in terms of the account;
- (g) where such survivor is an heir in terms of section 4 of the Cap. 31:03 Succession (Rights of Surviving Spouse and Inheritance Family Provisions) Act-
 - (i) proof that the deceased spouse left no valid will; and
 - (ii) proof of the balance of the estate for distribution by means of a certificate of the Master or a copy of the liquidation account certified by the Master.

(2) When a title-deed is endorsed under section 43 of the Act the Registrar shall make an appropriate note in the land register affected.

31. Land transfer in pursuance of a will etc.

(1) Where land is to be transferred in pursuance of the provisions of a will, codicil, or other testamentary instrument, a certified copy of the will, codicil, or other testamentary instrument, as the case may be, shall be lodged with the deed.

(2) The Registrar may also in the exercise of his discretion require any executor who seeks to transfer land belonging to the estate under his administration, to lodge a certified copy of the will, codicil, or other testamentary instrument, and of the liquidation account in the estate.

(3) If, however, a copy is already lodged in the deeds registry, it will be sufficient if a note is made in either case on the deed indicating the number and the date of the deed with which such copy is filed.

(4) Where land is sought to be transferred by an executor in pursuance of-

(a) the exception (b) to section 21 of the Act, there shall be lodged with such transfer a certificate by the Master or the executor or a conveyancer that the land has been sold to pay the debts of the joint estate; or

(b) the exception (c) to section 21 of the Act, there shall be lodged with such transfer a certificate by the Master or a conveyancer that the surviving spouse has adiated under the will whereby the joint estate is massed or a statement to that effect signed by the surviving spouse and duly witnessed.

32. Production of title deed

(1) Where it is sought to deal with immovable property, the title-deed of such property, or a certified copy thereof issued to serve as an original, shall, except as provided in subregulation (3), be produced and be mentioned in the deed dealing with such property.

(2) It shall, however, not be necessary, unless the Registrar so requires, to produce any deed by which the property was previously held, whether such deed be the diagram deed or any intermediate deed, nor shall the Registrar be required to endorse thereon any record of subsequent dealings with the property.

(3) Where immovable property is to be transferred or ceded in execution of the judgment of any competent court by the officer appointed by law, or by such court, it shall not be necessary to produce the title-deed of such property or a certified copy issued in lieu thereof if such officer certifies in writing that he has been unable to obtain possession of such title-deed or copy:

Provided that where the duplicate original of such title-deed filed of record in a deeds registry has been lost or destroyed it shall be necessary for such officer to obtain a certificate of registered title under the provisions of section 36 of the Act, for which purpose such officer shall be regarded as the owner of the land, and no transfer thereof shall be executed until a conveyancer has lodged with the Registrar a certificate that he has searched the register of transfers, and that it contains no record of a transfer of the land conveyed by the person from whom it is proposed to be alienated.

33. Arbitration

Where, in the partition of land or rights to minerals an undivided share in such land or rights to minerals is registered in the name of a deceased person, or of his or her estate, or of his or her surviving spouse, the Registrar shall, if it comes to his notice that such share has been bequeathed, require not only the consent of the Master in terms of section 49 of the Administration of Estates Act on behalf of legatees who may be minors, but also the consent of the major legatees, if there are such, unless it can be proved to his satisfaction by documentary evidence that the partition was agreed upon during the lifetime of the testator.

34. Transfer in favour of estate of a deceased person

(1) Where immovable property has been acquired by any person not married in community of property and transfer thereof has not been effected during the lifetime of such person, the transfer deed shall be made out in favour of the estate of such person.

(2) A certificate of registered title, of consolidated title or of amended title of land which is registered in the name of a person since deceased, shall be issued in the name of the registered owner (deceased), and not in favour of his estate.

35. Value of immovable property

Where in the circumstances provided in section 15(1)(b)(ii) of the Act transfer direct to a purchaser is lodged, such deed of transfer shall not be executed unless proof of the value of the immovable property being dealt with is furnished by means of a written valuation by a sworn appraiser.

36. *Fideicommissum*

Where transfer is lodged in the circumstances provided in section 30(1) of the Act such transfer shall not be executed unless proof that the land awarded on partition to the owner of any share subject to a

fideicommissum is an equivalent of that share, is furnished by means of the written report of a sworn appraiser or of an impartial person approved by the magistrate of the district in which the property is situate.

37. Deeds, etc., in favour of bank, etc.

In the event of any deed of transfer or any mortgage bond either by or in favour of any bank, company, church, association, society, or other body or institution, or of any trustees or other officers thereof, being lodged for execution or registration in the deeds registry or of any consent to the performance of any act on behalf of any one or other of them being lodged in such registry, there shall be produced for record purposes a certified copy of or a relevant extract from the deed of constitution or regulations of such body or other institution and of such further evidence as may be necessary to prove that the transaction is within the scope of its constitution or regulations.

38. Consolidated title

Any person making application to the Registrar for a consolidated title, or for an amended title comprising more than one piece of land, shall, if the diagram of the land in respect of which such application is made does not contain a description of the several pieces of land comprised therein corresponding so far as may be material for purposes of identification with that contained in the existing title-deeds, cause to be lodged with his application a certificate containing such description from the Director of Surveys and Lands.

39. Servitudes

(1) Whenever it appears from any statement on the diagram of a portion of a piece of land about to be transferred that the transferor has granted a servitude in favour of such portion over the remaining extent thereof or over some other land adjoining the land to be transferred and registered in the transferor's name, or has imposed a servitude over such portion in favour of such remaining extent or other land, such servitude shall be embodied in the power given for the purposes of the transfer of such portion and also in the relative deed of transfer.

(2) If a diagram lodged with an application for any certificate of title contains a statement indicating the creation of a new servitude, the Registrar shall decline to issue such title, unless there has been lodged for registration with the application a notarial deed embodying the terms of such servitude; or unless such servitude is only to be created on eventual transfer of the land affected.

(3) The land affected by a servitude shall be sufficiently described, and the number and date of the deed by which it is held shall be quoted.

(4) The provisions of subregulation (3) in respect of the number and date of the deed may be relaxed by the Registrar in special circumstances in his discretion.

40. Cancellation

(1) Where cancellation of registration is sought under the provisions of section 65(2) of the Act, the Registrar may accept a unilateral notarial deed of cancellation by the holder of such servitude provided such deed does not impose any obligation upon the owner of the land.

(2) The Registrar may accept for registration a unilateral notarial deed of-

- (a) cancellation of a *fideicommissum* by the *fideicommissary* heirs;
- (b) cession of a personal servitude mentioned in section 63 of the Act in favour of the owner of the land encumbered thereby; and
- (c) cession of mineral rights by the holder of such servitude or rights:

Provided that such deed does not impose any obligation upon the owner of the land under paragraph (a) or upon the cessionary under either paragraph (b) or (c).

41. Endorsement of title deeds

(1) In the circumstances mentioned in section 73 of the Act, the title deeds of the land affected shall be endorsed as to the nature of the praedial servitude created in a deed of transfer.

(2) If however, the description of the servitude is of such lengthy or complicated nature as to render an effective reference thereto or a transcription thereof impracticable by endorsement, an extract thereof certified by the conveyancer executing the deed of transfer shall be lodged for annexure by the Registrar to the originals and office duplicates of the deeds affected and a suitable reference to such extract shall be made by the Registrar upon such deeds.

42. Reference to documents already filed

(1) If, in connection with the execution or registration or filing of record of any deed, power or other document, reference is necessary to any deed or document already filed or registered in the Deeds Registry, the number and year of that deed, or of the deed with which such document is filed, or the number under which it is registered, must be furnished when the deed, power or document is lodged for execution or registration or record.

(2) When any deed, power, or document to which reference is necessary is of a lengthy character, it shall be the duty of the conveyancer or other person concerned to indicate the particular clause thereof which relates to the question to be determined.

(3) An additional fee prescribed by the schedule of fees of office may be levied in cases where a wrong reference has been given, and, if so levied, shall be affixed to the deed, power, or other document.

(4) All deeds, bonds, diagrams, or documents necessary in connection with the examination, execution, or registration of any deed, bond, power, or other document lodged in the deeds registry, including all receipts or certificates required by law to be produced, shall accompany such deed.

(5) The Registrar shall not execute or attest a deed or bond unless the title-deeds and bonds thereon for cancellation, release or substitution accompany the deed or bond lodged for execution except where such production is specifically waived under the Act or these Regulations.

(6) When a deed lodged by any person for execution or registration or any other purpose is intended to be executed or registered, or otherwise dealt with, in conjunction with a deed lodged by another person, a note to that effect shall be made by the conveyancers or other persons responsible for the lodgement thereof on the several deeds concerned.

(7) If any conveyancer omits to comply with this regulation, the deed in respect of which such omission has been made, may, if in order, be executed, registered, or otherwise dealt with independently of such other deed.

(8) If, in connection with the execution or registration of any deed, power, or other document, it is necessary to prove the appointment of any executor, trustee, tutor, curator or assignee, the original appointment granted under the hand of the Master shall be produced, or a certified copy of such original appointment or a certificate thereof, issued by the Master, and such original copy or certificate, as the case may be, shall be accepted by the Registrar for all purposes until he receives from the Master notification of any revocation of, or change in, any such appointment.

PART IV

Powers and Certified Copies thereof (reg 43)

43. Agents

(1) Any person seeking to pass, cede, or cancel a deed or to perform any other act in the deeds registry on behalf of any other person must, except as hereinafter provided, lodge for filing with the Registrar the original power under which he claims to act.

(2) Powers must specify the date as well as the place of their execution, the latter being described sufficiently to enable the Registrar to judge whether or not it is situated within Botswana.

(3) A special power of attorney to transfer, hypothecate, or otherwise deal with land or other immovable property shall clearly and sufficiently describe the same and the registered number, if any, and the date of the deed whereby such land or other immovable property is held, should be quoted and in a power of attorney to transfer land the date of disposal of such land.

(4) A general power of attorney shall not be available for the purpose of dealing with immovable property unless it contains express authority empowering the agent to do so.

(5) If an original power is filed of record in any deeds registry in the Republic of South Africa, Namibia, Zimbabwe, Zambia or Malawi the Registrar may accept a copy thereof certified under the hand and seal of the Registrar at any such deeds registry, if such copy bears an endorsement signed by the Registrar issuing the same that it has been issued for use in the deeds registry of Botswana.

(6) If an original power is filed of record in the office of the Registrar or Master of the court or in the office of the Mining Commissioner in his capacity as a registration officer, the Registrar of Deeds may recognize, as and for the purposes of an original, any copy certified under the hand and seal of such Registrar or Master of the court, or of such Mining Commissioner, whether it is already lodged in the deeds registry under his charge or is hereafter lodged therein.

(7) A notice of the revocation of any power of attorney filed in a deeds registry will only be recognized if it is signed by the mandant or by some person expressly authorized by him in writing to revoke the same.

(8) If a power of attorney is printed or written on a form of mortgage bond or deed of transfer, or authorizes the passing of a bond or transfer on a form annexed thereto, such form shall not be accepted for execution and registration as a bond or transfer.

PART V

Copies of Deeds and Documents (regs 44-47)

44. Copies for information

Copies of deeds conferring title to land or to any interest therein and copies of mortgage or notarial bonds, required for information only, shall be issued on the application of any person and the words "Issued for information only" shall be written or stamped on the face of every copy so issued.

45. Copies for judicial purposes

Where copies of deeds conferring title to land or to any interest therein and copies of mortgage or notarial bonds are required for judicial purposes, they shall be issued on a written application signed by an attorney of the court and the words "Issued for judicial purposes only" shall be written or stamped on the face of every copy so issued.

46. Deeds lost or destroyed

(1) If any deed conferring title to land or interest therein or any real right, or any registered lease or any mortgage or notarial bond, is lost or destroyed and a copy is required for any purpose other than one of those mentioned in regulation 44 or 45, the registered holder thereof or his duly authorized agent may make written application for such copy, which application shall be accompanied by an affidavit describing the deed and stating that it has not been pledged and is not being detained by any one as security for debt or otherwise, but that it has been actually lost or destroyed and cannot be found though diligent search has been made therefor, and further setting forth where possible the circumstances under which it was lost or destroyed.

(2) If the circumstances of the loss or destruction are not stated, or if they are stated and the Registrar is of opinion that further evidence is necessary, either from the applicant himself or some other person in whose custody the deed, lease, or bond may have been before the loss or destruction thereof, to establish such loss or destruction, he shall be entitled to call for such evidence.

(3) If such a registered holder is deceased or a lunatic, or is insolvent, or has assigned his estate for the benefit of his creditors under the provisions of the Cap. 42:02 Insolvency Act, or is a company under official liquidation, then the application and affidavit may be made by the legal representative of the estate or by the liquidator of the company:

Provided that if such representative or liquidator is not able to produce evidence definitely establishing the loss or destruction of the deed the Registrar may, on being satisfied that all necessary steps have been taken to recover the same, issue a copy thereof upon compliance with the further requirements of this regulation.

(4) The applicant shall also insert once in the *Gazette* and once a week in two consecutive weeks in such newspaper as is mentioned in section 36(2) of the Act and in the case of a notarial bond in a newspaper circulating in the area where the bondholder resides and carries on business, a notice in the

following form-

"LOST

..... (here insert description of the deed).

Notice is hereby given that I intend applying for a certified copy of

(here insert description of the deed) No, dated

....., passed by
(here insert the name of the person, if any, passing the deed, and if none omit the word "by". In the case of bonds insert the word "for" and the amount thereof in figures)

in favour of

(here insert the name of the person in whose favour the deed was passed)

in respect of certain (here insert
a description of the property still held under the title deed). (Omit the words "in respect of certain" in the case of a notarial bond.) All persons having objection to the issue of such copy are hereby required to lodge the same in writing with the Registrar of Deeds within three weeks from the last publication of this notice.

Dated at this day of
....., 20

.....
(Signature of Applicant or of his Attorney)".

(5) The applicant shall lodge with the Registrar the application and affidavit aforesaid and a copy of each issue of the newspaper in which such notice appeared, and shall furnish a reference to the number and date of the *Gazette* in which it was published.

(6) After the expiry of the time mentioned in such notice the Registrar shall, if he is satisfied that no good reason to the contrary exists, issue the certified copy asked for:

Provided that no such copy shall be issued until the Registrar has searched the registers and has made suitable endorsements regarding transactions, if any, registered therein in connection with the deed or bond concerned.

(7) If a copy issued to serve as an original is itself lost or destroyed, the Registrar may, subject to the fulfilment *mutatis mutandis* of the conditions prescribed in this regulation in regard to the loss of originals, issue a further copy to serve in lieu of the original.

(8) If any deed referred to in subregulation (1) hereof or any registered lease or any mortgage or notarial bond has for any reason become unserviceable, it shall be competent for the Registrar to issue a certified copy thereof to serve in place of the original on written application being made to him by the owner or the legal holder or the duly authorized agent of such owner or holder:

Provided that the original deed shall be lodged with such application and if any such deed, lease, or bond is lodged for any purpose without an application for a certified copy, the Registrar shall have power, if in his opinion the same is not serviceable for the purposes intended, to require a certified copy to be taken out.

(9) In the event of any deed, lease, or bond, in lieu of which a copy has been issued under the provisions of this regulation being subsequently found and produced to the Registrar, he shall endorse thereon that it has become void except in the case of a deed of transfer affected by the provisions of section 32(2) of the Act when the provisions of subregulation (12) hereof shall apply.

(10) If the registered holder of a mortgage or notarial bond (which has been lost or destroyed) or his duly authorized agent, desires to procure cancellation of the entry relating to the same in the register, and

has made written application duly witnessed to the Registrar to cancel such entry, and has complied *mutatis mutandis* with the provisions of subregulations (1), (2), (3), (4) and (5), the Registrar shall, after the expiry of the time mentioned in the notice referred to in the said subregulation (4), if he is satisfied that no good reason to the contrary exists, cancel such entry or write off such amount and the cancellation of such entry shall be deemed to be a cancellation of the aforesaid bond without a formal consent to cancellation.

(11) In the circumstances mentioned in section 32(2) of the Act the provisions of this regulation shall *mutatis mutandis* be complied with.

(12) Where any person has obtained a certificate of registered title under the provisions of section 32(2) of the Act, the Registrar shall endorse upon the registry duplicate of the lost or destroyed deed the fact that a certificate has been issued in respect of the share of the applicant under the aforesaid action and if the lost deed is found and produced to the Registrar a similar endorsement shall be made thereon.

47. Certified copies

If a certified copy of any document not specified in regulation 45(1) is required by any person, such person may obtain the same upon application and within such period as circumstances will permit.

PART VI

Miscellaneous (regs 48-53)

48. Business at the Deeds Registry

Business with the deeds registry shall be conducted in person or through an agent and not by correspondence.

49. Prospecting contracts

(1) If a portion of any piece of land held under a title-deed, or the rights to minerals over a portion of the area over which the grantor's rights extend, form the subject of a prospecting contract, a diagram of that portion must, if required by the Registrar, be annexed to such contract.

(2) Where land or rights to minerals are registered in the names of two or more joint owners, it shall be competent for the Registrar to register a prospecting contract relating to such land or rights to minerals granted by one or more of such joint owners without the consent of the remaining joint owners, provided such contract is clearly expressed to be granted solely in respect to the grantor's undivided share of the land or rights to minerals.

50. Cession of rights to minerals

(1) In the event of any rights to minerals on a portion of any piece of land held under any title being leased or ceded, it shall be necessary for the registration of such lease or cession that a diagram of such portion be annexed to each copy of the deed or lease or cession lodged for registration, unless such portion is already registered as a separate entity.

(2) Subregulation (1) shall also apply to leases and subleases of land and to subleases and cessions of rights to minerals affecting only a portion of the ground held under the original leases or cessions, and also to deeds creating or defining servitudes, whether created or defined by the parties thereto or by order of the court, unless such leases and sub-leases of land and such servitudes subject to the provisions of any law are, in the opinion of the Registrar, sufficiently described in such deed or order, as the case may.

(3) Before registering any notarial deed in regard to rights to minerals or issuing any certificate prescribed by section 75 of the Act or registering any deed of transfer containing a reservation of such rights as are contemplated by section 70 of the Act, the Registrar may require a certificate from a conveyancer that there is no record in or on any title-deeds relating to the land concerned indicating that the rights described in such first-mentioned deed, certificate, or transfer have been reserved or alienated.

51. Mynpacht provided

(1) When it is sought to register the cancellation of a mynpacht brief, which has been lawfully cancelled, it shall not be necessary to produce the mynpacht brief to the Registrar, who on the production of the lawful authority for such cancellation shall make the necessary notes in his registers in reference thereto and on the duplicate original title-deed of the land against which the mynpacht has been registered.

(2) In such cases it shall also be unnecessary to produce any mortgage bond over the mynpacht and the Registrar shall note in the Debt Register that the title to the mortgaged property has been cancelled.

52. Transfer of certain rights

The holder of a real right mentioned in section 61(1) of the Act may transfer the whole thereof (if transferable), without first obtaining a certificate as mentioned in the said section.

53. Endorsement on bonds

The endorsement on a bond prescribed by section 61 of the Act shall disclose what portion of the mortgaged property has been sold.

PART VII

Forms (reg 54)

54. Form of certificate of title

The certificates of title to be issued by the Registrar under the Act, and the further deeds or documents prescribed thereunder or under these Regulations, shall be prepared substantially in the forms prescribed by the Registrar.