

PRACTICE CIRCULAR 5 OF 2014

To All Law Firms / Law Organisations

(A) Implementation of the Land Titles (Amendment) Act 2014 and related Rules

Effective 15 August 2014, the following legislation will come into operation:

- (i) Land Titles (Amendment) Act 2014;
- (ii) Land Titles (Amendment) Rules 2014; and
- (iii) Land Titles (Electronic Lodgment) (Amendment) Rules 2014.

The legislative changes seek to improve the laws on land administration and make changes for greater clarity, consistency and operational efficiency.

Your attention is drawn to the following significant amendments and changes in our practices, processes and procedures:

1. Creation, Variation and Extinguishment of Easements

A new section 97A of the Land Titles Act (LTA) empowers the court to create an easement over land if it is not inconsistent with the public interest and is reasonably necessary for the effective use or development of the land that will have the benefit of the easement.

A new section 105A LTA empowers the court to vary, or extinguish wholly or in part, an existing easement over registered land upon an application by any person with an interest in the servient tenement.

The applications under the new sections 97A and 105A LTA are to be lodged electronically without the need for paper lodgment and must be signed digitally by the solicitors in compliance with the Electronic Transactions Act.

Related amendments have been made to the Conveyancing and Law of Property Act to confer similar powers on the court in respect of the creation, variation or extinguishment of easements over unregistered land.

Section 105 LTA is revised to allow for easements over registered or unregistered land to be varied or released by an instrument in the approved form or in accordance with general law, provided the parties agree to the variation or release of the easements.

The following new forms will be introduced:

- (i) Application to Create Easement (Pursuant to Order of Court);
- (ii) Application to Vary Easement (Pursuant to Order of Court);

- (iii) Application to Extinguish Easement (Total) (Pursuant to Order of Court);
- (iv) Application to Extinguish Easement (Partial) (Pursuant to Order of Court);
and
- (v) Variation of Easement.

2. Caveats and Remedies of Property Owners

2.1 Frivolous or Vexatious Caveats

Where a property owner lodges an application (currently in the form of a statutory declaration) with the Registrar of Titles (the Registrar) to challenge a caveat's validity, the revised section 127(2) LTA will require the caveator, within 30 days of the Registrar's notice, to obtain a court order for the caveat to remain on the land-register. If this is not done within the stipulated period, the Registrar will cancel the caveat.

This caveator will be required to justify his claim of an interest in the property. This is in line with the normal burden of proof in that he who asserts must prove his assertion. Consequently, the lodgment fee for an application to cancel a frivolous or vexatious caveat is reduced from \$263.25 to \$145. The application is to be electronically lodged without the hard copy submission and must be signed digitally by the applicant's solicitor.

For cases where the statutory declarations in the existing form have already been made but not lodged, the Registrar will continue to accept these statutory declarations provided they are lodged before 15 August 2014.

Where a Statutory Declaration to Cancel Vexatious Caveat is pending notification on the land-register immediately before 15 August 2014, the statutory declaration shall continue to be dealt with in accordance with the existing section 127 LTA as if the section has not been amended.

A new form "Application to Cancel Vexatious Caveat" will replace the existing form "Statutory Declaration to Cancel Vexatious Caveat".

2.2 Registration of Dealings in Land

Section 129 LTA is amended to create two separate lists of dealings:

- (i) A "permissive list" of dealings the registration of which the caveator can still prohibit by lodging a caveat; and
- (ii) A "non-conflict list" of dealings the registration of which the caveator cannot prohibit by lodging a caveat. These are dealings which do not conflict with or have any impact on the caveator's claim of an interest in the property, for example, a name correction or an application for a new certificate of title.

3. Surrender and Reissue of Title to Land

Sections 9, 10 and 11 LTA are repealed and a new section 9 LTA is re-enacted to introduce a more streamlined process for the surrender of all types of title to land (whether registered or unregistered, whether of the same or different tenure and whether or not subject to any subsisting mortgage, CPF charge or caveat) to the President in exchange for the reissue of fresh State title(s) of one type of tenure.

Where the land is subject to any subsisting mortgage, it will not be necessary to lodge a discharge of the subsisting mortgage, an application to notify a substituted mortgage and the actual substituted mortgage so as to replace the discharged mortgage. The subsisting mortgage will be notified on the new certificate of title when issued.

Please note that where any title to land is surrendered to the President for the reissue of a fresh State title under the existing section 9, 10 or 11 LTA and no fresh State title has been issued by the President before 15 August 2014, the surrender and reissue of the title to land shall continue to be dealt with in accordance with the relevant existing section as if that section has not been repealed.

4. Replacement of certificates of title, etc

Section 43 LTA is repealed and re-enacted to introduce a new process for the replacement of certificates of title that have been lost, mislaid, destroyed or are being improperly or wrongfully withheld. Instead of a replacement certificate of title, the Registrar will issue a new certificate of title or a new subsidiary certificate of title (as the case may be) that bears a new serial number, ie, new Volume and Folio numbers.

An applicant will no longer be required to advertise unless directed to do so by the Registrar. The Registrar will send a notice to the registered proprietor to inform him that an Application for Replacement of Certificate of Title has been lodged and that the Registrar will issue a new certificate of title with the new serial number as a replacement after 7 days from the date of the notice.

The application and the forms of notice to be published in the Straits Times for the replacement of certificates of title have accordingly been amended.

The fees payable will be \$78.30 per application and \$70 for the creation of a new folio. If an application affects more than one folio, an additional fee of \$70 is chargeable for each new folio.

The Registrar will continue to accept applications in the existing form until 14 August 2014.

Where an Application for Replacement Certificate of Title is pending registration immediately before 15 August 2014, the application shall be deemed to be an application under the re-enacted section 43 LTA.

4.1 Consequential changes to practice circulars

4.1.1 Arising from the above changes in the procedure, paragraph 3 of Part 4 of the Consolidated Practice Circulars 2003, as amended by Practice Circulars 3 of 2006 and 6 of 2006, shall be deleted and substituted with the following:

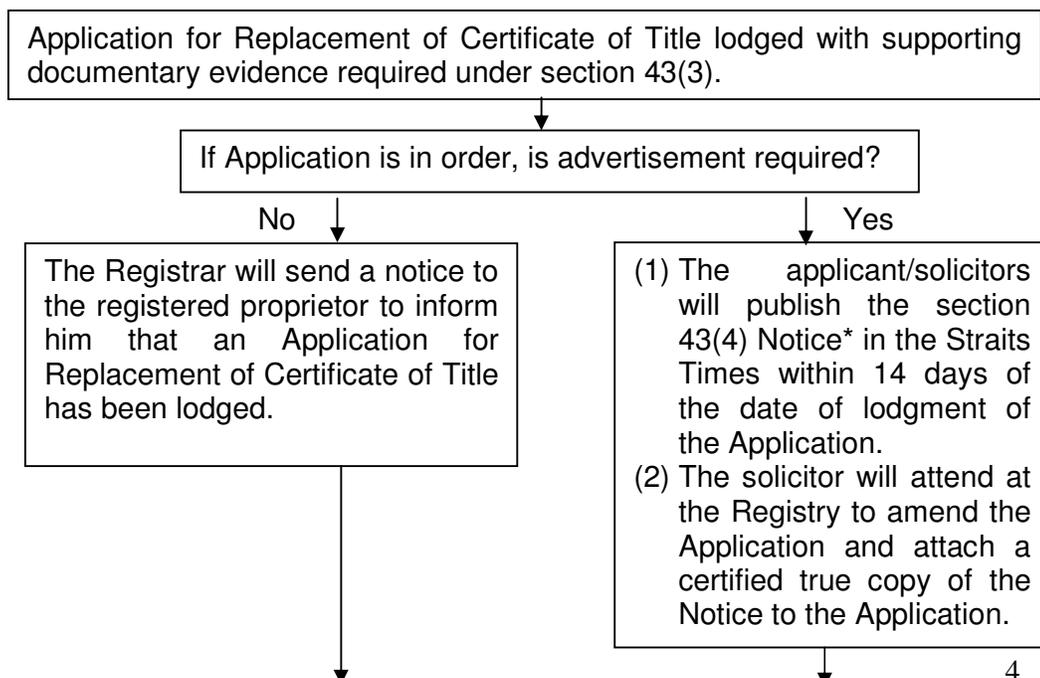
“3 **Application for Replacement of CT/SSCT/SCT pursuant to section 43 of the Land Titles Act**

3.1 Effective 15 August 2014, the Registry will introduce a new procedure for the issue of:

- (a) Replacement of Certificate of Title (CT), Subsidiary Strata Certificate of Title (SSCT) and Subsidiary Certificate of Title (SCT);
- (b) CT or SCT for a private leasehold estate comprised in a Lease; and
- (c) SCT for a leasehold estate in a Housing and Development Board (HDB) flat or shop comprised in a Lease.

3.2 The new procedure is set out below:

a) **Application for Replacement of CT/SSCT/SCT pursuant to section 43 of the Land Titles Act**



If no valid written objections are received by the Registrar within 7 days of the date of the Registrar's notice, the Registrar will issue a new CT/SSCT/SCT with a new serial number and enter the appropriate notification in the cancelled CT/SSCT/SCT and new CT/SSCT/SCT.

If no valid written objections are received by the Registrar within 14 days of the date of publication of the Notice, the Registrar will issue a new CT/SSCT/SCT with a new serial number and enter the appropriate notification in the cancelled CT/SSCT/SCT and new CT/SSCT/SCT.

Note: As with existing procedure, the Registrar will not verify the contents of the Notice*. The applicants/solicitors will still be required to certify:

- (a) that the correct Notice in accordance with the approved form has been duly published in the Straits Times; and
- (b) the date of the publication of the Notice.

b) Application to issue a CT or SCT for a private leasehold estate comprised in a Lease [pursuant to section 29(3) of the Land Titles Act or section 122 of the Land Titles (Strata) Act]

These are applications made where the duplicate Lease has been lost, mislaid, destroyed or is being improperly or wrongfully withheld and the proprietor needs to have a CT/SCT issued in its place. The new procedure as set out in paragraph (a) will apply.

c) Application to issue a SCT for a leasehold estate in a HDB flat or shop comprised in a Lease

The new procedure in paragraph (a) will also apply to all applications for the issuance of SCTs to replace the duplicate Leases for shops and flats sold by HDB (including an application for the issuance of a SCT to replace a duplicate Lease which is being improperly or wrongfully withheld).

No plans will be annexed to the SCTs.

3.3 Applications for Replacement of CT/SSCT/SCT where the title document has been lost, mislaid, destroyed or is being improperly or wrongfully withheld should be supported by a statutory declaration [Section 43(3) Land Titles Act]

The statutory declaration should be made by:

- (a) All the owners recounting the events or circumstances leading to the loss, etc. The statutory declaration can be made jointly or separately;
- (b) The person who is entitled to possession of the title document.

Note: This includes a mortgagee or a chargee. Where there is a CPF Charge and a mortgage or 2 mortgages each in favour of a different mortgagee, the chargee/mortgagee entitled to possession of the title document must provide a statutory declaration. The statutory declaration is required even where another declarant states that the title document was never handed over to the chargee or mortgagee or that the latter had handed the title document to someone else. The statutory declaration should be made by an authorised and responsible officer of the mortgagee or chargee; and

- (c) Any other person who handled the title document after it was collected from the Registry. This may include a solicitor, a law firm's representative, etc.

Note: The statutory declaration should include a statement by the declarant that to the best of his information, knowledge and belief, the title document has not been deposited with anyone as security for a loan or otherwise.

A sample form of a statutory declaration can be found at SLA's website."

4.1.2 In view of the changes to the procedure, paragraph 2 of Practice Circular 4 of 2006 shall be deleted and substituted with the following paragraph:

"2) Replacement Title Document

Where a replacement title document was issued prior to 15 August 2014, the word "Replacement" is printed on the top right hand corner of every page of the replacement title document."

5. New/Amended forms

All new/amended forms and notices will be available on SLA's website on 1 August 2014 to enable you to prepare the documents in the new form for lodgment after 14 August 2014.

(B) Application to Correct Data

Effective 15 August 2014, an applicant in an Application to Correct Data will not be required to give a statutory declaration to correct his erroneous particulars, e.g. name, ID Number, etc., in the land-register. Accordingly, the application has been amended and will be available on SLA's website on 1 August 2014.

The Registrar will continue to accept applications in the existing form if they are lodged before 15 August 2014.

Date: 29 July 2014

VINCENT HOONG
REGISTRAR OF TITLES