

Mr. Michael McDowell
Minister for Justice Equality & Law Reform
Department of Justice Equality & Law Reform
94 St. Stephen's Green
Dublin 2

22nd June, 2005

**Re: Registration of Deeds and Title Bill, 2004
Submission of the Law Society Conveyancing Committee**

Dear Minister,

I have been requested by the Conveyancing Committee of the Law Society to make the following submissions on its behalf in relation to the above Bill. The committee extends its apologies for being somewhat tardy in lodging this submission but hopes that there will still be time to take its submissions on board before the next relevant stage in the progress of the Bill through the Oireachtas.

The committee has drafted its submission and comments on the Bill by making reference to the relevant section of the Bill itself as follows:-

SECTION 5

There are two exclusions to the list of documents included in the definition of "deed".

The first exclusion is:-

"(i) Any document which may be registered under the Act of 1964...".

Is the word "may" correct here?

This exclusion may affect deeds which relate to both registered and unregistered land, and such deeds may, as a consequence of this exclusion, not be registerable in the Registry of Deeds. It is suggested that there be an amendment providing, for example, that what is excluded is "any document which is compulsorily registerable under Section 23 of the Act or which is not exempt for registration under Section 116 of the Act." It may be sufficient only to refer to Section 116.

The second exclusion is:-

"(ii) Any Lease for a term not exceeding 21 years where actual occupation is in accordance with the Lease".

There does not appear to be any justification for excluding the registration, in the Registry of Deeds of leases for less than 21 years. If this provision remains in the Act, then such leases

(for terms of less than 21 years) will not be registerable either in the Land Registry or in the Registry of Deeds.

SECTIONS 15 AND 16

Section 15 provides that a serial number shall be allocated in the prescribed manner to every application for registration. Section 16 (1) provides that deeds registered are deemed and taken as good and effectual ... according to the priority determined by the serial numbers allocated to them pursuant to Section 15... What, however, happens to the serial number allocated to an application which is not successful? Will a serial number only be allocated to an application which has been correctly completed? A problem would appear to be caused by the allocation of serial numbers to applications for registration rather than to successful applications for registration.

Section 16 (2) states that a deed which is not registered in accordance with sub-section (1) is void against a registered deed affecting “the land concerned”. Should this not refer to “the interest in land concerned”? This problem could perhaps be resolved by amending the definition of Land in Section 5 by extending (e) of the definition from “incorporeal hereditaments” to “an interest in land including incorporeal hereditaments”. Alternatively there could be an additional (g) in this definition saying “any interest in land”.

SECTION 17

This provides that proof of execution of a deed by a witness to the execution by a grantee under the deed is deemed always to have been valid, as if the witness had been a witness to the execution by the grantor. Should this be reworded as follows:-

“... proof of execution of a deed by a witness to the execution by a grantee under the deed is deemed to be and always to have been as valid” ?

SECTION 22

This entitles a person to inspect, search, examine and make extracts from, or take short notes of, such records maintained ... as may be prescribed. It does not include the word “copies”. This word is included in Section 26 (f). We suggest that the word “copies” be included.

SECTION 24

It seems to be a retrograde step to abolish the Index of Lands, and it is suggested that the Index of Lands be reinstated, at least going forward. Why not have a double entry system, referring both to Deeds and to Lands? This would bring e-conveyancing nearer and would assist in countering money laundering.

SECTION 34

This refers to compulsory registration and amends Section 23 of the 1964 Act. It is suggested that Section 23 to 24 of the 1964 Act be made more “flexible” so that the Registrar (instead of the Minister) can extend compulsory registration to, for example, specific sites or developments. Instead of Section 23 referring to counties, it might just refer to “land”. Furthermore, section 24 might be amended to provide that “this section shall apply to any land whether categorised by location or nature of development or otherwise or any portion thereof”.

SECTION 40

This provides for an application to the Court for compensation “if the claim is not settled”. However no time limit is given for a claim being “settled”. It is suggested that there be a time limit of, say, six months from the date of the bringing of the claim in question.

MISCELLANEOUS

There would appear to be some other Land Registry problems that are not addressed by the Bill:-

- Abolishing the necessity of the Land Registry checking stamp duty (section 104 of the 1964 Act).
- The inability of the person entitled to be the registered owner to grant a lease.
- Sealing by foreign incorporated companies both of deeds and of powers of attorney.
- The deregistration of, for example, property adjustment orders or notices of marriage.
- The amendment of section 72 of the 1964 Act by reducing the “21 years” reference in relation to leases to “10 years” and removing the proviso about occupation.

Nothing further occurs at the moment and the committee hopes that your Department will look favourably at making the amendments to the Bill that have been addressed in its submission. If you or any of your officials wish to discuss any aspect of this submission please note that committee members are available to meet with you as required and you can contact me or the committee secretary, Catherine O’Flaherty, in this regard at (01) 868 1220 or c.oflaherty@lawsociety.ie .

Yours truly,

William B. Devine
Chairman
Conveyancing Committee

c.c. Mr. Seamus Carroll, Department of Justice
Mr. Michael Holohan, Department of Justice