

REGISTRATION OF TITLES BILL, 2013

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A BILL FOR AN ACT

ENTITLED

REGISTRATION OF TITLES ACT 2013

An Act to provide for the registration of title to land and interests in land, to guarantee title to land and interests in land, to improve the administration of land titles, to facilitate dealings with land and interests in land, and for related purposes.¹

PART 1 — PRELIMINARY

1 Short title

This Act is the Registration of Titles Act 2013.

2 Purposes of this Act [new]²

The purposes of this Act are to:

- (a) provide for the registration of title to land and interests in land;
- (b) guarantee title to land and registered interests in land;
- (c) simplify title to land and facilitate dealings with land;
- (d) facilitate transition to a parcel-based register of land ownership, and merge existing land registers into a single Register;
- (e) facilitate decentralisation of the Register;
- (f) facilitate computerisation of the Register and electronic transactions with land;
- (g) facilitate public access to, and confidence in, the Register;
- (h) reduce the incidence of fraud in land transactions;
- (i) define the powers, functions and duties of the Registrar;

¹ This long title is an expanded version of the long title in the *Registration of Titles Act* (cap 230) — in these footnotes called the “RTA” — to emphasise the wider ambit of this new draft Act.

² This section provides a statement of purpose, to help readers understand the scope of the Act and to guide courts in its interpretation.

- (j) encourage increased efficiencies in, and best-practice management of, the Registry.

3 Relationship to other laws [RTA 2]³

- (1) This Act is to be interpreted as not limiting the provisions of any law relating specially to the property of married women.⁴
- (2) If an inconsistency exists between a provision of this Act and:
 - (a) a provision of the Land Act cap 227, the Land Act prevails to the extent of the inconsistency;
 - (b) the Mortgage Act 2009, the Mortgage Act prevails to the extent of the inconsistency.
- (3) Subject to subsections (1) and (2), if an inconsistency exists between a provision of this Act and another law, this Act is presumed to prevail, unless the contrary is shown.

4 Definitions and interpretation [RTA 1]

- (1) In this Act, unless the context requires otherwise, a reference to:
 - (a) a law includes a reference to the law as amended or re-enacted from time to time;
 - (b) a person includes a natural person, body corporate or body unincorporate, including a company, partnership, unincorporated association, government or state;
 - (c) publishing a document or notice, or causing it to be published, includes publishing or causing it to be published in printed or electronic form;
 - (d) registering or recording an instrument or information in the folio of the Register is a reference to registering or recording it in (or in the case of a folio kept in paper form, on) the folio of the Register for the land concerned;
 - (e) the singular includes the plural and vice versa.
- (2) Headings in this Act do not affect its interpretation.

³ The purpose of this provision is to help resolve conflicts between this Act and others. Special provision is made for the Land Act and the Mortgage Act. Otherwise, this Act (including its guarantee of title) is presumed to prevail over other Acts, unless the other Act expressly (and not merely impliedly) provides otherwise. The presumption can be rebutted; but it will provide a useful starting point.

⁴ This subsection reflects section 2(2) of the RTA.

- (3) In this Act, unless the context indicates otherwise, the following words have the meanings indicated:

approved form means a form approved by the Registrar;

bankruptcy includes insolvency or liquidation;

caveatee means the person against whose registered interest a caveat is lodged;

caveator means the person by or on whose behalf a caveat is lodged;

certificate of title means a certificate issued under section 38;

conveyancing agent means a person referred to in section 183;

correct (used as a verb) includes correct by way of addition, omission or substitution;

Court means the High Court;

dealing means an instrument or matter by which land or the title to land can be affected or dealt with;

deed of grant means a document evidencing the grant of land (including leasehold) by the Crown,⁵ state or similar authority;

deposit means file with the Registrar other than for registration;

document means any paper or other material (including electronic material) containing writing, words, figures, drawings or symbols;

duplicate certificate of title means a duplicate certificate of title issued under the *Registration of Titles Act* (cap 230);

error includes an error by omission;

family land has the meaning given in section 38A of the Land Act cap 227;

fee includes tax;

folio of the Register⁶ means a folio of the Register created under this Act;

⁵ "Crown" is the conventional term in property statutes. However, in Uganda a better term might be "Government", since after independence land became "Government" land.

⁶ This Act uses the term "folio of the Register" in place of "original certificate of title" (ie, the "white page", as it is commonly called). The term "folio of the Register" is now common in modern

fraud means a consciously dishonest act, and not mere constructive or equitable fraud;⁷

instrument includes:

- (i) a deed of grant or certificate of title;
- (ii) a document that relates to or may be used to deal with land;
- (iii) a power of attorney that may be used to deal with land;
- (iv) a request, application or other document that deals with land;
- (v) a map, sketch plan, plan of survey, plan of subdivision, or diagram;
- (vi) an order of a court;

interest (in relation to land) means an interest of any kind in the land;

land includes any interest in land;

law includes legislation and subsidiary or delegated legislation;

lease includes a sublease;

limited folio means a folio of the Register that is subject to a notation under section 20;

lodge, in relation to a document, means depositing or lodging the document for registration or recording under this Act, and includes, in addition to physical depositing or lodging, any method of depositing or lodging permitted by the Registrar under section 125;

minor means a person under the age of 18;

mortgage includes a charge on land to secure a debt or any other obligation;

ordinary folio means a folio of the Register that is not a limited folio;

ownership interest in relation to land means any of the following:⁸

- (i) customary ownership;

Torrens title statutes, as it more easily accommodates the computerisation. Following on from this, this Act also uses the term “certificate of title” in place of “duplicate certificate of title”.

⁷ This definition is intended to capture the judicial explanation of the term “fraud” as it is used in Torrens title statutes.

⁸ This definition is intended to reflect the incidents of forms of tenure set out in s 3 of the Land Act.

- (ii) freehold ownership;
- (iii) mailo ownership;
- (iv) leasehold ownership;

in each case with the incidents described in section 3 of the Land Act cap 227;

plan of subdivision means a plan of survey that relates to the subdivision of land;

plan of survey means a plan that defines or adjusts land boundaries, and that is prepared and certified by a qualified surveyor;

Practice Manual means the Practice Manual of Office Procedures to be published under section 184;

prescribed means prescribed under regulation;

produce, in relation to a certificate of title, means to lodge it at the Registry to allow registration or recording of an instrument;

register (used as a verb in relation to land, or in relation to an instrument or other thing) means record the particulars of the thing in the Register;

Register means the Register kept under section 7;

registered owner,⁹ in relation to land, means the person registered in the Register as holding an ownership interest in the land;

registered proprietor, in relation to land, means a person registered in the Register as entitled to any interest in the land (whether or not in possession, and whether or not that person is also the registered owner of the land);

Registrar means the person holding office as Registrar under section 5;

Registry means the office or offices maintained by the Registrar in the administration of this Act;

renew (in relation to a lease) includes extend;

⁹ This Act distinguishes between the “registered owner” of land (ie, the person who in fact “owns” the land) and a “registered proprietor” (who may have any interest – freehold or less than freehold – in the land).

rent includes any amount due under a lease, whether or not described in the lease as rent;

sketch plan means a plan or drawing that is drawn to a standard that satisfies the requirements of the Registrar, but is not a plan of survey;

statutory charge means a charge on land established by or under a law;

tenant by occupancy means a lawful or bona fide occupant declared to be a tenant by occupancy under section 31 of the *Land Act*;¹⁰

term includes a covenant or condition;

transmission means the passing of title to land in any manner other than by transfer;

Warrant of execution means a Warrantor warrant of execution after judgment in a court.

- (4) **Notes and Examples** appearing in this Act are for information only, and do not form part of the text of the Act.

PART 2 — ADMINISTRATION

Division 1 — The Registrar

5 The office of Registrar¹¹ [RTA 3, 4, 5]

- (1) The office of Registrar is created as a corporation sole.¹²
- (2) The Registrar must administer this Act.
- (3) In administering this Act, the Registrar must do his or her best to ensure that inefficiencies and corruption are minimised.
- (4) The Registrar may appoint one or more District Registrars, Deputy Registrars, Assistant Registrars and other officers, to help the Registrar administer this Act.¹³
- (5) Anything that may lawfully be done by the Registrar may be done by a person appointed under subsection (4).

¹⁰ This uses the definition of this term found in the proposed (but not enacted) *Registration of Titles (Amendment) Act 2005*.

¹¹ For convenience, this draft Act uses the title “Registrar”, rather than the more compendious “Commissioner for Land Registration” (introduced by section 3 of the *Land (Amendment) Act 2004*).

¹² Subsection (1) may need amending if the proposed Land Information System (LIS) legislation provides for the appointment of the Registrar.

¹³ The power to appoint “officers” will cover the appointment of valuers, currently appointed under section 6 of the RTA.

- (6) A person dealing with the Registrar’s office may assume that acts done or records made have been done or made with authority.

6 Seal of office and signature [RTA 4, 5, 53]

- (1) The Registrar has a seal of office, bearing the words “Office of Titles, Uganda”.
- (2) Unless the contrary is shown, a document purporting to bear the Registrar’s seal of office or signature is to be taken to be sealed or signed by the Registrar or at the Registrar’s direction.

Division 2 – Establishing and maintaining the Register

7 Keeping the Register [RTA 37]

The Registrar must keep a register of land (in this Act called “the Register”).

8 Form of Register [new]

- (1) The Register may be kept in manual or electronic form, or in a combination of manual and electronic forms.
- (2) The Registrar may change the form in which the Register, or any part of it, is kept.

9 Computerising the Register and land records [new]

The Registrar must take all necessary steps, within financial and administrative constraints, to computerise the Register and the retrieval of land records.

10 Decentralising the Register [RTA 37(1), (2)]¹⁴

- (1) The Registrar may maintain one or more Registry offices in different parts of Uganda, and may delegate to those offices whatever functions the Registrar considers appropriate for the efficient conduct of land registration in different parts of Uganda.
- (2) However, the Registrar may not delegate to those offices functions under Part 20 in relation to the Compensation Fund, including the payment of claims under that Part.¹⁵
- (3) The Registrar must take all necessary steps, within financial and administrative constraints, to facilitate access to the Register by citizens of Uganda regardless of where they live in Uganda.

¹⁴ Subsection (1) of this section is based on RTA section 37(1), (2). Subsection (2) is new, to give effect to Government policy of decentralising the Register.

¹⁵ This reflects our recommendation in the Draft Final Issues Paper that, even if the general aspects of the Register are decentralised, the need for consistency in the payment of compensation from the Fund is so important that payments should be only made from a central office.

11 A unified, parcel-based Register [new]¹⁶

- (1) The Registrar must take all necessary steps, within financial and administrative constraints, to merge all existing land registers (freehold, mailo and leasehold) into a comprehensive, unified Register, that:
 - (a) is a complete record of registered interests in land in Uganda; and
 - (b) is based on land parcels, with each parcel having its own unique identifier and all dealings with the land being registered or recorded against that identifier.
- (2) In order to comply with subsection (1), the Registrar may:
 - (a) call in, amend or cancel any documents (including certificates of title and duplicate certificates of title);
 - (b) take any other action the Registrar considers appropriate.
- (3) In taking any steps under subsections (1) and (2), the Registrar must ensure that existing rights attaching to the land are not diminished in any way.

Example: Suppose that a freehold title exists for land, with a separate leasehold title for a lease over that land. Under subsections (2) and (3), the Registrar could call in and cancel the leasehold title, but must register the lease against the freehold title for the land. A search of the freehold title would show the lease as a registered interest binding the freehold title. This “combining” of the titles helps unify the land registers, but does not diminish the lessee’s rights, for the lessee retains a registered lease over the land.

12 Studies and pilot schemes [new]

In order to carry out any obligations or powers under this Division, the Registrar may conduct studies and pilot schemes.¹⁷

Division 3 – Bringing land under Act

13 Land brought under Act by creation of folio of Register [new]¹⁸

Land is brought under this Act by the creation of a folio of the Register for the land.

¹⁶ This section implements the recommendations in a number of studies, to the effect that there should be a single land register (and not, as at the moment, separate freehold, mailo and leasehold registers), and that it should be based on unique parcel identifiers: see, eg, Private Sector Competitiveness Project (PSCP II), *Baseline Evaluation Report* (May 2007), pp 46-52.

¹⁷ This is to permit the Registrar to experiment before undertaking large-scale and permanent change.

¹⁸ Note the new terminology, explained earlier: “folio of the Register” (for “certificate of title”) and “certificate of title” (for “duplicate certificate of title”).

14 Creation of folio of Register [cf RTA 7, 11-28, 46]¹⁹

- (1) Whenever an Act requires the Registrar to bring land under this Act, or to issue or create a certificate of title for land or an ownership interest in land, the Registrar must create a folio of the Register for the land.
- (2) For the avoidance of doubt, the Registrar complies with an obligation of the kind in subsection (1) by creating a folio of the Register for the land.
- (3) Whenever an Act permits the Registrar to bring land or an ownership interest in land under this Act, or to issue or create a certificate of title for land or an ownership interest in the land, the Registrar may create a folio of the Register for the land.

Note: This section does *not* require the Registrar to create a folio of the Register on being notified of the issue of a certificate of occupancy under section 33 of the *Land Act*. Under section 33(9) of that Act, the Registrar merely records that certificate of occupancy as an encumbrance on the certificate of title [in this Act called the “folio of the Register”] of the owner of the land.

PART 3 —THE REGISTER

Division 1 — Contents of, and information in, the Register

15 Contents of Register [new]

The Register consists of:

- (a) folios of the Register;²⁰
- (b) particulars recorded by the Registrar under sections 16 and 17;
- (c) registered instruments; and
- (d) documents lodged with the Registrar that are not required to be registered.

16 Information Registrar must record in Register [RTA 46(3)]

- (1) The Registrar must record in the Register the information necessary to identify:
 - (a) every folio of the Register;
 - (b) every instrument lodged, recorded or registered under this Act, and when it was lodged, recorded or registered; and

¹⁹ This section replaces the more complex RTA sections 7, 11-28 and 46. It also harmonises the RTA with the provisions of the *Land Act* in relation to bringing land under the Act.

²⁰ See definition of “folio of the Register” in section 4 (in effect, the new term for “certificate of title”).

- (c) the name of each present and past registered proprietor and the nature of their interest.
- (2) The Registrar must also record in the Register any other information required to be recorded in it by this or any other law.
- (3) Without affecting the generality of subsection (2), where it is brought to the Registrar's notice that a certificate of customary ownership, or a certificate of occupancy, has been issued under the Land Act in relation to the land in the folio of the Register, the Registrar must record the existence of that certificate in the folio.

17 Information Registrar may record in Register [new]

- (1) The Registrar may record in the Register any information the Registrar is permitted to record in it by this or any other law.
- (2) In addition, the Registrar may record in the Register any information the Registrar considers should be recorded to ensure that the Register is an accurate, comprehensive and useable record of land ownership.

Division 2 – Form and contents of folio of Register

18 Form of folio of Register [new]

- (1) Subject to section 9, a folio of the Register may be in the form the Registrar considers appropriate.
- (2) A folio of the Register may be in manual form or electronic form, or partly manual and partly electronic.

19 Information to be included in folio of Register [RTA 28, 38]

- (1) A folio of the Register created after the commencement of this Act must contain the following information:
 - (a) a description of the land;
 - (b) the name of the registered owner;²¹
 - (c) brief details of each registered interest affecting that owner's interest, including the name of the registered proprietor of that interest;
 - (d) any other information required by law.
- (2) In addition, a folio of the Register may contain any other information the Registrar considers appropriate.

²¹ Defined in section 4.

Note: Under subsection (2), the Registrar could record in the folio general information about the land of the kind that might be useful to intending purchasers or mortgagees, such as charges for rates or taxes, environmental clean-up notices, or zoning details. Information of this kind might not strictly affect the title to the land. But it would make the Register a useful source of information relating to the land, as an integral part of an overall land information system (LIS).

- (3) Where a person whom the Registrar considers is entitled to be a registered proprietor dies before the folio is created:
 - (a) the Registrar may nevertheless record that person as a registered proprietor; and
 - (b) the land devolves as if the folio had been created immediately before the person died.

20 Limited folio of Register [RTA 39-43]

- (1) The Registrar may add to a folio of the Register a notation that the folio is limited as to boundaries, if
 - (a) the boundaries of the land to be included in a folio of the Register have not been certified as correct by a qualified surveyor; or
 - (b) the Registrar otherwise considers that the boundaries are insufficiently defined.
- (2) The Registrar may not remove the notation until:
 - (a) a registered proprietor satisfies the Registrar as to the precise boundaries, by lodging a plan of survey²² or by providing other appropriate information; and
 - (b) the Registrar has notified adjoining owners (if their names and addresses are known to the Registrar after reasonable enquiry) of the intention to remove the notation, and they have not, within 21 days of notification, objected to the removal.
- (3) If within the 21 days an adjoining owner objects to the removal of the notation, the Registrar must consider the objection, and may not remove the notation unless satisfied that the objection is unfounded.²³

²² A “plan of survey” must be certified by a qualified surveyor: see definition in [section 4](#).

²³ This subsection is new. The existing RTA (section 41) does not deal with the situation where an adjoining owner objects.

- (4) Subject to this section, the provisions of this Act apply to land in a limited folio in the same way as they apply to land in an ordinary folio.²⁴

21 New folio of Register following consolidation or subdivision [RTA 67]

- (1) Where land in a number of folios of the Register is lawfully consolidated into a single parcel, the Registrar must cancel the existing folios of the Register and create a new folio of the Register for the consolidated parcel.
- (2) Where land in a folio of the Register is lawfully subdivided into a number of parcels, the Registrar must cancel the existing folio of the Register for the land and create a new folio of the Register for each parcel.
- (3) When creating a new folio of the Register under subsection (1) or (2), the Registrar must carry over to the new folio all recordings from the cancelled folio or folios, except recordings that the Registrar is satisfied are properly superseded.

Division 3 – Registration of instruments

22 Need for registration [RTA 54]

Subject to this Act, an instrument does not transfer or create an interest in land until the instrument is registered.

23 Registrar’s duty to register [RTA 46(3)]

- (1) If a person lodges for registration an instrument that is in registrable form, the Registrar must register it.
- (2) An instrument is in registrable form if it relates to land in a folio of the Register and complies with the requirements of this Act for registration.
- (3) Subsection (1) does not prevent a person from withdrawing an instrument before it is registered.

24 Method and time of registration [RTA 46(2), 51]

- (1) On registering an instrument, the Registrar must:
 - (a) give the instrument a distinguishing reference sufficient to identify it; and
 - (b) record the reference in the folio of the Register for the land concerned.

²⁴ An “ordinary folio” is a folio that is not a limited folio: see definition in [section 4](#).

- (2) An instrument is registered when the Registrar records the distinguishing reference in the folio.

25 Order of registration [RTA 48, 54]

- (1) Instruments that are in registrable form must be registered in the order in which they are lodged for registration.
- (2) For the purposes of subsection (1), an instrument that is lodged for registration but is later withdrawn before registration or rejected by the Registrar, is not lodged until it is relodged.
- (3) Despite subsection (1), if an instrument ("instrument 2") affecting land is lodged after another instrument ("instrument 1") affecting the land, instrument 2 may be registered before instrument 1 if the registration of instrument 2 cannot affect any interest that a person might claim under instrument 1.

26 Priority of registered instruments [RTA 48]

Registered instruments have priority according to when they were registered, not according to when they were executed.

27 Deemed deed [RTA 95]

A registered instrument takes effect as a deed.

28 Instrument of postponement [new]²⁵

- (1) A registered interest may, by a registered instrument of postponement executed by all parties to the interest, be postponed to any other registered interest.
- (2) On registration of an instrument of postponement, the parties' interests rank in priority in the order expressed in the instrument.
- (3) An instrument of postponement binds only the parties to it.

Example of section 28. Assume that there are 3 registered mortgages over the land: M1, securing 50,000 shillings; M2; and M3 securing 100,000 shillings. M1 and M3 could agree to "swap" their priority, by executing and registering an instrument of postponement, so that M3 takes the place of M1 as first registered mortgagee and M1 takes the place of M3 as third registered mortgagee. However, this arrangement would not affect M2. For example, if the property were sold in exercise of a power of sale, M2 could insist that the first mortgagee receive only the first 50,000 shillings of the net proceeds of sale in priority to M2, not the first 100,000 shillings.

²⁵ This new provision is inserted to provide flexibility in land financing.

Division 4 – Consequences of registration

Subdivision 1 – General

29 Effect of registration on interest [RTA 54]

On registration of an instrument that is expressed to transfer or create an interest in land, the interest:

- (a) is transferred or created in accordance with the instrument; and
- (b) vests in the person identified in the instrument as being entitled to it.

30 Conclusive effect of registration [RTA 59, 60, 63, 64]

Subject to this Act, the registration of a person as proprietor of an interest in land is conclusive evidence that the person is the registered proprietor of that interest.

Note: In the classic terminology of the Torrens system, this conclusive evidence renders the person's interest in the land "indefeasible".

31 Conclusive evidence of information in Register [RTA 59, 60]

The information about a registered instrument recorded in the Register is conclusive evidence of:

- (a) the registration of the instrument;
- (b) when the instrument was registered; and
- (c) the contents of the instrument.

32 Consideration not needed [new]²⁶

The benefits of registration apply to an instrument whether or not valuable consideration is given.

Example. If the registered owner of land (A) gives the land to B by way of gift, and B then becomes the registered owner, B receives the same protection from registration as if B were a purchaser for value. Thus, if A had created an equitable interest in the land (such as an unregistered mortgage) before giving the land to B, B (on registration) would take free of the unregistered mortgage just as effectively as if B had purchased the land for value.

²⁶ This section is designed to clarify an issue that has given rise to litigation in other countries: are the benefits of registration limited to purchasers for value? Some courts have held "yes"; others have held "no".

33 Interest of registered proprietor paramount [RTA 64, 66, 176]

- (1) Subject to this Act, a registered proprietor holds his, her or its registered interest in the land subject to all prior interests registered in the folio of the Register for the land but free from all other interests.
- (2) In particular, the registered proprietor:
 - (a) is not affected by notice (actual, constructive or imputed) of any trust or unregistered interest affecting the land;²⁷

Example of operation of paragraph (a). Assume that the registered owner (A) has granted a mortgage over the land in favour of M, but the mortgage is unregistered. Now assume that A sells the land to a purchaser (P), who has notice of the mortgage. Under paragraph (a), once P becomes registered, P takes free of the mortgage. M retains the contractual right to recover the mortgage debt from A, but has lost any right against the land. M should have registered the mortgage or lodged a caveat.

- (b) is not affected by any interest that, but for this Act, might be held to be paramount or to have priority;
 - (c) is not affected by any error or informality in any application or proceedings; and
 - (d) is not liable to proceedings for possession, unless brought by a person claiming a prior registered interest in the land.
- (3) For the purpose of subsection (2)(a), notice that a trust or unregistered interest exists is not, of itself, fraud.²⁸

34 General exceptions to section 33 [RTA 64, 65, 176]²⁹

- (1) A registered proprietor does not obtain the benefit of section 33 in relation to the following interests or rights affecting the land:
 - (a) any exceptions, reservations, covenants, conditions or powers contained in the grant of the land;
 - (b) any easements acquired by enjoyment or use affecting the land;

²⁷ This provision is discussed in the Draft Final Issues Paper, para 1.3.3. The provision is not new, but has been productive of conflicting judicial decisions. Hence the Example that follows.

²⁸ See also the definition of "fraud", in section 4.

²⁹ These "exceptions to indefeasibility" parallel RTA section 64(2), but have been modified to reflect other changes proposed in this draft Act, such as those that relate to adverse possession (which we recommend prospectively abolishing: see section 109).

- (c) any unpaid rates or other moneys which, by statute, are charged on the land in favour of a Government department or public authority, whether or not the statute provides for their registration under this Act;
 - (d) any lease, licence or permission, lawfully granted by a Government department or public authority, whether or not a statute provides for their registration under this Act;³⁰
 - (e) an equitable obligation binding the registered proprietor as a result of the conduct of the registered proprietor or a person for whose conduct the registered proprietor is responsible;³¹
 - (f) the interest of a lessee in actual possession under a lease for a term (including any option to renew, whether or not exercised) not exceeding 3 years;³²
 - (g) the interest of any tenant by occupancy;³³
 - (h) the interest of another registered proprietor, if 2 or more persons are registered as proprietors of the same interest (in which case the earliest-registered interest prevails);
 - (i) the interest of another registered owner, if 2 or more folios of the Register exist for the same land or part of the same land (in which case the earliest-created folio prevails);
 - (j) in the case of family land, the right of his or her spouse to have access to the land and to live on it;
 - (k) rights under any certificate of customary ownership or certificate of occupancy issued under the Land Act.
- (2) If any of the interests or rights in subsection (1) come to the Registrar's attention, the Registrar must make the appropriate changes to the Register to ensure that the Register accurately reflects the state of the title to the land.

³⁰ This exception to indefeasibility is included to reflect the current position under the RTA cap 230. However, we may question why leases issued by Government (etc) should receive special protection. Other unregistered leases are not protected (unless they do not exceed 3 years (para (f))).

³¹ This is intended to encompass what are sometimes called "rights in personam" or "personal equities"—specifically, rights arising out of conduct of a registered proprietor which falls short of fraud but which the courts consider is sufficiently unconscionable that the registered proprietor should not be allowed to assert his or her title against them. An example is where a registered proprietor knows of an unregistered interest in the land, and represents that he or she will honour that interest but then, on becoming registered, seeks to repudiate it.

³² This follows the existing RTA provisions that, in effect, do not require registration of leases for terms of 3 years or less.

³³ This reflects the intent of the Land Act.

*Subdivision 2 – Effect of fraud*³⁴

35 Fraud by registered proprietor [RTA 77]

A registered proprietor who has engaged in fraud in acquiring land or an interest in land does not receive the benefit of section 33 in relation to that land or interest.

Example: Assume that A is the registered owner of land. Now assume that X steals A’s certificate of title, then forges A’s signature on a transfer of the land in favour of himself (X) and then becomes the registered owner of the land. X has acquired title by fraud. A may set aside X’s title on the ground of X’s fraud.

36 Fraud by person other than registered owner [new]³⁵

- (1) Where a person (B) has become the registered owner of land through the fraud of a person for whose actions B is not responsible, the defrauded registered owner (A) may apply to the Registrar to be restored to the Register as registered owner.
- (2) The application:
 - (a) can only be made within 3 years of B’s registration; and
 - (b) cannot be made if B has transferred the land to another person (C) who has become the registered owner, except where B and C have colluded to defeat A’s right to make an application.

Example of subsections (1) and (2). Assume that A is the registered owner of land. Now assume that a third party (X) steals A’s certificate of title and then poses as A so as to sell the land to B (who is ignorant of the fraud), and then forges A’s signature on a transfer in favour B, who becomes the registered owner. Here, B’s title is “presumptively” indefeasible. However, A can apply to the Registrar to have B’s registration set aside. But A must apply within 3 years of B’s registration; and if in the meantime B has transferred the land to C, who becomes the registered owner, it is too late for A to apply to set B’s registration aside (unless B and C have colluded to defeat A’s right to apply to the Registrar).

- (3) The Registrar must:
 - (a) notify B of the application;

³⁴ Note that “fraud” is defined in section 4.

³⁵ This provision is new, and is intended to implement the principle of “presumptive indefeasibility” outlined in para 1.3.2.2 of the Draft Final Issues Paper.

- (b) allow both A and B a reasonable time to make written submissions in relation to the application; and
 - (c) consider those submissions.
- (4) In deciding whether to allow or reject the application, the Registrar must also consider:
- (a) the circumstances in which B acquired the land;
 - (b) the parties' attachment to the land;
 - (c) the parties' use of the land; and
 - (d) the parties' willingness to accept compensation.
- (5) The onus lies on A to persuade the Registrar to restore A as registered owner.
- (6) If the Registrar decides in favour of A, the Registrar must amend the folio of the Register accordingly.
- (7) The losing party may seek compensation for deprivation of the land, under Part 20.
- (8) An appeal lies to the Court against the Registrar's decision.
- (9) On the appeal, the Court may make the order or orders it considers appropriate, including ordering the payment of compensation under Part 20 and directing the Registrar to cancel or amend recordings in the Register.

Division 5 – Unregistered interests

37 Nature and priority of unregistered interests [new]³⁶

- (1) Nothing in this Act prevents an unregistered instrument from:
- (a) operating as a contract; or
 - (b) taking effect as an equitable interest; or
 - (c) being otherwise enforceable according to its terms.

Example: An unregistered mortgage, or an unregistered lease, takes effect (despite non-registration) not only as a contract, but could also take effect as an equitable mortgage or an equitable lease.

³⁶ The purpose of this section is to clarify doubts in existing Ugandan law over whether unregistered interests are to be treated as equitable interests: see discussion in Mugambwa, *Principles of Land Law in Uganda*, pp 71-72.

- (2) The lodgement of an instrument in registrable form for registration has the same effect as the lodgement of a caveat protecting the interest claimed under that instrument.
- (3) The benefit of subsection (2) is lost if the instrument is withdrawn from registration.

Division 6 – Certificates of title

38 Issuing certificates of title [RTA 55]³⁷

- (1) Subject to this Act, the Registrar must issue a certificate of title corresponding to each folio of the Register.
- (2) A certificate of title:
 - (a) must be in the approved form;
 - (b) must indicate (if it is the case) that the folio of the Register is limited as to parcels;
 - (c) may contain a diagram of the land to which it relates.

39 Request not to issue, or to cancel, certificate of title [new]

- (1) The registered owner (or if there is more than one, any one or more of the registered owners) may request the Registrar not to issue a certificate of title, or to cancel an existing certificate of title.
- (2) Subject to subsection (3), the Registrar must comply with the request.
- (3) Before cancelling a certificate of title under this section, the Registrar:
 - (a) must notify any registered mortgagee; and
 - (b) if the mortgagee requests within 14 days of the notification, must not cancel the certificate of title.
- (4) The Registrar must record in the folio of the Register whether a certificate of title has been issued or cancelled.

40 Delivery of certificate of title [RTA 45; new]

- (1) The Registrar must give the certificate of title to the registered owner or to a person whom the registered owner directs in writing.

³⁷ This section and the following section allows the registered owner to request the Registrar not to issue a certificate of title, or to cancel an existing certificate of title. This implements our Recommendation at para 1.3.6 of the Draft Final Issues Paper. Experience shows that certificates of title are a common instrument of fraud. Proprietors who fear loss or improper use of a certificate of title should be able to ask the Registrar not to issue one, or to cancel an existing one.

- (2) The Registrar may give the certificate of title to the person in subsection (1):
 - (a) by posting it to that person at an address supplied by that person; or
 - (b) by personally giving it to that person.
- (3) The Registrar may demand a receipt before parting with the certificate of title.

41 Issuing subsequent certificate of title

The Registrar may issue a second or later certificate of title only if all earlier certificates of title are cancelled.

42 Evidentiary effect of certificate of title [RTA 60]

- (1) The contents of a certificate of title are to be treated as conclusively correct as at the date of issue of the certificate of title:
 - (a) except in the circumstances mentioned in sections 33, 34, 35 and 36; and
 - (b) except to the extent that the contents conflict with or differ from the contents of the folio of the Register.
- (2) Without limiting subsection (1), if the contents of the folio of the Register conflict with or differ from the contents of the certificate of title, the folio of the Register prevails.

PART 4 — JOINT HOLDERS

43 Registering co-owners [RTA 56; new]

- (1) When registering persons as co-owners of land, the Registrar must record whether they hold as tenants in common or as joint tenants.
- (2) Persons who are registered as “joint proprietors” are conclusively presumed to hold as joint tenants.³⁸
- (3) If an instrument does not show whether co-owners hold as tenants in common or as joint tenants, the Registrar must record them as joint tenants.³⁹

³⁸ The term “joint proprietors” is an archaic term found in early Torrens statutes, intended to convey the meaning “joint tenants” but without the feudal overtones inherent in “tenant”. Actual registration of persons “as joint proprietors” is, we understand, rare. The modern practice is to use the term “as joint tenants”. This Act reflects that practice, while catering for the (rare) circumstance that persons may appear on the title “as joint proprietors”.

- (4) Unless the Registrar records otherwise, tenants in common are presumed to hold in equal shares.
- (5) Where persons own land as tenants in common, the Registrar may create separate folios of the Register for the interest of each tenant in common.

44 Body corporate may hold land as joint tenant [new]⁴⁰

- (1) A body corporate is capable of holding land as joint tenant.
- (2) Where a body corporate is a joint tenant of land at the time of its dissolution, the land devolves on the other joint tenant or joint tenants.

45 Death of joint tenant [new]⁴¹

Where joint tenants die in circumstances where it is unclear who survived whom, the younger is deemed to have survived the elder.

46 Effect of “no survivorship” [RTA 57, 58]

- (1) Where persons are registered as joint tenants or “joint proprietors”, with the added words “no survivorship”, no instrument dealing with the land is effective unless executed by all of the named persons.
- (2) The Court may permit the execution of an instrument by less than all of the named persons, on such terms (including the giving of notice) as the Court considers appropriate.

PART 5 — TRANSFERS

Division 1 — General

47 Registering transfer [RTA 92, 96]

- (1) Land in a folio of the Register may be transferred by registering an instrument of transfer.

Note: “land” is defined in section 4 to include an interest in land.

³⁹ This reflects the apparent import of RTA section 56. However, many jurisdictions have legislated for a presumption in favour of tenancies in common. Whether Ugandan law should adopt a similar presumption is a matter that the Ugandan Law Reform Commission could profitably consider, particularly given: (1) the “unfairness” inherent in joint tenancies, where devolution of property is determined by the accident of death; and (2) the relative ease with which joint tenancies may be severed, destroying the expectation of taking by survivorship.

⁴⁰ At common law, a corporation cannot be a joint tenant, because corporations do not “die” as humans do. This provision reverses the common law. However, of course it applies only to land under this Act. This is an area where a general property law statute could legislate a similar provision for *all* types of land.

⁴¹ This section fills a gap in Ugandan law. See Mugambwa, *Principles of Land Law in Uganda*, p 146.

- (2) Except as provided in this Act or in any other law, a part only of land in a folio of the Register cannot be transferred.
- (3) Subsection (2) does not prevent the acquisition of a part of land in a folio of the Register by a public authority by or under a law.
- (4) Subject to subsection (2), where part only of the land in a folio of the Register is transferred, the Registrar must cancel the folio of the Register for the whole land and create new folios of the Register for each part.

48 Requirements for transfer to be registered [new]

- (1) In order to be registered, an instrument of transfer must:
 - (a) include particulars sufficient to identify the land to be transferred; and
 - (b) include the details of any consideration.⁴²
- (2) Subsection (1) does not limit the matters that the approved form of instrument of transfer may require to be included.

49 Effect of registration of transfer [RTA 66, 92, 93, 96-98, 105, 193]

- (1) On the registration of a transfer, all of the transferor's rights, powers, privileges and liabilities in relation to the land vest in the transferee.
- (2) Without limiting subsection (1):
 - (a) the registered transferee of a mortgage is bound by and liable under the mortgage to the same extent as the original mortgagee;
 - (b) the registered transferee of a lease is bound by and liable under the lease to the same extent as the original lessee; and
 - (c) the transfer of the mortgage or lease does not, of itself, release the transferor from obligations under the mortgage or lease.
- (3) In this section, "rights", in relation to a mortgage or lease, includes the right to sue on the terms of the mortgage or lease and to recover a debt or enforce a liability under the mortgage or lease.

50 Merger [new]⁴³

- (1) The doctrine of merger applies on the registration of a transfer to give effect to a contract for the sale of land.

⁴² This requirement is purely for statistical purposes. It can be deleted if required.

⁴³ This provision is intended to clarify the application of the principle of "merger" to land under the RTA.

- (2) Where on registration the interests of lessor and lessee vest in the same person, no merger occurs until there is also registered a surrender of the lease.

51 Transfer of mortgaged land [RTA 98]

- (1) If land that is subject to a registered mortgage is transferred:
 - (a) the transferee is primarily liable to comply with the terms of the mortgage; and
 - (b) the transferee must indemnify the transferor against liability under the mortgage.
- (2) This section does not apply to a transfer by a mortgagee in exercise of a power of sale.

52 Transfer under statutory vesting or grant [new]⁴⁴

- (1) If land has become vested in a person or public authority by or under a law, the Registrar:
 - (a) must record in the Register any information the Registrar considers necessary in connection with the vesting; and
 - (b) may cancel or create folios of the Register as the Registrar considers appropriate in consequence of the vesting.
- (2) The Registrar may exercise the powers conferred by subsection (1):
 - (a) on application; or
 - (b) on the Registrar's own initiative.

Division 2 – Family land, and land subject to tenancy by occupancy

53 Transfer of family land [RTA 92]⁴⁵

- (1) A transfer of family land in breach of the provisions of the Land Act is void, despite registration of the transfer.

Note: "Family land" is defined in section 4.

- (2) If a transfer of family land in breach of the Land Act is registered, the wronged spouse may apply to the Registrar to set the registration aside.

⁴⁴ This provision is intended to make clear that the Registrar has the power to act in these circumstances.

⁴⁵ This section is intended to protect the rights of spouses, where land has been transferred in breach of s 39 of the Land Act.

- (3) The Registrar must comply with the application if:
 - (a) the Registrar is satisfied that the transfer was in breach of the provisions of the Land Act; and
 - (b) the transferee has not transferred the land to another person who has become the registered owner (unless the Registrar is satisfied that the transferee and that person had colluded to defeat the rights of the spouse under the Land Act).

54 Transfer of land subject to tenancy by occupancy [RTA 92]⁴⁶

For the avoidance of doubt, the registration of a transfer of land subject to a tenancy by occupancy does not defeat the tenancy.

Note: Under section 34, a registered proprietor's interest is subject to any tenancy by occupancy of the land.

PART 6 — LEASES

55 Lease of land [RTA 101]⁴⁷

- (1) Land in a folio of the Register may be leased.
- (2) A lease may comprise the whole or part of land in a folio of the Register.
- (3) Where the term of a lease (including any option to renew, whether or not exercised) exceeds 3 years, an instrument of lease must be registered. A lease for any other term may (but need not) be registered.

56 Lease of family land⁴⁸

- (1) A lease of family land in breach of the provisions of the Land Act is void, despite registration of the lease.

Note: "Family land" is defined in section 4.

- (2) If a lease of family land in breach of the Land Act is registered, the wronged spouse may apply to the Registrar to set the registration aside.

⁴⁶ Our earlier Draft RTA 2008 contained a provision giving a tenant by occupancy a right of first refusal if the land owner wished to sell the land. That provision was intended to implement an amendment proposed to s 92 of the RTA by the *Registration of Titles (Amendment) Act 2005*. However, that amendment did not become law; and so the substance of this current version of s 54 has been changed.

⁴⁷ Note that section 4 of this Act defines "lease" to include "sublease", so there is no need for separate provisions dealing with subleases.

⁴⁸ This section is intended to protect that interests of a spouse where family land has been leased in breach of s 39 of the Land Act. Note that "family land" is defined in section 4.

- (3) The Registrar must comply with the application if:
 - (a) the Registrar is satisfied that the lease was in breach of the provisions of the Land Act; and
 - (b) the lessee has not transferred the lease, or granted a sublease, to another person who has become registered as assignee or sublessee (unless the Registrar is satisfied that that person and the lessee had colluded to defeat the rights of the spouse under the Land Act).

57 Requirements for lease to be registered [RTA 101]

- (1) In order to be registered, an instrument of lease must include a description sufficient to identify the land being leased.
- (2) Subsection (1) does not limit the matters that the approved form of instrument of lease may require to be included.

58 Variation of registered lease [new]⁴⁹

- (1) A registered lease may be varied by registering an instrument of variation of lease.
- (2) However, an instrument of variation must not:
 - (a) add or remove a party to the lease; or
 - (b) be lodged after the term of the lease (including as extended by any option to renew) has expired.
- (3) A lease as varied by a registered instrument of variation continues in force and is not surrendered by reason of the variation.
- (4) This section does not limit other ways in which a lease may be varied.

59 Whether lease, or variation of lease, binds mortgagee [RTA 101]

- (1) A lease, or a variation of a lease, executed after the registration of a mortgage, does not bind the mortgagee unless the mortgagee consents to the lease or variation.
- (2) The Registrar may require evidence of the mortgagee's consent and may record the fact of the consent in the folio of the Register.

⁴⁹ This provision allows variation of registered leases – for example, the extension of a lease, or variations in the rent. Its purpose is two-fold: (1) to encourage parties to have their variations registered, so that the Register reveals the “true” position about the lease; and (2) to confirm that variations of lease do not constitute a surrender of lease—a matter which is open to debate at common law.

60 Options to renew or purchase [new]⁵⁰

- (1) When registering a lease that contains an option to renew or purchase, the Registrar must also record the fact of the option in the folio of the Register.
- (2) Registration of a lease containing an option to renew or purchase does not give the option any greater validity than it otherwise would have.

61 Expiry of lease [new]

The Registrar may record in the folio of the Register that a registered lease has expired.

62 Termination of lease following lessee's default [RTA 106]⁵¹

- (1) The Registrar may record in the folio of the Register that the lessor has terminated a registered lease following the lessee's default.
- (2) Before recording the termination, the Registrar may require supporting evidence to establish that the termination was lawful.
- (3) The recording of the termination does not:
 - (a) release the lessee from liability for breach of a covenant, express or implied, in the lease; or
 - (b) extinguish any right the lessee may have to seek relief against forfeiture.⁵²
- (4) After the termination of a registered lease containing an option to renew or purchase:
 - (a) the Registrar need not enquire whether the option has been exercised; and
 - (b) a person dealing with the lessor need not enquire whether any unregistered interest has been created as a result of exercise of the option.

⁵⁰ This provision is intended to build market confidence in the Register as a complete record of all interests and rights affecting the land—or, in this case, affecting the lease.

⁵¹ This is based on RTA section 106, but adds new provisions regarding options and relief against forfeiture.

⁵² This is added to clarify a doubt whether, once a termination of lease is registered under the RTA, any right to seek relief against forfeiture is necessarily excluded: see Mugambwa, *Principles of Land Law in Uganda*, pp 108-109.

63 Surrendering a lease [RTA 108]⁵³

- (1) A registered lease may be surrendered in whole or in part by registering an instrument of surrender of lease, executed by the lessor and the lessee.
- (2) However, the Registrar must not register the instrument of surrender unless every registered mortgagee of the lease and every registered sublessee consents.
- (3) On registration of the instrument of surrender:
 - (a) the lessee's interest vests in the lessor; and
 - (b) any sublease is taken to be a direct lease from the lessor.
- (4) This section does not limit other means by which a lease may be surrendered. If a registered lease is surrendered by other means, the Registrar may record the surrender in the folio of the Register on application by either lessor or lessee and supported by any evidence the Registrar may require.

64 Implied covenants by lessees [RTA 102]

- (1) In a lease of land, there is are implied covenants by the lessee with the lessor:
 - (a) to pay the rent as required by the lease;
 - (b) to keep the premises, and yield them up at the end of the lease, in good tenable repair, except for:
 - (i) damage from earthquake, storm and tempest; and
 - (ii) reasonable wear and tear.
- (2) Where the lessee is a sublessee, there is an implied covenant by the sublessee with the sublessor to observe and perform all of the lessee's covenants under the lease to the sublessor.
- (3) The covenants implied by subsections (1) and (2) may be varied or negated by express provision in the lease.

65 Implied powers of lessors and termination for breach [RTA 103]⁵⁴

- (1) In a lease of land, the lessor has the implied powers to enter the leased land for the following purposes:

⁵³ This is based on RTA section 108, but introduces a simpler method of surrendering a lease.

⁵⁴ This is based on RTA section 103, but has been updated to take account of modern commercial practices.

- (a) to view the state of repair (but only once in each year of the term, at a reasonable time of day, and on giving the lessee 2 days' prior notice);
 - (b) to carry out any repairs that the lessee should have (but has not) carried out under the lease; and
 - (c) to comply with any written law affecting the premises, or to comply with any notice that is given to the lessor or the lessee by any public authority and that requires repairs or work to be done (whether by the lessor or the lessee).
- (2) Anything the lessor does under subsection (1) must be done without undue interference with the lessee's occupation and use of the premises.
 - (3) The powers implied by subsection (1) may be varied or negated by express provision in the lease.
 - (4) In addition to the powers under subsection (1), the lessor has the implied power to re-enter the leased premises and terminate the lease in the following circumstances:
 - (a) where any rent due under the lease is at least 30 days overdue (even if no formal demand for payment has been made); or
 - (b) where any other term of the lease, whether express or implied, has been breached and the breach has continued for at least 30 days after the lessor has served notice on the lessee requiring it to be remedied.
 - (5) The 30-day periods in subsection (4) may be lengthened by express provision in the lease, but cannot be reduced.

PART 7 — MORTGAGES⁵⁵

66 Right to mortgage

- (1) Land in a folio of the Register may be mortgaged by registering an instrument of mortgage.
- (2) Except as provided in this Act or any other law, a part only of land in a folio of the Register cannot be mortgaged.

67 Application of Mortgage Act 2009, and mortgage of family land

- (1) The *Mortgage Act 2009* applies to mortgages of land in a folio of the Register.

⁵⁵ This Part is very brief, given that mortgages are now regulated by the *Mortgage Act 2009*.

- (2) The following subsections of this section apply only to a mortgage of family land that is:
 - (a) in breach of the provisions of the Land Act; and
 - (b) is not saved by the application of section 5 of the *Mortgage Act 2009*.

Note: “Family land” is defined in section 4.

- (3) A mortgage of family land in breach of the provisions of the Land Act is void, despite registration of the mortgage.
- (4) If a mortgage of family land in breach of the Land Act is registered, the wronged spouse may apply to the Registrar to set the registration aside.
- (5) The Registrar must comply with the application if:
 - (a) the Registrar is satisfied that the mortgage was in breach of the provisions of the Land Act; and
 - (b) the mortgagee has not transferred the mortgage, or granted a mortgage of the mortgage, to another person who has become registered as transferee or submortgagee (unless the Registrar is satisfied that that person and the mortgagee had colluded to defeat the rights of the spouse under the Land Act).

PART 8 — STATUTORY CHARGES⁵⁶

68 Registration of statutory charges [new]

- (1) A person or public authority with the benefit of a statutory charge over land in a folio of the Register may apply to the Registrar to have the charge registered in the folio of the Register.
- (2) On receiving the application, the Registrar must register the charge.
- (3) The Registrar must give notice of the registration to all persons who have a registered interest in the land.
- (4) Registration does not give the charge any greater effect than it would have without registration.

Note: unregistered charges may still bind the land as exceptions to indefeasibility, under section 34(1)(c).

⁵⁶ This Part is intended to provide a convenient method of registering statutory charges.

PART 9 — EASEMENTS

Division 1 – Creation of easements

69 Creation of easements under this Part [RTA 100]

An easement may be created under this Part by:

- (a) registration of an instrument of easement under section 70;
- (b) registration of a plan of subdivision under section 71; or
- (c) Court order under section 80.

70 Creation by instrument of easement [RTA 100]

- (1) An easement may be granted or reserved over land in a folio of the Register by registering an instrument of easement.
- (2) In order to be registered, an instrument of easement must:
 - (a) indicate clearly:
 - (i) the nature of the easement;
 - (ii) the rights granted or reserved under it;
 - (iii) the land benefited by it; and
 - (iv) the extent of the land burdened by it;
 - (b) if required by the Registrar, include a sketch plan or a plan of survey identifying the land to be benefited by the easement and the land to be burdened by it; and
 - (c) contain the consents of all registered mortgagees and registered lessees of the land to be burdened by the easement.
- (3) This section does not limit the matters that the approved form of instrument of easement may require to be included.
- (4) Where the easement relates to underground pipes, cables or other installations the locations of which are difficult to describe with precision, the Registrar may accept for registration an instrument of easement that contains only a general description of the location.
- (5) The Registrar must register the easement in the folios of the Register for the land benefited and the land burdened.

71 Creation by plan of subdivision [new]⁵⁷

- (1) An easement may be created by registering a plan of subdivision showing the easement or easements intended to be created.
- (2) There must be lodged with the plan of subdivision an instrument that:
 - (a) indicates clearly:
 - (i) the nature of the easement;
 - (ii) the rights granted or reserved under it;
 - (iii) the land benefited by it; and
 - (iv) the extent of the land burdened by it.
 - (b) contains the consents of all registered mortgagees and registered lessees of the land to be burdened by the easement.
- (3) Where the easement relates to underground pipes, cables or other installations the locations of which are difficult to describe with precision, the Registrar may accept for registration an instrument that contains only a general description of the location.
- (4) On registration of the plan of subdivision, the easement is created and vests in the person entitled to the benefit of it.
- (5) When creating folios of the Register for the land benefited and the land burdened by the easement, the Registrar must register the easement in them.

72 Interests not valid easements [new]⁵⁸

- (1) Registration of an interest as an easement is not conclusive evidence that the interest meets the legal requirements for a valid easement.
- (2) However, subsection (1) does not apply to an interest which this Act recognises as a valid easement.

⁵⁷ The purpose of this section is to allow easements to be created “up-front” on the registration of a plan of subdivision, rather than having to be created individually as each parcel of land in the subdivision is sold.

⁵⁸ The purpose of this provision is to ensure that proposed “easements” do not become registered as easements if they fail to qualify as easements under common law principles (for these principles, see Mugambwa, *Principles of Land Law in Uganda*, p 129-131). Without such a provision, it might be argued that an interest that did not meet the requirements for a valid easement could be “cured” by virtue of the conclusiveness of registration.

Division 2 – General

73 Easement benefiting and burdening land of same registered owner [new]⁵⁹

- (1) An easement may be registered even though the same person is the registered owner of the land benefited by the easement and the land burdened by it.
- (2) A registered easement is not extinguished merely because the same person becomes the registered owner of the land benefited by the easement and the land burdened by it, unless:
 - (a) that owner requests the Registrar to extinguish the easement; or
 - (b) the Registrar creates a single folio of the Register for the lands.
- (3) A registered easement is not extinguished merely because the registered owner of the land benefited by the easement acquires an interest, or a greater interest, in the land burdened by the easement.

Division 3 – Variation or extinguishment of easements

74 Variation or release of easement by parties [new]⁶⁰

- (1) A registered easement may be varied or wholly or partly extinguished by registering an instrument of variation or release of easement.
- (2) In order to be registered, the instrument of variation or release:
 - (a) must be executed by the registered owner of the land benefited by the easement; and
 - (b) may (but need not) be executed by the registered owner of the land burdened by the easement.
- (3) A registered easement may be varied or released only with the consent of all registered mortgagees and lessees of the land benefited by the easement.
- (4) Subsection (3) does not apply to a lessee who, in the Registrar's opinion, does not receive a benefit from the easement.

⁵⁹ The purpose of this provision is to overcome the common law rules that: (1) easements cannot be created where the same person owns both the benefited and the burdened lands; and (2) easements are extinguished if, after their creation, the lands benefited and burdened come to be owned by the same person.

⁶⁰ This provision is intended to introduce a straightforward procedure for varying or releasing easements.

75 Cancellation of easement [new]⁶¹

- (1) The Registrar must cancel the registration of an easement on being satisfied that:
 - (a) any period of time for which the easement was to subsist has expired; or
 - (b) an event on which the easement was to come to an end has occurred; or
 - (c) the easement has been abandoned.
- (2) Regardless of whether an easement has been abandoned, if an easement has not been used for at least 20 years, then:
 - (a) a person may apply to the Registrar to have the registration of the easement cancelled;
 - (b) if satisfied that the evidence supports the application, the Registrar must notify the registered owner of the benefited land that, unless the Registrar receives an objection to the application within 1 month of the notice, the Registrar intends to cancel the registration of the easement; and
 - (c) if the Registrar does not receive an objection within the 1 month, or if the Registrar does receive an objection within that time but considers it to be of insufficient merit, the Registrar may cancel the registration of the easement.

76 Court order varying or extinguishing easement [new]⁶²

- (1) The Court may, on application by any person interested in land burdened by an easement, make an order wholly or partly varying or extinguishing the easement.
- (2) The Court may only make an order under subsection (1) if satisfied that:
 - (a) by reason of a lawful change in use of the land burdened by the easement, the easement's continued existence will impede the development of that land for public or private purposes; or

⁶¹ This provision has two purposes: (1) to allow the Registrar to remove easements that have ceased to serve any purpose, but which still "clutter" the Register; and (2) to provide a method for persons to seek to remove easements which are more than 20 years old and which, in their view, serve no useful purpose. The 20-year period is arbitrary; it could be shorter or longer.

⁶² This provision introduces a procedure (common in many other jurisdictions) to empower the Court to vary or extinguish an easement on the basis that (in essence) the easement has outlived its usefulness. It fills a gap in Ugandan law: see Mugambwa, *Principles of Land Law in Uganda*, p 136. However, unlike in some other jurisdictions (notably Australia), our draft empowers the Court to order compensation to be paid to those who lose the benefit of the easement.

- (b) the proposed variation or extinguishment will not materially injure the persons entitled to the benefit of the easement.
- (3) When making an order under subsection (1), the Court may order the applicant to pay compensation to any person entitled to the benefit of the easement.
- (4) An order under subsection (1) binds all persons who are, or who may become, entitled to the benefit of the easement, regardless of whether they have been notified of, or participated in, the proceedings.
- (5) The Registrar may record the order in the folios of the Register for the burdened land and the benefited land.

Division 4 – Meaning of certain types of easements

77 Right of carriageway [RTA 61, 62, 99]

- (1) In the construction of an instrument evidencing or creating a right of way over land, the expression "right of carriageway" has the following meaning, subject to contrary provision in the instrument:

Full right for the registered owner of the benefited land, and every person authorised by that owner, to pass and repass at all times and for all purposes, on foot or in vehicles, and with or without animals, over or along the way.

78 Party wall [new]⁶³

- (1) In the construction of an instrument referring to a "party wall", that expression means (unless the contrary intention appears) a wall severed vertically and longitudinally with separate ownership of the severed portions, and with cross-easements entitling each of the persons entitled to a portion of the wall to have their building supported by the whole wall.
- (2) Where land is transferred by a person entitled to create easements in relation to a wall built on the common boundary of that land and adjoining land, and the instrument of transfer describes the wall as a party wall, then the instrument, when registered, operates to create an easement for a party wall.

⁶³ This new provision could be useful to define and create rights under party walls. It is common in many jurisdictions. Party wall easements are important rights in city and urban living. The RTA mentions party walls (section 155), but has no provision along the lines of this provision.

Division 5 – Contributions to repairs

79 Contribution to repairs [new]⁶⁴

- (1) Where a registered easement relating to land in a folio of the Register contains a covenant obliging one or more persons to contribute to the cost of constructing or repairing the subject matter of the easement, the obligation binds not only those persons but also their successors in title as if they had been a party to the creation of the easement, for as long as the easement subsists.
- (2) However, a person's liability under subsection (1) does not extend to expenditure made before the person became a registered proprietor, or after the person ceased to be a registered proprietor.⁶⁵

Division 6 – Easements created by Court order

80 Easements created by Court order [new]⁶⁶

- (1) The Court, on application, may make an order imposing an easement over land if the easement is reasonably necessary for the effective use or development of other land that will have the benefit of the easement.

Note: If satisfied that the conditions of this section are met, the Court may make an order granting any kind of easement. Examples are: (i) a right of way; (ii) a right of drainage; (iii) a right to allow building cranes to overhang neighbouring property during construction work.

- (2) The Court may make an order under subsection (1) only if satisfied that:
 - (a) use of the land having the benefit of the easement will not be inconsistent with the public interest;
 - (b) the registered owner of the land to be burdened by the easement and each other person having a registered interest in that land

⁶⁴ The purpose of this provision is to allow repair obligations in relation to easements to be enforceable by and between the successors in title to the original parties to the easement. Obligations of this kind are "positive" covenants and normally do not run with the land. This provision allows them to run, and so clarifies an area of law that has long been the cause of dispute.

⁶⁵ This subsection prevents the retrospective imposition of liability to contribute to the cost of repairs. Also, the reference to registered "proprietor" (rather than registered "owner" – see definition in section 4) is intended to cover the situation where, for example, the easement is appurtenant to a lease of land.

⁶⁶ This Division introduces a regime, now becoming common in other jurisdiction, allowing the Court to impose easements over properties in specified situations. It implements a proposal in our Issues Paper, at pp 76-77. It is wider than, and will supersede, the provisions in the *Access to Roads Act* (cap 350) that allow the creation of a right of access over another person's land; and for that reason, we propose (in the "Repeals" provisions of this draft Act) that the *Access to Roads Act* be repealed. Ideally, our provision would be better placed in a "general property statute", of the kind we proposed in our Issues Paper; but for now it can be located in this Act.

can be adequately compensated for any loss or other disadvantage that will arise from imposition of the easement; and

- (c) the applicant has made all reasonable attempts to negotiate the grant of the easement or an easement having similar effect, but without success.
- (3) The Court order:
- (a) must specify the nature of the easement; and
 - (b) may limit the times at which the easement applies.
- (4) The Court may order that the easement be registered, and, if it does so, must specify in the order whatever information is required by section 70 to enable the easement to be registered.
- (5) The Court order must require the applicant to pay compensation in return for the easement, unless the Court determines that the special circumstances of the case make compensation inappropriate.
- (6) The applicant must pay the costs of the proceedings, unless the Court orders otherwise.
- (7) Nothing in this section prevents the easement from being:
- (a) varied or released under section 74;
 - (b) cancelled under section 75; or
 - (c) varied or extinguished under section 76.

PART 10 —COVENANTS⁶⁷

Division 1 — General

81 Positive covenants permitted [new]

- (1) This Act permits the creation of positive covenants as well as negative (restrictive) covenants.⁶⁸

⁶⁷ This Part of the Act is new. It has no counterpart in the RTA. Its purpose is to allow the creation and enforcement of covenants over land. This fills a gap in Ugandan law: see Mugambwa, *Principles of Land Law in Uganda*, p 141. In many ways, the provisions of this Part mirror the provisions in relation to easements, but are varied in some respects to reflect the different characteristics of covenants. In some Torrens statutes, covenants are not “registered”, strictly speaking, but only “recorded”. In this draft statute, they are registered.

⁶⁸ Conventionally, courts in common law countries allow only “negative” or “restrictive” covenants to run with land: *Tulk v Moxhay* (1848) 2 Ph 774; 41 ER 1143; *Rhone v Stephens* [1994] 2 AC 310. This,

- (2) In the construction of this Part, a reference to a covenant includes a reference to a positive covenant, unless the contrary appears.

Division 2 — Registration of covenants

82 Creation of covenant by registration [new]

A covenant may be created by:

- (a) registration of an instrument of covenant under section 83; or
- (b) registration of a plan of subdivision under section 84.

83 Creation by instrument of covenant [new]

- (1) An covenant may be created over land in a folio of the Register by registering an instrument of covenant.
- (2) In order to be registered, an instrument of covenant must:
 - (a) indicate clearly:
 - (i) the nature of the covenant;
 - (ii) the obligations created under it;
 - (iii) the land benefited by it; and
 - (iv) the land burdened by it;
 - (b) if required by the Registrar, include a sketch plan or a plan of survey identifying the land to be burdened by the covenant and the land to be benefited by it; and
 - (c) contain the consents of all registered mortgagees and registered lessees of the land to be burdened by the covenant.
- (3) This section does not limit the matters that the approved form of instrument of covenant may require to be included.
- (4) Where a covenant relates to underground pipes, cables or other installations the locations of which are difficult to describe with precision, the Registrar may accept for registration an instrument of covenant that contains only a general description of the location.

in our view, has created many inconveniences. We suggest a change in law to allow “positive covenants” also to run with land, and have drafted this Act accordingly. If precedent be sought, courts in the USA allow positive covenants to run; and even in common law countries, courts allow positive covenants to run in leases. We discuss these issues in para 2.2 of our Draft Final Issues Paper.

- (5) The Registrar must register the covenant in the folios of the Register for the land burdened and the land benefited.

84 Creation by plan of subdivision [new]

- (1) A covenant may be created by registering a plan of subdivision showing the covenant or covenants intended to be created.
- (2) There must be lodged with the plan of subdivision an instrument that:
 - (a) indicates clearly:
 - (i) the nature of the covenant;
 - (ii) the obligations created under it;
 - (iii) the land benefited by it; and
 - (iv) the extent of the land burdened by it; and
 - (b) contains the consents of all registered mortgagees and registered lessees of the land to be burdened by the covenant.
- (3) Where the covenant relates to underground pipes, cables or other installations the locations of which are difficult to describe with precision, the Registrar may accept for registration an instrument that contains only a general description of the location.
- (4) On registration of the plan of subdivision, the covenant is created.
- (5) When creating folios of the Register for the land benefited and the land burdened by the covenant, the Registrar must register the covenant in them.

85 Covenant benefiting and burdening land of same registered owner [new]⁶⁹

- (1) A covenant may be registered even though the same person is the registered owner of the land benefited and the land burdened by the covenant.
- (2) A registered covenant is not extinguished merely because the same person becomes the registered owner of the land benefited by the covenant and the land burdened by it, unless:

⁶⁹ The purpose of this provision is to overcome the principles that: (1) covenants cannot be created where the same person owns both benefited and burdened lands; and (2) covenants are extinguished if, at some time after their creation, the lands benefited and burdened come to be owned by the same person. When taken with the preceding provision (Creation by plan of subdivision), this will overcome the need for the implication of common building scheme principles—principles that have added great complexity to the law of covenants: see Mugambwa, *Principles of Land Law in Uganda*, pp 140-141.

- (a) that owner requests the Registrar to extinguish the covenant; or
 - (b) the Registrar creates a single folio of the Register for the lands.
- (3) A registered covenant is not extinguished merely because the registered owner of the land benefited by the covenant acquires an interest, or a greater interest, in the land burdened by the covenant.

Division 3 — Variation or extinguishment of covenants

86 Variation or release of covenant by parties [new]

- (1) A registered covenant may be varied or wholly or partly extinguished by registering an instrument of variation or release of covenant.
- (2) In order to be registered, the instrument of variation or release:
- (a) must be executed by the registered owner of the land benefited by the covenant; and
 - (b) may (but need not) be executed by the registered owner of the land burdened by the covenant.
- (3) A registered covenant may be varied or released only with the consent of all registered mortgagees and lessees of the land benefited by the covenant.
- (4) Subsection (3) does not apply to a lessee who, in the Registrar's opinion, does not receive a benefit from the covenant.

87 Court order varying or extinguishing covenant [new]⁷⁰

- (1) The Court may, on application by any person interested in land burdened by a covenant, make an order wholly or partly varying or extinguishing the covenant.
- (2) The Court may only make an order under subsection (1) if satisfied that by reason of a lawful change in use of the burdened land:
- (i) the covenant is obsolete;
 - (ii) the continued existence of the covenant will impede the development of that land for public or private purposes;
or
 - (iii) the proposed variation or extinguishment will not materially injure the persons entitled to the benefit of the covenant.

⁷⁰ This provision parallels the similar provision in relation to easements.

- (3) When making an order under subsection (1), the Court may order the applicant to pay compensation to any person entitled to the benefit of the covenant.
- (4) An order under subsection (1) binds all persons who are, or who may become entitled, to the benefit of the covenant, regardless of whether they have been notified of, or participated in, the proceedings.
- (5) The Registrar may record the order in the folios of the Register for the burdened land and the benefited land.

88 Interests no valid covenants [new]

- (1) Registration of an interest as a covenant is not conclusive evidence that the interest meets the legal requirements for a valid covenant.

Example: Registration of a “covenant” that is purely personal to the benefited owner and does not relate to the land would not make the covenant run with the land.

- (2) However, subsection (1) does not apply to an interest which this Act recognises as a valid covenant.

89 Duration of covenant⁷¹

- (1) A covenant ceases to be enforceable 10 years after it was registered.
- (2) Where a covenant ceases to be enforceable under subsection (1), the Registrar may record that fact in the folios of the Register for the land burdened and the land benefited.
- (3) Despite subsection (1), any person having the benefit of the covenant may, before the covenant ceases to be enforceable, extend it by lodging with the Registrar an instrument of extension.
- (4) If an instrument of extension is lodged, the Registrar must record it in the folio of the Register for the land burdened and the land benefited.

PART 11 — PROFITS A PRENDRE⁷²

90 Creation of profit à prendre by registration

A profit à prendre may be created over land in a folio of the Register by registering an instrument of profit à prendre.

⁷¹ The purpose of this provision is to enable the removal of covenants which have ceased to have any real effect but which still clutter the Register.

⁷² This Part regulates the registration of profits à prendre. It fills a gap in the RTA: see Mugambwa, *Principles of Land Law in Uganda*, pp 136-138,

91 Requirements of instrument of profit à prendre

- (1) In order to be registered, an instrument of profit à prendre must:
 - (a) include a description or sketch plan sufficient to identify the land or part of the land to be burdened by the profit à prendre and the land or part of the land to be benefited by the profit à prendre; and
 - (b) include a description of the profit à prendre, including the period for which it is to be enjoyed.
- (2) Subsection (1) does not limit the matters that the approved form of instrument of profit à prendre may require to be included.

92 Profits à prendre benefiting and burdening land of same registered owner

- (1) A profit à prendre may be registered even though the same person is the registered owner of the land benefited by the profit à prendre and the land burdened by the profit à prendre.
- (2) A registered profit à prendre is not extinguished merely because the same person becomes the registered owner of the land benefited by the profit à prendre and the land burdened by it, unless:
 - (a) that owner requests the Registrar to extinguish the profit à prendre; or
 - (b) the Registrar creates a single folio of the Register for the land.
- (3) A registered profit à prendre is not extinguished merely because the registered owner of the land benefited by the profit à prendre acquires an interest, or a greater interest, in the land burdened by the profit à prendre.

93 Varying profit à prendre

- (1) A registered profit à prendre may be varied by registering an instrument of variation of profit à prendre.
- (2) An instrument of variation cannot add a party to or remove a party from the profit à prendre.
- (3) An instrument of variation must include the consents of all registered mortgagees of the land burdened by the profit à prendre.

94 Releasing profit à prendre

- (1) A registered profit à prendre may be released in whole or in part by registering an instrument of release of profit à prendre.

- (2) The Registrar must register the release to the extent shown in the instrument of release.
- (3) On registration of the instrument of release, the profit à prendre is discharged, and the land is released from the profit à prendre, to the extent shown in the instrument of release.

95 Removing profit à prendre

- (1) The Registrar may remove a profit à prendre from the folio of the Register if:
 - (a) a request to remove the profit à prendre is lodged; and
 - (b) it is clearly established that:
 - (i) the period for which the profit à prendre was intended to subsist has ended; or
 - (ii) the event on which the profit à prendre was intended to end has happened.

PART 12 — TRUSTS

96 No notice of trusts in Register [RTA 50]⁷³

- (1) The Registrar must not record in the Register any notice of a trust, whether express, implied or constructive.
- (2) However, subsection (1):
 - (a) does not prevent the Registrar from registering or recording an instrument merely because a person has the word “trustee” in its name;
 - (b) does not prevent a person or the Registrar from lodging a caveat to protect the interest of a beneficiary under a trust.

97 Vesting orders in relation to trust estates [RTA 166]

- (1) A court order vesting land in a folio of the Register in a person as trustee has no effect until the order is registered.
- (2) However, subsection (1) does not prevent the person lodging a caveat

⁷³ This provision adopts the principle in section 50 of the RTA – namely, that the Register is to be kept free of notice of trusts. However, it omits the provision regarding the lodging of trust instruments. This we consider to be unnecessary. In our experience, the lodgment of trust instruments is extremely rare. A beneficiary of a trust can always lodge a caveat to protect his or her interest – a principle confirmed by subs (2)(b).

- (3) On being served with the order, the Registrar must register the person as registered proprietor in accordance with the terms of the order.
- (4) On registration, the land vests in the person in accordance with the terms of the order.

98 Dealing with trustee [RTA 136]

Where a registered proprietor is a trustee, a person dealing with that trustee is entitled to assume that the trustee is the legal and beneficial owner, freed from all trusts.

PART 13 — DECEASED ESTATES

99 Registration of personal representative [RTA 134]

- (1) A person may lodge an application to be registered as personal representative of a deceased registered proprietor in relation to a folio of the Register.
- (2) If satisfied that the person is entitled to be so registered, the Registrar may register the person in the capacity of personal representative.
- (3) On registration, the person is treated as if they had been registered as proprietor immediately after the death of the deceased.
- (4) If more than one person is registered as the deceased's personal representative, all must join in any dealing with the land.

100 Dealings without registration of personal representative [new]⁷⁴

- (1) The Registrar may register a dealing by the personal representative of a deceased registered proprietor without requiring the personal representative to be registered, if the Registrar considers it unnecessary or impracticable to require the personal representative to be registered.
- (2) Before acting under subsection (1), the Registrar may require any evidence the Registrar considers necessary to protect the interests of those whom the Registrar considers to be entitled to the deceased's estate.

⁷⁴ This provision will allow dealings with small estates without the expense of formal registration of the personal representative. However, it may be thought to offer avenues of fraud — avenues that would not be so available if a formal grant of representation is required. Hence, it may need reconsideration.

101 Notice of death [RTA 192]⁷⁵

- (1) A person entitled to land in a folio of the Register on the death of a joint tenant or life tenant may apply to the Registrar to record the death.
- (2) If satisfied that the death has occurred, the Registrar may record in the folio of the Register that the deceased's interest has determined and that the land has vested in the survivor or in the person entitled to the reversion or remainder.

PART 14 — BANKRUPTCY

102 Transmission on bankruptcy [RTA 197, 198]

- (1) The Registrar may register a transmission of land in a folio of the Register under a law relating to bankruptcy, if a request to register the transmission is lodged.
- (2) A person registered by transmission under subsection (1) is taken to be the registered proprietor for the purpose of any dealing with the land.
- (3) Until registration of the transmission under subsection (1), no interest vests in a person entitled under a law relating to bankruptcy, but this does not prevent the person lodging a caveat.

Note: Section 4 defines "bankruptcy" to include insolvency or liquidation.

103 Bankruptcy of lessee [RTA 107]

- (1) This section applies where:
 - (a) a lessee becomes bankrupt and, at the date of the bankruptcy, the lease is subject to:
 - (i) one mortgage only; or
 - (ii) two or more mortgages in favor of one mortgagee only; and
 - (b) the official receiver disclaims the lease.
- (2) The mortgagee may apply to the Registrar for foreclosure of the mortgage or mortgages.
- (3) If the mortgagee's application is supported by a letter from the official receiver that it has disclaimed the lease:

⁷⁵ This is based on RTA section 192, expanded to include the recording of the death of a life tenant.

- (a) the Registrar must register the mortgagee as the proprietor of the lease; and
 - (b) the registration operates as a foreclosure.
- (4) If the mortgagee has not applied to the Registrar under subsection (2), the lessor may give the mortgagee written notice requiring the mortgagee to do so.
- (5) If the mortgagee fails to apply to the Registrar within 21 days of the lessor's notice, then:
- (a) the lessor may request the Registrar to record that the lease has been surrendered; and
 - (b) on receipt of the request, the Registrar must record that the lease has been surrendered.
- (6) A recording under subsection (5) operates as a surrender of the lease, free of any mortgages but without affecting any cause of action for breach of the lease that occurred before the recording was made.

PART 15 — WRITS

104 Request to register Warrant[RTA 135]

The Registrar must register a Warrant of execution relating to land in a folio of the Register if:

- (a) the judgment creditor for whose benefit the Warrant was issued lodges a request to register the writ;
- (b) the request is accompanied by an official copy of the writ; and
- (c) the request is lodged within 6 months of the date of issue of the writ.

105 Registration of Warrant[RTA 135]

- (1) The Registrar registers a Warrant of execution by recording the Warrant in the folio of the Register for the judgment debtor's land.
- (2) A Warrant of execution:
 - (a) does not bind or affect land until it is registered, whether or not there is notice of it; and
 - (b) binds or affects land only if it is executed and put into force within:
 - (i) 12 months after the date it is issued; or

- (ii) an extended time allowed by the Court.

106 Cancellation of registration of Warrant[new]

The Registrar must cancel the registration of a Warrant of execution if:

- (a) a request to cancel is lodged by the judgment creditor for whose benefit the Warrant was issued; or
- (b) the Registrar is satisfied that the time or extended time for executing and putting the Warrant into force has expired.

107 Discharging or satisfying Warrant[RTA 135(2), 169]

- (1) If a registered Warrant of execution has been discharged or satisfied, the Registrar may record that fact in the folio of the Register.
- (2) The Registrar may act under subsection (1):
 - (a) on the Registrar's own initiative; or
 - (b) on application by a registered owner.

108 Transfer of land sold in execution [RTA 135]

- (1) If land is sold under a registered Warrant of execution, the registrar or clerk of the relevant court may execute an instrument of transfer to the purchaser.
- (2) On registration of the transfer, the transferee becomes the registered owner of the land subject only to:
 - (a) prior registered interests; and
 - (b) equitable mortgages notified by caveat lodged before the Warrant of execution was registered.

PART 16 — ADVERSE POSSESSION

109 Title by adverse possession [new; cf RTA 78-91]⁷⁶

- (1) A person who enters into possession of land after this Act commences cannot acquire any right or title to land in a folio of the Register by adverse possession.
- (2) However, subsection (1) does not affect any rights or entitlements under the *Land Act*.
- (3) Also, subsection (1) does not affect the rights, if any, of a person who is in adverse possession of land at the time this Act commences.

110 Claims by existing adverse possessors [new]

- (1) This section applies where, at the time this Act commences, a person (in this section called “the applicant”):
 - (a) is in adverse possession of land comprised in a folio of the Register; and
 - (b) has been or remains in adverse possession for a time and in circumstances sufficient to prevent the registered owner from recovering the land.
- (2) The applicant may apply to the Registrar in the approved form to become the registered owner of the land.

Examples of operation of subsections (1) and (2): Assume that, at the time this Act comes into force, a person (“the applicant”) has been in possession that is “adverse” in accordance with the requirements of the *Limitation Act* (cap 80).

- If the applicant has already been in possession for 12 years, he or she could apply to become the registered owner;
- If the applicant has been in possession for, say, 10 years, he or she would retain their “accrued” right of 10 years’ possession. Until a

⁷⁶ Although the RTA and the *Limitation Act* (cap 80) allow the acquisition of title by adverse possession, we understand that few claims are made. The purpose of this provision is to prohibit the acquisition of any “new” titles by adverse possession. In our view, from a moral perspective, most Ugandans would regard the acquisition of title by adverse possession as “theft”. In addition, from a legal perspective, title by adverse possession undermines confidence in security of registered titles, because it allows title to be acquired by acts “outside of the Register”.

However, our draft Act recognises two exceptions to the prohibition on the acquisition of title by adverse possession:

- (a) the rights of those already in possession under the *Land Act*; and
- (b) the rights, if any, of persons in adverse possession when the proposed new Act comes into force. The examples illustrate the operation.

further 2 years elapses, he or she is a trespasser, and can be evicted. But if the possession is continued for 2 more years, then he or she may apply to the Registrar to become the registered owner.

- (3) On receiving the application, the Registrar:
 - (a) may require the applicant to prove to the Registrar's satisfaction the facts and circumstances stated in it;
 - (b) must:
 - (i) use best endeavours to notify all registered proprietors of the land that the application has been received;
 - (ii) advertise the application in the manner the Registrar considers appropriate; and
 - (c) consider any objections lodged to the application
- (4) If the Registrar is satisfied that the requirements of this section have been satisfied, the Registrar may register the applicant as registered owner of the land.

PART 17 — CAVEATS

Division 1 — Lodging caveats

111 Who may lodge a caveat? [RTA 139] ⁷⁷

- (1) A caveat may be lodged in relation to land in a folio of the Register by any of the following persons:
 - (a) a person claiming an interest in the land;
 - (b) a previous registered owner who has been deprived of the land by fraud and who is entitled to apply under section 36 to be restored to the Register as registered owner;⁷⁸
 - (c) a spouse in exercise of the right to lodge a caveat under s 39 of the Land Act in relation to family land;
 - (d) a tenant by occupancy;

⁷⁷ This section enlarges the categories of persons entitled to lodge a caveat.

⁷⁸ The purpose of this paragraph is to ensure that such persons have the right to lodge a caveat. Without the provision, their right to lodge a caveat would be doubtful: unless and until the transferee's registration is set aside, they have no proprietary interest — at most, they have a "mere equity".

- (e) a person who has the benefit of an injunction restraining a registered proprietor from dealing with the land.
- (2) For the avoidance of doubt, a caveat may be lodged by a registered proprietor.
- (3) A caveat may be lodged by the Registrar under section 155.

112 Requirements of caveat [RTA 139]

- (1) A caveat lodged under section 126(1) must be in the approved form, and must be signed by or for the caveator.
- (2) A caveat must state:
 - (a) the name of the caveator;
 - (b) the interest claimed by the caveator;
 - (c) the grounds on which the interest is claimed;
 - (d) the land affected by the caveat and, if the caveat relates to part only of land in a folio of the Register, a description of the part;
 - (e) the registered interest or interests affected by the caveat;
 - (f) the extent of the prohibition on dealings;
 - (g) an address within Uganda where documents can be served on the caveator, including any documents in court proceedings relating to the caveat; and
 - (h) the name and address of:
 - (i) the registered owner of the land; and
 - (ii) each person known to the caveator whose interest or whose claim to registration of an instrument may be affected by the caveat.
- (3) Subsection (2) does not limit the matters that the approved form of caveat may require to be included.

113 Recording a caveat [RTA 143]

- (1) If a caveat is lodged that complies with section 112, the Registrar must record the caveat in the folio of the Register.
- (2) If the Registrar considers that urgency or other special circumstances require, the Registrar may record a caveat that omits information

required by section 112, on condition that the information be supplied within a time specified by the Registrar.

- (3) If the information is not supplied within the specified time, or any extended time the Registrar allows, the Registrar may cancel the caveat.

114 Giving notice of caveat

The Registrar must give written notice of lodgement of a caveat to each person disclosed or known to the Registrar whose interest or whose claim to registration of an instrument may be affected by the caveat.

Division 2 – Effect of caveat

115 Effect of lodging caveat [RTA 141]

- (1) A caveat prevents the registration of an instrument affecting the land in respect of which the caveat is lodged:
 - (a) to the extent stated in the caveat; and
 - (b) from the time the caveat is lodged.
- (2) A caveat continues to have the effect in subsection (1) until the caveat lapses or is withdrawn, removed or cancelled.
- (3) Despite subsection (1), the lodging of a caveat does not prevent registration of the following:
 - (a) an instrument specified in the caveat as an instrument to which the caveat does not apply;
 - (b) an instrument to the registration of which the caveator consents;
 - (c) an instrument executed by a mortgagee, if the mortgage was registered before the caveat was lodged;
 - (d) an interest that, if registered, would not affect the interest claimed by the caveator;
 - (e) an instrument that was lodged for registration before the caveat was lodged;
 - (f) an instrument that is withdrawn from registration.
- (4) For the purposes of subsection (3), "mortgagee" includes a submortgagee.

- (5) Where the Registrar registers an instrument that does not completely dispose of the registered interest to which the caveat relates, the caveat remains in force as to the balance of that interest.
- (6) Subject to section 121, the lodging of a caveat does not prevent the lodging of another caveat.

Division 3 — Withdrawal, lapsing and removal of caveats

116 Withdrawal of caveat [RTA 139, 145]

- (1) A caveat may be withdrawn by lodging a request to withdraw it.
- (2) The request may be lodged by:
 - (a) the caveator;
 - (b) where the caveator has died, the caveator's personal representative;
 - (c) where the caveators are joint tenants, by the surviving joint tenant or joint tenants;
 - (d) by any person authorised at law to act on the caveator's behalf.
- (3) The withdrawal takes effect at the time it is lodged.

117 Lapsing of caveat following notice by caveatee [RTA 140(3)]

- (1) This section applies to a caveat unless:
 - (a) it is lodged by the registered owner;
 - (b) the caveatee's consent is deposited when the caveat is lodged;
 - (c) it is lodged by the Registrar under section 155;
 - (d) it is lodged by a beneficiary claiming under a will or settlement, and the Registrar considers that the instrument that is lodged for registration is authorised by the will or settlement, or the caveator has consented to or has not protested against the proposed registration within 14 days of notification; or
 - (e) it is lodged by a spouse of the caveatee in relation to family land.⁷⁹
- (2) A caveatee may serve on the caveator a notice requiring the caveator to start proceedings in the Court to justify why the caveat should remain.

⁷⁹ The special protection for spouses reflects s 39(8) of the Land Act.

- (3) The caveat lapses 60 days after service of the notice, unless within the 60 days:
 - (a) the caveator has started appropriate proceedings in the Court; and
 - (b) the Registrar has been notified of the proceedings.
- (4) In proceedings in relation to the caveat:
 - (a) the caveator bears the onus of proving why the caveat should remain; and
 - (b) the Court may make such order as it considers appropriate.
- (5) If, under this section, a caveat lapses or the Court orders it to be removed, the Registrar may record that fact in the folio of the Register.

118 Removal of caveat by Court order, apart from notice procedure [new]⁸⁰

- (1) A caveatee may at any time apply to the Court for an order that a caveat be removed.
- (2) The Court may make the order it considers appropriate.
- (3) The Court may make its order regardless of whether the caveator has been served with the application.

119 Order for security [RTA 140]

In proceedings in relation to a caveat, the Court may order the caveator to give undertakings, or lodge security, or both.

120 Cancellation of caveat by Registrar [RTA 145]⁸¹

- (1) The Registrar may cancel a caveat if a request to cancel the caveat is lodged and the Registrar is satisfied that:
 - (a) the interest claimed by the caveator has ceased or the caveator's claim to it has been abandoned, settled or withdrawn; or
 - (b) the nature of the interest claimed does not entitle the caveator to prevent registration of an instrument that has been lodged.
- (2) The Registrar must notify the caveator of the intention to cancel the caveat, at least 7 days before cancelling it.

⁸⁰ This new provision is to enable the swift removal of caveats, by-passing the more laborious notice procedure under the preceding section.

⁸¹ This provision is based on RTA section 145, but also introduces new material.

- (3) Regardless of whether a request to cancel the caveat has been lodged, if an instrument that has been lodged will on being registered give full effect to an interest claimed in a caveat, the Registrar may cancel the caveat and register the instrument.

121 Further caveat [RTA 140(3)]

If a caveat lapses, or is withdrawn, removed or cancelled, the caveator may not lodge another caveat in relation to the land on the same, or substantially the same, grounds except with the Court's permission.

Division 4 — Improper caveats

122 Compensation for improper caveat [RTA 142]

- (1) A caveator who lodges or continues a caveat without reasonable cause must compensate anyone who suffers loss as a result.
- (2) In proceedings for compensation under subsection (1):
 - (a) the caveator bears the onus of proving that the caveat was lodged or continued with reasonable cause; and
 - (b) the Court may include in any compensation a component for exemplary damages.

Division 5 — General

123 Notices to caveator [RTA 139(4)]

- (1) A notice to a caveator under this Part is sufficiently served if left at or sent to the address mentioned in [section 112\(2\)](#).
- (2) If the Registrar considers that a notice will not reach the caveator if served in the way mentioned in subsection (1), the notice may be served in any other way the Registrar considers appropriate.

124 Right to injunction not affected [new]⁸²

Nothing in this Part prevents a person from seeking an injunction to protect an interest in land.

⁸² This provision is for more abundant caution—to make it clear that if for some reason a caveat cannot be lodged, or would be ineffective to prevent registration, a person may still approach the Court for an injunction to restrain registration.

PART 18 — REGISTRATION OF INSTRUMENTS

Division 1 — Electronic processing

125 Lodgement by electronic or other means [new]⁸³

The Registrar may:

- (a) permit instruments to be executed;
 - (b) permit instruments or documents to be lodged or deposited; and
 - (c) correct instruments that have been lodged or deposited,
- by any means, including electronic means.

Division 2 — Suitability of instruments for registration

126 When instrument capable of registration [new; RTA 200]⁸⁴

- (1) An instrument is able to be registered only if it:
 - (a) complies with this Act;
 - (b) is in the approved form;⁸⁵
 - (c) appears on its face to be capable of being registered; and
 - (d) is accompanied by any form of application or other document, and payment of any relevant fee, that may be required by the Registrar or by this or any other law.
- (2) Despite subsection (1)(b), the Registrar may register an instrument that is not in the approved form if:
 - (a) there is no approved form; or
 - (b) the Registrar considers that it is not reasonable to require the instrument to be in the approved form.
- (3) Also despite subsection (1)(b), the Registrar may register an instrument that is in the approved form but that contains departures from it, if the Registrar considers that the departures may be excused.

⁸³ This provision aids the anticipated computerisation of the Register.

⁸⁴ This section is added for clarification.

⁸⁵ An “approved form” is a form approved by the Registrar. This Act proposes that forms be “approved” in this way, rather than “prescribed”. See [section 160](#).

127 Registrar’s discretion to reject instrument on certain grounds [new]⁸⁶

Before registering an instrument, the Registrar may require the person who lodged it to provide information to satisfy the Registrar that:

- (a) the instrument was made in good faith;
- (b) the matters set out in the instrument are correct;
- (c) the person acquiring an interest under the instrument accepts ownership of that interest and is not under any legal disability; and
- (d) the person divesting ownership under the instrument is entitled to divest the interest and is not under any legal disability.

128 Address for service to be provided [RTA 37(3), 191]

- (1) An instrument lodged for registration must specify an address in Uganda for the service of notices on any person taking under the instrument.
- (2) A person referred to in subsection (1) must ensure that the Registrar is notified of any change in the address for service.
- (3) The Registrar must record in the Register:
 - (a) the address for service provided under subsection (1); and
 - (b) any change of address provided under subsection (2).

129 Registration after death of party executing instrument [new]

The death of a person after signing an instrument but before the instrument is registered, does not, of itself, prevent registration of the instrument.

Division 3 – Manner of execution of instruments

130 Execution of certain instruments [new]⁸⁷

- (1) Subject to this Act, an instrument to transfer or create an interest in land must be executed by:
 - (a) the transferor or the person creating the interest; and
 - (b) the transferee or the person in whose favour the interest is to be created.

⁸⁶ The purpose of this provision is to help ensure the bona fides and legal competence of persons dealing with land.

⁸⁷ This section clarifies who must execute instruments; and by requiring the parties to execute them, may help in identifying persons who deal with land and so help reduce opportunities for fraud.

- (2) A total or partial discharge of a mortgage need only be executed by the mortgagee.

131 Execution of instruments by corporations [RTA 132]

- (1) For a corporation, an instrument relating to land in a folio of the Register is validly executed if it is:
 - (a) executed in a way permitted by law; or
 - (b) executed under the corporation's seal and countersigned by a director and the corporation's secretary.
- (2) Without limiting subsection (1), a person is entitled to assume that an instrument relating to land in a folio of the Register is validly executed by a corporation if it is executed under the corporation's seal and countersigned by a director and the company's secretary.

132 Execution of instruments by natural persons [RTA 147]⁸⁸

- (1) For a natural person, an instrument relating to land in a folio of the Register is validly executed if:
 - (a) it is signed by the person; and
 - (b) the signature is witnessed by a person approved by the Registrar, either for that instrument, or for instruments of that class, or for instruments generally.
- (2) A person who witnesses an instrument executed by a natural person must:
 - (a) first take reasonable steps to ensure that the person is the person entitled to sign the instrument;
 - (b) then have the person execute the document in their presence; and
 - (c) not be a party to the instrument.

133 Proof of execution of instruments [new]⁸⁹

- (1) In order to ensure integrity in land dealings and registration procedures, and to minimise the risk of fraud, the Registrar may make whatever enquiries the Register considers appropriate to establish or confirm the identity of parties or purported parties to instruments lodged for registration.

⁸⁸ This provision is based on RTA 147, but it adds a procedure for witnesses to follow, intended to help reduce the incidence of fraud in land transactions.

⁸⁹ This provision implements recommendations in the Issues Paper, p 43.

- (2) Without limiting subsection (1), the Registrar may apply biometric or other methods of establishing identity.

134 Indicating consent when required for dealing [new; RTA 130]

If a person's consent is necessary for a dealing with land in a folio of the Register, the consent must be:

- (a) written or contained on, or form part of, the relevant instrument; or
- (b) if the Registrar considers it appropriate, lodged with the relevant instrument.

135 Execution of instrument under power of attorney [RTA 146, 147]⁹⁰

- (1) An instrument relating to land in a folio of the Register may be executed by a person's attorney properly authorised under a power of attorney, if the requirements of subsection (2) are met.
- (2) The requirements are that:
 - (a) the power of attorney must be in writing;
 - (b) the power of attorney must be executed by the donor in accordance with the provisions of section 131 or 132; and
 - (c) the power of attorney, or a certified copy of it, must be lodged with the Registrar.
- (3) The execution of the instrument is not invalid merely because the power of attorney was not lodged with the Registrar until after the instrument was executed.

Division 4 – The process of registering instruments

136 Lodging certificate of title [RTA 52, 69, 73, 74, 165]

- (1) Subject to this section, an instrument affecting land in a folio of the Register may only be registered if the certificate of title for the land is lodged.
- (2) Subsection (1) does not apply if there is no current certificate of title for the land.
- (3) A certificate of title need not be lodged merely because the land is to receive the benefit of an easement or covenant.

⁹⁰ This provision greatly simplifies the provisions of RTA sections 146 and 147. In addition, it does away with the prescribed form of power of attorney. The parties should be free to draft their own form of power of attorney, preferably in simpler language than the prescribed form. In time, we would expect standard precedents to appear.

- (4) A certificate of title need not be lodged with any of the following:
 - (a) a request to register a Warrant of execution or other court order;
 - (b) a transfer in pursuance of a Warrant of execution;
 - (c) a transfer in pursuance of a statutory charge;
 - (d) a transfer in pursuance of a court order;
 - (e) a caveat;
 - (f) a statutory charge;
 - (g) a statutory vesting under section 52;
 - (h) an instrument or a class of instruments for which the Registrar has dispensed with production of the certificate of title.
- (5) Where this section requires a certificate of title to be lodged for the registration of an instrument, and the person having possession, custody or control of the certificate of title refuses to neglects to produce it, the Registrar may require that person to produce it within 7 days.
- (6) A person who, without reasonable cause, refuses or neglects to produce it within the 7 days commits an offence against this Act.
- (7) If the person refuses or neglects to produce the certificate of title within the 7 days, the Registrar may dispense with production of it.
- (8) If the Registrar dispenses with production under this section, the Registrar must record in the folio of the Register that production was dispensed with.

137 Updating certificate of title [RTA 52]

- (1) When registering an instrument, the Registrar must make on the certificate of title a recording identical to the recording the Registrar makes in the folio of the Register.
- (2) Subsection (1) does not apply if the Registrar has dispensed with production of the certificate of title, or if there is no current certificate of title.
- (3) Despite subsection (2), if the certificate of title is later lodged with the Registrar, or if a certificate of title is later created, the Registrar must then ensure that the certificate of title bears a recording identical to any subsisting recording in the folio of the Register.

138 Registrar's power to correct obvious errors in instruments lodged for registration [new]

- (1) Where the Registrar considers that an instrument lodged for registration contains an obvious error, the Registrar may correct the error.
- (2) The Registrar must retain a record of the correction.
- (3) The Registrar:
 - (a) may not act under subsection (1) unless satisfied that the correction will not prejudice a person's existing rights; and
 - (b) must, as soon as practicable after making the correction, notify the person who lodged the instrument that the correction has been made.
- (4) An instrument corrected by the Registrar under this section has the same effect as if the error had not been made.

139 Registrar's requisitions [RTA 173]

- (1) Before registering or recording an instrument, the Registrar may serve on the person who lodged it a notice requiring:
 - (a) the instrument to be re-executed, completed or corrected, if the Registrar considers it to be defective, incomplete or incorrect; or
 - (b) the person to supply information or produce documents the Registrar considers necessary or appropriate in order to register or record the instrument.
- (2) The Registrar may require any information supplied or document produced under subsection (1)(b) be verified by statutory declaration.

140 Rejecting instrument if requisitions not complied with [RTA 173]

- (1) If within 30 days of service of the notice under section 139, or any extended period the Registrar considers appropriate, the person does not comply with the notice, the Registrar may reject the instrument and any instrument that depends on it for registration or recording.
- (2) An instrument rejected under subsection (1) loses its priority under section 26.
- (3) Where the Registrar rejects an instrument under subsection (1), the Registrar must:
 - (a) note on the instrument that it has been rejected; and

- (b) return it to the person who lodged it.
- (4) This section does not prevent a rejected instrument being relodged after the notice has been complied with.
- (5) If a rejected instrument is relodged, it is taken to have been lodged at the time it is relodged.

141 Withdrawing instrument before registration [new]

- (1) The person who lodged an instrument for registration may withdraw it before registration.
- (2) The withdrawal of an instrument does not prevent it from later being re-lodged for registration.
- (3) An instrument withdrawn under subsection (1) loses its priority under section 26 and is taken to have been lodged at the time it is relodged.

142 Dispensing with production of certificate of title or instrument [RTA 69]

- (1) When registering an instrument, the Registrar may dispense with the production of the certificate of title or any other instrument.
- (2) Before dispensing with production, the Registrar may require evidence that a person seeking to deal with the land is the registered proprietor and that the certificate of title or instrument:
 - (a) has been lost or no longer exists; and
 - (b) is not deposited as security or for safe custody.
- (3) If the Registrar dispenses with production under this section, the Registrar must record in the folio of the Register that production was dispensed with.

143 Requiring plan etc to be lodged [RTA 149, 150]

- (1) If the Registrar considers that it is necessary or appropriate, the Registrar may require a person who lodges an instrument for registration or recording to lodge a sketch plan, plan of survey, map or diagram of the land to be affected by the instrument.
- (2) The sketch plan, plan of survey, map or diagram must comply with the Registrar's directions as to dimensions, scale and contents.

144 Protection of persons under disability [RTA 55]

- (1) Where it appears to the Registrar that a registered proprietor is a minor or under some other legal disability, the Registrar must record the disability in the folio of the Register.

- (2) Where a disability is recorded under subsection (1), the Registrar must not register an instrument executed by that person, unless:
 - (a) a court has authorised the execution of the instrument; or
 - (b) the Registrar considers that execution of the instrument is within the person's legal capacity.

*Division 5 — Standard terms incorporated into instruments*⁹¹

145 Interpretation

In this Division, "standard terms document" means a document containing provisions that are intended to be incorporated into a registered instrument.

146 Standard terms documents [new]

- (1) A registered instrument may incorporate some or all of the terms of a standard terms document.
- (2) If there is a conflict between the standard terms document and the terms in an instrument, the instrument prevails.

147 Lodging standard terms document

- (1) The Registrar or any other person may lodge a standard terms document and may amend the document by lodging a further standard terms document.
- (2) The Registrar must give each standard terms document a distinguishing reference.

148 Withdrawing standard terms document

- (1) The person who lodged a standard terms document may withdraw it.
- (2) The Registrar must keep and, if asked, produce for inspection a copy of a standard terms document withdrawn under this section.
- (3) The withdrawing of a standard terms document does not affect an instrument already registered.

149 Other means of incorporating terms into instruments

This Division does not limit the ways in which terms may be implied or incorporated into registered instruments.

⁹¹ This Division allows a registered instrument to incorporate terms from other instruments ("standard terms documents"). This will shorten the length of registered documents, and in that way help reduce clutter in the Register.

Division 6 — Covenants in registered instruments

150 Successors in title implied [RTA 193]

In registered instruments, unless a contrary intention is expressed, covenants:

- (a) are deemed to be made by the covenantor and the covenantor's successors in title, with the covenantee and the covenantee's successors in title; and
- (b) have effect as if those successors were expressly referred to.

PART 19 — POWERS OF, AND PROCEEDINGS AGAINST, REGISTRAR

Division 1 — Powers of Registrar

151 General powers of the Registrar [new]

The Registrar has the power to do whatever is necessary or appropriate to carry out the Registrar's powers, duties and functions under or in relation to this Act.

152 Registrar may require instrument for correction or cancellation [RTA 73]

- (1) In order to maintain the integrity of the Register, the Registrar may require a person to deposit an instrument for correction or cancellation.
- (2) A person who fails to comply with a requirement under subsection (1) commits an offence against this Act.

153 Registrar may issue substitute certificate of title or instrument [RTA 70, 72]

- (1) If the Registrar is satisfied that a certificate of title or a registered instrument has been lost, destroyed, irrevocably damaged, or otherwise ought to be replaced, the Registrar may issue a substitute for it.
- (2) The Registrar must record in the folio of the Register that the substitute certificate of title or instrument has been issued and the date on which it was issued.
- (3) The Registrar must endorse on the substitute:
 - (a) that it is a substitute replacing a lost or destroyed original;
 - (b) the date on which the substitute was issued;
 - (c) that the substitute is to be used in place of the original;
 - (d) the location of the original, so far as it is known; and

- (e) other known circumstances of the loss or destruction.
- (4) Where the substitute replaces a certificate of title, the Registrar must endorse on the substitute all of the entries and recordings that were on the original, so far as they can be ascertained from information available to the Registrar.
- (5) On issuing the substitute:
 - (a) the substitute takes the place of the original; and
 - (b) the substitute has the priority to which the original was entitled.

154 Registrar may correct errors in Register⁹²

- (1) The Registrar may correct errors in the Register in the circumstances and manner specified in section 91(4) of the *Land Act* (cap 227).
- (2) However, the Registrar may exercise the power under subsection (1) only if the correction will not prejudice the rights of a registered proprietor under an interest that was registered before the correction was made.
- (3) For the purposes of subsection (2), the rights of a registered proprietor are not prejudiced if the registered proprietor acquired or has dealt with the interest with actual or constructive knowledge that the Register was incorrect.
- (4) Except to the extent specified or implied in this section, the Registrar's powers to correct the Register under the provisions of the *Land Act* or any other law remain in force.

155 Registrar may lodge caveat [RTA 170(a)]

- (1) The Registrar may prepare and lodge a caveat over land in a folio of the Register:
 - (a) to prevent a dealing that, in the Registrar's opinion, may prejudice a person who has an interest, including a beneficial interest, in the land; or

⁹² This provision is new, but it adopts section 91 of the *Land Act*. Logically, the Registrar's power to correct the Register should be found in the RTA rather than the *Land Act*; but for convenience we have incorporated the relevant Land Act provisions by reference into this provision. However, our proposed section adds a rider to section 91 of the *Land Act*, by placing a limit on the Registrar's power to correct. This limit is in fact recommended in leading court decisions on the Torrens system (eg *Frazer v Walker* [1967] 1 AC 569 at 585-586), in order to protect the underlying principle of indefeasibility of title. If the Registrar's power to correct could be exercised at any time, regardless of intervening registrations, public confidence in the system would be seriously undermined.

- (b) to give effect to a Court order directed to the Registrar; or
 - (c) whenever the Registrar considers it appropriate to do so to protect the integrity of the Register.
- (2) Without limiting subsection (1), the Registrar may lodge a caveat to prevent a dealing with the land that may prejudice any of the following:
- (a) the Government of Uganda;
 - (b) a minor;
 - (c) a person who is intellectually or mentally impaired or who is incapable of managing his or her own affairs;
 - (d) a person who is absent from Uganda;
 - (e) a person, as a result of misdescription of the land or its boundaries;
 - (f) a person, as a result of fraud or improper dealing.
- (3) The caveat may be in the form the Registrar considers appropriate.

156 Registrar may record defeasance [new]

Where this Act makes no express provision for recording the defeasance of an interest in land, the Registrar may record the defeasance in the way the Registrar considers appropriate.

157 Registrar may require notice to be given of certain proposed action [new]⁹³

- (1) This section applies if a person asks the Registrar to do any of the following things:
- (a) register an instrument;
 - (b) issue a substitute certificate of title or registered instrument;
 - (c) dispense with production of an instrument.
- (2) The Registrar may require the person to give public notice of the request.
- (3) The Registrar may specify:
- (a) what is to be included in the public notice;

⁹³ This provision is new. It is one of the new fraud-prevention mechanisms proposed for the RTA. It allows the Registrar to seek information from the public before taking certain action.

- (b) how many times the public notice is to be published; and
 - (c) how and when the public notice is to be published.
- (4) The person must satisfy the Registrar that the public notice has been given as required.

158 Registrar may refer matters to Court [RTA 174]

- (1) In any matter arising under this Act, the Registrar may:
- (a) apply to the Court for directions; or
 - (b) state a case for decision by the Court.
- (2) The directions or decision binds the Registrar.

159 Registrar may demand fees and charges [RTA 33, 170(b), 171, 172]

- (1) The Registrar may demand and receive the fees and charges that are prescribed or fixed by directions made under this Act.
- (2) The Registrar may sue for any unpaid fees or charges.
- (3) The Registrar may waive the payment of any fees or charges.
- (4) The Registrar may receive the fees and charges electronically.

160 Registrar may approve forms [new]⁹⁴

The Registrar may approve forms for use under this Act.

Division 2 – Power to hold inquiries⁹⁵

161 Registrar may hold inquiry [new; RTA 156-164]

- (1) The Registrar may hold an inquiry under this Division:
- (a) to consider whether a person has fraudulently or wrongfully lodged, obtained, kept or procured an instrument affecting land;

⁹⁴ This section introduces a new concept to the RTA. Instead of forms being “prescribed”, this Act proposes that they be “approved” (ie, approved by the Registrar). This accords with the recommendation in our Draft Final Issues Paper, para 1.6. Similar changes have been made in other Torrens title jurisdictions. The change will streamline the operation of the Act and allow greater flexibility in its administration.

⁹⁵ This Division is new. It is intended to allow the Registrar to hold enquiries to help uncover fraudulent conduct, or for other purposes that may be prescribed. It will also cover situations dealt with in existing RTA sections 156-164 (dealing with rectification of titles).

- (b) to consider whether a person has fraudulently or wrongfully procured a registration or recording in the Register or an endorsement on an instrument affecting land;
 - (c) consider whether one or more folios of the Register ought to be rectified so as more accurately to reflect land boundaries;
 - (d) in other circumstances that may be prescribed.
- (2) The Registrar may hold the inquiry:
- (a) on his own decision; or
 - (b) at the request of any person who claims an interest in land that may be affected by the outcome of the inquiry.

162 Notice of inquiry

- (1) The Registrar must give reasonable advance notice of the inquiry to:
- (a) all registered proprietors of the land;
 - (b) any tenant by occupancy; and
 - (c) where the land is family land, the spouse of the registered owner.⁹⁶
- (2) In addition, the Registrar may give notice of the inquiry to any other persons the Registrar considers appropriate.

163 Registrar's conduct of inquiry

- (1) In conducting the inquiry, the Registrar:
- (a) must consider submissions made by any person to whom notice of the inquiry has been given;
 - (b) must observe natural justice;
 - (c) must act as quickly, and with as little formality and technicality, as is consistent with proper consideration of the issues;
 - (d) is not bound by the rules of evidence;
 - (e) may inform himself or herself in any way he or she considers appropriate; and

⁹⁶ This implements amendments to RTA section 160, proposed by the *Registration of Titles (Amendment) Act 2005* but not in fact enacted. It reflects the Land Act's protections to spouses in relation to family land.

- (f) may decide the procedures to be followed.
- (2) Also, in conducting the inquiry the Registrar may:
 - (a) act in the absence of a person who has been given reasonable notice to appear;
 - (b) receive evidence on oath or affirmation or by statutory declaration;
 - (c) adjourn the inquiry;
 - (d) disregard a defect, error or insufficiency in a document; and
 - (e) permit or refuse legal representation at the inquiry.

164 Notice to attend

- (1) The Registrar may, by written notice, require a person to attend the inquiry at a specified time and place as a witness to give evidence or produce specified documents or things.
- (2) A person required to appear as a witness before the inquiry is entitled to:
 - (a) prescribed witness fees; or
 - (b) if no witness fees are prescribed, reasonable witness fees as decided by the Registrar.

165 Offences by witnesses

- (1) A person who is given a notice under section 164 must not, without reasonable excuse:
 - (a) fail to attend as required by the notice; or
 - (b) fail to continue to attend at the inquiry as required by the Registrar.
- (2) A person appearing as a witness at the inquiry must not:
 - (a) fail to take an oath or make an affirmation when required by the Registrar;
 - (b) fail, without reasonable excuse, to answer a question from the Registrar; or
 - (c) fail, without reasonable excuse, to produce something they are required to produce by a notice under section 164.

- (3) It is a reasonable excuse for a person to fail to answer a question or produce something if the answer or production might tend to incriminate the person.
- (4) A person who breaches subsections (1) or (2) commits an offence against this Act.

166 Powers of Registrar following inquiry

At the end of the inquiry, the Registrar may do any of the following:

- (a) correct the Register (but subject to any limitation imposed by section 154);
- (b) order that an instrument be produced;
- (c) refer any findings of fraudulent or wrongful actions to the police;
- (d) lodge a caveat under section 155;
- (e) publish reasons for any decision made.

167 Referral to Court from inquiry

- (1) If in an inquiry under this Division, a person:
 - (a) fails to attend as required by a notice given under section 164;
 - (b) fails to continue to attend as required by the Registrar;
 - (c) fails to take an oath or make an affirmation when required by the Registrar;
 - (d) fails to answer a question asked by the Registrar; or
 - (e) fails to produce something required by a notice under section 164,

the Registrar may apply to the Court for an order to compel the person to comply.

- (2) The Court may make any order to assist the Registrar in the conduct of the inquiry that the Court considers appropriate.

Division 3 — Proceedings against Registrar

168 Registrar may be compelled to perform duty [RTA 182]

- (1) A person who considers that the Registrar has refused to perform a duty under this Act may require the Registrar to state in writing the grounds of the refusal.

- (2) The Registrar must state the grounds within 30 days of receiving the request.
- (3) On receiving the grounds, or if no grounds are received within the 30 days, the person may commence proceedings against the Registrar, requiring the Registrar to substantiate the grounds or the refusal.
- (4) The Court may make the order it considers appropriate, and may give any directions it considers necessary for carrying out the order.
- (5) The Court may make the order as to costs and expenses it thinks appropriate.

169 Protection from liability [RTA 175]

The Registrar, or any person acting under the Registrar’s authority, is not personally liable for anything done in good faith in the exercise or purported exercise of a power, duty or function under this Act.

PART 20 — COMPENSATION FOR LOSS

170 Compensation from Consolidated Fund [RTA 179-180, 183-187]⁹⁷

- (1) A person who is deprived of, or suffers loss or damage in relation to, land because of the circumstances in subsection (2), may claim compensation from the Consolidated Fund.

Notes:

- “Land” is defined in section 4 to include any interest in land. Therefore the right to claim compensation extends to the deprivation of, or loss or damage in relation to, an interest in land.
- The functions of the Registrar under this Part cannot be delegated to decentralised offices: see section 10.

- (2) The circumstances are:
 - (a) the fraud of another person;
 - (b) an error in the Register;
 - (c) tampering with the Register;
 - (d) loss, destruction or improper use of a document lodged or deposited with the Registrar or held by the Registrar;

⁹⁷ This Part implements the proposals made in relation to compensation, in the Issues Paper, pp 48-53.

- (e) an omission, mistake, breach of duty, negligence or misfeasance of or by the Registrar or a member of the Registrar's staff.
- (3) This section does not limit any other lawful means of recovering compensation for the deprivation, loss or damage.⁹⁸

171 Circumstances where no claim possible

- (1) Despite section 170, a claim against the Consolidated Fund may not be made for deprivation, loss or damage occasioned by any of the following:
 - (a) a breach of trust or fiduciary duty, including a breach of duty arising in the administration of the estate of a deceased person;⁹⁹
 - (b) any incorrect description of boundaries or the dimensions of any land, where no survey has been carried out;
 - (c) the Registrar's act in lodging a caveat under section 155;
 - (d) any error in the Register, if the Registrar may correct the register under section 154.
- (2) Also despite section 170, a claim against the Consolidated Fund may not be made by a person for the loss of an equitable interest or an unregistered interest, if that equitable or unregistered interest was not protected by caveat.¹⁰⁰

172 Special provision regarding mortgages [new]¹⁰¹

- (1) This section applies only to mortgages of family land or land on which there is a dwelling house.
- (2) Where a registered owner suffers deprivation, loss or damage as a result of fraud in relation to the grant of a mortgage to a mortgagee who

⁹⁸ Thus, the claimant could sue the wrongdoer personally. Importantly, however, the claimant need not sue the wrongdoer before claiming against the Fund; in this sense, the right to claim against the Fund is not a right of last resort. The claimant can go straight to the Fund, and then leave the Government (if the claim is successful) to exercise its right of subrogation to recover from the wrongdoer.

⁹⁹ This exclusion effectively relegates the beneficiary to a claim against the trustee or personal representative. Where a person's loss is caused by breach of trust or fiduciary duty, as distinct from a matter of "title", there seems no good reason to throw the liability onto the Fund.

¹⁰⁰ This reflects the provision in some other Torrens jurisdictions (such as Western Australia), and is designed to encourage people to register their interests or protect them by caveat.

¹⁰¹ This implements a recommendation in the Draft Final Issues Paper, para 1.4.4, requiring mortgagees in such circumstances to accept compensation rather than resorting to selling the property of innocent mortgagors. We have limited the operation of the section to family land (a defined term) or land on which there is a dwelling house—these being cases where mortgagors have an emotional attachment to the land. The same considerations do not apply to mortgages of commercial property.

is innocent of the fraud, the mortgagee must not exercise a power of sale following default under the mortgage, but must instead accept compensation under this Part from the Consolidated Fund.

- (3) Either the registered owner or the mortgagee may make the claim against the Fund.

173 Procedure for making claims [includes RTA 186]

- (1) A claim for compensation from the Consolidated Fund is made against the Registrar as nominal defendant.
- (2) Where a claim or a series of related claims against the Fund does not exceed in total 50,000 Shillings or other prescribed amount, the Registrar may authorise payment from the Fund without the need for litigation, if satisfied that the claim is justified.¹⁰²
- (3) A person wishing to claim compensation from the Fund may take proceedings against the Registrar, as nominal defendant, seeking a Court order for either or both of the following:
 - (a) determining whether compensation is payable from the Fund under section 170, and the amount of the compensation;
 - (b) directing the Registrar to take action in relation to the deprivation, loss or damage.
- (4) The Court may make the order it considers appropriate.
- (5) In considering the amount of compensation to be paid, the Court must take into account any contributory neglect, default or lack of caution by or on behalf of the claimant.
- (6) Without limiting subsection (4), the Court may direct the Registrar to:
 - (a) cancel or correct a folio of the Register or other information in the Register;
 - (b) create a new folio of the Register; or
 - (c) do anything else.

174 Government's right of subrogation

- (1) If compensation is paid to a claimant under this Part, the Government of Uganda is subrogated to the claimant's rights against the person responsible for the deprivation, loss or damage.

¹⁰² This is a deliberately conservative amount. Regulation may set a higher amount.

- (2) Without limiting subsection (1), the Government's right of subrogation extends to persons (including legal practitioners and surveyors) who in the course of their professional duties have given advice or prepared documents that have led, in whole or in part, to the deprivation, loss or damage.
- (3) If, in exercising its rights under subsection (1), the Government receives an amount greater than the amount it paid to the claimant, the Government must pay the difference to the claimant after deducting the Government's costs.

175 Time limit for claims [RTA 187]

- (1) No claim under this Part lies against the Consolidated Fund unless it is commenced within 6 years from the date of the deprivation, loss or damage.
- (2) However, the Registrar or the Court may waive the 6-year limitation period if the Registrar or the Court considers it appropriate in the circumstances.¹⁰³

176 Payments into Consolidated Fund¹⁰⁴

The Minister may direct that the Registrar pay into the Fund a proportion of the fees paid when documents are lodged for registration, in order to help defray the cost of existing or future claims against the Fund.

PART 21 — SEARCHES

177 Entitlement to search Register [RTA 201]¹⁰⁵

- (1) During normal business hours, the Registrar must provide adequate access to allow persons to search:
 - (a) the Register; and
 - (b) instruments that have been registered or recorded, or copies of them.
- (2) Access may be provided in person or by electronic means.

¹⁰³ This power is new: it will allow the Registrar or the Court to extend the time for claims where it is appropriate to do so.

¹⁰⁴ This provision will help support the Consolidated Fund. See discussion in Draft Final Issues Paper, para 1.4.5.

¹⁰⁵ This provision builds on RTA section 201, by facilitating electronic searches and the provision of search results by electronic means.

- (3) The Registrar may supply information to searchers by any way the Registrar considers appropriate, including way of certificate, statement or computer print-out.

178 Evidentiary effect of documents issued by Registrar [RTA 201]

- (1) A document issued by the Registrar conveying information relating to land is to be taken to be correct, unless the contrary is shown.
- (2) A document issued by the Registrar purporting to be a certified copy of a registered instrument is to be taken to be an accurate copy, unless the contrary is shown.

PART 22 — ARCHIVING¹⁰⁶

179 Disposing of instrument in certain circumstances [new]

- (1) The Registrar may, in accordance with a scheme to be prepared in consultation with the National Records and Archives Agency, dispose of any document that appears to the Registrar to be unnecessary for establishing or evidencing an interest in or right over land.
- (2) The scheme may provide for disposal of documents by destruction, sale, delivery to a former registered proprietor, or delivery to any person or body for preservation as being of historic interest.
- (3) Before destroying a document under this section, the Registrar must copy it in whatever way the Registrar considers appropriate, unless exempted from doing so by law.
- (4) A document may be disposed of under this section only in accordance with any restrictions or limitations prescribed by law.

180 Record of non-current or historical dealings [new]¹⁰⁷

- (1) Despite section 179, the Registrar:
 - (a) must keep a record of all dealings, including non-current or historical dealings, registered or recorded in, or action taken in respect of, the Register; and
 - (b) may keep a record of any other non-current or historical information in relation to the Register that the Registrar thinks appropriate.

¹⁰⁶ This Part gives effect to the recommendations in our earlier Issues Paper, pp 85-86.

¹⁰⁷ As we mentioned in our earlier Issues Paper (p 85), although retrospective title searches are generally unnecessary under the RTA, it is important that an historical record be available. This section requires the Registrar to keep a record of historical dealings.

- (2) The records kept under subsection (1) are not part of the Register.
- (3) The Registrar may permit a person to have access to the records kept under subsection (1) on paying any relevant fee.

PART 23 — MISCELLANEOUS

181 Power of Court to direct Registrar [RTA 177]

The Court may order the Registrar to alter the Register in any way the Court considers appropriate, or to cancel a folio of the Register, to give effect to a decision of the Court relating to land in a folio of the Register.

182 Receipts for documents [RTA 196]

The Registrar must give a receipt for documents lodged or deposited in the Registry, if requested by the person lodging or depositing them.

183 Conveyancing agents [new]¹⁰⁸

- (1) A person must not act for another for reward in relation to a dealing with land, including the lodgement of a document for registration or recording, unless that person is a qualified conveyancing agent.

<p>Note: The regulation-making power under this Act authorises the Minister to prescribe the qualifications for conveyancing agents.</p>

- (2) The Minister may, by regulation, defer the operation of subsection (1) for up to 3 years from the commencement of this Act.

184 Registrar to publish Practice Manual [new]¹⁰⁹

- (1) The Registrar must, as soon as reasonably practicable after the commencement of this Act, publish a Practice Manual of Office Procedures.
- (2) The Manual must:
 - (a) set out, clearly and concisely, the practice of the Registry in relation to the operation of this Act;
 - (b) contain an up-to-date version of this Act;
 - (c) contain any other material required by this Act or any other law.

¹⁰⁸ This section implements a recommendation in the Draft Final Issues Paper, designed to protect the public from unqualified persons acting in land transactions: see para 1.3.5.

¹⁰⁹ The purpose of this section is to publicise the Registrar's procedures and policies, so that persons who lodge documents for registration or recording may know in advance the office's requirements. See Draft Final Issues Paper, para 1.5.

- (3) The Registrar must make the Manual available for:
 - (a) purchase at reasonable cost; and
 - (b) inspection at all Registry offices, on payment of a reasonable inspection fee.

185 Words and expressions used in registered instruments [new]¹¹⁰

- (1) Words and expressions used in instruments registered under this Act have the same meanings as they have in this Act.
- (2) The application of subsection (1) may be displaced, wholly or partly, by a contrary intention appearing in the instrument.

186 Reference to instrument is reference to instrument completed in approved form [new]

In this Act, a reference to a particular type of instrument for which there is an approved form is a reference to the instrument completed in the approved form.

187 References to persons includes assigns etc [RTA 76]

- (1) In this Act or a registered instrument, a reference to a person as owner, proprietor, transferor, transferee, mortgagor, mortgagee, lessor, lessee, or as having an interest in land in a folio of the Register, includes a reference to the person's assigns, successors and personal representatives.
- (2) Subsection (1) may be displaced, wholly or partly, by a contrary intention.

188 Transfer to self etc [RTA 94]

A registered proprietor may, by registered instrument of transfer, transfer land in a folio of the Register:

- (a) to himself or herself;
- (b) to his or her spouse;
- (c) to himself or herself and another;
- (d) from himself or herself jointly to himself or herself alone;

without the intervention of any form of use.

¹¹⁰ This provision is common in Torrens statutes. It is purely for convenience, and allows parties conveniently to adopt the terminology of this Act.

189 Interests in succession [RTA 94]

A person may, by registered instrument of transfer, create interests for life, and interests in reversion or remainder, without the intervention of any form of use.

190 Service of notices [RTA 202]

- (1) If this Act requires a notice to be served on or given to a person, the requirement is satisfied if the notice is:
 - (a) served personally;
 - (b) sent by registered or certified post or by fax:
 - (i) to the address for service noted in the Register;
 - (ii) in the case of a corporation – either to that address or to the address of the corporation's registered office or principal place of business; or
 - (iii) if the address or addresses authorised by paragraphs (i) and (ii) appear to the Registrar to be unsatisfactory – to any other address that the Registrar considers appropriate; or
 - (c) served in a manner specified in the Registrar's directions.
- (2) The address for service noted in the Register may be a post office box and may, in the case of a natural person, be a business address.
- (3) The Court may order that a notice required or permitted to be served on a person under this Act be served in the way directed by the Court.
- (4) The Court may dispense with service of a notice required or permitted to be served on a person under this Act if it is satisfied that it is appropriate to dispense with service of the notice.
- (5) Subsection (1) does not limit the methods for service of notice on a caveator under section 112(2).

191 Offences against this Act [RTA 190]

A person who breaches or fails to perform an obligation under this Act, or who otherwise commits an offence against this Act, is liable to the prescribed penalty.

192 Registrar's directions [RTA 203]¹¹¹

- (1) The Registrar may issue directions, not inconsistent with this Act, specifying the requirements to be followed in relation to this Act.
- (2) The Registrar must publish the directions in the Practice Manual.
- (3) In issuing the directions, the Registrar must have regard to:
 - (a) the purposes of this Act; and
 - (b) the principle that a registered interest is not to be adversely affected except with the registered proprietor's consent.
- (4) Without limiting subsection (1), the Registrar's directions may provide for:
 - (a) the form and content of, and the requirements for, folios of the Register and instruments;

Note: "Instruments" is widely defined in [section 4](#).
 - (b) the number of copies of instruments to be lodged, whether copies are to be returned to the person who lodged them, and whether the returned copies are to be marked in any way;¹¹²
 - (c) the need for lodging consents, certificates, instruments and documents;
 - (d) who may act on behalf of parties to lodge instruments for registration or recording;
 - (e) the execution of instruments (including in electronic form);
 - (f) the practice of carrying forward registered interests onto existing or new folios of the Register;
 - (g) the fees to be charged by the Registrar, and how and when they are to be paid; and

¹¹¹ This provision allows the *Registrar* to make *directions* for the operation of the Act. It differs from RTA section 203, which authorises the *Minister* to make *rules* for the operation of the Act. The shift to the *Registrar* and *directions* is consistent with the recommendations in the Issues Paper (para 3.2.3) that the Registrar be given autonomy in the administration of the Act.

¹¹² This would allow the Registrar to follow procedures, such as those in RTA section 49—for example, on lodgement of a lease for registration, to require a number of copies to be lodged and to indicate on the copies which is the "lessor's copy" and which is the "lessee's copy". We anticipate that this practice will become less important once the Register is computerised, as anyone can by searching the Register obtain a copy of the registered lease.

- (h) the circumstances in which, and the methods by which, the Registrar publishes, or requires others to publish, notifications of actions the Registrar intends to take.
- (5) The Registrar's directions must be complied with unless the Registrar dispenses with compliance.

193 Minister may make regulations [RTA 203]¹¹³

- (1) The Minister may make regulations, not inconsistent with this Act, prescribing matters that the Minister considers are necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) The Registrar must publish an up-to-date version of the regulations in the Practice Manual.
- (3) Without limiting the generality of subsection (1), the regulations may:
 - (a) prescribe the qualifications for conveyancing agents;¹¹⁴
 - (b) prescribe standard terms and conditions for instruments;
 - (c) prescribe fees to be charged by the Registrar;
 - (d) prescribe the proportion of lodgement fees that are to be paid into the Consolidated Fund to help defray compensation payments made under Part 20;
 - (e) prescribe that a contravention of, or a failure to comply with, this Act or a regulation is an offence;
 - (f) prescribe the penalties for offences against this Act or the regulations; and
 - (g) regulate the Registrar's practice in relation to matters arising under this Act.
- (4) If there is an inconsistency between regulations made by the Minister and directions issued by the Registrar, the regulations prevail.

¹¹³ This section in effect preserves to the Minister (rather than the Registrar) the power to regulate some of the more "important" matters in the operation of the Act. These are matters which involve some degree of public policy, and therefore warrant some political input.

¹¹⁴ In the Draft Final Issues Paper, para 1.3.5, we recommend the introduction of qualified "conveyancing agents", to ensure quality and probity in land transactions.

PART 24 — REPEALS, SAVINGS AND TRANSITIONAL PROVISIONS

194 Definition

In this Part, a reference to the *Registration of Titles Act* (cap 230) means that Act as in force immediately before the commencement of this Act.

195 Repeal of Registration of Titles Act (cap 230)

- (1) The *Registration of Titles Act* (cap 230) is repealed.
- (2) However, despite subsection (1), the repeal of that Act does not affect:
 - (a) the operation of any sections of that Act relating to the implication of covenants into instruments—and in relation to those instruments those sections continue to apply as if they had not been repealed;
 - (b) the operation of any caveat lodged under that Act—and in relation to the caveat Part VI of that Act continues to apply as if it had not been repealed;
 - (c) the operation of any short form covenants implied into leases under section 104 of that Act—and in relation to those leases section 104 and the Ninth Schedule (as referred to in that section) of that Act continue to apply as if they had not been repealed;
 - (d) the adoption in any contract for sale entered into before the repeal of that Act of the conditions in Table A of Schedule 19 of that Act—and in relation to the contract section 199 and Table A of Schedule 19 continue to apply as if they had not been repealed.
- (3) The *Access to Roads Act* (cap 350) is repealed.¹¹⁵

196 Things done under the Registration of Titles Act (cap 230)

- (1) Everything done under the *Registration of Titles Act* (cap 230) is as effective as if it had been done under this Act.
- (2) Without limiting subsection (1), on the commencement of this Act:
 - (a) each subsisting interest in land registered or recorded under the *Registration of Titles Act* (cap 230), is taken to be an interest registered or recorded under this Act;

¹¹⁵ The *Access to Roads Act* is no longer necessary, given the Court's wide powers to grant easements (including access rights) under section 80.

- (b) each subsisting certificate of title for freehold or mailo land issued under the *Registration of Titles Act* (cap 230) is taken to be a folio of the Register created under this Act;
 - (c) each subsisting duplicate certificate of title for freehold or mailo land issued under the *Registration of Titles Act* (cap 230) is taken to be a certificate of title issued under this Act; and
 - (d) each subsisting certificate of title for leasehold land, and each subsisting duplicate certificate of title for leasehold land, is taken to evidence a registered leasehold interest in the relevant land.
- (3) The Registrar must do everything necessary or desirable to ensure that the particulars of each interest mentioned in subsection (2)(a) are fully and accurately recorded in the Register.

197 Registration of instruments lodged before commencement of Act

- (1) If:
- (a) an instrument was lodged before the commencement of this Act, but was not registered before the commencement; and
 - (b) the Registrar had power to register the instrument when it was lodged;
- the Registrar may register the instrument under this Act.
- (2) When registering an instrument under subsection (1), the Registrar must exercise the powers that the Registrar had at the time when the instrument was lodged.

198 Words in other Acts [new]¹¹⁶

In any Act, including any Act repealed before or after the commencement of this Act, unless the context otherwise requires:

- (a) a reference to the “Register Book” (or similar term) is a reference to the Register, as kept under section 7 of this Act;
- (b) a reference to a certificate of title is a reference to a folio of the Register, as created under section 14 of this Act;

¹¹⁶ The purpose of this provision is to standardise the “new” terminology in this Act with the terminology formerly used. The new terminology is designed to help computerisation of the land register. This Act changes the old terms “Register Book”, “certificate of title” and “duplicate certificate of title” to “Register”, “folio of the Register” and “certificate of title”, respectively.

- (c) a reference to a duplicate certificate of title is a reference to a certificate of title, as issued under section 38 of this Act.

[END]