Chapter I

TORRENS SYSTEM AND PURPOSE, THE GOVERNING LAW, THE PROPER COURT

1. Torrens System defined, and coverage

Black's Dictionary (Fifth Edition, 1979) defines the Torrens System as "a system for registration of land under which, upon the landowner's application, the court may, after appropriate proceedings, direct the issuance of a certificate of title."

Generally, the Torrens System refers to the system of "registration of transactions with interest in land whose object is, under governmental authority, to establish and certify to the ownership of an absolute and indefeasible title to realty, and to simplify its transfer." This system was devised and first introduced in South Australia by Sir Robert Torrens in 1857.[1]

The registration of lands throughout the Philippines "shall be based on the generally accepted principles underlying the Torrens System,"[2] so that the system of registration under the Spanish Mortgage Law has been discontinued and all lands granted under said system which are not yet covered by a certificate of title issued under the Torrens system are considered as unregistered lands.[3]

2. Purpose of land registration under the Torrens System

In the classic prose of the Supreme Court in the case of *Legarda vs. Saleeby*, 31 Phil. 590:

> "The real purpose of the system is to quiet title of land; to put a stop forever to any question of the legality

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[1]Grey Alba vs. De la Cruz, 17 Phil. 49, 58, 60 (1910) citing Hogg on Australian Torrens System; also Philippine Law Dictionary by Moreno, Third Edition, p. 954.

[2]Sec. 2, Presidential Decree (PD) No. 1529.

[3]Sec. 3, P.D. No. 1529.

> of the title, except claims which were noted at the time of registration, in the certificate, or which may arise subsequent thereto. That being the purpose of the law, it would seem that once a title is registered the owner may rest secure, without the necessity of waiting in the portals of the courts, or sitting in the '*mirador de su casa*,' to avoid the possibility of losing his land. x x x The certificate, in the absence of fraud, is the evidence of title and shows exactly the real interest of its owner. The title once registered, with very few exceptions, should not thereafter be impugned, altered, changed, modified, enlarged, or diminished, except in some direct proceeding permitted by law. Otherwise all security in registered titles would be lost."[4]

Stated simply, the registration of property is to (1) avoid possible conflicts of title in and to real property, and (2) "facilitate transactions relative thereto by giving the public the right to rely upon the face of the Torrens certificate of title and to dispense with the need of inquiring further, except when the party concerned has actual knowledge of facts and circumstances that should impel a reasonably cautious man to make such further inquiry."[5] It was therefore adopted in this country since it is the most effective measure to guarantee the integrity of land titles.[6]

However, the purpose of land registration is not the acquisition of lands but only the registration of title which the applicant already possessed over the land. Registration was never intended as a means of acquiring ownership.[7]

3. Nature of land registration proceedings

Section 2 of the Property Registration Decree (Presidential Decree No. 1529) provides that "judicial proceedings for the registration of lands throughout the Philippines shall be *in rem* and shall be based on generally accepted principles underlying the Torrens

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[4]Reiterated in Constantino vs. Espiritu, 45 SCRA 557, 562 (1972); Albienda vs. Court of Appeals, 135 SCRA 402 (1985).

[5]Capitol Subdivision, Inc. vs. Province of Negros Occidental, 7 SCRA 60, 69-70 (1963).

[6]Republic vs. Umali, 171 SCRA 647, 656 (1989).

[7]Republic vs. Court of Appeals, 131 SCRA 532, 539 (1984), citing Roxas vs. Enriquez, 29 Phil. 54.

system." It is therefore binding on the whole world because "by the description in the notice (of initial hearing of the application for registration) 'To All Whom It May Concern,' all the world are made parties defendant."[8]

As such a proceeding *in rem*, it binds all persons known and unknown,[9] and the title issued as a result thereof is binding and conclusive upon the whole world.[10] All persons who may be adversely affected by the proceedings are so bound by the proceedings, innocent factually as they might have been of the publication of the aforesaid notice of initial hearing.[11]

Relatedly, a decree of registration that has become final shall be deemed conclusive not only on the questions actually contested and determined but also upon all matters that might be litigated or decided in the land registration proceedings (*Cacho vs. CA*, 269 SCRA 159, 169 [1997]).

4. Governing Law

Presidential Decree (P.D.) No. 1529, known as the Property Registration Decree, was issued on June 11, 1978. It amended and codified the laws relative to registration of property, in order to facilitate the effective implementation of said laws. It was also intended to strengthen and simplify registration proceedings and the issuance of certificates of title. (WHEREAS of said Decree). But it is broad in scope as it covers original registration of title — both ordinary registration proceedings and cadastral registration proceedings, the registration of voluntary and involuntary dealings with registered lands, as well as the reconstitution of lost or destroyed originals of Torrens title. This Decree "supersedes all other laws related to registration of property."[12]

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[8]Sec. 26, P.D. No. 1529. "Judicial Proceedings" refer to the ordinary land registration proceedings; judicial confirmation of imperfect or incomplete title under the Public Land Act; and cadastral proceedings.

[9]Esconde vs. Barlongay, 152 SCRA 603 (1987), citing Moscoso vs. Court of Appeals, 128 SCRA 70 (1984).

[10]Gestosani vs. Insular Development Corp., 21 SCRA 114 (1967); Garcia vs. Bello, 13 SCRA 769 (1965).

[11]Francisco vs. Court of Appeals, 97 SCRA 22, 33 (1980), citing Grey Alba vs. De la Cruz, *supra*.

[12]Director of Lands vs. Santiago, 160 SCRA 186, 191 (1988).

5. Related laws

Before the issuance of the Property Registration Decree, the basic law on the adjudication and registration of title to lands in the Philippines was the Land Registration Law (Act No. 496), which took effect on February 1, 1903. Most of the governing principles of the Torrens System resulted from the application, construction and interpretation of its provisions. Thus, past and current rulings of the Supreme Court on land registration of title usually refer to particular provisions of said Act. Aptly then, the Property Registration Decree itself also provides that judicial proceedings for the registration of lands "shall be based on the generally accepted principles underlying the Torrens System." (Sec. 2 of the Decree).

Section 103 of the Decree requires that patents issued over public lands under the Public Land Act (Commonwealth Act No. 141) shall be registered with the Register of Deeds of the province or city where the land lies. Section 110 of the same Decree provides that judicial reconstitution of lost or destroyed original copies of certificates of title shall be in accordance with the procedure prescribed in Republic Act No. 26 insofar as not inconsistent with said Decree. There is evident linkage of both Com. Act No. 141 and R.A. No. 26 to the basic Decree.

6. Jurisdiction of Regional Trial Courts over registration of title

A. *Regional Trial Courts now have plenary jurisdiction over land registration proceedings*.

The Property Registration Decree provides that said courts:

> "Shall have exclusive jurisdiction over all applications for original registration of title to lands, including improvements and interests therein, and over all petitions filed after original registration of title, with power to hear and determine all questions arising upon such applications or petitions. The court through its clerk of court shall furnish the Land Registration Commission with two certified copies of all pleadings, exhibits, orders, and decisions filed or issued in applications or petitions for land registration, with the exception of stenographic notes, within five days from the filing or issuance thereof."[13]

[13]Sec. 2, par. 2, P.D. No. 1529.

Regional Trial Courts therefore no longer have limited jurisdiction in original land registration cases,[14] so that there is no more distinction between its general jurisdiction and the limited jurisdiction conferred by the Land Registration Act. The reason for the change is explained in *Averia vs. Caguioa*[15] where it was held that the aforequoted Section 2 of the Property Registration Decree (P.D. No. 1529):

> "Has eliminated the distinction between the general jurisdiction vested in the regional trial court and the limited jurisdiction conferred upon it by the former law (Act 496) when acting merely as a cadastral court. Aimed at avoiding multiplicity of suits, the change has simplified registration proceedings by conferring upon the regional trial courts the authority to act not only on applications for 'original registration' but also 'over all petitions filed after original registration of title, with power to hear and determine all questions arising upon such applications or petitions.'
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> "Consequently, and specifically with reference to Section 112 of the Land Registration Act (now Section 108 of P.D. No. 1529), the court is no longer fettered by its former limited jurisdiction which enabled it to grant relief only in cases where there was 'unanimity among the parties' or none of them raised any 'adverse claim or serious objection.' Under the amended law, the court is now authorized to hear and decide not only such non-controversial cases but even the contentious and substantial issues x x x which were beyond its competence before."

B. *Rule prior to P.D. No. 1529*

Even before the explicit grant of general and exclusive jurisdiction over original registration of title to lands and over petitions filed after such original registration by P.D. No. 1529, the special and limited jurisdiction of the Regional Trial Courts which did not

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[14]Association of Baptists for World Evangelism, Inc. vs. First Baptists Church, 152 SCRA 393 (1987).

[15]146 SCRA 459, 462 (1986); reiterated in Vda. de Arceo vs. Court of Appeals, 185 SCRA 489 (1990); Phil. National Bank vs. International Corporate Bank, 199 SCRA 508 (1991).

extend to cases involving issues properly litigable in other independent suits or ordinary civil actions had time and again been relaxed by the Supreme Court.[16] Such exceptions were based not alone on the fact that the land registration courts are likewise the same Regional Trial Courts, but also under the following conditions: (1) the parties have mutually agreed or acquiesced in submitting the aforesaid issues for determination by the court in the registration proceedings; (2) the parties have been given full opportunity in the presentation of their respective sides of the issues and of the evidence in support thereof; and the court has considered the evidence already of record and is convinced that the same is sufficient and adequate for rendering a decision upon the issues. Whether a particular matter should be resolved by the Regional Trial Court in the exercise of its general jurisdiction or its limited jurisdiction was then held to be not in reality a jurisdictional question but a procedural question involving a mode of practice which may be waived.[17]

7. Delegated jurisdiction

Section 34 of Batas Pambansa Blg. 129 (known as the Judiciary Reorganization Act of 1980) as amended by Rep. Act No. 7691, allows inferior courts, in certain cases, to hear and determine cadastral or land registration cases. The provision reads:

> "SEC. 34. *Delegated jurisdiction in cadastral and land registration cases*. — Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts may be assigned by the Supreme Court to hear and determine cadastral or land registration cases covering lots where there is no controversy or opposition, or contested lots, the value of which does not exceed one hundred thousand pesos (P100,000.00), such value to be ascertained by the affidavit of the claimant or by agreement of the respective claimants if there are more than one, or from the corresponding tax declaration of the real property. Their decisions in these

[16]Moscoso vs. Court of Appeals, 128 SCRA 705, 717 (1984), citing Florentino vs. Encarnacion, 79 SCRA 193 (1977).

[17]Moscoso vs. CA, *supra*; Zuniga vs. Court of Appeals, 95 SCRA 740 (1980); Santos vs. Ganayo, 116 SCRA 431 (1972).

cases shall be appealable in the same manner as decisions of the Regional Trial Courts."

Accordingly, the Supreme Court issued Administrative Circular No. 6-93-A dated November 15, 1995 authorizing the inferior courts to hear and decide the cadastral or land registration cases mentioned in the aforequoted law.

Chapter II

ADMINISTRATION OF TORRENS SYSTEM

1. Land Registration Authority

The Land Registration Authority (hereafter referred to as Authority) is the agency of the Government charged with the efficient execution of the laws relative to the registration of lands, and is under the executive supervision of the Department of Justice.[1] The Authority is headed by an Administrator and is assisted by two (2) Deputy Administrators, all of whom are appointed by the President of the Philippines upon recommendation of the Secretary of Justice.[2]

A. *Functions of the Authority* —

The Authority shall:

"(a) Extend speedy and effective assistance to the Department of Agrarian Reform, the Land Bank, and other agencies in the implementation of the land reform program of the government;

(b) Extend assistance to courts in ordinary and cadastral land registration proceedings; and

(c) Be the central repository of records relative to original registration of lands titled under the Torrens system, including subdivision and consolidation plans of titled lands."[3]

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[1]Sec. 28, Chapter 9, Title III, Administrative Code of 1987; Sec. 4, P.D. No. 1529.

[2]Sec. 29, *supra*.

[3]Sec. 6(2), P.D. No. 1529.

B. *Functions of the Administrator (formerly Commissioner) —*

The Administrator shall perform the following:[4]

"(a) Issue decrees of registration pursuant to final judgments of the courts in land registration proceedings and cause the issuance by the Registers of Deeds of the corresponding certificates of title;[5]

(b) Exercise supervision and control over all Registers of Deeds and other personnel of the Commission;

(c) Resolve cases elevated *en consulta* by, or on appeal from decision of, Registers of Deeds;[6]

(d) Exercise executive supervision over all clerks of court and personnel of the Courts of First Instance throughout the Philippines with respect to the discharge of their duties and functions in relation to the registration of lands;

(e) Implement all orders, decisions, and decrees promulgated relative to the registration of lands and issue, subject to the approval of the Secretary of Justice, all needful rules and regulations therefor;

(f) Verify and approve subdivision, consolidation, and consolidation-subdivision survey plans of properties titled under Act 496 (and under P.D. No. 1529) except those covered by P.D. No. 957."[7]

2. The Register of Deeds

The office of the Register of Deeds constitutes a public repository of records of instruments affecting registered or unregistered lands and chattel mortgages in the province or city wherein such office is situated.[8]

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[4]Sec. 6(1), P.D. No. 1529.

[5]See Sec. 39 of P.D. No. 1529 relating to preparation of decree and certificate of title. Also see Chapter X, 1-B of this Book.

[6]See Sec. 117, P.D. No. 1529 relating to procedure on *Consulta*; also see discussions in Chapter XIV of this book.

[7]P.D. 957 covers subdivision plans of land to be converted into a subdivision project. Such plans are first referred to the Human Settlements and Regulatory Commission and then to Director of Lands for approval.

[8]Sec. 10, P.D. No. 1529.

As provided by the Property Registration Decree (P.D. 1529), the Register of Deeds, who heads the office, shall be appointed by the President of the Philippines upon recommendation of the Secretary of Justice. No person shall be appointed Register of Deeds unless he has been admitted to the practice of law in the Philippines and shall have been actually engaged in such practice for at least three years or has been employed for a like period in any branch of government the functions of which include the registration of property.

He is assisted by a Deputy Register of Deeds, a member of the Philippine Bar and appointed by the Secretary of Justice upon recommendation of the Administrator of the Authority.[9]

A. *General Functions*

Section 10 of P.D. No. 1529 provides that:

> "It shall be the duty of the Register of Deeds to immediately register an instrument presented for registration dealing with real or personal property which complies with all the requisites for registration. He shall see to it that said instrument bears the proper documentary and science stamps and that the same are properly cancelled. If the instrument is not registrable, he shall forthwith deny registration thereof and inform the presentor of such denial in writing, stating the ground or reason therefor, and advising him of his right to appeal by *consulta* in accordance with Section 117 of this Decree."

The Register of Deeds also prepares and keeps an index system which contains the names of all registered owners alphabetically arranged, and all the lands respectively registered in their names.[10]

B. *Ministerial character of duty to register instrument*

Construing aforecited Section 10 of P.D. No. 1529 in relation to Section 117 thereof, the Supreme Court in *Baranda vs. Gustilo*,[11] stated, that "the function of a Register of Deeds with reference to the registration of deeds, encumbrances, instruments and the like is

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[9]Sections 8 and 9, *supra*.
[10]Sec. 12, P.D. No. 1529.
[11]165 SCRA 757, 770 (1988).

ministerial in nature." It is enough that in his opinion an instrument is registrable for him to register it and, the act being also an administrative act does not contemplate notice to and hearing of interested parties.[12]

The Register of Deeds is entirely precluded by Section 10 of P.D. 1529 (formerly Sec. 4, R.A. 1151) from exercising his personal judgment and discretion when confronted with the problem of whether to register a deed or instrument on the ground that it is invalid. The determination of whether a document is valid or not is a function that belongs properly to a court of competent jurisdiction.[13] As reasoned out by the Supreme Court in an earlier case:[14]

> "x x x the supposed invalidity of the contracts of lease is no valid objection to their registration, because invalidity is no proof of their non-existence or a valid excuse for denying their registration. The law on registration does not require that only valid instruments shall be registered. How can parties affected thereby be supposed to know their invalidity before they become aware, actually or constructively, of their existence or of their provisions? If the purpose of registration is merely to give notice, then questions regarding the effect or invalidity of instruments are expected to be decided *after*, *not before*, registration. It must follow as a necessary consequence that registration must first be allowed, and validity or effect litigated afterwards."

C. *When Register of Deeds may deny registration of voluntary instruments*

The case of *Balbin vs. Register of Deeds of Ilocos Sur*,[15] cites the following instances when the Register of Deeds may validly deny registration of a voluntary instrument:

> (a) Where there are more than one copy of the owner's duplicate certificate of title and not all such copies are presented to the Register of Deeds. In this cited case, petitioners presented to the Register of Deeds of Ilocos Sur only the duplicate copy of the registered owner's certificate together with a Deed of

[12]Ledesma vs. Villaseñor, 13 SCRA 494, 497 (1965).
[13]Almirol vs. The Register of Deeds of Agusan, 22 SCRA 1152, 1154-1155 (1968).
[14]Gurbax Singh Pablo and Co. vs. Reyes and Tantoco, 92 Phil. 182-183, as cited in Almirol, *supra*.
[15]28 SCRA 12, 15-6 (1969).

Donation *inter vivos* but not the three co-owner's duplicates of the same title. When the Register of Deeds refused to make the necessary annotation in the presented duplicate, petitioners referred the matter to the Commissioner of Land Registration who upheld the stand of the former. The Supreme Court held that Section 55 of Act 496 (now Section 53, P.D. 1529) which provides that "the production of the owner's duplicate certificate of title whenever any voluntary instrument is presented for registration shall be conclusive authority from the registered owner to the register of deeds to make a memorandum of registration in accordance with such instrument" assumes that there is only one duplicate copy of the title involved — that of the registered owner himself. But where there are several copies of the same title in existence, every copy must contain identical entries of transactions affecting the land covered thereby, particularly voluntary ones for if other copies of such title carry different annotations, then the Torrens system of registration would no longer be validable.

(b) Where the voluntary instrument bears on its face an infirmity. Thus, if the conjugal character of the property subject of a deed donation by the husband "is assumed" and 2/3 portion of the property was donated by the husband alone, then such donation clearly exceeds the 1/2 share that pertains to him.

(c) Where the validity of the instrument sought to be registered is in issue in a pending court suit. The registration may be suspended to await the final outcome of the case and the rights of the interested parties could be protected in the meantime by filing the proper notice of *lis pendens*.

The Register of Deeds may also refuse to register a private document, since Section 112 of P.D. No. 152 (formerly Sec. 127 of Act 496) provides that deeds of conveyances affecting lands should be verified and acknowledged before a notary public or other public officer authorized by law to take acknowledgment.[16]

Pertinently, the fact that a deed of sale was executed in a place other than where the property subject thereof is located does not affect the extrinsic validity of the instrument. It has thus been held that what is important is that the notary public concerned has au-

[16]Gallardo vs. Intermediate Appellate Court, 155 SCRA 248, 258 (1987).

thority to acknowledge the document executed within his territorial jurisdiction. The notarial acknowledgment attaches full faith and credit to the document and also vests upon it the presumption of regularity.[17]

Where, however, the Register of Deeds is in doubt as to the proper action to take on an instrument or deed presented to him for registration, he should submit the question to the Administrator of the Authority. (See discussion on Section 117 of P.D. No. 1529 on *Consultas*, in Chapter XIV of this book).

[17]Sales vs. CA, 211 SCRA 885, 865 (1992).

Chapter III

ORIGINAL REGISTRATION UNDER P.D. NO. 1529

1. Requisites in ordinary land registration proceedings

In original registration proceedings under the Property Registration Decree (P.D. 1529) as well as in the confirmation of imperfect or incomplete title under Section 48(b) of the Public Land Act, as amended,[1] the following requisites should all be satisfied:[2]

1. Survey of land by the Bureau of Lands or a duly licensed private surveyor;[3]

2. Filing of application for registration by the applicant;

3. Setting of the date for the initial hearing of the application by the Court;

4. Transmittal of the application and the date of initial hearing with all the documents or other evidences attached thereto by the Clerk of Court to the Land Registration Commission (now Land Registration Authority);

5. Publication of a notice of the filing of the application and date and place of the hearing in the Official Gazette;

6. Service of notice upon contiguous owners, occupants and those known to have interests in the property by the sheriff;

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[1]See discussion on confirmation of imperfect or incomplete title under Chapter IV of this book.

[2]Republic vs. Alon, 199 SCRA 396, 403-404 (1991), citing Republic vs. Heirs of Abrille, 71 SCRA 57, 66 (1976).

[3]Under Sec. 17, P.D. No. 1529, requisite survey plan must be duly approved by the Director of Lands. Authority of Land Registration Authority to approve such plan was withdrawn by P.D. No. 239 dated July 9, 1983.

7. Filing of answer to the application by any person whether named in the notice or not;

8. Hearing of the case by the Court;

9. Promulgation of judgment by the Court;

10. Issuance of the decree by the Court declaring the decision final and instructing the Land Registration Authority to issue a decree of confirmation and registration;

11. Entry of the decree of registration in the Land Registration Authority;

12. Sending of copy of the decree of registration to the corresponding Register of Deeds; and

13. Transcription of the decree of registration in the registration book and issuance of the owner's duplicate original certificate of title to the applicant by the Register of Deeds, upon payment of the prescribed fees.

A certificate of title issued without fully complying with the above requisites are thus illegal and invalid and may be cancelled by the courts.

2. Applicants in ordinary registration proceedings

Section 14 of the Property Registration Decree provides that the following persons may file in the proper Regional Trial Court an application for registration of title to land, whether personally or through their duly authorized representatives:

"(1) Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the public domain under a *bona fide* claim of ownership since June 12, 1945, or earlier.[4]

(2) Those who have acquired ownership of private lands by prescription under the provisions of existing laws.

(3) Those who have acquired ownership of private lands or abandoned river beds by right of accession or accretion under the existing laws.

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[4]See discussion on confirmation of imperfect and incomplete title under Chapter IV of this book.

(4) Those who have acquired ownership of land in any other manner provided for by law.

Where the land is owned in common, all the co-owners shall file the application jointly.

Where the land has been sold under *pacto de retro*, the vendor a *retro* may file an application for the original registration of the land, provided, however, that should the period for redemption expire during the pendency of the registration proceedings and ownership to the property consolidated in the *vendee a retro*, the latter shall be substituted for the applicant and may continue the proceedings.

A trustee on behalf of his principal may apply for original registration of any land held in trust by him, unless prohibited by the instrument creating the trust."

2.1. Section 14(1) interpreted

In the recent case of *Republic vs. CA*, 448 SCRA 442, 447-449, G.R. No.144057, (Jan. 17, 2005), the central issue for resolution is whether it is necessary under Section 14(1) of the Property Registration Decree that the subject land be first classified as alienable and disposable before the applicant's possession under a *bona fide* claim of ownership could even start. The Supreme Court held that:

> "Instead, the more reasonable interpretation of Section 14(1) is that it merely requires the property sought to be registered as already alienable and disposable at the time the application for registration of title is filed. If the State, at the time the application is made, has not yet deemed it proper to release the property for alienation or disposition, the presumption is that the government is still reserving the right to utilize the property; hence, the need to preserve its ownership in the State irrespective of the length of adverse possession even if in good faith. However, if the property has already been classified as alienable and disposable, as it is in this case, then there is already an intention on the part of the State to abdicate its exclusive prerogative over the property.
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> This reading aligns conformably with our holding in *Republic vs. Court of Appeals* (392 SCRA 190, 201 [2002]). Therein, the Court noted that "to prove that the land sub-

ject of an application for registration is alienable, an applicant must establish the existence of a positive act of the government such as a presidential proclamation or an executive order; an administrative action; investigation reports of Bureau of Lands investigators; and a legislative act or a statute. In that case, the subject land had been certified by the DENR as alienable and disposable in 1980, thus the Court concluded that the alienable status of the land, compounded by the established fact that therein respondents had occupied the land even before 1927, sufficed to allow the application for registration of the said property. In the case at bar, even the petitioner admits that the subject property was released and certified as within alienable and disposable zone in 1980 by the DENR."

A. *Acquisition of ownership of lands under the Civil Code, including accretion. Owners can apply for registration of title thereto*

1. Article 1137 of the Civil Code provides that "ownership and other real rights over immovables also prescribe through uninterrupted adverse possession thereof for thirty years, without need of title or of good faith." In the computation of that 30-year period, the Code (Art. 1138) also provides the following rules:

(1) The present possessor may complete the period by tacking his possession to that of his grantor or predecessor-in-interest;

(2) The present possessor who was also the possessor at a previous time, is presumed to have continued to be in possession during the intervening time in the absence of proof to the contrary; and

(3) The first day shall be excluded and the last day included.

1.2. It must be noted that while the aforequoted Article 1137 of the Civil Code speaks of "ownership and other real rights over immovables," the above-mentioned Section 14(2) of P.D. No. 1529 relates to the acquisition of "ownership of private lands by prescription under existing laws." It is not, therefore, ownership of any kind of "immovable" acquired by prescription that may be registered under said Decree, but only the ownership of private lands. An exam-

ple would be those lands registered under the Spanish Mortgage Law which are not yet covered by a certificate of title by the time of the issuance of P.D. 1529 on June 11, 1978 and considered as unregistered land (Sec. 3 of said Decree). Those lands may be deemed as falling under Sec. 14(2) of the Decree in relation to Art. 1137 of the Civil Code, when acquired by a person by prescription by adverse possession against the original grantee.

2. Article 457 of the Code provides that "to the owners of lands adjoining the banks of rivers belong the accretion which they gradually receive from the effects of the current of the waters."

For accretion or alluvion to be registerable, there must be concurrence of the three requisites of said Article 457 of the Code (1) that the deposit be gradual and imperceptible; (2) that it be made through the effects of the current of the water; (3) that the land where accretion takes place is adjacent to the banks of rivers.[5] A sudden and forceful action like that of flooding is not the alluvial process contemplated under said Article of the Code. It is the slow and hardly perceptible accumulation of soil deposits that the law grants to the riparian owner.[6] Alluvion must be the exclusive work of nature, not caused by human intervention. The reason behind the law giving the riparian owner the right to any land or alluvion deposited by a river is to compensate him for the danger of loss that he suffers because of the location of his land. Thus, the ownership of such accretions or alluvions by the riparian owner is not lost even after they are separated from the principal lots by the sudden change of course of the river.[7]

An accretion from river to registered land does not automatically become registered land. As such it must be placed under the operations of the Torrens system.[8]

A petition then for registration of the accretion is in effect a request for confirmation of title already vested in the riparian owner by the law.[9]

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[5]Republic vs. Court of Appeals, 132 SCRA 514, 520 (1984); also Agustin vs. Intermediate Appellate Court, 187 SCRA 218 (1990); Binalay vs. Manalo, 195 SCRA 374 (1991).

[6]Binalay vs. Manalo, *supra*, p. 386.

[7]Rep. vs. CA, *supra*, p. 521 and Binalay case, *supra*; also Art. 463, Civil Code.

[8]Cureg vs. Intermediate Appellate Court, 177 SCRA 313, 322 (1989), citing Grande vs. Court of Appeals, 5 SCRA 524 (1962).

[9]Fernandez vs. Tanada, 39 SCRA 662, 665 (1971).

It must be noted, however, that an accretion from the sea is part of the public domain and generally outside the commerce of man.[10]

3. Article 461 of the Code states that "river beds which are abandoned through the natural change in the course of the waters *ipso facto* belong to the owners whose lands are occupied by the new course in proportion to the area lost. However, the owners of lands adjoining the old bed shall have the right to acquire the same by paying the value thereof, which value shall not exceed the value of the area occupied by the new bed."

B. *Persons or entities acquiring ownership of land by other modes may apply for registration of title thereto*

1) A land reserved, by presidential proclamation, for medical center site purposes under the administration of the Director of Hospital is not subject to entry by any other person or entity and no lawful settlement on them can be acquired. The proclamation legally effected a land grant, validly sufficient for initial registration by the grantee under the Property Registration Decree (formerly under Act 496). Such land grant is constitutive of a "fee simple" title or absolute title in favor of said grantee.[11] It can be said then that any other person or entity to whom a land grant has been granted by a similar proclamation issued by the President of the Philippines may apply for registration of title thereto.

2) In the case of *International Hardwood and Veneer Co., of the Philippines vs. University of the Philippines*,[12] the Supreme Court held:

> "Pursuant x x x to R.A. No. 3990, which establishes a central experiment station for the use of the UP in connection with its research and extension functions, particularly by the College of Agriculture, College of Veterinary Medicine and College of Arts and Sciences, the above 'reserved' area was 'ceded and transferred in full ownership to the University of the Philippines subject to any existing concessions, if any."

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[10]De Buyser vs. Director of Lands, 121 SCRA 13 (1983).

[11]Republic (represented by Mindanao Medical Center) vs. Court of Appeals, 73 SCRA 146, 152-153 (1976); see also Section 103 of P.D. No. 1529.

[12]200 SCRA 554, 572 (1991).

> "When it ceded and transferred the property to UP, the Republic of the Philippines completely removed it from the public domain and x x x removed and segregated it from a public forest; it divested itself of its rights and title thereto and relinquished and conveyed the same to UP; and made the latter the absolute owner thereof x x x."

UP may validly apply for registration of its title to the land ceded to it by the law. Other persons or entities to whom a land might have been similarly ceded by the Republic of the Philippines by law may thus also properly apply for registration of title thereto.

C. *Persons who cannot properly file an application for registration of land*

1) A public land sales applicant is not a proper party to file for registration of the same land covered by his sales application. By filing such application, he acknowledged that he is not the owner of the land and that the same is public land under the administration of the Bureau of Lands. He perforce could not claim holding the land under a *bona fide* claim of acquisition of ownership.[13]

However, an applicant is not barred from pursuing his application although his predecessor-in-interest was a free patent applicant if the latter, at the time he filed such public land application, had already acquired an imperfect title through continuous 30-year possession in the concept of an owner.[14]

2) A mortgagee, or his successor-in-interest to the mortgage, cannot apply for the registration of the land mortgaged, notwithstanding lapse of the period for the mortgagor to pay the loan secured or redeem it. Such failure to redeem the property does not automatically vest ownership of the property to the mortgagee, which would grant the latter the right to appropriate the thing mortgaged or dispose of it. If the mortgagee registers the property in his own name upon the mortgagor's failure to redeem it, such act would amount to a *pactum commissorium* which is against good morals and public policy.[15]

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[13]Palawan Agricultural and Industrial Co., Inc. vs. Director of Lands, 44 SCRA 15 (1972).

[14]Director of Land Management vs. CA, 205 SCRA 486.

[15]Reyes vs. Sierra, 93 SCRA 472, 480 (1979).

3) An antichretic creditor cannot also acquire by prescription the land surrendered to him by the debtor. His possession is not in the concept of owner but mere holder placed in possession of the land by its owners. Such possession cannot serve as a title for acquiring dominion.[16]

4) A person or entity whose claim of ownership to land had been previously denied in a reivindicatory action, and the right of ownership thereto of another upheld by the courts, cannot apply for the same land in a registration proceedings. Thus, in the case of *Kidpales vs. Baguio Mining Co.*,[17] the Supreme Court held that if the former cases were reivindicatory in character and the pending ones are land registration proceedings, "such difference in forms of action are irrelevant for the purposes of *res judicata*. It is a firmly established rule that a different remedy sought or a diverse form of action does not prevent the estoppel of the former adjudication. x x x Since there can be no registration of land without applicant being its owner, the final judgment of the Court of Appeals in the previous litigation declaring that the mining company's title is superior to that of the applicant's shall be conclusive on the question in the present case." The Court also ruled that the vesting of title to the lands in question in the appellee Baguio Mining Company has effectively interrupted and rendered discontinuous the possession claimed by applicants.

3. Form and Contents of application

As provided in Section 15 of P.D. No. 1529, the application for land registration shall be in writing, signed by the applicant or the person duly authorized in his behalf, and sworn to before any officer authorized to administer oath for the province or city where the application was actually signed. If there is more than one applicant, the application shall be signed and sworn to by and in behalf of each. The application shall contain the following:

1. Description of the land applied for, together with the buildings and improvements thereon, if any. The plan duly approved by the Director of Lands, and technical descriptions of the land applied for, must be attached to the application.

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[16]Ramirez vs. Court of Appeals, 144 SCRA 292, 301 (1986).
[17]14 SCRA 913, 916, 198 (1965).

2. The citizenship and civil status of the applicant, whether single or married, and if married, the name of the wife or husband, and, if the marriage has been legally dissolved, when and how the marriage relation terminated.

3. The assessed value of the land and the buildings and other improvements thereon, based on the last assessment for taxation purposes.

4. Mortgage or encumbrance of any kind whatsoever affecting the land applied for, or names of other persons who may have an interest therein, legal or equitable. Otherwise, the applicant shall state that to the best of his knowledge and belief, there are no such encumbrance or interested persons.

5. The manner by which the applicant has acquired the land. (Refer to Section 14 of P.D. No. 1529).

6. The full names and addresses of all occupants of the land and those of the adjoining owners, if known, and if not known, the applicant shall state the extent of the search made to find them.

It has been held that "a mere statement of the lack of knowledge of the names of the occupants and adjoining owners is not sufficient but 'what search has been made to find them is necessary' and the omission of such 'search' "can not but be a deliberate misrepresentation constituting fraud, a basis for allowing a petition for review of judgment" (*Divina vs. CA*, 352 SCRA 527, 535, 536, citing *Francisco vs. CA*, 97 SCRA 22 [1980], G.R. No. 117734, Feb. 22, 2001).

7. Additionally, Section 20 of the Decree provides that if the application describes the land as bounded by a public or private way or road, it shall state whether or not the applicant claims any and what portion of the land within the limits of the way or road, and whether the applicant desires to have the line of the way or road determined.

8. Section 21 of the Decree also states that the court may require facts to be stated in the application in addition to those prescribed by the Decree not inconsistent therewith and may require the filing of any additional papers. It may also conduct an ocular inspection, if necessary.

An application may include two or more parcels of land belonging to the applicant/s provided they are situated within the same province or city.[18]

[18]Section 18 of P.D. No. 1529.

If the applicant is non-resident, Section 16 of P.D. No. 1529 provides the following additional requirements:

> "If the applicant is not a resident of the Philippines, he shall file with his application an instrument in due form appointing an agent or representative residing in the Philippines, giving his full name and postal address, and shall therein agree that the service of any legal process in the proceedings under or growing out of the application made upon his agent or representative shall be of the same legal effect as if made upon the applicant within the Philippines. If the agent or representative dies, or leaves the Philippines, the applicant shall forthwith make another appointment for the substitute, and, if he fails to do so, the court may dismiss the application."

A. *Where to file*

According to the Decree, the application for land registration shall be filed with the Regional Trial Court of the province or city where the land is situated. The applicant shall also file together with the application all original muniments of titles or copies thereof and a survey plan of the land approved by the Bureau of Lands.

The Clerk of Court shall not accept any application unless it is shown that the applicant has furnished the Director of Lands with a copy of the application and all annexes.[19]

B. *Amendments to application and needed publication*

Section 18 of P.D. No. 1529 allows the court, at any time, to order an application to be amended by striking out one or more of the parcels of land applied for or by a severance of the application.

Section 19 of the Decree likewise provides:

> "Amendments to the application including joinder, substitution, or discontinuance as to the parties may be allowed by the court at any stage of the proceedings upon just and equitable terms."
>
> "Amendments which shall consist in a substantial change in the boundaries or an increase in area of the land applied for or which involve the inclusion of an additional land shall be

[19]Section 17, *supra*.

subject to the same requirements of publication and notice as in an original application."[20]

Under the above provision of law, there is need to comply with the required publication and notice if the amendment of the application consists in:

1. A substantial change in the boundaries;
2. An increase in the area of the land applied for; or
3. The inclusion of an additional land.

An amendment due to change of name of the applicant does not require republication.[20a]

It is the publication of specific boundaries of lands to be registered that would actually put the interested parties on notice of the registration proceedings and enable them, if they have rights or interest in the property, to show why the application for registration should not be granted.[21]

In the case of *Benin vs. Tuason*,[22] the Supreme Court in construing Sections 23 and 24 of Act 496, which provisions are similar to Sections 18 and 19 of P.D. No. 1529, explained the reasons why an amendment consisting of the inclusion of an area not originally applied for registration must be published:

> "Under Section 23 of Act 496, the registration court may allow, or order, an amendment of the application for registration when it appears to the court that the amendment is necessary and proper. Under Section 24 of the same act the court may at any time order an application to be amended by striking out one or more parcels or by severance of the application. The amendment may be made in the application or in the survey plan, or in both since the application and survey plan go together. If the amendment consists in the inclusion in the application for registration of an area or parcel of land not previously included in the original application, as published, a new publica-

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[20]See Sec. 23 of P.D. No. 1529 and discussions under Acquisition of Jurisdiction in this book.

[20a]Director of Lands vs. IAC, 219 SCRA 399, 345 (1993).

[21]Fewkes vs. Vasquez, 39 SCRA 514 (1971).

[22]57 SCRA 531, 551-552 (1974).

tion of the amended application must be made. The purpose of the new publication is to give notice to all persons concerned regarding the amended application. Without a new publication the registration court cannot acquire jurisdiction over the area or parcel of land that is added to the area covered by the original application, and the decision of the registration court would be a nullity insofar as the decision concerns the newly included land. The reason is because without a new publication, the law is infringed with respect to the publicity that is required in registration proceedings, and third parties who have not had the opportunity to present their claim might be prejudiced in their rights because of failure of notice. But if the amendment consists in the exclusion of a portion of the area covered by the original application and the original plan as previously published, a new publication is not necessary. In the latter case, the jurisdiction of the court over the remaining area is not affected by the failure of a new application."

In an earlier case,[23] the High Court also held that a Court order amending the official plan so as to include land not previously included therein is a nullity unless new publication is made as a preliminary to such step. An additional territory cannot be included by amendment of the plan without new publication.

[23]Director of Lands, *et al.* vs. Benitez, *et al.*, 16 SCRA 557, 561 (1966), citing Philippine Manufacturing Co. vs. Imperial, 49 Phil. 122.

Chapter IV

JUDICIAL CONFIRMATION OF IMPERFECT OR INCOMPLETE TITLE UNDER PUBLIC LAND ACT

1. Nature of proceeding

The proceedings under the Property Registration Decree (P.D. No. 1529), formerly under the Land Registration Law (Act No. 496), and under the provisions of Chapter VIII of the Public Land Act (Com. Act. 141), particularly Section 48(b), are the same in that both are against the whole world, both take the nature of judicial proceedings, and for both the decree of registration issued is conclusive and final.[1] Both proceedings are likewise governed by the same court procedure and law of evidence.

2. Changes in law governing judicial confirmation of imperfect or incomplete title

(a) The original text of Section 48(b), Chapter VIII of the Public Land Act, which took effect on December 1, 1936, reads:

> "Sec. 48. The following-described citizens of the Philippines, occupying lands of the public domain or claiming to own any such lands or an interest therein, but whose titles have not been perfected or completed, may apply to the Court of First Instance (now Regional Trial Courts) of the province where the land is located for confirmation of their claims and the issuance of a certificate of title therefor, under the Land Registration Act (now Property Registration Decree), to wit:
>
> "(a) (Repealed by P.D. No. 1073, Sec. 3);

[1]Lee Hong Hok vs. David, 48 SCRA 372, 380 (1972).

"(b) Those who by themselves or through their predecessors-in-interest have been in the open, continuous, exclusive, and notorious possession and occupation of agricultural lands of the public domain, under a *bona fide* claim of acquisition of ownership, except as against the Government, since July twenty-six, eighteen hundred and ninety-four, except when prevented by war or *force majeure*. These shall be conclusively presumed to have performed all the conditions essential to a Government grant and shall be entitled to a certificate of title under the provisions of this Chapter."

(b) Republic Act No. 1942, effective on June 22, 1957, amended the aforequoted Subsection (b) of Section 48 of the Public Land Act, to read as follows:

"(b) Those who by themselves or through their predecessors in interest have been in open, continuous, exclusive, and notorious possession and occupation of agricultural lands of the public domain, under a *bona fide* claim of acquisition of ownership, for at least thirty years immediately preceding the filing of the application for confirmation of title except when prevented by war or *force majeure*. These shall be conclusively presumed to have performed all the conditions essential to a Government grant and shall be entitled to a certificate of title under the provisions of this Chapter."

The required period of occupation of the application since July 26, 1894 under the original text of the law was changed to "at least thirty years immediately preceding the filing of the application." The phrase "except as against the Government" in the first law was deleted by said R.A. No. 1942.

(c) Republic Act No. 3872, which took effect on June 18, 1964, added a new subsection (c) to Section 48 of the Public Land Act, entitling those described therein to apply for judicial confirmation of imperfect or incomplete title. Thus —

"(c) Members of the national cultural minorities who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of lands of the public domain suitable to agricultural, whether disposal or not, under a *bona fide* claim of ownership for at least 30 years shall be entitled to the rights granted in subsection (b) hereof."

(d) Presidential Decree No. 1073 (Section 4), promulgated and effective on January 25, 1977, further amended subsections (b) and (c) of the Public Act, to wit:

> "Section 4. — The provisions of Section 48(b) and Section 48(c), Chapter VIII, of the Public Land Act are hereby amended in the sense that these provisions shall apply only to alienable and disposable lands of the public domain which have been in open, continuous, exclusive and notorious possession and occupation by the applicant himself or thru his predecessors-in-interest, under a *bona fide* claim of acquisition of ownership, since June 12, 1945."

Section 5 of said P.D. No. 1073 likewise states that "any law or executive order or part thereof contrary to or inconsistent with this Decree is hereby amended or repealed accordingly."

The required period of possession of the applicant for at least thirty years immediately preceding the filing of the application has thus been changed to a possession "since June 12, 1945," (*Republic vs. Doldol*, 295 SCRA 359, 364, 365, G.R. No. 132963, Sept. 10, 1998), and the land must be part of the "alienable and disposable lands of the public domain, and not merely "agricultural lands of the public domain." With respect to national cultural minorities, the land possessed by them must also be "alienable and disposal lands of the public domain," and no longer irrespective of whether disposable or not, and their possession must also have been since June 12, 1945 (or prior thereto), not merely for at least 30 years.

3. Extended periods for filing applications

As chronicled in *Director of Lands vs. Dano*,[2] in the original text of Section 47 of the Public Land Act, the time limitation within which to file applications for confirmation of imperfect or incomplete title was not to extend beyond December 31, 1938. The expiry date was extended to December 31, 1941 by Commonwealth Act 292, Section 2, approved on June 9, 1938. The period was again extended to Dec. 31, 1957 by R.A. 107, approved on June 2, 1947. The limit was further extended to December 31, 1968 by R.A. 2061, approved on June 13, 1958. Again, the period was extended to December 31, 1976 by R.A. 6236, approved on June 19, 1971. The period was further

[2]96 SCRA 161, 166 (1980).

lengthened to December 31, 1987 by Presidential Decree No. 1073 issued on January 25, 1977. The time limitation was furthermore extended up to December 31, 2000 by R.A. No. 6940 approved on March 28, 1990. The latest extension of the period up to December 31, 2020, is provided for in Section 2 of R.A. No. 9176, approved on November 13, 2002, to wit:

> "Sec. 2. Section 47, Chapter VIII of the same Act (Commonwealth Act No. 141), as amended, is hereby further amended to read as follows:
>
> "Sec. 47. The persons specified in the next following section are hereby granted time, not to extend beyond December 31, 2020 within which to avail of the benefits of this Chapter; Provided that this period shall apply only where the area applied for does not exceed twelve (12) hectares; *Provided, further,* that the several periods of time designated by the President in accordance with Section Forty-Five of this Act shall apply also to the lands comprised in the provisions of this Chapter, but this Section shall not be construed as prohibiting any of said persons from acting under this Chapter at any time prior to the period fixed by the President."

Even without the extended periods under said R.A. No. 6940 and R.A. No. 9176, persons who possess the qualifications fixed by Section 48(b) and Section 48(c) of Com. Act 141 as amended by P.D. No. 1073 may nonetheless apply for registration of title under Section 14(l) of P.D. No. 1529 which provides for the same qualifications, provided the area applied for does not exceed twelve (12) hectares.

A. *Status of applications filed after every expiry of the extended periods*

In the case of *Director of Lands vs. Abairo,*[3] the petitioner contended that respondent Court of First Instance of Isabela should have dismissed the application for registration based on imperfect or incomplete title because it has no jurisdiction over it inasmuch as it was filed on March 1, 1971, that is, after December 31, 1968, the expiry date for filing such kind of application under R.A. No. 2061. The latest extension of the period to December 31, 2020 within which to file said applications, as provided for in Section 2 of Republic Act

[3]90 SCRA 422 (1979).

No. 9176, approved on November 13, 2002 "shall apply where the area applied for does not exceed twelve (12) hectares."

> "It is clear from the law itself that those who applied for judicial confirmation of their title at *any time prior to the cut-off date of December 31, 1976* (as provided for in R.A. No. 6236) did so on time, even if such application was filed during the intervening period from January 1, 1969 to June 18, 1971 like the application of respondent Abairo, who instituted the same on March 1, 1971.
>
> "All the amendments to Section 47 of C.A. No. 141 expressly includes the proviso that 'this section shall not be construed as prohibiting any of said persons from acting under this Chapter at any time prior to the period fixed by the President. No period has been fixed by the President despite the authority granted him by the aforesaid proviso.
>
> "But even in the absence of the aforesaid proviso of Section 47, as amended, the basis of the petition is too technical to merit serious consideration. The extension until December 31, 1976 by R.A. No. 6236 for the filing of such application, retroacted to, and covered the applications filed after January 1, 1969 and before June 19, 1971. Moreover, the application which private respondent filed on March 1, 1971, could be considered as refilled after the effectivity of R.A. No. 6236 on June 1971, less than four months thereafter.
>
> "Respect should be given to the obvious intention of the lawmaker in extending the period for filing such applications time and again, to give full opportunity to those who are qualified under the law to own disposable lands of the public domain and thus reduce the number of landless among the citizenry."

In *Director of Lands vs. Dano, supra,* where the facts are almost on all fours with the *Abairo* case, the Court made a similar ruling on the same issue.

4. Limitation of area applied for

Republic Act No. 6236, enacted on June 19, 1971, did not only amend Section 47 of Chapter VIII of the Public Land Act by extending the period to file application for judicial confirmation of imperfect or incomplete title to December 31, 1976 but also by limiting the

areas to be applied for not to exceed 144 hectares. Presidential Decree No. 1073 which also further extended said period to December 31, 1987 similarly provided that the extension shall apply only where the area applied for does not exceed 144 hectares. Subsequent extensions of the period within which to file said applications, as provided for in Section 3 of Republic Act No. 6940, approved on March 28, 1990, and under R.A. No. 9176, approved on November 13, 2002, "shall apply only where the area applied for does not exceed twelve (12) hectares."

5. Applicants

By law and jurisprudence, the following may therefore apply for judicial confirmation of their imperfect or incomplete title:

1. Filipino citizens who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the public domain under a *bona fide* claim of acquisition since June 12, 1945 or prior thereto,[4] or even since time immemorial.[5]

2. Filipino citizens who by themselves or their predecessors-in-interest have been prior to the effectivity of P.D. 1073 on January 25, 1977, in open, continuous, exclusive and notorious possession and occupation of agricultural lands of the public domain, under a *bona fide* claim of acquisition of ownership, for at least 30 years, or at least since January 24, 1947.[6]

3. Private corporations or associations which had acquired lands, fomerly part of the alienable and disposable lands of the public domain, from Filipino citizens who had possessed the same in the manner and for the length of time indicated in subparagraphs 1 and 2 above.[7]

In *Republic vs. Manna Properties, Inc*., it was upheld that:

> "Under CA 141, the reckoning point is June 12, 1945. If the predecessors-in-interest of Manna Properties have been in

[4]P.D. No. 1073 and P.D. No. 1529, Sec. 14(1).

[5]Republic vs. CA, G.R. No. 103746, Feb. 9, 1993, citing Susi vs. Razon, 48 Phil. 424 and Oh Cho vs. Director of Lands, 75 Phil. 890.

[6]R.A. 1942; Director of Lands vs. Intermediate Appellate Court and ACME, 146 SCRA 509 (1986).

[7]Director of Lands vs. IAC and ACME, *supra*; P.D. No. 1073.

> possession of the land in question since this date, or earlier, Manna Properties may rightfully apply for confirmation of title to the land. Following our ruling in *Director of Lands vs. IAC,* Manna Properties, a private corporation, may apply for judicial confirmation of the land without need of a separate confirmation proceeding for its predecessors-in-interest first."

4. Natural-born citizens of the Philippines who have lost their Philippine citizenship, who have acquired disposable and alienable lands of the public domain from Filipino citizens who had possessed the same in the same manner and for the length of time indicated in subparagraphs 1 and 2.[7a]

A. *What applicant must prove*

The applicant must then prove that (a) the land is alienable and disposable land of the public domain, and (b) his possession must be for the length of time and in the manner and concept stated in Section 48(b) of the Public Land Act, as amended. To prove that the land is alienable, he "must secure a certification from the Government that the lands which he claims to have possessed as owner for more than thirty (30) years (or since June 12, 1945 under P.D. No. 1073) are alienable and disposable. It is the burden of the applicant to prove its (his) positive averments."[8]

(1) *Meaning of the required "possession"*

The Supreme Court made the following clarification of what the law means of the term:

> "It must be understood that the law speaks of 'possession and occupation.' Since these words are separated by the conjunction *and*, the clear intention of the law is not to make one synonymous with the other. Possession is broader than occupation because it includes constructive possession. When, therefore, the law adds the word *occupation*, it seeks to delimit the all-encompassing effect of constructive possession. Taken together with the words *open*, *continuous*, *exclusive* and *notorious*, the word *occupation* serves to highlight the fact that for

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[7a] 450 SCRA 247, 259, G.R. No. 146827, January 31, 2005 Republic vs. CA, 235 SCRA 567, 580, 581 (1994).

[8] Rep. vs. CA, *supra*.

one to qualify under paragraph (b) of the aforesaid section (48 of Com. Act 141), his possession of the land must not be mere fiction."

"Possession is open when it is patent, visible, apparent, notorious and not clandestine. It is continuous when uninterrupted, unbroken and not intermittent or occasional; exclusive when the adverse possessor can show exclusive dominion over the land and an appropriation of it to his own use and benefit; and notorious when it is so conspicuous that it is generally known and talked of by the public or the people in the neighborhood.

"Use of land is adverse when it is open and notorious."[9]

B. *Effect of compliance with requirement*

It has been held that when the conditions as specified in the provisions of Section 48(b) of the Public Land Act, as amended, are complied with, the possessor is deemed to have acquired, by operation of law, a right to a grant, a government grant, without the necessity of a certificate of title being issued. The land perforce ceases to be of the public domain, and beyond the authority of the Director of Lands to dispose of. The application for confirmation is then a mere formality, the lack of which does not affect the sufficiency of the title as would be evidenced by the patent and the corresponding Torrens title issued pursuant to such patent.[10] It should however be noted, and emphasized, that the above provision of law applies exclusively to public agricultural land,[11] which are alienable and disposable.

6. Private corporations or associations as applicants

The Philippine Constitution of 1973, Chapter XIV, Section 11, provides that "no private corporation or association may hold alienable lands of the public domain except by lease not to exceed one thousand hectares in area." Similarly, the 1987 Philippine Constitution, Chapter XII, Section 3, provides that "private corporations or associations may not hold such alienable lands of the public domain except by lease, for a period not exceeding twenty-five years, renew-

[9]Director of Lands vs. IAC, 209 SCRA 214, 222-224 (1992).
[10]Herico vs. Department of Agrarian Reform, 95 SCRA 437 (1980).
[11]Director of Lands vs. Court of Appeals, 178 SCRA 708, 712 (1989).

able for not more than twenty-five years, and not to exceed one thousand hectares in area." It is clear that if the land is still part of the alienable and disposable lands of the public domain at the time a corporation or association files an application for confirmation of imperfect or incomplete title thereto or at the time such applicant acquired the land from a Filipino citizen, then the aforequoted constitutional bar applies.

On the other hand, it has been held that the prohibitions in the said Constitutions against a private corporation (or association) acquiring lands of the public domain, do not apply where at the time such corporation acquired the land, its predecessors-in-interest by exclusive, continuous, and adverse possession of the same for more than 30 years had acquired ownership thereof *ipso jure*, enabling the latter to convey title to the corporation.[12]

The leading case of *Director of Lands vs. Intermediate Appellate Court and ACME*[13] made significant and precedent-setting rulings on the matter, as follows:

> 1) Notwithstanding the prohibition in the 1973 and 1987 Constitutions against private corporations holding lands of the public domain except by lease not exceeding 1000 hectares, still a private corporation may institute confirmation proceedings under Section 48(b) of the Public Land Act if, at the time of institution of the registration proceedings, the land was already private land. On the other hand, if the land was still part of the public domain, then a private corporation cannot institute such proceedings.
>
> 2) "The correct rule x x x is that alienable public land held by a possessor, personally or through his predecessors-in-interest, openly continuously and exclusively for the prescribed statutory period (30 years under the Public Land Act, as amended) is converted to private property by the mere lapse or completion of said period, *ipso jure*."
>
> 3) Since Section 48(b) of the Public Land Act itself considers "possession of public land which is of the character and duration prescribed by statute as the equivalent of an express grant from the State," then confirmation proceedings would in

[12]Republic vs. Court of Appeals, 155 SCRA 344 (1987).
[13]146 SCRA 509 (1986).

truth be little more than a formality, at the most limited to ascertaining whether the possession claimed is of the required character and length of time; and registration thereunder would not confer title, but simply recognize a title already vested. The proceedings would not *originally* convert the land from public to private land, but only confirm such a conversion already effected by operation of law from the moment the required period of possession became complete."

4) "The purely accidental circumstance that confirmation were brought under the aegis of the 1973 Constitution which forbids corporations from owning lands of the public domain cannot defeat a right already vested before that law came into effect, or invalidate transactions then perfectly valid and proper." x x x. "The Constitution cannot impair vested rights."

5) The objection that ACME, as juridical person, is not qualified to apply for judicial confirmation of title under Section 48(b) of the Public Land Act, "is technical, rather than substantial."

6) The ruling in *Manila Electric Co. (Meralco) vs. Castro-Bartolome*, 114 SCRA 799 (1982)[14] that a private corporation is not qualified to apply for such registration under said provision of the Public Land Act "is no longer deemed to be binding."

The current doctrine, first enunciated in the Meralco case (146 SCRA 509), that the constitutional prohibitions in the 1973 and 1987 Constitutions do not apply to public lands already converted into private ownership by natural persons under the provisions of the Public Act, was subsequently reiterated in *Director of Lands vs. Manila Electric Co.*, 153 SCRA 686 (1987) and other cases.[15] In *Natividad vs. Court of Appeals*,[16] the Supreme Court said, "determinative of this issue is the character of the parcels of land — whether

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[14]The Meralco case ruling was reiterated in Republic vs. Villanueva, 114 SCRA 875 (1982); Rep. vs. Gonong and Iglesia ni Cristo, 118 SCRA 729 (1982); Rep. vs. Iglesia ni Cristo and Rep. vs. Cendana, 119 SCRA 449 (1982); Director of Lands vs. Lood, 124 SCRA 460 (1983); Rep. vs. Iglesia ni Cristo, 127 SCRA 687 (1984); Rep. vs. Iglesia ni Cristo, 128 SCRA 44 (1984); Director of Lands vs. Hermanos y Hermanas de Sta. Cruz de Mayo, Inc., 141 SCRA 21 (1991).

[15]Republic vs. Court of Appeals, 156 SCRA 344 (1987); De Ocsio vs. CA, 170 SCRA 729 (1989); Director of Lands vs. Iglesia ni Cristo, 200 SCRA 606 (1991).

[16]202 SCRA 439, 498 (1991).

they were still public land or already private — when the registration proceedings were commenced. If they were already private lands, the constitutional prohibition against acquisitions by a private corporation would not apply."

7. Form and contents of Application

Section 50 of the Public Land Act provides that the application for judicial confirmation of imperfect or incomplete title "shall conform as nearly as may be in its material allegations to the requirements of an application under the Land Registration Act," now the Property Registration Decree (P.D. 1529). Accordingly, the applicant should state in his application the material facts and information required under Section 15 of the said Decree. In point of practice, applicants in original registration under aforementioned Act or Decree invariably invoke in their applications the benefits under Chapter VIII of the Public Law Act should their claims of ownership under said Act or Decree are not granted.

8. Confirmation of title over land previously declared public land

In the case of *Mindanao vs. Director of Lands*,[17] Pio Mindanao and his co-heirs filed a land registration case under Act No. 496, alleging that they inherited the land involved from their grandfather, and alternatively invoking Section 48(b) of Com. Act No. 141, as amended, since they and their predecessor-in-interest had been in continuous possession of the land, adversely and in the concept of owner for more than 30 years immediately preceding the filing of the application.

Vicente de Villa, Jr., opposed the application on the ground of *res judicata*, contending that the land was previously declared public land in a decision in 1949 in a land registration case filed by Villa, and that Mindanao, *et al.,* were not oppositors to this earlier case. The Director of Lands and Director of Forestry also opposed the application.

In ruling in favor of the Mindanao heirs' right to apply for registration, the Supreme Court held:

> "It should be noted that appellants' application is in the alternative: for registration of their title of ownership under

[17]20 SCRA 641 (1967).

Act 496 or for judicial confirmation of their 'imperfect' title or claim based on adverse and continuous possession for at least thirty years. It may be that although they were not actual parties in that previous case the judgment therein is a bar to their claim as owners under the first alternative, since the proceeding was *in rem* of which they and their predecessor had constructive notice by publication. Even so, this is a defense that properly pertains to the Government, in view of the fact that the judgment declared the land in question to be public land. In any case, appellants' imperfect possession of title was not disturbed or foreclosed by such declaration for precisely the proceeding contemplated in the aforecited provision of Commonwealth Act 141 presupposes that the land is public. The basis of the decree of judicial confirmation authorized therein is not that the land is already privately owned and hence no longer of the public domain, but rather that by reason of the claimant's possession for thirty years he is conclusively presumed to have performed all the conditions essential to a Government grant."

Even a decision in a cadastral proceeding declaring the land as public does not bar a subsequent application for judicial confirmation of the same land. Thus, in *Director of Lands vs. Court of Appeals*,[18] the Court held:

> "A judicial declaration that a parcel of land is public, does not preclude even the same applicant from subsequently seeking a judicial confirmation of his title to the same land, provided he thereafter complies with the provisions of Section 48 of Commonwealth Act No. 141, as amended, and as long as said public land remains alienable and disposable."

[18]106 SCRA 426, 433, (1981); also Ramirez vs. Court of Appeals, 256 SCRA 217, 225 (1996).

Chapter V

NON-REGISTRABLE PROPERTIES

Even before an applicant files his application for registration of title he should know what properties or lands cannot be subject of private appropriation.

1. Civil Code provisions dealing with non-registrable properties

Properties of public dominion have been described as those which, under existing legislation, are not the subject of private ownership and are reserved for public purposes.[1] According to the Civil Code,[2] the following things are property of public dominion:

> "(1) Those intended for public use, such as roads, canals, rivers, torrents, ports and bridges constructed by the State, banks, shores, roadsteads, and others of similar character;
>
> (2) Those which belong to the State, without being for public use, and are intended for some public service or for the development of the national wealth."

It has been held that such properties of the public dominion are held by the State by Regalian right. They are things *res publicae* in nature, incapable of private appropriation.[3] Accordingly, the Constitution of 1987 provides that "with the exception of agricultural lands, all other natural resources shall not be alienated."[4]

The Civil Code provisions dealing on special properties, like waters,[5] likewise enumerate the following to be of public dominion:

> "(1) Rivers and their natural beds;

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[1]Republic vs. Court of Appeals, 131 SCRA 532, 537 (1984).
[2]Civil Code, Article 420.
[3]Republic vs. Alagad, 169 SCRA 466, 461 (1989).
[4]1987 Constitution, Article XI, Sec. 2.
[5]Civil Code, Article 502.

(2) Continuous or intermittent waters of springs and brooks running in their natural beds and the beds themselves;

(3) Waters rising continuously or intermittently on lands of public dominion;

(4) Lakes and lagoons formed by Nature on public lands, and their beds;

(5) Rain waters running through ravines or sand beds, which are also of public dominion;

(6) Subterranean waters on public lands;

(7) Waters found within the zone of operation of public works, even if constructed by a contractor;

(8) Waters rising continuously or intermittently on lands belonging to private persons, to the State, to a province, or to a city or a municipality from the moment they leave such lands;

(9) The waste waters of fountains, sewers and public establishments."

A. *Samples of property of public domain*

An example of property intended for public use and thus classified as one of public dominion under paragraph 1 of Article 420 of the Civil Code, is a public market, which is outside of the commerce of man and could no longer be subject of private registration. A public plaza also falls under this classification and if thus a non-registrable property. Municipal street or public buildings likewise belong to this class of public dominion.[6]

Another specific example of property of public dominion is the *Roppongi* property in Tokyo, Japan. This property was acquired by the Philippine Government through Reparation Agreements, and specifically designated under the Reparation Agreement to house the Philippine Embassy. In the case of *Laurel vs. Garcia*, 187 SCRA 797 (1990), the Supreme Court held that the Roppongi property is classified under paragraph 2 of Article 420 of the Civil Code as property belonging to the State and intended for public use. On the argument

[6]Municipality of Antipolo vs. Zapanta, 133 SCRA 820 (1984); Martinez vs. Court of Appeals, 66 SCRA 674 (1974); Navera vs. Quicho, 5 SCRA 454.

that said property has been converted into patrimonial property and therefore disposable, the Court said:

> "The fact that the Roppongi site has not been used for a long time for actual Embassy service does not automatically convert it to patrimonial property. Any such conversion happens only if the property is withdrawn from public use (*Cebu Oxygen and Acetylene Co. vs. Bercilles*, 66 SCRA 481 [1985]). A property continues to be part of the public domain, not available for private appropriation or ownership, until there is a formal declaration on the part of the government to withdraw it from being such (*Ignacio vs. Director of Lands*, 108 Phil. 335 [1960].)"

2. Specific kinds of non-registrable properties or lands

A. *Forest or timberland, public forest, forest reserves*

Forest lands or forest reserves, like the Cordillera Forest Reserve, are incapable of private appropriation and possession thereof, however long, cannot convert them into private properties. This is premised on the Regalian doctrine enshrined not only in the 1935 and 1973 Constitutions but also in the 1987 Constitution.[7] This is the rule consistently held in a host of earlier cases.[8] It has also been held that whatever possession of the land prior to the date of release of forested land as alienable and disposable cannot be credited to the 30-year requirement (now, since June 12, 1945) under Section 48(b) of the Public Land Act. It is only from that date that the period of occupancy for purposes of confirmation of imperfect or incomplete title may be counted.[9] And the inclusion of forest land in a title, "whether title be issued during the Spanish regime or under the Torrens system, nullifies the title."[10]

1. *Power to classify or reclassify public lands into alienable or disposable lands*

The classification of public lands is an exclusive prerogative of the Executive Department of the Government and not of the courts.

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[7]Director of Lands vs. Aquino, 192 SCRA 296, 303 (1990).

[8]Director of Forestry vs. Munoz, 23 SCRA 183 (1968); Rep. vs. CA, 154 SCRA 476 (1987); Republic vs. Animas, 56 SCRA 499 (1974).

[9]Director of Lands vs. Court of Appeals and Jose Salazar, *et al.*, 133 SCRA 701 (1984); Republic vs. CA, 148 SCRA 480 (1987).

[10]Republic vs. Sps. Maximo, *et al.*, 135 SCRA 156, 165 (1985).

In the absence of such classification, the land remains as unclassified land until it is released therefrom and rendered open to disposition."[11]

In the case of *Bureau of Forestry vs. Court of Appeals*,[12] the Supreme Court ruled:

> "As provided for under Section 6 of Commonwealth Act 141, which was lifted from Act 2874, the classification or reclassification of public lands into alienable or disposable, mineral or forest lands is now a prerogative of the Executive Department of the government and not the courts. With these rules, there should be no more room for doubt that it is not the court which determines the classification of lands of the public domain into agricultural, forest or mineral but the Executive Branch of the government, through the Office of the President. Hence, it was grave error and/or abuse of discretion for respondent court to ignore the uncontroverted facts that (1) the disputed area is within a timberland block, and (2) as certified by the then Director of Forestry, the area is needed for forest purposes."

Specifically, Section 6 of Commonwealth Act 141 reads:

> "Section 6. The President, upon the recommendation of the Secretary of Agriculture and Natural Resources (formerly Commerce), shall from time to time classify the lands of the public domain into —
>
> "(a) Alienable or disposable;
>
> "(b) Timber; and
>
> "(c) Mineral lands;
>
> and may at any time and in a like manner transfer such lands from one class to another, for the purpose of their administration and disposition."

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[11]Director of Lands and Director of Forest Development vs. Court of Appeals, 129 SCRA 689 (1984), citing Rep. vs. Court of Appeals, 99 SCRA 742 (1980); Director of Lands vs. CA, 178 SCRA 708 (1989).

[12]153 SCRA 351 (1987); also Director of Lands vs. Court of Appeals, 129 SCRA 689 (1984); Republic vs. De Porkan, 151 SCRA 88, 105 (1987).

Under Section 8 of the Act —

> "The President may, for reasons of public interest, declare lands of the public domain open to disposition before the same have had their boundaries established or been surveyed, or may, for the same reason, suspend their concession or disposition until they are again declared open to concession or disposition by proclamation duly published or by Act of the National Assembly (now Congress)."

While the aforequoted portion of Section 8 of CA 141 speaks of proclamation or by Act of legislative body and the case of *Director of Lands vs. CA*, 178 SCRA 708, 711 (1989), also speaks of a release from the forest zone "in an official proclamation," yet the Supreme Court had likewise stated in the cases of *Republic vs. Animas, supra*, and *Heirs of Jose Amunategui vs. Director of Lands*,[13] that "a *positive act* of Government is needed to declassify land which is classified as forest and convert it into alienable or disposable land for agricultural or other purposes." That *positive act* may not necessarily, exclusively and absolutely be in the form of an official proclamation by the President or by an act of Congress. In most instances, such releases from the forest zone into alienable zone were done by mere administrative orders issued by the Secretary of Natural Resources and by BF (Bureau of Forestry) Classification Maps. It is the opinion of the author then that the release from the timber zone may be made through any kind of Presidential issuance so long as the intention to declassify the land into alienable and disposal is clearly and positively manifest therein.

An example of a legislative act releasing a forest land is indicated in the case of *International Hardwood and Veneer Co. of the Philippines vs. U.P.*[14] In this case, by R.A. 3995, the Republic ceded and transferred the previously reserved area to the University of the Philippines. The Supreme Court held that when the Republic ceded and transferred the property to U.P., the former completely removed it from the public domain, from the public forest.

2. *Term "forest land" explained*

The case of *Heirs of Jose Amunategui vs. Director of Forestry, supra*, makes a classical discourse on the legal signification of land classified as forest land, to wit:

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[13]126 SCRA 69, 75 (1983).
[14]200 SCRA 554 (1991).

> "A forested area classified as forest land of the public domain does not lose such classification simply because loggers or settlers may have stripped it of its forest cover. Parcels of land classified as forest land may actually be covered with grass or planted to crops by Kaingin cultivators or other farmers. Forest lands do not have to be on mountains or in out of the way places. Swampy areas covered by mangrove trees, nipa palms, and other trees growing in brackish or sea water may also be classified as forest land. The classification is descriptive of its legal nature or status and does not have to be descriptive of what the land actually looks like. Unless and until the land classified as forest is released in an official proclamation to that effect so that it may form part of the disposable agricultural lands of the public domain, the rules on confirmation of imperfect title do not apply."

It can thus be also said that, conversely, a parcel of land that has been declassified as alienable and disposable does not cease to be such simply because there remains on the land trees fit for logging.

B. *Mangrove swamps*

In the case of *Director of Forestry vs. Villareal*,[15] the Supreme Court *en banc* ruled as follows:

> "Mangrove swamps or mangroves should be understood as comprised within the public forests of the Philippines as defined in the aforecited Section 1820 of the Administrative Code of 1917. x x x The statutory definition remains unchanged to date.
>
> x x x
>
> "Our previous description of the term in question as pertaining to our agricultural lands should be understood as covering only those lands over which the ownership had already vested before the Administrative Code of 1917 became effective."
>
> x x x

[15]170 SCRA 598, 608-610 (1980).

"It is reiterated for emphasis that, conformably to the legislative definition embodied in Section 1820 of the Revised Administrative Code of 1917, which remains unamended up to now, mangrove swamps or *manglaves* form part of the public forests of the Philippines. As such they are not alienable under the Constitution and may not be the subject of private ownership until and unless they are first released as forest land and classified as alienable agricultural land."

B.1. Lands that are within the reservation for park purposes form part of the forest zone and therefore not susceptible of private appropriation (*Paloma vs. CA*, 266 SCRA 392, 401 [1997]).

C. *Mineral lands*

Both under the 1987 Constitution of the Philippines[16] and Section 2 of the Public Land Act, mineral lands are not alienable and disposable.[17] Possession of a mineral land, however long, does not therefore confer upon the possessor any possessory right.[18]

D. *Foreshore land and Seashore*

Foreshore land has been defined as follows:

"x x x that part of (the land) which is between high and low water and left dry by the flux and reflux of the tides x x x."

x x x

"The strip of land that lies between the high and low water marks and that is alternatively wet and dry according to the flow of the tide."

x x x

"If the submergence, however, of the land is due to precipitation (rainfall), it does not become foreshore despite its proximity to the waters."[19]

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[16]Article XII, Sec. 3.

[17]Lepanto Consolidated Mining Co. vs. Dumyung, 89 SCRA 532, 537 (1979).

[18]Atok-Big Wedge Mining Co. Inc. vs. Court of Appeals, 193 SCRA 71, 77 (1991).

[19]Republic vs. Alagad, 169 SCRA 455, 462, 464 (1989), citing Rep. vs. CA 131 SCRA 532 (1984).

It has also been held that when the land is covered by the sea water at high tide (as in May to July) and there is no showing that the tides are due to abnormal conditions, the land is clearly part of the shore and therefore public land belonging to the State.[20]

Seashore, foreshoreland, and/or portions of the territorial waters and beaches, cannot be registered. Even alluvial formation along the seashore is part of the public domain and, therefore, not open to acquisition by adverse possession by private persons. Such accretion is outside the commerce of man, unless declared by either the executive or legislative branch of the government as disposable. Their inclusion in a certificate of title does not convert the same into properties of private ownership or confer title upon the registrant.[21]

E. *Navigable rivers, streams and creeks*

It has been held that a river is a compound concept consisting of three elements, namely: (1) the running waters, (2) the bed and (3) the banks. All these constitute the river. Since a river is but one compound concept, it has only one nature, *i.e.*, it has either to be totally public or completely private. And since rivers are of public ownership, it is implicit that all the three component elements be of the same nature.[22] Navigable rivers, including their beds, or foreshore, are non-registrable properties.[23]

The ownership of a navigable stream or of the bed thereof is not also subject to acquisitive prescription. That it is included in the title does not change its public character.[24]

A creek has been defined as a recess or arm extending from a river and participating in the ebb and flow of the sea. It is thus a property belonging to the public domain, incapable of registration under the Torrens system in the name of any individual. Such nature of a creek as property of the public domain is not altered by the conversion of the creek into a fishpond, nor by the mere con-

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[20]Cagampang vs. Morano, 22 SCRA 1040 (1986).

[21]Dizon vs. Rodriguez, 13 SCRA 704 (1965); Rep. vs. Ayala Y Cia, 14 SCRA 260 (1965); Bruna Aranas de Buyser vs. Director of Lands, 121 SCRA 13 (1983); Republic vs. Vda. de Castillo, 163 SCRA 286 (1988).

[22]Hilario vs. City of Manila, 19 SCRA 931, 939 (1976).

[23]Republic vs. Sioson, 9 SCRA 533; Martirez vs. Court of Appeals, 56 SCRA 647 (1974); Rep. vs. CA, 132 SCRA 514 (1984); Rep. vs. Lozada, 90 SCRA 502 (1979).

[24]Mateo vs. Moreno, 28 SCRA 796 (1969), citing Lovina vs. Moreno, 9 SCRA 557 (1963).

struction of irrigation dikes, even if done by the National Irrigation Administration, which prevented the water from flowing in and out of such fishpond.[25]

F. *Lakes*

Lakes, which are of public dominion,[26] are likewise incapable of registration. Thus, it has been held that areas which form parts of the Laguna de Bay (which is in fact a lake) are neither agricultural nor disposable. Hence, any title issued on these areas, even in the hands of an alleged innocent purchaser for value, may be cancelled.[27]

G. *Military Reservations*

A military reservation or part thereof, whether of the Philippine Government or of then the United States, is not registrable. The reservation made segregates it from the public domain and no amount of time in whatever nature of possession could have ripen such possession into private ownership.[28]

H. *Other kinds of Reservations*

Reservations for specific purposes other than military reservations made by Presidential or Executive proclamation for a specific purpose, are not also subject of private ownership. In one case, a Presidential Proclamation reserved an area for the medical center site of the Mindanao Medical Center in Davao under the administration of the Director of Hospitals. On the effects of such reservation, the Supreme Court held as follows:[29]

> "Lands covered by reservations are not subject to entry, and no lawful settlement on them can be acquired. The claims of persons who have settled on, occupied, and improved a parcel of public land which is later included in a reservation are considered worthy of protection and are usually respected, but where the President, as authorized by law, issues a proclamation reserving certain lands, and warning all persons to depart therefrom, this terminates any rights previously acquired in

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[25]Maneclang vs. Intermediate Appellate Court, 161 SCRA 469 (1985).

[26]Civil Code, Art. 502 (4).

[27]Republic vs. Reyes, 155 SCRA 313 (1987).

[28]Republic vs. Marcos, 52 SCRA 238 (1973); Rep. vs. Intermediate Appellate Court, 155 SCRA 412 (1987); Director of Lands vs. CA, 179 SCRA 522 (1989).

[29]Republic vs. Court of Appeals, 73 SCRA 146, 156-157 (1976).

such land by a person who has settled thereon in order to obtain a preferential right of purchase. And patents for lands which have been previously granted, reserved from sale, or appropriated, are void."

The reserved area, insofar as said settlers or occupants are concerned, cannot perforce be subject of registration by them. However, in the same case, the Court held that the Mindanao Medical Center, by the land grant through the Presidential proclamation which is constitutive of a "fee simple" title, may validly apply for initial registration of said reserved area.

(1) *Authority to make reservation*

The President of the Philippines has the recognized competence to reserve by executive proclamation alienable lands of the public domain for a specific public use or service.[30] Under Section 64(e) of the Revised Administrative Code, the President may "reserve from sale or other disposition and for specific public uses or service, any land belonging to the public domain of the Government of the Philippines, the use of which is not otherwise provided by law." The Administrative Code of 1987, in Section 14(1), Chapter 4, Book III thereof, also provides that "The President shall have the power to reserve for settlement or public use and for specific public purposes, any of the lands of the public domain, the use of which is not otherwise directed by law. The reserved area shall thereafter remain subject to the public purpose indicated until otherwise provided by law or proclamation." Similarly, the President is authorized by Section 83 of the Public Land Act (Com. Act 141) to "designate by proclamation any tract or tracts of land of the public domain as reservations for the use of the Commonwealth (now Republic) of the Philippines or of any of its branches, or of the inhabitants thereof, x x x or for quasi-public uses or purposes when the public interest requires it, including reservations for x x x other improvements for the public benefit."

(2) *Baguio Townsite Reservation*

In *Republic vs. Fagonil*,[31] the private respondents filed with the then Court of First Instance of Baguio applications for registration

[30]Republic vs. October, 16 SCRA 848 (1966).
[31]133 SCRA 513, 517 (1984).

of lots within the Baguio Townsite Reservation. They alternatively invoked the benefits provided in Section 48(b) and (c) of the Public Land Act because they and their predecessors allegedly have been in possession of the lots for more than 30 years. Citing the decision dated November 13, 1922 of the Land Registration Court in Civil Reservation Case No. 1, GLRO Record No. 211, which held that all lands within the Baguio Townsite are public lands with the exception of (1) lands reserved for specific public uses; and (2) lands claimed and adjudicated as private property, the Supreme Court ruled, to wit:

> "The 1922 decision established the rule that lots of the Baguio Townsite Reservation, being public domain, are not registerable under Act 496. As held by Judge Belmonte in a 1973 case, the Baguio Court of First Instance has no jurisdiction to entertain any land registration proceedings under Act 496 and the Public Land Law, covering any lot within the Baguio Townsite Reservation which was terminated in 1922 (*Camdas vs. Director of Lands*, L-37782, Resolution of this Court of March 8, 1974, dismissing petition for review of Judge Belmonte's ruling)."

In a subsequent ruling in another case,[32] the Supreme Court reiterated that outside of those lands specifically excepted from the effects of the 1922 decision in Civil Reservation Case No. 1, all lands within the Baguio Townsite Reservation are "no longer registerable under the Land Registration Act."

I. *Watershed*

A watershed established as such by Executive Proclamation cannot be registered. Watersheds serve as a defense against soil erosion and guarantees the steady supply of water. The Constitution expressly mandates the conservation and utilization of natural resources, which includes the country's watershed."[33]

J. *Grazing lands*

Grazing lands are not alienable under Section 1, Article XIII of the 1935 Constitution and Sections 8, 10 and 11 of Article XIV of the 1973 Constitution. While the 1987 Constitution does not specifically

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[32]Rep. vs. Sangalang, 159 SCRA 515, 520 (1988).
[33]Tan vs. Director of Forestry, 125 SCRA 302, 318 (1983).

provide that grazing lands are not disposable, yet if such lands are part of a forest reserve, there can be no doubt that the same are incapable of registration.[34]

K. *Previously titled land*

A land previously registered pursuant to a public land patent, or already decreed in the name of another in an earlier registration case, can no longer be the subject of another land registration proceeding, for further registration of the same would lead to an obviously undesirable result, even if the certificates would be issued in the name of the same person. A second decree for the same land would be null and void.

"And if the certificates were to be issued to different persons, the indefeasibility of the first title which is the most valued characteristics of Torrens title, would be torn away."[35]

L. *Alluvial deposit along river when man-made*

Where the alluvial deposits were formed not because of the sole effect of the current of the rivers but as a result of special works expressly intended or designed to bring about accretion, the riparian owner does not acquire ownership thereof. Such deposit is really an encroachment of a portion of the bed of the river, classified as property of the public domain under Article 420, paragraph 1 and Article 502(1) of the Civil Code, and hence not open to registration.[36]

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[34]Director of Lands vs. Rivas, 141 SCRA 329, 335 (1986).

[35]Lahora vs. Dayanghirang, 37 SCRA 346, 351 (1971); also Laburada vs. Land Registration Authority, 287 SCRA 333, 343, 344 (1998)

[36]Rep. vs. CA, 132 SCRA 514 (1984).

Chapter VI

PUBLICATION, OPPOSITION, DEFAULT

1. Notice of initial hearing

Under Section 23 of the Property Registration Decree (P.D. 1529), after the filing of the application for registration of title to land, the next step is for the proper Regional Trial Court, within five days from said filing, to "issue an order setting the date and hour of the initial hearing which shall not be earlier than forty-five days nor later than ninety days from the date of the order." In turn, "the public shall be given notice of the initial hearing of the application for land registration by means of (1) publication; (2) mailing; and (3) posting."

A. *Publication of notice of initial hearing*

Said Section 23 of P.D. No. 1529 additionally provides as regards the mode by publication as follows:

> "Upon receipt of the order of the court setting the time for initial hearing, the Commissioner of Land Registration shall cause a notice of initial hearing to be published once in the Official Gazette and once in a newspaper of general circulation in the Philippines: *Provided, however,* that the publication in the Official Gazette shall be sufficient to confer jurisdiction upon the court. Said notice shall be addressed to all persons appearing to have an interest in the land involved including the adjoining owners so far as known, and "to all whom it may concern." Said notice shall also require all persons concerned to appear in court at a certain date and time to show cause why the prayer of said application shall not be granted."

(1) ***Purpose and effects of publication***

The primary purposes and effects of publication of the notice of application are (a) to confer jurisdiction over the land applied for

upon the court, and (b) to charge the whole world with knowledge of the application of the land involved, and invite them to take part in the case and assert and prove their rights over the property subject thereof.

The case of *Benin vs. Tuason,*[1] clearly explains the effects of publication and non-publication of the application, as follows:

> "The settled rule, further, is that once the registration court had acquired jurisdiction over a certain parcel, or parcels, of land in the registration proceedings in virtue of the publication of the application, that jurisdiction attaches to the land or lands mentioned and described in the application. If it is later shown that the decree of registration had included land or lands not included in the original application as published, then the registration proceedings and the decree of registration must be declared null and void insofar — *but only insofar* — as the land not included in the publication is concerned. This is so, because the court did not acquire jurisdiction over the land not included in the publication — the publication being the basis of the jurisdiction of the court. But the proceedings and the decree of registration, relating to the lands that were included in the publication, are valid. Thus, if it is shown that a certificate of title had been issued covering lands where the registration court had no jurisdiction, the certificate of title is null and void *insofar as it* concerns the land or lands over which the registration court had not acquired jurisdiction."

This case of *Benin* nonetheless ruled that if the area of the land appearing in the decree of registration and as reproduced in the original certificate of title is bigger by only 27.10 square meters than that published, the entire parcel of land decreed being more than 879 hectares, then the difference is not so substantial as would affect the identity of the land. The failure to publish the bigger area does not perforce affect the court's jurisdiction.

In *Republic vs. Court of Appeals*,[2] it was observed that the Benin case reiterates earlier rulings "that only where the original survey plan is amended during the registration proceedings, by the addi-

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[1]57 SCRA 531, 558, citing Philippine Manufacturing Co. vs. Imperial, 49 Phil. 122; Juan and Chongco vs. Ortiz, 49 Phil. 252; Lichauco vs. Herederos de Corpus, 60 Phil. 211.

[2]71 SCAD 665; 258 SCRA 223, 237 (1996).

tion of land not previously included in the original plan, should publication be made in order to confer jurisdiction on the court to order the registration of the area added after the publication of the original plan. Conversely, if the amendment does not involve an addition, but on the contrary, a reduction of the original area that was published, no new publication is required." The *Benin* case is, however, inapplicable where the amendment of the original survey plan of the land applied for was made after the court has rendered its decision. In this instant, there is need for a re-opening of the case.

It is also the rule that a land registration court which has validly acquired jurisdiction over a parcel of land for registration of title thereto by the publication of the application cannot be divested of said jurisdiction by a *subsequent* administrative act consisting in the issuance by the Director of Lands of a homestead patent covering the same parcel of land.

Thus, in the situation presented in the case of *De Los Angeles vs. Santos*,[3] if the applicants succeed in proving their allegations in their application for registration that they are owners *pro-indiviso* and in fee simple of the land involved, then the court would have to order a decree of title issued in favor of the applicants and declare the homestead patent a nullity which vested no title in the patentee as against the real owners.

With respect to persons who have been charged with knowledge of the application of land by the publication of the notice of initial hearing, who have or claim rights to the land involved and fail to assert them, their failure cannot operate to exclude them from the binding effects of the judgment that may be rendered therein.

(2) *Meaning of the proviso that publication of the notice of initial hearing in the Official Gazette "shall be sufficient to confer jurisdiction upon the court"*

Republic vs. Marasigan,[4] explains the meaning of aforecited proviso of Section 23 of P.D. No. 1529, to wit:

> "This proviso was never meant to dispense with the requirement of notice by *mailing* and by *posting*. What it simply means is that in so far as publication is concerned, there is

[3]12 SCRA 622, 625 (1964).
[4]198 SCRA 219, 228 (1991), stress supplied.

sufficient compliance if the notice is published in the Official Gazette, although the law mandates that it be published once in the Official Gazette and once in a newspaper of general circulation in the Philippines. However, publication in the latter alone would not suffice. This is to accord primacy to the official publication.

"That such proviso was never meant to dispense with the other modes of giving notice, which remain *mandatory* and *jurisdictional*, is obvious from Section 23 itself. If the intention of the law were otherwise, said section would not have stressed in detail the requirements of mailing of notice to all persons named in the petition who, per Section 15 of the Decree, include owners of adjoining properties, and occupants of the land."

In *Director of Lands vs. CA*, 276 SCRA 276, 285 (1997), it was also held that publication of the notice of initial hearing in a newspaper of general circulation is mandatory and imperative. Absent such publication, the land registration court cannot validly confirm the title of the applicant for registration.

(3) ***Defective publication and effects***

A defective publication of the notice of initial hearing deprives the court of jurisdiction.[5] And when the court *a quo* lacks jurisdiction to take cognizance of a case, it lacks the authority over the whole case and all its aspects.[6] For it is the proper publication of said notice that brings in the whole world as a party in the case and confers the court with jurisdiction to hear and decree it.[7] The publication is defective in the following instances:

a) Where what was published in the Official Gazette is the description of a bigger lot which includes the lands subject of registration. The registration did not acquire jurisdiction over subject lands because:

a.1) Section 15 of P.D. No. 1529 (as also Sec. 21 of Act 496) specifies that the application for registration should contain the description of the land subject of registration and this is the description to be published;

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[5]Po vs. Republic, 40 SCRA 37 (1971).
[6]Pinza vs. Aldovino, 25 SCRA 220, 224 (1968).
[7]Register of Deeds of Malabon vs. RTC, Malabon, M.M. Branch 170, 181 SCRA 788 (1990).

a.2) It is the publication of specific boundaries of lands to be registered that would actually put the interested parties on notice of the registration proceedings and enable them, if they have rights or interest in the property, to show why the application for registration should not be granted;

a.3) The adjoining owners of the bigger lot would not be the same as the owners of the smaller lots subject of registration. Hence, notice to adjoining owners of the bigger lot is not notice to those of the smaller lots.[8]

b) Where the actual publication of the notice of initial hearing was after the hearing itself. The publication is also defective where the Official Gazette containing said notice, although for the month prior to the scheduled hearing, was released for publication only after said hearing.[9]

Thus, in the case of *Register of Deeds of Malabon vs. RTC, Malabon, Metro Manila, Branch 170*, *supra*, the court order set the hearing of the petition for reconstitution of title on August 17, 1988. Said order was included in the May 22 and 30, 1988 issues of the Official Gazette, but released for circulation on October 3, 1988. The Supreme Court held that the court did not acquire jurisdiction to hear the petition for tardiness of publication. This principle equally applies to a belated publication of an application for registration of title.

B. *Mailing and Posting of Notice of Initial Hearing*

The two other modes of giving notice are by mailing and by posting. Compliance with these requirements is mandatory and jurisdictional.[10]

(1) ***Persons and officials to whom notice is given by mailing***

Section 23 of P.D. No. 1529 provides that the Commissioner of Land Registration Commission (now Administrator of the Land Registration Authority) shall cause a copy of the notice of initial hearing of the application to be mailed to the following:

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[8]Fewkes vs. Vasques, 39 SCRA 514, 516-518 (1971).
[9]Republic vs. Court of Appeals, 236 SCRA 442, 449 (1994).
[10]Republic vs. Marasigan, *supra*.

a) To every person named in the notice whose address is known — within seven days after publication of said notice in the Official Gazette.

b) To the Secretary of Public Works and Highways, to the Provincial Governor, and to the Mayor of the municipality or city, as the case may be, in which the land lies — if the applicant requests to have the line of a public way or road determined.

c) To the Secretary of Agrarian Reform, the Solicitor General, the Director of Land Management, the Director of Mines and/or the Director of Fisheries and Aquatic Resources, as may be appropriate — if the land borders on a river, navigable stream or shore, or on an arm of the sea where a river or harbor line has been established, or on a lake, or if it otherwise appears from the application or the proceedings that a tenant-farmer or the national government may have a claim adverse to that of the applicant.

d) To such other persons as the court may deem proper.

(2) ***Notice by posting***

The same Section 23 of P.D. 1529 also provides that the Administrator of the Land Registration Authority —

> "Shall also cause a duly attested copy of the notice of initial hearing to be posted by the Sheriff of the province or city, as the case may be, or by his deputy, in a conspicuous place on each parcel of land included in the application and also in a conspicuous place on the bulletin board of the municipal building of the municipality or city in which the land or portion thereof is situated, fourteen days at least before the date of initial hearing."

(3) ***Proof of publication and notice***

Section 24 of P.D. No. 1529 provides that the certification of the Administrator of the Land Registration Authority and of the Sheriff concerned "to the effect that the notice of initial hearing, as required by law, has been complied with shall be filed in the case before the date of initial hearing, and shall be conclusive proof of such fact."

Such certification cannot, however, be conclusive proof of the fact of publication and/or posting, if the certification is made even

prior to the actual publication of the notice or release for circulation of the Official Gazette, or prior to the completion of the 14-day period of actual posting of such notice.

2. Opposition to application in ordinary proceedings

Section 25 of P.D. No. 1529 provides:

> "Any person claiming an interest, whether named in the notice or not, may appear and file an opposition on or before the date of initial hearing, or within such further time as may be allowed by the court. The opposition shall state all the objections to the application and shall set forth the interest claimed by the party filing the same and apply for the remedy desired, and shall be signed and sworn to by him or by some other duly authorized person."
>
> "If the opposition or the adverse claim of any person covers only a portion of the lot and said portion is not properly delimited on the plan attached to the application, or in case of undivided co-ownership, conflicting claims of ownership or possession, or overlapping of boundaries, the court may require the parties to submit a subdivision plan duly approved by the Director of Lands."

It will be noted that under Section 34 of the land Registration Act (Act 496), such person claiming interest in the land is required to file an answer to the application for registration. But even before P.D. No. 1529, the Supreme Court had said that a verified opposition is the answer referred to in said Section 34 of Act 496.[11]

A. *The oppositors*

The oppositor to an application for registration need not be named in the notice of initial hearing. He must claim an interest to the property applied for, based on a right of dominion or some other real right independent of, and not at all subordinate to, the rights of the Government.[12] The oppositor does not have to show title in himself; he should however appear to have an interest in the property. "It is immaterial whether this interest is in the character of legal owner or is of a purely equitable nature as where he is a beneficiary

[11]Director of Lands vs. Santiago, 160 SCRA 186 (1988).
[12]Leyva vs. Jandoc, 4 SCRA 595 (1962).

of a trust."[13] Under this criteria, the following may be proper oppositors:

> (1) A homesteader who had not yet been issued his title but who had fulfilled all the conditions required by law to entitle him to a patent;
>
> (2) A purchaser of friar land before the issuance of the patent to him; and
>
> (3) Persons who claim to be in possession of a tract of public land and have applied with the Bureau of Lands for its purchase.[14]

However, a mere foreshore lessee of public land cannot be an oppositor, since he cannot be considered an equitable owner of the land, his right being subordinate to that of the Government.[15]

In the proceedings, the owner of buildings and improvements on the land applied for should claim them. If such claim is sustained by the court, the fact of ownership thereof must be noted on the face of the certificate of title. Absent such notation, the claim is deemed adversely resolved. It has also been held that a mere claim to a portion of the land involved, even if noted in the survey plan accompanying the petition for registration, if not asserted properly in a written opposition, cannot defeat a registered title to such portion in the name of the successful applicant.[16]

B. *Contents and form of opposition*

Under the provisions of Section 25 of P.D. 1529, the opposition shall state all the objections to the application and set forth the interest claimed by the oppositor, and duly sworn to by him or his duly authorized representative. It has been held, however, that failure to verify said pleading is not sufficient to divest the party from his standing in court. The court, instead of dismissing his opposition outright, may allow the oppositor to verify his opposition.[17]

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[13]De Castro vs. Marcos, 26 SCRA 644, 653 (1969), citing Archbishop of Manila vs. Barrio of Sto. Cristo, 39 Phil. 1, 7 and Cuoto vs. Cortes, 8 Phil.. 459, 461.

[14]De Castro vs. Marcos, *supra*; also Heirs of Pelagia Zara vs. Director of Lands, 20 SCRA 641 (1967).

[15]Leyva vs. Jandoc, *supra*.

[16]Fernandez vs. Aboratigue, 36 SCRA 476, 480-481 (1970).

[17]Miller vs. Director of Lands, 12 SCRA 292 (1964).

3. Default

The interested party to a land subject of registration may file his opposition to the application on or before the date of initial hearing. Absent any oppositor, the court will then issue an order of default pursuant to Section 26 of P.D. No. 1529 which reads:

> "If no person appears and answers within the time allowed, the court shall, upon motion of the applicant, no reason to the contrary appearing, order a default to be recorded and require the applicant to present evidence. By the description in the notice "To all Whom It May Concern," all the world are made parties defendant and shall be concluded by the default order.
>
> "Where an appearance has been entered and an answer filed, a default order shall be entered against persons who did not appear and answer."

A. *Effects of default; remedy*

A default order in a land registration proceedings is entered "against the whole world," so that all persons, except only the parties who had appeared and filed pleadings in the case, are bound by said order.[18] Where there is no opposition, all the allegations in the application are deemed confessed on the part of the opponent. Thus, it has also been held that a person who has not challenged the application for registration of land, even if the appeal he afterwards interposed is based on the right of dominion over the same land, cannot allege damage or error against the judgment granting the registration inasmuch as he did not allege to have any right to such land.[19]

A defaulted interested person may however gain standing in court by filing a motion to set aside the order of default in accordance with Section 3, Rule 18 of the Rules of Court,[20] which reads:

> "Sec. 3. *Relief from order of default*. — A party declared in default may at any time after discovery thereof and before judgment file a motion under oath to set aside the order of default upon proper showing that his failure to answer (or file an oppo-

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[18]Cachero vs. Marzan, 196 SCRA 601, 610 (1991).

[19]Esconde vs. Barlongay, 152 SCRA 603, 610 (1987).

[20]Sec. 34. of P.D. No. 1529 allows application of the Rules of Court in a suppletory character when not inconsistent with said Decree.

sition as in ordinary land registration case) was due to fraud, accident, mistake or excusable neglect and that he has a meritorious defense. In such case the order of default may be set aside on such terms and conditions as the judge may impose in the interest of justice."

B. *When default order is improper; remedy*

Where an oppositor has already filed with the court an opposition based on substantial grounds, it is improper, even illegal, to declare him in default simply because he failed to appear at the initial hearing of the application for registration. As explained by the Supreme Court in *Director of Lands vs. Santiago*:[21]

> "The pertinent provision of law which states: 'If no person appears and answers within the time allowed, the court may at once upon motion of the applicant, no reason to the contrary appearing, order a general default to be recorded x x x'[22] cannot be interpreted to mean that the court can just disregard the answer (now opposition) before it, which has long been filed, for such interpretation would be nothing less than illogical, unwarranted and unjust. Had the law intended that failure of the oppositor to appear on the date of the initial hearing would be a ground for default despite his having filed an answer, it would have been so stated in unmistakable terms, considering the serious consequences of default."

In the same case, the Supreme Court also held that the appropriate remedy to contest an illegal declaration or order of default is a petition for *certiorari*; not appeal which is not an adequate remedy. It pointed out that in the case of *Omico Mining and Industrial Corporation vs. Vallejos*,[23] the Court stated, *to wit*:

> "The remedy provided for in the above-quoted rule (*i.e.*, Sec. 2, Rule 41) is properly, though not exclusively, available to a defendant who has been *validly* declared in default. It does not preclude a defendant who has been *illegally* declared in default from pursuing a more speedy and efficacious remedy, like a petition for certiorari to have the judgment by default set aside as a nullity."

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[21]160 SCRA 186, 191-192 (1988).
[22]Section 26, P.D. No. 1529.
[23]63 SCRA, 300 (1975), citing Matute vs. Court of Appeals, 26 SCRA 768 (1969).

C. *Motion to dismiss application; motion to dismiss opposition*

In a land registration case, a motion to dismiss the application, or a motion to dismiss the opposition to such application, is allowed. In the case of *Valisno vs. Plan*,[24] the Supreme Court pointed out that while the Land Registration Act (Act 496) does not provide for a pleading similar or corresponding to a motion to dismiss, Rule 132 of the Rules of Court however allows the application of the rules in a suppletory character or whenever practicable and convenient. Similarly, the Property Registration Decree (P.D. No. 1529) does not provide for a motion to dismiss, but it specifically provides in its Section 34 that "the Rules of Court shall, insofar as not inconsistent with the provisions of this Decree, be applicable to land registration and cadastral cases by analogy or in a suppletory character and whenever practical and convenient." Thus, in an earlier case,[25] the High Court sustained the dismissal of the application for registration upon a motion to dismiss grounded on the court's lack of jurisdiction over the *res* as the lands sought to be registered had been previously registered in the names of the oppositors.

On the other hand, in the aforementioned *Valisno* case, the applicant's motion to dismiss the opposition to the application for registration on ground of *res judicata* was sustained by the Court, holding that the former judgment (in a case of recovery of possession) was a final judgment rendered by a court (Court of Appeals) having jurisdiction of the subject matter and of the parties, and that there was between the first and second actions identity of parties, subject matter and cause of action.

This is the lucid reasoning of the Court:

> "While the complaint in the first action is captioned for recovery of possession, the allegations and the prayer for relief therein raise the issue of ownership. In effect, it is in the nature of an *accion reivindicatoria*. The second case is for registration of title. Consequently, between the two cases there is identity of causes of action because in *accion reivindicatoria* possession is sought on the basis of ownership and the same is true in registration cases. Registration of title in one's name is

[24]143 SCRA 502 (1986).
[25]Duran vs. Oliva, 3 SCRA 154 (1961), cited in Valisno vs. Plan, *supra*.

based on ownership. In both cases, the plaintiff and the applicant seek to exclude other persons from ownership of the land in question. The only difference is that in the former case, the exclusion is directed against particular persons, while in the latter proceedings, the exclusion is directed against the whole world. Nonetheless, the cause of action remains the same."

x x x

"It does not matter that the first case was decided by a court of general jurisdiction, while the second case is being heard by one of a limited jurisdiction, such as a registration court. It is enough that the court which decided the first case on the merits had validly acquired jurisdiction over the subject matter and the parties. That both courts should have equal jurisdiction is *not* a requisite of *res judicata*."

Chapter VII

EVIDENCE

1. Burden of applicant

It is the fundamental rule in land registration cases that "no person is entitled to have land registered under the Cadastral or Torrens system unless he is the owner in fee simple of the same, even though there is no opposition presented against such registration by third persons. x x x In order that the petition for the registration of his land shall be permitted to have the same registered, and to have the benefit resulting from the certificate of title, finally, issued, the burden is upon him to show that he is the real and absolute owner, in fee simple."[1] All applicants must overcome the presumption that the land sought to be registered forms part of the public domain, and to do this, he must present competent, clear and persuasive evidence of private ownership or of acquisition from the government. For under the Regalian doctrine, all lands not otherwise appearing to be clearly within private ownership are presumed to belong to the State.[2] Such doctrine finds affirmance by the present (1987) Constitution in Section 2, Article VII thereof, which explicitly provides that "all lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forms of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State."

Similarly, in confirmation of imperfect title cases, the applicant shoulders the burden of overcoming the presumption that the land he is applying for is part of the public domain. As pointed out in

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[1]Republic vs. Lee, 197 SCRA 13, 19 (1091), quoting from Director of Lands vs. Agustin, 42 Phil. 227; also Zuniga vs. Court of Appeals, 95 SCRA 740 (1980).

[2]Republic vs. Sayo, 191 SCRA 71 (1990); Director of Lands vs. Aquino, 192 SCRA 296 (1990); National Power Corp. vs. CA, 114 SCRA 318 (1982); Republic vs. CA, 167 SCRA 150 (1988); Director of Lands vs. CA, 211 SCRA 868, 876 (1992).

Laragan vs. Court of Appeals,[3] under Section 48(b) of the Public Land Law, "the presumption always is that the land pertains to the State, and the occupants and possessors claim an interest in the same, by virtue of their imperfect title or continuous, open, exclusive and notorious possession and occupation under a *bona fide* claim of ownership for the required number of years."

The basic rule then is that the applicant must stand on the strength of his own evidence. He must submit the evidence to the court although no one appears to oppose his title and to oppose the registration of the land. He should not also rely on the absence or weakness of the evidence of the oppositors.[4]

2. What the applicant must prove

The applicant for registration of title, or for confirmation of imperfect title, must prove that the land applied for has been declassified from the forest or timber zone and is a public agricultural land, is alienable and disposable, or otherwise capable of registration. He must prove the identity of that land. He must prove his possession and occupation thereof for the length of time and in the manner required by law (See Section 4, P.D. 1073, amending subsections 48[b] and 48[c] of the Public Land Act). And if he claims private ownership not because of his possession, he must prove the basis of such claim by submitting his muniments of title or whatever evidence to support the same.

3. Specific evidences

A. *Proofs that land has been declassified from the forest zone, is alienable or disposable, and is registrable*

1) Presidential proclamation.

"Thus, before any land may be declassified from the forest groups and converted into alienable or disposable land for agricultural or other purposes, there must be a *positive act from the government*. Even rules on the confirmation of imperfect

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[3]153 SCRA 172, 180 (1987); also NPC vs. CA, *supra*; Heirs of Jose Amunatequi vs. Director of Forestry, 126 SCRA 69 (1983); Director of Lands vs. IAC, 195 SCRA 38 (1991).

[4]Laragan vs. CA, *supra*; Reyes vs. Sierra, 93 SCRA 472 (1979); Director of Lands vs. Buyco, G.R. No. 91189, prom. Nov. 27, 1992.

titles do not apply unless and until the land classified as forest land is released in an *official proclamation* to that effect so that it may form part of the disposable agricultural lands of the public domain."[5]

2) Executive Order. This is also a positive act of the President.

3) Administrative Order issued by the Secretary of Environment and Natural Resources (formerly Secretary of Natural Resources).

4) BFD (Bureau of Forestry, now Bureau of Forest Development) Land Classification Map.

5) Certification by the Director of Forestry; and reports of District Forester.

In *Director of Lands vs. Court of Appeals*,[6] the Supreme Court gave weight to the mere certification of the Bureau of Forestry that the land applied for became disposable and alienable only on April 28, 1961. In another case,[7] the court held that reports and testimonies of a district forester and a land inspector that the area applied for is forest land within the Central Cordillera Forest Reserve deserve great weight. However, a mere recommendation of the District Forester for release of the land from its unclassified origin is not evidence of such release.[8]

On the other hand, the report submitted by a District Forester that the land involved is within a forested zone covered by a land classification map showing the timberland zone and his testimony which merely identified and described the condition of the area and verified the location of the land as stated in the survey plan, absent any authentic document evidencing the classification of the land applied for as a forest zone, are not sufficient to establish the forested nature of the land.[9]

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[5]Sunbeam Convenience Foods, Inc. vs. Court of Appeals, 181 SCRA 443, 448 (1990), citing Director of Lands vs. CA, 178 SCRA 708 (1989).

[6]133 SCRA 701 (1984); also Director of Lands vs. Funtilar, 142 SCRA 57, 68 (1986).

[7]Republic vs. Court of Appeals, 154 SCRA 476, 486 (1987).

[8]Director of Lands vs. Court of Appeals, 129 SCRA 689 (1984).

[9]Republic vs. Court of Appeals, 168 SCRA 77 (1988).

In any event, the mere classification or certification made by the Bureau of Forestry (or by a District Forester) is not controlling in all cases. Thus, in the case of *Tattoc vs. Intermediate Appellate Court*,[10] it was held that if the forester who issued the certification that the land is alienable did not testify in court, such evidence "in point of strict law" may be "constitutive of hearsay." "And moreover, such certification is rendered also doubtful, if not overriden, by on the spot surveys and investigations by other foresters the results of which show the contrary."

6) Investigation reports of Bureau of Lands investigator.

In *Republic vs. De Porkan*,"[11] the Supreme Court held that:

> "The nature and character of said tract of public land, more particularly Lot No. 1099, as one found inside an 'agricultural zone', and that of Lot No.1546, as one suitable for rice cultivation, which were categorically stated in the separate investigation reports in 1953 of Vicente J. Villena, junior public land inspector of the Bureau of Lands (Davao), is binding on the courts inasmuch as it is the exclusive prerogative of the Executive Department of the Government to classify public lands. The classification is descriptive of its legal nature or status and does not have to be descriptive of what the land actually looks like."

The Court subsequently reiterated that "it is already established that the nature and character of a public land made in the investigation report of the Bureau of Lands is binding on the courts."[12]

7) Legislative act, or by statute.

A forest area may also be segregated from a public forest by means of legislation. In the case of *International Hardwood and Veneer Co. of the Phils. vs. University of the Philippines*,[13] it appears that Congress enacted Republic Act No. 3990, approved by the President on June 18, 1964, which established a Central Experiment Station for UP. Section 2 thereof provides that the area designated for the purpose "is hereby ceded and transferred in full ownership to the University of the Philippines, subject to any existing concessions,

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[10]180 SCRA 386 (1989).
[11]151 SCRA 88, 105 (1987).
[12]Director of Forest Administration vs. Fernandez, 192 SCRA 121, 134 (1990).
[13]200 SCRA 554 (1991).

if any." Interpreting the aforequoted provision, the Supreme Court held as follows:

> "When it *ceded and transferred* the property to UP, the Republic of the Philippines completely removed it from the public domain and, more specifically, in *respect to the areas covered by the timber license of petitioner, removed and segregated it from a public forest*; it divested itself of its rights and title thereto and relinquished and conveyed the same to UP; and made the latter the absolute owner thereof, subject only to the existing concession."

B) *Proofs not sufficient to establish declassification of land from forest to alienable or disposable, or agricultural*

1) A survey plan, even if approved by the Bureau of Lands, "does not convert such land into alienable land, much less private property."[14] And a "survey made in a cadastral proceedings merely identifies each lot preparatory to a judicial proceedings for adjudication of title to any of the lands upon claim of interested parties,"[15] so that it does not follow that all lands comprised within the surveyed area are automatically released as alienable and disposable. Nor does the survey plan of mangrove swamps approved by the Director of Lands "have the effect of converting the mangrove swamps, as forest land, into agricultural land."[16]

2) The conversion of land into fishpond and the titling of properties around it "does not automatically render the property as alienable and disposable."[17]

3) The mere fact that the area in which the land involved is located has become highly developed residential or commercial land and actually no longer forest land, does not alter the lot's status as still forest land.[18]

On the other hand, evidence may show that the land in question is still within forest area.

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[14]Republic vs. Court of Appeals, 154 SCRA 476, 486 (1987).
[15]Director of Lands vs. Court of Appeals, 129 SCRA 689, 693 (1984).
[16]Director of Forestry vs. Villareal, 170 SCRA 598, 609 (1989).
[17]Director of Lands vs. CA, *supra*.
[18]Republic vs. Bacus, 176 SCRA 376, 383 (1989).

4) It was thus held that "the long period of time from 1949 to 1969 during which the land was under pasture lease permits granted to petitioner all the more lends credence to the fact that said land was within the Forest Zone as only lands of the category of public forest land can be subject of such permits."[19]

5) In *Director of Lands vs. Rivas*,[20] the Court held that the following evidence may establish that the land is public grazing land within a forest reserve:

(a) Land Classification Map (Map L.C.) of the Bureau of Forestry indicating Timberland;

(b) Presidential Proclamation reserving area for wood production, watershed, soil protection and other forest uses;

(c) Pasture lease agreement with Bureau of Forestry;

(d) Tax declaration describing land as for "pasture exclusively" or even simply describing it as "pasture land"; and

(e) Possessory information title describing land as grazing land.

6) It was likewise held that the certification by the Director of Forestry that the land sought to be registered is within the public forest, based on land classification map, suffices to show such fact, more so when relevant reports on the nature and character of the land by foresters corroborate such fact.[21]

C. *Proofs on identity of land*

In a land registration proceeding, the land applied for must be identified. "The claim of possession or having a composition title is inutile if the land is not identified.[22]

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[19]Tottoc vs. Intermediate Appellate Court, 180 SCRA 386, 391 (1989).
[20]141 SCRA 329 (1986); see also Republic vs. Bacus, *supra*.
[21]Republic vs. Court of Appeals, 135 SCRA 156, 162 (1985).
[22]Director of Lands vs. Court of Appeals, 130 SCRA 91, 93 (1984).

1) Survey plan in general

The survey plan of the property which shows its boundaries and total area clearly identifies and delineates the extent of the land. Even this plan alone is sufficient to identify the land. As explained by the Supreme Court, "no survey would at all be possible where the identity of the land is not first properly established. More importantly, without such identification, no opposition, even its own, to the application for registration could be interposed. Encroachment on or adverse possession of property could not be justly claimed."[23] The survey plan must, however, be approved by the Director of Lands as required by the Revised Administrative Code and Presidential Decree No. 239, otherwise, it cannot be considered as evidence.[24] But even if duly approved, the survey plan is not entitled to credit if it shows that the lots sought to be registered have areas very much bigger than those indicated in the tax declarations of the same lots.[25]

2) Tracing cloth plan and blue print copies of plan

Sections 1858 and 1864 of the Revised Administrative Code and Section 26 of Act 496 require the presentation of the tracing cloth plan. Thus, in *Director of Lands vs. Reyes*,[26] the Supreme Court held that the applicant in a land registration case must submit in evidence the original tracing cloth plan of the land applied for, duly approved by the Director of Lands. This is a statutory requirement of mandatory character which cannot be waived. The purpose of this requirement is to fix the exact or definite identity of the land as shown in the plan and technical descriptions.

In subsequent cases,[27] the Court ruled that while the best evidence to identify a parcel of land for registration is the original cloth plan, yet the blue print copy of the plan suffices for the purpose where the original tracing cloth plan was attached to the application for registration.

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[23]Director of Lands vs. Funtilar, *supra*, page 64; also Republic Cement Corp. vs. Court of Appeals, 198 SCRA 734, 742 (1991).

[24]Director of Lands vs. Heirs of Juana Carolino, 140 SCRA 396 (1985).

[25]Republic Cement Corp. vs. CA, *supra*.

[26]68 SCRA 177 (1975).

[27]Republic vs. Intermediate Appellate Court, 144 SCRA 705, 708 (1986); Republic vs. Court of Appeals, 167 SCRA 150, 154 (1988); Republic vs. CA and Infante-Tayag, 131 SCRA 140, 142 (1984); also Director of Lands vs. Intermediate Appellate Court, 195 SCRA 38, 44 (1991); Republic vs. Nubilla, 451 SCRA 181, 185, G.R. No. 157683, Feb. 11, 2005.

The Court had likewise held that even the true certified copy of the white paper plan would suffice to identify the land applied for. Thus:

> "No reversible error was committed by appellate court in ruling that Exhibit "O", the true certified copy of the white paper plan, was sufficient for identifying the land in question. Exhibit "O" was found by the appellate court to reflect the land as surveyed by a geodetic engineer. It bore the approval of the Land Registration Commission, and was reverified and approved by the Bureau of Lands on April 25, 1974 pursuant to the provisions of P.D. No. 239 withdrawing from the Land Registration Commission the authority to approve original survey plans. It contained the following material data: the barrio (Poblacion), municipality (Amadeo) and province (Cavite) where the subject land is located, its area of 379 square meters, the land as plotted, its technical descriptions and its natural boundaries. Exhibit "O" was further supported by the Technical Descriptions signed by a geodetic surveyor and attested by the Land Registration Commission. In fine, Exhibit "O" contained all the details and information necessary for a proper and definite identification of the land sought to be registered, thereby serving the purpose for which the original tracing cloth plan is required. The fact therefore that the original survey plan was recorded on which paper instead of a tracing cloth plan should not detract from the probative value thereof."[28]

2.A) *Other cases where mandatory requirement not strictly applied*

> (1) In *Republic vs. Court of Appeals*, 131 SCRA 140, 142 (1984), the contention that the application should be denied because the original tracing cloth plan was not submitted in evidence was not sustained on the finding that "it is indubitably indicated that the 'cloth plan of Psu-112106' was attached to the application (p. 3, Record on Appeal). It was detached and kept by the Land Registration Commission. It could not be marked in evidence."

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[28]Director of Lands vs. Court of Appeals, 158 SCRA 586, 571 (1988).

(2) In *Republic vs. Intermediate Appellate Court*, 144 SCRA 705, 708, 709 (1986), the Supreme Court held:

"On the other hand, in the case at bar, private respondent asserts in her comment (Rollo, p. 101) that it is not entirely correct for the petitioner to say that she merely presented the blue print copies of their tracing cloth plan because she in fact attached the original thereof in the application for registration as Annex "A" and is deemed part thereof. Such assertion was confirmed by the Intermediate Appellate Court which ruled that although the blue print copies of the plan were the only ones offered in evidence, the original tracing cloth plan was available to the Court for comparison and consideration. (Decision, Court of Appeals, Rollo, p. 43). Furthermore, the lands applied for are covered by public land surveys that bear the approval and certification of the Director of Lands aside from the amplification of applicant's documentary exhibits by the testimonies of two witnesses as to the areas, location and boundaries thereof. *(Ibid.)*

The fact that the lower court finds the evidence of the applicant sufficient to justify the registration and confirmation of her titles and did not find it necessary to avail of the original tracing cloth plan from the Land Registration Commission for purposes of comparison (Petition, Rollo, p. 29), should not militate against the rights of the applicant. Such is especially true in this case where no clear, strong, convincing and more preponderant proof has been shown by the oppositor to overcome the corrections of said plans which were found both by the lower court and the Court of Appeals as conclusive proofs of the descriptions and identities of the parcels of land contained therein."

(3) The Supreme Court in *Director of Lands vs. IAC*, 195 SCRA 38, 44 (1991), acknowledged that "the presentation of the tracing cloth plan required by Sections 1858 and 1864 of the Revised Administrative Code may be dispensed with where there is a survey plan the correctness of which had not been overcome by clear, strong and convincing evidence."

2.B) *Cases where mandatory requirement for submission of original tracing cloth plan was applied*

(1) In *Director of Lands vs. IAC*, 214 SCRA 604, 608 (1992), where the applicant submitted only blue print copy of

the survey plan of the land applied for, it was held that "the submission of the original tracing cloth plan is a statutory requirement of mandatory character" and the failure to do so "is fatal to the application." In this case, there was no finding that the original tracing cloth plan was attached to the records of the case. The respondent-applicant only contended that said tracing cloth plan and supporting documents were submitted to the Clerk of Court when he submitted the application and that the same were then elevated to the Land Registration Commission for approval of the survey plan by the Director of Lands. There was therefore no means by which both the lower court and the appellate court could have verified the correctness of the blue print copies of the survey plan.

(2) In *Dir. of Lands vs. IAC*, 219 SCRA 339, 344 (1993).

The omission to submit the original tracing cloth plan was ruled as fatal to the application, and the submission of a certified true copy of said plan not a substantial compliance with the mandatory requirement of the law. It should be noted that in this case, the applicant-respondent simply "claims that the tracing cloth plan is with the files of the Land Registration Commission, and the only evidence that can be presented to that fact is the request for the issuance of a certified true copy thereof." There was perforce no clear, convincing evidence to identify the land applied for.

(3) In the relatively recent case of *Director of Lands vs. Heirs of Isabel Tesalona*, 236 SCRA 336, 342 (1994), the High Court again rejected the submission of the blue print of the survey plan of the land involved, reasoning out, to wit:

> "The original tracing cloth plan, together with the duplicate copy of their application for registration of land title were under the custody of the Land Registration Commission (LRC) at that time. But such does not relieve the private respondents of their duty to retrieve the said tracing cloth plan and submit before the court. In the case of *Director of Lands vs. Reyes (supra)*, this Court clearly declared that if the original tracing cloth plan was forwarded to the LRC, 'the applicants may easily' retrieve the same therefrom and submit the same in evidence. This was not done. Assuming that the same was in their possession dur-

> ing the trial, private respondents should have made it available to the trial court for verification."

3) Technical description of the land applied for, duly signed by a Geodetic Engineer

Thus, it has been held that "what defines a piece of titled property is not the numerical data indicated as the area of the land, but the boundaries or 'metes and bounds' of the property specified in its technical description as enclosing it and showing its limits (*Republic vs. CA*, 301 SCRA 366, 383 [1999]).

4) Tax declarations

It has been held that the differences in the description of the land boundaries as well as in the land area stated in tax declarations after the survey, if logically explained, do not adversely affect the probative value of these tax declarations as evidence of identity of the land. As explained in the case of *Director of Lands vs. Funtilar*:[29]

> "Such differences are not uncommon as early tax declarations are, more often than not, based on approximation or estimation rather than on computation. More so, if the land as in this case was merely inherited from a predecessor and was still held in common. Differences in boundaries described in required municipal forms may also occur with changes in boundary owners, changes of names of certain places, a certain natural boundary being known by more than one name or by plain error. Neither was it uncommon then to designate the nearest, most visible natural landmarks such as mountains, creeks, rivers, etc., to describe the location or situation of the boundaries of properties in the absence of knowledge of technical methods of measuring or determining boundaries with accuracy, especially where as in this case, the same were made merely by humble farm people. Certain discrepancies, if logically explained later, do not make doubtful, the identification of the property as made, understood and accepted by the parties to the case."

5) Boundaries and area

The well-entrenched, general rule is that in the identification of land, well-defined boundaries will prevail over area, and, in case

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[29]142 SCRA 57, 65 (1986).

of conflict, the former controls the latter.[30] The evidence as to such natural boundaries must be clear and convincing, the boundaries given sufficiently certain, and the identity of the land proved by the boundaries clearly indicates that an erroneous statement concerning the area can be disregarded or ignored.[31] Otherwise, this rule cannot be applied.

In *Carabot vs. Court of Appeals, supra*, it was held that the rule on natural boundaries cannot be applied where there is a 500-hectare difference in the total area covered by the Spanish title and the total area claimed by the applicant as surveyed based on supposed natural boundaries, and the increase had not been validly explained. Substantial and unexplained discrepancies as to the area of the land stated in the muniments of title or in documents evidencing acquisition of the land by the applicant or his claim of ownership, on the one hand, and the area as surveyed based on natural boundaries, on the other hand, perforce negate the application of the general rule.[32]

D. *Proofs of private ownership*

The usual proof to establish a registrable title is by means of document. But the applicant for registration of land who relies on a document evidencing his title thereto must prove not only the identity of the land referred to therein but also the genuineness of said title.[33]

(1) Spanish titles, in pending cases

Although Spanish titles like *titulo real, composicion con el Estado, informacion posesoria* or possessory information title, *concession especial,* and *titulo de compra*, or the like, are now inadmissible and ineffective as proof of ownership in land registration proceedings filed after August 16, 1976,[34] so that all lands granted

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[30]Romero, Sr. vs. Court of Appeals, 40 SCRA 172, 179 (1971), citing Centenera vs. Director of Lands, 82 Phil. 85; Buiser vs. Cabrera, 81 Phil. 669; also Republic vs. Court of Appeals, 135 SCRA 156 (1985); Balantakbo vs. CA, 249 SCRA 323, 326 (1995), citing Dichoso vs. CA, 192 SCRA 169 (1990).

[31]Carabot vs. Court of Appeals, 145 SCRA 368, 381 (1986); Paterno vs. Salud, 9 SCRA 81, 86 (1963).

[32]Paterno vs. Salud, *supra*; Republic vs. CA, 135 SCRA 156 (1985); Director of Forest Administration vs. Fernandez, 192 SCRA 121, 135 (1990).

[33]Republic Cement Corp. vs. Court of Appeals, *supra*, page 747.

[34]P.D. No. 892; also Director of Lands vs. Rivas, 141 SCRA 329 (1986).

under the Spanish Mortgage Law system of registration which are not yet covered by a certificate of title issued under the Torrens system are deemed as unregistered land,[35] yet there are still pending cases in court which particularly involve possessory information titles. There is thus still relevancy to cite pertinent rulings of the Supreme Court on this type of Spanish title — on its probative value and how it may ripen into ownership.

> "The inscription in the property registry of an *informacion posesoria* under the Spanish Mortgage Law was a means provided by the law then in force in the Philippines prior to the transfer of sovereignty from Spain to the United States of America, to record a claimant's actual possession of a piece of land, established through an *ex parte* proceeding conducted in accordance with prescribed rules. Such inscription merely furnishes, at best, *prima facie* evidence of the fact that at the time the proceeding was held, the claimant was in possession of the land under a claim of right as set forth in his application. The possessory information could ripen into a record of ownership after the lapse of 20 years (later reduced to 10 years), upon the fulfillment of the requisites prescribed in Article 393 of the Spanish Mortgage Law.
>
> "There is no showing in the case at bar that the *informacion posesoria* held by the respondent had been converted into a record of ownership. Such possessory information, therefore, remained at best *prima facie* evidence of possession. Using this possessory information, the respondent could have applied for judicial confirmation of imperfect title under the Public Land Act, which is an action *in rem*. However, having failed to do so, it is rather late for him to pursue this avenue at this time."[36]

In a subsequent case, it was held that:

> "x x x under Article 393 of the Spanish Mortgage Law, the registered possessory information proceedings do not ripen into ownership except under certain conditions such as: (a) that an applicant has been in open possession of the land; (b) that an application to this effect has been filed after the expiration of

[35]P.D. No. 1529, Sec. 3.
[36]Republic vs. Feliciano, 148 SCRA 424, 431, 432 (1987).

twenty (20) years from date of such registration; (c) that such conversion be announced by means of a proclamation in a proper official bulletin; (d) that there is a court order for the conversion of the registration of possession into a record of ownership; and (e) that the Register of Deeds make the proper record thereof in the Registry (*Querol vs. Querol*, 48 Phil. 90; *Fernandez Hermanas vs. Director of Land*s, *supra*; *Director of Lands vs. Reyes*, 68 SCRA 137 [1975])."

x x x

"As held by this Court, failure to perform all conditions essential to a government grant does not entitle an applicant to confirmation of an imperfect title (*Director of Lands vs. Datu*, 115 SCRA 25 [1982]). At most, the *titulo de informacion posesoria* in the instant case may provide a *prima facie* evidence of the fact that at the time of its execution the predecessors-in-interest of claimants were in possession of the property covered, which may possibly be converted into ownership by uninterrupted possession for the statutory period (*Baltazar vs. Insular Government*, *supra*; *Republic vs. IAC*, 148 SCRA 480 [1987])."[37]

In *Balbin vs. Medalla*,[38] the Supreme Court held that a possessory information has to be confirmed in a land registration proceeding, as required in Section 19 of Act 496. Moreover, the holder must show actual, public and adverse possession of the land, under claim of ownership, for such possessory information to be effective as a mode of acquiring title under Act 496 (now PD 1529).

It is also the rule that where the applicant alleges a Spanish title such as a composition title as basis of his application, he must produce that title or prove the contents thereof by secondary evidence. Otherwise, the precise boundaries and location of the land applied for cannot be established.[39]

(2) Tax declarations and realty tax payments

Tax declarations and realty tax payments are not conclusive evidence of ownership. But they are at least proof that the holder

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[37]Director of Forest Administration vs. Fernandez, 192 SCRA 121, 136, 137 (1990).

[38]108 SCRA 666 (1981).

[39]Director of Lands vs. Court of Appeals, 130 SCRA 91 (1984).

had a claim of title over the property, also at best *indicia of possession*.[40] But they become strong evidence of ownership acquired by prescription when accompanied by proof of actual possession of the property[41] or supported by other effective proof.[42]

Tax declarations and realty tax payments may, however, lose their probative value in some instances. Thus, where the taxes for 31 years, 1946 to 1976, were paid only in 1976, a few months prior to the filing of the application, such payment does not constitute sufficient proof that applicant has a *bona fide* claim of ownership during those years prior to the filing of the application.[43] Irregular payment of realty taxes also casts doubts as to applicant's claim of imperfect title or *bona fide* claim of ownership; and discrepancies in the names of adjoining owners in tax declarations covering the same parcel of land involved as well as variance or disparity in the size of the land are indications that applicant was uncertain as to the exact or actual size of the land he purportedly possessed.[44] In the case of *Republic vs. Court of Appeals*,[45] the mention in the tax declaration of the improvements allegedly introduced on the land covered thereby, instead of bolstering applicant's claim of long possession, negated such claim. The court thus observed:

> "The private respondent showed that he had been paying taxes on the land only from 1972 and up to 1977. There was no showing of tax payments made on the same land before 1972 by his predecessor-in-interest although they are supposed to have been in possession thereof since time immemorial."
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> "Although he declared in 1977 that he had planted one thousand mango and five thousand coconut trees on the land,

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[40]Director of Lands vs. Intermediate Appellate Court, 195 SCRA 38 (1991); Ordonez vs. Court of Appeals, 188 SCRA 109 (1990); Municipality of Santiago, Isabela vs. CA, 120 SCRA 734 (1983); Rizal Cement Co., Inc. vs. Villareal, 135 SCRA 15 (1985); Director of Lands vs. Reyes, 68 SCRA 177 (1975); Director of Lands vs. IAC, 209 SCRA 214 (1992); Republic vs. CA, 258 SCRA 712, 720 (1996); Heirs of Simplicio Santiago vs. Heirs of Mariano Santiago, 404 SCRA 193, 198, 200 (2003).

[41]Republic vs. Court of Appeals, 131 SCRA 532 (1984); Lazatin vs. CA, 211 SCRA 129, 138 (1992).

[42]Municipality of Santiago, Isabela vs. CA, *supra*; Rizal Cement Co., Inc., *supra*; also Banez vs. CA, 59 SCRA 15, 30 (1974).

[43]Republic vs. Court of Appeals, 131 SCRA 140 (1984).

[44]Republic vs. Intermediate Appellate Court, 140 SCRA 98, 105 (1985); Republic vs. CA, 135 SCRA 156 (1985).

[45]167 SCRA 150, 156-157 (1988).

he added that they were not yet productive. It takes only ten years for mango trees and five years for coconut trees to begin bearing fruit, which only means that they had been planted in less than these number of years, or not earlier than 1967. This weakens his claim of possession which under P.D. Nos. 1073 and 1529, amending Section 48(b) of the Public Land Act, must commence not later than June 12, 1945."

In another case, it was held that the claim that applicant had been in continuous, exclusive and uninterrupted possession of the disputed land is negated by the fact that he declared the property for tax purposes only in October, 1959 when he filed his application for registration, although he could have done so in 1937 when he allegedly purchased the land.[46] But the mere failure of the owner of the land to pay the realty tax thereon does not warrant a conclusion that there was abandonment of his right to the property.[47]

(3) Presidential issuances and legislative acts

A Presidential Proclamation which reserves a land for specific purpose or purposes in favor of an entity, such as for medical center site to be administered by the Director of Hospitals, is constitutive of a "free simple" title or absolute title in favor of the grantee.[48] On the other hand, a law or statute which ceded or transferred in full ownership a reserve area in favor of a government institution, such as U.P., thereby effectively transferred that ownership to the transferee.[49] Official, authentic or duly certified copies of such proclamation and/or statute are perforce proofs of private ownership. Similar conveyances of a public land by the President of the Philippines, or a department secretary expressly by authority of and acting in behalf of the President, which may be in the form of a deed of sale, transfer or other kinds of alienation, may be considered as evidencing private ownership of the land covered thereby.

(4) Other kinds of proof

(a) Testimonial evidence may establish that a river bed has been abandoned by the natural change in the course of the

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[46]National Power Corp. vs. Court of Appeals, 144 SCRA 318, 323 (1986).

[47]Reyes vs. Sierra, 93 SCRA 472, 481 (1979).

[48]Republic (rep. by Mindanao Medical Center vs. Court of Appeals, 73 SCRA 146 (1976).

[49]International Hardwood and Veneer Co. of the Phil. vs. U.P., 200 SCRA 554 (1991).

water, and that the new course occupied another land. To the owner of this land occupied by the new course belongs the abandoned river bed. (Art. 461, Civil Code). A person claiming ownership over the accretion or alluvion to his private land must prove by testimonial evidence, and possibly additionally by photos or maps or sketches, that the deposit was gradual and imperceptible, that it was accumulated through the effects of the river current, and that the accretion is on a land adjacent to a river. Any evidence that the accretion was formed through the intervention of human hands negates the claim.[50]

(b) Deeds of sale are usually presented by applicants to show acquisition of the lands from their predecessors-in-interest. However, in cases where there is a great difference between the area of the land sought to be registered, and that which appears on the deed of sale on which the registration is based, the same should be properly explained and the identity of the property should be proven in a satisfactory manner (*Director of Lands vs. CA*, 211 SCRA 868, 875 [1992]).

E. *Proofs not sufficient to establish private right or ownership*

(a) A compromise agreement among the parties to a land registration case where they agreed that they have rights and interest over the land and assigned/allocated portions thereof to each of them, is no proof of title at all without further factual proof of their ownership. The assent of the Director of Lands and Director of Forest Management to such compromise agreement did not and could not supply the absence of evidence of title required of the applicant.[51]

(b) A decision in an estate proceeding of a predecessor-in-interest of an applicant which involves a property over which the decedent has no transmissible right, and decisions in any other cases where the issue of ownership was not definitely passed upon, may not be invoked to prove applicant's right over the property sought to be registered.[52]

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[50]Article 457, Civil Code; Rep. vs. CA, 132 SCRA 514 (1984); Binalay vs. Manalo, 195 SCRA 374 (1991).

[51]Republic vs. Sayo, 191 SCRA 71 (1990).

[52]Director of Lands vs. Intermediate Appellate Court, 195 SCRA 38, 44 (1991).

(c) A survey plan of the land, even if approved by the Bureau of Lands, "is no proof in itself of ownership of the land covered by the plan." That plan "does not convert such land into alienable land, much less private property."[53]

F. *Possession as mode of acquiring ownership*

(1) Effect of possession; general rule on proof thereof

The established rule is "that open, exclusive and undisputed possession of alienable public land for the period prescribed by law creates the legal fiction whereby the land, upon completion of the requisite period *ipso jure* and without the need of judicial or other sanctions, ceases to be public land and becomes private property." And the "possessor is deemed to have acquired by operation of law, a right to a grant, a government grant, without the necessity of a certificate of title being issued."[54]

To prove that kind of possession, it is not enough to simply declare one's possession and that of the applicant's predecessors-in-interest to have been "adverse, continuous, open, public, peaceful and in concept of owner" for the required number of years. Such general statement or phrase is a mere conclusion of law than factual evidence of possession. The applicant then should present specific facts that would show such nature of possession. If the testimony is such bare, the burden of proof is not shifted to the oppositor, who may even forego to cross-examine the witness.[55]

(2) Start of requisite period

The commencement of adverse possession presents no problem where the land applied for registration was not formerly part of forest land. But if the land was formerly within the forest zone, it is only from the date it was released as an agricultural land for disposition under the Public Land Act that the period of occupancy for purpose of confirmation of imperfect or incomplete title may be counted. The possession of the land by the applicant prior to such

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[53]Republic vs. CA, 154 SCRA 476, 486 (1987).

[54]Director of Lands vs. Bengzon, 152 SCRA 369, 376 (1987); also Herico vs. Dar, 95 SCRA 437 (1980); Director of Lands vs. IAC and ACME, 146 SCRA 509 (1980).

[55]Republic vs. Lee, 197 SCRA 1320-21 (1991); Rep. vs. CA, 167 SCRA 150, 156 (1988).

release or reclassification cannot be credited as part of the requisite period, and could not ripen into private ownership, however long it was.[56] The Supreme Court appears to have abandoned this concept when in the relatively recent case of *Republic vs. CA*, 448 SCRA 442, 448 [2005]), it held that Section 14(1) of P.D. No. 1529 "merely requires the property sought to be registered as already alienable and disposable at the time the application for registration of title is filed." This recent doctrine should also apply to applications for judicial confirmation of imperfect or incomplete title under the Public Land Act which requires the same length of time of occupation under a *bona fide* claim of ownership.

However, where the applicant's possession of the lands for 30 years or more antedated the classification as forest land, then such prior possession may ripen into private ownership and such lands "could not be retroactively legislated or classified as forest lands because it would violate previously acquired property rights protected by the due process clause of the Constitution."[57] Similarly, land possessed for 30 years or more could no longer be considered as part of a subsequent reservation of an area as a settlement and the Director of Lands could no longer dispose of the land as the occupant or his predecessor-in-interest had already effectively acquired private ownership thereof.[58]

(3) Tacking of possession to that of predecessor

The provision under Article 1138 of the Civil Code that "in the computation of time necessary for prescription x x x the present possessor may complete the period necessary for prescription by tacking his possession to that of his grantor or predecessor-in-interest," applies only where there is privity between the successive possessors.[59]

The case of *South City Homes, Inc. vs. Republic,*[60] illustrates when tacking of possession may not be done.

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[56]Republic vs. Court of Appeals, 148 SCRA 480 (1987); Vallarta vs. Intermediate Appellate Court, 151 SCRA 679 (1987); Rep. vs. CA, 154 SCRA 476 (1987); Rep. vs. Bacus, 176 SCRA 376 (1989); Almeda vs. CA, 196 SCRA 476 (1991).

[57]Almeda vs. CA, *supra*, page 480.

[58]Director of Land Management vs. Court of Appeals, 205 SCRA 486 (1992).

[59]Ruiz vs. Court of Appeals, 79 SCRA 525, 537 (1977), citing Razote vs. Razote, 49 Phil. 182 and Locsin vs. Government, 39 Phil. 631.

[60]185 SCRA 693, 700, 701 (1990), citing 3 Am. Jur. 2d Adverse Possession.

In said case, two lots were sold by the registered owners in 1981 to petitioner. In 1983, petitioner discovered after a survey a strip of land between the two lots, not included in the latter's technical descriptions. Petitioner filed registration proceedings and the strip of land was decreed by the court to it. The Republic of the Philippines appealed, contending that petitioner's possession started only in 1981 and could not be tacked to that of the vendors. The Supreme Court ruled for the Republic, thus:

> "x x x tacking of possession is allowed only when there is privity of contract or relationship between the previous and present possessors. In the absence of such privity, the possession of the new occupant should be counted only from the time it actually began and cannot be lengthened by connecting it with the possession of the former possessors. Thus, it has been held:
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> "A deed, in itself, creates no privity as to land outside its calls. Nor is privity created by the bare taking of possession of land previously occupied by the grantor. It is therefore the rule, although sharply limited, that a deed does not of itself create privity between the grantor and the grantee as to land not described in the deed but occupied by the grantor in connection therewith, although the grantee enters into possession of the land not described and uses it in connection with that conveyed."

G. *Insufficient proof of possession; negating circumstances*

(1) It has been held that:

> "A mere casual cultivation of portions of the land by the claimant, and the raising therein of cattle, do not constitute possession under claim of ownership. In that sense, possession is not exclusive and notorious so as to give rise to a presumptive grant from the State. x x x While grazing livestock over land is of course to be considered with other acts of dominion to show possession, the mere occupancy by grazing livestock upon it, without substantial inclosures, or other permanent improvements, is not sufficient to support a claim of title thru acquisitive prescription."[61]

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[61]Director of Lands vs. Reyes, 68 SCRA 170 (1975), citing Province of Camarines Sur vs. Director of Lands, 64 Phil. 600 and Ramirez vs. Director of Lands, 60 Phil. 114; also Republic vs. Vera, 120 SCRA 210 (1983).

In another case, the Court aptly observed:

> "In a practical and scientific way of planting, a one-hectare land can be planted to about 144 coconut trees. In the instant case, if the hired tenants and workers of respondent applicants managed to plant only 3,000 coconut trees, it could only mean that about only 25 hectares out of the 138 hectares claimed by herein respondent applicants were cleared, cultivated and planted to coconut trees and fruit trees. Once planted, a coconut is left to grow and need not be tended or watched. This is not what the law considers as possession under claim of ownership. On the contrary, it merely showed *casual* or *occasional* cultivation of portions of the land in question. In short, possession is not exclusive nor notorious, much less continuous, so as to give rise to a presumptive grant from the government."[62]

(2) A tax declaration over land sought to be registered which is not in the name of the applicant, but in the name of the deceased parents of an oppositor, may be used to defeat claim of adverse possession, since that possession of the applicant is not completely adverse or open, nor is it truly in the concept of an owner.[63] A much delayed declaration of property for tax purposes can also negate the claim of continuous, exclusive and uninterrupted possession of the land applied for, as where the applicant made such declaration only in October 1959 when he filed his application for registration, although he could have done so in 1937 when he allegedly purchased the land.[64] A belated declaration is also indicative that the applicant had no real claim of ownership for the number of years prior to the declaration.[65]

(3) It has likewise been held that "acts of a possessory character performed by one who holds the property be mere tolerance of the owner are clearly not in the concept of an owner, and such possessory acts, no matter how long continued, do not start the period of prescription running."[66] The possession of an applicant for registration is not also that of an owner if he and/or his predecessor-

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[62]Republic vs. Intermediate Appellate Court, 140 SCRA 98, 107 (1985).
[63]Sunga vs. De Guzman, 90 SCRA 618, 625 (1979).
[64]National Power Corp. vs. CA, 144 SCRA 318, 323 (1986).
[65]Director of Lands vs. Santiago, 160 SCRA 186, 194 (1988).
[66]Ordonez vs. Court of Appeals, 188 SCRA 109, 112 (1990).

in-interest had filed a sales application for the land with the Bureau of Lands, for he thereby acknowledged that he does not own the land and that the same is public land.[67]

(4) Where the applicants tacked their possession to that of their predecessor-in-interest but they did not present him as witness, then there is no proof what acts of ownership and cultivation were performed by the predecessor. And if they had tenants but none of such tenants was presented, then there is also no clear evidence when the tenants started cultivating the land to prove at least 30 years possession.[68] But the testimony of a tenant could not be persuasive if he failed to identify the portion of the land he was tilling, nor testimony of an overseer of the land who was deemed bias.[69]

(5) The failure of the fiscal representing the State or government to cross-examine the applicant on the claimed possession is not a circumstance that would support and reinforce the bare statements of applicant as to his supposedly adverse, continuous, open, peaceful possession in the concept of owner.[70]

(6) The possession of other persons in the land applied for, in their own rights, and/or asserting adverse claim against the applicant, impugns the exclusive quality of the latter's possession.[71]

(7) The mere fact of declaring uncultivated land for taxation purposes and visiting it every once in a while does not constitute acts of possession.[72]

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[67]Director of Lands vs. Santiago, *supra*.
[68]Director of Lands vs. Datu, 115 SCRA 25, 28 (1987).
[69]Ferrer-Lopez vs. Court of Appeals, 150 SCRA 393, 403 (1987).
[70]Republic vs. Lee, *supra*.
[71]Director of Lands vs. CA and Salazar, 133 SCRA 701 (1984).
[72]Director of Lands vs. IAC, 209 SCRA 214, 223 (1992).

Chapter VIII

HEARING, JUDGMENT AND POST-JUDGMENT INCIDENTS IN ORDINARY LAND REGISTRATION

1. Speedy hearing, reference to a referee, order of trial

Section 27 of P.D. No. 1529 requires the trial court to dispose of the case within ninety (90) days from date of submission thereof for decision. This section also allows the court, if it deems necessary, to refer the case or any part thereof to a referee who —

> "Shall hear the parties and their evidence, and the referee shall submit his report thereon to the court within fifteen days after the termination of such hearing. Hearing before a referee may be held at any convenient place within the province or city as may be fixed by him and after reasonable notice thereof shall have been served the parties concerned. The court may render judgment in accordance with the report as though the facts have been found by the judge himself: *Provided, however,* that the court may in its discretion accept the report, or set it aside in whole or in part, or order the case to be recommitted for further proceedings."

The order of trial is similar to that in ordinary civil action (Rule 30, Rules of Court). The applicant must first produce his testimonial and documentary evidence, subject to cross-examination by the oppositor, and then formally offer said evidence. The oppositor would then also produce his evidence, subject to cross-examination by the applicant, and formally offer said evidence.

As Section 34 of P.D. No. 1529 expressly states, the Rules of Court shall, insofar as not inconsistent with the provisions of this Decree, be applicable to land registration and cadastral cases by analogy or in a suppletory character and whenever practicable and convenient."

2. *Res judicata* as applied to registration proceeding

As earlier noted in Chapter VI, 3-C,[1] an oppositor may file a motion to dismiss the application, when the court lacks jurisdiction over the *res* as the land applied for registration had been previously registered in the name of another. The principle of *res judicata* may also bar the proceedings.

A. *Elements of res judicata*

It has been held that:

> "The principle of *res judicata* applies to all cases and proceedings, including land registration and cadastral proceedings." x x x In order that there may be *res judicata*, the following requisites must be present: (a) The former judgment must be final; (b) it must have been rendered by a court having jurisdiction of the subject matter and of the parties; (c) it must be a judgment on the merits; and (d) there must be, between the first and the second actions, identity of parties, of subject matter, and of cause of action x x x Thus, when a person is a party to a registration proceedings or when notified he does not want to participate and only after the property has been adjudicated to another and the corresponding title has been issued files an action for reconveyance, to give due course to the action is to nullify registration proceedings and defeat the purpose of the law."[2]

(1) *Decision in a cadastral proceeding*

In the case of *Director of Lands vs. Court of Appeals*,[3] it was held that a decision in a cadastral proceeding declaring a lot public land is not the final decree contemplated in Sections 38 and 40 of the Land Registration Act. There is no prior final judgment at all so that *res judicata* cannot be invoked. Accordingly, a person, who may even be the same applicant in the cadastral case, may seek a judicial

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[1]Citing Valisno vs. Plan, 143 SCRA 502 (1986) and Duran vs. Oliva, 3 SCRA 154 (1961).

[2]Vencilao vs. Vano, 182 SCRA 491 (1990), citing Republic vs. Estenzo, 99 SCRA 65 (1980) and Ramos vs. Pablo, 146 SCRA 24 (1986); Suarez vs. CA, 193 SCRA 183 (1991); Gutierrez vs. CA, 193 SCRA 437 (1991).

[3]106 SCRA 426, 433 (1981); reiterated in Director of Lands vs. CA, 179 SCRA 522, 527 (1989); Cachero vs. Marzan, 196 SCRA 601 (1991); Director of Lands vs. CA, 209 SCRA 457, 463 (1992).

confirmation of his title to the same land, "provided he there-after complies with the provisions of Section 48 of Commonwealth Act No. 141, as amended, and as long as said public land remains alienable and disposable (now Sections 3 and 4, P.D. No. 1073)."

But in another case,[4] the Supreme Court also ruled that a decision in a cadastral proceedings declaring the land involved public land, which decision had become final and conclusive, bars a re-litigation of ownership over the same property under the doctrine of *res judicata*. The Regional Trial Court would thus be without jurisdiction over such land in a subsequent voluntary registration under Act 496 (now under P.D. No. 1529). This ruling is, however, subject to the qualification that in filing his application for voluntary registration of land, the applicant does not invoke the benefits under Section 48(b) of the Public Land Act.

Nonetheless, in *Cachero vs. Marzan, supra*, it was held that a cadastral proceeding which had long been discontinued and abandoned, and which had resulted in no judgment or final order affecting the lands involved in a subsequent registration under Act 496, cannot be invoked and set up as a bar to the latter proceedings. There being no final adjudication in the cadastral proceedings, there is no reason to apply the doctrine of *res judicata*.

(2) *Final judgment in ordinary civil action*

A final judgment in an ordinary civil suit determining the ownership of certain lands, is *res judicata* in a land registration proceedings where the parties and property are the same as in the former case.[5]

3. Judgment

Sections 28 and 29 of P.D. No. 1529 read:

> "SEC. 28. *Partial judgment*. — In a case where only a portion of the land subject of registration is contested, the court may render partial judgment provided that a subdivision plan showing the contested and uncontested portions approved by the Director of Lands is previously submitted to said court."

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[4]Republic vs. Vera, 120 SCRA 210 (1983).

[5]Vencilao vs. Vano, *supra*, citing Paz vs. Inandan, 75 Phil. 608; also Kidpales vs. Baguio Gold Mining Co., 14 SCRA 913 (1965).

> "SEC. 29. *Judgment confirming title.* — All conflicting claims of ownership and interest in the land subject of the application shall be determined by the court. If the court, after considering the evidence and the reports of the Commissioner of Land Registration and the Director of Lands, finds that the applicant or the oppositor has sufficient title proper for registration, judgment shall be rendered confirming the title of the applicant, or the oppositor, to the land or portions thereof."

Although partial judgment may be rendered on an uncontested portion of the land applied for, the applicant is nonetheless duty bound to substantiate his claim to such portion, and it is on the basis of such evidence that the court shall render judgment. Otherwise, that uncontested portion would be declared public land.

It would be precipitate for the court to render judgment when the report of the Land Registration Authority was still forthcoming. "On the other hand, if a faster disposition of the proceedings were really desired, the court could facilely wield the powers of its office in order to compel the LRA to speed up its investigation, report and recommendation."[5a]

A. *Only claimed property or portion thereof can be adjudged*

A land registration court has no jurisdiction to adjudge a land to a person who has never asserted any right of ownership thereof.[6] If the applicant asserts ownership to and submits evidence only for a portion of a lot, the inclusion of the portion not claimed by the applicant is void and of no effect for a land registration court has no jurisdiction to decree a lot to a person who put no claim to it and who never asserted any right of ownership over it."[7]

B. *Where portions of land are covered by public land patents*

Where portions of a land subject of a land registration case are covered by titles based on homestead, free or sales patent, the court cannot simply invalidate them even if applicant's evidence establishes his private ownership of those titled portions. These portions should

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[5a]Ramos vs. Rodriguez, 244 SCRA 418, 424 (1995).

[6]Caragay-Layno vs. Court of Appeals, 133 SCRA 718, 724 (1984) .

[7]Almarza vs. Arguelles, 156 SCRA 718 (1987), citing Vda. de Recinto vs. Inciong, 77 SCRA 196 (1977).

be excluded by survey and their validity "should be the subject of a separate litigation between the claiming party and such registered patentees."[8]

C. *Reports of the Administrator of Land Registration Authority and the Director of Land Management*

The provision of Section 29 of P.D. No. 1529, herebefore quoted, requires the court to consider not only the evidence presented but also the reports of the above officials before rendering judgment. However, the "duty of x x x land registration officials to render reports is not limited to the period before the court's decision becomes final, but may extend even after its finality but not beyond the lapse of one (1) year from the entry of the decree."[9] Thus, the court, on the basis of the report of the Land Registration Authority that the lots adjudged were already titled thru homestead patent, can still set aside its decision in the case.

D. *In whose name registration of land may be made*

The same Section 29 of the Decree clearly indicates that the court may confirm title of the applicant or the oppositor, and accordingly order the registration of the title in either of their names. However, the court may validly order the registration of the land in the name of the buyer or of the person to whom the land has been conveyed by an instrument executed during the interval of time between the filing of the application for registration and the issuance of the decree of title, pursuant to Section 29 of Act 496, now Section 22 of P.D. No. 1529 which reads:

> "SEC. 22. *Dealings with land pending original registration*. — After the filing of the application and before the issuance of the decree of registration, the land therein described may still be the subject of dealings in whole or in part, in which case the interested party shall present to the court the pertinent instruments together with a subdivision plan approved by the Director of Lands in case of transfer of portions thereof, and the court, after notice to the parties, shall order such land registered subject to the conveyance or encumbrance created

[8]Director of Land vs. Court of Appeals, 181 SCRA 450 (1990).
[9]Gomez vs. Court of Appeals, 168 SCRA 503, 510 (1988).

by said instruments, *or order that the decree of registration be issued in the name of the persons to whom the property has been conveyed by said instruments*." (Underscoring supplied)

Construing the then Section 29 of Act 496, the Supreme Court in the case of *Mendoza vs. Court of Appeals,*[10] held as follows:

> "It is clear from the above-quoted provision (Sec. 29) that the law expressly allows the land, subject matter of an application for registration, to be 'dealt with', *i.e.*, to be disposed of or encumbered during the interval of time between the filing of the application and the issuance of the decree of title, and to have the instruments embodying such disposition or encumbrance presented to the registration court by the 'interested party' for the court to either 'order such land registered subject to the encumbrance created by such instruments, or *order the decree of registration* issued in the name of the buyer or of the person to whom *the property has been conveyed by said instruments*.' The law does not require that the application for registration be amended by substituting the 'buyer' or the 'person to whom the property has been conveyed' for the applicant. Neither does it require that the 'buyer' or the person to whom the property has been conveyed be a party to the case. He may thus been total stranger to the land registration proceedings. The only requirements of the law are: (1) that the instrument be presented to the court by the interested party together with a motion that the same be considered in relation with the application; and (2) that prior notice be given to the parties to the case."

Simply stated then, in such particular situation: (a) the land may be adjudged or decreed in the name of the buyer or person to whom the land was conveyed notwithstanding that he was not a party as applicant or oppositor in the registration case; (b) there is no need to amend the application for registration to substitute the original applicant with the buyer; (c) the requirement that the interested party has to present such instruments to the court, by motion, does not preclude that the applicant himself presents such conveyance, as when the latter adduces evidence showing the conveyance of the

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[10]84 SCRA 67, 76-77 (1978).

land; and (d) the law neither requires the motion accompanying the instrument to be written or in writing, for the applicant himself may move in effect to order the registration of the land in the name of the vendee during his testimony.

It is nevertheless incumbent upon the buyer or to whom the property has been conveyed that he asserts his interest on the land applied for, since even genuine and *bona fide* purchases or deeds of sale, if not so asserted during the proceeding, lose their efficacy. For the judgment rendered in the registration proceeding "is deemed to have settled the status of the land subject thereof" and bars under the principle of *res judicata* any claim on the basis of said purchase convenants.[11]

4. Finality of judgment and order to issue decree

Section 30 of P.D. No. 1529 reads:

> "SEC. 30. *When judgment becomes final; duty to cause issuance of decree.* — The judgment rendered in a land registration proceedings becomes final upon the expiration of thirty days to be counted from the date of receipt of notice of the judgment. An appeal may be taken from the judgment of the court as in ordinary civil cases.
>
> After judgment has become final and executory, it shall devolve upon the court to forthwith issue an order in accordance with Section 39 of this Decree to the Commissioner for the issuance of the decree of registration and the corresponding certificate of title in favor of the person adjudged entitled to registration."

The finality of judgment as above provided by the Decree has been modified to the lapse of fifteen (15) days counted from receipt of the notice of judgment.[12] If an appeal is taken from the judgment of the lower court, the 15-day period should be reckoned from receipt of notice of judgment of the appellate court. The prevailing party in the lower court cannot however move for an execution pending appeal, otherwise, innocent purchasers of the land involved may

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[11]*Rodriguez vs. Toreno*, 79 SCRA 356, 362 (1979).

[12]Section 39, Batas Pambansa Blg. 129 (The Judiciary Reorganization Act of 1980).

be misled into purchasing real property upon reliance on a favorable judgment that may be reversed on appeal.[13]

A. *Receipt of judgment by Solicitor General, not by Fiscal, binds the Government*

In several cases,[14] it has been held that court orders and decisions sent to the Fiscal, acting as agent of the Solicitor General in land registration cases, are not binding until they are actually received by the Solicitor General. Hence, for purposes of an appeal from a decision of the trial court in such cases, the period of appeal shall be reckoned from receipt of the decision by the Solicitor General. For by express provision of law (Section 1[e] of P.D. No. 478), the Solicitor General is empowered "to represent the Government in all land registration and related proceedings."

Indeed, as observed by the Supreme Court, while the Solicitor General usually requests the provincial/city fiscal to represent him in the trial of a land registration case, he nonetheless formally enters his appearance as counsel, either or both for the Director of Lands and Director of Forest Development. In that notice of appearance, he expressly requests that he should be served in Manila with all notices of hearings, orders, resolutions, decisions and other processes" and that such service is distinct from the service of notices and other papers on the fiscal. He also indicates in said notice of appearance that he "retains supervision and control over the representation in this case and has to approve withdrawal of the case, non-appeal, or other actions which appear to compromise the interest of the Government;" and that only notices of orders, resolutions and decisions served on him will bind" the Government. The fiscal then was merely a surrogate of the Solicitor General.

B. *Retained control of the court after the 15-day period from receipt of judgment*

Notwithstanding the lapse of the 15-day period from receipt of judgment by the parties, the court continues to retain control of the case until the expiration of one (1) year after the entry of decree of

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[13]Director of Lands vs. Reyes, 68 SCRA 177, 186 (1975).

[14]Republic vs. Sayo, 191 SCRA 71 (1990); Republic vs. Abaya, 182 SCRA 524 (1990); Republic vs. Mendoza, 125 SCRA 539 (1983); Republic vs. Polo, 89 SCRA 33 (1979).

registration by the Land Registration Authority. As held by the Supreme Court:

> "Unlike ordinary civil actions, the adjudication of land in a cadastral or land registration proceeding does not become final in the sense of incontrovertibility until after the expiration of one (1) year after the entry of the final decree of registration. This court, in several decisions, has held that as long as a final decree has not been entered by the Land Registration Commission (Now LRA) and the period of one (1) year has not elapsed-from date of such decree, the title is not finally adjudicated and the decision in the registration proceeding continues to be under the control and sound discretion of the court rendering it."[15]

In an earlier case, it was likewise held that:

> "As long as the final decree is *not* issued (by the LRA) and the period of one year within which it may be reviewed has not elapsed, the decision remains under the control and sound discretion of the court rendering the decree, which court after hearing, may set aside the decision or decree and adjudicate the land to another party."[16]

C. *When Court has to issue order (or decree) of registration*

Section 30 of P.D. No. 1529, as earlier quoted, directs the court to issue an order to the Administrator of the Land Registration Authority for the issuance of the decree and corresponding certificate of title in accordance with Section 39 of said P.D. No. which provides in part as follows:

> "After the judgment directing the registration of title to the land has become final, the court shall, within fifteen days from entry of judgment, issue an order directing the Commissioner (now Administrator) to issue the corresponding decree of registration and certificate of title. The clerk of court shall send, within fifteen days from entry of judgment, certified cop-

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[15]Gomez vs. Court of Appeals, 168 SCRA 503, 509 (1988), citing among others, Director of Land vs. Busuego, 12 SCRA 678 (1964); Ramos vs. Rodriguez, *supra*, p. 422.

[16]Cayanan vs. De los Santos, 21 SCRA 1348 (1961), quoting from Carpio, 94 Phil. 113, 116 (1963).

ies of the judgment and of the order directing the Commissioner (Administrator) to issue the corresponding decree of registration and certificate of title, and a certificate stating that the decision has not been amended, reconsidered, nor appealed, and has become final."

While the law thus explicitly mandates the court to issue the aforementioned order to the Administrator of the LRA within fifteen days from entry of judgment, the court may nonetheless still issue said order even beyond that period so as not to prejudice the adjudged owner.

> "There is nothing in the law that limits the period within which the court may order or issue a decree. The reason is x x x that the judgment is merely declaratory in character and does not need to be asserted or enforced against the adverse party. Furthermore, the issuance of a decree is a ministerial duty both of the judge and of the Land Registration Commission; failure of the court or of the clerk of court to issue the decree for the reason that no motion therefor has been filed cannot prejudice the owner, or the person in whom the land is ordered to be registered."[17]

Consequently, a decision in a land registration case is not rendered inefficacious by the statute of limitations and/or by laches, so that a decree issued pursuant to such judgment even after the lapse of 10 years is not void.[18]

5. Remedies where records are lost or destroyed

Where the land registration case records in both the Regional Trial Court (then Court of First Instance) and appellate court are destroyed and not reconstituted pursuant to law, "the parties are deemed to have waived the effects of the decision rendered in their favor and their only alternative is to file an action anew for the registration in their names of the lots in question."[19]

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[17]Vda. de Barroza vs. Albano, 157 SCRA 131,136 (1988), citing Sta. Ana vs. Menla, 1 SCRA 1297-l298 (1961); Cacho vs. CA, 269 SCRA 159, 171 (1997).

[18]Heirs of Cristobal Marcos vs. De Banuvar, 25 SCRA 316, 324 (1968), citing Sta. Ana vs. Menla, *supra*.

[19]Realty Sales Interprise, Inc. vs. Intermediate Appellate Court, 154 SCRA 328, 341(1987), citing Ambat vs. Director of Land, 92 Phil. 567 (1953), Villegas vs. Fernandez, 27 SCRA 1119 (1969).

Where, however, the records in the trial court are intact and only the records in the appellate court were destroyed, then the rule is as follows:

> "If the records up to a certain point or stage are lost and they are not reconstituted, the parties should go back to the next preceding stage where records are available, but not beyond that, otherwise to ignore and go beyond the stage next preceding would be voiding and unnecessarily ignoring proceedings which are duly recorded and documented, to the great prejudice not only of the parties and their witnesses, but also of the court which must again perforce admit pleadings, rule upon them and then try the case and decide it anew, — all of these, when the records up to said point or stage are intact and complete and uncontroverted."[20]

Thus, as illustrated in the *Nacua* case, *supra*, if the records in the lower court up to the decision are intact but appeal records in the appellate court are lost or destroyed and not reconstituted, then the parties lost "the benefit of having the case at the stage of appeal. So they have to go back to the next stage where they started from in making the appeal, namely, the decision of the (then) Court of First Instance and complete the records." The appealing party should be allowed to file and prosecute anew his appeal, giving him reasonable time for that purpose.

Relatedly, as ruled in the *Realty Sales Interprise, Inc., supra*, p. 344, where the records in the lower court were destroyed at the stage where there was already a decision and the appellate court had affirmed the judgment, but authentic copies of the decisions of both courts are available, then the parties need not have to commence a new action. The lower court may issue a decree of registration, or order directing the issuance of such decree.

In such situations of loss or destruction of records, the burden to reconstitute the same is on the parties who are interested in preserving their alleged rights to the disputed land.[21]

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[20]Realty Sales Interprise, Inc. vs. IAC, *supra*, p. 343, quoting Nacua vs. de Beltran, 93 Phil. 595 (1953).

[21]Heir of Mariano Lacson vs. Del Rosario, 151 SCRA 714, 718 (1987).

6. Post-judgment incidents

A. *Writ of Possession*

The issuance of a writ of possession in a land registration case is a mere post-judgment incident that is governed by special rule.[22] The judgment therein adjudicating ownership to the successful applicant impliedly carries with it the delivery of possession if he is deprived, since the right of possession is inherent in that ownership. And the trial court may issue such writ even pending appeal from said decision.[23] As aptly explained by the Supreme Court:[24]

> "In a land registration case, the judgment confirming the title of the applicant and ordering its registration in his name necessarily carried with it the delivery of possession which is inherent element of the right of ownership. The issuance of the writ of possession is, therefore, sanctioned by existing laws in this jurisdiction and by the generally accepted principle upon which the administration of justice rests x x x. A writ of possession may be issued not only against the person who has been defeated in a registration case but also against anyone unlawfully and adversely occupying the land or any portion thereof during the land registration proceedings up to the issuance of the final decree."

It is the duty of the court to issue said writ when asked by the successful party or by a subsequent purchaser of the land. The pendency of a reconveyance suit between the same parties involving the same land is not a bar to the issuance of the writ. And there is no period of prescription for its issuance, for if there was such period, a successful applicant may be compelled to commence other actions in other courts for the purpose of securing the fruits of his victory."[25] Moreover, the provision of the Rules of Court (Sec. 6, Rule 39) to the effect that judgment may be enforced within five years by motion and after five years but within ten years by action refers to

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[22]F. David Enterprise vs. Insular Bank of Asia and America, 191 SCRA 516, 523 (1990); also Bolanos vs. J.M. Tuason & Co., Inc. 37 SCRA 223 (1971).

[23]Coloma vs. Ramos, 94 SCRA 573 (1979).

[24]Vencilao vs. Vano, *supra,* p. 505; also Vda. be Barroga vs. Albano, *supra*, p. 134.

[25]Lucero vs. Leot, 25 SCRA 678 (1968); also Gawaran vs. Intermediate Appellate Court, 162 SCRA 154 (1988).

civil actions and is not applicable to special proceedings, such as land registration cases. Indeed, there is no provision in Act 496 or in P.D. 1529 similar to said provision of the Rules. The judgment in land registration proceeding, unless adverse or the losing party is in possession, becomes final without any further action upon the expiration of period to appeal.[26]

(1) *When writ of possession may not be issued*

A writ of possession does not lie in a land registration case against a person who entered the property after issuance of the final decree and who had not been a party in the case. As held by the Supreme Court:

> "It is a settled rule that when parties against whom a writ of possession is sought have been in possession of the land for at least ten years, and they entered into possession apparently after the issuance of the final decree, and none of them had been a party in the registration proceedings, the writ of possession will not issue. A person who took possession of the land after final adjudication of the same in registration proceedings cannot be summarily ousted through a writ of possession secured by a mere motion and that regardless of any title or lack of title of persons to hold possession of the land in question, they cannot be ousted without giving them their day in court in proper independent proceedings."[27]

As further indicated by the *Bernas* case, *supra*, the proper independent proceedings can be a separate action for unlawful entry or detainer, or for reivindicatory action, as the case may be.

A writ of possession cannot, however, be issued in a petition for reconstitution of allegedly lost or destroyed certificate of title. As already discussed, in a land registration case, such writ may be issued only after final adjudication of the property involved in an original land registration case. But reconstitution does not confirm or adjudicate ownership over the property covered by the reconstituted title as in original land registration proceedings.[28]

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[26]Rodil vs. Benedicto, 95 SCRA 137 (1980).

[27]Bernas vs. Nuevo, 127 SCRA 399, 402-403 (1984), also Heirs of Cristobal Marcos vs. De Banuvan, *supra*, pp. 322-323; Co vs. Salvador, 121 SCRA 61, 63 (1983).

[28]Serra-Serra vs. Court of Appeals, 195 SCRA 482, 490 (1991).

(2) *Remedy when there is refusal to vacate land despite writ*

In the case of *Vencilao vs. Vano, supra*, the lower court issued a writ of possession against petitioners, who refuse to vacate and sign the sheriffs return. Hence, one of the registered owners filed a petition for contempt against petitioners for their said refusal to vacate the land occupied by them and to sign the sheriff's return. The trial court found petitioners in contempt under Section 36, Rule 71, Rules of Court. The Supreme Court, indicating when contempt is proper and when not, ruled as follows:

> "We do not subscribe to the ruling of the Court *a quo* that petitioners are guilty of contempt. Under Section 8(d) of Rule 19, Rules of Court, if the judgment be for the delivery of possession of real property, the writ of execution must require the sheriff or other officer to whom it must be directed to deliver the possession of the property, describing it, to the party entitled thereto. This means that the sheriff must dispossess or eject the losing party from the premises and deliver the possession thereof to the winning party. If subsequent to such dispossession or ejectment the losing party enters or attempts to enter into or upon the real property, for the purpose of executing acts of ownership or possession, or in any manner disturbs the possession of the person adjudged to be entitled thereto, then and only then may be loser be charged with and punished for contempt (*Quizon vs. Philippine National Bank, et al.*, 85 Phil. 459). According to this section, it is exclusively incumbent upon the sheriff to execute, to carry out the mandates of the judgment in question, and in fact, it was he himself, and he alone who was ordered by the trial court who rendered that judgment to place the respondents in possession of the land. The petitioners in this case had nothing to do with that delivery of possession, and consequently, their refusal to effectuate the writ of possession, is entirely officious and impertinent and therefore could not hinder and much less prevent, the delivery being made, had the sheriff known how to comply with his duty. It was solely due to the latter's fault, and not to the disobedience of the petitioners, that the judgment was not duly executed. For that purpose, the sheriff could even have availed himself of the public force, had it been necessary to resort thereto. (See *United States vs. Ramarat*, 22 Phil. 183)."

B. *Writ of demolition*

The land registration court has jurisdiction or authority to order, as a consequence of the writ of possession issued by it, the demolition of improvements introduced by the defeated oppositor or his successor-in-interest. The writ of demolition is but a complement of the writ of possession, without which the latter would be ineffective.[29]

[29]Lucero vs. Loot, *supra*; Heirs of Cristobal Marcos vs. De Banuvar, *supra;* Vencilao vs. Vano, *supra*; Baltazar, *et al.* vs. Caridad, *et al.*, 17 SCRA 460, 463 (1966).

Chapter IX

CADASTRAL REGISTRATION PROCEEDINGS

1. Nature of cadastral proceeding

A cadastral proceeding is one *in rem* and against everybody. The judgment therein is binding on the whole world, "inclusive of persons not parties thereto, and particularly upon those who had actually taken part in the proceedings as well as their successors-in-interest by title subsequent to the commencement of the action."[1] The decision therefore precludes parties from re-litigating the same issues already determined by final judgment.[2]

The proceeding is also characterized as involuntary in the sense that the initiative in the filing of the petition for registration is by the government, not by the persons claiming ownership of the lands subject thereof, and the latter are, on pain of losing their claim thereto, in effect compelled to go to court to make known their claim or interest therein, and to substantiate such claim or interest.

The objective of the proceeding, like that of the ordinary land registration proceeding, is the adjudication of title to the lands or lots involved in said proceeding. The effects of the decrees and certificates of title issued pursuant to judgments in cadastral proceedings are the same as those obtaining by virtue of the ordinary land registration proceedings.

2. Cadastral survey preparatory to filing of petition

Section 35 of P.D. No. 1529 provides for the steps to be taken in the survey of the lands that will be subject of the cadastral proceedings, the safeguards to be taken by both the Director of Land

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[1]Vda. de Barroga vs. Albano, 157 SCRA 131,137 (1988); Cano vs. De Camacho, 43 SCRA 390 (1972).

[2]Municipality of Santiago, Isabela vs. Court of Appeals, 120 SCRA 73, 743 (1983); See discussion in Chapter VIII, 2-A-(1).

Management and the geodetic engineers (surveyors) so that occupants or those who have interest in the land may not be prejudiced by the survey, as well as the duties of such occupants or interested persons in connection with the survey. Said provision reads:

> "(a) When in the opinion of the President of the Philippines public interest so requires that title to any unregistered lands be settled and adjudicated, he may to this end direct and order the Director of Lands to cause to be made a cadastral survey of the land involved and the plans and technical descriptions thereof prepared in due form.
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> (b) Thereupon, the Director of Lands (now Director of Land Management) shall give notice to persons claiming any interest in the lands, as well as to the general public, of the day on which such survey will begin giving as fully and accurately as possible the description of the lands to be surveyed. Such notice shall be published once in the Official Gazette, and a copy of the notice in English or the national language shall be posted in a conspicuous place on the bulletin board of the municipal building of the municipality in which the lands or any portion thereof is situated. A copy of the notice shall also be sent to the mayor of such municipality as well as to the barangay captain and likewise to the Sangguniang Panlalawigan and the Sangguniang Bayan concerned.
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> (c) The Geodetic Engineers or other employees of the Bureau of Lands in charge of the survey shall give notice reasonably in advance of the date on which the survey of any portion of such lands is to begin, which notice shall be posted in the bulletin board of the municipal building of the municipality or barrio in which the lands are situated, and shall mark the boundaries of the lands by monuments set up in proper places thereon. It shall be lawful for such Geodetic Engineers and other employees to enter upon the lands whenever necessary for the purposes of such survey or the placing of monuments.
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> (d) It shall be the duty of every person claiming an interest in the lands to be surveyed, or in any parcel thereof, to communicate with the Geodetic Engineer upon his request therefor all information possessed by such person concerning the boundary lines of any lands to which he claims title or in which he claims any interest.

(e) Any person who shall willfully obstruct the making of any survey undertaken by the Bureau of Lands or by a licensed Geodetic Engineer duly authorized to conduct the survey under this Section, or shall maliciously interfere with the placing of any monument or remove such monumental or shall destroy or remove any notice of survey posted on the land pursuant to law, shall be punished by a fine of not more than one thousand pesos or by imprisonment for not more than one year, or both."

The parcels of land, as surveyed, are designated as "lots" with separate number given by the Director of Land Management known as "cadastral lot numbers." The lots within each municipality shall be numbered consecutively beginning with number "one" and only series of numbers shall be used in each municipality. A designation of the landholdings by blocks and lot numbers may, however, be used instead of the cadastral number in cities or townsites. Additionally, where different persons hold or occupy two or more parcels of land, the plan shall indicate the boundaries or limits of the various parcels of land.[3]

3. Petition

A. *Contents*

The petition for registration of the cadastrally surveyed lands is instituted by the Director of Land Management, represented by the Solicitor General, in the Regional Trial Court of the place "where the land is situated against the holders, claimants, possessors, or occupants of such lands or a part thereof. The petition shall state in substance that public interest requires that the title to such lands be settled and adjudicated and, accordingly, shall pray that such titles be so settled and adjudicated. The petition shall likewise contain a description of the land and shall be accompanied by the plan thereof, and may further contain such other data as may serve to furnish full notice to the occupants of the land and to all persons who may claim any right or interest therein.[4]

B. *Notice of initial hearing*

The notice of initial hearing is addressed to all individual persons appearing to have an interest in the lands involved and the

[3]Sec. 36, par. 3, P.D. No. 1529.
[4]Sec. 36, pars. 1 and 2, P.D. No. 1529.

adjoining owners so far as known, and to all whom it may concern. It requires them to present their claims to said lands or any portion thereof. It also warns that unless they appear before the court at the time and place therein stated, they will be declared in default.

(1) *By publication*

Absent specific provisions in the Property Registration Decree (P.D. No. 1529) governing notice of the initial hearing of the petition in cadastral proceedings, the pertinent provisions of the Cadastral Act (Act No. 2259), which are not inconsistent with said Decree, should be applied. Such notice is indispensable as cadastral proceedings are *in rem*. The Act provides for notice by publication, mailing and posting as follows:

> "Sec. 7. Upon the receipt of the order of the court setting the time for initial hearing of the petition the Chief of the General Registration Office (now Administrator of the Land Registration Authority) shall cause notice thereof to be published twice, in successive issues of the Official Gazette, in the English language. The notice shall be issued by order of the court, attested by the x x x (Administrator of LRA) x x x."

Publication is one of the essential basis of jurisdiction in cadastral cases as in ordinary land registration proceedings. Additional territory, not previously included in the official plan of the lands subject of the proceedings, cannot be included by amendment of the plan without new publication. An order of the court to effect such amendment without such preliminary step is a nullity.[5]

(2) *By mailing*

Section 8 of the Act also provides that the LRA Administrator shall "within seven days after the publication of said notice in the Official Gazette, x x x cause a copy of the notice to be mailed to every person named therein whose address is known. A copy of the notice shall also be sent by registered mail to the Mayor of the city, municipality, township or settlement in which the lands are situated, and to the Provincial Governor. The court may cause other or further notice of the petition to be given in such manner and to such other persons as it may deem proper (as amended by Sec. 4, R.A. No. 69).

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[5]Director of Land, *et al.* vs. Benitez, *et al.*, 16 SCRA 557, 561(1960), citing Philippine Manufacturing Co. vs. Imperial, 49 Phil. 122.

(3) *By posting*

"Section 8 of the Act likewise requires the Administrator to "cause a copy of the notice to be posted, in a conspicuous place on the lands included in the petition and also in a conspicuous place upon the chief municipal building of the city, municipality x x x in which the lands or a portion thereof are situated x x x fourteen days at least before the return day thereof."

4. Answer to petition

In cadastral proceedings any claimant, whether named in the notice or not, is required to appear before the court by himself or by some other authorized person in his behalf and to file an answer on or before the date of initial hearing or within such further time as may be allowed by the court. The answer shall state whether the claimant is married or unmarried, the name of the spouse if married, the date of marriage and his nationality, residence and postal address. Additionally, the answer shall contain the following details: (a) Age of the claimant; (b) Cadastral number of the lot or lots claimed, or the block and lot numbers, as the case may be; (c) Name of the barrio and municipality in which the lots are situated; (d) Names and addresses of the owners of the adjoining lots so far known to the claimant; (e) If the claimant is in possession of the lots claimed but without any express grant of the land by the government to him or his predecessor-in-interest, the answer shall state the length of time of such possession and the manner of his acquisition; (f) If the claimant is not in possession or occupation of the land, the answer shall set forth his interest therein and the time and manner of his acquisition; (g) The last assessed value of the lots if they have been assessed for taxation; and (h) Encumbrances, if any, affecting the lots and the names of adverse claimants, as far as known.[6]

The answer in a cadastral proceeding partakes of an action to recover title, as real rights are involved therein.[7]

5. Motion to dismiss petition

A land covered by a certificate of title issued pursuant to a public land patent, such as a homestead, sales patent or even free pat-

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[6]Sec. 37, P.D. No. 1529.

[7]Valismo vs. Plan, 143 SCRA 502, 511 (1986), citing Dias vs. Court of First Instance of Capiz, 51 Phil. 896.

ent, cannot be the subject of a cadastral proceeding, and title issued thereon to another person is null and void. If there is such petition for registration for a titled property, the titleholder may properly file a motion to dismiss on the ground that the court lacks jurisdiction to decree registration of the same property. By express provision of Section 34 of the Property Registration Decree (P.D. No. 1529), the Rules of Court, insofar as not inconsistent with the provision of this Decree, apply to land registration and cadastral cases by analogy or in a supplementary character and whenever practicable and convenient.[8]

The motion to dismiss may also be on the ground of *res judicata*, for this principle applies to cadastral and ordinary land registration proceedings.[9]

6. Hearing; Judgment; Decree

Section 38 of P.D. No. 1529 provides:

> "The trial of the case may occur at any convenient place within the province in which the lands are situated and shall be conducted, and orders for default and confessions entered, in the same manner as in ordinary land registration proceedings and shall be governed by the same rules. All conflicting interests shall be adjudicated by the court and decrees awarded in favor of the persons entitled to the lands or to parts thereof and such decrees shall be the basis for issuance of original certificates of title in favor of said persons and shall have the same effect as certificates of title granted on application for registration of land under ordinary land registration proceedings.

A. *Trial procedure and evidence*

Under Section 34 of the same Decree, it is explicit that the Rules of Court is applicable to both ordinary land registration and cadastral cases. The order of trial in both proceedings are perforce the same, with the claimant (instead of the applicant in the case of ordinary land registration proceedings) first presenting his evidence, before the petitioner Director of Lands and any oppositor to the claim.

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[8]Duran vs. Olivia, 3 SCRA 154 (1961); also Rule 143, Rules of Court.

[9]Republic vs. Director of Lands, 99 SCRA 651, 657 (1980), citing Yusingco vs. Ong Hin Lian, 42 SCRA 589 (1962), and Abes, *et al.* vs. Rodil, *et al.*, 17 SCRA 822 (1966).

The burden of proof is also on the claimant. And the evidence he may submit to court may be the same or similar to those that may be presented by an applicant in an ordinary land registration proceeding.

Three actions are taken after trial by the cadastral court:

1. Judgment or decision which adjudicates ownership of the land involved in favor of one or more of the claimants. This is the decree of the court.

2. Declaration by the court that the decree is final and its order for the issuance of the certificate of title by the Land Registration Authority. This is issued if no appeal is taken within the reglementary period.

3. Registration of the decree by the LRA and issuance of he corresponding certificate of title.[10]

B. *Scope and limitations of jurisdiction*

The cadastral court is not limited to merely adjudicating ownership in favor of one or more claimants. If there are no successful claimants, the property is declared public land.[11] Additionally, while the court has no jurisdiction to adjudicate lands already covered by a certificate of title, it is nonetheless true that this rule only applies where there exists no serious controversy as to the certificate's authenticity *vis-à-vis* the land covered therein.[12] The cadastral court may also (1) order the correction of the technical description of the land; and (2) resolve as well the priority of over-lapping titles. This is pursuant to its mandate in Section 38 of P.D. No. 1529 to adjudicate "all conflicting interests" over the lots or lands involved. As well expounded by the Supreme Court in *Gabriel vs. Court of Appeals*:[13]

> "It has long been settled that in cadastral cases the jurisdiction of the court over lands already registered is limited to the necessary correction of technical errors in the description of the lands *provided* such corrections do not impair the sub-

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[10]Merced vs. Court of Appeals, 5 SCRA 240 (1962), citing Gov't of the Philippine Island vs. Abural, 39 Phil. 997.

[11]Republic vs. Vera, 120 SCRA 210, 217 (1983).

[12]Widows and Orphans Association, Inc. vs. Court of Appeals, 201 SCRA 165, 175 (1991).

[13]159 SCRA 461, 468 (1988).

stantial rights of the registered owner, and that such jurisdiction cannot operate to deprive a registered owner of his title. (*Pamintuan vs. San Agustin*, 43 Phil. 561 [1922])."

"In a later case, such power of the court was further clarified and amplified to the effect that the above proposition does not exclude from the jurisdiction of the court the power to determine the priority of over-lapping or over-lying registered titles. There is nothing in this proposition which militates against allowing the court in a cadastral case to determine which one of several conflicting registered titles shall prevail. This power is necessary for a complete settlement of the title to the land, which is the express purpose of cadastral proceedings and therefore, be considered as within the jurisdiction of the courts in such proceedings. Furthermore, it was stressed that in such proceeding no final decree of registration was reopened or set aside (*Timbol vs. Diaz*, 44 Phil. 589-590 [1932])."

Earlier, it has also been held that where a parcel of land already covered by a certificate of title issued pursuant to a homestead patent is included in a cadastral proceedings, such proceeding insofar as the titled land is concerned, would no longer be for the purpose of adjudicating ownership to the claimant, "but merely to substitute the old certificate of title issued in said previous proceeding with a new one. The cadastral court, certainly, would have no jurisdiction to diminish nor enlarge the area of the property thus already decreed."[14] The court however has jurisdiction to entertain a petition for the cancellation of an outstanding certificate of title where the registered owner has been lawfully divested of his title thereof and there is no substantial controversy in regard thereto between the petitioner and any other interested party.[15] But like in an ordinary land registration proceeding, the cadastral court has no authority to award a land or property to persons who have not put any claim to it and have asserted any right of ownership therein.[16]

C. *Finality of judgment; its effects*

Appeal in cadastral proceedings as in an ordinary land registration case, may be taken by a simple notice of appeal within 15

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[14]Republic vs. Abacite, 1 SCRA 1076, 1079 (1961), citing Gov't. of the Phil. vs. Arias, 36 Phil. 194.

[15]Philippine National Bank vs. Mallorca, 21 SCRA 694, 700-701 (1967).

[16]Avila vs. Tapucar, 201 SCRA 148, 155 (1991).

days from notice of judgment.[17] Upon the expiration of the period to appeal and no such appeal is perfected, the title of ownership on the land is vested upon the owner. For all legal intents and purposes, the land "became registered" in the name of the adjudicatee. The certificate of title would then be necessary for the purpose of effecting registration of subsequent disposition of the land.[18]

The judgment is one against a specific thing and therefore conclusive upon the title to the thing. Being a judgment *in rem*, it is generally binding upon the whole world inclusive of persons not parties thereto, and particularly upon those who had actually taken part in the proceeding as well as their successors-in-interest by title subsequent to the commencement of the action.[19]

Like in an ordinary land registration proceeding, the cadastral court may, after final judgment, issue a writ of possession, or even a complementary order of demolition, in favor of the prevailing party.[20]

7. Reopening of cadastral cases no longer allowed

Republic Act No. 931, effective June 20, 1953 for five years, authorizing the reopening of cadastral cases under certain conditions, and which had been extended until December 31, 1968, is no longer in force. Courts are thus without jurisdiction or authority to reopen a cadastral proceeding since December 31, 1968.[21]

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[17]Heirs of Cornelio Labrada vs. Monsanto, 131 SCRA 651; (1984); also Sections 18 and 19 of Interim Rules and Guidelines relative to Judiciary Act of 1981 (Batas Pambansa Blg. 129; Nieto vs. Quines, 6 SCRA 74 (1962).

[18]Merced vs. Court of Appeals, 5 SCRA 240 (1962); Nieto vs. Quines, 6 SCRA 74, *supra*.

[19]Vda. de Barroga vs. Albano, *supra*, p. 137.

[20]Verastigue vs. Court of Appeals, 27 SCRA 1196 (1969).

[21]Republic vs. Estenzo, 158 SCRA 282 (1988).

Chapter X

DECREE OF REGISTRATION AND CERTIFICATE OF TITLE

1. Decree of Registration

It is pursuant to the order of the court that the Administrator of the Land Registration Authority (LRA) prepares and issues a decree of registration.

A. *Contents and Effects*

The contents of every decree issued by the LRA Administrator (formerly Commissioner) are set forth in Section 31, P.D. No. 1529:

> "SEC. 31. *Decree of registration.* — Every decree of registration issued by the Commissioner shall bear the date, hour and minute of its entry, and shall be signed by him. It shall state whether the owner is married or unmarried, and if married, the name of the husband or wife: *Provided, however,* that if the land adjudicated by the court is conjugal property, the decree shall be issued in the name of both spouses. If the owner is under disability, it shall state the nature of disability, and if a minor, his age. It shall contain a description of the land as finally determined by the court, and shall set forth the estate of the owner, and also, in such manner as to show their relative priorities, all particular estates, mortgages, easements, liens, attachments, and other encumbrances, including rights of tenant-farmers, if any, to which the land or owner's estate is subject, as well as any other matters properly to be determined in pursuance of this Decree."[1]

[1]See also Llaban vs. Court of Appeals, 204 SCRA 887, 898 (1991).

The Administrator shall sign the said decree and file it with the LRA.[2]

The decree of registration binds the land, quiets title thereto, subject only to such exceptions or liens as may be provided by law. It is conclusive upon all persons, including the national Government, whether named or mentioned in the application for registration or notice.[3] And such conclusiveness does not cease to exist when the title is transferred to a successor.[4] The decree likewise bars the re-litigation of the question of ownership in the same proceedings. Thus, a subsequent petition in the case filed, after the lapse of one year after entry of the decree, to allow heirs, oppositors, substituted parties, or even other persons who have not filed opposition to the original application for registration, to present evidence tending to prove that the registered owners of the property are not the owners of certain portions of the land involved therein, cannot be granted by the court.[5] The decree, after the lapse of one year from date of its issuance, becomes incontrovertible.[6]

B. *Duty of Administrator of LRA to issue decree*

The duty of the land registration officials to issue the decree of registration is ministerial in the sense that they act under the orders of the court and the decree must be in conformity with court judgment and with the data found in the record. In this respect, they have no discretion. However, if they are in doubt upon any point in relation to the preparation and issuance of the decree, they are duty bound to refer the matter to the court. They act, in this respect, as court officials and not as administrative officials. Their act then is the act of the Court. As Section 6(2c) of P.D. No. 1529 specifically requires, they have to "extend assistance to courts in ordinary and cadastral land registration proceedings."[7]

The Administrator is thus not legally obligated to issue the decree where, upon his verification, he finds that subject land has already been decreed and titled in another's name.[7a] And he could

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[2]Sec. 39, P.D. No. 1529.
[3]Sec. 31, par. 2, P.D. No. 1529.
[4]Melgar vs. Pagayon, 21 SCRA 841 (967).
[5]Ylarde vs. Lichauco, 42 SCRA 641 (1971).
[6]Sec. 32, 2nd par., P.D. No. 1529.
[7]Gomez vs. Court of Appeals, 168 SCRA 503, 510 (1988).
[7a]Ramos vs. Rodriguez, 244 SCRA 418, 422 (1995).

not be compelled through *mandamus* because the issuance of a decree is part of the judicial function of courts and not a mere ministered act.[7b]

2. Certificate of Title

"The original certificate of title shall be a true copy of the decree of registration" and like the decree shall also be signed by the Administrator of the LRA.[8] Such certificate of title is therefore the transcription of the decree.[9] The original of the original certificate of title together with the owner's duplicate certificate are thereafter sent to the Register of Deeds of the city or province where the property is situated for entry in his registration book. Said certificate takes effect upon the date of entry thereof, and the land covered thereby becomes registered land on that date.[10]

The certificate of title contains the full names of all persons whose interest make up the full ownership in the whole land, their civil status, names of respective spouses, if married, their citizenship, residence and postal address. If the property covered belongs to the conjugal parties, the certificate is issued in the names of both spouses.[11]

A. *Rule determining conjugal or paraphernal character of land covered by certificate of title*

The original certificate of title merely confirms a pre-existing title. Such certificate does not therefore establish the time of acquisition of the property covered. It could have been acquired during marriage or before it. Hence, in determining whether a property belongs to the conjugal partnership or paraphernal property of one of the spouses, it is important to note in whose name or names the title is registered. Thus, if the property was acquired during coverture, it would be registered in the name of both spouses. If it is registered only in the name of one spouse although it appears that said spouse is married, such as when the title is registered in the

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[7b]Laburada vs. Land Registration Authority, 287 SCRA 333, 345 (1998); also reiterates ruling in Ramos vs. Rodriguez, *supra*.

[8]Sec. 39, P.D. No. 1529.

[9]Benin vs. Tuason, 57 SCRA 531, 566 (1974).

[10]Sections 39 and 40, P.D. No. 1529; Benin vs. Tuason, *supra*.

[11]Sec. 45, P.D. No. 1529.

name of "Marcosa Rivera, married to Rafael Litam," then such property belongs to the registered owner, Marcosa Rivera. For the phrase "married to Rafael Litam" after the name of Marcosa Rivera is merely descriptive of the civil status of Marcosa.[12] The presumption in Article 160 of the Civil Code (All property of the marriage is presumed to belong to the conjugal partnership) applies only to property acquired during the lifetime of the husband and wife. This presumption cannot prevail when the title is in the name of only one spouse and the rights of innocent third parties are involved.[13]

B. *Owner's duplicate certificate of title; transfer certificate of title*

The pertinent provision of P.D. No. 1529 reads:

> "SEC. 41. *Owner's duplicate certificate of title.* — The owner's duplicate certificate of title shall be delivered to the registered owner or to his duly authorized representative. If two or more persons are registered owners, one owner's duplicate certificate may be issued for the whole land, or, if the co-owners so desire, a separate duplicate may be issued to each of them in like form, but all outstanding certificate of title so issued shall be surrendered whenever the Register of Deeds shall register any subsequent voluntary transaction affecting the whole land or part thereof or any interest therein. The Register of Deeds shall note on each certificate of title a statement as to whom a copy thereof was issued."

It has been held that the owner of the land in whose favor and in whose name said land is registered and inscribed in the certificate of title has a more preferential right to the possession of the owner's duplicate than one whose name does not appear in the certificate and has yet to establish his right to the possession thereof.[14]

Sec. 43 of P.D. No. 1529 also provides:

> "SEC. 43. *Transfer Certificate of Title.* — The subsequent certificates of title that may be issued by the Register of Deeds pursuant to any voluntary or involuntary instrument relating

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[12]Ponce de Leon vs. Rehabilitation Finance Corp., 36 SCRA 289, 309-310, 312 (1976), citing Litam vs. Espiritu, 100 Phil. 364, 376.

[13]Philippine National Bank vs. Court of Appeals, 153 SCRA 435, 442 (1987).

[14]Reyes vs. Raval Reyes, 17 SCRA 1099 (1966).

to the same land shall be in like form, entitled "Transfer Certificate of Title," and likewise issued in duplicate. The certificate shall show the number of the next previous certificate covering the same land and also the fact that it was originally registered, giving the record number, the number of the original certificate of title, and the volume and page of the registration book in which the latter is found."

C. *Probative value of certificate of title*

Registration does not vest title; it is not a mode of acquiring ownership over property. It is merely evidence of such title over a particular property.[15] And a Torrens certificate is the best evidence of ownership over registered land.[16]

However, the simple possession of a certificate of title does not necessarily make the holder thereof a true owner of all the property described therein, such as when such title includes by mistake or oversight land which can no longer be registered under the Torrens system, as when the same land had already been registered and an earlier certificate for the same land is in existence.[17] The inclusion of an area in a Torrens title which the registered owner (or successful applicant) has put no claim to it and has never asserted any right of ownership thereof, is void and of no effect. The court has no jurisdiction to decree a lot to one who thus made no claim for it. The Torrens title is unavailing although a relocation survey may indicate that the unclaimed area is within such title.[18] The certificate of title is likewise not conclusive of ownership when the issue of fraud and misrepresentation in obtaining it is seasonably raised,[19] or where the certificate itself is faulty as to its purported origin. Thus, where the holder of a transfer certificate of title claims that its origin as

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[15]Solid State Multi-Products Corp. vs. Court of Appeals, 196 SCRA 630 (1991); Avila vs. Tapucar, 201 SCRA 148, 156 (1991); De Guzman, *et al.*, vs. CA, 156 SCRA 701 (1987); Cruz vs. Cabana, 129 SCRA 656 (1984).

[16]Villanueva vs. Court of Appeals, 198 SCRA 472, 477 (1991); Demasiado vs. Velasco, 71 SCRA 105, 112 (1976); Republic vs. CA, Antonio Guido, *et al.,* 204 SCRA 160 (1991).

[17]Avila vs. Tapucar, *supra*; Miranda vs. CA, 177 SCRA 303 (1989); Coronel vs. Intermediate Appellate Court, 155 SCRA 270 (1987); Caragay-Layno vs. CA, 133 SCRA 718 (1984); Widows and Orphans Association, Inc. vs. CA, 201 SCRA 165, 176 (1991); Martinez vs. CA, 56 SCRA 647 (1974); Register of Deeds vs. PNB, 13 SCRA 46 (1965).

[18]Vda. de Recinto vs. Inciong, 77 SCRA 196 (1977).

[19]Foja vs. Court of Appeals, 75 SCRA 441, 446 (1977); Monticenes vs. CA, 53 SCRA 14 (1973).

reflected in the certificate is not the true original certificate of title but another original certificate of title, then the derivative certificates' conclusiveness is not indubitable.[20]

D. *Attributes of, and limitations on, certificates of title and registered lands*

(1) Free from liens and encumbrances, with certain exceptions

Section 44 of P.D. No. 1529 reads:

> "Every registered owner receiving a certificate of title in pursuance of registration, and every subsequent purchaser of registered land taking a certificate of title for value and in good faith, shall hold the same free from all encumbrances except those noted on said certificate and any of the following encumbrances which may be subsisting, namely:
>
> ***First***. Liens, claims or rights arising or existing under the laws and Constitution of the Philippines which are not by law required to appear of record in the Registry of Deeds in order to be valid against subsequent purchasers or encumbrances of record.
>
> ***Second***. Unpaid real estate taxes levied and assessed within two years immediately preceding the acquisition of any right over the land by an innocent purchaser for value, without prejudice to the right of the government to collect taxes payable before that period from the delinquent taxpayer alone.
>
> ***Third***. Any public highway or private way established or recognized by law, or any government irrigation canal or lateral thereof, if the certificate of title does not state that the boundaries of such highway or irrigation canal or lateral thereof have been determined.
>
> ***Fourth***. Any disposition of the property or limitation on the use thereof by virtue of, or pursuant to, Presidential Decree No. 27 or any other law or regulations on agrarian reform."

The rule that every registered owner receiving a certificate of title in pursuance of said P.D. No. 1529 shall hold the same free from

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[20]Widows and Orphans Assn., Inc. vs. CA, *supra*.

all encumbrances except those noted in said certificate and those specifically mentioned by law, equally applies to every subsequent purchaser of registered land taking a certificate of title in good faith (*Dy vs. CA*, 204 SCRA 878, 886, G.R. No. 97929, Dec. 17, 1991).

Under the above provision, claims and liens of whatever character existing against the land prior to the issuance of certificate of title, except those annotated in the certificate and those mentioned by law, are cut off by such certificate and the certificate so issued binds the whole world, including the government.[21] But a mortgage right annotated on a certificate of title that was subsequently declared a nullity, which the mortgagee acquired on full reliance of such certificate that was issued as a result of regular land proceedings, still subjects the land although said lien was not noted in another certificate of title issued pursuant to free patent, also covering the same property and obtained during the pendency of the registration proceeding.[22]

With respect to the third statutory lien, it has been held that public servitudes to which a certificate of title issued pursuant to a decree of registration is subjected, refers to those existing at the time of the acquisition of the land, not those (like roads) constructed subsequent to such acquisition.[23]

(2) Incontrovertible and indefeasible

Upon the expiration of one year from and after the date of entry of the decree of registration, not only such decree but also the corresponding certificate of title becomes incontrovertible and indefeasible.[24] But the indefeasibility of title could be claimed only if a previous valid title to the same land does not exist.[25] Nor does this incontestable character of a Torrens certificate apply when the land covered thereby is not capable of registration.[26] The certificate of title likewise loses its indefeasibility when it is established that fraud

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[21]National Grains Authority vs. Intermediate Appellate Court, 157 SCRA 380, 387 (1988); Republic vs. Umali, 171 SCRA 647, 652 (1989); Dy vs. CA, 204 SCRA 878, 886 (1991).

[22]Penullar vs. Philippine National Bank, 120 SCRA 171 (1983).

[23]Digran vs. Auditor General, *et al.*, 16 SCRA 762 (1966).

[24]Section 32, P.D. No. 1529.

[25]Register of Deeds vs. Philippine National Bank, *supra*; C.N. Hodges vs. Dy Buncio and Co., Inc., 6 SCRA 287, 292 (1962).

[26]Martinez vs. Court of Appeals, *supra*, citing Dizon vs. Rodriguez, 13 SCRA 704 (1965); Republic vs. CA, 99 SCRA 743 (1980).

attended its acquisition. For the Torrens System could not be used as a means to perpetuate fraud against the rightful owner of real property.[27] Furthermore, the rule on the incontrovertible nature of a certificate of title applies when what is involved is the validity of the original certificate of title, not when it concerns that of a transfer certificate of title.[28]

(3) Registered land not subject to prescription

It is by law explicit that "no title to registered land in derogation of the title of the registered owner shall be acquired by prescription or adverse possession."[29] Prescription is unavailing not only against the registered owner but also equally against the latter's hereditary successors.[30] Thus, even adverse, notorious and continuous possession under a claim of ownership for the period fixed by law is ineffective against a Torrens title.[31]

Relatedly, the fact that the title to the land was lost does not mean that the land ceased to be registered land before the reconstitution of its title. It cannot perforce be acquired by prescription (*Rivera vs. CA*, 244 SCRA 218, 223 [1995]).

a) *Right to recover possession*

The right of the registered owner to recover possession of the land covered by his title is thus imprescriptible.[32] But where the plaintiff was not the registered owner, claiming title only by succession as when the certificate of title was still in the name of his mother, then that otherwise imprescriptible right of action could not be invoked. The defendant-possessor then may set up the defense of acquisitive prescription.[33]

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[27]Bornales vs. Intermediate Appellate Court, 166 SCRA 519 (1988).

[28]Arguelles vs. Timbancaya, 72 SCRA 193 (1976).

[29]Sec. 47, P.D. No. 1529.

[30]Jose vs. Court of Appeals, 192 SCRA 735, 742 (1990); Bailon-Casilao vs. CA, 160 SCRA 738 (1988); Gallardo vs. Intermediate Appellate Court, 155 SCRA 248 (1987); Umbay vs. Alecha, 135 SCRA 427, 429 (1985).

[31]Umbay vs. Alecha, *supra*, citing Vda. de Recinto vs. Inciong, 77 SCRA 196 (1977) and J.M. Tuason and Co. Inc. vs. CA, 93 SCRA 146 (1979).

[32]Umbay vs. Alecha, *supra*; Gallardo vs. IAC, *supra*; St. Peter Memorial Park vs. Cleofas, 92 SCRA 389, 410 (1979); J.M. Tuason and Co., Inc. vs. Aguirre, 7 SCRA 109 (1963).

[33]Jimenez vs. Fernandez, 184 SCRA 190 (1990); Tambot vs. CA, 181 SCRA 202 (1990); Heirs of Bationg-Lacamen vs. Heirs of Laruan, 65 SCRA 605 (1975); Arcino vs. Aparis, 22 SCRA 407 (1968).

b) *Laches as defense against recovery*

The defense of laches, when proper, bars the registered title holder from asserting his rights over the registered property and from recovering it. This defense, an equitable one, does not concern itself with the character of the defendant's title but only with whether by plaintiff's unreasonable and unexplained or unexcusable neglect, he is thus barred to assert his claim.[34] It is "a delay in the assertion of a right which works disadvantage to another because of the inequity founded on some change in the condition or relation of the property or parties. It is based on public policy which, for the peace of society, ordains that relief will be denied to a stale demand which otherwise could be a valid claim."[35] Laches may thus be invoked to bar reconveyance of the land to the registered owner only if there are intervening rights of third persons which may be affected or prejudiced if such land is returned to the registered owner.[36]

The failure of the registered owner to assert his right need not be for 50 years as in *Golloy vs. Court of Appeals*,[37] nor the lesser period of 20 years as in *Caragay-Layno vs. CA*, *supra*. Such inaction still effectively bars suit even if such inaction were from 10 to 16 years.[38] And in the more recent case of *Isabela Colleges, Inc. vs. Heirs of Nieves Tolentino-Rivera,* 344 SCRA 95, 108, (G.R. No. 132677, Oct. 20, 2000), it was pointed out that the doctrine of laches can still be applied even if only 7 years or 4 years had lapsed from the emergence of the cause of action to the institution of the court action.

(4) Certificate of title not subject to collateral attack

Section 48 of P.D. 1529 provides that "a certificate of title shall not be subject to collateral attack. It cannot be altered, modified, or cancelled except in a direct proceeding in accordance with law." Such proscription has long been enshrined in Philippine jurisprudence. The judicial action required to challenge the validity of title is a direct attack, not a collateral one.[39]

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[34]Sotto vs. Teves, 86 SCRA 154, 183 (1978).

[35]Heirs of Bationg-Lacamen vs. Heirs of Laruan, *supra*, p. 610.

[36]Javier vs. Concepcion, Jr., 94 SCRA 212 (1979).

[37]173 SCRA 26 (1989).

[38]Heirs of Bationg Lacamen vs. Heirs of Laruan, *supra*, citing de Lucas vs. Gamponia, 100 Phil. 277, 283-284; also Z.E. Lotho, Inc. vs. Ice and Cold Storage Industries of the Phil., 3 SCRA 744 (1961); De la Calzada-Cierras vs. CA, 212 SCRA 390, 396 (1992).

[39]Widows and Orphans Asso., Inc. vs. CA, *supra*, p. 174; Natalia Realty Corp. vs. Valdez, 173 SCRA 534 (1989); Cimafranca vs. Intermediate Appellate Court, 147

The case of *Leyson vs. Bontuyan*, 452 SCRA 94, (G.R. No. 156357, Feb. 18, 2005), distinguishes a collateral attack from a direct attack, to wit:

> "While Section 47 of Act No. 496 provides that a certificate of title shall not be subject to collateral attack, the rule is that an action is an attack on a title if its object is to nullify the same, and thus challenge the proceeding pursuant to which the title was decreed. The attack is considered direct when the object of an action is to annul or set aside such proceeding, or enjoin its enforcement. On the other hand, an attack is indirect or collateral when, in an action to obtain a different relief, an attack on the proceeding is nevertheless made as an incident thereof. Such action to attack a certificate of title may be an original action or a counterclaim in which a certificate of title is assailed as void. A counterclaim is considered a new suit in which the defendant is the plaintiff and the plaintiff in the complaint becomes the defendant. It stands on the same footing and is to be tested by the same rules as if it were an independent attack."

a) *Instances of collateral attack*

In *Cimafranca vs. CA, supra*, the defendants filed their answer to the complaint praying for the cancellation of plaintiff's Torrens certificate of title and for an award of damages by way of counterclaim. Such prayer for cancellation of title was deemed a mere collateral attack which cannot be done. In the case of *Natalia Realty Corp. vs. Valdez, supra*, the attack on the title involved therein was only in defendant's answer. This was also deemed as a collateral attack.

The recent case of *Toyota Motor Philippines Corp. vs. Court of Appeals,*[40] illustrates that even an action for reformation may constitute a collateral attack on a Torrens title. In this case, Toyota filed on September 11, 1991 a complaint against the Asset Privatization Trust (APT) and Sun Valley Manufacturing and Development Corp. (Sun Valley), for reformation of the deed of sale executed between Toyota and APT, which allegedly failed to reflect the true intention

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SCRA 611, 621 (1987); Barrios vs. CA, 78 SCRA 427 (1977); Magay vs. Estanislao, 69 SCRA 456 (1977).

[40]G.R. No. 102881, Dec. 7, 1992.

of the parties as it did not include the 723 square meters in question. Sun Valley was impleaded as it purchased also from APT the adjoining land whose title included the said 723 square-meter property. The Court held that the complaint for reformation amounted to a collateral attack on Sun Valley's title, approvingly citing and quoting the ruling in *Domingo vs. Santos Ongsiako Lim Y Sia,* 55 Phil. 361, as follows:

> "x x x The fact should not be overlooked that we are here confronted with what is really a collateral attack upon a Torrens title. The circumstances that the action was directly brought to recover a parcel of land does not alter the truth that the proceeding involves a collateral attack upon a Torrens title, because as we have found, the land in controversy lies within the boundaries determined by that title. The Land Registration Law defines the methods under which a wrongful adjudication of title to land under the Torrens system may be corrected x x x."

Continuing further, the Court also held that "while reformation may often be had to correct mistakes in defining the boundary of lands conveyed so as to identify the lands, it may not be used to pass lands from those intended to be bought and sold, notwithstanding a mistake in pointing out the lines, since reformation under these circumstances would be inequitable and unjust."

In the case of *Seville vs. National Development Co.*, 351 SCRA 112, 124, G.R. No. 129401, Feb. 2, 2001, it was held that an action for recovery of real property, rentals and damages, which supposedly does not seek the re-opening of a decree under the Torrens System but only praying for a segregation of a portion of land acquired under a Miscellaneous Sales Patent by the respondents, effectively seeks the modification of one of the respondent's OCT and therefore is tantamount to a collateral attack.

b) *Instances where attack on title not considered collateral*

In the case of *Realty Sales Enterprises, Inc. (Realty) vs. Intermediate Appellate Court*,[41] one Morris Carpo filed a complaint with the then Court of First Instance of Rizal to declare nullity of Realty's Torrens title. Realty answered that its own title, earlier issued,

[41]154 SCRA 328, 348 (1987).

should prevail over Carpo's title. With leave of court, Realty also filed a third-party complaint against the Quezon City Development and Financing Corporation, alleging that the latter's title also covers the land in dispute. The Supreme Court ruled:

> "The action filed by Carpo against Realty is in the nature of an action to remove clouds from title to real property. By asserting its own title to the property in question and asking that Carpo's title be declared null and void instead, and by filing the third-party complaint against QCDFC, Realty was similarly asking the court to remove clouds from its own title."

Realty's responses were not deemed as collateral attacks on Carpo's and QCDFC's titles.

In another case,[42] the counterclaim of the private respondents which was in effect a reconveyance to them of their 1/3 undivided portion over the lot covered by Torrens title, was not deemed a collateral attack on said title.

(5) Torrens certificate presumed valid and devoid of flaws

The Torrens certificate of title is presumed to have been regularly issued, valid and without defects. The related presumption is that the buyer or transferee of registered land is not aware of any defect in the title of the property he purchased or acquired. He has the right to rely upon the face of the Torrens title and to dispense with the trouble of inquiring further, except when he has actual knowledge of facts and circumstances that would impel a reasonably cautious man to make inquiry.[43]

(6) General incidents of registered land

Section 46 of P.D. No. 1529 provides that "registered land shall be subject to such burdens and incidents as may arise by operation of law." According to this provision, registered land or the owners thereof are therefore not relieved from the following:

> a) From any rights incident to the relation of husband and wife, landlord and tenant;

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[42]Coronel vs. IAC, *supra*, p. 279.

[43]Albienda vs. CA, 135 SCRA 402 (1985); Lopez vs. CA, 169 SCRA 271 (1989); Santos vs. CA, 189 SCRA 550 (1990); see further discussions under Chapter XIV on voluntary dealings with registered lands.

b) From liability to attachment or levy on execution;

c) From liability to any lien of any description established by law on the land and the buildings thereon, or in the interest of the owner in such land or building;

d) From any right or liability that may arise due to change of the law on descent;

e) From the rights of partition between co-owners;

f) From the right of government to take the land by eminent domain;

g) From liability to be recovered by an assignee in insolvency or trustee in bankruptcy under the laws relative to preferences;

h) From any other rights or liabilities created by law and applicable to unregistered land.

(7) Where certificate of title was obtained by trustee

It has been held that a trustee who obtains a Torrens title in his name, over property held in trust by him for another known as the *cestui que trust*, "cannot repudiate the trust by relying on the registration," such being one of the limitations upon the finality of title. The trustee could not perforce legally convey ownership of the registered property in her will. For she is not the absolute owner thereof.[44]

E. *Splitting or consolidation of titles; subdivision and consolidation plans*

The registered owner of several distinct parcels of land covered by one certificate of title may secure separate certificates for one or more parcels of land. Where several parcels of land are covered by separate certificates, he may also secure a single certificate for all those lands or several certificates for different parcels thereof. In either case, he should file a written request for that purpose with the Register of Deeds concerned and surrender to him the owner's duplicate or duplicates of title.[45]

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[44]Sotto vs. Teves, 86 SCRA 154, 178 (1978).
[45]Section 49, P.D. No. 1529.

A registered owner may subdivide his property into two or more lots, or consolidate several lots into one or more lots in accordance with Section 50 of P.D. No. 1529.

F. *Enlargement of area or impairment of title not allowed*

The actions that the Land Registration Authority may take on any of such titles or plans, are circumscribed by the following provision of said Section 50 of the Decree:

> "The Commission (now Authority) may not order or cause any change, modification, or amendment in the contents of any certificate of title, or of any decree or plan, including the technical description therein, covering any real property registered under the Torrens System, nor order the cancellation of the said certificate of title and the issuance of a new one which would result in the enlargement of the area covered by the certificate of title."

Any enlarged area could not be considered as registered land and the certificate of title covering the same may be cancelled.[46]

[46]Republic vs. Heirs of Abrille, 71 SCRA 57 (1976).

Chapter XI

REMEDIES

An aggrieved party may take any of the remedies available in law to challenge the judgment in a land registration case or the validity of title issued pursuant thereto. Such remedies must, however, be seasonably invoked within the reglementary or prescriptive period or as allowed by jurisprudence and equity.

1. New Trial

The aggrieved party, whether applicant or oppositor in ordinary land registration proceedings, or whether petitioner or claimant in a cadastral proceeding, may file a motion for new trial under Rule 37 of the Rules of Court,[1] within the 15-day period for perfecting an appeal on one or more of the following grounds:

> "(a) Fraud, accident, mistake or excusable negligence which ordinary prudence could not have guarded against and by reason of which such aggrieved party has probably been impaired in his rights;
>
> (b) Newly discovered evidence, which he could not, with reasonable diligence, have discovered, and produced at the trial and which if presented would probably alter the result;
>
> (c) Award of excessive damages, or insufficiency of the evidence to justify the decision or that the decision is against the law."[2]

The failure of counsel of a party to attend the trial of the case for lack of advance notice on him has been held to constitute an "accident." But failure to attend trial because the party's counsel for-

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[1]Republic vs. Director of Lands, 71 SCRA 426, 439 (1976).
[2]Section 1, Rule 37, Rules of Court.

got to note the notice of hearing in his calendar does not constitute accident, mistake or excusable negligence.[3] Nor is the failure to hire a new counsel for any subsequent hearing when the party knew that he had no lawyer to assist him excusable.[4]

For the second ground for new trial to be properly invoked, it must be shown that (1) the new evidence was discovered after the trial; (2) such evidence could not have been discovered and produced at the trial even with the exercise of reasonable diligence, and (3) that such evidence is material, not merely cumulative, corroborative or impeaching, and is of such weight that if admitted, will probably alter the judgment.[5]

2. Relief from judgment

Under Section 2, Rule 38 of the Rules of Court, "when a judgment or order is entered, or other proceeding is taken, against a party in a Court of First Instance (now Regional Trial Court) through fraud, accident, mistake, or excusable negligence, he may file a petition in such court and in the same cause praying that the judgment, order or proceeding be set aside."

The petition must be verified and filed within sixty (60) days after the petitioner learns of the judgment, order or other proceeding and not more than six (6) months or 180 days after such judgment or order was entered, or such proceeding was taken. The petition must be accompanied with affidavits showing the fraud, accident, mistake, or excusable negligence relied upon, and the facts constituting the petitioner's good and substantial causes of action or defense as the case may be (Sec. 3, *id.*). Moreover, the petitioner must allege that because of such extrinsic fraud, he has been unjustly deprived of a hearing, or he has been prevented from taking an appeal.

A relief from judgment may be availed of only when the judgment has become final and a new trial is not available. For when another remedy is open to a party, he cannot invoke such remedy.

Unlike a petition for review, hereafter to be discussed, only a party, that is, either the applicant or the oppositor, may avail of the remedy.

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[3]Talavera vs. Mangoba, 8 SCRA 837 (1963).
[4]Antonio vs. Ramos, 2 SCRA 731 (1961).
[5]People vs. Dela Cruz, 207 SCRA 632, 641 (1992).

3. Appeal

Presidential Decree No. 1529 expressly provides that judgment or orders of the court in land registration cases are appealable to the Court of Appeals or to the Supreme Court in the same manner as in ordinary actions.[6] Appeal to the Court of Appeals is taken by simply filing a notice of appeal with the lower court within 15 days from receipt of said judgment or order by counsel of the aggrieved party. However, appeals to the appellate court in the exercise of its appellate jurisdiction is by a petition for review. With respect to the Government, which is invariably an oppositor in ordinary land registration proceedings and always the petitioner in cadastral proceedings, the notice of judgment that binds it is that one sent to and received by the Solicitor General, not that to the Fiscal. It is from the date of receipt of such notice by the former that the 15-day period to appeal should be reckoned.[7]

The mode of appeal from a judgment of the Court of Appeals to the Supreme Court is by way of a petition for review on *certiorari*.[8]

4. Petition for Review

The statutory authority for a petition for review of a decree of registration is Section 32 of P.D. No. 1529 (formerly Section 3 of the Land Registration Act) which reads:

> "SEC. 32. *Review of decree of registration, Innocent purchaser for value.* — The decree of registration shall not be reopened or revised by reason of absence, minority, or other disability of any person adversely affected thereby, nor by any proceeding in any court for reversing judgments, subject, however, to the right of any person, including the government and the branches thereof, deprived of land or of any estate or interest therein by such adjudication or confirmation of title obtained by actual fraud, to file in the proper court of First Instance (Regional Trial Court) a petition for reopening and review of registration not later than one year from and after the date of the entry of such decree of registration, but in no case shall such petition be entertained by the court where an innocent

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[6]Sec. 33, P.D. No. 1529.
[7]See discussions in Chapter VIII, 4(A).
[8]Republic vs. Court of Appeals, 182 SCRA 290, 299-300 (1990).

purchaser for value has acquired the land or an interest therein, whose rights may be prejudiced. Whenever the phrase innocent purchaser for value or an equivalent phrase occurs in this Decree, it shall be deemed to include an innocent lessee, mortgagee, or other encumbrances for value.

Upon the expiration of said period of one year, the decree of registration and the certificate of title issued shall become incontrovertible. Any person aggrieved by such decree of registration in any case may pursue his remedy by action for damages against the applicant or any other persons responsible for the fraud."

A petition for review, to set aside decree, must be filed, not in the form of separate action, but in the form of a motion filed in the same registration proceeding where the decree was issued.[9]

A. *Who may file petition*

By explicit provision of the above-quoted Section 32 of the Decree, "any person, including the government and the branches thereof, deprived of land or of any estate or interest therein" may file a petition for review to set aside the decree of registration. It is not only the aggrieved party in ordinary land registration proceedings or in confirmation of imperfect title, but also an aggrieved party in a cadastral proceeding who may file such petition.[10] The petitioner need not be an oppositor in the registration proceeding or an original claimant who had filed an answer in the cadastral proceeding. Nor is it necessary for the petitioner to first procure the lifting of the order of general default before he could file the petition. As explained by the Supreme Court, "fraud might intervene precisely to prevent a person from filing an answer," and "the aim of the law in giving aggrieved parties, victimized by registration proceedings of their estate by means of fraud, the opportunity to review the decree would be defeated if such parties would be limited to those who had filed their opposition or answer to the petition for registration or require them to priorly lift the order of general default.[11] But those entitled to a review of the decree are those who were deprived of their opportunity to be heard in the original registration case."[12]

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[9]Baldoz vs. Papa, 14 SCRA 691 (1965).
[10]Garcia vs. Mendoza, 203 SCRA 732, 734 (1991).
[11]Rublico vs. Orellano, 30 SCRA 511, 513-514 (1969).
[12]Crisolo vs. Court of Appeals, 68 SCRA 435, 441 (1975).

Thus even a homestead applicant who has complied with all the requirements of law to entitle him to a patent, even without the actual issuance thereof, has "a real, legally protected interest" over the land subject of a petition for review, to clothe him with the requisite personality to question, independently of the Director of Lands (now Director of Land Management), the validity of the grant of title to the successful registration applicant.[13]

B. *Persons who may not file the petition*

A petition for review under Section 32 of P.D. No. 1529 cannot apply when the petitioner does not claim the land to be his private property but is admittedly formerly part of the disposable public land awarded under a public land patent.[14] An oppositor who abandons his opposition to a registration proceedings is not entitled to challenge the decree, or even the judgment, by means of such petition. Nor an oppositor who had notice of the original registration proceedings but failed to put up any claim and to show title in himself.[15]

C. *When to file petition*

Section 32 of the Decree provides that a petition for review must be filed "not later than one year from and after the date of the entry of such decree of registration." Section 38 of Act 496 similarly provides that such petition must be filed "within one year after the entry of the decree." Construing said Section 38, the Supreme Court held as follows:

> "The petition for review contemplated in the foregoing provision (Sec. 38, Act 496, now Sec. 32, P.D. No. 1529) clearly envisages the issuance of a decree of registration. It presupposes the rendition of a court's decision. In fact, it has been held that a petition for review under the aforequoted provision may be filed at any time after the rendition of the Court's Decision and before the expiration of one year from entry of the final decree of registration."[16]

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[13]Cruz vs. Navarro, 54 SCRA 109,115-116 (1973).

[14] Boniel vs. Reyes, 35 SCRA 218 (1970).

[15]Crisolo vs. CA, *supra*.

[16]Yabut Lee vs. Punzalan, 99 SCRA 567, 570 (1980) (stress supplied), citing Rivera vs. Moran, 48 Phil. 836 and Director of Lands vs. Aba, *et al*., 68 Phil. 85; also Banognon vs. Zerna, 154 SCRA 593, 597 (1987).

In another decision, the Court clarified that "the one-year period stated in Section 32 of P.D. No. 1529 within which a petition to re-open and review the decree of registration clearly refers to the decree of registration described in Section 31 of said P.D., which decree is prepared and issued by the Commission of Land Registration"[16a]

A petition filed after rendition of the decision but before the entry of the decree of registration is a petition for review of judgment. The petition filed within one year after such entry is a petition for review of the decree.

D. *Essential requisites for the reopening or review of decree*

For a petition for review to be given due course, there must be concurrence of the following essential requisites:

1. Petitioner has a real and dominical right;

2. He has been deprived thereof;

3. Through fraud;

4. Petition is filed within one year from issuance of the decree (and in respect to a review of the judgment, from rendition thereof); and

5. The property has not yet passed to an innocent purchaser for value.[17]

E. *Actual or Extrinsic fraud, or collateral fraud, defined; and differentiated from intrinsic fraud*

Only extrinsic fraud or collateral fraud as distinguished from intrinsic, is a ground for a petition for review. "*Extrinsic fraud* refers to any fraudulent act of the successful party in a litigation which is committed outside the trial of a case against the defeated party, or his agents, attorneys or witnesses, whereby said defeated party is prevented from presenting fully and fairly his side of the case. On the other hand, *intrinsic fraud* refers to acts of a party in a litigation during the trial, such as the use of forged instruments or perjured

[16a]Ramos vs. Rodriguez, 244 SCRA 418, 423 (1995).
[17]Walstrom vs. Mapa, Jr., 181 SCRA 431(1990); Rubico vs. Orellano, *supra*.

testimony, which did not affect the presentation of the case, but did prevent a fair and just determination of the case."[18]

If the fraud alleged is involved in the same proceeding where the party seeking relief had ample opportunity to assert his right, to attack the documents presented by the applicant, and to cross-examine the witnesses who testified thereto, then the fraud is intrinsic, which is not a ground for the review of the decree. For the essential characteristic of the actual fraud contemplated under the Decree or the law is the "intention to deprive another of his just rights,"[19] the fraudulent scheme of the prevailing litigant which prevented a party from presenting his case. The fraud is perforce one that affects and goes into the jurisdiction of the court.[20]

F. *Specific instances of actual or extrinsic fraud*

In *Ramirez vs. Court of Appeals, supra*, the following acts were held to constitute extrinsic or actual fraud to warrant a petition for review of decree:

> 1. Applicants, having willfully and fraudulently suppressed the fact that petitioners were the legal and rightful owners of the land in question and that said applicants possess the land merely as antichretic creditors as security for loan, are guilty of misrepresentation and concealment in declaring in their application for registration that no other person had any claim or interest in the land applied for;
>
> 2. Applicant's omission to state the respondent's (other person's) interest and their positive attestation to the absence of any adverse claim in the land;
>
> 3. A deliberate misrepresentation that the lots are not contested when in fact they are;
>
> 4. Applying for and obtaining adjudication and registration in the name of a co-owner of land, which he (applicant) knows had not been allotted to him in the partition;

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[18]Sterling Investment Corp. vs. Ruiz, 30 SCRA 318, 324 (1969), citing Palanca vs. American Food Manufacturing Co., 24 SCRA 819, 826 (1968); Libudan vs. Gil, 45 SCRA 17 (1972).

[19]Frias vs. Esquivel, 5 SCRA 770, 773-774 (1962); Manila vs. Abila, 75 SCRA 267, 269-270 (1977).

[20]Ramirez vs. Court of Appeals, 144 SCRA 292 (1986), citing Libudan vs. Gil, *supra*, also Rublico vs. Orellano, *supra*.

5. Intentionally concealing facts, and conniving with the land inspector to include in the survey plan the bed of a navigable stream;

6. Deliberately failing to notify the party entitled to notice, or in inducing him not to oppose an application;

7. Misrepresenting about the identity of the lot applied for to the true owner by the applicant, causing the former to withdraw his opposition, or inducing a party not to oppose an application;

Additionally —

8. Failure and intentional omission of the applicant to disclose the fact of actual physical possession of the land by another person;[21]

9. Suppression by applicant of the fact that her husband's previous application for a revocable permit and to purchase the lands from the Bureau of Lands had been rejected because the lands were already reserved for school site, and instead claiming the lands in her application for registration as having been inherited from her parents;[22]

It has been held, however, that the failure of the vendee, to whom decree has been issued, to pay the purchase price to the seller, is not a ground for a petition for review. This is breach of a contract, litigable in an ordinary case.[23]

G. *Sufficient allegations of actual fraud illustrated*

It does not suffice to merely allege fraud. The specific, intentional acts to deceive and deprive another of his right, in some manner injure him, must be alleged and proved."[24]

In the case of *Nicolas vs. Director of Lands, supra*, the petition for review contained, among others, the following allegations of the petitioner:

"8. That he has been in possession of the said two lots openly, notoriously, continuously, in concept of owner since his filing of said application on January 8, 1936;

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[21]Nicolas vs. Director of Lands, 9 SCRA 934 (1963; Minlay vs. Sandoval, 53 SCRA (1973).

[22]Republic vs. Lozada, 90 SCRA 503 (1979).

[23]Nicolas vs. Director of Lands, *supra*.

[24]Crisolo vs. Court of Appeals, *supra*, p. 441.

"9. That despite the knowledge of the respondents that the aforementioned lots are owned by the herein petitioner, the same was fraudulently included in their respective applications;

x x x

"13. That respondents further failed to inform the Court that the aforementioned lots claimed by the herein petitioner is and has always been in the continuous, open and notorious possession of the petitioner under a claim of title from the year 1936; and for which reason, respondents had to get a writ of possession (execution) from the Court for the purpose of ejecting the petitioner."

The Supreme Court made the following ruling in the above mentioned case, as follows:

"It is contended that, in cases of the nature of the case at bar, the only basis for the re-opening of the case, is actual fraud. There was allegation of actual fraud in the petition, such as the failure and intentional omission on the part of the respondents to disclose the fact of actual physical possession of the premises by petitioner herein. It is fraud to knowingly omit or conceal a fact, upon which benefit is obtained to the prejudice of a third person (*Estiva vs. Alvero*, 37 Phil. 498). In short, the *series of allegations contained in the petition*, portions of which are quoted heretofore, *describe fraudulent acts, actual and otherwise. Perhaps, the trial judge had reasons to doubt the veracity of the supposed fraudulent acts, attributed to respondent. This doubt, however, should not have been made the basis of dismissal, because if a court doubts the veracity of the allegations in the petition, the best thing it could do, would have been to deny the motion to dismiss and proceed with the hearing on the merits of the petition*." (Underscoring supplied)

H. *Other grounds for review of a decree*

Aside from actual or extrinsic fraud, a decree of registration may also be reviewed:

1) By reason of a fatal infirmity in the decision, for want of due process. As reasoned out by the Supreme Court.[25]

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[25]Tiongco vs. De la Merced, 58 SCRA 89 (1974), citing Vda. de Cuaycong vs. Vda. de Sengbengco, 110 Phil. 113 (1960); Republic vs. Kalintas, 26 SCRA 716, 720 (1969).

"If a decree issued in pursuance of a decision, obtained by fraud, may be annulled within one (1) year from entry of said decree, there is more reason to hold that the same, if entered in compliance with a decision suffering from a fatal infirmity, for want of due process, may be reviewed, set aside and cancelled upon petition filed within the same period, provided that no innocent purchaser for value will be injured thereby."

2) For lack of jurisdiction of the court.

The allegations in a petition for review that the lands decreed as private property is part of or within a military reservation and/or public forest or timberland, suffice to warrant a review. For if such allegations are true, then the land registration or cadastral court had no jurisdiction to adjudicate or register them.[26] The courts then should not summarily deny petitions for review filed by the Government where it is based on the allegation that the land adjudged is not thus alienable or disposable.[27]

I. *Purchaser in good faith, as element of petition*

The last essential requisite of a petition for review is that the property involved has not yet passed to an innocent purchaser for value. Such a purchaser is one who buys the property of another without notice that some other person has right to, or interest in, such property and pays a full and fair price for the same, at the time of such purchase and before he has notice of the claim or interest of some other persons in the property.[28] (For a detailed discussion of a purchaser in good faith, see Chapter XIV on Subsequent Registration.)

5. Action for reconveyance

The basic rule is that after the lapse of one (1) year from entry, a decree of registration is no longer open to review or attack, even though the issuance thereof may have been attended by fraud and that the Torrens title may be inherently defective. The law nevertheless safeguards the rightful party's or the aggrieved party's interest in the titled land from fraud and improper technicalities by

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[26]Republic vs. Court of Appeals, 89 SCRA 648 (1979).

[27]Director of Lands vs. Abanzado, 65 SCRA 5 (1975).

[28]Fule vs. De Legare, 7 SCRA 351 (1963); GSIS vs. Court of Appeals, 240 SCRA 737, 744 (1995).

allowing such party to bring an action for reconveyance to him of whatever he has been deprived of as long as the property has not been transferred or conveyed to an innocent purchaser for value.[29] In the latter instance, the aggrieved party's only remedy is to file an action for damages against the person who perpetrated the fraud within four (4) years after discovery of the deception (*Delos Reyes vs. CA*, 285 SCRA 81, 87 [1998]). An action for reconveyance of a property wrongfully or erroneously registered under the Torrens System "does not aim or purport to reopen the registration proceedings and set aside the decree of registration but only to show that the person who secured the registration of the questioned property is not the real owner thereof."[30] The action, while respecting the decree as incontrovertible, seeks to transfer or reconvey the land from the registered owner to the rightful owner.[31]

A. *Statutory basis of the action*

Section 96 of P.D. No. 1529 states "that nothing in this decree shall be construed to deprive the plaintiff of any right of action which he may have against any person for such loss or damage or deprivation (of land or of any estate or interest therein) without joining the National Treasurer as party-defendant." This is a restatement of Section 102 of Act 496. Construing this Section 102 of the Act, the Supreme Court held that this provision constitutes sufficient authority, aside from the dictates of equity, under which the remedy of reconveyance may be invoked. x x x This remedy cannot always be availed of by an aggrieved claimant, as when the rights of innocent purchasers for value will be affected."[32]

B. *When to file action; form of pleading*

An aggrieved party is not required to wait for the issuance of a decree of registration before he can bring action for reconveyance. The remedy for review, which may be filed within one (1) year from such issuance of the decree, is not the exclusive remedy of, and does not bar any other remedy to, which the aggrieved party may be enti-

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[29]Municipality of Victorias vs. Court of Appeals, 149 SCRA 32 (1987); Gitgano vs. Borromeo, 133 SCRA 437 (1984).

[30]Rodriguez vs. Toreno, 79 SCRA 356 (1977).

[31]Esconde vs. Barlongay, 152 SCRA 603 (1987).

[32]Frias vs. Esquivel, *supra*, p. 493.

tled. The action for reconveyance may be filed then even before the issuance of the decree.[33] A mere applicant for free patent is not, however, an aggrieved party and, perforce, has no legal personality to institute such suit. (*Caro vs. Sucaldito*, 458 SCRA 595, 605 [2005]).

The action for reconveyance is an ordinary civil suit, brought through an ordinary complaint. The action may also be in the nature of a counterclaim.[34]

C. *Grounds for reconveyance; when it prescribes*

An action for reconveyance may be based on fraud, implied or constructive trust, express trust, and even on a void contract.

(1) *Fraud*

When the action for reconveyance is based on fraud, it must be filed within four (4) years from discovery of the fraud. Such discovery is deemed to have taken place from the issuance of the original certificate of title.[35]

However, where the said action for reconveyance is on the ground that the certificate of title was obtained by means of a fictitious deed of sale, then the action is virtually one for the declaration of its nulllity, which action does not prescribe. (*Lacsamana vs. CA*, 288 SCRA 287, 292 [1998]).

(2) *Implied or constructive trust*

If the land is decreed or titled in the name of another through mistake or fraud, such person is by force of law considered a trustee of an implied trust for the benefit of the persons from whom the property comes.[36] Implied trust is also commonly denominated as constructive trust.[37] There is neither promise nor fiduciary relations, the trustee does not recognize any trust and has no interest to hold

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[33]Cabrera vs. CA, 163 SCRA 214, 218 (1988); Municipality of Hagonoy vs. Secretary of Agriculture and Natural Resources, 73 SCRA 507 (1976); Agreda vs. Agreda, 39 SCRA 191 (1971).

[34]Amerol vs. Bagumbaran, 154 SCRA 396 (1987); Coronel vs. Intermediate Appellate Court, 155 SCRA 270 (1987).

[35]Esconde vs. Barlongay, *supra*, p. 612, citing Balbin vs. Medalla, 108 SCRA 666 (1981) and Alaran vs. Bidin, 120 SCRA 390 (1983).

[36]Article 1456, Civil Code; Mun. of Victorias vs. CA, *supra*, p. 45; Gonzales vs. Jimenez, Sr., 13 SCRA 80, 82 (1965).

[37]Bueno vs. Reyes, 27 SCRA 1179, 1181 (1969).

the property for the beneficiary. Implied or constructive trust is not a trust in the technical sense and is prescriptible.[38]

a) Prescription and laches as defenses

The action for reconveyance can be barred by prescription.

It is now settled that an action for reconveyance based on an implied or constructive trust prescribes in ten (10) years. This prescriptive period is counted from the date adverse title to the property is asserted by the possessor thereof. And it is from the date of the issuance of the original certificate of title or transfer certificate of title that the effective assertion of adverse title for purposes of the statute of limitations is counted. For it is the rule that registration of an instrument in the Office of the Register of Deeds constitutes constructive notice to the whole world, and, therefore the discovery of the fraud is deemed to have taken place at the time of registration.[39]

But it has been held that this rule applies only when the plaintiff or the person enforcing the trust is not in possession of the property, since if said party is in actual possession of the property, that right to seek reconveyance, which in effect seeks to quiet title to property, does not prescribe. (*Vda. de Cabrera vs. CA*, 78 SCAD 705, 267 SCRA 339, 353 [1997]).

Laches, aside from prescription, may also bar an action to enforce an implied trust.[40] Laches is a doctrine in equity and may not be invoked to resist the enforcement of a legal right. It cannot also be used to defeat justice as to perpetuate fraud and injustice. (*Alcantara vs. Daus*, 404 SCRA 74, 82-83 [2003]).

The existence of a mortgage over the property does not, however, bar reconveyance, if proper, otherwise, "the judgment for reconveyance could be negated at the will of the holder of the title. By the simple expedient of constituting a mortgage or other encumbrance on the property, the remedy of reconveyance would become illusory."[41]

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[38]Mindanao Development Authority vs. CA, 113 SCRA 429, 440 (1982).

[39]Villagonzalo vs. IAC, 167 SCRA 535, 539 (1988); Amerol vs. Bagumbayan, *supra*, p. 407; Amansec vs. Melendez, 98 SCRA 639 (1980); Duque vs. Domingo, 80 SCRA 654, 664 (1977); Jaramil vs. CA, 78 SCRA 420 (1972).

[40]Villagonzalo vs. IAC, *supra,* Vda. De Cabrera vs. CA, *supra.*

[41]Amerol vs. Bagumbayan, *supra*, p. 408.

b) When reconveyance does not prescribe

1. An action for reconveyance based on implied trust, if brought by the registered owners or their children, is not barred by prescription.[42]

2. A co-heir who, through fraud, succeeds in obtaining a certificate of title in his name to the prejudice of his co-heirs, is deemed to hold the land in trust for the latter. The excluded heir's action is imprescriptible.[43]

3. Where the plaintiff in an action for reconveyance, which is in effect an action to quiet title, is in possession of the land in question, prescription cannot be invoked.[44] This rule only applies where the actual possession is in the concept of an owner, not where the possessor is a mere lessee of the property (*Tan vs. CA*, 295 SCRA 247, 259, 260 [1998]).

4. A claim of prescription of action would be unavailing in "action for reconveyance predicated on the fact that the conveyance complained of was null and void *ab-initio*." Neither may laches be invoked, since "the positive mandate of Article 1410 of the New Civil Code conferring imprescribility in action for declaration of the inexistence of a contract should preempt and prevail over all abstact arguments based only on equity." (*Heirs of Romana Ingjugtiro, et al., vs. Spouses, Leon V. Casal and Lilia C. Casal, et al.*, G.R. No. 134718, Aug. 20, 2001).

(3) *Express Trust*

Express trust is created by the will of the parties, no particular words being required for its creation, so long as a trust is clearly intended. It is created by the direct and positive acts of the parties, by some writing or deed or will or words evidencing, such intention to create a trust. An action for reconveyance based on an express trust is not barred by prescription.[45] However, if the property held in trust had been conveyed or transferred to third parties for value and who claimed adverse title for themselves, an action for reconveyance

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[42]Alzona vs. Capunitan, 4 SCRA 450 (1962); Vda. de Cabrera vs. CA, *supra*.

[43]Vda. de Jacinto vs. Vda. de Jacinto, 5 SCRA 371, 376-377 (1962); Juan vs. Zuniga, 4 SCRA 1221 (1962).

[44]Almarza vs. Arquelles, 156 SCRA 718, 732 (1987); Caragay-Layno vs. CA, 133 SCRA 718 (1984); Coronel vs. IAC, *supra*, p. 279.

[45]Tamayo vs. Callejo, 46 SCRA 27 (1972).

on the theory of trust cannot prosper. The action "might prosper, if at all, as against the trustees and provided they still hold the properties, but not against third persons who do not occupy the same fiduciary position."[46]

(4) *Void contract*

An action for reconveyance is imprescriptible when its basis is a void contract of sale, as when there was no consent on the part of the alleged vendor. But even this action cannot prosper when the property has passed to an innocent third-party for value. It is thus important that the complaint should allege that the defendant was a purchaser in bad faith or has notice of the defect in the title of his vendor. Absent such an allegation, the defendant is presumed to be an innocent purchaser for value and in good faith.[47]

6. Action for damages

After one year from date of the decree and if reconveyance is not possible because the property has passed to an innocent purchaser for value and in good faith, the aggrieved party may bring an ordinary action for damages only against the applicant or persons responsible for the fraud or were instrumental in depriving him of the property. Such action prescribes in ten (10) years from the issuance of the Torrens title over the property.[48]

7. Action for compensation from Assurance Fund

The Assurance Fund is a special fund created by P.D. No. 1529 (Sections 93 and 94) under the custody of the National Treasurer, to compensate, when proper, a person who sustains loss or damage, or is deprived of land or any estate or interest therein, by reason of the operation of the Torrens System. The action for recovery of damages from the Assurance Fund may be availed of in case of insolvency of the party who procured the wrongful registration.[49] This action is

[46]Joaquin vs. Cojuangco, 20 SCRA 769, 772 (1967).

[47]Castillo vs. Heirs of Vicente Madrigal, 198 SCRA 556, 561, 563 (1991).

[48]Sec. 32, P.D. No. 1529; Pino vs. Court of Appeals, 198 SCRA 434, 446 (1991); Ybanez vs. IAC, 194 SCRA 743, 750 (1991), citing Gonzales vs. IAC, 157 SCRA 587 (1988); Ching vs. CA, 181 SCRA 9, 17 (1990); Benin vs. Tuason, 57 SCRA 531, 572 (1974), citing Caladiao, *et al.* vs. Vda. de Blas, 10 SCRA 691(1964).

[49]People vs. Cainglet, 16 SCRA 749, 753 (1966).

civil in character and may be in the form of the ordinary complaint for damages.

A. *Who may file the action; requisite conditions*

The prevailing law on who may be the proper party to file action for such compensation is Section 95 of P.D. No. 1529 (formerly Sec. 101, Act. No. 496) which reads:

> "SEC. 95. *Action for compensation from funds.* — A person who, without negligence on his part, sustains loss or damage, or is deprived of land or any estate or interest therein in consequence of the bringing of the land under the operation of the Torrens System or arising after original registration of land, through fraud or in consequence of any error, omission, mistake or misdescription in any certificate of title or in any entry or memorandum in the registration book, and who by the provisions of this Decree is barred or otherwise precluded under the provision of any law from bringing an action for the recovery of such land or the estate or interest therein, may bring an action in any court of competent jurisdiction for the recovery of damage to be paid out of the Assurance Fund."

The action for compensation may lie then only upon concurrence of the following:

1. The aggrieved party, or the suitor, sustained loss or damage, or is deprived of land or any estate or interest therein;

2. Such loss, damage or deprivation (a) was occasioned by the bringing of the land under the operation of the Torrens System; or (b) arose after original registration of land;

3. The loss, damage or deprivation was due to (a) fraud; or (b) any error, omission, mistake or misdescription in any certificate of title or in any entry or memorandum in the registration book;

4. There was no negligence on his part;

5. He is barred or precluded under the provision of P.D. No. 1529 or under the provision of any law from bringing an action for the recovery of such land or the estate or interest therein; and

6. The action has not prescribed.

The case of *Treasurer of the Philippines vs. Court of Appeals,*[50] illustrates a situation where there is no deprivation of land, estate or interest therein. Thus, where a person, posing as the registered owner of land, transferred the land to another who acquired a transfer certificate of title which was subsequently declared null and void *ab initio*, on the ground that the transfer was made by an impostor, the transferee cannot thereafter claim damages against the Assurance Fund. The supposed vendor had no title or interest to transfer. The new certificate of title having been so voided, "it had no legal effect whatsoever and at any time." The transferee was "not for a single moment the owner of the property in question and so cannot claim to have been unlawfully deprived thereof when their (his) certificate of title was found and declared to be a total nullity." Relatedly, the court likewise held, quoting from *La Urbana vs. Bernardo*,[51] that it is condition *sine qua non* that the person who brings an action for damages against the Assurance Fund be the registered owner and as holders of transfer certificates of title, that they be innocent purchasers in good faith and for value."

The fraud which caused the wrongful deprivation of land, by the registration thereof in the name of another person, may be actual or constructive fraud.[52] But the decree (Sec. 101) disallows compensation from the Assurance Fund for any loss, damage or deprivation caused or occasioned by a breach of trust, whether express, implied or constructive or by any mistake in the resurvey or subdivision of registered land resulting in the expansion of area in the certificate of title."

The case of *Torres vs. Court of Appeals,*[53] illustrates a situation where the aggrieved parties were negligent. Here the Supreme Court noted that while the trial court recognized the principle that a person dealing with registered lands need not go beyond the certificate of title, it nevertheless pointed out that there are circumstances which should have put said parties on guard and prompted them to investigate the property being mortgaged to them. The property was very valuable, it has great income potential — which should led any pro-

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[50]153 SCRA 359, 365 (1987).

[51]62 Phil. 790 (1936).

[52]Mabuhay Development Company vs. Ronquillo, 38 SCRA 439, 460; also Sesuya vs. Lacopia, 64 Phil. 534, 536 (1930).

[53]186 SCRA 672, 679 (1990).

spective buyer or mortgagee to inquire into these and related facts and circumstances.

B. *Prescriptive period to file action*

Section 102 of P.D. No. 1529 (formerly Sec. 107, At 496) provides for the limitation of action and the exceptions thereto. Such action "shall be instituted within a period of six years from the time the right to bring such action first occurred." In *Sesuya vs. Lacopia, supra*, the Supreme Court in construing a similar provision in Act No. 496, ruled that "the date of the deprivation of the land is the date of the issue of the certificate of title, and the action must be brought within the period of limitation from that time." It could be similarly said that if the loss or damage, or deprivation of any estate or interest in the land is the result of any error, omission, mistake or misdescription in any entry or memorandum in the registration book, the period of limitation starts from the date of such entry or memorandum.

C. *Against whom action filed*

If the loss, damage or deprivation of land or any estate or interest therein is due wholly through fraud, negligence, omission, mistake or misfeasance of the court personnel, Register of Deeds, his deputy or other employees of the Registry in the performance of their respective duties, the action shall be against both the Register of Deeds of the province or city where the land is situated and the National Treasurer. If such loss, damage or deprivation due to the same causes is attributable to person or persons other than said court personnel and Registry officials or personnel, the action shall be against the Register of Deeds concerned, the National Treasurer and the other person or persons.[54]

D. *Satisfaction of judgment*

The award for compensation in this action cannot be more than the fair market value of the land at the time the plaintiff or aggrieved party suffered the loss, damage or deprivation thereof. If the judgment is against the National Treasurer, the Register of Deeds and any of the other defendants, the execution shall first issue against such defendants other than the National Treasurer and Register of

[54]Sec. 96, P.D. No. 1529.

Deeds. If the execution is returned unsatisfied, wholly or partly, and the officer returning the same certifies that the amount cannot be collected from the land or personal property of such other defendant, the remaining amount unpaid is to be paid by the National Treasurer out of the Assurance Fund. In the latter case, the Government of the Republic of the Philippines is subrogated to the rights of the plaintiff against any other parties or entities.[55]

8. Cancellation suits

A. *Suits involving double title*

Cancellation suits usually involve a situation where two certificates of title are issued to different persons covering the same parcel of land in whole or in part. When one title is held to be superior over the other, the latter title should be declared null and void and ordered cancelled, even if the prevailing party did not pray for such relief.[56]

In this situation, the general rule is that the certificate "earlier in date must prevail as between the original parties, and in case of successive registration where more than one certificate is issued over the land, the person holding under the prior certificate is entitled to the land as against the person who relies on the second certificate."[57] The decree issued in a land registration proceeding does not have the effect of annuling the title that had been previously issued in accordance with P.D. No. 1529 or the Land Registration Act (Act 496), although the earlier title may have been issued pursuant to a public land patent. The person obtaining the subsequent or later title has no true title to the land covered thereby and cannot transmit the same to another. Thus, from such later title, the holder be he an innocent purchaser or transferee for value, may not validly hold the same as against the prior title.[58]

The principle of according superiority to a certificate of title earlier in date cannot however apply if it is established that the same

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[55]Sections 97 and 99, P.D. No. 1529.

[56]Pajomayo vs. Manipon, 39 SCRA 676, 680 (1971).

[57]Iglesia ni Cristo vs. Hon. Judge CFI of Nueva Ecija, 123 SCRA 516, 525 (1983); Director of Lands vs. CA, 102 SCRA 370 (1981); Garcia vs. CA, 95 SCRA 380 (1980); De Villa vs. Trinidad, 22 SCRA 1667 (1968); Alzate vs. PNB, 20 SCRA 422(1967).

[58]Pajomayo vs. Manipo, *supra*, pp. 681-682; Register of Deeds vs. Phil. National Bank, 13 SCRA 46 (1965).

was procured through fraud or is otherwise jurisdictionally flawed. Moreover, the indefeasible character of the earlier title may be waived by the title holder in favor of another who holds a subsequent certificate of title.[59]

B. *Suits involving non-registrable property; cancellation for other causes*

The cancellation of a certificate of title which includes public forest or where the land is within the public forest may be pursued through an ordinary action. This action cannot be barred by the prior judgment of the land registration court since said court has no jurisdiction over the subject matter.[60] It has also been held that when, during the pendency of an appeal in the Court of Appeals from a judgment of the lower court, on the ground that the land adjudged is a timberland, the applicant somehow obtained a decree of registration and the corresponding certificate of title, the aggrieved party may institute a cancellation suit since the issuance of such decree and certificate rendered the appeal impractical, necessitating a remedy other than said appeal.[61] Other non-registerable properties, when titled, may be challenged also by a cancellation or reversion suit.[62]

A certificate of title issued pursuant to a judgment that is not final is a nullity, as it is violative of Sections 30 and 39 of P.D. No. 1529 which require that a decree shall be issued only after the decision adjudicating the title becomes final and executory.[63] A certificate of title is also a nullity, if it was issued to a person who did not claim and applied for the registration of the land covered.[64] In these situations, a suit for the cancellation of the flawed and invalid certificate may be brought. Nonetheless, the mere fact that an original certificate of title has been voided by the court insofar as certain derivative titles are concerned does not mean that such declaration of nullity affects also other titles, also derived from the same original certificate of title, but issued in the names of other persons who have neither been heard or notified. The due process principle

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[59]Rep. vs. CA and Antonina Guido, *et al.*, G.R. No. 84966, prom-Nov. 21, 1991.

[60]Republic vs. Court of Appeals, 99 SCRA 743, 748-749 (1980).

[61]Heirs of Marinao Lacson vs. Del Rosario, 151 SCRA 714 (1987).

[62]See discussions on Cancellation suit or reversion suits involving non-registerable properties in next chapter on Public Land Patents.

[63]Director of Lands vs. Reyes, 68 SCRA 177 (1975).

[64]Santos vs. Court of Appeals, 189 SCRA 550, 556 (1990).

demands that such other persons must have the opportunity to be heard and defend their titles.[65]

8.1. *Annulment of judgment*

An aggrieved party may also seek annulment of judgment in the ordinary land registration or cadastral proceedings pursuant to Section 9(2) of B.P. Blg. 129. But this remedy is available only where the ordinary remedies of new trial, petition for relief or other appropriate remedies are no longer available through no fault of the petitioner (*Linzag vs. Court of Appeals*, 595 SCAD 204, 291 SCRA 304, 321 [1998]).

8.2. *Effect of declaration of nullity of the title*

The subsequent declaration of a title as null and void is not a ground for nullifying the contractual right of a purchaser, mortgagee or transferee in good faith. (*Premiere Development Bank vs. Court of Appeals*, G.R. No. 128122, March 18, 2006).

9. Quieting of title

A. *When proper; nature of the action*

According to Art. 476 of the Civil Code —

> "Whenever there is a cloud on title to real property or any interest therein, by reason of any instrument, record, claim, encumbrance or proceeding which is apparently valid or effective but is in truth and in fact invalid, ineffective, voidable, or unenforceable, and may be prejudicial to said title, an action may be brought to remove such cloud or to quiet the title.
>
> "An action may also be brought to prevent a cloud being cast upon title to real property or any interest therein."

A complaint for quieting of title is an ordinary civil remedy.[66]

It has been held that "suits to quiet title are not technically suits *in rem*, nor are they, strictly speaking, *in personam*, but being against the person in respect of the *res*, these proceedings are char-

[65]Bolanos vs. J.M. Tuason and Co., Inc., 37 SCRA 223 (1971).
[66]Sy, Sr. vs. IAC, 162 SCRA 130, 144-145 (1988).

acterized as *quasi in rem* x x x. The judgment in such proceedings is conclusive only between the parties.[67]

It has also been held that an action for quieting of title "is equivalent to an action for reconveyance of title wrongfully or erroneously registered in another's name. The successful outline of such action would in most cases necessarily entail the cancellation of existing title wrongly issued to another, which in turn requires the action of LRA (Land Regisration Authority) and/or the proper Register of Deeds. (*Premiere Development Bank vs. Court of Appeals*, 453 SCRA 630, 657 [2005]).

A claimant under forequoted Art. 476 of the Civil Code must show that there is an instrument, record, claim, encumbrance or proceeding which constitutes or cast a cloud, doubt, question or shadow upon the owner's title to or interest in real property. The ground or reason for filing a complaint for quieting of title must therefore be "an instrument, record, claim, encumbrance or proceeding." And, under the maxim *expresio unius est exclusio alterius*, these grounds are exclusive so that other reasons outside of the purview of these reasons may not be considered valid for the same action. Thus, alleged acts of physical intrusion into the claimant's property could not be a ground for action for quieting of title (*Titong vs. CA [4th Div.]*, 287 SCRA 102, 110 [1998]).

B. *Form of cloud on title*

A certificate of title over land that is also covered by another certificate in the name of another person may also be characterized as a cloud on the title of the second holder and vice versa. An action by one party asserting his own title to the property covered and asking that the other title be declared null and void is deemed to be in the nature of an action to remove cloud from title or quieting of title. And such action may be pleaded even in a counterclaim as in a third-party complaint.[68]

A claim on property based on an ineffective Spanish title, or tax declarations and realty tax payments, or on documents purporting to indicate that the claim was inherited by him, may likewise constitute cloud on title which may spark an action to quiet the claimed property.

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[67]Realty Sales Enterprises, Inc. vs. IAC, 154 SCRA 328, 348 (1987).
[68]Realty Sales Enterprises, Inc. vs. IAC, *supra*, p. 348.

A mortgage lien over a parcel of land covered by the real estate mortgage likewise constitutes a cloud on the legal title and is a proper subject for quieting of title (*DBP vs. Court of Appeals*, 445 SCRA 500, 515[2004]).

C. *Who may file action to quiet title*

A registered owner of the property is the proper party to bring suit to quiet his title. But the person who avails of this remedy may also be other than a registered owner. For "title," as used in Article 477 of the Civil Code, "does not necessarily mean the original or transfer certificate of title; it can connote acquisitive prescription by possession in the concept of an owner thereof," hence, even a person who has an equitable right or interest in the property may likewise file such action.[69] Suitors need not be in possession of the property involved.[70]

D. *When action imprescriptible*

It is an established rule that an action to quiet title to property in the possession of plaintiff is imprescriptible. The reason is explained by the Supreme Court, thus:

> "There is settled jurisprudence that one who is in actual possession of a piece of land claiming to be owner thereof may wait until his possession is disturbed or his title is attacked before taking step to vindicate his right, the reason for the rule being, that his undisturbed possession gives him a *continuing right to seek the aid of a court in equity* to ascertain and determine the nature of the adverse claim of a third party (who may even have secured a Torrens title to the property) and its effect on his."[71]

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[69]Mamadsul vs. Moson, 190 SCRA 82, 89 (1990); also Chacon Enterprises vs. CA, 124 SCRA 784 (1983).

[70]Tan vs. Valdehueza, 66 SCRA 61, 65 (1975); Art. 477, Civil Code.

[71]Faja vs. Court of Appeals, 75 SCRA 441, 446 (1977), citing Sapto, *et al.* vs. Fabiana, 103 Phil. 683; Heirs of Segundo Uberas vs. CFI of Negros Occ., Br. II, 86 SCRA 144 (1978); Mamadsul vs. Moson, *supra*, p. 88.

10. Criminal action

In *People vs. Cainglet, supra*, pp. 753, 754, the Supreme Court held:

> "The State may criminally prosecute for perjury the party who obtains registration through fraud, such as by stating false assertions in the sworn answer required of applicants in cadastral proceedings."
>
> x x x
>
> "Section 116 (of the Land Registration Act) applies to all and does not distinguish between those who make false statements and successfully procure registration by such statements, and those whose statements were not given credence by the land registration court."

Above cited Section 116 of the Land Registration Act (Act 496) has not been repealed by, or inconsistent with, P.D. No. 1529. It is still an effective law.

11. Reversion suits, see discussion under Chapter XII (Land Patents).

Chapter XII

LAND PATENTS

1. Public land patents; requisite registration

The registration of public land patents is required by Section 103 of Presidential Decree No. 1529 which reads:

> "SEC. 103. *Certificate of title pursuant to patents.* — Whenever public land is by the Government alienated, granted or conveyed to any person, the same shall be brought forthwith under the operation of this Decree. It shall be the duty of the official issuing the instrument of alienation, grant, patent or conveyance in behalf of the Government to cause such instrument to be filed with the Register of Deeds of the province or city where the land lies, and to be there registered like other deeds and conveyance, whereupon a certificate of title shall be entered as in other cases of registered land, and an owner's duplicate issued to the grantee. The deed, grant, patent or instrument of conveyance from the Government to the grantee shall not take effect as a conveyance or bind the land, but shall operate only as a contract between the Government and the grantee and as evidence of authority to the Register of Deeds to make registration. It is the act of registration that shall be the operative act to affect and convey the land, and in all cases under this Decree, registration shall be made in the Office of the Register of Deeds of the province or city where the land lies. The fees for registration shall be paid by the grantee. After due registration and issuance of the certificate of title, such land shall be deemed to be registered land to all intents and purposes under this Decree."

This provision is a restatement of Section 122 of Act No. 496 (Land Registration Act). Correspondingly, Section 107 of Com. Act No. 141 (Public Land Act) provides that the actual conveyance of land covered by all public land patents or certificates of land grant

shall be effected only as provided in the said Section 122 of Act No. 496, that is, after the registration thereof in the Office of the Register of Deeds concerned.

A. ***Kinds of public land patents; to whom granted***

The land patents issued by the Government under the Public Land Act are the homestead patent, free patent, sales patent, and what is denominated as special patents.

Under the present Constitution (1987 Constitution), citizens of the Philippines may acquire not more than twelve hectares of agricultural land of the public domain by purchase, homestead, or grant (Article XII, Sec. 3, Constitution).

(1) *Homestead patent*

A homestead patent may be issued to any citizen of this country over the age of 18 years or the head of a family, "who does not own more than twenty-four hectares of land in the Philippines or has not had the benefit of any gratuitous allotment of more than twenty-four hectares of land since the occupation of the Philippines by the United States" (Sec. 12, Public Land Act), and who has complied with the residence and cultivation requirements of the law. The applicant is thus required to have resided continuously for at least one year in the municipality where the land is situated, and must have cultivated at least one-fifth of the land applied for (Sections 13 and 14, *supra*). In view of the Constitutional limitation on the number of hectares to be granted, the 24 hectares stated in the aforequoted Section 12 should be understood to refer to only 12 hectares.

(2) *Free Patent*

Section 44 of the Public Land Act, as amended by Republic Act No. 6940 which was approved on March 28, 1990, authorizes:

> "Any natural-born citizen of the Philippines who is not the owner of more than twelve (12) hectares and who, for at least thirty (30) years prior to the effectivity of this amendatory Act, has continuously occupied and cultivated, either by himself or through his predecessors-in-interest a tract or tracts of agricultural public lands subject to disposition, who shall have paid the real taxes thereon while the same has not been occupied by any person shall be entitled x x x to have a free patent issued to him for such tract or tracts of such land not to exceed twelve (12) hectares."

Under the said amendatory Act, the period for the filing of applications for free patents ends on December 31, 2000.

The filing and processing of the application and the issuance of the free patent constitute the administrative mode of confirming an imperfect title, the judicial mode being under Section 48(b) of the Public Land Act.[1]

(3) *Sales patent*

(a) Only citizens of the Philippines of lawful age, and such citizens not of lawful age who is a head of a family, may purchase *public agricultural land* of not more than 12 hectares. Private corporations or associations are not qualified to purchase such land (Section 22, Public Land Act, in relation to Art. XII, Section 3, Constitution). The land applied for is sold at public auction, and the highest bidder to whom the land shall be awarded, whether he be the applicant or any other Filipino citizen, is thereafter required to have at least 1/5 of the land broken and cultivated within 5 years from the date of the award. A sales patent may be issued to him only after full payment of the purchase price and the awardee shall have established his actual occupancy, cultivation, and improvement of at least 1/5 of the land until the date of such final payment. (Sections 24 to 28, Public Land Act).

(b) Agricultural lands, which are suitable for *residential, commercial or industrial purposes*, not exceeding more than 12 hectares, may also be sold to citizens of the Philippines who meet the qualification to purchase public lands for agricultural purposes. The land is sold at public auction and awarded to the highest bidder. A sales patent may be issued to him after full payment of the purchase price and after he shall have completed the construction of permanent improvements appropriate for the purpose for which the land is purchased within 18 months from date of the award. (Sections 59, 61, 63, 65 and 67, *supra*).

(c) *Republic Act No. 730*, which took effect on June 18, 1952, permits the sale without public auction of public lands for *residential purposes* to "any Filipino citizen of legal age who is not the owner of a home lot in the municipality in which he

[1]Kayaban vs. Republic, 52 SCRA 357, 361 (1973).

resides and who has in good faith established his residence on a parcel of land of the public domain of the Republic of the Philippines which is not needed for the public service," of not more than one thousand square meters at a price to be fixed by the Director of Lands with the approval of the Secretary of Agriculture and Natural Resources (now Secretary of Environment and Natural Resources). The law further makes it "an essential condition of this sale that the occupant has constructed his house on the land and actually resided therein (Sec. 1 thereof)."

This Act which authorizes private sale without public bidding, is an exception to the general rule that sale should be by bidding. But this Act applies only if the area applied for does not exceed one thousand (1,000) square meters and the purchaser has the qualifications specified therein.[2] Moreover, as amended by P.D. No. 2004 lands acquired under this law "shall not be subject to any restrictions against encumbrance or alienation before and after the issuance of the patents thereon."

(4) *Special patents*

(a) Special patents may also be granted to Non-Christian Filipinos under Section 84 of the Public Land Act. Under this provision, "as soon as the Secretary of Interior (now Secretary of Local Government) shall certify that the majority of the non-Christian inhabitants of any given reservation have advanced sufficiently in civilization, then the President may order that the lands of the public domain within such reservation be granted under the general provisions of this Act to the said inhabitants x x x." Similarly, special patents may be issued covering lands that may be sold under the provisions of Sections 69 and 70 of the same Act, which authorize concession of lands of the public domain for educational, charitable and similar purposes.

(b) Republic Act No. 926, effective as of June 20, 1953, authorizes the President of the Philippines to convey public land and other public property in payment of landed estates acquired by the Government. Section 1 thereof provides:

[2]Agura vs. Serfino, Sr., 204 SCRA 569, 583 (1991).

> "Section 1. In payment of compensation for landed estates acquired by the Government, whether thru voluntary agreement or thru expropriation proceedings, the President of the Philippines may convey in behalf of the Republic, with the written consent of the owner of land, in total or partial payment of such compensation, such public land as is disposable by sale or lease to private individuals in accordance with law and such other similarly disposable property pertaining to the Republic of the Philippines. In effecting such exchange involving public agricultural land, the assessed value shall not be taken into consideration."

Public land conveyed under the Act is limited to not more than 12 hectares, and a special patent may be issued by the Government in favor of the owner of the landed estate acquired.

Original certificates of title issued pursuant to Special Patents serve as concrete and conclusive evidence of an indefeasible title to the properties covered thereof (*Cagayan de Oro City Landless Residents Asso., Inc. vs. CA*, 254 SCRA 220, 230 [1996]).

B. ***Registration of patent mandatory; its effects***

Under Section 107 of the Public Land Act (Com. Act 141), all land patents must be registered since the conveyance of the land covered thereby is effective only upon such registration. This registration is mandatory to affect third parties (Sec. 51, P.D. No. 1529). Absent such registration, title to the land covered thereby, whether it be by homestead, free patent or sales, may not be considered as perfected and, perforce, not indefeasible. A patent becomes indefeasible as a Torrens Title only when the said patent is registered pursuant to P.D. No. 1529.[3] And particularly with land covered by a sales patent, its public character is not divested by the issuance of such patent until the registration thereof in the Office of the Register of Deeds.[4]

The original certificate of title issued pursuant to a public land patent partakes of the nature of a certificate of title issued in a judicial proceeding, as long as the land covered is really part of the pub-

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[3]Ortegas vs. Hidalgo, 198 SCRA 635, 641 (1991); Santana vs. Marinas, 94 SCRA 853, 859 (1979); Pajomayo, *et al.* vs. Manipon, *et al.*, 39 SCRA 676 (1971); Republic vs. Abacite, 1 SCRA 1076 (1961).

[4]Franco vs. Executive Secretary, 145 SCRA 87 (1980).

lic domain. The certificate of title becomes indefeasible and incontrovertible upon the expiration of one year from the date of the issuance of the order for the issuance of the patent, and thus prescription cannot operate against the registered owner.[5] Lands covered by such title may no longer be the subject matter of a cadastral proceedings, nor can it be decreed to another person.[6]

2. Restrictions on alienation/encumbrance of lands titled pursuant to patents; right to repurchase

Section 118 of the Public Land Act prohibits the alienation or encumbrance of lands acquired under free patent or homestead patent, except in favor of the Government or any of its branches, units, or institution, or legally constituted banking corporation, from the date of the approval of the application and for a term of five years from and after the date of issuance of the patent or grant. This provision also proscribes the alienation, transfer or conveyance of any homestead after five years and before twenty-five years after issuance of title without the approval of the Secretary of Environment and National Resources (formerly Secretary of Agriculture).

This restriction applies to disposition of rights before or after issuance of patent.[7] And it has been held that for the purpose of computing the five-year prohibition against alienation of homestead (and for that matter also free patent grants), it is to be reiterated and emphasized that the patent is deemed issued upon promulgation of the order for issuance thereof by the Director of Lands.[8]

The same Section 118 further prohibits the taking of said properties for the satisfaction of debts contracted before the expiration of said period.

On the other hand, Section 119 of the Public Land Act gives the owner-vendor of lands acquired under free patent or homestead patent, his widow, or legal heirs the right to repurchase the same, within five years from the date of conveyance.

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[5]Heirs of Gregorio Tengco vs. Heirs of Jose Aliwalas, 168 SCRA 198,203, 204 (1988), citing Republic vs. Heirs of Carle, 105 Phil. 1227 (1959) and Lopez vs. Padilla, 45 SCRA 44 (1972); Iglesia ni Cristo vs. Hon. Judge, CFI of Nueva Ecija, Br. I, 123 SCRA 516 (1983).

[6]Gomez vs. CA, 168 SCRA 503, 511 (1988); Dela Cruz vs. Reano, 33 SCRA 585 (1970); Duran vs. Olivia, 3 SCRA 154 (1961).

[7]Gonzaga vs. CA, 51 SCRA 381 (1973).

[8]Decolongon vs. CA, 122 SCRA 843, 849 (1983), citing Enervida vs. Dela Torre, 55 SCRA 339 (1974).

A. *Reason for prohibition and the right to repurchase; when such right is lost*

The reason for the prohibition, as well as for the right to repurchase, is based on the fundamental policy of the State to preserve and keep in the family of the public land grantee that portion of the public domain which the State has gratuitously given to him.[9] The prohibition is mandatory, violation of which renders the conveyance null and void *ab initio*, thus cannot acquire validity through the passage of time. This prohibition is embracing and covers and extends even to sales to the homesteader's own son or daughter or descendants.[10] And this restriction may not be circumvented by stipulating in the deed of sale that the actual conveyance of the land or portion thereof would be made only after the lapse of the 5-year period. The deed is illegal and void *ab initio*.[11]

However, when the land sought to be redeemed is no longer agricultural but residential and/or commercial, and the intention to repurchase is to exploit it for business or greater profit, then that right of repurchase has lost its purpose and cannot be allowed.[12]

B. *When to avail of the right to repurchase or redeem; manner of exercising such right*

The right to repurchase under Section 119 of the Public Land Act attaches to every alienation or encumbrance, and that right can be exercised even in the absence of any stipulation in the deed of sale.[13] Such right cannot be waived by the party entitled thereto and applies with equal force to both voluntary and involuntary conveyances.[13a] The 5-year period for its exercise starts from the date of the execution of the deed of sale, even if full payment of the purchase price is not made on said date, unless there is a stipulation in the deed that ownership shall not vest in the vendee until full payment of the price. And this period cannot even be restricted by an order of the Court that the right to repurchase should be exercised

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[9]Phil. National Bank vs. De los Reyes, 179 SCRA 619, 628-629 (1989).

[10]Gayappanao vs. Intermediate Appellate Court, 199 SCRA 309, 313-314 (1991), citing Arsenal vs. IAC, 143 SCRA 49 (1986).

[11]Homena vs. Casa, 157 SCRA 232, 235 (1988).

[12]Santana vs. Marinas, 94 SCRA 853, 862-863 (1979), citing Simeon vs. Pena, 36 SCRA 610 (1970).

[13]Vallangca vs. CA, 173 SCRA 42, 57 (1989).

[13a]Rural Bank of Davao City, Inc. vs. CA, 217 SCRA 554, 565 (1993).

only within 30 days from finality of decision in a reconveyance case filed by the vendor-patentee against the vendee who refused to allow repurchase. Such suit merely suspended the period to repurchase, and which period commence to run only after finality of the decision therein.[14]

As is implicit in said Section 119 of the Public Land Act, where the vendor is still living, he alone has the right of redemption.[15] But if he had died, his widow and his legal heirs have that right.[16]

The right to repurchase may be expressed in any form or manner, so long as the act amounts to a demand for reconveyance. Thus, it has been held that the act of the owner-vendor in going to the residence of the vendee, tendering to the latter the amount of the repurchase price, was in effect an exercise of that right.[17]

With respect to mortgaged land granted under homestead patent, or free patent, which was sold at extra-judicial foreclosure, the 5-year period of redemption began to run from the day after the expiration of the one-year period to repurchase allowed in extra-judicial foreclosure.[18] Where the mortgagor has filed suit to redeem the property within that period, there is no need to make an offer to redeem, or tender payment of the purchase price, not even a need for the consignation of the redemption price. The filing of such action is equivalent to a formal offer to redeem.[19]

C. *Other restrictions on public land grants*

Other restrictions on lands disposed under the Public Land Act are contained in Sections 120, 121, 122 and 123 thereof, and in Section 2 of Republic Act No. 730.

Section 120 requires that conveyances and encumbrances made by persons belonging to the "non-Christian tribes" may be made only when the person making the conveyance or encumbrance is able to read and understand the language in which the instrument or deed is written. And for conveyances and encumbrances made by illiter-

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[14]Sucaldito vs. Montejo, 193 SCRA 556, 560 (1991); also Patalinghod vs. Ballesteros, 38 SCRA 247 (1971).

[15]Enervida vs. Dela Torre, *supra*.

[16]Ferrer vs. Mangente, 50 SCRA 424 (1973).

[17]Vallangca vs. CA, *supra*.

[18]Belisario vs. IAC, 165 SCRA 101 (199).

[19]PNB vs. De los Reyes, *supra*, p. 625, citing Gonzaga vs. Go, 69 Phil. 678 (1940) and Torio vs. Rosario, 93 Phil. 801 (1953).

ate non-Christians, the approval by the then Commissioner of Mindanao and Sulu is necessary.

Section 121, read in relation to Article XII, Section 3 of the present (1987) Constitution, allows a private corporation, association or partnership to lease lands covered by free patent, homestead patent or individual sales patent solely for commercial, industrial, educational, religious or charitable purposes or for a right of way, with the consent of the grantee and the approval of the Secretary of Environment and Natural Resources.

Section 122 restricts the disposal of lands originally acquired in any manner under the provisions of the Public Land Act to those who are qualified to acquire lands of the public domain.

D. *Effect of violations of the restrictions*

Section 124 of the Public Land Act stipulates that "any acquisition, conveyance, alienation, transfer, or other contract made or executed in violation of any of the provisions" of Sections 118, 120, 121, 122 and 123 of this Act "shall be unlawful, null and void from its execution and shall produce the effect of annulling, and canceling the grant, title, patent or permit originally issued, recognized or confirmed, actually or presumptively and cause the reversion of the property and its improvements to the State."

3. Actions against improper, illegal issuance of patents

The usual adverse actions taken against improperly and/or illegally issued patents and their corresponding certificates of title are reversion, cancellation, and reconveyance suits.

A. *Reversion suits*

The objective of an action for reversion of property is the cancellation of the certificate of title and the consequential reversion of the land covered thereby to the State. That is why this action is also oftentimes designated as a cancellation suit or annulment suit. The designation of the action as one for reversion, is designed to distinguish the suit from an action for cancellation usually brought by a private individual, which does not result in the reversion of the land to the State. The proper forum for this suit is the Regional Trial Court where the land involved is located.[20]

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[20]Director of Lands vs. CFI of Misamis Oriental, Br. I, 135 SCRA 392 (1985).

The recent case of *Evangelista vs. Santiago*, 457 SCRA 744 (2004), reiterates the distinction between an action for reversion from an action for declaration of nullity of title laid down in *Heirs of Ambrosio Kionisala vs. Heirs of Honorio Dacut,* 378 SCRA 206, 214-215, to wit:

> "An ordinary civil action for declaration of nullity of free patents and certificates of title is not the same as an action for reversion. The difference between them lies in the allegations as to the character of ownership of the realty whose title is sought to be nullified. In an action for reversion, the pertinent allegations in the complaint would admit State ownership of the disputed land. Hence, in *Gabila vs. Barriga,* 41 SCRA 131, where the plaintiff in his complaint admits that he has no right to demand the cancellation or amendment of the defendant's title because even if the title were canceled or amended the ownership of the land embraced therein or of the portion affected by the amendment would revert to the public domain, we ruled that the action was for reversion and that the only person or entity entitled to relief would be the Director of Lands.
>
> On the other hand, a cause of action for declaration of nullity of free patent and certificate of title would require allegations of the plaintiff's ownership of the contested lot prior to the issuance of such free patent and certificate of title as well as the defendant's fraud or mistake, as the case may be, in successfully obtaining these documents of title over the parcel of land claimed by plaintiff. In such a case, the nullity arises strictly not from the fraud or deceit but from the fact that the land is beyond the jurisdiction of the Bureau of Lands to bestow and whatever patent or certificate of title obtained therefore is consequently void *ab initio.* The real party-in-interest is not the State but the plaintiff who alleges a pre-existing right of ownership over the parcel of land in question even before the grant of title to the defendant."

1. ***Grounds for reversion***

a) *Violation of Sections 118, 120, 121, 122 and 123 of the Public Land Act (Com. Act. 141.)*

Section 124 of the Act, earlier quoted in this Chapter, expressly and clearly provides that any conveyance or disposition of property violative of said sections 118, 120, 121, 122 and 123 is void *ab initio*

and cause the reversion of the property and its improvements to the State. But reversion under the Act is not automatic and the Government has to take action in order that the land involved may be reverted to it.

An alienation or sale of homestead executed within the 5-year prohibitory period is void *ab initio*, so that a confirmatory deed of sale, executed after the lapse of said period, does not cure the void sale.[21]

Similarly, a bilateral promise to buy and sell a homestead lot at a certain price, which was reciprocally demandable, entered into within the 5-year prohibitory period, violated Section 118 of the Public Land Act. The law does not distinguish between executory and consummated sales.[22]

It has been also held that the nullity of the sale of only a portion of the land covered by free patent or homestead patent due to violation of said Section 118, extended to the entire lot. The sale produced the effect of annulment and cancellation of the title and causes the reversion of the entire lot and its improvements to the State.[23]

In all the foregoing instances, reversion suits may properly be instituted to revert the properties involved to the State. This action may likewise be resorted to when, in the sale of lands forming part of a landed estate acquired by the government for distribution to landless tenants and farmers, the State imposes a 10-year period from issuance of the certificate of title prohibiting the sale, alienation and encumbrance of the property granted, and the grantee violated it.[24]

b) *When land patented and titled is not capable of registration (See Chapter V on Non-registrable lands).*

It is a well-recognized principle that the Director of Lands (now Land Management) is bereft of any jurisdiction over public forest or any lands not capable of registration. But when he is misled into

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[21]Arsenal vs. IAC, 143 SCRA 40 (1986), citing Menil vs. CA, 84 SCRA 413 (1978) and Manzano vs. Ocampo, 1 SCRA 691, 697 (1961).

[22]Heirs of Enrique Zambales vs. CA, 120 SCRA 897, 907 (1983).

[23]Sola vs. CFI of Negros Oriental, Br. V, 184 SCRA 694 (1990); also Francisco vs. Rodriguez, 67 SCRA 212 (1975).

[24]Tipon vs. Intermediate Appellate Court, 148 SCRA 291 (1987).

issuing patents over such lands, the patents and the corresponding certificates of title are immediately infected with jurisdictional flaw which warrants the institution of suits to revert the lands to the State.

> "The right of the Republic to revert and recover inalienable land of the public domain to which a person has obtained a decree or title by mistake or oversight since such decree or title is void *ab initio* is a settled matter."[25]

It has been held, however, that where a portion of the public domain, such as a river, has been erroneously included in a free patent, but there is no clear evidence of fraud in such illegal inclusion by the patentee, the same being the omission, mistake or error of the issuing government agency or official, then the entirety of the free patent should not be nullified. Rather, only such portion of the public domain should be ordered reconveyed by the patentee to the Republic of the Philippines.[25a] (*Morandarte vs. CA*, 436 SCRA 213, G.R. No. 123586, Aug. 12, 2004).

c) *Failure of the grantee to comply with conditions imposed by law to entitle him to a patent or grant.*

It has been held that in the case of disposable agricultural public land, the failure of the patentee to comply with the conditions imposed by law to entitle him to a grant voids the patent.[26] For if the patentee had succeeded in obtaining his patent, it could only be because he misrepresented in his application and in the processing thereof that he has complied with the occupation and cultivation requirements of the law. He thus committed fraud and misrepresentation, which pursuant to Section 91 of the Public Land Act, "shall *ipso facto* produce the cancellation of the concession, title, or permit granted." The patentee cannot then invoke the principle of indefeasibility of title issued pursuant to a public land patent one year after its issuance since "a grant tainted with fraud and secured through misrepresentation x x x is null and void and of no effect whatsoever."[27]

Accordingly, the failure of the applicant to disclose in his free patent application that another person was in possession of a por-

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[25]Rep. vs. dela Cruz, 67 SCRA 221, 226 (1975).

[25a]Morandarte vs. CA, 436 SCRA 213, G.R. No. 123586, Aug. 12, 2004.

[26]Republic vs. Mina, 114 SCRA 945, 949 (1982); Rep. vs. Animas, 56 SCRA 499 (1974); Director of Lands vs. CA 17 SCRA 71, 79, 80 (1966).

[27]Director of Lands vs. Abanilla, 124 SCRA 358, 369 (1983).

tion of the land applied for constitutes fraud and misrepresentation and is a ground for annulling the title.[27a]

An expanded area usually results when a subdivision/consolidation survey embraces an area which is not within the area originally applied for and titled in either a judicial or administrative proceeding. That expanded area may not be brought under the Torrens System through the expedient of such survey and thereafter having the proper court approve it.[28]

d) *When land is acquired in violation of the Constitution.*

Land acquired by an alien, in violation of Section 7 of Article XII of the Constitution, may be reverted to the State.[29] And land acquired by a private corporation, where its predecessor-in-interest, if any, has not priorly acquired an imperfect title thereto, thus violative of Section 3, Article XII of the Constitution, may also be assailed in a reversion suit.

2. *Who institutes action for reversion*

The Solicitor General, in behalf of the Republic of the Philippines, is by law the proper official to institute an action for reversion. Thus, he has the specific power and function" to represent the Government in all land registration and related proceedings" and to "institute actions for the reversion to the Government of lands of the public domain and improvements thereon as well as lands held in violation of the Constitution."[30]

A private person is not proper party to bring such suit. However, the Supreme Court, in the exercise of its equity jurisdiction, may directly resolve the issue of alleged fraud in the acquisition of a public land patent although the action is instituted by a private person where the facts are not disputed and the area involved is small.

> "It would be unduly time-consuming, if there being no claim to the rest of the property included in such patent to the

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[27a]Republic vs. CA, *supra*, p. 341.

[28]Republic vs. Heirs of Luisa Villa Abrille, 71 SCRA 57 (1976).

[29]People vs. Avengoza, 119 SCRA 17 (1982).

[30]Sec. 35(5), Chapter XII, Title III, Administrative Code of 1987 (Executive Order No. 292); also Sec. 1(e), P.D. No. 478; Sec. 101, Public Land Act (Com. Act 141); Arsenal vs. IAC, *supra*, p. 53; Maximo vs. CFI of Capiz, Branch III, 182 SCRA 420, 425 (1990).

respondent, the question of the alleged fraud would still have to be inquired into."[31]

3. *Investigation by Director of Lands prior to institution of the suit*

Actions for reversion, or annulment of title issued by the Director of Lands, should be initiated by the Director of Lands or at least with his prior authority and consent.[32] Investigation or inquiry by said official thus generally precedes the suit. "The indefeasibility of a title over land previously public is not a bar to an investigation by the Director of Lands as to how such title has been acquired, if the purpose of such investigation is to determine whether or not fraud had been committed in securing such title in order that the appropriate action for reversion may be filed by the Government.[33] And "it is not only the right but the duty of the Director of Lands to conduct the investigation."[34] This investigative authority of the Director of Lands and his consequential duty to initiate the action extends even to lands that may have been ceded to a city, such as the City of General Santos. For the Public Land Act "does not distinguish whether lands of the public domain belong to the national government or to any branch of the local government."[35]

4. *Indefeasibility of title, prescription, laches and estoppel do not bar reversion suit*

The defense of indefeasibility of a certificate of title issued pursuant to a public land patent does not lie in an action for reversion of the land covered thereby when the land is non-registrable property or non-alienable land of the public domain. In such cases, the Director of Lands has no jurisdiction to dispose the land.[36] Nor does such defense be invoked where the ground for the action is based on

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[31]De los Reyes vs. Ramolete, 122 SCRA 652 (1983).

[32]Kayaban vs. Republic of the Philippines, 52 SCRA 357 (1973).

[33]Pinero vs. Director of Lands, 57 SCRA 386, 392 (1974); Rep. vs. Lozada, 90 SCRA 503, 510 (1979); Ybanez vs. Intermediate Appellate Court, 194 SCRA 743, 751 (1991).

[34]Nery vs. Teves, 126 SCRA 90 (1983), citing Sec. 91, Public Land Act and Cebedo vs. Director of Lands, 2 SCRA 25, 29 (1961); also Nieto vs. Quines, 6 SCRA 74, 81 (1962); Director of Lands vs. CA, 17 SCRA 71 (1966).

[35]Director of Lands vs. Gonzales, 120 SCRA 376, 378 (1983).

[36]Director of Lands vs. CA, *supra*, p. 76; Rep. vs. Animas, *supra*; Nery vs. Teves, *supra*.

non-compliance with the cultivation and occupation requirements of the law, or for violation of the restrictions imposed on the public land patents. For these conditions and restrictions are parts of the grant and, by specific provisions of the Public Land Act, violations thereof nullify the grant or subject the title to reversion suit (Sections 91 and 101 of the Act).

It is a well recognized rule that the government is never estopped by the mistakes and errors of its officials or agents.[37] Nor is the State bound by prescription or laches, as is explicit in law and by consideration of public policy which requires an unimpeded exercise of its sovereign function as when it brings suit to revert illegally acquired public land.[38] This rule "that prescription does not run against the State does not apply to corporations or artificial bodies created by the State for special purposes, it being said that when the title of the Republic has been divested, its grantees, although artificial bodies of its own creation, are in the same category as ordinary persons." (*Shipside Incorporated vs. Court* of *Appeals*, 352 SCRA 334, 351, G.R. No. 743377, Feb. 20, 2001.)

B. *Cancellation suits*[39]

If the land covered by patent was a private land, the Director of Lands has no jurisdiction over it and title issued pursuant to the patent is a nullity. The aggrieved private party may institute an action for cancellation of such title.[40]

C. *Action for reconveyance*[41]

An action for reconveyance is proper where the patent and corresponding certificate of title were acquired in breach of constructive or implied trust, as when a co-heir obtains title over portions that do not belong to him, or when a tenant similarly obtained title on the land he was tilling.[42] It has been held that trial courts shall not preemptorily dismiss an action for reconveyance brought by a

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[37]Republic vs. CA, 135 SCRA 156 (1985); People vs. Castaneda, 165 SCRA 327 (1988); Luciano vs. Estrella, 34 SCRA 769, 776 (1970).

[38]Art. 1108(4), Civil Code; People vs. Castaneda, *supra*, p. 336.

[39]Please see extensive discussion in Chapter XI, Remedies.

[40]Agne vs. Director of Lands, 181 SCRA 793, 803-804 (1990).

[41]See discussion on Reconveyance suits in Chapter XI, Remedies.

[42]Obanana vs. Boncaros, 128 SCRA 457 (1984); Sanchez vs. Vda. de Tamsi, 2 SCRA 772 (1961).

private party based on breach of constructive or implied trust, notwithstanding that the titled land was previously a public land. Thus:

> "The allegation that inasmuch as the subject lot was previously a public land, the proper party to bring the suit is the Director of Lands, thru the Solicitor General and not petitioner, should be taken with caution. The trial court should have conducted a preliminary hearing thereon because the action brought by petitioner is one for reconveyance of real property based on constructive or implied trust resulting from fraud and it has no way of determining against whom fraud was committed unless a hearing is held. The assertion of private respondents would be true if the fraud or misrepresentation was committed against the State or in violation of the law but if it was committed against petitioner in breach of their understanding, then the latter is the right party to bring the suit."[43]

4. Emancipation patents; conditions for issuance

Presidential Decree No. 27 (Emancipation Decree) decreed, as of October 21, 1972, that "tenants-farmers of private agricultural lands primarily devoted to rice and corn x x x shall be deemed owner of a portion constituting a family-size farm of five (5) hectares if not irrigated and three (3) hectares if irrigated." In implementation of this emancipation of tenants from the bondage of the soil, the Department of Agrarian Reform shall "issue in duplicate a Certificate of Land Transfer for every land brought under Operation Land Transfer, the original of which shall be kept by the tenant-farmer and the duplicate in the Registry of Decree" (Sec. 105, P.D. No. 1529). For the purpose of keeping said certificate, the Registry of Deeds maintains a special registry book known as "Provincial Register of Documents, under P.D. No. 27."

After the tenant-farmer shall have paid the total cost of the land, in 15 years of 15 equal annual amortization, has become a full-fledged member of a duly recognized farmer's cooperation, and has complied with other related obligations, an Emancipation Patent, which may cover previously titled or untitled property, is issued to him by the Department of Agrarian Reform.[44] Thereafter, the Regis-

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[43] Domaoal vs. Bea, 130 SCRA 512, 516 (1984).
[44] P.D. No. 1529, Sec. 105.

ter of Deeds and said Department are, by the same Section 105 of the Decree, required to do or act as follows:

> "The Register of Deeds shall complete the entries on the aforementioned Emancipation Patent and shall assign an original certificate of title number in case of unregistered land, and in case of registered property, shall issue the corresponding transfer certificate of title without requiring the surrender of the owner's duplicate of the title to be cancelled.
>
> In case of death of the grantee, the Department of Agrarian Reform shall determine his heirs or successor-in-interest and shall notify the Register of Deeds accordingly.
>
> In case of subsequent transfer of property covered by an Emancipation Patent or a Certificate of Title emanating from an Emancipation Patent, the Register of Deeds shall effect the transfer only upon receipt of the supporting papers from the Department of Agrarian Reform.
>
> No fee, premium, or tax of any kind shall be charged or imposed in connection with the issuance of an original Emancipation Patent and for the registration of related documents."

A. ***Restriction on the patent***

P.D. No. 27 expressly provides that "title to land acquired pursuant to this Decree or the Land Reform Program of the Government shall not be transferable except by hereditary succession or to the Government in accordance with the provisions of this Decree, Code of Agrarian Reforms and other existing laws and regulations." This is to ensure that the beneficial effects of land ownership by tenant-farmers are not defeated, that they may not once again be shackled by the bondage of the soil.

B. ***Subsequent dealings on lands covered by Emancipation Patents***

Section 106 of P.D. No. 1529 provides:

> "SEC. 106. *Sale of agricultural land; affidavit.* — No voluntary deed or instrument purporting to be a subdivision, mortgage, lease, sale or any other mode of encumbrance or conveyance of private agricultural land principally devoted to rice or corn or any portion thereof shall be registered unless accom-

panied by an affidavit of the vendor or executor stating that the land involved is not tenanted, or if tenanted, the same is not primarily devoted to the production of rice and/or corn.

"If only a portion of the land is primarily devoted to the production of rice and/or corn, and such area so devoted is tenanted, no such deed or instrument shall be registered unless accompanied by an affidavit stating the area (size) or the portion which is tenanted and primarily devoted to rice and/or corn, and stating further that the deeds or instrument covers only the untenanted portion or that which is not primarily devoted to the production or rice and/or corn. A memorandum of said affidavit shall be annotated on the certificate of title. The Register of Deeds shall cause a copy of the registered deed or instrument, together with the affidavit, to be furnished the Department of Agrarian Reform Regional Office where the land is located. The affidavit provided in this section shall not be required in the case of tenant-farmer who deals with his Certificate of Land Transfer or Emancipation Patent in accordance with law."

The requisite of the affidavit is evidently to complement the restriction against transfer of title to the lands acquired under the Emancipation Decree.

Chapter XIII

RECONSTITUTION OF TITLE; OTHER PETITIONS/ACTIONS AFTER ORIGINAL REGISTRATION

1. Reconstitution of lost or destroyed original copies of certificate of title

A. *Meaning, purpose and nature of reconstitution*

It has been held that the reconstitution of a certificate of title denotes restoration of the instrument, which is supposed to have been lost or destroyed in its original form and condition. The purpose of the reconstitution of title or any document is to have the same reproduced, after proper proceedings, in the same form they were when the loss or destruction occurred."[1] The applicant must prove not only the loss or destruction of the title sought to be reconstituted but also that at the time the said title was lost or destroyed, he was the registered owner thereof (*Republic vs. Holazo*, 437 SCRA 345, 352 [2004]).

If the court goes beyond such purpose, it acts without or in excess of jurisdiction. Thus, if the petition for reconstitution showed that one of the registered co-owners was Pedro Pinote, the court could not receive evidence proving that Petra Pinote, not Pedro Pinote, is a registered owner. Thus also, it has been held that where the certificate of title was decreed in the names of "Antonio Ompad and Dionisia Icong," the reconstituted title could not be in the names of "spouses Antonio Ompad and Dionisia Icong" for this was a material change.[2] In *Serra vs. Court of Appeals,* 195 SCRA 482, 493 [1991], it was held that "if no such original certificate of title exists, the reconstituted title is a nullity x x x the same rule applies if in fact there is an earlier valid certificate of title in the name and in the possession of another person."

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[1]Heirs of Pedro Pinote vs. Dulay, 187 SCRA 12, 19-20 (1990).
[2]Bunagan, *et al.* vs. CFI of Cebu, Branch VI, 97 SCRA 72 (1980).

Judicial reconstitution of title partakes of a land registration proceeding and is perforce a proceeding *in rem*.[3] The proceeding is governed by Republic Act No. 26 in relation to Section 110 of P.D. No. 1529. Administrative reconstitution of title is also governed by Rep. Act. No. 26, as amended by Republic Act No. 6732, approved on July 17, 1989.

B. ***Sources for judicial reconstitution of title***

(1) ***For original certificate of title***

The sources, in the following order, may be availed of:[4]

a) Owner's duplicate of the certificate of title;

b) Co-owner's, mortgagee's or lessee's duplicate of said certificate;

c) Certified copy of such certificate, previously issued by the Register of Deeds concerned or by a legal custodian thereof;

d) Authenticated copy of the decree of registration or patent as the case may be, which was the basis of the certificate of title;

e) Deed or mortgage, lease or encumbrance containing description of property covered by the certificate of title, and on file with the Registry of Deeds, or an authenticated copy thereof indicating that its original had been registered; and

f) Any other document which, in the judgment of the court, is sufficient and proper basis for reconstitution.

(2) ***For transfer certificate of title***

The sources, also in the following order, may be availed of:[5]

a) The same as sources a); b); and c) for reconstitution of original certificate of title;

b) Deed of transfer or other document containing description of property covered by transfer certificate of title and on file with the Registry of Deeds, or an authenticated copy

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[3]Republic vs. Intermediate Appellate Court, 157 SCRA 62, 66 (1988); Heirs of Pedro Pinote vs. Dulay, *supra*.

[4]Sec. 2, Rep. Act No. 26.

[5]Sec. 3, *supra*.

thereof indicating that its original had been registered and pursuant to which the lost or destroyed certificate of title was issued.

c) The same as sources e); and f) for reconstitution of original certificate of title.

(3) ***Rule on availment of "any other document" deemed proper and sufficient***

It has been held that when Republic Act No. 26 speaks of "any other document" that the court may deem proper and sufficient for reconstitution of title, "it must refer to similar documents previously enumerated therein." And "the documents alluded to under Sections 2(f) and 3(f) x x x must be resorted to in the absence of those preceding in order. There is no showing here that the private respondent had sought to secure such prior documents x x x and failed to find them. This engenders doubts x x x about the existence of the alleged title itself."[6]

In another case[7] the Supreme Court considered a certification from the Bureau of Lands that the lot involved was decreed in the names of the oppositors, and a decision in a civil case for recovery of possession concerning the same lot and showing who were the registered owners of the lot, as documents falling within Section 3(f) of Rep. Act. No. 26.

2. Requirements and procedures in petitions for judicial reconstitution.

It has been held in *Puzon vs. Sta. Lucia Realty and Development, Inc.,* 353 SCRA 699, G.R. No. 139518, March 6 2001, that where the sources for judicial reconstitution are those enumerated in Sections 2(a), 2(b), 3(a), 3(b) and 4(a) of Rep. Act 26, the requirements are set forth in Section 10 in relation to Section 9 of the Act. On the other hand, the requirements for judicial reconstitution where the sources are enumerated in Sections 2(c), 2(d), 2(e), 2(f), 3(c), 3(d), and 3(f) are set forth in Sections 12 and 13 of the same law.

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[6]Republic vs. IAC, 157 SCRA 62, 70 (1988); Sec. 2 of Rep. Act No. 6732, reviving and amending Sec. 5 of Rep. Act No. 26.

[7]Republic vs. IAC, 196 SCRA 422, 429-430 (1991).

A. Publication of notice and posting under Sections 9 and 10

Sections 9 and 10 of Rep. Act 26 require that thirty (3) days before the date of hearing —

1) a notice be published in two successive issue of the Official Gazette at the expense of the petitioner.

2) That such notice be posted at the main entrances of the provincial building and of the municipal hall of the municipality or city where the property lies.

The notice, under Sec. 9 of the Act, shall state the following:

1) the number of the certificate of title;

2) the name of the registered owner/owners;

3) the name of the interested parties appearing in the reconstituted certificate of title;

4) the location of the property; and

5) the date on which all persons having an interest in the property, must appear and file such claims as they may have (*Puzon* case, *supra*, p. 708).

It is notable that, unlike the requirement set forth in Sections 12 and 13 of Rep. Act 26, there is nothing in Sections 9 and 10 of the Act that requires the notices to be sent to owners of adjoining lots.

B. Sections 9 and 10 on the required notice, publication and posting are mandatory and jurisdictional

The proceedings under Sections 9 and 10 being *in rem*, the court acquires jurisdiction to hear and decide the petition for reconstitution of the owner's certificate of title upon compliance with the required posting of notices and publication in the Official Gazette. Non-compliance with such mandatory requirements renders the proceedings therein void, and the reconstituted title decreed and issued thereby is likewise void (*Villegas vs. Court of Appeals*, 351 SCRA 69, 77, G.R. No. 129977, Feb. 1, 2001).

C. Contents of petition; publication and posting of the notice thereof

According to Section 12 of Rep. Act No. 26, the petition for reconstitution shall state or contain, among other things, the following:

1) that the owner's duplicate of the certificate of title had been lost or destroyed;

2) that no co-owner's, mortgagor's or lessee's duplicate had been issued;

3) the location, area and boundaries of the property;

4) the nature and description of the buildings or improvements if any, which do not belong to the owner of the land, and the names and addresses of the owners of such buildings or improvements;

5) the names and addresses of the (a) occupants or persons in possession of the property; (b) of the owners of the adjoining properties; and (c) of all persons who may have any interest in the property;

6) a detailed description of the encumbrance, if any, affecting the property; and

7) a statement that no deeds or other instruments affecting the property have been presented for registration, or, if there be any, the registration thereof has not been accomplished, as yet.

This provision of the Act also requires that all documents, or authenticated copies thereof, to be introduced in evidence in support of the petition, shall be attached thereto and filed with the same.

If the source for reconstitution is "any other document" which may be sufficient and proper for reconstitution, as enumerated in Sections 2(f) and 3(f) of the Act, the petition shall also be accompanied with a plan and technical description of the property duly approved by the Administrator of the Land Registration Authority, or with a certified copy of the description from a prior certificate of title covering the same property.

Section 13 of Rep. Act No. 26 mandates the court to issue a notice of the petition for reconstitution, which shall state, among other things, "the name of the registered owner, the names of the occupants or persons in possession of the property, the owners of the adjoining properties and all other interested parties, the location, area and boundaries of the property, and date on which all persons having any interest therein must appear and file their claim or objections to the petition."

1. ***Publication of notice, posting and sending thereof by mail.***

The Court shall cause the said notice:

(a) to be published twice in successive issues of the Official Gazette, at the expense of the petitioner;

(b) to be posted on the main entrance of the provincial building and of the municipal building of the municipality or city in which the land is situated; and

(c) to be sent by registered mail or otherwise, at the expense of the petitioner, to every person named in said notice.

The above publication, posting and sending by mail of the notice should be done at least thirty (30) days prior to the date of hearing.

Under Section 12 of the Act, only the registered owner, his assigns, or any other person who has an interest in the property covered by the certificate sought to be reconstituted may file a petition for reconstitution. The Register of Deeds is not a proper party to file said petition.[8]

Under Section 13 of the Act, the publication of the notice of petition in a local newspaper is not required.[9]

D. *Sections 12 and 13 of Rep. Act No. 26 are mandatory and jurisdictional; non-compliance voids proceedings*

It is now settled that the requirements in Section 12 of Rep. Act No. 26 (on the contents of a petition for reconstitution of title) and in Section 13 of the same Act (on the publication, posting and sending by mail thereof) where the basis or sources for reconstitution are those enumerated in Sections 2c), 2(d), 2(e), 2(f), 3(c), 3(d), 3(e) and/or 3(f) of Rep. Act No. 26, are mandatory and jurisdictional, non-observance of which fatally affects the whole proceedings in all its aspects.[9a] This is the principle laid down in the following cases:

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[8]Register of Deeds of Malabon vs. RTC, Malabon, M.M. Br. 170, 181 SCRA 788, 792 (1990).

[9]Zuñiga vs. Vivencio, 153 SCRA 720 (1987).

[9a]Ortigas and Co. Ltd. Partnership vs. Velasco, 234 SCRA 455, 482 (1994).

1. In ***Alabang Development Corp. vs. Valenzuela***, 116 SCRA 261, 271-272, (1982), the Supreme Court declared:

> "Upon examination of the subject petition for reconstitution, the Court notes that some essential data required in section 12 and section 13 of Republic Act 26 have been omitted: the nature and description of the buildings or improvements which do not belong to the owner of the land, and the names and address of the owners of such buildings or improvements, and the names and addresses of the occupants or persons in possession of the property, of the owners of the adjoining properties and of all persons who may have any interest in the property. Neither do these data appear in the Notice of Hearing, such that no adjoining owner, occupant or possessor was even served a copy thereof by registered mail or otherwise. On these glaringly conspicuous omissions, the Court repeats its pronouncement in the *Bernal* case, to *wit*:
>
> "And since the above data do not appear in the Amended Petition, the same data do not also appear in the Notice of Hearing of the petition published in the Official Gazette. Patently, the provisions of Section 12 which enumerates mandatorily the contents of the Petition for Reconstitution and Section 13 which similarly require the contents of the Notice have not been complied with. In view of these multiple omissions which constitute non-compliance with the above-cited sections of the Act, We rule that said defects have not invested the Court with the authority or jurisdiction to proceed with the case because the manner or mode of obtaining jurisdiction as prescribed by the statute which is mandatory has not been strictly followed, thereby rendering all proceedings utterly null and void. We hold that the mere notice that 'all interested parties are hereby cited to appear and show cause if any they have why said petition should not be granted' is not sufficient for the law must be interpreted strictly; it must be applied rigorously, with exactness and precision. We agree with the ruling of the trial court granting the motion to amend the original petition provided all the requisites for publication and posting of notices be complied with, it appearing that the amendment is quite substantial in nature. As we pointed above, respondent Demetria Sta. Maria Vda. de Bernal failed to comply with all the requirements for publication and posting of notices, which failure is fatal to the jurisdiction of the court.

"The rule on notification to the possessor or one having interest in the property whose title is sought to be reconstituted is laid down explicitly in *Manila Railroad Company vs. Hon. Jose M. Moya, et al.*, L-17913, June 22, 1965, 14 SCRA 358, thus:

> "Where a petition for reconstitution would have the certificate of title reconstituted from the plans and technical descriptions of the lots involved, which sources may fall properly under section 3(e) or 3(f) of Republic Act No. 26, the possessor thereof or the one who is known to have an interest in the property should be sent a copy of the notice of the petition at the expense of the petitioner, pursuant to section 13 of the said Act.
>
> 'If no notice of the date of hearing of a reconstitution case is served on a possessor or one having interest in the property involved, he is deprived of his day in court and the order of reconstitution is null and void, even if otherwise the said order should have been final and executory.
>
> 'Under Section 13 of Republic Act No. 26, notice by publication is not sufficient but such notice must be actually sent or delivered to parties affected by the petition for reconstitution.'

"The rule We have stated and quoted from *Manila Railroad Company vs. Hon. Jose M. Moya, et al., supra*, is rightly so because one who seeks the reconstitution of his title to the property is duty bound to know who are the occupants, possessors thereof, or persons having an interest in the property involved, specially where the property is so vast and situated in a suitable residential and commercial location, where buildings and improvements have been or are being constructed openly and publicly. As stated earlier, indispensable parties have appeared, claiming ownership, possession, and valuable interests in the property, which are not only numerous but also patently conspicuous that private respondent cannot feign ignorance, much less unawareness, nor blindness as to their existence of her or within her claimed property."[10]

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[10]Director of Lands vs. CA and Bernal, 102 SCRA 370, cited in Alabang case.

2. In ***Tahanan Development Corp. vs. Court of Appeals***, 118 SCRA 273 (1982), the Court reiterated its rulings in the *Alabang* case, and held that:

> a) The requirements and procedures for reconstitution of title under Sections 12 and 13 of Rep. Act 26 are mandatory (p. 305, *supra*);
>
> b) It is the duty of persons applying for reconstitution of title to know who are their actual boundary owners on all sides and directions of their property. It is their obligation to inquire who their neighbors are in actual possession and occupancy of not only of portions of their own property but also of land adjacent thereto. And this obligation or duty cannot be simply ignored especially where the location of the properties involved is a prime site for expansion and development, suitable for residential, commercial and industrial purposes (pp. 306-307, *supra*);
>
> c) Failure or omission to notify the owner, possessor or occupant of an adjacent property, as well as failure to post copies of the Notice of Hearing at the main entrance of the municipal (or city) building where the land is situated, and at the Provincial building, are fatal to the acquisition and exercise of jurisdiction by the trial court (p. 309, *supra*);
>
> d) Motions for intervention by owners/occupants of the properties involved or portions thereof, should be allowed, in the interest of administration of justice (p. 311, *supra*).

In the recent case of *Republic vs. el Gobierno de las Filipinas*, 459 SCRA 533, 546-547 [2005], the Supreme Court reiterated that "as we held in *Tahanan Development Corp. vs. CA* (*supra*), the absence of any document, private or official, mentioning the number of the certificate of title and the date when the certificate of title was issued, does not warrant the granting of such petition (for reconstitution)."

2.1. *Dordas vs. CA*, 270 SCRA 328, 336 (1997), reiterates that actual owners and possessors of the land involved must be duly served with actual and personal notice of the petition for reconstitution. But where the source for reconstitution of title is the owner's duplicate copy thereof, the notices to the owners of the adjoining lots and actual occupants of subject property are not mandatory and jurisdictional (*Republic vs. Planes*, 381 SCRA 215, 227, G.R. No. 130433, April 17, 2002).

2.2. In *Divina vs. Court of Appeals*, 352 SCRA 527, 535, G.R. No. 117734, Feb. 22, 2001, it was reiterated that if the full names and addresses of the adjoining owners are not known, the application shall 'state the extent of the search made to find them.' The mere statement of the lack of knowledge of their names and addresses is not a sufficient compliance with requirements mandated by the law.

3. ***Metropolitan Waterworks and Sewerage System vs. Sison***, 124 SCRA 394 (1983) stressed:

> "The publication of the petition in *two* successive issues of the Official Gazette, the service of the notice of hearing to the adjoining owners and actual occupants of the land, as well as the posting of the notices in the main entrance of the provincial and municipal buildings where the property lies at least 30 days prior to the date of the hearing, as prescribed by Section 13 of the law (Rep. Act 26), are mandatory and jurisdictional requisites" (p. 402) x x x. "If an order of reconstitution is issued without any previous publication as required by law x x x, such order of reconstitution is null and void" (quoting from *Syjuco vs. PNB*, 86 SCRA 320). Even the publication of the notice of hearing in a newspaper of general circulation like the Manila Daily Bulletin, is not a substantial compliance with the law because section 13 specifies O.G. and "does not provide for any alternative medium or manner of publication (p. 403)."

4. ***Republic vs. Intermediate Appellate Court***, 157 SCRA 62 (1988), reiterated that the mode of publication of the notice of the petition for reconstitution, under section 13 of Rep. Act 26, is a jurisdictional requirement, and failure on the part of the applicant to comply with it confers no jurisdiction upon the court. And —

> "It is not enough that there is publication in the Official Gazette x x x. In addition, Republic Act No. 26 decrees that such notice be posted 'on the main entrance' of the corresponding provincial capitol and municipal building, as well as served actually upon the owners of the adjacent lands. Failure to comply with such requisites will nullify the decree of reconstitution."

5. In ***Register of Deeds of Malabon vs. RTC, Malabon, MM, Branch 170****, supra*, the court restated:

> "Where there is a defect in the publication of the petition, such defect deprives the court of jurisdiction (*Po vs. Republic*,

> 40 SCRA 37). And when the court *a quo* lacks jurisdiction to take cognizance of a case, it lacks authority over the whole case and all its aspects (*Pinza vs. Aldovino*, 25 SCRA 220, 224)."

In this case, the order of the Court setting the hearing of the petition for reconstitution of title on August 17, 1988 was included in the May 22 and 30, 1988 issues of the Official Gazette, but released for circulation only on October 3, 1988. The court did not thus acquire jurisdiction to hear the petition for tardiness of the publication.

6. ***Republic vs. Marasigan***, 198 SCRA 219, 228-229 (1991), ruled that although under Sec. 13 of Rep. Act 26, the duty to send notices of the petition for reconstitution to adjoining owners and actual occupants is imposed upon the court, not the party filing said petition, still the failure of the court to comply with the law does not excuse such non-compliance. For the law does not make any exception or exemptions from complying with that mandatory requirement. Nor does lapses on the part of the courts or their personnel a reason or a justification of non-observance of the law.

7. In ***Allama vs. Republic***, 206 SCRA 600 (1992), the notice of hearing of the petition for reconstitution failed to state the: (a) name of one of the registered owners; (b) names of the occupants or persons in possession of the property; (c) owner of the adjoining properties and all other interested persons; and (d) location, area and boundaries of the property as required in Section 13, Rep. Act 26. The Court ruled that:

> "The trial court lacked jurisdiction to take cognizance of the case as well as the authority over the whole case and all its aspects. All the proceedings held by the court including its order granting the petition for reconstitution are, therefore, considered null and void for lack of jurisdiction."

8. In ***Republic vs. CA and PNB***, G.R. No. 103746, promulgated on February 9, 1993, the Court held:

> "The jurisdictional requirement of a petition for reconstitution of title, refers to the actual publication of the notice of initial hearing of the petition in two successive issues of the Official Gazette (with the required posting and notice by registered mail or otherwise to specified persons) and its release for circulation at least thirty (30) days before the scheduled hearing (*Zuniga vs. Hon. Vicencio*, 153 SCRA 720)."

Accordingly, the Court held that the lower court did not acquire jurisdiction to hear the petition because the notice of hearing was published less than thirty (30) days prior to the date of hearing fixed in the notice, and the court actually heard the petition on a different date from that which appeared in the published notice of hearing.

9. Notwithstanding that notice to a possessor of the property subject of a petition for reconstitution is mandatory, it had been held that notice is not required to the actual possessor who "was a mere squatter or usurper whose only basis for the possession is alleged occupation but with no showing of ownership."[11]

E. *Duty of courts, and a warning to them*

Reconstitution proceedings have "many times been misused as a means of divesting a property owner of title to his property," so the courts should "proceed with extreme caution" in these proceedings, requiring not only strict compliance with the provisions of Rep. Act No. 26 but also ascertaining the identity and authority of every person who files a petition for reconstitution of title.[12] The "courts must exercise the greatest caution in entertaining such petitions for reconstitution of allegedly lost certificates of title," making "sure that indispensable parties, *i.e.*, the actual owners and possessors of the lands involved, are duly served with actual and personal notice of the petition (not by the mere general publication), particularly where the lands involved constitute prime developed commercial land."[13]

The duty of the court to issue the order of reconstitution is mandatory, and gives him no discretion to deny the same, if all the basic requirements of the law have been complied with, as when: (a) the petitioner is the registered owner; (b) the certificate of title was in force at the time it was lost or destroyed; and (c) the evidence presented is sufficient and proper to warrant the reconstitution of such title.[14] The court, even without any opposition by the Government, must however convince itself that the petitioner's evidence is substantial enough to warrant reconstitution.[15] The order or judgment directing the reconstitution of title shall become final after the lapse

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[11]Esso Standard Eastern Inc. vs. Lim, 123 SCRA 464, 478 (1983).
[12]Heirs of Pedro Pinote vs. Dulay, *supra*, pp. 20-21.
[13]Alabang case, *supra*, pp. 277-278, reiterating Bernal case, *supra*.
[14]Republic vs. Intermediate Appellate Court, 196 SCRA 422, 430 (1991).
[15]Republic vs. IAC, 157 SCRA 62, 67 (1988).

of fifteen (15) days from receipt by the Register of Deeds concerned and by the Administrator of the Land Registration Authority of a notice of such order or judgment without an appeal having been filed by such officials.[16]

It is also the rule that reconstitution proceedings is absolutely unnecessary when the original of the certificate of title sought to be reconstituted was never lost,[17] and the existing certificate is on file and available in the registry of deeds.[18] In such event, it is also the duty of the court to deny the petition for reconstitution. Needless to state, a wrongly reconstituted certificate of title, secured through fraud and misrepresentation, cannot be the source of legitimate rights and benefits.[19]

F. *Administrative reconstitution of title*

The procedure for administrative reconstitution of lost or destroyed certificate of title was originally prescribed in Section 5 of Rep. Act No. 26. Under Section 110 of P.D. No. 1529, such procedure was abrogated. Republic Act No. 6732, which was approved on July 17, 1989, revived the administrative procedure in a limited scale, as indicated in its Section 1, which reads in part as follows:

> "The procedure relative to administrative reconstitution of lost or destroyed certificate prescribed in said Act (No. 26) may be availed of only in case of substantial loss or destruction of land titles due to fire, flood or other *force majeure* as determined by the Administrator of the Land Registration Authority; *Provided*, That the number of certificates of titles lost or damaged should be at least ten percent (10%) of the total number in the possession of the Office of the Register of Deeds; *Provided, further*, That in no case shall the number of certificates of title lost or damaged be less than five hundred (500)."

(1) *Sources for administrative reconstitution*

Administrative reconstitution of title may be based on the (a) owner's duplicate of the certificate of title; and (b) co-owner's, mortgagee's or lessee's duplicate of said certificate.[20]

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[16]Sec. 110, second par., P.D. No. 1529, as amended by Rep. Act 6732.
[17]Astorga vs. CA, 133 SCRA 748 (1984).
[18]Republic vs. CA, 94 SCRA 865, 872 (1979).
[19]Jose vs. CA, 192 SCRA 735, 741 (1990).
[20]Sec. 2, Rep. Act No. 6732, reviving and amending Sec. 5 of Rep. Act 26.

(2) ***Contents of petition; where to file and by whom***

The petition for administrative reconstitution shall state, among other things, the petitioner's full name, address and other personal circumstances, the nature of his interest in the property, and the title number of the certificate of title sought to be reconstituted. It must be verified, accompanied by the source or sources for reconstitution and an affidavit of the registered owner stating, among other things, the following:[21]

> "(1) That no deed or other instrument affecting the property had been presented for registration, or, if there be any, the nature thereof, the date of its presentation, as well as the names of the parties, and whether the registration of such deed or instrument is still pending accomplishment;
>
> "(2) That the owner's duplicate certificate or co-owner's duplicate is in due form without any apparent intentional alterations or erasures;
>
> "(3) That the certificate of title is not the subject of litigation or investigation, administrative or judicial, regarding its genuineness or due execution or issuance;
>
> "(4) That the certificate of title was in full force and effect at the time it was lost or destroyed;
>
> "(5) That the certificate of title is covered by a declaration regularly issued by the Assessor's Office; and
>
> "(6) That real estate taxes have been fully paid up to at least two (2) years prior to the filing of the petition for reconstitution.
>
> "If the reconstitution is to be made from any of the sources enumerated in Section 2(b) or 3(b), the affidavit should further state that the owner's duplicate has been lost or destroyed and the circumstances under which it was lost or destroyed. Thereupon, the Register of Deeds shall, no valid reason to the contrary existing, reconstitute the certificate of title as provided in this Act."

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[21]Sec. 2, *supra*; LRA Circular No. 13 dated July 26, 1989 (rules and regulations implementing Rep. Act 6732).

The said petition may be filled with the Register of Deeds concerned by the registered owner, his assigns, or other persons, both natural and juridical, having an interest in the property.

(3) ***Review of decision of reconstitution officer; remedy of aggrieved party***

Rep. Act No. 6732 provides for a mechanism for review of the decision of the Register of Deeds or reconstituting officer, as well as for the remedy of an aggrieved party. The particular provisions read:

> "Sec. 9. The Land Registration Authority Administrator may review, revise, reverse, modify or affirm any decision of the reconstituting officer or Register of Deeds. Any appeal shall be filed within fifteen days from the receipt of the judgment or order by the aggrieved party."
>
> "Sec. 10. Any interested party who by fraud, accident, mistake or excusable negligence has been unjustly deprived or prevented from taking part in the proceedings may file a petition in the proper court to set aside the decision and to reopen the proceedings. The petition shall be verified and must be filed within sixty days after the petitioner learns of the decision but not more than six months from the promulgation thereof."

The LRA Administrator, pursuant to his power under aforequoted Section 9 of Rep. Act No. 6732, may even nullify the subject reconstituted certificate of title. As explained in *Manotok vs. Heirs of Homer L. Barque*, 477 SCRA 339, 356, 357, G.R. Nos. 162335 and 162605:

> "The LRA has the jurisdiction to act on petitions for administrative reconstitution. It has the authority to review, revise, reverse, modify or affirm on appeal the decision of the reconstituting officer. The function is adjudicatory in nature — it can properly deliberate on the validity of the titles submitted for reconstitution. Logically, it can declare a title as sham or spurious, or valid on its face. Otherwise, if it cannot make such declaration, then there would be no basis for its decision to grant or deny the reconstitution. The findings of fact of the LRA, when supported by substantial evidence, as in this case, shall be binding on the Court of Appeals.
>
> In the reconstitution proceedings, the LRA is bound to determine from the evidence submitted which between or among

the titles is genuine and existing to enable it to decide whether to deny or approve the petition. Without such authority, the LRA would be a mere robotic agency clothed only with mechanical powers."

In view of such authority, there is no further need for a judicial declaration that subject reconstituted certificate of title was fraudulently reconstituted.

The decision of the LRA Administrator, under aforequoted Sec. 9, may be appealed, by means of a petition for review to the Court of Appeals. On the other hand, the petition to set aside the decision or order of the reconstituting officer, under Sec. 10 on ground of fraud, accident, mistake, or excusable negligence, may be filed with the Regional Trial Court concerned.[21a]

3. Amendment and alteration of certificate of title

A. *Grounds for petition*

Under Section 108 of P.D. No. 1529 (formerly Section 112, Act No. 496), no erasure, alteration, or amendment shall be made upon the registration book after the entry of a certificate of title or of a memorandum therein and the attestation of the same by the Register of Deeds, except by order of the proper Regional Trial Court. A petition for such purpose, to be filed and entitled in the original case in which the decree or registration was entered, may be filed by the (a) registered owner; or (b) other person having an interest in the registered property; or (c) in proper cases, the Register of Deeds with the approval of the Administrator of the Land Registration Authority, on any of the following circumstances:

1. When registered interests of any description, whether vested, contingent, expectant, or inchoate, have terminated and ceased.

2. When new interests have arisen or been created which do not appear upon the certificate.

3. When any error, omission or mistake was made in entering a certificate or any memorandum thereon or on any duplicate certificate.

[21a]Medina vs. CA, 229 SCRA 601 (1994).

4. When the name of any person on the certificate has been changed.

5. When the registered owner has been married, or, registered as married, the marriage has terminated and no right or interest of heirs or creditors will thereby be affected.

6. When a corporation, which owned registered land and has been dissolved, has not conveyed the same within three years after its dissolution.

7. When there is a reasonable ground for the amendment or alteration of title.[22]

B. *Extent and limitations of court's authority*

Earlier in Chapter I of this book, mention was made that Regional Trial Courts no longer have limited jurisdiction in original land registration cases. And with particular reference to Section 112 of Act 496, now Section 108 of P.D. No. 1529, the Supreme Court held that "the court is no longer fettered by its former limited jurisdiction which enabled it to grant relief only in cases where there was 'unanimity among the parties' or none of them raised any 'adverse claim or serious objection.' Under the amended law (P.D. No. 1529), the court is now authorized to hear and decide not only such non-controversial cases but even the contentious and substantial issues x x x which were beyond its competence before."[23] But the court has no jurisdiction or authority to reopen the judgment or decree of registration; nor impair the title or other interest of a purchaser holding a certificate for value and in good faith, or his heirs and assigns, without his or their written consent. After due hearing then, the court may only (a) order the entry or cancellation of a new certificate; (b) order the entry or cancellation of a memorandum upon a certificate; or (c) grant any other relief upon such terms and conditions, requiring security or bond if necessary, as it may consider proper."[24]

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[22]See Luzon Surety Company, Inc. vs. Mirasol, Jr., 75 SCRA 52, 57 (1977).

[23]Averia vs. Caquioa, 146 SCRA 459, 462 (1986); also Vda. de Arceo vs. CA, 185 SCRA 489 (1990); PNB vs. International Corporate Bank, 199 SCRA 508 (1991).

[24]Sec. 108, P.D. No. 1529.

4. Surrender of withheld duplicate certificate of title

A. *Grounds for petition*

A party in interest may file a petition in the Regional Trial Court to compel surrender of the owner's duplicate certificate of title:

(a) Where it is necessary to issue a new certificate of title pursuant to any involuntary instrument (such as attachment or sale on execution) which divests the title of the registered owner against his consent;

(b) Where a voluntary instrument (such as conveyances, mortgage or lease) cannot be registered by reason of the refusal or failure of the holder to surrender the owner's duplicate certificate of title; and

(c) Where the owner's duplicate certificate is not presented for amendment or alteration pursuant to a court order.[25]

B. *Actions by the court*

After hearing the petition, the court may:

(a) order the registered owner or any person withholding the duplicate certificate to surrender the same, and direct the entry of a new certificate or memorandum upon such surrender; or

(b) order the annulment of the owner's duplicate certificate and the issuance of a new certificate in lieu thereof if the person withholding the same, is not amenable to the court's processes, or if for any reason said owner's duplicate certificate cannot be surrendered. Such new certificate and all duplicates thereof shall contain a memorandum of the annulment of the outstanding duplicate.[26]

C. *Remedy by motion*

A party may, by motion, also ask the Regional Trial Court to compel the holder of the duplicate certificate of title to surrender the same to the Register of Deeds concerned for the registration of the deed of sale subject of the principal action for specific performance as a necessary incident to the main case. As thus held,

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[25]Section 107 and Sec. 109, second paragraph, P.D. No. 1529.
[26]Sec. 107, *supra*.

> "Since Regional Trial courts are courts of general jurisdiction, they may therefore take cognizance of this case pursuant to such jurisdiction. Even while Sec. 107 of P.D. 1529 speaks of a petition which can be filled by one who wants to compel another to surrender the certificates of title to the Register of Deeds, this does not preclude a party to a pending case to include as incident therein the relief stated under Sec. 107, especially if the subject certificates of title to be surrendered are intimately connected with the subject matter of the principal action."[27]

This remedy by motion could not, however, apply where the principal action involved, had been finally terminated, and already executed by levy and sold on execution. The prevailing party who could not present the owner's duplicate copy of the certificate of title of the losing party who refuses to surrender the same to the former should follow the procedure laid down in said Section 107 of P.D. 1529, "to file a petition in court to compel the surrender" of the said owner's duplicate certificate of title to the Register of Deeds (*Padilla, Jr. vs. Phil. Producers' Cooperative Marketing Association, Inc.*, 463 SCRA 480 [2005]).

5. Replacement of lost duplicate certificate of title

Sec. 109 of P.D. No. 1529 details the actions to be taken in case of loss, destruction, or theft of an owner's duplicate certificate of title. The provision reads in full as follows:

> "SEC. 109. *Notice and replacement of lost duplicate certificate.* — In case of loss or theft of an owner's duplicate certificate of title, due notice under oath shall be sent by the owner or by someone in his behalf to the Register of Deeds of the province or city where the land lies as soon as the loss or theft is discovered. If a duplicate certificate is lost or destroyed, or cannot be produced by a person applying for the entry of a new certificate to him or for the registration of any instrument, a sworn statement of the fact of such loss or destruction may be filed by the registered owner or other person in interest and registered.

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[27]Ligon vs. CA, 244 SCRA 693, 700 (1995).

> Upon the petition of the registered owner or other person in interest, the court may, after notice and due hearing, direct the issuance of a new duplicate certificate, which shall contain a memorandum of the fact that it is issued in place of the lost duplicate certificate, but shall in all respects be entitled to like faith and credit as the original duplicate, and shall thereafter be regarded as such for all purposes of this decree."

The petition should be filed with the Regional Trial court of the province or city where the land lies. The notice of the petition should be sent to all persons interested in the property as shown in the encumbrances annotated in the original certificate on file with the Registry of Deeds, to the Register of Deeds concerned. Notice to the Solicitor General is not however imposed by the law. It is the Register of Deeds who should request for representation by the Solicitor General (*Republic vs. CA*, 317 SCRA 504 (1999).

Where the certificate of title sought to be replaced was not in fact lost or destroyed, there would be no necessity for filing a petition for the issuance of a new owner's duplicate certificate of title. A proceeding under such a circumstance is null and void for lack of jurisdiction and the newly issued duplicate is also itself null and void.[28] Accordingly, it has been held in *Macabalo-Bravo vs. Macabalo*, 471 SCRA 60 (2005), that in a petition for issuance of a second owner's duplicate copy of a certificate of title in replacement of a lost one, the only issues to be resolved are whether or not the original owner's duplicate copy had indeed been lost and whether the petitioner seeking the issuance of a new owner's duplicate title is the registered owner or other person in interest (p. 67, *supra*).

[28]New Durawood Co., Inc. vs. CA, 253 SCRA 740, 748 (1996).

Chapter XIV

SUBSEQUENT REGISTRATION

1. Scope of subsequent dealings with registered land

This Chapter treats of voluntary and involuntary dealings with registered lands. Voluntary dealings refer to deeds, instruments or documents which are the results of the free and voluntary acts of the parties thereto. Among such dealings are sales, conveyances or transfers of ownership over the titled property; mortgages and leases; powers of attorney; and trusts. On the other hand, involuntary dealings refer to such writ, order or process issued by a court of record affecting registered land which by law should be registered to be effective, and also to such instruments which are not the willful acts of the registered owner and which may have been executed even without his knowledge or against his consent. Among such dealings are writs of attachment, injunction, or *mandamus*, sale on execution of judgment or sale for taxes, adverse claims, and notice of *lis pendens*.

A. *Necessity and effects of registration in general*

Sections 51 and 52 of P.D. No. 1529 explain the purpose and effects of registering voluntary and involuntary instruments. These provisions read in full as follows:

> "SEC. 51. *Conveyance and other dealings by registered owner.* — An owner of registered land may convey, mortgage, lease, charge or otherwise deal with the same in accordance with existing laws. He may use such forms of deeds, mortgages, leases or other voluntary instruments as are sufficient in law. But no deed, mortgage, lease, or other voluntary instrument, except a will purporting to convey or affect registered land, shall take effect as a conveyance or bind the land, but shall operate only as a contract between the parties and as evidence of authority to the Register of Deeds to make registration.

The act of registration shall be the operative act to convey or affect the land insofar as third persons are concerned, and in all cases under this Decree, the registration shall be made in the office of the Register of Deeds for the province or city where the land lies."

"SEC. 52. *Constructive notice upon registration*. — Every conveyance, mortgage, lease, lien, attachment, order, judgment, instrument or entry affecting registered land shall, if registered, filed or entered in the office of the Register of Deeds for the province or city where the land to which it relates lies, be constructive notice to all persons from the time of such registering, filing or entering."

Under the above-quoted provisions, the rules may be stated, thus:

a) Except a will that purports to convey or affect registered land, the mere execution of deeds of sale, mortgages, leases or other voluntary documents serves only 2 purposes: (1) as a *contract* between the parties thereto; and (2) as *evidence of authority* to the Register of Deeds to register such documents.

The documents by themselves do not effect a conveyance or encumbrance on the land.

b) It is only the act of registering the instrument in the Register of Deeds for the province or city where the land lies which is the operative act that conveys ownership or affects the land insofar as third persons are concerned.[1]

c) The act of registration creates a constructive notice to the whole world of such voluntary or involuntary instrument or court writ or process.[2]

Thus, it has been held in *Garcia vs. Court of Appeals*:[3]

"The record is a notice to all the world. All persons are charged with the knowledge of what it contains. All persons

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[1]Campillo vs. Court of Appeals, 129 SCRA 513 (1984); Viacrusis vs. CA, 44 SCRA 176 (1972).

[2]Heirs of Maria Marasigan vs. Intermediate Appellate Court, 152 SCRA 253 (1987).

[3]95 SCRA 380, 389 (1980); citing Legarda and Prieto vs. Salesby, 31 Phil. 590, 600.

dealing with land so recorded, or any portion of it, must be charged with notice of what it contains. The purchaser is charged with notice of every fact shown by the record and is presumed to know every fact which the record discloses.

"When a conveyance has been properly recorded, such record is a constructive notice of its contents and all interests, legal and equitable, included therein." x x x "Under the *rule of notice*, it is presumed that the purchaser has examined every instrument affecting the title. *Such presumption is irrefutable*. He is charged with notice of every fact shown by the record and is presumed to know every fact which an examination of the record would have disclosed."

"This presumption cannot be overcome by proof of innocence or good faith" (nor) "defeated by proof of want of knowledge of what the record contains."

Such constructive notice cannot however be invoked in an action to rescind an allegedly fraudulent contract. The specific provision of Article 1383 of the Civil Code first requires that the rescinding party may resort to an action for rescission if he has no other means to obtain reparation. That could be even beyond the 4-year prescriptive period to file such suit if reckoned from the date of registration of the questioned contract (*Khe Hong Cheng vs. CA*, 355 SCRA 701, 709, G.R. No. 144169, March 28, 2001.

B. *Voluntary and involuntary registration distinguished*

In the same case of *Garcia vs. CA*, *supra*, the Court also distinguished the effects of voluntary registration *vis-à-vis* involuntary registration. Thus —

"In case of *voluntary* registration of documents, an *innocent* purchaser for value of registered land becomes the registered owner, and, in contemplation of law the holder of a certificate of title, the moment he presents and files a duly notarized and valid deed of sale and the same is *entered in the day book* (primary entry book) and *at the same time he surrenders or presents the owner's duplicate certificate of title covering the land sold* and pays the registration fees, because what remains to be done lies not within his power to perform."

On the other hand, in cases of *involuntary* registration of documents, "an entry thereof in the day book (primary entry book) of the Registry of Deed is a sufficient notice to all persons even if the owner's duplicate certificate of title is not presented to the Register of Deeds."

(1) *Primary Entry Book*

It is in the primary entry book that each Register of Deeds, upon payment of the entry fee, enters, in the order of their reception, all instruments including copies of writs and processes filed with him relating to registered land. He also notes in such book the date, hour and minute of reception of all instruments, also in the order in which they were received. The instruments "shall be regarded as registered from the time so noted, and the memorandum of each instrument, when made on the certificate of title to which it refers, shall bear the same date."[4] It has been held though that:

> "The date of mailing (by registered mail) of an instrument to the Register of Deeds for purposes of registration should be considered the date of filing and receipt thereof by the Register of Deeds. It is this date (not the date the instrument was actually received in said office) that should be entered in the primary entry book of the Register of Deeds which shall be regarded as the date of its registration."[5]

2. Voluntary Instruments

A. *Formal and procedural requisites for registration in general*

Generally, the following are required for purposes of registering voluntary instruments:

1) The instrument or document shall be in a form sufficient in law. And according to Sec. 55 of P.D. No. 1529:

> "Every deed or other voluntary instrument presented for registration shall contain or have endorsed upon it the full name, nationality, residence and postal address of the grantee or other person acquiring or claiming an interest under such

[4]Sec. 56, 1st par., P.D. No. 1529.
[5]Mingoa vs. Land Registeration Commission, 200 SCRA 782, 786 (1991).

> instrument, and every deed shall also state whether the grantee is married or unmarried, and if married, the name in full of the husband or wife. If the grantee is a corporation or association, the instrument must contain a recital to show that such corporation or association is legally qualified to acquire private lands. Any change in the residence or postal address of such person shall be endorsed by the Register of Deeds on the original copy of the corresponding certificate of title, upon receiving a sworn statement of such change. All names and addresses shall also be entered on all certificates."

The importance of the address/es in the instrument is underscored by the same provision which makes notices and processes issued in relation to registered land at said address or addresses binding on the party in interest, whether such person resides within or without the Philippines.

2) The instruments or deeds with their copies shall be presented to the Register of Deeds.[6]

3) The owner's duplicate certificate of title over the land subject of the instrument must also be presented to the Register of Deeds. If there are more than one (1) such certificate, all copies must be presented. The production of the owner's duplicate certificate "shall be conclusive authority from the registered owner to the Register of Deeds to enter a new certificate or to make a memorandum of registration in accordance with such instrument, and the new certificate or memorandum shall be binding upon the registered owner and upon all persons claiming under him, in favor of every purchaser for value and good faith."[7]

It has thus been held that to affect the land sold, the presentation of the deed of sale and its entry in the day book (primary entry book) must be done with the surrender of the owner's duplicate of title. And only after compliance with this and other requirements shall actual registration retroact to the date of entry in the primary entry book.[7a]

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[6]Sec. 56, 3rd par., *supra*.
[7]Sec. 53, P.D. No. 1529.
[7a]Pilapil vs. CA, 66 SCAD 178, 250 SCRA 566, 573, 574 (1995).

B. *Deeds of sale or conveyance and transfers*

(1) Registration when deed covers entire titled property; when only portion conveyed

The registration of deeds of sale or conveyances and transfer follows the same general procedures and entered in the primary book of entry, as earlier mentioned in this Chapter. Additionally, if the instrument involves the entire property covered by the certificate of title, the Register of Deeds makes out in the registration book a new certificate of title to the grantee, furnishing him an owner's duplicate certificate. The original and the owner's duplicate certificate of the grantor shall be stamped "cancelled."[8] The procedure where the conveyance involves only a portion of the titled property is governed by Section 58 of P.D. No. 1529, which reads:

> "If a deed of conveyance is for a part only of the land described in a certificate of title, the Register of Deeds shall not enter any transfer certificate to the grantee until a plan of such land showing all the portions or lots into which it has been subdivided and the corresponding technical descriptions shall have been verified and approved pursuant to Section 50 of this Decree. Meanwhile, such deed may only be annotated by way of memorandum upon the grantor's certificate of title, original and duplicate, said memorandum to serve as a notice to third persons of the fact that certain unsegregated portion of the land described therein has been conveyed, and every certificate with such memorandum shall be effectual for the purpose of showing the grantee's title to the portion conveyed to him, pending the actual issuance of the corresponding certificate in his name.
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> Upon the approval of the plan and technical descriptions, the original of the plan, together with a certified copy of the technical descriptions shall be filed with the Register of Deeds for annotation in the corresponding certificate of title and thereupon said officer shall issue a new certificate of title to the grantee for the portion conveyed, and at the same time cancel the grantor's certificate partially with respect only to said portion conveyed, or, if the grantor so desires, his certificate may

[8]Sec. 57, *supra*.

be cancelled totally and a new one issued to him describing therein the remaining portion: *Provided, however*, that pending approval of said plan, no further registration or annotation of any subsequent deed or other voluntary instrument involving the unsegregated portion conveyed shall be effected by the Register of Deeds, except where such unsegregated portion was purchased from the Government or any of its instrumentalities. If the land has been subdivided into several lots, designated by numbers or letters, the Register of Deeds may, if desired by the grantor, instead of cancelling the latter's certificate and issuing a new one to the same for the remaining unconveyed lots, enter on said certificate and on its owner's duplicate a memorandum of such deed of conveyance and of the issuance of the transfer certificate to the grantee for the lot or lots thus conveyed, and that the grantor's certificate is cancelled as to such lot or lots."

Subsisting encumbrances or annotations appearing in the registration book shall be carried over and stated in the new certificate or certificates to be issued, unless they are simultaneously released or discharged.[9]

(2) Effects of registration

Particularly with respect to a voluntary sale of land, the registration of the instrument is the operative act that transmits or transfers title. Absent such registration, a conveyance does not affect or bind the land.[10] Thus, it has been held that when a portion of registered property was sold and the sale was duly registered (and annotated in the certificate of title of the vendor), the vendee technically becomes the owner of the sold portion as of the registration of the sale, notwithstanding that the title to the property is still in the name of the vendor.[11] The rule extends even to a sale of real estate as a result of a foreclosure or execution sale, which becomes legally effective against third persons only from its registration.[12]

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[9]Sec. 59, *supra*.

[10]Villaluz vs. Neme, 7 SCRA 27, 31 (1963).

[11]Alarcon vs. Bidin, 120 SCRA 390, 391 (1983).

[12]Campillo vs. Court of Appeals, 129 SCRA 513 (1984), citing Campillo vs. PNB, 28 SCRA 220 (1969); also PNB vs. CA, 98 SCRA 207 (1980).

(3) Rule that buyer is not required to go beyond the certificate of title; purchaser in good faith.

The rule is clearly stated in the case of *Centeno vs. Court of Appeals*:[13]

> "Well-settled is the rule that all persons dealing with property covered by Torrens certificate of title are not required to go beyond what appears on the face of the title. When there is nothing on the certificate of title to indicate any cloud or vice in the ownership of the property, or any encumbrance thereon, the purchaser is not required to explore further than what the Torrens title upon its face indicates in quest for any hidden defect or inchoate right that may subsequently defeat his right thereto."

The purchaser is only charged with notice of the burdens in the property which are noted on the face of the register or the certificate of title.[14]

However, under Article 1544 of the Civil Code, mere registration is not enough to acquire new title. Good faith must concur.[15] "Good faith consists in the possessor's belief that the person from whom he received the thing was the owner of the same and could convey his title. x x x There is good faith where there is an honest intention to abstain from taking an unconscientious advantage from another. x x x Otherwise stated, good faith is the opposite of fraud and it refers to the state of mind which is manifested by the acts of the individual concerned.[16]

The defense of having bought the property in good faith may be availed of only where registered land is involved and the buyer had relied in good faith on the clean title of the registered owner. If the sale involves unregistered land, the buyer purchases it at his own peril.[17]

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[13]139 SCRA 545, 555 (1985); also Manzanilla vs. CA, 183 SCRA 207, 215 (1990); Pino vs. CA, 198 SCRA 434 (1991); A.D. Guerrero vs. Juntilla, 173 SCRA 572 (1989); Tajonera vs. CA, 103 SCRA 46 (1981).

[14]Ibarra vs. Ibarra, Sr., 156 SCRA 616, 620 (1987); Bel Air Village Assn., Inc. vs. Dionisio, 174 SCRA 589 (1989).

[15]Vda. de Jomoc vs. CA, 200 SCRA 74, 79 (1991), citing Bergado vs. CA, 173 SCRA 497 (1989), and Concepcion vs. CA, G.R. No. 83208, Feb. 6, 1991.

[16]Duran vs. Intermediate Appellate Court, 138 SCRA 489, 494 (1985).

[17]David vs. Bandin, 149 SCRA 140, 150 (1987).

(4) Exceptions to the above rule; buyers in bad faith

The following rulings indicate the instances when a buyer of registered land should look beyond the certificate of title:

(a) *Egao vs. Court of Appeals*, 174 SCRA 484, 492 (1989), held that:

> "Where a purchaser neglects to make the necessary inquiries and closes his eyes to facts which should put a reasonable man on his guard as to the possibility of the existence of a defect in his vendor's title, and relying on the belief that there was no defect in the title of the vendor, purchases the property without making any further investigation, he cannot claim that he is a purchaser in good faith for value."[18]

(b) In *Francisco vs. Court of Appeals*, 153 SCRA 330, 336, 337 (1987), it was held that where there are —

> "Sufficiently strong indications to impel a closer inquiry into the location, boundaries and condition of a lot" (embraced in the purchase), "that inquiry is in truth dictated by common sense, expected of a man of ordinary prudence. 'The earth, it has been said, is that universal manuscript open to the eyes of all. When a man proposes to buy or deal with realty, his first duty is to read this public manuscript, that is, to look and see who is there upon it, and what are his rights."
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> x x x
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> "The buyer who could not have failed to know or discover that the land sold to him was in the adverse possession of another, is a buyer in bad faith, such knowledge being equivalent to registration."

Accordingly, *Santiago vs. CA*, 63 SCAD 636, 247 SCRA 336, 345 (1995), reiterates the rule that where the land sold is in the possession of a person other than the vendor, the purchaser is required to go beyond the certificate of title and make inquiries concerning the rights of the actual possessor. Failure to do so would make him a purchaser in bad faith." (Citing *De Guzman vs. CA*, 156 SCRA 701 [1987]); reiterated in *Heirs of Ramon Durano, Sr. vs. Uy*, 344 SCRA 238, 262, G.R. No. 136456, Oct. 24, 2000).

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[18]Also Republic vs. CA, 149 SCRA 480, 492 (1987).

(c) In *Quiniano vs. Court of Appeals*, 39 SCRA 221 (1991), the Supreme Court ruled that where a person buys land not from the registered owner (nor from the one in whose name the title is registered) but from one whose rights to the land has been merely annotated on the certificate of title, and such purchaser has only his deed of sale, and its annotation on said certificate of title, he is not considered "a subsequent purchaser of registered land who takes certificate of title for value and in good faith" and who is protected against any encumbrance except those noted on said certificate.

(d) In *Phil. National Bank vs. CA*, 98 SCRA 207, 232 (1980), it was held that one who purchases a land the certificate of title of which contains a notice of *lis pendens* is a purchaser in bad faith.

(e) *Bernales vs. IAC*, 166 SCRA 519, 524 (1988) likewise states that the fact alone that the vendees "purchased the property with full knowledge of the flaws and defects in the title of their vendors is enough proof of their bad faith." (Reiterated in *Abad vs. Guimbas*, 465 SCRA 356, 367 [2005]).

And in *Vda. de Jomoc vs. CA, supra*, it was held that one who purchased a land with full knowledge of a previous sale to another person cannot be considered as a buyer in good faith, notwithstanding that the second sale was thereafter registered.

(f) The rule that a person, be he a buyer or mortgagee, dealing with titled property, is not required to go beyond what appears on the face of the covering title itself, does not apply to banks. The reason is that their business is one affected with public interest, "keeping in trust money belonging to their depositors, which they should guard against loss by not committing any act of negligence which amounts to lack of good faith." (*Private Development Corp. of the Phil. vs. Court of Appeals*, 475 SCRA 591, 605 [2005], citing *Robles vs. CA*, 328 SCRA 97, 113 [2000], which in turn cited *Tomas vs. Tomas*, 98 SCRA 207 [1980]).

The Supreme Court, in the same case, reiterated the rule that "where the party has knowledge of a prior existing interest which is unregistered at the time he acquired a right to the same land, his knowledge of that unregistered interest has the effect of registration as to him" (p. 607 *supra*). The party could not perforce claim to be an innocent purchaser for value on the argument that said prior existing interest has not annotated in the certificate of title of the land.

(g) It was held in *Premiere Development Bank vs. CA*, 453 SCRA 630 (2005), that the title of the land purchased was reconsti-

tuted, is a circumstance that should alert the purchaser to make the necessary investigation in the office of the Register of Deeds concerned. If he failed to do so and it turns out that the owner is other than the seller or that irregularity attended the issuance of the reconstituted title, then the purchaser could not be considered as a purchaser in good faith and for value (*Premiere Development Bank vs. Court of Appeals*, 453 SCRA 630, G.R. No. 128122, March 18, 2005, citing *Republic vs. CA*, 94 SCRA 865, 872, 573 [1979]).

(5) Double sale

The rule is that where the same registered owner sells the same land to two different persons who are unaware of the flaw that lies in its title, the ownership of the land passes to the vendee who first recorded it in the Registry of Deeds.[19]

The rule on double sale of an immovable property is laid down in Article 1544 of the Civil Code which instructs that ownership shall be transferred (1) to the person acquiring it who in good faith first recorded it in the Registry of Property; (2) in default thereof, to the person who in good faith was first in possession; and (3) in default thereof, to the person who presents he oldest title, provided there is good faith (*Payongayong vs. Court of Appeals*, 430 SCAD 210, 219, G.R. No. 144576, May 28, 2004).

It has been held that "if the second buyer in a double sale of real property does not insist in obtaining possession of the owner's copy of the Torrens title, does not inspect the property in the absence of said copy to ascertain who is in possession, and does not try to have the deed of sale registered until after he learns that there was a buyer of the same lot ahead of him, his rights cannot prevail over the first buyer who did all these things." (*Santiago vs. CA*, *supra,* p. 346.)

(6) Forged document, or one procured by fraud; when such document may be the root of valid title.

The third paragraph of Section 53 of P.D. No. 1529 states:

> "In all cases of registration procured by fraud, the owner may pursue all his legal and equitable remedies against the

[19]Campillo vs. CA, *supra*; Article 1544, Civil Code; Development Bank of the Philippines vs. Mangawang, 11 SCRA 405, 408 (1964); Garcia vs. CA, *supra*.

parties to such fraud without prejudice, however, to the rights of any innocent holder of the decree of registration on the original petition or application; any subsequent registration procured by the presentation of a forged duplicate certificate of title, or a forged deed or other instrument, shall be null and void."

Construing a similar provision in Section 55 of the Land Registration Act (Act 496), the Supreme Court in *Solivel vs. Francisco*,[20] held that the proviso therein "that a registration procured by the presentation of a forged deed shall be null and void" is a limitation to the earlier proviso of Section 55 that "in all cases of registration by fraud the owner may pursue all his legal and equitable remedies against the parties to the fraud, without prejudice to the rights of any innocent holder for value of a certificate of title" — in the sense "that in order that the holder of a certificate for value issued by virtue of the registration of a voluntary instrument may be considered a holder in good faith for value, the instrument registered should not be forged. When the instrument presented is forged, even if accompanied by the owner's duplicate certificate of title, the registered owner does not thereby lose his title, and neither does the assignee in the forged deed acquire any right or title to the property." That a forged deed is an absolute nullity and conveys no title is a settled principle.[21]

But as also held in the *Solivel* case, *supra*, "the fraudulent and forged document of sale may become the root of a valid title if the certificate has already been transferred from the name of the true owner to the name indicated by the forger,"[22] or to the name of the forger.[22a] For then the vendee, or even a mortgagee, as innocent third person for value had the right to rely on the correctness of the certificate of title.[23] This doctrine of a forged document becoming a root of a valid title cannot, however, be applied where the owner still holds a valid and existing certificate of title covering the same property. The law protects and prefers the lawful holder of registered title over the transfer of a vendor bereft of any transmissible right.[24]

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[20]170 SCRA 218, 226 (1989).

[21]Raneses vs. IAC, 187 SCRA 397, 405 (1990).

[22]Also Fule vs. Legare, 7 SCRA 351 (1963); PNB vs. CA, 187 SCRA 735 (1990).

[22a]Tenio-Obsequio vs. CA, 230 SCRA 550, 559 (1994); Lim vs. Chuatoco, 453 SCRA 308, G.R. No. 161861, March 11, 2005.

[23]Duran vs. IAC, *supra*.

[24]Torres vs. CA, 186 SCRA 672, 677, 678 (1990), citing Baltazar vs. CA, 168 SCRA 35 (1988).

The victim or person prejudiced by a forged instrument may bring (a) an action for damages against those who caused the fraud; or (b) if the latter are insolvent, an action against the Treasurer of the Philippines for recovery against the Assurance Fund.[25]

C. *Mortgages and leases*

(1) *Requisite registration and procedure*

Section 60 of P.D. No. 1529 requires that deeds of mortgage or lease and all instruments which assign, extend, discharge or otherwise deal with the mortgage or lease shall be registered, and shall take effect upon the title only from time of registration. Article 2125 of the Civil Code also provides that "it is indispensable, in order that a mortgage may be validly constituted, that the document in which it appears be recorded in the Registry of Property (or Registry of Deeds). If the instrument is not recorded, the mortgage is nevertheless binding between the parties." Article 1648 of the Code also stipulates that "every lease of real estate may be recorded in the Registry of Property," and unless so "recorded, it shall not be binding upon third persons."

The procedure for registration of such instruments follows the general procedure for registering those which do not divest the ownership or title from the owners: they shall be registered by filing them with the Register of Deeds and by a brief memorandum thereof made by the Register of Deeds upon the certificate of title and signed by him, and a similar memorandum on the owner's duplicate. The discharge, cancellation or extinguishment of such encumbrances or interests shall be registered in the same manner.[26]

The registration of court orders or processes, and documents or instruments, related to the foreclosure of mortgage, whether judicially or extra-judicially, is governed by Section 63 of P.D. No. 1529, as follows:

> "SEC. 63. *Foreclosure of Mortgage.* — (a) If the mortgage was foreclosed judicially, a certified copy of the final order of the court confirming the sale shall be registered with the Register of Deeds. If no right of redemption exists, the certificate of

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[25]PNB vs. CA, *supra*, p. 742.

[26]Section 54, P.D. No. 1529, in relation with Sections 61 and 62 of the same Decree.

title of the mortgagor shall be cancelled, and a new certificate issued in the name of the purchaser.

Where the right of redemption exists, the certificate of title of the mortgagor shall not be cancelled, but the certificate of sale and the order confirming the sale shall be registered by a brief memorandum thereof made by the Register of Deeds upon the certificate of title. In the event the property is redeemed, the certificate or deed of redemption shall be filed with the Register of Deeds, and a brief memorandum thereof shall be made by the Register of Deeds on the certificate of title of the mortgagor.

If the property is not redeemed, the final deed of sale executed by the Sheriff in favor of the purchaser at a foreclosure sale shall be registered with the Register of Deeds; whereupon the title of the mortgagor shall be cancelled, and a new certificate issued in the name of the purchaser.

(b) If the mortgage was foreclosed extra-judicially, a certificate of sale executed by the officer who conducted the sale shall be filed with the Register of Deeds who shall make a brief memorandum thereof on the certificate of title.

In the event of redemption by the mortgagor, the same rule provided for in the second paragraph of this section shall apply.

In case of non-redemption, the purchaser at foreclosure sale shall file with the Register of Deeds, either a final deed of sale executed by the person authorized by virtue of the power of attorney embodied in the deed of mortgage, or his sworn statement attesting to the fact of non-redemption; whereupon, the Register of Deeds shall issue a new certificate in favor of the purchaser after the owner's duplicate of the certificate has been previously delivered and cancelled."

(2) *Governing laws and rules on mortgage and lease*

Mortgage is governed by Articles 2085 to 2092 (dealing on provisions common to pledge and mortgage) and Articles 2124 to 2131 of the Civil Code; the Mortgage Law; Rule 68 of the Rules of Court (on judicial foreclosure of mortgage); and Act No. 3135, as amended by Act 4118 (on extra-judicial foreclosure of mortgage). Lease of lands, in general, is covered by Article 1646 to 1688 of the Civil Code.

(3) *Basic concepts and characteristics of mortgage*

(a) A contract of mortgage may be constituted only on immovables and/or alienable real rights imposed upon immovables, by the person who is the absolute owner of the property mortgaged and has the free disposal thereof or otherwise legally authorized to mortgage the same, in order to secure the fulfillment of a principal obligation.[27] It must be registered or recorded in the proper Registry of Deeds in order to be validly constituted and binding on third persons.[28]

It has been held, however, in *Lustan vs. Court of Appeals*, 266 SCRA 633, 675 (1997) that:

> "Third persons who are not parties to a loan may secure the latter by pledging or mortgaging their own property (citing Art. 2085, Civil Code). So long as valid consent was given, the fact that the loans were solely for the benefit of Parangan (borrower) would not invalidate the mortgage with respect to petitioner's property."

Mortgage may be characterized as all-embracing, inseparable and indivisible.

It is *all-embracing* because under Art. 2127 of the Civil Code:

> "The mortgage extends to the natural accessions, to the improvements, growing fruits, and the rents or income not yet received when the obligation becomes due, and to the amount of the indemnity granted or owing to the proprietor from the insurers of the property mortgaged, or in virtue of expropriation for public use, with the declarations, amplifications and limitations established by law, whether the estate remains in the possession of the mortgagor, or it passes into the hands of a third person."

A mortgage of land thus necessarily includes in the absence of a stipulation of the improvement thereon, building. However, a real estate mortgage can be constituted on the building itself, for the building would still be considered immovable property even if dealt with separately and apart from the land, and even if the building is erected on land belonging to another.[29]

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[27]Article 2124, 2085, Civil Code.
[28]Art. 2125, *supra*.
[29]Prudential Bank vs. Panis, 153 SCRA 390, 396 (1987).

It is *inseparable*, for according to Art. 2126 of the Code, "the mortgage directly and immediately subjects the property upon which it is imposed, whoever the possessor may be, to the fulfillment of the obligation for whose security it was constituted."

It is *indivisible* since Art. 2089 of the Code is explicit that a "mortgage is indivisible, even though the debt may be divided among the successors-in-interest of the debtor or of the creditor." This article further provides that "the debtor's heir who has paid a part of the debt cannot ask for the proportionate extinguishment of the x x x mortgage as long as the debt is not completely satisfied." Construing this particular provision of the Code, the Supreme Court explained:

> "x x x what the law proscribes is the foreclosure of only a portion of the property or a number of the several properties mortgaged corresponding to the unpaid portion of the debt where before foreclosure proceedings partial payment was made by the debtor on his total loan or obligation. This also means that the debtor cannot ask for the release of any portion of the mortgaged property or one or some of the several lots mortgaged unless and until the loan thus secured has been fully paid, notwithstanding the fact that there had been a partial fulfillment of the obligation. Hence, it is provided that the debtor who has paid a part of the debt cannot ask for the proportionate extinguishment of the mortgage as long as the debt is not completely satisfied."[30]

The court also ruled that the rule of indivisibility of mortgage does not apply after complete foreclosure of the mortgage, with full payment of the debt, since there is nothing more to secure. In another case, it was held that aforecited Art. 2089 presupposes several heirs of the debtor or creditor, so that the doctrine does not apply where there are no several heirs.[31]

Relatedly, the established rule is that where the Torrens title of the land was in the name of the mortgagor, the mortgagee has the right to rely on what appears on the certificate of title. For the doc-

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[30]PNB vs. De los Reyes, 179 SCRA 619, 626 (1989), citing Gonzales, *et al.* vs. GSIS, 107 SCRA 492 (1981) and PNB vs. Amores, 155 SCRA 445 (1987).

[31]Central Bank of the Phil. vs. CA, 139 SCRA 46, 57 (1985).

trine of innocent purchaser for value is applicable to an innocent mortgagee for value.[32]

(b) A mortgage must sufficiently describe the debt to be secured and an obligation is not secured by a mortgage unless it comes fairly within the term of the mortgage. Thus, a mortgage contract which provides that it secures notes and other evidence of indebtedness could not be understood to also include penalty charges. "Under the rule of a *ejusdem generis,* where a description of things of a particular class or kind is accompanied by words of a generic character, the generic words will usually be limited to things of a kindred nature with those particularly enumerated." A penalty charge does not belong to the species of obligations enumerated in aforecited contract. (*Philippine Bank of Communications vs. Court of Appeals*, 253 SCRA 241, 254 [1996]).

Relatedly, it has also been held that a mortgage contract and a promissory note secured by it are deemed parts of one transaction and are construed together. In case of ambiguity as when the note provides for the payment of a penalty but the mortgage does not, and the contract was prepared solely by the mortgagee (such as the lending bank), ambiguity must be read against the mortgagee. (*Phil. Bank of Communications*, *supra,* pp. 254-255)

(c) It has been held that mortgages given to secure future advancements or loans are valid and legal contracts, and that the amounts indicated as consideration in said contracts do not limit the amount for which the mortgage may stand as security if from the four corners of the document the intent to secure future and other indebtedness can be gathered (*China Banking Corporation vs. Court of Appeals*, 77 SCAD 125, 265 SCRA 327, 339, 340 (1996), citing *Mojica vs. CA*, 201 SCRA 517, 522 (1991) and other cases). Such mortgage is a continuing security and is not discharged by repayment of the amount named in the mortgage, until the full amount of the advancements are paid (*Mojica vs. CA*, *supra*, 522). Where therefore, the mortgagor failed to settle to the fullest his obligation, the mortgagee has a valid recourse for foreclosure.

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[32]Rural Bank of Sariaya, Inc. vs. Yacon, 175 SCRA 62, 66 (1989), citing Penullar vs. PNB, 120 SCRA 171 (1983); Phil. National Cooperative Bank vs. Carandang Villalon, 139 SCRA 570, 573 (1985); Mallorca vs. De Ocampo, 32 SCRA 48 (1970), citing Roxas vs. Dinglasan, 28 SCRA 430 (1969).

3.A. *Recourse of mortgagee where mortgagor defaults*

China Banking Corporation vs. Court of Appeals, 77 SCAD 125, 265 SCRA 327, 343, 344 (1996), reiterated the rule that

> "x x x where debt is secured by a mortgage and there is a default in payment on the part of the mortgagor, the mortgagee has a choice of one (1) or two (2) remedies, but he cannot have both. The mortgagee may:
>
> 1) foreclosure the mortgage; or
>
> 2) file an ordinary action to collect the debt.
>
> "When the mortgagee chooses the foreclosure of the mortgage as a remedy, he enforces his lien by the sale on foreclosure of the mortgaged property. The proceeds of the sale will be applied to the satisfaction of the debt. With this remedy, he has a prior lien on the property. In case of a deficiency, the mortgagee has the right to claim for the deficiency resulting from the price obtained in the sale of the real property at public auction and the outstanding obligation at the time of the foreclosure proceedings (*Soriano vs. Enriquez*, 24 Phil. 584; *Banco de Islas Filipinas vs. Concepcion Hijos*, 53 Phil. 86; *Banco Nacional vs. Barreto*, 53 Phil. 101).
>
> "On the other hand, if the mortgagee resorts to an action to collect the debt, he thereby waives his mortgage lien. He will have no more priority over the mortgaged property. If the judgment in the action to collect is favorable to him, and it becomes final and executory, he can enforce said judgment by execution. He can even levy execution on the same mortgaged property, but he will not have better lien on the properties of the mortgagor."

Foreclosure then can only be valid where the debtor is in default. But where the loan secured by the mortgage has been completely paid prior to the foreclosure, then such proceeding and the certificate of sale subsequently issued thereby are void. As plainly stated in *Philippine National Bank vs. CA, spouses Antonio So Hu and Soledad del Rosario, et al*. (G.R. No. 126908, January 16, 2003), the mortgaged "property could no longer be foreclosed to satisfy an extinguished obligation."

3. B. Effect of Partial Failure of Consideration

Where there is partial consideration, the mortgage becomes unenforceable to the extent of such failure. In the case *of PNB vs. RBL Enterprises,* 430 SCRA 299, 308, G.R. No. 149569, May 28, 2005, since the Philippine National Bank failed to release the P 1 million balance of the loan, the Real Estate and Chattel Mortgage Contract to secure such loan became unenforceable to that extent.

(4) *Guiding principles on judicial foreclosure of mortgage*

In the case of *Rural Bank of Oroquieta (Mis. Occ.), Inc. vs. Court of Appeals*, 101 SCRA 5, 9-12, 1980[33] the Supreme Court laid down the following basic principles on judicial foreclosure of mortgage:

> "After the execution of a real estate mortage, the mortgagor has an *equity of redemption* exercisable within the period stipulated in the mortgage deed. *In case of judicial foreclosure, the equity of redemption subsists after the sale and before it is confirmed by the court* (*Raymundo vs. Sunico*, 25 Phil. 365; *Benedicto vs. Yulo*, 26 Phil. 160; *Grimalt vs. Velasquez and Sy Quio*, 36 Phil. 936; Sun Life *Insurance Co. vs. Gonzales Diez*, 52 Phil. 271; *La Urbana vs. Belando*, 54 Phil. 930; *Villar vs. Javier de Paderanga*, 97 Phil. 604; *Piano vs. Cayanong*, 117 Phil. 415).
>
> However, in case of a judicial foreclosure of a mortgage in favor of a banking institution, Section 78 of the General Banking Law grants the mortgagor a right of redemption, which may be exercised within one year from the sale.
>
> Under Section 3, Rule 68 of the Rules of Court, it is the confirmation by the court of the auction sale that would divest the Serrano spouses of their rights to the mortgaged lot and that would vest such rights in the bank as purchaser at the auction sale.
>
> The clause "subject to such rights of redemption as may be allowed by law," found in the last part of Section 3, has no application to this case because the mortgagor did not exercise his right of redemption under Section 78 of the General Banking Law.

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[33]101 SCRA 5, 9-12 (1980).

What applies to this case is the settled rule that "a foreclosure sale is not complete until it is confirmed, and before said confirmation, the court retains control of the proceedings by exercising a sound discretion in regard to it, either granting or withholding confirmation as the rights and interests of the parties and the ends of justice may require." *(Salazar vs. Torres*, 108 Phil. 209, 214-5).

'In order that a foreclosure sale may be validly confirmed by the court, it is necessary that a hearing be given the interested parties, at which they may have an opportunity to show cause why the sale should not be confirmed.' (*Raymundo vs. Sunico*, 25 Phil. 365).

'The acceptance of a bid at the foreclosure sale confers no title on the purchaser. Until the sale has been validly confirmed by the court, he is nothing more than a preferred bidder. Title vests only when the sale has been validly confirmed by the court.' (*Raymundo vs. Sunico,* 25 Phil. 365).

The confirmation retroacts to the date of the sale (*Villar vs. Javier de Paderanga*, 97 Phil. 604, citing *Binalbagan Estate, Inc. vs. Gatuslao,* 74 Phil. 128).

A hearing should be held for the confirmation of the sale. The mortgagor should be notified of that hearing. Lack of notice vitiates the confirmation of the sale. The mortgagor may still redeem the mortgaged lot after the rendition of the order confirming the sale which is void for lack of hearing and notice to the mortgagor. (*Grimalt vs. Velasquez and Sy Quio*, 36 Phil. 936; *Raymundo vs. Sunico*, 25 Phil. 365).

Notice and hearing of a motion for confirmation of sale are essential to the validity of the order of confirmation, not only to enable the interested parties to resist the motion but also to inform them of the time when their right of redemption is cut off (*Tiglao vs. Botones*, 90 Phil. 275, 279).

An order of confirmation, void for lack of notice and hearing, may be set aside anytime (*Tiglao vs. Botones*, *supra*).

It is equally settled that after the foreclosure sale but before its confirmation, the court may grant the judgment debtor or mortgagor an opportunity to pay the proceeds of the sale and thus refrain from confirming it (*Anderson and De Mesa vs. Reyes and Gutierrez Saenz*, 54 Phil. 944, citing *Grimalt vs. Velasquez*

and Sy Quio, 36 Phil. 936 and *La Urbana vs. Belando*, 54 Phil. 930).

If after the foreclosure sale and before the confirmation thereof, the mortgagee, as purchaser at the auction sale, sold the mortgaged property to another person, that subsequent sale does not render the foreclosure sale more effective. That subsequent sale does not prevent the trial court from granting the mortgagor a period within which to redeem the mortgaged lot by paying the judgment debt and the expenses of the sale and costs (*Anderson and De Mesa vs. Reyes and Gutierrez Saenz*, 54 Phil. 944).

'Whatever may have been the old rule by all of the modern authorities, it is the policy of the court to assist rather than to defeat the right of redemption.' *(De Castro vs. Olondriz and Escudero*, 50 Phil. 725, 732).

After the confirmation of the sale, made after hearing and with due notice to the mortgagor, the latter cannot redeem anymore the mortgaged lot (unless the mortgagee is a banking institution) (*Piano vs. Cayanong*, 117 Phil. 415).

It is after the confirmation of the sale that the mortgagor loses all interest in the mortgage property (*Clemente vs. H.E. Heacock* Co., 106 Phil. 1163; *Clemente vs. Court of Appeals*, 109 Phil. 798; *Clemente vs. H.E. Heacock Co.,* L-23212, May 18, 1967, 20 SCRA 115). (Underscoring supplied).

It bears emphasis that unless the mortgagee is a banking institution, there is no right of redemption after the judicial sale; that title vests on the purchaser in the foreclosure sale when validly confirmed by the court such confirmation retroacting to the date of the sale; and that the rights of the mortgagor and person holding under him are cut off by the sale upon confirmation, and with them the equity of redemption.[34]

(5) ***Extrajudicial foreclosure of mortgage***

a) An extrajudicial foreclosure of real estate mortgage is initiated by filing a petition, not with any court of justice, but with the office of the sheriff of the province or city where the sale is to be

[34]Lonzame vs. Amores, 134 SCRA 386, 392 (1985).

made. And by express mandate of Section 2 of Act No. 3135, as amended by Act No. 4118, "such sale cannot be made legally outside of the province (or city) in which the property sold is situated."

Before the sale, Section 3 of said Act No. 3135 requires that:

> "Notice shall be given by posting of the sale for not less than twenty days in at least three public places of the municipality or city where the property is situated, and if such property is worth more than four hundred pesos, such notice shall be published once a week for at least three consecutive weeks in a newspaper of general circulation in the municipality or city."

Personal notice to the mortgagor is thus not required (*Philippine National Bank vs. Rabat*, 344 SCRA 706, 716, G.R. No. 134406, Nov. 15, 2000).

b) The law expressly confers to the mortgagor that right to redeem a property extrajudicially foreclosed. Section 6 of Act No. 3135, as amended by Act 4148, provides:

> "SEC. 6. In all cases in which an extrajudicial sale is made under the special power hereinbefore referred to (meaning the special power inserted in or attached to the real estate mortgage), the debtor, his successors-in-interest or any judicial creditor or judgment creditor of said debtor, or any person having a lien on the property subsequent to the mortgagee or deed of trust under which the property is sold, may redeem the same at any time within the term of one year from and after the deed of sale; and such redemption shall be governed by the provisions of sections four-hundred and sixty four to four hundred and sixty-six, inclusive, of the Code of Civil Procedure (now Sections 29, 30 and 34 of Rule 39 of the Rules of Court), in so far as these are not inconsistent with the provision of this Act." (Stress supplied)

It has been held that said "right of redemption provided for by the aforequoted provision, like any other property rights, may be transferred or assigned by its owner.[35] The law "grants to the mortgagor the right of redemption within one (1) year from the registration of the sheriff's certificate of foreclosure sale," not from the date

[35]Gorospe vs. Santos, 69 SCRA 191, 205 (1976).

of auction sale.[36] The option to exercise such right, is, however, personal to the mortgagor.[37] The latter therefore may waive to redeem the mortgaged property and let the title thereto vest upon whoever purchases it in the manner provided by law.

The aforementioned one (1) year period for redemption no longer applies to juridical persons whose real property has been mortgaged with a bank. Section 47, 2nd paragraph, of Republic Act No. 8791 (known "The General Banking Law of 2000") provides as follows:

> "Notwithstanding Act 3135, juridical persons whose property is being sold pursuant to an extrajudicial foreclosure shall have the right to redeem the property in accordance with this provision until, but not after, the registration of the certificate of foreclosure sale with the applicable Register of Deed which in no case shall be more than three (3) months after foreclosure, whichever is earlier. Owners of property that has been sold in a foreclosure sale prior to the effectivity of this Act (approved on May 23, 2000 shall retain their redemption rights until their expiration."

On the other hand, a mortgagee is deemed to have waived the statutory period for redemption when he accepts the redemption price from the mortgagor after the one (1) year for redemption had expired.[37a]

c) During the redemption period, the mortgagor may validly execute a mortgage contract over the same property in favor of a third party. For the mortgagor remains as the absolute owner of the property during that period.[38] However, upon a proper foreclosure of the prior mortgage, all liens subordinate to the first mortgage are likewise foreclosed, and the purchaser acquires title free from the subordinate liens. Thereafter, the Register of Deeds, ordinarily, is authorized to issue new titles without carrying over the annotations of the subordinate liens.[39]

d) On the other hand, a mortgagee who effects the extrajudicial foreclosure of the mortgage, or the purchaser at the foreclosure

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[36]Limpin vs. Intermediate Appellate Court, 166 SCRA 87, 93,94 (1980); Eastmen Chemical Industries, Inc. vs. CA, 174 SCRA 619 (1989).

[37]Tolentino vs. CA, 106 SCRA 513, 525 (1981).

[37a]Ramirez vs. CA, 219 SCRA 598, 603 (1993).

[38]Medida vs. CA, 208 SCRA 887, 897 (1992).

[39]PNB vs. International Corporate Bank, 199 SCRA 508, 516 (1991).

sale, is entitled to a writ of possession over the property foreclosed even before the expiration of the period of redemption,[40] provided that a proper motion has been filed, a bond approved, and no third person is involved.

As thus ruled in *Sulit vs. CA*, 268 SCRA 441, 450, 451 (1997):

> "The governing law (Sec. 7, Act 3135) thus explicitly authorizes the purchaser in a foreclosure sale to apply for a writ of possession during the redemption period by filing an *ex parte* motion under oath for that purpose in the corresponding registration or cadastral proceeding in the case of property with Torrens title. Upon the filing of such motion and the approval of the corresponding bond, the law also in express terms directs the court to issue the order for a writ of possession.
>
> No discretion appears to be left to the court. Any question regarding the regularity and validity of the sale, as well as the consequent cancellation of the writ, is to be determined in a subsequent proceeding as outlined in Section 8 (Act 3135), and it cannot be raised as a justification for opposing the issuance of the writ of possession since, under the Act, the proceeding for this *ex parte*. Such recourse is available to a mortgagee, who effects the extrajudicial foreclosure of the mortgage, even before the expiration of the period of redemption provided by law and the Rules of Court."

There are however, exceptions to the foregoing rule, such as:

(1) when a third party is actually holding the property adversely to the judgment debtor; (2) where the property or properties were found to have been sold at an unusually lower price than their true value, such as where the properties worth at least P500,000.00 were sold for only P 57,396.85 (*Cometa, et al. vs. IAC*, 151 SCRA 563 (1987); and (3) where a surplus from the proceeds of the sale equivalent to approximately 40% of the total mortgage debt, which is obviously a substantial amount, has not been paid by the mortgagee or purchaser to the mortgagor or the person entitled to it (*Sulit vs. CA, supra*, p. 452).

Any of these circumstances demand that a writ of possession should not issue. Nonetheless, the *Sulit* case held that the mere fact

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[40]Veloso vs. IAC, 205 SCRA 227, 229 (1992); Malonzo vs. Mariano, 173 SCRA 667, 671 (1989); Barican vs. IAC, 162 SCRA 358 (1988).

that "the mortgagee is retaining more of the proceeds of the sale than he is entitled to xx will not affect the validity of the sale but simply gives the mortgagor a cause of action to recover such surplus."

However, if the property is not redeemed within the one-year period after registration of the sale, he becomes the absolute owner of subject property. "As such, he is entitled to the possession of the said property and *can demand it any time following the consolidation of ownership in his name and the issuance to him of a new transfer certificate of title*." (*F. David Enterprises vs. Insular Bank of Asia and America*, 191 SCRA 516, 523 [1990]). To give effect to his right of possession, the purchaser must however invoke the aid of the courts and ask for a writ of possession. And upon proper application therefor and proof of title, it is the ministerial duty of the court to issue the writ of possession.[40a] The only remedy of the mortgagor would then be to question the validity of the sale by filing a petition to set it aside and to cancel the writ of possession.[40b]

e) The redemptioner may pay only the purchase price paid by the successful bidder plus one percent (1%) monthly interest up to the time of redemption.[41]

(5.1) ***Right of mortgagor and junior encumbrances to surplus proceeds of foreclosure sale***

To quote again from *Sulit vs. CA*, *supra*, pp. 455, 456:

> "xxx surplus money arising from a sale of land under a decree of foreclosure stands in the place of the land itself with respect to liens thereon or vested rights thereon. They are constructively, at least, real property and belong to the mortgagor or his assigns. Inevitably, the right of a mortgagor to the surplus proceeds is a substantial right which must prevail over rules of technicality.
>
> "xxx Jurisprudence has it that when there are several liens upon the premises, the surplus money must be applied to their discharge in the order of the of their priority. A junior mortga-

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[40a]Joven vs. CA, 212 SCRA 700, 708, 709 (1992), citing Section 7, Act 3135, as amended by Act No. 4118.

[40b]De Ramos vs. CA, 213 SCRA 207, 216 (1992).

[41]Sec. 30, Rule 139 Rules of Court; De los Reyes vs. IAC, 176 SCRA 394, 400 (1989); Gorospe vs. United Coconut Planters Bank vs. Reyes, 193 SCRA 7546, 560 (1991).

gee may have his rights protected by an appropriate decree as to the application of the surplus, if there be any, after satisfying the prior mortgage. His lien on the land is transferred to the surplus fund. And a senior mortgagee, realizing more than the amount of his debt on a foreclosure sale, is regarded as a trustee for the benefit of junior encumbrances."

(5.2) Right of the creditor to recover deficiency from proceeds of the sale in extrajudicial foreclosure

It is settled that a creditor is allowed to recover the deficiency from the sale of the property in an extrajudicial foreclosure. Stated otherwise, the creditor is not prohibited from taking steps to recover any unpaid balance on the principal obligation simply because he chose to extrajudicially foreclose the real estate mortgage (*Cuñada vs. Drilon*, G.R. No. 159118, June 28, 2004, 432 SCRA 618, 625).

(6) ***Equitable mortgage***

Invariably related to discussions on real estate mortgage is equitable mortgage which has been defined as "one which although it lacks some formality, form of words or other requisite prescribed by a statute, shows the intention of the parties to charge a real property as security for a debt and contains nothing impossible or contrary to law."[42]

Art. 1602 of the Civil Code states that the contract shall be presumed to be an equitable mortgage, in any of the following cases:

"(1) When the price of a sale with right to repurchase is unusually inadequate;

"(2) When the vendor remains in possession as lessee or otherwise;

"(3) When upon or after the expiration of the right to repurchase another instrument extending the period of redemption or granting a new period is executed;

"(4) When the purchaser retains for himself a part of the purchase price;

"(5) When the vendor binds himself to pay the taxes on the thing sold;

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[42]Cachola, Sr. vs. CA, 208 SCRA 496, 502 (1992), citing Vda. de Zulueta vs. Octaviano, 121 SCRA 314 (1983).

> "(6) In any other case where it may be fairly inferred that the real intention of the parties is that the transaction shall secure the payment of a debt or the performance of any other obligation."

Article 1604 of the Code makes the aforequoted provision of Art. 1602 applicable to a contract purporting to be an absolute sale.

The existence of any of the circumstances under Art. 1602, not a concurrence nor an overwhelming number of such circumstances, suffices to give rise to the presumption that the contract is an equitable mortgage. (*Lustan vs. CA*, *supra*, p. 672).

D. *Powers of Attorney; Trusts*

(1) *Registration of power of attorney*

Section 64 of P.D. No. 1529 provides that "any person may, by power of attorney, convey or otherwise deal with registered land and the same shall be registered with the Register of Deeds of the province or city where the land lies. Any instrument revoking such power of attorney shall be registered in like manner."

Relatedly, Civil Code provisions require that an agent's authority to sell a piece of land or any interest therein shall be in writing, otherwise, the sale is void (Article 1874); that "a special power to sell excludes the power to mortgage; and a special power to mortgage does not include the power to sell." (Art. 1879); and that a special power of attorney is necessary before an agent may "enter into any contract by which ownership of an immovable is transmitted or acquired either gratuitously or for a valuable consideration" (Art. 1878[5]) or "lease any real property to another person for more than one year." (Art. 1878[8]).

(2) *Elements of express trust*

Express trusts are created by the intention of the trustor (Art. 1441, Civil Code). There are no particular words required to establish trust; it is sufficient that a trust is clearly intended (Art. 1444, *supra*). But there are requirements that must exist before an express trust will be recognized. It has been held thus:

> "It is fundamental in the law of trusts that certain requirements must exist before an express trust will be recognized. Basically, these elements include a competent trustor and trus-

tee, an ascertainable trust *res*, and sufficiently certain beneficiaries. Stilted formalities are unnecessary, but nevertheless each of the above elements is required to be established, and, if any one of them is missing, it is fatal to the trusts. Furthermore, there must be a present and complete disposition of the trust property, notwithstanding that the enjoyment in the beneficiary will take place in the future. It is essential, too, that the purpose be an active one to prevent trust from being executed into a legal estate or interest, and one that is not in contravention of some prohibition of statute or rule of public policy. There must be also some power of administration other than a mere duty to perform a contract although the contract is for a third-party beneficiary. A declaration of terms is essential, and these must be stated with reasonable certainty in order that the trustee may administer, and the court, if called upon so do, may enforce, the trust."[43]

(a) ***How trusts in registered land, and any trust with power to sell or encumber, are registered.***

Sections 65 and 66 of P.D. No. 1529, quoted below, indicate the procedures of registration of trust in titled property, or where the trust is with power to sell or encumber.

"SEC. 65. *Trusts in registered land*. — If a deed or other instrument is filed in order to transfer registered land in trust, or upon any equitable condition or limitation expressed therein, or to create or declare a trust or other equitable interests in such land without transfer, the particulars of the trust, condition, limitation or other equitable interest shall not be entered on the certificate; but only a memorandum thereof shall be entered by the words "in trust," or "upon condition," or other apt words, and by a reference by number to the instrument authorizing or creating the same. A similar memorandum shall be made upon the original instrument creating or declaring the trust or other equitable interest with a reference by number to the certificate of title to which it relates and to the volume and page in the registration books in which it is registered."

"SEC. 66. *Trust with power of sale, etc., how expressed*. — If the instrument creating or declaring a trust or other equita-

[43]Mindanao Development Authority vs. CA, 113 SCRA 429, 436, 437 (1982); see Articles 1440-1446, Civil Code.

ble interest contains an express power to sell, mortgage or deal with the land in any manner, such power shall be stated in the certificate of title by the words "with power to sell" or "power to mortgage," or by apt words of description in case of other powers. No instrument which transfers, mortgages or in any way deals with registered land in trust shall be registered, unless the enabling power thereto is expressly conferred in the trust instrument, or unless a final judgment or order of a court of competent jurisdiction has construed the instrument in favor of the power, in which case a certified copy of such judgment or order may be registered."

(3) ***Implied trust; how established***

Implied trusts come into being by operation of law (Art. 1441, Civil Code), and may be proved by oral evidence (Art. 1457, *supra*). Articles 1448 to 1456 of the Civil Code enumerate some of the cases of implied trust, the most common of which is when property is acquired through mistake or fraud, the person obtaining it is deemed to hold it in trust for the benefit of the true owner or the person from whom the property comes (Art. 1456, *supra*).

One who claims an interest in registered land on the basis of implied or constructive trust shall file for registration with the Register of Deeds concerned a sworn statement to that effect, describing the land and indicating the name of the registered owner and number of the certificate of title. Such claim, before its registration, cannot affect the title of a purchaser for value and in good faith.[44]

E. ***Tax-free exchange of land for shares of stock***

Revenue Memorandum No. 26-92 dated May 28, 1992 of the Bureau of Internal Revenue provides that in cases where property is the subject of tax-free exchange for shares of stock of a corporation, the Register of Deeds having jurisdiction over the property exchanged may cause the registration of the document of exchange and issue a transfer certificate of title to the transferee corporation only upon presentation of a Certificate Authorizing Registration issued by the authorized Internal Revenue Officer. The Register of Deeds shall annotate at the back of the certificate of title to be issued a statement that the transfer is a tax-free exchange under Section 34(c)(2) of the Tax Code.

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[44]Sec. 68, P.D. No. 1529

3. Involuntary Dealings

Among involuntary dealings affecting registered land which shall be registered are attachments, sale on execution or for taxes or for any assessment, adverse claim and notice of *lis pendens*.

A. *Attachments*

(1) *Registration*

Attachment is governed by Rule 57 of the Rules of Court. The writ of attachment, when issued by the court at the instance of the plaintiff or any proper party, subjects the attached property of the adverse party as security for the satisfaction of any judgment that may be recovered (Sec. 1 of the Rule). A copy of said writ, as well as an order or process of the court intended to create or preserve any lien, status, or right (such as a restraining order, injunction or *mandamus*) shall be filed and registered in the Registry of Deeds of the province or city in which the land lies.[45] If the duplicate certificate of title of the land involved is not presented at the time of said registration, the Register of Deeds shall, within 36 hours thereafter, send notice by mail to the registered owner, informing that such paper has been registered and requesting him to send or produce his duplicate certificate so that a memorandum of the attachment or other lien may be made thereon. If the owner neglects or refuses to comply therewith, the Register of Deeds "shall report the matter to the court, and it shall, after notice, enter an order to the owner to produce his certificate at a time and place named therein, and may enforce the order by suitable process."[46]

A certificate of entry of any order, decision or judgment of the court where the action is pending which continues, reduces, dissolves or discharges the writ of attachment or other liens upon registered land shall also be registered in the proper Registry of Deeds.[47]

(2) *Effects of attachment*

Santos vs. Aquino, Jr.,[48] gives an enlightening discourse on the effects of attachment, as follows:

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[45]Sec. 69, P.D. No. 1529.
[46]Sec. 71, P.D. No. 1529.
[47]Sec. 73, P.D. No. 1529.
[48]205 SCRA 127, 133, 134 (1992).

"The rule is that when real property, or an interest therein, of the judgment debtor is attached, the levy creates a lien which nothing can subsequently destroy except by the dissolution of the attachment. Prior registration of the lien creates a preference, since the act of registration is the operative act to convey and affect the land (*Lu vs. IAC, et al.*, 169 SCRA 595; *Vda. de Carvajal vs. Coronado*, 18 SCRA 635, 641). Because an attachment is a proceeding *in rem* against particular property/properties, the attaching creditor acquires a specific lien upon the attached properties which ripens into a judgment against the *res* when the order of sale is made. Such a proceeding is in effect a finding that the properties attached are indebted things considered as a virtual condemnation to pay the owners' debt. (Art. 2242[7] of the Civil Code; Rules 39 and 57 of the Rules of Court; 7 CJS 433). The lien obtained by attachment stands upon as high equitable ground as a mortgage lien, a fixed and positive security which must necessarily continue until the debt is paid (*Roa vs. CA*, 190 SCRA 262, citing *Government vs. Mercado,* 67 Phil. 409). It necessarily follows that the attached properties cannot be interferred with until sold to satisfy the judgment, or discharged in the manner provided by the Rules of Court, requiring the conduct of a proper hearing by the court (*Uy vs. CA,* 191 SCRA 275, citing *Manila Herald Publishing Co., Inc. vs. Ramos*, 88 Phil. 94 and *BF Homes, Inc. vs. CA*, 190 SCRA 263, on Sections 12 and 13, Rule 57 of the Rules of Court).

The writ of attachment is substantially a writ of execution except that it emanates at the beginning, instead of at the termination, of a suit. It places the attached properties in *custodia legis*, obtaining *pendente lite* a lien until the judgment of the proper tribunal on the plaintiff's claim is established, when the lien becomes effective as of the date of the levy (pp. 407-503, 83 CJS, citing *Bank of Missouri vs. Matson*, 26 No. 243, 73 Amd 208; *Forrier vs. Masters*, 83 459, 473, 2 SE 927).

There is no rule allowing substitution of attached property although an attachment may be discharged wholly or in part upon the security of a counterbond offered by the defendant upon application to the court, with notice to, and after hearing, the attaching creditor (Sec. 12, Rule 57, Rules of Court), or upon application of the defendant, with notice to the applicant and after hearing, if it appears that the attachment was improperly or irregularly issued (Sec. 13, Rule 57, Rules of Court).

If an attachment is excessive, the remedy of the defendant is to apply to the court for a reduction or partial discharge of the attachment, not the total discharge and substitution of the attached properties. The reason for this is that the lien acquired by the plaintiff-creditor as of the date of the original levy would be lost. It would in effect constitute a deprivation without due process of law of the attaching creditor's interest in the attached property as security for the satisfaction of the judgment which he may obtain in the action."

B. *Registration of sale of land on execution, or for taxes or for any assessment; issuance of new certificate of title*

The self-explanatory provisions of Sections 74 and 75 of P.D. 1529 are as follows:

"SEC. 74. *Enforcement of liens on registered land.* — Whenever registered land is sold on execution, or taken or sold for taxes or for any assessment or to enforce a lien of any character, or for any costs and charges incident to such liens, any execution or copy of the execution, any officer's return, or any deed, demand, certificate, or affidavit, or other instrument made in the course of the proceedings to enforce such liens and required by law to be recorded shall be filed with the Register of Deeds of the province or city where the land lies and registered in the registration book, and a memorandum made upon the proper certificate of title in each case as lien or encumbrance."

"SEC. 75. *Application for new certificate upon expiration of redemption period.* — Upon the expiration of the time, if any, allowed by law for redemption after registered land has been sold on execution, or taken or sold for the enforcement of a lien of any description, except a mortgage lien, the purchaser at such sale or anyone claiming under him may petition the court for the entry of a new certificate of title to him.

Before the entry of a new certificate of title, the registered owner may pursue all legal and equitable remedies to impeach or annul such proceedings."

The right of the purchaser at such sale to petition for the issuance of a new certificate of title to him is thus subject to the condition that "before the entry of a new certificate of title,

the registered owner may pursue all legal and equitable remedies to impeach or annul such proceedings." Should the registered owner's opposition raise substantial or controversial matters such as impugning the validity of the proceedings on sale or execution, or on sale for the enforcement of a lien of any character, then the regional trial court sitting as a land registration or cadastral court loses jurisdiction to resolve the issues. These controversial issues should be threshed out in a separate appropriate action (*Tagaytay-Taal Tourist Development Corp. vs. Court of appeals,* 83 SCAD 155; 273 SCRA 182 [1997]).

(1) Tax delinquent land owner entitled to notice of sale

One such controversial issue is where the registered owner was not notified of the alleged tax delinquency and other proceedings relative to the tax sale. The collection of delinquent taxes being *in personam*, not *in rem,* a notice by publication does not suffice. It is "still incumbent upon the city (or municipal) treasurer to send notice of the tax delinquency" as well as the notice by public auction, directly to the tax payer in order to protect the interests of the latter. And "for purposes of the real property tax, the registered owner of the property is deemed the tax payer" (*Talusan vs. Tayag, 356* SCRA 263, 276, 277, G.R. No. 133698, April 4, 2001).

A tax sale held despite the absence of actual notice to the delinquent land owner, is null and void. And the title of the buyer therein is thus also null and void. (*Sarmiento vs. CA*, 470 SCRA 99, 116-119 [2005]).

C. *Adverse claim*

A claim or interest may be registered as an adverse claim when (1) the claimant' s right or interest in registered land is adverse to the registered owner; (2) such right or interest arose subsequent to the date of original registration; and (3) no other provision is made in the Decree for the registration of such right or claim.[49]

A mere money claim cannot be registered as an adverse claim.[50]

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[49]Sec. 70, 1st par., P.D. No. 1529; Arrazola vs. Bernas, 86 SCRA 279, 283 (1978).
[50]Sanchez vs. Court of Appeals, 69 SCRA 327 (1976).

(1) ***Formal requisites***

The formal requisites of an adverse claim for the purpose of registration are as follows:[51]

(1) The adverse claimant must state the following in writing:

a. his alleged right or interest;

b. how and under whom such alleged right or interest is acquired;

c. the description of the land in which the right or interest is claimed; and

d. the certificate of title number.

(2) Such statement must be signed and sworn to before a notary public or other officer authorized to administer oath; and

(3) The claimant shall state his residence or place to which all notices may be served upon him.

The non-compliance with said formal requisites, such as the failure of the claimants to state how and under whom they acquired their alleged right or interest, renders such adverse claim non-registrable and ineffective.

(2) ***Purpose of registering adverse claim***

The purpose of annotating adverse claim on the certificate of title is to apprise third persons that there is a controversy over the ownership of the land covered thereby and to preserve and protect the right of the adverse claimant during the pendency of the controversy. It is a notice to third persons that any transaction regarding the disputed land is subject to the outcome of the dispute."[52]

However, a claim that is not validly registered is ineffective for the purpose of protecting the claimant's right or interest on the disputed land, and could not thus prejudice any right that may have arisen thereafter in favor of third parties.[53]

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[51]Sec. 70, 2nd par., *supra*; Lozano vs. Ballesteros, 195 SCRA 681, 689 (1991).
[52]Arrazola vs. Bernas, *supra*, p. 284.
[53]L.P. Leviste and Co., Inc. vs. Noblejas, 89 SCRA 520, 529 (1979).

(3) ***Samples of registrable and non-registrable adverse claims***

(a) Claim based on the hereditary rights of the children of a deceased parent and there is a proceeding for the probate of his will while the parent is still living. The expectant hereditary rights do not constitute adverse claim.[54]

(b) Voluntary instruments, such as sale and lease, may be registered as adverse claims when the owner refuses to surrender the duplicate certificate of title for annotation of the voluntary instrument.[55]

(c) An interest or right on land based on a lawyer's contingent fee contract which arose after the original registration thereof, can be annotated as an adverse claim after termination of the litigation involving the land.[56]

On the other hand —

A claim based on occurrences prior to the original registration is not registerable; nor can a claim based on prescription or adverse possession be registered by the possessor when the land is already registered in the name of another.[57]

(4) ***Period of effectivity; when cancelled***

Under the second paragraph of Section 70, P.D. No. 1529, the adverse claim shall be effective for a period of thirty (30) days from the date of registration, and it may be cancelled:

(a) After the lapse of said 30 days, upon the filing by the party in interest of a *verified petition* for such purpose. No second adverse claim based on the same ground may thereafter be registered by the same claimant.

Construing said Section 70 of P.D. No. 1529, it was held "that the cancellation of the adverse claim is still necessary to render it ineffective, otherwise, the inscription will remain annotated and shall continue as a lien upon the property"

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[54]Arrazola vs. Bernas, *supra*, p. 286.

[55]L.P. Leviste Co., Inc. vs. Noblejas, *supra*, p. 528; Arrazola vs. Bernas, *supra*, p. 283; Junio vs. de Los Santos, 132 SCRA 209 (1984).

[56]Director of Lands vs. Ababa, 88 SCRA 513 (1979).

[57]Arrazola vs. Bernas, *supra*, p. 283, citing De los Reyes vs. De los Reyes, 91 Phil. 528 and Estella vs. Register of Deeds of Rizal, 106 Phil. 911.

(*Sajonas vs. CA*, 258 SCRA 79, 96 [1996]). For this purpose, the interested party must file with the proper court a petition for cancellation of adverse claim, and a hearing must also first be conducted. The Register of Deeds cannot on his own automatically cancel the adverse claim (*Diaz-Duarte vs. Ong*, 298 SCRA 388, 396 [1998]).

(b) Before the lapse of said 30 days, upon the filing by the claimant of a *sworn petition* withdrawing his adverse claim.

(c) Before the lapse of the 30-day period, when a party in interest files a petition in the proper Regional Trial court for the cancellation of the adverse claim and, after notice and hearing, the court finds that the claim is invalid. If the court also finds the claim to be frivolous, it may fine the claimant in the amount of not less than one thousand pesos nor more than five thousand pesos, in its discretion.

Although an adverse claim could subsist concurrently with a subsequent annotation of a notice of *lis pendens* involving the same right or interest covered by the adverse claim,[58] the said claim may be validly cancelled after the registration of such notice, since the notice of *lis pendens* also serves the purposes of the adverse claim.[59]

D. *Notice of lis pendens*

(1) *Nature and purpose of the notice*

It has been held that:

"The notice of *lis pendens* — *i.e.*, that real property is involved in an action — is ordinarily recorded without the intervention of the court where the action is pending. The notice is but an incident in an action, an extrajudicial one, to be sure. It does not affect the merits thereof. It is intended merely to constructively advise, or warn, all people who deal with the property that they so deal with it at their own risk, and whatever rights they may acquire in the property in any voluntary transaction are subject to the results of the action, and may well be inferior and subordinate to those which may

[58]Arrazola vs. Bernas, *supra*, p. 285, citing Ty Sin Tei vs. Dy Piao, 103 Phil. 858.
[59]Villaflor vs. Juezan, 184 SCRA 315 (1990).

be finally determined and laid down therein. (See *Heirs of Maria Marasigan vs. IAC*, 152 SCRA 253 (1987); *Tanchoco vs. Aquino*, 154 SCRA 1 (1987). The cancellation of such a precautionary notice is therefore also a mere incident in the action, and may be ordered by the court having jurisdiction of it at any given time. And its continuance or removal — like the continuance or removal of a preliminary attachment or injunction — is not contingent on the existence of a final judgment in the action, and ordinarily has no effect on the merits thereof."[60] The Notice of *lis pendens* covers only the particular property subject of the litigation.

(2) *Cases where notice of lis pendens is proper*

A notice of *lis pendens* is proper in an action —

a) to recover possession of real estate;

b) to quiet title thereto;

c) to remove clouds upon the title thereof;

d) for partition;

e) to establish a right, an equitable estate, or interest in, a specific real property;

f) to enforce a lien, a charge or an encumbrance against it; and

g) any other proceeding of any kind in court directly affecting the title to the land or the use or occupation thereof or the building thereon.[61]

It is not therefore proper where the action is a purely personal action, as where the suit was a simple collection suit, though the title or right of possession to the property be incidentally affected.

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[60]Magdalena Homeowners Assn., Inc. vs. CA, 184 SCRA 325, 330 (1990); also Felix Gochan and Sons Realty Corp. vs. Canada, 165 SCRA 207, 216 (1988); Baranda vs. Gustilo, 165 SCRA 757, 768 (1988); Tan vs. Lantin, 142 SCRA 423, 425 (1986); Laroza vs. Guia, 134 SCRA 341 (1985); Jose vs. Blue, 42 SCRA 351, 360 (1971).

[61]Sec. 76 P.D. No. 1529; Sec. 24, Rule 14 of the Rules of Court; Magdalena Homeowners Assn., Inc. vs. CA, *supra*, p. 330. Atlantic Erectors Inc. vs. Herbal Cove Realty Corp., 399 SCRA 409, 416, G.R. No. 148568, March 20, 2003.

The rule on *lis pendens* has been further explained in *Romero vs. Court of Appeals*, (458 SCRA 483, 494, 495 [2005]), as follows:

"xxx

"To put the property under the coverage of the rule on *lis pendens*, all a party has to do is to assert a claim of possession or title over the subject property. It is not necessary that ownership or interest over the property is proved."

xxx

"Whether or not the claim of private respondent has merit is of no moment and should not affect the annotation of *lis pendens* on the title of the subject property. There is nothing in the rules which requires a party seeking annotation of *lis pendens* to show that the land belongs to him. There is no requirement that the party applying for the annotation must prove his right or interest over the property sought to be annotated. Thus, we have held that even on the basis of an unregistered deed of sale, a notice of *lis pendens* may be annotated on the title. Said annotation cannot be considered as a collateral attack against the certificate of title based on the principle that the registration of a notice of *lis pendens* does not produce a legal effect similar to a lien. The rules merely require that an affirmative relief be claimed since a notation of *lis pendens* neither affects the merits of a case nor creates a right or a lien. It only protects the applicant's rights which will be determined during trial."

(3) *Form of the notice and when it takes effect*

The notice of *lis pendens* should state the pendency of the action, containing the names of the parties and the object of the action or defense and the court wherein the same is pending; the date of the institution of the suit; an adequate description of the land affected, the number of the certificate of title covering it and the name of the registered owner.[62]

It is the rule that the entry of the notice of *lis pendens* in the primary entry book (then day book) is sufficient to constitute regis-

[62]Sec. 76, *supra*, Sec. 24, Rule 14, *supra*.

tration, and such entry is notice to all persons, including subsequent transferees, of the pending action. And it is equally the rule that such notice, when annotated in the mother or original certificate of title, must be carried over in all certificates subsequently issued, which will yield to the result of the action.[63]

(4) *When it may be cancelled*

The notice of *lis pendens* may be cancelled before final judgment upon order of the court in the following cases.[64]

(a) when it is shown that the notice is for the purpose of molesting the adverse party;

(b) when it is shown that it is not necessary to protect the right of the party who caused the registration thereof;

(c) where the evidence so far presented by the plaintiff does not bear out the main allegations of the complaint; and

(d) where the continuances of the trial, for which the plaintiff is responsible, are unnecessarily delaying the determination of the case to the prejudice of the defendant.

The notice may also be cancelled upon verified petition of the party who caused the registration thereof.

The notice cannot, however be cancelled upon the mere filing of sufficient bond, in fact regardless of the amount, by the party on whose title the said notice is annotated (*Lim vs. Vera Cruz*, 356 SCRA 386, 393, G.R. No. 143646, April 4, 2001).

The notice of *lis pendens* shall be deemed cancelled after final judgment in favor of defendant, or other disposition of the action such as to terminate all rights of the plaintiff to property involved. The notice loses its efficacy when the adverse right fails in the litigation.[65]

Relatedly, and while as earlier indicated (under discussion of adverse claim) a notice of *lis pendens* and an adverse claim can con-

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[63]Director of Lands vs. Reyes, 68 SCRA 177, 188 (1975).

[64]Sec. 77, P.D. No. 1529; Baranda vs. Gustilo, *supra*, p. 768, citing Victoriano vs. Rovina, 55 Phil. 1000; Sarmiento vs. Ortiz, 10 SCRA 158.

[65]Tirador vs. Sevilla, 188 SCRA 321, 326 (1990); Sec. 77, 2nd par., P.D. No. 1529.

currently subsist, yet should any of these annotations be considered unnecessary or superfluous, "it would be the notice of *lis pendens*, and not the annotation of an adverse claim, which is more permanent and cannot be cancelled without adequate hearing and proper disposition of the claim involved."[66]

4. *Transfer of private land to natural-born citizen of the Philippines who has lost his Philippine citizenship*

Sections 2 and 3 of Batas Pambansa Blg. 185 (An Act to implement section 15 of Article XIV of the Philippine Constitution) which was approved and took effect on March 16, 1982, provide as follows:

> "SEC. 2. Any natural-born citizen of the Philippines who has lost his Philippine citizenship and who has the legal capacity to enter into a contract under Philippine laws may be a transferee of a private land up to a maximum area of one thousand square meters, in the case of urban land, or one lecture in the case of rural land, to be used by him as his residence. In the case of married couples, one of them may avail of the privilege herein granted: *Provided*, That if both shall avail of the same, the total area acquired shall not exceed the maximum herein fixed.
>
> In case the transferee already owns urban or rural lands for residential purposes, he shall still be entitled to be a transferee of additional urban or rural land for residential purposes which, when added to those already owned by him, shall not exceed the maximum areas herein authorized.
>
> "SEC. 3. A transferee under this Act may acquire not more than two lots which should be situated in different municipalities or cities anywhere in the Philippines: *Provided*, That the total area thereof shall not exceed one thousand square meters in the case of urban lands or one hectare in the case of rural land for use by him as his residence. A transferee who has already acquired urban land shall be disqualified from acquiring rural land, and vice versa."

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[66]A. Doronila Resources Dev., Inc. vs. CA, 157 SCRA 26, 30 (1988).

The transfer as a mode of acquisition under the above Act refers to either voluntary sale, devise or donation, or involuntary sales on tax delinquency, foreclosure and execution of judgment (Sec. 5 thereof).

For the purpose of registering such transfer the transferee shall, in addition to the other requirements for registration of title under P.D. No. 1529 (already discussed), submit to the Register of Deeds where the subject property is located "a sworn statement showing the date and place of his birth; the names and addresses of his parents, of his spouse and children, if any; the area, the location and the mode of acquisition of his landholdings in the Philippines, if any; his intention to reside permanently in the Philippines; the date he lost his Philippine citizenship and the country of which he is presently a citizen; and such other information as may be required" in the implementing rules and regulations (Section 6 of the Act).

Aforequoted Sections 2 and 3 of B.P. Blg. 185 have been lately amended by a new section designated as Section 10 of the Foreign Investments Act (Rep. Act 7042) pursuant to Section 5 of Rep. Act No. 8179, approved on March 28, 1996. Said Section 10 reads as follows:

> "SEC. 10. *Other Rights of Natural Born Citizen Pursuant to the Provisions of Article XII, Section 8 of the Constitution.* — Any natural born citizen who has lost his Philippine citizenship and who has the legal capacity to enter into a contract under Philippine laws may be a transferee of a private land up to a maximum area of five thousand (5,000) square meters in the case of urban land or three (3) hectares in the case of rural land to be used by him for business or other purposes. In the case of married couples, one of them may avail of the privilege herein granted: *Provided*, that if both shall avail of the same, the total area acquired shall not exceed the maximum herein fixed.
>
> "In case the transferee already owns urban or rural land for business or other purposes, he shall still be entitled to be a transferee of additional urban or rural land for business or other purposes which when added to those already owned by him shall not exceed the maximum areas herein authorized."
>
> "A transferee under this Act may acquire not more than two (2) lots which should be situated in different municipalities or cities anywhere in the Philippines: *Provided*, That the

total land area thereof shall not exceed five thousand (5,000) square meters in the case of urban land or three (3) hectares in the case of rural land for use by him for business or other purposes. A transferee who has already acquired urban land shall be disqualified from acquiring rural land and vice versa."

5. Consultas

As earlier stated in Chapter II of this book, it is the ministerial duty of the Register of Deeds to register an instrument which in his opinion is registrable, and to deny registration only if the instrument is not registrable. Where he is in doubt as to the proper action to be taken on such instrument or deed, he may himself, pursuant to Section 117 of P.D. No. 1529, submit the questions to the Administrator of the Land Registration Authority (LRA). When the Register of Deeds denies the registration of the instrument, he is required by the same section of the Decree to do the following:

(1) He shall notify the interested party in writing of such denial, stating the defects of the instrument or legal ground relied upon, and advising the latter that if he does not agree to such denial or ruling, he may, without withdrawing the instrument or document from the Registry, elevate the matter by *consulta* within five days from receipt of the notice of denial of registration to the LRA Administrator; and

(2) He shall make a memorandum of the pending *consulta* in the certificate of title covering the land subject of the instrument or deed. After final resolution or decision of the *consulta*, he shall *motu proprio* cancel the memorandum. He may also cancel the memorandum before resolution of the same, if withdrawn by the petitioner.

The interested party may not properly file a petition for mandamus to compel the Register of Deeds to register an instrument, but must resort to the remedy of a *consulta*.[67]

The resolution or ruling of the LRA Administrator in *consulta* shall be conclusive and binding upon all Register of Deeds; however, the party in interest who disagrees with the final resolution or ruling may appeal to the Court of Appeals within the period and in the

[67]Almirol vs. The Register of Deeds of Agusan, 22 SCRA 1152 (1968).

manner provided in Rep. Act No. 5434 (last part., Sec. 117, P.D. No. 1529).

In Revised Administrative Circular No. 1-95 of the Supreme Court made effective on June 1, 1995, an appeal from the Administrator's final resolutions or orders may be taken to the Court of Appeals within fifteen (15) days from notice of said resolution or order or of the denial of the aggrieved party's motion for reconsideration by filing a verified petition for review in seven (7) legible copies with the latter court; with proof of service of a copy on the adverse party and on the Land Registration Authority.

Chapter XV

REGISTRATION OF COURT JUDGMENTS AND ORDERS AND RELATED PROCESSES OR PAPERS

1. Judgment/Order in actions involving ownership of or affecting real estate

Presidential Decree No. 1529 provides for the following actions to be taken:

a) A judgment for the plaintiff in an action to recover possession or ownership of real estate or any interest therein affecting registered land is entitled to registration. Upon presentation of a certificate of entry of such judgment from the clerk of the court where the action is pending, the Register of Deeds concerned shall enter a memorandum thereof upon the certificate of title of the land to which the judgment relates. If the judgment does not apply to all the lands embraced in the certificate of title, both the aforesaid certificate of the clerk of court and the memorandum so entered shall contain a description of the land affected by the judgment (Sec. 78).

b) When the action is to *recover ownership* of real estate or an interest therein and an order of execution has been issued in favor of the plaintiff, the Register of Deeds concerned shall issue to him a new certificate of title and cancel the original certificate and owner's duplicate of the former registered owner. If the registered owner neglects or refuses within a reasonable time after plaintiff's request to produce his duplicate certificate for cancellation, the court shall, on application and after notice, order the owner to produce his certificate at the time and place designated (Sec. 79).

c) The court, upon petition of plaintiff, shall order any parties before it to execute for registration any deed or instrument necessary to give effect to a judgment in favor of plaintiff

affecting registered land, and shall require the registered owner to deliver his duplicate certificate to the plaintiff or to the Register of Deeds to be cancelled or to have a memorandum annotated upon it. Should the person required to execute such deed or instrument is absent in the Philippines, or is a minor, or insane, or for any reason not amenable to the process of the court rendering the judgment, said court may appoint a suitable person or trustee to execute such instrument which shall be entitled to registration (Sec. 80).

1A. When surrender of owner's duplicate certificate of title not necessary

The Register of Deeds concerned need not wait for the registered owner of the property subject of the judgment to first surrender his duplicate certificate of title before complying with the execution of a final and executory decision — which is to issue titles in the name of the prevailing party. As the Supreme Court said:

> "xx if execution (of a final judgment) cannot be had just because the losing party will not surrender her titles, the entire proceedings in the courts, not to say the efforts, expenses and time of the parties, would be rendered nugatory. It is revolting to conscience to allow petitioners to further avert the satisfaction of their obligation because of sheer literal adherence to technicality, or formality of surrender of the duplicate titles. The surrender of the duplicate is implied from the executory decision since petitioners themselves were parties thereto. Besides, as part of the execution process, it is a ministerial function of the Register of Deeds to comply with the decision of the court to issue a title and register a property in the name of a certain person xx" (*Toledo-Banaga vs. CA*, 302 SCRA 331, 343 [1997]).

2. Judgment in partition

The court, in a judgment in an action for partition of registered land, (a) may assign a particular portion of the land to each party; or (b) may order the sale of the land; or (c) may assign the entire land to one of the parties upon payment to the others of the sum ordered by the court. In either of these adjudications, a true copy of the judgment certified by the clerk of court should be recorded or registered in the Registry of Deeds where land lies.

Each owner of a particular portion of the land, the purchaser or his assigns, and the party — assignee to the land, are all entitled to have a certificate entered in his or their names and to receive an owner's duplicate thereof. Any such new certificate of title shall contain a memorandum of the final judgment of partition. However, "any person holding such certificate of title or a transfer thereof shall have the right to petition the court at any time to cancel the memorandum relating to such judgment or order, and the court, after notice and hearing, may grant the petition. Such certificate shall thereafter be conclusive in the same manner and to the same extent as other certificates of title."[1]

If it appears "that a mortgage or lease affecting a specific portion or an undivided share of the premises had been previously registered, the Register of Deeds shall carry over such encumbrance on the certificate of title that may be issued." (Sec. 82, P.D. No. 1529).

3. Notice and adjudication in Insolvency or Bankruptcy proceedings

Section 83 of P.D. No. 1529 provides:

> "SEC. 83. *Notice of insolvency.* — Whenever proceeding in bankruptcy or insolvency, or analogous proceedings, are instituted against a debtor who owns registered land, it shall be the duty of the officer serving the notice of the institution of such proceedings on the debtor to file a copy thereof with the office of the Register of Deeds for the province or city where the land of the debtor lies. The assignee or trustee appointed by the court in such proceedings shall be entitled to the entry of a new certificate of the registered land of the debtor or bankrupt, upon presenting and filing a certified copy of the assignment in insolvency or order or adjudication in bankruptcy with the insolvent's or bankrupt's duplicate certificate of title; but the new certificate shall state that it is entered to him as assignee in insolvency or trustee in bankruptcy or other proceedings, as the case may be."

When any of the aforementioned proceedings is vacated by judgment, a certified copy thereof may be registered, and the new certificate of title issued to the assignee or trustee, if any, shall be surrendered to the Register of Deeds for cancellation and forthwith the

[1]Sec. 81, P.D. No. 1529; see also Sec. 11, Rule 69, Rules of Court.

debtor shall be entitled to a new certificate in his name. (Sec. 84, *supra*).

4. Judgment in eminent domain

The expropriating agency or instrumentality is required under Section 85 of P.D. No. 1529 to file for registration in the proper Registry of Deeds a copy of the judgment in the eminent domain case. The Register of Deeds shall then make a memorandum of the right or interest taken on the certificate of title covering the land expropriated. Where the fee simple title is taken, a new certificate shall be issued in favor of the expropriator.

5. Extrajudicial settlement of estate

The summary settlement of estate, by extra-judicial settlement between or among heirs, or by means of an affidavit of adjudication if there is only one heir, is governed by Rule 74 of the Rules of Court. The public instrument of extrajudicial settlement, the affidavit in the latter case, should be filed with the Register of Deeds where the property is located. Section 86 of P.D. No. 1529 mandates the Register of Deeds to annotate on the proper title the two-year lien mentioned in Section 4 of said Rule 74 of the Rules of Court. This lien refers to the liability of the estate for the share of an heir or other person who may have been unduly deprived of his participation in the estate, and for any debt outstanding against the estate. Upon the expiration of the two-year period and presentation of a verified petition by the registered heirs or parties in interest that no claim of any creditor, heir or other person exist, the Register of Deeds shall cancel the said lien noted on the title without the necessity of a court order. The said petition shall be entered in the Primary Entry book and a memorandum thereof made on the title.

6. Judgment, order and other papers related to registered land or estate of a deceased owner

In connection with registered land or estate of a deceased owner, P.D. No. 1529 likewise requires the filing with the office of the Register of Deeds of the following:

1) A certified copy of the letters of administration of the executor or administrator of the estate or if there is a will, a certified copy thereof and the court order allowing the same, together with the letters testamentary or of administration with

the will annexed, as the case may be. Upon the production of the duplicate certificate of title, the Register of Deeds shall enter upon the certificate a memorandum of the said letters, will and order, making reference to the letters and/or will by their file number, and the date of filing the same. (Sec. 87).

2) A certified copy of the order, if any has been issued by the court having jurisdiction of the estate or intestate proceedings, directing the executor or administrator to take over and transfer to the devisees or heirs, or any of them, in anticipation of final distribution a portion or the whole of the registered land to which they might be entitled on final distribution. The executor or administrator may then cause such transfer to be made upon the register in like manner as in the case of a sale, and the Register of Deeds upon the presentation of the owner's duplicate certificate shall issue to the devisees or heirs their corresponding certificates of title. (Sec. 91).

3) A certified copy of the partition and distribution, together with the final judgment or order of the court approving the same or otherwise making final distribution, supported by evidence of payment of estate tax or exemption therefrom, as the case may be. Upon presentation of the owner's duplicate certificate of title, the Register of Deeds shall issue new certificate to the parties severally entitled thereto in accordance with the approved partition and distribution (Sec. 92).

Chapter XVI

RECORDING OF INSTRUMENTS RELATING TO UNREGISTERED LAND; CHATTEL MORTGAGE; CONDOMINIUM

1. Instruments involving unregistered land

Section 113 of P.D. No. 1529, which specifically governs the registration of documents or instruments involving unregistered land, reads in full as follows:

> "SEC. 113. *Recording of instruments relating to unregistered lands.* — No deed, conveyance, mortgage, lease, or other voluntary instrument affecting land not registered under the Torrens system shall be valid, except as between the parties thereto, unless such instrument shall have been recorded in the manner herein prescribed in the office of the Register of Deeds for the province or city where the land lies.
>
> (a) The Register of Deeds for each province or city shall keep a Primary Entry Book and a Registration Book. The Primary Entry Book shall contain, among other particulars, the entry number, the names of the parties, the nature of the document, the date, hour and minute it was presented and received. The recording of the deed and other instruments relating to unregistered lands shall be effected by way of annotation on the space provided therefor in the Registration Book, after the same shall have been entered in the Primary Entry Book.
>
> (b) If, on the face of the instrument, it appears that it is sufficient in law, the Register of Deeds shall forthwith record the instrument in the manner provided herein. In case the Register of Deeds refuses its admission to record, said official shall advise the party in interest in writing of the ground or grounds for his refusal, and the latter may appeal the matter to the Com-

missioner of Land Registration in accordance with the provisions of Section 117 of this Decree. It shall be understood that any recording made under this section shall be without prejudice to a third party with a better right.

(c) After recording on the Record Book, the Register of Deeds shall endorse, among other things, upon the original of the recorded instruments, the file number and the date as well as the hour and minute when the document was received for recording as shown in the Primary Entry Book, returning to the registrant or person in interest the duplicate of the instrument, with appropriate annotation, certifying that he has recorded the instrument after reserving one copy thereof to be furnished the provincial or city assessor as required by existing law.

(d) Tax sale, attachment and levy, notice of *lis pendens*, adverse claim and other instruments in the nature of involuntary dealings with respect to unregistered lands, if made in the form sufficient in law, shall likewise be admissible to record under this section.

(e) For the services to be rendered by the Register of Deeds under this section, he shall collect the same amount of fees prescribed for similar services for the registration of deeds or instruments concerning registered lands.

From the above provisions, it is clear that (1) voluntary and involuntary instruments affecting unregistered land must also be registered; (2) that with respect to voluntary instruments, it is the registration thereof that makes them binding even as against third persons; and (3) that a party to such instrument may, when proper, resort to the remedy of *consulta*.

2. Chattel Mortgage

A. *Nature and requisite registration*

According to Article 2140 of the Civil Code, "by a chattel mortgage, personal property is recorded in the Chattel Mortgage Register as a security for the performance of an obligation." Said Register actually refers to the Primary Entry Book and the Registration Book specifically for chattel mortgages and any assignment or discharge thereof, as well as any other instrument relating to the recorded

mortgage which are kept in every Registry of Deeds (Sec. 115, P.D. No. 1529).

Unlike a contract of pledge, the movable which is subject of a chattel mortgage is not delivered to the creditor or a third person; otherwise, it is a contract of pledge (Art. 2140, *supra*). But like in pledge, in chattel mortgage it is essential that the mortgagor be the absolute owner of the thing mortgaged, and that he has the free disposal of such property.[1] When constituted, "a chattel mortgage shall be deemed to cover only the property described therein and not like or substituted property thereafter acquired by the mortgagor and placed in the same depository as the property originally mortgaged, anything in the mortgage to the contrary notwithstanding."[2]

The chattel mortgage shall be registered in the office of the Register of Deeds of the province or city where the mortgagor resides as well as where the property is situated or ordinarily kept.[3] It is this recording that gives validity and effect to the contract even as against third persons.[4] However, a chattel mortgage over a motor vehicle, to be binding on third persons, shall not only be registered in the Registry of Deeds but also in the Motor Vehicle Office.[5]

B. *Mortgagee's right of possession preparatory to foreclosure*

Section 14 of the Chattel Mortgage Law (Act No. 1508, as amended) provides, *inter alia*, that the "mortgagee, his executor, administrator, or assign, may, after thirty days from the time of condition broken, cause the mortgaged property, or any part thereof, to be sold at public auction x x x." The mortgagee then has the right to the possession of the property mortgaged for the purpose of selling it a public auction. But the mortgagee may not secure possession of said property against the will of the debtor. Thus, it has been held that "the law does not allow the creditor himself to take possession of the mortgaged property through violence and against the will of

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[1]Art. 2141 of the Civil Code makes the provisions of the Code on pledge (Articles 2085-2123) applicable to chattel mortgages insofar as they are not in conflict with the Chattel Mortgage Law (Act No. 1508, as amended).

[2]Sec. 7, last par., Chattel Mortgage Law.

[3]Sec. 114, P.D. No. 1529.

[4]Sec. 4, Chattel Mortgage Law.

[5]Aleman vs. De Catera, 1 SCRA 776, 780 (1961); Montano vs. Lim Ang, 7 SCRA 250, 256 (1963).

the debtor because the creditor's right of possession is conditioned upon the fact of default and the existence of this fact may naturally be the subject of controversy. The debtor, for instance, may claim in good faith, and rightly or wrongly, that the debt is paid, or that for some other reason the alleged default is non-existent." The remedy then "if the debtor refuses to yield up the property" is for the creditor to "institute an action, either to effect a judicial foreclosure directly, or to secure possession as a preliminary to the sale contemplated."[6]

Relatedly, the foreclosure and actual sale of a mortgaged chattel bars further recovery by the vendor of any balance in the outstanding obligation not so satisfied by the sale.[7]

3. Condominium

A. *Concept defined*

The Condominium Act (Rep. Act No. 4726), which took effect on June 18, 1966, defines a condominium, as follows:

> "SEC. 2. A condominium is an interest in real property consisting of a separate interest in a unit in a residential, industrial or commercial building and an undivided interest in common, directly or indirectly, in the land on which it is located and in other common areas of the building. A condominium may include, in addition, a separate interest in other portions of such real property. Title to the common areas, including the land, or the appurtenant interests in such areas, may be held by a corporation specially formed for the purpose (hereinafter known as the "condominium corporation") in which the holders of separate interest shall automatically be members or shareholders, to the exclusion of others, in proportion to the appurtenant interest of their respective units in the common areas.

The real right in condominium may be ownership or any other interest in real property recognized by law, on property in the Civil Code and other pertinent laws."

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[6]BPI Credit Corp. vs. CA, 204 SCRA 601, 611 (1991), citing Bacharach Motor Co. vs. Summers, 42 Phil. 3.

[7]Cruz vs. Filipinas Investment and Finance Corp., 23 SCRA 791 (1968); Esquerra vs. CA, 173 SCRA 1, 10 (1989).

B. *Requisite registration*

The Act requires the registration in the Register of Deeds of the province or city where the property lies of the following:

1) Enabling or master deed. — It is the recording of this deed that makes the provisions of the Act applicable to property divided or to be divided into condominiums. This deed shall contain, among others, the following: description of the building, and the land on which such building is located or to be located; description of the common areas and facilities; statement of the exact nature of the interest acquired or to be acquired by the purchaser in the separate units and in the common areas and facilities, as well as the purpose for which the building and each of the units are intended or restricted as to use; and a certificate of the registered owner of the property, if he is other than those executing the master deed, as well as all registered holders of any lien or encumbrance on the property, that they consent to the registration of the deed. In addition, there shall be appended to the deed as integral part thereof, a survey plan of the land included in the project, a diagrammatic floor plan of the building, and any reasonable restriction regarding the right of any condominium owner to alienate or dispose of his condominium (Sec. 4). The term "project" means the entire parcel of real property to be divided in condominiums, including all structures thereon.

2) Declaration of restrictions relating to such project. — These restrictions are annotated upon the certificate of title covering the land included in the project and constitute a lien upon each condominium (Sec. 9).

3) Instrument conveying a condominium. — Upon the registration and annotation of the conveyance on the certificate of title covering the land within the project, the transferee is entitled to the issuance of a "condominium owner's" copy of the pertinent portion of such certificate of title. A copy of the description of the land, a brief description of the condominium conveyed, name and personal circumstances of the condominium owner would be sufficient for the purposes of the "Condominium owner's" copy of the certificate of title (Sec. 18).

4) Notice of assessment upon any condominium made in accordance with a duly registered declaration of restrictions. — This notice becomes a lien upon the condominium assessed

when registered. Any release or discharge of this lien should also be registered (Sec. 20).

5) Court decree directing reorganization of a project. — The proper court, in an action for partition of a condominium project or for the dissolution of condominium corporation on the ground that the project or material part thereof has been condemned or expropriated, may issue such a decree (Sec. 23).

APPENDIX "A"

PRESIDENTIAL DECREE NO. 1529

AMENDING AND CODIFYING THE LAWS RELATIVE TO REGISTRATION OF PROPERTY AND FOR OTHER PURPOSES

WHEREAS, there is a need to update the Land Registration Act and to codify the various laws relative to registration of property, in order to facilitate effective implementation of said laws;

WHEREAS, to strengthen the Torrens system, it is deemed necessary to adopt safeguards to prevent anomalous titling of real property, and to streamline and simplify registration proceedings and the issuance of certificates of title;

WHEREAS, the decrees promulgated relative to the registration of certificates of land transfer and emancipation patents issued pursuant to Presidential Decree No. 27 to hasten the implementation of the land reform program of the country form an integral part of the property registration laws;

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Republic of the Philippines, by virtue of the powers vested in me by the Constitution, do hereby order and decree the following:

CHAPTER I — GENERAL PROVISIONS

SECTION 1. *Title of Decree.* — This Decree shall be known as the PROPERTY REGISTRATION DECREE.

SECTION 2. *Nature of registration proceedings; jurisdiction of courts.* — Judicial proceedings for the registration of lands throughout the Philippines shall be *in rem* and shall be based on the generally accepted principles underlying the Torrens system.

Courts of First Instance shall have exclusive jurisdiction over all applications for original registration of title to lands, including improvements and interests therein, and over all petitions filed after original registration of title, with power to hear and determine all questions arising upon such applications or petitions. The court through its clerk of court

shall furnish the Land Registration Commission with two certified copies of all pleadings, exhibits, orders, and decisions filed or issued in applications or petitions for land registration, with the exception of stenographic notes, within five days from the filing or issuance thereof.

SECTION 3. *Status of other pre-existing land registration system.* — The system of registration under the Spanish Mortgage Law is hereby discontinued and all lands recorded under said system which are not yet covered by Torrens title shall be considered as unregistered lands.

Hereafter, all instruments affecting lands originally registered under the Spanish Mortgage Law may be recorded under Section 113 of this Decree, until the land shall have been brought under the operation of the Torrens system.

The books of registration for unregistered lands provided under Section 194 of the Revised Administrative Code, as amended by Act No. 3344, shall continue to remain in force; *Provided*, That all instruments dealing with unregistered lands shall henceforth be registered under Section 113 of this Decree.

CHAPTER II — THE LAND REGISTRATION COMMISSION AND ITS REGISTRIES OF DEEDS

SECTION 4. *Land Registration Commission.* — In order to have a more efficient execution of the laws relative to the registration of lands, geared to the massive and accelerated land reform and social justice program of the government, there is created a commission to be known as the Land Registration Commission under the executive supervision of the Department of Justice.

SECTION 5. *Officials and employees of the Commission.* — The Land Registration Commission shall have a chief and an assistant chief to be known, respectively, as the Commissioner and the Deputy Commissioner of Land Registration who shall be appointed by the President. The Commissioner shall be a duly qualified member of the Philippine Bar with at least ten years of practice in the legal profession, and shall have the same rank, compensation and privileges as those of a Judge of the Court of First Instance. The Deputy Commissioner, who shall possess the same qualifications as those required of the Commissioner, shall receive compensation which shall be three thousand pesos per annum less than that of the Commissioner. He shall act as Commissioner of Land Registration during the absence or disability of the Commissioner and when there is a vacancy in the position until another person shall have been designated or appointed in accordance with law. The Deputy Commissioner shall also perform such other functions as the Commissioner may assign to him.

They shall be assisted by such number of division chiefs as may be necessary in the interest of the functioning of the Commission, by a Spe-

cial Assistant to the Commissioner, and by a Chief Geodetic Engineer who shall each receive compensation at the rate of three thousand four hundred pesos per annum less than that of the Deputy Commissioner.

All other officials and employees of the Land Registration Commission including those of the Registries of Deeds whose salaries are not herein provided, shall receive salaries corresponding to the minimum of their respective upgraded ranges as provided under paragraph 3.1 of Budget Circular No. 273, plus sixty per centum thereof across the board, notwithstanding the maximum salary allowed for their respective civil service eligibilities.

The salaries of officials and employees provided in this Decree shall be without prejudice to such benefits and adjustments as may from time to time be granted by the President or by the legislature to government employees.

All officials and employees of the Commission except Registers of Deeds shall be appointed by the Secretary of Justice upon recommendation of the Commissioner of Land Registration.

SECTION 6. *General Functions.* —

(1) The Commissioner of Land Registration shall have the following functions:

(a) Issue decrees of registration pursuant to final judgments of the courts in land registration proceedings and cause the issuance by the Registers of Deeds of the corresponding certificates of title;

(b) Exercise supervision and control over all Registers of Deeds and other personnel of the Commission;

(c) Resolve cases elevated *en consulta* by, or on appeal from decision of, Registers of Deeds;

(d) Exercise executive supervision over all clerks of court and personnel of the Courts of First Instance throughout the Philippines with respect to the discharge of their duties and functions in relation to the registration of lands;

(e) Implement all orders, decisions, and decrees promulgated relative to the registration of lands and issue, subject to the approval of the Secretary of Justice, all needful rules and regulations therefor;

(f) Verify and approve subdivision, consolidation, and consolidation-subdivision survey plans of properties titled under Act No. 496 except those covered by P.D. No. 957.

(2) The Land Registration Commission shall have the following functions:

(a) Extend speedy and effective assistance to the Department

of Agrarian Reform, the Land Bank, and other agencies in the implementation of the land reform program of the government;

(b) Extend assistance to courts in ordinary and cadastral land registration proceedings;

(c) Be the central repository of records relative to original registration of lands titled under the Torrens system, including subdivision and consolidation plans of titled lands.

SECTION 7. *Office of the Register of Deeds.* — There shall be at least one Register of Deeds for each province and one for each city. Every Registry with a yearly average collection of more than sixty thousand pesos during the last three years shall have one Deputy Register of Deeds, and every Registry with a yearly average collection of more than three hundred thousand pesos during the last three years, shall have one Deputy Register of Deeds and one second Deputy Register of Deeds.

The Secretary of Justice shall define the official station and territorial jurisdiction of each Registry upon the recommendation of the Commissioner of Land Registration, with the end in view of making every registry easily accessible to the people of the neighboring municipalities.

The province or city shall furnish a suitable space or building for the office of the Register of Deeds until such time as the same could be furnished out of national funds.

SECTION 8. *Appointment of Registers of Deeds and their Deputies and other subordinate personnel; salaries.* — Registers of Deeds shall be appointed by the President of the Philippines upon recommendation of the Secretary of Justice. Deputy Registers of Deeds and all other subordinate personnel of the Registries of Deeds shall be appointed by the Secretary of Justice upon the recommendation of the Commissioner of Land Registration.

The salaries of Registers of Deeds and their Deputies shall be at the following rates:

(1) *First Class Registries* — The salaries of Registers of Deeds in first class Registries shall be three thousand four hundred pesos per annum less than that of the Deputy Commissioner.

(2) *Second Class Registries* — The salaries of Registers of Deeds in second class Registries shall be three thousand four hundred pesos per annum less than those of Registers of Deeds in first class Registries.

(3) *Third Class Registries* — The salaries of Registers of Deeds in third class Registries shall be three thousand four hundred pesos per annum less than those of Registers of Deeds in second class Registries.

(4) The salaries of Deputy Registers of Deeds and Second Deputy Registers of Deeds shall be three thousand four hundred pesos per annum

less than those of their corresponding Registers of Deeds and Deputy Registers of Deeds, respectively.

The Secretary of Justice, upon recommendation of the Commissioner of Land Registration, shall cause the reclassification of Registries based either on work load or the class of province/city, whichever will result in a higher classification, for purposes of salary adjustments in accordance with the rates hereinabove provided.

SECTION 9. *Qualifications of Registers of Deeds and Deputy Registers of Deeds.* — No person shall be appointed Register of Deeds unless he has been admitted to the practice of law in the Philippines and shall have been actually engaged in such practice for at least three years or has been employed for a like period in any branch of government the functions of which include the registration of property.

The Deputy Register of Deeds shall be a member of the Philippine Bar. Provided, however, that no Register of Deeds or Deputy Register of Deeds holding office as such upon the passage of this Decree shall by reason hereof, be removed from office or be demoted to a lower category or scale of salary except for cause and upon compliance with due process as provided for by law.

SECTION 10. *General functions of Registers of Deeds.* — The office of the Register of Deeds constitutes a public repository of records of instruments affecting registered or unregistered lands and chattel mortgages in the province or city wherein such office is situated.

It shall be the duty of the Register of Deeds to immediately register an instrument presented for registration dealing with real or personal property which complies with all the requisites for registration. He shall see to it that said instrument bears the proper documentary and science stamps and that the same are properly cancelled. If the instrument is not registrable, he shall forthwith deny registration thereof and inform the presentor of such denial in writing, stating the ground or reason therefor, and advising him of his right to appeal by consulta in accordance with Section 117 of this Decree.

SECTION 11. *Discharge of duties of Register of Deeds in case of vacancy, etc.* —

(1) Until a regular Register of Deeds shall have been appointed for a province or city, or in case of vacancy in the office, or upon the occasion of the absence, illness, suspension, or inability of the Register of Deeds to discharge his duties, said duties shall be performed by the following officials, in the order in which they are mentioned below, unless the Secretary of Justice designates another official to act temporarily in his place:

(a) For the province or city where there is a Deputy Register of Deeds, by said Deputy Register of Deeds, or by the second Deputy Register of Deeds, should there be one;

(b) For the province or city where there is no Deputy or second Deputy Register of Deeds, by the Provincial or City Fiscal, or any Assistant Fiscal designated by the Provincial or City Fiscal;

(2) In case of absence, disability or suspension of the Register of Deeds without pay, or in case of vacancy in the position, the Secretary of Justice may, in his discretion, authorize the payment of an additional compensation to the official acting as Register of Deeds, such additional compensation together with his actual salary not to exceed the salary authorized for the position thus filled by him.

(3) In case of a newly-created province or city and pending establishment of a Registry of Deeds and the appointment of a regular Register of Deeds for the new province or city, the Register of Deeds of the mother province or city shall be the *ex-officio* Register of Deeds for said new province or city.

SECTION 12. *Owner's Index; reports.* — There shall be prepared in every Registry an index system which shall contain the names of all registered owners alphabetically arranged. For this purpose, an index card which shall be prepared in the name of each registered owner which shall contain a list of all lands registered in his name.

The Register of Deeds shall submit to the Land Registration Commission within ten days after the month to which they pertain his monthly reports on collections and accomplishments. He shall also submit to the Commission at the end of December of each year, an annual inventory of all titles and instruments in his Registry.

SECTION 13. *Chief Geodetic Engineer.* — There shall be a Chief Geodetic Engineer in the Land Registration Commission who shall be the technical adviser of the Commission on all matters involving surveys and shall be responsible to him for all plats, plans and works requiring the services of a geodetic engineer in said office. He shall perform such other functions as may, from time to time, be assigned to him by the Commissioner.

CHAPTER III — ORIGINAL REGISTRATION

I. ORDINARY REGISTRATION PROCEEDINGS

A. APPLICATIONS

SECTION 14. *Who may apply.* — The following persons may file in the proper Court of First Instance an application for registration of title to land, whether personally or through their duly authorized representatives:

(1) Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession

and occupation of alienable and disposable lands of the public domain under a *bona fide* claim of ownership since June 12, 1945, or earlier.

(2) Those who have acquired ownership of private lands by prescription under the provision of existing laws.

(3) Those who have acquired ownership of private lands or abandoned river beds by right of accession or accretion under the existing laws.

(4) Those who have acquired ownership of land in any other manner provided for by law.

Where the land is owned in common, all the co-owners shall file the application jointly.

Where the land has been sold under *pacto de retro*, the vendor *a retro* may file an application for the original registration of the land, provided, however, that should the period for redemption expire during the pendency of the registration proceedings and ownership to the property consolidated in the vendee *a retro*, the latter shall be substituted for the applicant and may continue the proceedings.

A trustee on behalf of his principal may apply for original registration of any land held in trust by him, unless prohibited by the instrument creating the trust.

SECTION 15. *Form and contents.* — The application for land registration shall be in writing, signed by the application or the person duly authorized in his behalf, and sworn to before any officer authorized to administer oaths for the province or city where the application was actually signed. If there is more than one applicant, the application shall be signed and sworn to by and in behalf of each. The application shall contain a description of the land and shall state the citizenship and civil status of the applicant, whether single or married, and, if married, the name of the wife or husband, and, if the marriage has been legally dissolved, when and how the marriage relation terminated. It shall also state the full names and addresses of all occupants of the land and those of the adjoining owners, if known, and, if not known, it shall state the extent of the search made to find them.

The application, shall, in form, be substantially as follows:

Republic of the Philippines

Court of First Instance of _____

The undersigned, _____

_____

hereby applies (or apply) to have the land hereinafter described brought under the operation of the Property Registration Decree, and to have the title thereto registered and confirmed:

AND DECLARE . . . . .

1. That the applicant/s is/are the owners of the land (by virtue of inheritance or deed of sale or conveyance and/or possession in accordance with Section 14 of said Decree), together with the building and improvements thereon, with the exception of the following: _____
_____
which is/are the property of _____
residing at _____. The said land, consisting of _____ parcel/s is/are situated, bounded and described as shown on the plan and technical descriptions attached hereto and made a part hereof, with the following exception:
_____
_____

2. That said land at the last assessment for taxation was assessed at P ____, Philippine currency, and the buildings and other improvements at P _____, Philippine currency.

3. That to the best of my/our knowledge and belief, there is no mortgage or encumbrance of any kind whatsoever affecting said land, nor any other person having any interest therein, legal or equitable, or in possession, other than as follows:

_____
_____

4. That the applicant/s has/have acquired said land in the following manner: _____

_____

_____

(Note: Refer to Sec. 14 of said Decree. State also whether the property is conjugal, paraphernal or exclusive property of the applicant/s)

5. That said land is occupied by the following person: _____ .

6. That the names in full and addresses, as far as known to the undersigned, of the owners of all adjoining properties, of the persons mentioned in paragraphs 3 and 5, and of the persons shown on the plan as claimants, are as follows: _____
_____ .

7. That the applicant/s is/are single or married to _____ (Note: if marriage has been legally dissolved, state when and how the marriage relation terminated.) _____ .

8. That the applicant's/s' full name, age, citizenship, residence, and postal address/es is/are as follows: _____ _____ .

9. That (Note: If the land included in the application is bounded by a public or private way or road, there should be stated in this paragraph whether or not the applicant claims any and what land within the limits of the way or road and whether the applicant desires to have the line of the way or road determined.) _____ _____ .

10. That the following documents are attached hereto and made a part hereof: _____ _____ .

Signed at _____ this _____ day of _____, in the year nineteen hundred and _____.

_____
Applicant

_____
(Post Office Address)

Republic of the Philippines
Province (or City) of _____

On this _____ day of _____, 19 _____ personally appeared before me the above-named _____ _____ known to me to be the person/s who executed the foregoing application and made oath that the statements therein are true of his/their knowledge, information and belief.

The Residence Certificate/s _____ of the applicant/s _____ was/were exhibited to me being No. _____ issued at _____ dated _____, 19_____.

_____
(Notary Public, or other Officer
authorized to administer oaths)

PTR NO. _____

SECTION 16. *Non-resident applicant.* — If the applicant is not a resident of the Philippines, he shall file with his application an instrument in due form appointing an agent or representative residing in the Philip-

pines, giving his full name and postal address, and shall therein agree that the service of any legal process in the proceedings under or growing out of the application made upon his agent or representative shall be of the same legal effect as if made upon the applicant within the Philippines. If the agent or representative dies, or leaves the Philippines, the applicant shall forthwith make another appointment for the substitute, and, if he fails to do so the court may dismiss the application.

SECTION 17. *What and where to file.* — The application for land registration shall be filed with the Court of First Instance of the province or city where the land is situated. The applicant shall file together with the application all original muniments of titles or copies thereof and a survey plan of the land approved by the Bureau of Lands.

The clerk of court shall not accept any application unless it is shown that the applicant has furnished the Director of Lands with a copy of the application and all annexes.

SECTION 18. *Application covering two or more parcels.* — An application may include two or more parcels of land belonging to the applicant/s provided they are situated within the same province or city. The court may at any time order an application to be amended by striking out one or more of the parcels or by a severance of the application.

SECTION 19. *Amendments.* — Amendments to the application including joinder, substitution, or discontinuance as to parties may be allowed by the court at any stage of the proceedings upon just and reasonable terms.

Amendments which shall consist in a substantial change in the boundaries or an increase in area of the land applied for or which involve the inclusion of an additional land shall be subject to the same requirements of publication and notice as in an original application.

SECTION 20. *When land applied for borders on road.* — If the application describes the land as bounded by a public or private way or road, it shall state whether or not the applicant claims any and what portion of the land within the limits of the way or road, and whether the applicant desires to have the line of the way or road determined.

SECTION 21. *Requirement of additional facts and papers; ocular inspection.* — The court may require facts to be stated in the application in addition to those prescribed by this Decree not inconsistent therewith and may require the filing of any additional paper. It may also conduct an ocular inspection, if necessary.

SECTION 22. *Dealings with land pending original registration.* — After the filing of the application and before the issuance of the decree of registration, the land therein described may still be the subject of dealings in whole or in part, in which case the interested party shall present to the court the pertinent instruments together with a subdivision plan

approved by the Director of Lands in case of transfer of portions thereof and the court, after notice to the parties, shall order such land registered subject to the conveyance or encumbrance created by said instruments, or order that the decree of registration be issued in the name of the person to whom the property has been conveyed by said instruments.

B. PUBLICATION, OPPOSITION AND DEFAULT

SECTION 23. *Notice of initial hearing, publication, etc.* — The court shall, within five days from filing of the application, issue an order setting the date and hour of the initial hearing which shall not be earlier than forty-five days nor later than ninety days from the date of the order.

The public shall be given notice of the initial hearing of the application for land registration by means of (1) publication; (2) mailing; and (3) posting.

1. By publication. —

Upon receipt of the order of the court setting the time for initial hearing, the Commissioner of Land Registration shall cause notice of initial hearing to be published once in the Official Gazette and once in a newspaper of general circulation in the Philippines: *Provided, however,* That the publication in the Official Gazette shall be sufficient to confer jurisdiction upon the court. Said notice shall be addressed to all persons appearing to have an interest in the land involved including the adjoining owners so far as known, and "To All Whom It May Concern." Said notice shall also require all persons concerned to appear in court at a certain date and time to show cause why the prayer of said application shall not be granted.

2. By mailing. —

(a) Mailing of notice to persons named in the application. — The Commissioner of Land Registration shall also, within seven days after publication of said notice in the Official Gazette, as hereinbefore provided, cause a copy of the notice of initial hearing to be mailed to every person named in the notice whose address is known.

(b) Mailing of notice to the Secretary of Public Highways, the Provincial Governor and the Mayor. — If the applicant requests to have the line of a public way or road determined, the Commissioner of Land Registration shall cause a copy of said notice of initial hearing to be mailed to the Secretary of Public Highways, to the Provincial Governor, and to the Mayor of the municipality or city, as the case may be, in which the land lies.

(c) Mailing of notice to the Secretary of Agrarian Reform, the Solicitor General, the Director of Lands, the Director of Public Works, the Director of Forest Development, the Director of Mines and the Director of

Fisheries and Aquatic Resources. — If the land borders on a river, navigable stream or shore, or on an arm of the sea where a river or harbor line has been established, or on a lake, or if it otherwise appears from the application or the proceedings that a tenant-farmer or the national government may have a claim adverse to that of the applicant, notice of the initial hearing shall be given in the same manner to the Secretary of Agrarian Reform, the Solicitor General, the Director of Lands, the Director of Mines and/or the Director of Fisheries and Aquatic Resources, as may be appropriate.

3. By posting. —

The Commissioner of Land Registration shall also cause a duly attested copy of the notice of initial hearing to be posted by the sheriff of the province or city, as the case may be, or by his deputy, in a conspicuous place on each parcel of land included in the application and also in a conspicuous place on the bulletin board of the municipal building of the municipality or city in which the land or portion thereof is situated, fourteen days at least before the date of initial hearing.

The court may also cause notice to be served to such other persons and in such manner as it may deem proper.

The notice of initial hearing shall, in form, be substantially as follows:

(Caption and Title)

NOTICE OF INITIAL HEARING

To (here insert the names of all persons appearing to have an interest and the adjoining owners so far as known, and to all whom it may concern):

An application (or petition) having been filed in the above-entitled case by (full name and address) praying for the registration and confirmation (or for the settlement and adjudication, in case of petition in cadastral proceedings) of title to the following described lands:

(Insert description)

You are hereby served this notice to appear before this Court at its session to be held at _____ on the _____ day of _____, 19 _____, at _____ o'clock in the _____ then and there to present such claims as you may have to said lands or any portion thereof, and to submit evidence in support of such claim; and unless you appear at said Court at the time and place aforesaid, your default will be recorded and the title to the lands will be adjudicated and determined in accordance with law and the evidence before the Court, and

thereafter you will forever be barred from contesting said application (or petition) or any decree entered thereon.

Witness, the Hon. _____ Judge of the Court of First Instance of _____ this _____ day of _____, in the year 19_____.

Attest:

Commissioner of Land Registration

SECTION 24. *Proof of publication and notice.* — The certification of the Commissioner of Land Registration and of the sheriff concerned to the effect that the notice of initial hearing, as required by law, has been complied with shall be filed in the case before the date of initial hearing, and shall be conclusive proof of such fact.

SECTION 25. *Opposition to application in ordinary proceedings.* — Any person claiming an interest, whether named in the notice or not, may appear and file an opposition on or before the date of initial hearing, or within such further time as may be allowed by the court. The opposition shall state all the objections to the application and shall set forth the interest claimed by the party filing the same and apply for the remedy desired, and shall be signed and sworn to by him or by some other duly authorized person.

If the opposition or the adverse claim of any person covers only a portion of the lot and said portion is not properly delimited on the plan attached to the application, or in case of undivided co-ownership, conflicting claims of ownership or possession, or overlapping of boundaries, the court may require the parties to submit a subdivision plan duly approved by the Director of Lands.

SECTION 26. *Order of default; effect.* — If no person appears and answers within the time allowed, the court shall, upon motion of the applicant, no reason to the contrary appearing, order a default to be recorded and require the applicant to present evidence. By the description in the notice "To All Whom It May Concern," all the world are made parties defendant and shall be concluded by the default order.

Where an appearance has been entered and an answer filed, a default order shall be entered against persons who did not appear and answer.

C. HEARING JUDGMENT AND DECREE OF REGISTRATION

SECTION 27. *Speedy hearing; reference to a referee.* — The trial court shall see to it that all registration-proceedings are disposed or within ninety days from the date the case is submitted for decision.

The Court, if it deems necessary, may refer the case or any part thereof to a referee who shall hear the parties and their evidence, and the referee shall submit his report thereon to the Court within fifteen days after the termination of such hearing. Hearing before a referee may be held at any convenient place within the province or city as may be fixed by him and after reasonable notice thereof shall have been served the parties concerned. The court may render judgment in accordance with the report as though the facts have been found by the judge himself: *Provided, however,* That the court may in its discretion accept the report, or set it aside in whole or in part, or order the case to be recommitted for further proceedings:

SECTION 28. *Partial judgment.* — In a case where only a portion of the land subject of registration is contested, the court may render partial judgment provided that a subdivision plan showing the contested and uncontested portions approved by the Director of Lands is previously submitted to said court.

SECTION 29. *Judgment confirming title.* — All conflicting claims of ownership and interest in the land subject of the application shall be determined by the court. If the court, after considering the evidence and the reports of the Commissioner of Land Registration and the Director of Lands, finds that the applicant or the oppositor has sufficient title proper for registration, judgment shall be rendered confirming the title of the applicant, or the oppositor, to the land or portions thereof.

SECTION 30. *When judgment becomes final; duty to cause issuance of decree.* — The judgment rendered in a land registration proceedings becomes final upon the expiration of thirty days to be counted from the data of receipt of notice of the judgment. An appeal may be taken from the judgment of the court as in ordinary civil cases.

After judgment has become final and executory, it shall devolve upon the court to forthwith issue an order in accordance with Section 39 of this Decree to the Commissioner for the issuance of the decree of registration and the corresponding certificate of title in favor of the person adjudged entitled to registration.

SECTION 31. *Decree of registration.* — Every decree of registration issued by the Commissioner shall bear the date, hour and minute of its entry, and shall be signed by him. It shall state whether the owner is married or unmarried, and if married, the name of the husband or wife: *Provided, however,* That if the land adjudicated by the court is conjugal property, the decree shall be issued in the name of both spouses. If the owner is under disability, it shall state the nature of disability, and if a minor, his age. It shall contain a description of the land as finally determined by the court, and shall set forth the estate of the owner, and also, in such manner as to show their relative priorities, all particular estates, mortgages, easements, liens, attachments, and other encumbrances, including rights of tenant-farmers, if any, to which the land or owner's estate is

subject, as well as any other matters properly to be determined in pursuance of this Decree.

The decree of registration shall bind the land and quiet title thereto, subject only to such exceptions or liens as may be provided by law. It shall be conclusive upon and against all persons, including the National Government and all branches thereof, whether mentioned by name in the application or notice, the same being included in the general description "To All Whom It May Concern."

SECTION 32. *Review of decree of registration; Innocent purchaser for value.* — The decree of registration shall not be reopened or revised by reason of absence, minority, or other disability of any person adversely affected thereby, nor by any proceeding in any court for reversing judgments, subject, however, to the right of any person, including the government and the branches thereof, deprived of land or of any estate or interest therein by such adjudication or confirmation of title obtained by actual fraud, to file in the proper Court of First Instance a petition for reopening and review of the decree of registration not later than one year from and after the date of the entry of such decree of registration, but in no case shall such petition be entertained by the court where an innocent purchaser for value has acquired the land or an interest therein, whose rights may be prejudiced. Whenever the phrase "innocent purchaser for value" or an equivalent phrase occurs in this Decree, it shall be deemed to include an innocent lessee, mortgagee, or other encumbrancer for value.

Upon the expiration of said period of one year, the decree of registration and the certificate of title issued shall become incontrovertible. Any person aggrieved by such decree of registration in any case may pursue his remedy by action for damages against the applicant or any other persons responsible for the fraud.

SECTION 33. *Appeal from judgment, etc.* — The judgment and orders of the court hearing the land registration case are appealable to the Court of Appeals or to the Supreme Court in the same manner as in ordinary actions.

SECTION 34. *Rules of procedure.* — The Rules of Court shall, insofar as not inconsistent with the provision of this Decree, be applicable to land registration and cadastral cases by analogy or in a suppletory character and whenever practicable and convenient.

II. CADASTRAL REGISTRATION PROCEEDINGS

A. ORDER FOR SPEEDY SETTLEMENT AND ADJUDICATION; SURVEY; NOTICES

SECTION 35. *Cadastral Survey preparatory to filing of petition.* —

(a) When in the opinion of the President of the Philippines public interest so requires that title to any unregistered lands be settled and

adjudicated, he may to this end direct and order the Director of Lands to cause to be made a cadastral survey of the lands involved and the plans and technical description thereof prepared in due form.

(b) Thereupon, the Director of Lands shall give notice to persons claiming any interest in the lands as well as to the general public, of the day on which such survey will begin, giving as fully and accurately as possible the description of the lands to be surveyed. Such notice shall be published once in the Official Gazette, and a copy of the notice in English or the national language shall be posted in a conspicuous place on the bulletin board of the municipal building of the municipality in which the lands or any portion thereof is situated. A copy of the notice shall also be sent to the mayor of such municipality as well as to the barangay captain and likewise to the Sangguniang Panlalawigan and the Sangguniang Bayan concerned.

(c) The Geodetic Engineers or other employees of the Bureau of Lands in charge of the survey shall give notice reasonably in advance of the date on which the survey of any portion of such lands is to begin, which notice shall be posted in the bulletin board of the municipal building of the municipality or barrio in which the lands are situated, and shall mark the boundaries of the lands by monuments set up in proper places thereon. It shall be lawful for such Geodetic Engineers and other employees to enter upon the lands whenever necessary for the purposes of such survey or the placing of monuments.

(d) It shall be the duty of every person claiming an interest in the lands to be surveyed, or in any parcel thereof, to communicate with the Geodetic Engineer upon his request therefor all information possessed by such person concerning the boundary lines of any lands to which he claims title or in which he claims any interest.

(e) Any person who shall wilfully obstruct the making of any survey undertaken by the Bureau of Lands or by a licensed Geodetic Engineer duly authorized to conduct the survey under this Section, or shall maliciously interfere with the placing of any monument or remove such monument, or shall destroy or remove any notice of survey posted on the land pursuant to law, shall be punished by a fine of not more than one thousand pesos or by imprisonment for not more than one year, or both.

B. PETITION; LOT NUMBERS

SECTION 36. *Petition for registration.* — When the lands have been surveyed or plotted, the Director of Lands, represented by the Solicitor General, shall institute original registration proceedings by filing the necessary petition in the Court of First Instance of the place where the land is situated against the holders, claimants, possessors, or occupants of such lands or any part thereof, stating in substance that public interest requires

that the title to such lands be settled and adjudicated and praying that such titles be so settled and adjudicated:

The petition shall contain a description of the lands and shall be accompanied by a plan thereof, and may contain such other data as may serve to furnish full notice to the occupants of the lands and to all persons who may claim any right or interest therein.

Where the land consists of two or more parcels held or occupied by different persons, the plan shall indicate the boundaries or limits of the various parcels as accurately as possible. The parcels shall be known as "lots" and shall on the plan filed in the case be given separate numbers by the Director of Lands, which numbers shall be known as "cadastral lot numbers." The lots situated within each municipality shall, as far as practicable, be numbered consecutively beginning with number "one", and only one series of numbers shall be used for that purpose in each municipality. However in cities or townsites, a designation of the landholdings by blocks and lot numbers may be employed instead of the designation by cadastral lot numbers.

The cadastral number of a lot shall not be changed after final decision has been entered decreasing the registration thereof, except by order of court. Future subdivisions of any lot shall be designated by a letter or letters of the alphabet added to the cadastral number of the lot to which the respective subdivisions pertain. The letter with which a subdivision is designated shall be known as its "cadastral letter": *Provided, however*, That the subdivisions of cities or townsites may be designated by blocks and lot numbers.

C. ANSWER

SECTION 37. *Answer to petition in cadastral proceedings.* — Any claimant in cadastral proceedings, whether named in the notice or not, shall appear before the court by himself or by some other authorized person in his behalf, and shall file an answer on or before the date of initial hearing or within such further time as may be allowed by the court. The answer shall be signed and sworn to by the claimant or by some other authorized person in his behalf, and shall state whether the claimant is married or unmarried, and if married, the name of the spouse and the date of marriage, his nationality, residence and postal address, and shall also contain:

(a) The age of the claimant;

(b) The cadastral number of the lot or lots claimed, as appearing on the plan filed in the case by the Director of Lands, or the block and lot numbers, as the case may be;

(c) The name of the barrio and municipality in which the lots are situated;

(d) The names and addresses of the owners of the adjoining lots so far as known to the claimant;

(e) If the claimant is in possession of the lots claimed and can show no express grant of the land by the government to him or to his predecessors-in-interest, the answer shall state the length of time he has held such possession and the manner in which it has been acquired, and shall also state the length of time, as far as known, during which the predecessors, if any, held possession;

(f) If the claimant is not in possession or occupation of the land, the answer shall fully set forth the interest claimed by him and the time and manner of his acquisition;

(g) if the lots have been assessed for taxation, their last assessed value; and

(h) The encumbrances, if any, affecting the lots and the names of adverse claimants, as far as known.

D. HEARING; JUDGMENT; DECREE

SECTION 38. *Hearing, Judgment, Decree.* — The trial of the case may occur at any convenient place within the province in which the lands are situated and shall be conducted, and orders for default and confessions entered, in the same manner as in ordinary land registration proceedings and shall be governed by the same rules. All conflicting interests shall be adjudicated by the court and decrees awarded in favor of the persons entitled to the lands or to parts thereof and such decrees shall be the basis for issuance of original certificates of title in favor of said persons and shall have the same effect as certificates of title granted on application for registration of land under ordinary land registration proceedings.

CHAPTER IV — CERTIFICATE OF TITLE

SECTION 39. *Preparation of Decree and Certificate of Title.* — After the judgment directing the registration of title to land has become final, the court shall, within fifteen days from entry of judgment, issue an order directing the Commissioner to issue the corresponding decree of registration and certificate of title. The clerk of court shall send, within fifteen days from entry of judgment, certified copies of the judgment and of the order of the court directing the Commissioner to issue the corresponding decree of registration and certificate of title, and a certificate stating that the decision has not been amended, reconsidered, nor appealed, and has become final. Thereupon, the Commissioner shall cause to be prepared the decree of registration as well as the original and duplicate of the corresponding original certificate of title. The original certificate of title shall be a true copy of the decree of registration. The decree of registration shall be signed

by the Commissioner, entered and filed in the Land Registration Commission. The original of the original certificate of title shall also be signed by the Commissioner and shall be sent, together with the owner's duplicate certificate, to the Register of Deeds of the city or province where the property is situated for entry in his registration book.

SECTION 40. *Entry of Original Certificate of Title.* — Upon receipt by the Register of Deeds of the original and duplicate copies of the original certificate of title the same shall be entered in his record book and shall be numbered, dated, signed and sealed by the Register of Deeds with the seal of his office. Said certificate of title shall take effect upon the date of entry thereof. The Register of Deeds shall forthwith send notice by mail to the registered owner that his owner's duplicate is ready for delivery to him upon payment of legal fees.

SECTION 41. *Owner's duplicate certificate of title.* — The owner's duplicate certificate of title shall be delivered to the registered owner or to his duly authorized representative. If two or more persons are registered owners, one owner's duplicate certificate may be issued for the whole land, or if the co-owners so desire, a separate duplicate may be issued to each of them in like form, but all outstanding certificates of title so issued shall be surrendered whenever the Register of Deeds shall register any subsequent voluntary transaction affecting the whole land or part thereof or any interest therein. The Register of Deeds shall note on each certificate of title a statement as to whom a copy thereof was issued.

SECTION 42. *Registration Books.* — The original copy of the original certificate of title shall be filed in the Registry of Deeds. The same shall be bound in consecutive order together with similar certificates of title and shall constitute the registration book for titled properties.

SECTION 43. *Transfer Certificate of Title.* — The subsequent certificate of title that may be issued by the Register of Deeds pursuant to any voluntary or involuntary instrument relating to the same land shall be in like form, entitled "Transfer Certificate of Title," and likewise issued in duplicate. The certificate shall show the number of the next previous certificate covering the same land and also the fact that it was originally registered, giving the record number, the number of the original certificate of title, and the volume and page of the registration book in which the latter is found.

SECTION 44. *Statutory liens affecting title.* — Every registered owner receiving a certificate of title in pursuance of a decree of registration, and every subsequent purchaser of registered land taking a certificate of title for value and in good faith, shall hold the same free from all encumbrances except those noted in said certificate and any of the following encumbrances which may be subsisting, namely:

First. Liens, claims or rights arising or existing under the laws and Constitution of the Philippines which are not by law required to appear

of record in the Registry of Deeds in order to be valid against subsequent purchasers or encumbrancers of record.

Second. Unpaid real estate taxes levied and assessed within two years immediately preceding the acquisition of any right over the land by an innocent purchaser for value, without prejudice to the right of the government to collect taxes payable before that period from the delinquent taxpayer alone.

Third. Any public highway or private way established or recognized by law, or any government irrigation canal or lateral thereof, if the certificate of title does not state that the boundaries of such highway or irrigation canal or lateral thereof have been determined.

Fourth. Any disposition of the property or limitation on the use thereof by virtue of, or pursuant to, Presidential Decree No. 27 or any other law or regulations on agrarian reform.

SECTION 45. *Statement of personal circumstances in the certificate.* — Every certificate of title shall set forth the full names of all persons whose interests make up the full ownership in the whole land, including their civil status, and the names of their respective spouses, if married, as well as their citizenship, residence and postal address. If the property covered belongs to the conjugal partnership, it shall be issued in the names of both spouses.

SECTION 46. *General incidents of registered land.* — Registered land shall be subject to such burdens and incidents as may arise by operation of law. Nothing contained in this decree shall in any way be construed to relieve registered land or the owners thereof from any rights incident to the relation of husband and wife, landlord and tenant, or from liability to attachment or levy on execution, or from liability to any lien of any description established by law on the land and the buildings thereon, or on the interest of the owner in such land or buildings, or to change the laws of descent, or the rights of partition between co-owners, or the right to take the same by eminent domain, or to relieve such land from liability to be recovered by an assignee in insolvency or trustee in bankruptcy under the laws relative to preferences, or to change or affect in any way other rights or liabilities created by law and applicable to unregistered land, except as otherwise provided in this Decree.

SECTION 47. *Registered land not subject to prescriptions.* — No title to registered land in derogation of the title of the registered owner shall be acquired by prescription or adverse possession.

SECTION 48. *Certificate not subject to collateral attack.* — A certificate of title shall not be subject to collateral attack. It cannot be altered, modified, or cancelled except in a direct proceeding in accordance with law.

SECTION 49. *Splitting, or consolidation of titles.* — A registered owner of several distinct parcels of land embraced in and covered by a

certificate of title desiring in lieu thereof separate certificates, each containing one or more parcels, may file a written request for that purpose with the Register of Deeds concerned, and the latter, upon the surrender of the owner's duplicate, shall cancel it together with its original and issue in lieu thereof separate certificates as desired. A registered owner of several distinct parcels of land covered by separate certificates of title desiring to have in lieu thereof a single certificate for the whole land, or several certificates for the different parcels thereof, may also file a written request with the Register of Deeds concerned, and the latter, upon the surrender of the owner's duplicates, shall cancel them together with their originals, and issue in lieu thereof one or separate certificates as desired.

SECTION 50. *Subdivision and consolidation plans.* — Any owner subdividing a tract of registered land into lots which do not constitute a subdivision project has defined and provided for under P.D. No. 957, shall file with the Commissioner of Land Registration or with the Bureau of Lands a subdivision plan of such land on which all boundaries, streets, passageways and waterways, if any, shall be distinctly and accurately delineated.

If a subdivision plan, be it simple or complex, duly approved by the Commissioner of Land Registration or the Bureau of Lands together with the approved technical descriptions and the corresponding owner's duplicate certificate of title is presented for registration, the Register of Deeds shall, without requiring further court approval of said plan, register the same in accordance with the provisions of the Land Registration Act, as amended: *Provided, however,* That the Register of Deeds shall annotate on the new certificate of title covering the street, passageway or open space, a memorandum to the effect that except by way of donation in favor of the national government, province, city or municipality, no portion of any street, passageway, waterway or open space so delineated on the plan shall be closed or otherwise disposed of by the registered owner without the approval of the Court of First Instance of the province or city in which the land is situated.

A registered owner desiring to consolidate several lots into one or more, requiring new technical descriptions, shall file with the Land Registration Commission, a consolidation plan on which shall be shown the lots to be affected, as they were before, and as they will appear after the consolidation. Upon the surrender of the owner's duplicate certificates and the receipt of consolidation plan duty approved by the Commission, the Register of Deeds concerned shall cancel the corresponding certificates of title and issue a new one for the consolidated lots.

The Commission may not order or cause any change, modification, or amendment in the contents of any certificate of title, or of any decree or plan, including the technical description therein, covering any real property registered under the Torrens system, nor order the cancellation of the

said certificate of title and the issuance of a new one which would result in the enlargement of the area covered by the certificate of title.

CHAPTER V — SUBSEQUENT REGISTRATION

I. VOLUNTARY DEALINGS WITH REGISTERED LANDS

GENERAL PROVISIONS

SECTION 51. *Conveyance and other dealings by registered owner.* — An owner of registered land may convey, mortgage, lease, charge or otherwise deal with the same in accordance with existing laws. He may use such forms of deeds, mortgages, leases or other voluntary instruments as are sufficient in law. But no deed, mortgage, lease, or other voluntary instrument, except a will purporting to convey or affect registered land shall take effect as a conveyance or bind the land, but shall operate only as a contract between the parties and as evidence of authority to the Register of Deeds to make registration.

The act of registration shall be the operative act to convey or affect the land insofar as third persons are concerned, and in all cases under this Decree, the registration shall be made in the Office of the Register of Deeds for the province or city where the land lies.

SECTION 52. *Constructive notice upon registration.* — Every conveyance, mortgage, lease, lien, attachment, order, judgment, instrument or entry affecting registered land shall, if registered, filed or entered in the office of the Register of Deeds for the province or city where the land to which it relates lies, be constructive notice to all persons from the time of such registering, filing or entering.

SECTION 53. *Presentation of owner's duplicate upon entry of new certificate.* — No voluntary instrument shall be registered by the Register of Deeds, unless the owner's duplicate certificate is presented with such instrument, except in cases expressly provided for in this Decree or upon order of the court, for cause shown.

The production of the owner's duplicate certificate, whenever any voluntary instrument is presented for registration, shall be conclusive authority from the registered owner to the Register of Deeds to enter a new certificate or to make a memorandum of registration in accordance with such instrument, and the new certificate or memorandum shall be binding upon the registered owner and upon all persons claiming under him, in favor of every purchaser for value and in good faith.

In all cases of registration procured by fraud, the owner may pursue all his legal and equitable remedies against the parties to such fraud without prejudice, however, to the rights of any innocent holder for value of a certificate of title. After the entry of the decree of registration on the

original petition or application, any subsequent registration procured by the presentation of a forged duplicate certificate of title, or a forged deed or other instrument, shall be null and void.

SECTION 54. *Dealings less than ownership, how registered.* — No new certificate shall be entered or issued pursuant to any instrument which does not divest the ownership or title from the owner or from the transferee of the registered owners. All interests in registered land less than ownership shall be registered by filing with the Register of Deeds the instrument which creates or transfers or claims such interests and by a brief memorandum thereof made by the Register of Deeds upon the certificate of title, and signed by him. A similar memorandum shall also be made on the owner's duplicate. The cancellation or extinguishment of such interests shall be registered in the same manner.

SECTION 55. *Grantee's name, nationality, etc., to be stated.* — Every deed or other voluntary instrument presented for registration shall contain or have endorsed upon it the full name, nationality, residence and postal address of the grantee or other person acquiring or claiming an interest under such instrument, and every deed shall also state whether the grantee is married or unmarried, and if married, the name in full of the husband or wife. If the grantee is a corporation or association, the instrument must contain a recital to show that such corporation or association is legally qualified to acquire private lands. Any change in the residence or postal address of such person shall be endorsed by the Register of Deeds on the original copy of the corresponding certificate of title, upon receiving a sworn statement of such change. All names and addresses shall also be entered on all certificates.

Notices and processes issued in relation to registered land in pursuance of this Decree may be served upon any person in interest by mailing the same to the addresses given, and shall be binding, whether such person resides within or without the Philippines, but the court may, in its discretion, require further or other notice to be given in any case, if in its opinion the interest of justice so requires.

SECTION 56. *Primary Entry Book; fees; certified copies.* — Each Register of Deeds shall keep a primary entry book in which, upon payment of the entry fee, he shall enter, in the order of their reception, all instruments including copies of writs and processes filed with him relating to registered land. He shall, as a preliminary process in registration, note in such book the date, hour and minute of reception of all instruments, in the order in which they were received. They shall be regarded as registered from the time so noted, and the memorandum of each instrument, when made on the certificate of title to which it refers, shall bear the same date: *Provided*, That the national government as well as the provincial and city governments shall be exempt from the payment of such fees in advance in order to be entitled to entry and registration.

Every deed or other instrument, whether voluntary or involuntary, so filed with the Register of Deeds shall be numbered and indexed and endorsed with a reference to the proper certificate of title. All records and papers relative to registered land in the office of the Register of Deeds shall be open to the public in the same manner as court records, subject to such reasonable regulations as the Register of Deeds, under the direction of the Commissioner of Land Registration, may prescribe.

All deeds and voluntary instruments shall be presented with their respective copies and shall be attested and sealed by the Register of Deeds, endorsed with the file number, and copies may be delivered to the person presenting them.

Certified copies of all instruments filed and registered may also be obtained from the Register of Deeds upon payment of the prescribed fees.

(A) CONVEYANCES AND TRANSFERS

SECTION 57. *Procedure in registration of conveyances.* — An owner desiring to convey his registered land in fee simple shall execute and register a deed of conveyance in a form sufficient in law. The Register of Deeds shall thereafter make out in the registration book a new certificate of title to the grantee and shall prepare and deliver to him an owner's duplicate certificate. The Register of Deeds shall note upon the original and duplicate certificate the date of transfer, the volume and page of the registration book in which the new certificate is registered and a reference by number to the last preceding certificate. The original and the owner's duplicate of the grantor's certificate shall be stamped "cancelled." The deed of conveyance shall be filled and indorsed with the number and the place of registration of the certificate of title of the land conveyed.

SECTION 58. *Procedure where conveyance involves portion of land.* — If a deed or conveyance is for a part only of the land described in a certificate of title, the Register of Deeds shall not enter any transfer certificate to the grantee until a plan of such land showing all the portions or lots into which it has been subdivided and the corresponding technical descriptions shall have been verified and approved pursuant to Section 50 of this Decree. Meanwhile, such deed may only be annotated by way of memorandum upon the grantor's certificate of title, original and duplicate, said memorandum to serve as a notice to third persons of the fact that certain unsegregated portion of the land described therein has been conveyed, and every certificate with such memorandum shall be effectual for the purpose of showing the grantee's title to the portion conveyed to him, pending the actual issuance of the corresponding certificate in his name.

Upon the approval of the plan and technical descriptions, the original of the plan, together with a certified copy of the technical descriptions shall be filed with the Register of Deeds for annotation in the corresponding certificate of title and thereupon said officer shall issue a new certifi-

cate of title to the grantee for the portion conveyed, and at the same time cancel the grantor's certificate partially with respect only to said portion conveyed, or, if the grantor so desires, his certificate may be cancelled totally and a new one issued to him describing therein the remaining portion: *Provided, however,* That pending approval of said plan, no further registration or annotation of any subsequent deed or other voluntary instrument involving the unsegregated portion conveyed shall be effected by the Register of Deeds, except where such unsegregated portion was purchased from the Government or any of its instrumentalities. If the land has been subdivided into several lots, designated by numbers or letters, the Register of Deeds may, if desired by the grantor, instead of cancelling the latter's certificate and issuing a new one to the same for the remaining unconveyed lots, enter on said certificate and on its owner's duplicate a memorandum of such deed of conveyance and of the issuance of the transfer certificate to the grantee for the lot or lots thus conveyed, and that the grantor's certificate is cancelled as to such lot or lots.

SECTION 59. *Carry over of encumbrances.* — If, at the time of any transfer, subsisting encumbrances or annotations appear in the registration book, they shall be carried over and stated in the new certificate or certificates; except so far as they may be simultaneously released or discharged.

(B) MORTGAGES AND LEASES

SECTION 60. *Mortgage or lease of registered land.* — Mortgage and leases shall be registered in the manner provided in Section 54 of this Decree. The owner of registered land may mortgage or lease it by executing the deed in a form sufficient in law. Such deed of mortgage or lease and all instruments which assign, extend, discharge or otherwise deal with the mortgage or lease shall be registered, and shall take effect upon the title only from time of registration.

No mortgagee's or lessee's duplicate certificate of title shall hereafter be issued by the Registers of Deeds, and those issued prior to the effectivity of this Decree are hereby deemed cancelled and the holders thereof shall immediately surrender the same to the Register of Deeds concerned.

SECTION 61. *Registration.* — Upon presentation for registration of the deed of mortgage or lease together with the owner's duplicate, the Register of Deeds shall enter upon the original of the certificate of title and also upon the owner's duplicate certificate a memorandum thereof, the date and time of filing and the file number assigned to the deed, and shall sign the said memorandum. He shall also note on the deed the date and time of filing and a reference to the volume and page of the registration book in which it is registered.

SECTION 62. *Discharge or cancellation.* — A mortgage or lease on registered land may be discharge or cancelled by means of an instrument executed by the mortgage or lessee in a form sufficient in law, which shall be filed with the Register of Deeds who shall make the appropriate memorandum upon the certificate of title.

SECTION 63. *Foreclosure of Mortgage.* — (a) If the mortgage was foreclosed judicially, a certified copy of the final order of the court confirming the sale shall be registered with the Register of Deeds. If no right of redemption exists, the certificate of title of the mortgagor shall be cancelled, and a new certificate issued in the name of the purchaser.

Where the right of redemption exists, the certificate of title of the mortgagor shall not be cancelled, but the certificate of sale and the order confirming the sale shall be registered by a brief memorandum thereof made by the Register of Deeds upon the certificate of title. In the event the property is redeemed, the certificate or deed of redemption shall be filed with the Register of Deeds, and a brief memorandum thereof shall be made by the Register of Deeds on the certificate of title of the mortgagor.

If the property is not redeemed, the final deed of sale executed by the sheriff in favor of the purchaser at a foreclosure sale shall be registered with the Register of Deeds; whereupon, the title of the mortgagor shall be cancelled, and a new certificate issued in the name of the purchaser.

(b) If the mortgage was foreclosed extrajudicially, a certificate of sale executed by the officer who conducted the sale shall be filed with the Register of Deeds who shall make a brief memorandum thereof on the certificate of title.

In the event of redemption by the mortgagor, the same rule provided for in the second paragraph of this section shall apply.

In case of non-redemption, the purchaser at foreclosure sale shall file with the Register of Deeds, either a final deed of sale executed by the person authorized by virtue of the power of attorney embodied in the deed of mortgage, or his sworn statement attesting to the fact of non-redemption; whereupon, the Register of Deeds shall issue a new certificate in favor of the purchaser after the owner's duplicate of the certificate has been previously delivered and cancelled.

(C) POWERS OF ATTORNEY; TRUSTS

SECTION 64. *Power of attorney.* — Any person may, by power of attorney, convey or otherwise deal with registered land and the same shall be registered with the Register of Deeds of the province or city where the land lies. Any instrument revoking such power of attorney shall be registered in like manner.

SECTION 65. *Trusts in registered land.* — If a deed or other instrument is filed in order to transfer registered land in trust, or upon any equitable condition or limitation expressed therein, or to create or declare a trust or other equitable interests in such land without transfer, the particulars of the trust, condition, limitation or other equitable interest shall not be entered on the certificate; but only a memorandum thereof shall be entered by the words "in trust," or "upon condition," or other apt words, and by a reference by number to the instrument authorizing or creating the same. A similar memorandum shall be made upon the original instrument creating or declaring the trust or other equitable interest with a reference by number to the certificate of title to which it relates and to the volume and page in the registration book in which it is registered.

SECTION 66. *Trust with power of sale, etc., how expressed.* — If the instrument creating or declaring a trust or other equitable interest contains an express power to sell, mortgage or deal with the land in any manner, such power shall be stated in the certificate of title by the words "with power to sell," or "power to mortgage," or by apt words of description in case of other powers. No instrument which transfers, mortgages or in any way deals with registered land in trust shall be registered, unless the enabling power thereto is expressly conferred in the trust instrument, or unless a final judgment or order of a court of competent jurisdiction has construed the instrument in favor of the power, in which case a certified copy of such judgment or order may be registered.

SECTION 67. *Judicial appointment of new trustee.* — If a new trustee of registered land is appointed by a court of competent jurisdiction, a new certificate may be issued to him upon presentation to the Register of Deeds of a certified copy of the order or judicial appointment and the surrender for cancellation of the duplicate certificate.

SECTION 68. *Implied trusts, how established.* — Whoever claims an interest in registered land by reason of any implied or constructive trust shall file for registration with the Register of Deeds a sworn statement thereof containing a description of the land, the name of the registered owner and a reference to the number of the certificate of title. Such claim shall not affect the title of a purchaser for value and in good faith before its registration.

II. INVOLUNTARY DEALINGS

SECTION 69. *Attachments.* — An attachment, or a copy of any writ, order or process issued by a court of record, intended to create or preserve any lien, status, right, or attachment upon registered land, shall be filed and registered in the Registry of Deeds for the province or city in which the land lies, and, in addition to the particulars required in such papers for registration, shall contain a reference to the number of the certificate of title to be affected and the registered owner or owners thereof, and also

if the attachment, order, process or lien is not claimed on all the land in any certificate of title a description sufficiently accurate for identification of the land or interest intended to be affected. A restraining order, injunction or mandamus issued by the court shall be entered and registered on the certificate of title affected, free of charge.

SECTION 70. *Adverse claim.* — Whoever claims any part or interest in registered land adverse to the registered owner, arising subsequent to the date of the original registration, may, if no other provision is made in this Decree for registering the same, make a statement in writing setting forth fully his alleged right or interest, and how or under whom acquired, a reference to the number of the certificate of title of the registered owner, the name of the registered owner, and a description of the land in which the right or interest is claimed.

The statement shall be signed and sworn to, and shall state the adverse claimant's residence, and a place at which all notices may be served upon him. This statement shall be entitled to registration as an adverse claim on the certificate of title. The adverse claim shall be effective for a period of thirty days from the date of registration. After the lapse of said period, the annotation of adverse claim may be cancelled upon filing of a verified petition therefor by the party in interest: *Provided, however*, That after cancellation, no second adverse claim based on the same ground shall be registered by the same claimant.

Before the lapse of thirty days aforesaid, any party in interest may file a petition in the Court of First Instance where the land is situated for the cancellation of the adverse claim, and the court shall grant a speedy hearing upon the question of the validity of such adverse claim, and shall render judgment as may be just and equitable. If the adverse claim is adjudged to be invalid, the registration thereof shall be ordered cancelled. If, in any case, the court, after notice and hearing, shall find that the adverse claim thus registered was frivolous, it may fine the claimant in an amount not less than one thousand pesos nor more than five thousand pesos, in its discretion. Before the lapse of thirty days, the claimant may withdraw his adverse claim by filing with the Register of Deeds a sworn petition to that effect.

SECTION 71. *Surrender of certificate in involuntary dealings.* — If an attachment or other lien in the nature of involuntary dealing in registered land is registered, and the duplicate certificate is not presented at the time of registration, the Register of Deeds shall, within thirty-six hours thereafter, send notice by mail to the registered owner, stating that such paper has been registered, and requesting him to send or produce his duplicate certificate so that a memorandum of the attachment or other lien may be made thereon. If the owner neglects or refuses to comply within a reasonable time, the Register of Deeds shall report the matter to the court, and it shall, after notice, enter an order to the owner, to produce his cer-

tificate at a time and place named therein, and may enforce the order by suitable process.

SECTION 72. *Dissolution, etc. of attachments, etc.* — Attachments and liens of every description upon registered land shall be continued, reduced, discharged and dissolved by any method sufficient in law, and to give effect to the continuance, reduction, discharge or dissolution thereof the certificate or other instrument for that purpose shall be registered with the Register of Deeds.

SECTION 73. *Registration of orders of court, etc.* — If an attachment is continued, reduced, dissolved, or otherwise affected by an order, decision or judgment of the court where the action or proceedings in which said attachment was made is pending or by an order of a court having jurisdiction thereof, a certificate of the entry of such order, decision or judgment from the clerk of court or the judge by which such decision, order or judgment has been rendered and under the seal of the court, shall be entitled to be registered upon presentation to the Register of Deeds.

SECTION 74. *Enforcement of liens on registered land.* — Whenever registered land is solved on execution, or taken or sold for taxes or for any assessment or to enforce a lien of any character, or for any costs and charges incident to such liens, any execution or copy of execution, any officer's return, or any deed, demand, certificate, or affidavit, or other instrument made in the course of the proceedings to enforce such liens and required by law to be recorded, shall be filed with the Register of Deeds of the province or city where the land lies and registered in the registration book, and a memorandum made upon the proper certificate of title in each case as lien or encumbrance.

SECTION 75. *Application for new certificate upon expiration of redemption period.* — Upon the expiration of the time, if any, allowed by law for redemption after registered land has been sold on execution taken or sold for the enforcement of a lien of any description, except a mortgage lien, the purchaser at such sale or anyone claiming under him may petition the court for the entry of a new certificate of title to him.

Before the entry of a new certificate of title, the registered owner may pursue all legal and equitable remedies to impeach or annul such proceedings.

SECTION 76. *Notice of lis pendens.* — No action to recover possession of real estate, or to quiet title thereto, or to remove clouds upon the title thereof, or for partition, or other proceedings of any kind in court directly affecting the title to land or the use or occupation thereof or the buildings thereon, and no judgment, and no proceeding to vacate or reverse any judgment, shall have any effect upon registered land as against persons other than the parties thereto, unless a memorandum or notice stating the institution of such action or proceeding and the court wherein the same is pending, as well as the date of the institution thereof, together

with a reference to the number of the certificate of title, and an adequate description of the land affected and the registered owner thereof, shall have been filed and registered.

SECTION 77. *Cancellation of lis pendens.* — Before final judgment, a notice of *lis pendens* may be cancelled upon order of the court, after proper showing that the notice is for the purpose of molesting the adverse party, or that it is not necessary to protect the rights of the party who caused it to be registered. It may also be cancelled by the Register of Deeds upon verified petition of the party who caused the registration thereof.

At any time after final judgment in favor of the defendant, or other disposition of the action such as to terminate finally all rights of the plaintiff in and to the land and/or buildings involved, in any case in which a memorandum or notice of *lis pendens* has been registered as provided in the preceding section, the notice of *lis pendens* shall be deemed cancelled upon the registration of a certificate of the clerk of court in which the action or proceeding was pending stating the manner of disposal thereof.

CHAPTER VI — REGISTRATION OF JUDGMENTS; ORDERS; PARTITIONS

SECTION 78. *Judgment for plaintiff.* — Whenever in any action to recover possession or ownership of real estate or any interest therein affecting registered land judgment is entered for the plaintiff, such judgment shall be entitled to registration on presentation of a certificate of the entry thereof from the clerk of court where the action is pending to the Register of Deeds for the province or city where the land lies, who shall enter a memorandum upon the certificate of title of the land to which such judgment relates. If the judgment does not apply to all the land described in the certificate of title, the certificate of the clerk of court where the action is pending and the memorandum entered by the Register of Deeds shall contain a description of the land affected by the judgment.

SECTION 79. *Judgment adjudicating ownership.* — When in any action to recover the ownership of real estate or an interest therein execution has been issued in favor of the plaintiff, the latter shall be entitled to the entry of a new certificate of title and to the cancellation of the original certificate and owner's duplicate of the former registered owner. If the registered owner neglects or refuses within a reasonable time after request of the plaintiff to produce his duplicate certificate in order that the same may be cancelled, the court shall, on application and after notice, enter an order to the owner to produce his certificate at the time and place designated, and may enforce the order by suitable process.

SECTION 80. *Execution of deed by virtue of judgment.* — Every court rendering judgment in favor of the plaintiff affecting registered land shall, upon petition of said plaintiff, order and parties before it to execute for

registration any deed or instrument necessary to give effect to the judgment, and shall require the registered owner to deliver his duplicate certificate to the plaintiff or to the Register of Deeds to be cancelled or to have a memorandum annotated upon it. In case the person required to execute any deed or other instrument necessary to give effect to the judgment is absent from the Philippines, or is a minor, or insane, or for any reason not amenable to the process of the court rendering the judgment, said court may appoint a suitable person as trustee to execute such instrument which, when executed, shall be entitled to registration.

SECTION 81. *Judgment of partition.* — In proceedings for partition of registered land, after the entry of the final judgment of partition, a copy of such final judgment, certified by the clerk of the court rendering the same, shall be filed and registered; thereupon, if the land is set off to the owners in severalty, each owner shall be entitled to have his certificate entered showing the share set off to him in severalty, and to receive an owner's duplicate thereof.

If the land is ordered by the court to be sold, the purchaser or his assigns shall be entitled to certificate of title entered in his or their favor upon presenting a certified copy of the judgment confirming the sale.

In case the land is ordered by the court to be assigned to one of the parties upon payment to the others of the sum ordered by the court, the party to whom the land is thus assigned shall be entitled to have a certificate of title entered in his favor upon presenting a certified copy of the judgment: *Provided, however,* That any new certificate entered in pursuance of partition proceedings, whether by way of set-off or of assignment or of sale, shall contain a reference memorandum to the final judgment of partition, and shall be conclusive as to the title to the same extent and against the same persons as such judgment is made conclusive by the laws applicable thereto: *and Provided, further*, That any person holding such certificate of title or a transfer thereof shall have the right to petition the court at any time to cancel the memorandum relating to such judgment or order and the court, after notice and hearing, may grant the petition. Such certificate shall thereafter be conclusive in the same manner and to the same extent as other certificates of title.

SECTION 82. *Registration of prior registered mortgaged or lease on partitioned property.* — If a certified copy of a final judgment or decree of partition is presented and it appears that a mortgage or lease affecting a specific portion or an undivided share of the premises had previously been registered, the Register of Deeds shall carry over such encumbrance on the certificate of title that may be issued.

SECTION 83. *Notice of insolvency.* — Whenever proceeding in bankruptcy or insolvency, or analogous proceedings, are instituted against a debtor who owns registered land, it shall be the duty of the officer serving the notice of the institution of such proceedings on the debtor to file a copy

thereof with the office of the Register of Deeds for the province or city where the land of the debtor lies. The assignee or trustee appointed by the court in such proceedings shall be entitled to the entry of a new certificate of the registered land of the debtor or bankrupt, upon presenting and filing a certified copy of the assignment in insolvency or order or adjudication in bankruptcy with the insolvent's or bankrupt's duplicate certificate of title; but the new certificate shall state that it is entered to him as assignee in insolvency or trustee in bankruptcy or other proceedings, as the case may be.

SECTION 84. *Judgment or order vacating insolvency proceedings.* — Whenever any of the proceedings of the character named in the preceding section against a registered owner, of which notice has been registered, is vacated by judgment, a certified copy of the judgment or order may be registered. Where a new certificate has been entered in the name of the assignee or trustee, such certificate shall be surrendered for cancellation and forthwith the debtor shall be entitled to the entry of a new certificate to him.

SECTION 85. *Land taken by eminent domain.* — Whenever any registered land, or interest therein, is expropriated or taken by eminent domain, the National Government, province, city, municipality, or any other agency or instrumentality exercising such right shall file for registration in the proper Registry a certified copy of the judgment which shall state definitely, by an adequate description, the particular property or interest expropriated, the number of the certificate of title, and the nature of the public use. A memorandum of the right or interest taken shall be made on each certificate of title by the Register of Deeds, and where the fee simple title is taken, a new certificate shall be issued in favor of the National Government, province, city, municipality, or any other agency or instrumentality exercising such right for the land so taken. The legal expenses incident to the memorandum of registration or issuances incident to the memorandum of registration or issuance of a new certificate shall be for the account of the authority taking the land or interest therein.

SECTION 86. *Extrajudicial settlement of estate.* — When a deed of extrajudicial settlement has been duly registered, the Register of Deeds shall annotate on the proper title the two-year lien mentioned in Section 4 of Rule 74 of the Rules of Court. Upon the expiration of the two-year period and presentation of a verified petition by the registered heirs, devisees or legatees or any other party in interest that no claim or claims of any creditor, heir or other person exist, the Register of Deeds shall cancel the two-year lien noted on the title without the necessity of a court order. The verified petition shall be entered in the Primary Entry Book and a memorandum thereof made on the title.

No deed of extrajudicial settlement or affidavit of adjudication shall be registered unless the fact of extrajudicial settlement or adjudication is published once a week for three consecutive weeks in a newspaper of gen-

eral circulation in the province and proof thereof is filed with the Register of Deeds. The proof may consist of the certification of the publisher, printer, his foreman or principal clerk, or of the editor, business or advertising manager of the newspaper concerned, or a copy of each week's issue of the newspaper wherein the publication appeared.

SECTION 87. *Filing of letters of administration and will.* — Before the executor or administrator of the estate of a deceased owner of registered land may deal with the same, he shall file with the office of the Register of Deeds a certified copy of his letters of administration or if there is a will, a certified copy thereof and the order allowing the same, together with the letters testamentary or of administration with the will annexed, as the case may be, and shall produce the duplicate certificate of title, and thereupon the Register of Deeds shall enter upon the certificate a memorandum thereof, making reference to the letters and/or will by their file number, and the date of filing the same.

SECTION 88. *Dealings by administering subject to court approval.* — After a memorandum of the will, if any, and order allowing the same, and letters testamentary or letters of administration have been entered upon the certificate of title as hereinabove provided, the executor or administrator may alienate or encumber registered land belonging to the estate, or any interest therein, upon approval of the court obtained as provided by the Rules of Court.

SECTION 89. *Land devised to executor.* — When it appears by will, a certified copy of which letters testamentary had already been filed as provided in this Decree, that registered land is devised to the executor to his own use, or upon some trust, the executor may have the land transferred to himself upon the register in like manner and subject to like terms and conditions and to like rights as in the case of a transfer pursuant to a deed filed in the office of the Register of Deeds.

SECTION 90. *When executor empowered by will to sell, etc.* — When the will of a deceased owner of registered lands, or an interest therein, empowers the executor to sell, convey, encumber, charge or otherwise deal with the land, a certified copy of the will and letters testamentary being filed as provided in this Decree, such executor may sell, convey, encumber, charge or otherwise deal with the land pursuant to the power in like manner as if he were a registered owner, subject to the terms and conditions and limitations expressed in the will.

SECTION 91. *Transfer in anticipation of final distribution.* — Whenever the court having jurisdiction of the testate or intestate proceedings directs the executor or administrator to take over and transfer to the devisees or heirs, or any of them, in anticipation of final distribution a portion or the whole of the registered land to which they might be entitled on final distribution, upon the filing of a certified copy of such order in the office of the Register of Deeds, the executor or administrator may cause

such transfer to be made upon the register in like manner as in case of a sale, and upon the presentation of the owner's duplicate certificate to the Register of Deeds, the devisees or heirs concerned shall be entitled to the issuance of the corresponding certificates of title.

SECTION 92. *Registration of final distribution of estate.* — A certified copy of the partition and distribution, together with the final judgment or order of the court approving the same or otherwise making final distribution, supported by evidence of payment of estate tax or exemption therefrom, as the case may be, shall be filed with the Register of Deeds, and upon the presentation of the owner's duplicate certificate of title, new certificates of title shall be issued to the parties severally entitled thereto in accordance with the approved partition and distribution.

CHAPTER VII — ASSURANCE FUND

SECTION 93. *Contribution to Assurance Fund.* — Upon the entry of a certificate of title in the name of the registered owner, and also upon the original registration on the certificate of title of a building or other improvements on the land covered by said certificate, as well as upon the entry of a certificate pursuant to any subsequent transfer of registered land, there shall be paid to the Register of Deeds one-fourth of one per cent of the assessed value of the real estate on the basis of the last assessment for taxation purposes, as contribution to the Assurance Fund. Where the land involved has not yet been assessed for taxation, its value for purposes of this decree shall be determined by the sworn declaration of two disinterested persons to the effect that the value fixed by them is to their knowledge, a fair valuation.

Nothing in this section shall in any way preclude the court from increasing the valuation of the property should it appear during the hearing that the value stated is too small.

SECTION 94. *Custody and investment of fund.* — All money received by the Register of Deeds under the preceding section shall be paid to the National Treasurer. He shall keep this money in an Assurance Fund which may be invested in the manner and form authorized by law, and shall report annually to the Commissioner of the Budget the condition and income thereof.

The income of the Assurance Fund shall be added to the principal until said fund amounts to five hundred thousand pesos, in which event the excess income from investments as well as from the collections of such fund shall be paid into the National Treasury to the account of the Assurance Fund.

SECTION 95. *Action for compensation from funds.* — A person who, without negligence on his part, sustains loss or damage, or is deprived of land or any estate or interest therein in consequence of the bringing of

the land under the operation of the Torrens system of arising after original registration of land, through fraud or in consequence of any error, omission, mistake or misdescription in any certificate of title or in any entry or memorandum in the registration book, and who by the provisions of this Decree is barred or otherwise precluded under the provision of any law from bringing an action for the recovery of such land or the estate or interest therein, may bring an action in any court of competent jurisdiction for the recovery of damages to be paid out of the Assurance Fund.

SECTION 96. *Against whom action filed.* — If such action is brought to recover for loss or damage or for deprivation of land or of any estate or interest therein arising wholly through fraud, negligence, omission, mistake or misfeasance of the court personnel, Register of Deeds, his deputy, or other employees of the Registry in the performance of their respective duties, the action shall be brought against the Register of Deeds of the province or city where the land is situated and the National Treasurer as defendants. But if such action is brought to recover for loss or damage or for deprivation of land or of any interest therein arising through fraud, negligence, omission, mistake or misfeasance of person other than court personnel, the Register of Deeds, his deputy or other employees of the Registry, such action shall be brought against the Register of Deeds, the National Treasurer and other person or persons, as co-defendants. It shall be the duty of the Solicitor General in person or by representative to appear and to defend all such suits with the aid of the fiscal of the province or city where the land lies: *Provided, however*, That nothing in this Decree shall be construed to deprive the plaintiff of any right of action which he may have against any person for such loss or damage or deprivation without joining the National Treasurer as party defendant. In every action filed against the Assurance Fund, the court shall consider the report of the Commissioner of Land Registration.

SECTION 97. *Judgment, how satisfied.* — If there are defendants other than the National Treasurer and the Register of Deeds and judgment is entered for the plaintiff and against the National Treasury, the Register of Deeds and any of the other defendants, execution shall first issue against such defendants other than the National and the Register of Deeds. If the execution is returned unsatisfied in whole or in part, and the officer returning the same certificates that the amount due cannot be collected from the land or personal property of such other defendants, only then shall the court, upon proper showing, order the amount of the execution and costs, or so much thereof as remains unpaid, to be paid by the National Treasurer out of the Assurance Fund. In an action under this Decree, the plaintiff cannot recover as compensation more than the fair market value of the land at the time he suffered the loss, damage, or deprivation thereof.

SECTION 98. *General Fund when liable.* — If at any time the Assurance Fund is not sufficient to satisfy such judgment, the National Treas-

urer shall make up for the deficiency from any funds available in the treasury not otherwise appropriated.

SECTION 99. *Subrogation of government to plaintiff's rights.* — In every case where payment has been made by the National Treasurer in accordance with the provisions of this Decree, the Government of the Republic of the Philippines shall be subrogated to the rights of the plaintiff against any other parties or securities. The National Treasurer shall enforce said rights and the amount recovered shall be paid to the account of the Assurance Fund.

SECTION 100. *Register of Deeds as party in interest.* — When it appears that the Assurance Fund may be liable for damages that may be incurred due to the unlawful or erroneous issuance of a certificate of title, the Register of Deeds concerned shall be deemed a proper party in interest who shall, upon authority of the Commissioner of Land Registration, file the necessary action in court to annul or amend the title.

The court may order the Register of Deeds to amend or cancel a certificate of title or to do any other act as may be just and equitable.

SECTION 101. *Lossess not recoverable.* — The Assurance Fund shall not be liable for any loss, damage or deprivation caused or occasioned by a breach of trust, whether express, implied or constructive or by any mistake in the resurvey or subdivision of registered land resulting in the expansion of area in the certificate of title.

SECTION 102. *Limitation of Action.* — Any action for compensation against the Assurance Fund by reason of any loss, damage or deprivation of land or any interest therein shall be instituted within a period of six years from the time the right to bring such action first occurred: *Provided*, That the right of action herein provided shall survive to the legal representative of the person sustaining loss or damage, unless barred in his lifetime; *and Provided, further*, That if at the time such right of action first accrued the person entitled to bring such action was a minor or insane or imprisoned, or otherwise under legal disability, such person or anyone claiming from, by or under him may bring the proper action at any time within two years after such disability has been removed, notwithstanding the expiration of the original period of six years first above provided.

CHAPTER VIII — REGISTRATION OF PATENTS

SECTION 103. *Certificates of title pursuant to patents.* — Whenever public land is by the Government alienated, granted or conveyed to any person, the same shall be brought forthwith under the operation of this Decree. It shall be the duty of the official issuing the instrument of alienation, grant, patent or conveyance in behalf of the Government to cause such instrument to be filed with the Register of Deeds of the province or city where the land lies, and to be there registered like other deeds and

conveyance, whereupon a certificate of title shall be entered as in other cases of registered land, and an owner's duplicate issued to the grantee. The deed, grant, patent or instrument of conveyance from the Government to the grantee shall not take effect as a conveyance or bind the land but shall operate only as a contract between the Government and the grantee and as evidence of authority to the Register of Deeds to make registration. It is the act of registration that shall be the operative act to affect and convey the land, and in all cases under this Decree, registration shall be made in the office of the Register of Deeds of the province or city where the land lies. The fees for registration shall be paid by the grantee. After due registration and issuance of the certificate of title, such land shall be deemed to be registered land to all intents and purposes under this Decree.

CHAPTER IX — CERTIFICATE OF LAND TRANSFER, EMANCIPATION PATENT, AFFIDAVIT OF NON-TENANCY

SECTION 104. *Provisional Register of Documents.* — The Department of Agrarian Reform shall prepare by automate data processing a special registry book to be known as the "Provisional Register of Documents issued under PD-27" which shall be kept and maintained in every Registry of Deeds throughout the country. Said Registry Book shall be a register of:

a. All Certificates of Land Transfer (CLT) issued pursuant to P.D. No. 27; and

b. All subsequent transactions affecting Certificates of Land Transfer such as adjustments, transfer, duplication and cancellations of erroneous Certificates of Land Transfer.

SECTION 105. *Certificates of Land Transfer Emancipation Patents.* — The Department of Agrarian reform shall, pursuant to P.D. No. 27, issue in duplicate, a Certificate of Land Transfer for every land brought under "Operation Land Transfer," the original of which shall be kept by the tenant-farmer and the duplicate, in the Registry of Deeds.

After the tenant-farmer shall have fully complied with the requirements for a grant of title under P.D. No. 27, an Emancipation Patent which may cover previously titled or untitled property shall be issued by the Department of Agrarian Reform.

The Register of Deeds shall complete the entries on the aforementioned Emancipation Patent and shall assign an original certificate of title number in case of unregistered land, and in case of registered property, shall issue the corresponding transfer certificate of title without requiring the surrender of the owner's duplicate of the title to be cancelled.

In case of death of the grantee, the Department of Agrarian Reform

shall determine his heirs or successors-in-interest and shall notify the Register of Deeds accordingly.

In case of subsequent transfer of property covered by an Emancipation Patent or a Certificate of Title emanating from an Emancipation Patent, the Register of Deeds shall affect the transfer only upon receipt of the supporting papers from the Department of Agrarian Reform.

No fee, premium, of tax of any kind shall be charged or imposed in connection with the issuance of an original Emancipation Patent and for the registration of related documents.

SECTION 106. *Sale of agricultural land; affidavit.* — No voluntary deed or instrument purporting to be a subdivision, mortgage, lease, sale or any other mode of encumbrance or conveyance of private agricultural land principally devoted to rice or corn or any portion thereof shall be registered unless accompanied by an affidavit of the vendor or executor stating that the land involved is not tenanted, or if tenanted, the same is not primarily devoted to the production of rice and/or corn.

If only a portion of the land is primarily devoted to the production of rice and/or corn, and such area so devoted is tenanted, no such deed or instrument shall be registered unless accompanied by an affidavit stating the area (size) of the portion which is tenanted and primarily devoted to rice and/or corn, and stating further that the deed or instrument covers only the untenanted portion or that which is not primarily devoted to the production of rice and/or corn. A memorandum of said affidavit shall be annotated on the certificate of title. The Register of Deeds shall cause a copy of the registered deed or instrument, together with the affidavit, to be furnished the Department of Agrarian Reform Regional Office where the land is located. The affidavit provided in this section shall not be required in the case of a tenant-farmer who deals with his Certificate of Land Transfer or Emancipation Patent in accordance with law.

CHAPTER X — PETITIONS AND ACTIONS AFTER ORIGINAL REGISTRATION

SECTION 107. *Surrender of withheld duplicate certificates.* — Where it is necessary to issue a new certificate of title pursuant to any involuntary instrument which divests the title of the registered owner against his consent or where a voluntary instrument cannot be registered by reason of the refusal or failure of the holder to surrender the owner's duplicate certificate of title, the party in interest may file a petition in court to compel surrender of the same to the Register of Deeds. The court, after hearing, may order the registered owner or any person withholding the duplicate certificate to surrender the same, and direct the entry of a new certificate or memorandum upon such surrender. If the person withholding the duplicate certificate is not amenable to the process of the court, or if not any

reason the outstanding owner's duplicate certificate cannot be delivered, the court may order the annulment of the same as well as the issuance of a new certificate of title in lieu thereof. Such new certificate and all duplicates thereof shall contain a memorandum of the annulment of the outstanding duplicate.

SECTION 108. *Amendment and alteration of certificates.* — No erasure, alteration, or amendment shall be made upon the registration book after the entry of a certificate of title or of a memorandum thereon and the attestation of the same by the Register of Deeds, except by order of the proper Court of First Instance. A registered owner or other person having an interest in registered property, or, in proper cases, the Register of Deeds with the approval of the Commissioner of Land Registration, may apply by petition to the court upon the ground that the registered interests of any description, whether vested, contingent, expectant or inchoate appearing on the certificate, have terminated and ceased; or that new interest not appearing upon the certificate have arisen or been created; or that an omission or error was made in entering a certificate or any memorandum thereon, or, on any duplicate certificate; or that the same or any person on the certificate has been changed; or that the registered owner has married, or, if registered as married, that the marriage has been terminated and no right or interests of heirs or creditors will thereby be affected; or that a corporation which owned registered land and has been dissolved has not convened the same within three years after its dissolution; or upon any other reasonable ground; and the court may hear and determine the petition after notice to all parties in interest, and may order the entry or cancellation of a new certificate, the entry or cancellation of a memorandum upon a certificate, or grant any other relief upon such terms and conditions, requiring security or bond if necessary, as it may consider proper; *Provided, however,* That this section shall not be construed to give the court authority to reopen the judgment or decree of registration, and that nothing shall be done or ordered by the court which shall impair the title or other interest of a purchaser holding a certificate for value and in good faith, or his heirs and assigns, without his or their written consent. Where the owner's duplicate certificate is not presented, a similar petition may be filed as provided in the preceding section.

All petitions or motions filed under this Section as well as under any other provision of this Decree after original registration shall be filed and entitled in the original case in which the decree or registration was entered.

SECTION 109. *Notice and replacement of lost duplicate certificate.* — In case of loss or theft of an owner's duplicate certificate of title, due notice under oath shall be sent by the owner or by someone in his behalf to the Register of Deeds of the province or city where the land lies as soon as the loss or theft is discovered. If a duplicate certificate is lost or destroyed, or cannot be produced by a person applying for the entry of a new

certificate to him or for the registration of any instrument, a sworn statement of the fact of such loss or destruction may be filed by the registered owner or other person in interest and registered.

Upon the petition of the registered owner or other person in interest, the court may, after notice and due hearing, direct the issuance of a new duplicate certificate, which shall contain a memorandum of the fact that it is issued in place of the lost duplicate certificate, but shall in all respects be entitled to like faith and credit as the original duplicate, and shall thereafter be regarded as such for all purposes of this decree.

SECTION 110. *Reconstitution of lost or destroyed original of Torrens title.* — Original copies of certificates of title lost or destroyed in the offices of Register of Deeds as well as liens and encumbrances affecting the lands covered by such titles shall be reconstituted judicially in accordance with the procedure prescribed in Republic Act No. 26 insofar as not inconsistent with this Decree. The procedure relative to administrative reconstitution of lost or destroyed certificate prescribed in said Act is hereby abrogated.

Notice of all hearings of the petition for judicial reconstitution shall be given to the Register of Deeds of the place where the land is situated and to the Commissioner of Land Registration. No order or judgment ordering the reconstitution of a certificate of title shall become final until the lapse of thirty days from receipt by the Register of Deeds and by the Commissioner of Land Registration of a notice of such order or judgment without any appeal having been filed by any of such officials.

CHAPTER XI — SCHEDULE OF FEES: SPECIAL FUND

SECTION 111. *Fees payable.* — The fees payable to the Clerk of Court, the Sheriff, the Register of Deeds and the Land Registration Commission shall be as follows:

A. *Fees payable to the Clerk of Court.* — The fees payable to the clerk of court or his deputies shall be as follows:

1. For filing an application for the registration of land, the fees shall be based on the assessed value of the property for the current year, in accordance with the following schedule —

(a) When the value of the property does not exceed two thousand pesos, fifteen pesos for the first five hundred pesos, or fractional part thereof, and five pesos for each additional five hundred pesos, or fractional part thereof.

(b) When the value of the property does not exceed two thousand pesos but does not exceed ten thousand pesos, thirty-five pesos for the first three thousand pesos, or fractional part thereof, and five

pesos for each additional one thousand pesos, or fractional part thereof.

(c) When the value of the property is more than ten thousand pesos but does not exceed one hundred thousand pesos, eighty pesos for the first twenty thousand pesos, or fractional part thereof, and ten pesos for each additional ten thousand pesos, or fractional part thereof.

(d) When the value of the property is more than one hundred thousand pesos but does not exceed five hundred thousand pesos, one hundred eighty pesos for the first one hundred twenty-five thousand pesos, or fractional part thereof, and twenty pesos for each additional twenty-five thousand pesos, or fractional part thereof.

(e) When the value of the property is more than five hundred thousand pesos, five hundred twenty pesos for the first five hundred fifty thousand pesos, or fractional part thereof, and forty pesos for each additional fifty thousand pesos, or fractional part thereof.

If the property has not been assessed for taxation, the fees above prescribed shall be based on the current market value; and the applicant shall file with his application a sworn declaration of three disinterested persons that the value fixed by him is to their knowledge a fair valuation.

2. For filing a petition for review of judgment and decree, or other claim adverse to the registered owner, for each petition, twenty pesos.

3. For filing a petition after the decision has become final, twenty pesos. If it affects land decrees in more than one case, for each additional case, one peso. If it affects several lots or parcels of land in which the petitioners have no common interest, each of such petitioners shall pay the corresponding fees as if separate petitions had been filed by him.

B. *Fees payable to the Sheriff.* — The sheriff shall collect fees for his services rendered in connection with land registration and cadastral proceedings as follows:

1. For posting notices of initial hearing of land registration cases in conspicuous places on the lands described in the notice, for each parcel of land on which a copy of such notice is posted, besides travel fees, three pesos.

2. For posting notices of initial hearing of cadastral cases in conspicuous places on the lands included in the survey, for each group of one hundred lots on which a copy of the notice is posted, besides travel fees, three pesos.

3. For posting one copy of a notice of initial hearing in a conspicuous place upon the municipal building of the city, municipality, or munici-

pal district in which the land or portion thereof lies, besides travel fees, three pesos.

4. For serving notices upon cadastral claimants to appear before the court, travel fees only as provided in the Rules of Court.

5. For all other services not mentioned above, the same fees including travel fees as provided in the Rules of Court for similar services.

C. *Fees payable to the Register of Deeds.* — The Register of Deeds shall collect fees for all services rendered by him under this Decree in accordance with the following schedule:

1. *Original certificate of title.* — For the entry of one original certificate of title and issuance of one owner's duplicate certificate, ten pesos for the first parcel of land described thereon and five pesos for each additional parcel.

2. *Entry fee.* — For each entry fee in the primary entry book, five pesos.

3. *Attachment, levy, etc.* — For the annotation of an attachment, levy, writ of execution, adverse claim, five pesos for each parcel of land affected thereby.

4. *Lis Pendens, etc.* — For the annotation of a notice of lis pendens, or of any document or order in connection therewith, for each of land affected thereby, five pesos.

5. *Release of encumbrance.* — For the annotation of a release of any encumbrance, except mortgage, lease, or other lien for the cancellation of which a specific fee is prescribed herein, for each parcel of land so released, five pesos; but the total amount of fees to be collected shall not exceed the amount of fees paid for the registration of such encumbrance.

6. *Court Order.* — For the annotation of an order of the court for the amendment of, or the making of a memorandum on, a certificate of title, except inclusion of buildings or improvements, or any order directing the registration of a document, or of any right or interest referred to in said order, or the cancellation of a certificate of title and/or the issuance of a new one, ten pesos for each certificate of title on which the annotation is made, in addition to the fees prescribed under paragraphs sixteen or seventeen, as the case may be, of this subsection, in the same are also due for the registration of such document, right or interest.

7. *Building.* — For the annotation of an order of the court for the inclusion of building and/or improvement in a certificate of title, ten pesos for each certificate of title.

8. *Powers of attorney, letters of administration, appointment of guardian, resolution or revocation thereof.* — For registering and filing a power of attorney, letters of administration or letters testamentary whether

or not accompanied by a copy of the testament, certificate of allowance of a will with attested copy of the will annexed, appointment of guardian for a minor or incompetent person, appointment of receiver, trustee, or administrator, articles of incorporation of any corporation, association or partnership, or resolution of its board of directors empowering an officer or member thereof to act in behalf of the same, twenty pesos; and for the annotation of such papers on certificates of title when required by existing laws or regulations, five pesos for each certificate of title so annotated: *Provided, however,* That when the certificate of allowance of a will and the letters testamentary or letters of administration are filed together, only one fee shall be collected. For registering an instrument of revocation of any of the paper mentioned above, five pesos, and if annotated on the corresponding certificate of title, three pesos for each certificate of title.

9. *Notice of tax lien, loss, etc.* — For the annotation of a notice of tax lien of any description notice of lost duplicate or copy of a certificate of title, order of the court declaring such duplicate or copy null and void, notice of change of address, or the cancellation of any such annotation, for each certificate of title, five pesos.

10. *Carry over of annotation.* — For transferring the memorandum of an encumbrance of any kind from one certificate of title which is cancelled to a new one in lieu thereof, for each memorandum thus transferred, five pesos.

11. *Annotation on additional copy of title.* — For any memorandum made in a standing co-owner's copy of a certificate of title after a similar memorandum has been made in the original thereof, of each certificate of title, five pesos.

12. *No specific fee.* — For any memorandum made in a certificate of title for which no specific fee is prescribe above, for each certificate of title, five pesos.

13. *Transfer to trustee, executor, administrator, receiver.* — For the issuance of a transfer certificate of title, including its duplicate, to a trustee, executor, administrator, or receiver, or for the cancellation of such certificate of title and issuance of a new one, including its duplicate, to the *cestui que trust* in case of trusteeship, ten pesos. If the certificate covers more than one parcel or lot, an additional fee of five pesos shall be collected for each additional parcel or lot.

14. *Transfer certificate of title.* — For the issuance of a transfer certificate of title, including its duplicate, to a person other than those named in the next preceding paragraph, ten pesos, in addition to the fees hereinafter prescribed in paragraph sixteen or seventeen, as the case may be, of this subsection, if the same are also due. If the certificate covers more than one parcel or lot, an additional fee of five pesos shall be collected for each additional parcel or lot.

15. *Additional copy of title.* — For the issuance of a new owner's duplicate or a co-owner's copy of a certificate of title, or any additional duplicate or copy thereof, ten pesos for the first page and five pesos for each subsequent page, or fraction thereof.

16. *Registration fee.* — For the registration of a deed of sale, conveyance, transfer, exchange, partition, or donation; a deed of sale with *pacto de retro*, conditional sale, sheriff's sale at public auction, sale for non-payment of taxes, or any sale subject to redemption, or the repurchase or redemption of the property so sold; any instrument, order, judgment or decree divesting the title of the registered owner, except in favor of a trustee, executor, administrator or receiver; option to purchase or promise to sell; any mortgage, surety, bond, lease, easement, right-of-way, or other real right or lien created or constituted by virtue of a distinct contract or agreement, and not as an incidental condition of sale, transfer or conveyance; the assignment, enlargement, extension or novation of a mortgage or of any other real right, or a release of mortgage, termination of lease, or consolidation of ownership over a property sold with *pacto de retro*; where no specific fee is prescribed therefor in the preceding paragraphs, the fees shall be based on the value of the consideration in accordance with the following schedule:

(a) *Six thousand pesos maximum.* — When the value of the consideration does not exceed six thousand pesos, seven pesos for the first five hundred pesos, or fractional part thereof, and three pesos for each additional five hundred pesos, or fractional part thereof.

(b) *Thirty thousand pesos maximum.* — When the value of the consideration is more than six thousand pesos but does not exceed thirty thousand pesos, or fractional part thereof, and eight pesos for each additional two thousand pesos, or fractional part thereof.

(c) *One hundred thousand pesos maximum.* — When the value of the consideration is more than thirty thousand pesos but does not exceed one hundred thousand pesos, one hundred fifty pesos for the first thirty-five thousand pesos, or fractional part thereof, and fourteen pesos or each additional five thousand pesos, or fractional part thereof.

(d) *Five hundred thousand pesos maximum.* — When the value of the consideration is more than one hundred thousand pesos but does not exceed five hundred thousand pesos, three hundred fifty-two pesos for the first one hundred ten thousand pesos, or fractional part thereof, and twenty pesos for each additional ten thousand pesos, or fractional part thereof.

(e) *More than five hundred thousand pesos.* — When the value of the consideration is more than five hundred thousand pesos, one thousand one hundred sixty-two pesos for the first five hundred twenty thousand pesos, or fractional part thereof, and thirty

pesos for each additional twenty thousand pesos, or fractional part thereof.

17. *Fees for specific transactions.* — In the following transactions, however, the basis of the fees collectible under paragraph sixteen of this subsection, whether or not the value of the consideration is stated in the instrument, shall be as hereunder set forth:

(a) *Exchange.* — In the exchange of real property the basis of the fees to be paid by each party shall be the current assessed value of the properties acquired by one party from the other, in addition to the value of any other consideration, if any, stated in the contract.

(b) *Hereditary transfer.* — In the transmission of an hereditary estate without partition or subdivision of the property among the heirs, devisees or legatees, although with specification of the share of each in the value of the estate, the basis shall be the total current assessed value of the property thus transmitted.

(c) *Partition of hereditary estate; Conjugal property.* — In the partition of an hereditary estate which is still in the name of the deceased, in which determinate properties are adjudicated to each heir devisee or legatee, or to each group of heirs, devisees or legatees, the basis of the fees to be paid by each person or group, as the case may be, shall be the total current assessed value of the properties thus adjudicated to each person or group. In the case, however, of conjugal property, the basis of the fees for the registration of one-half thereof in the name of the surviving spouse shall be the total current assessed value of the properties adjudicated to said spouse.

(d) *Subdivision or partition.* — In the partition of real property held in common by several registered co-owner's the basis of the fees to be paid by each co-owner or group of co-owners shall be the total assessed value of the property taken by each co-owner or group.

(e) *Conveyance: several lots and parties.* — In the sale, conveyance or transfer of two or more parcels of land in favor of two or more separate parties but executed in one single instrument, the basis shall be the total selling price paid by each party-buyer, or, in the case of lump sum consideration, such portion thereof as apportioned in accordance with the assessed value of the respective land acquired by each party-buyer.

(f) *Conveyance of properties in different places.* — In the sale, conveyance, or transfer of properties situated in different cities or provinces, the basis of the fees in each Registry of Deeds where the instrument is to be registered shall be the total selling price of the properties situated in the respective city or province, or, in the case of lump sum consideration, such portion thereof as obtained for those

properties lying within the jurisdiction of the respective registry after apportioning the total consideration of the sale, conveyance or transfer in accordance with the current assessed value of such properties.

(g) *Conveyance of mortgaged properties.* — In the sale, conveyance, or transfer of a mortgaged property, the basis shall be the selling price of the property proper plus the full amount of the mortgage, or the unpaid balance thereof if the latter is stated in the instrument. If the properties are situated in different cities or provinces, the basis of the fees in each Registry of Deeds where the instrument is to be registered shall be such sum as obtained for the properties situated in the respective city or province after apportioning in accordance with the current assessed values of said properties the total amount of consideration as above computed, unless the selling price of the properties in each city or province and the proportionate share thereof in the amount of unpaid balance of the mortgage are stated in the instrument, in which case, the aggregate of such selling price and share shall be the basis. In any case, however, where the aggregate value of the consideration as above computed shall be less than the current assessed value of the properties in the city or province concerned, such assessed value shall be the basis of the fees in the respective Registry.

(h) *Mortgage of properties in different places.* — In a mortgage affecting properties situated in different cities or provinces, the basis of the fees in each Registry of Deeds where the document is to be registered shall be such amount as obtained for the properties lying within the jurisdiction of said Registry after apportioning the total amount of the mortgage in accordance with the current assessed value of such properties.

(i) *Release of mortgage.* — In the release of a mortgage the basis of the fees shall be an amount equal to ten per centum of the total amount of obligation secured by the mortgage. If the properties are situated in different cities or provinces, the basis of the fees in each Registry shall be ten per centum of such sum as obtained for the properties in the respective city or province after apportioning the amount of the mortgage in accordance with the current assessed values of such properties. In the case of a partial release, the fees shall be based on ten per centum of the current assessed value of the property so released in the respective city or province; *Provided, however*, That where several partial releases had been registered, the fees corresponding to the final release shall be computed on the basis of ten per centum of the difference between the amount of the mortgage and the aggregate of the consideration used as basis for the collection of the fees paid for the registration of all previous partial releases.

(j) *Certificate of sale.* — In a certificate of sale at public auction by virtue of an order of execution or sale for delinquency in the payment of taxes, or repurchase of the property so sold, the basis of the fees in each Registry shall be ten per centum of the selling or repurchase price of the property lying within the jurisdiction of the Registry.

(k) *Affidavit of consolidation of ownership.* — In an affidavit for the consolidation of ownership over a property sold with *pacto de retro* or pursuant to an extrajudicial foreclosure under the provisions of Act Numbered Thirty-one hundred and thirty-five, as amended, the basis of the fees in each Registry shall be an amount equivalent to ten per centum of the consideration of the sale in the respective city or province.

(l) *Contract of lease.* — In contracts of lease, the basis of the fees in each Registry shall be the sum total to be paid by the lessee for the properties situated in the respective city or province during the entire period specified in the contract, including the extension contemplated by the parties which may be given effect without the necessity of further registration. If the period is from year to year, or otherwise not fixed, the basis shall be the total amount of rentals due for thirty months. If the rentals are not distributed, the total amount thereof as above computed shall be apportioned to said properties in accordance with their assessed values, and the proportionate sum thus obtained for each city or province shall be the basis of the fees to be collected in the Registry concerned.

(m) *Termination of lease.* — In the termination of lease, the basis of the fees in each registry shall be ten per centum of the amount used as basis for the collection of the fees paid for the registration of said lease.

(n) *Option to purchase or promise to sell.* — In contracts of option to purchase or promise to sell, the basis of the fees in each Registry shall be ten per centum of the current assessed value of the property subject of such contract in the respective city or province.

(o) *Consideration not stated or fixed or less than assessed value.* — In other transactions where the actual value of the consideration is not fixed in the contract or cannot be determined from the terms thereof, or, in case of a sale, conveyance, or transfer, the consideration stated is less than the current assessed value of the property, the basis of the fees shall be the current assessed value of the property involved in the transaction. If the properties are situated in different cities or provinces, the basis of the fees in each Registry shall be the current assessed value of the properties lying within the jurisdiction of the Registry concerned.

18. *Issuance of copy of document.* — For furnishing copies of any entry, decree, document, or other papers on file, fifty centavos for each hundred words of fraction thereof contained in the copies thus furnished.

19. *Certified copy.* — For certifying a copy furnished under the next preceding paragraph, for each certification, five pesos for one page and one peso for each additional page certified.

20. *Certification.* — For issuing a certificate relative to, or showing the existence or non-existence of, an entry in the registration books or a document on file, for each such certificate containing not more than two hundred words, five pesos; if it exceeds that number an additional fee of one peso shall be collected for every hundred words, or fraction thereof, in excess of the first two hundred words.

21. *Research fee.* — For services rendered in attending to request for reference or researches on any records or documents on file in the Registry, there shall be collected two pesos per document or record.

D. *Fees payable to the Commissioner of Land Registration.* — The fees payable to the Commissioner of Land Registration shall be as follows:

(1) For verification and approval of subdivision plans, the fee shall be:

(a)	For each lot	P2.00
(b)	For each corner of a lot, irrespective of whether such corner is common to two or more lots	0.20
(c)	For each traverse station	0.10
(d)	For each observation	0.50

(e) In case the plan is a resurvey or relocation plan, an additional 40 percent of the rates prescribed above shall be collected; *Provided, however*, That the total fee as computed above, whether for subdivision and/or consolidation-subdivision survey, resurvey or relocation plan, shall in no case be less than P8.00 per plan.

(2) For changing or correcting the name of any person appearing on the subdivision plan or other plan in order to have it conform to that stated in the certificate of title covering the land, and for the cancellation of an approved plan when so requested by the interested party, there shall be a fee of P5.00 per plan.

(3) The rates of fees prescribed in paragraphs 1 and 2, inclusive, shall apply to similar services rendered in connection with the examination, verification, and approval of consolidation, consolidation-subdivision, resubdivision, and reconsolidation plans, special work order plans on the

basis of certified copies of technical descriptions of plans approved by the Land Registration Commission or the Bureau of Lands, private surveys, and other plans of similar nature.

In the computation of fees relative to lots subject of consolidation and consolidation-subdivision plans, a fee of two pesos shall be collected per lot as appearing in the old survey in addition to the fee collectible in paragraph 1 hereof for the new lots.

(4) For the preparation of a plan in a tracing cloth of any survey, the data of which are available in the Commission, except when the same is merely traced from an existing plan, the fees shall be computed as follows:

(a) When the plan to be so prepared contains only one lot:

(1)	For the first ten corners or fraction thereof	P40.00
(2)	For the next ten corners or fraction thereof	6.00
(3)	For each corner in excess of the first twenty corners	0.40

(b) When the plan to be so prepared contains two or more lots:

(1)	For the first lot, which must be the biggest of the group, irrespective of the number of its corner	P40.00
(2)	For each additional lot, irrespective of the number of its corners, said lot being adjacent to the first lot or any other lot	P15.00
(3)	For each non-adjacent lot (other than the first charged lot), irrespective of the number of its corners	P20.00
(4)	If any lot contains more than twenty corners for each corner of such lot in the first twenty corners	P0.40

(5) For the preparation of a plan in tracing cloth, to be traced from an existing plan, complete with bearings and distances of corners and tie lines, the fee shall be 30 per centum of the fees prescribed in paragraph 4 above.

(6) For the preparation of a plan in tracing cloth, to be copied from an existing plan, complete with bearings and distances of sides and tie-

lines, but using a different scale, the fee shall be 50 per centum of the fees prescribed under paragraph 4 above, if made on a reduced scale; or 60 per centum of the same fees, if made on an enlarged scale.

(7) For the preparation of a simple plan or sketch of any available survey or plan on any paper other than a tracing cloth, the fee on the basis of each lot, shall be as follows:

(a)	For the first ten corners or fraction thereof	P20.00
(b)	For the second ten corners or fraction thereof	5.00
(c)	For the third ten corners or fraction thereof	2.00
(d)	For each corner in excess of the first thirty corners	0.20
(e)	If the sketch is prepared in tracing cloth, add to the total fees as above computed	5.00
(f)	If the plan or sketch so prepared contains the bearing and distances of the sides and tie-lines, add to the total fees as above computed 10 per centum thereof.	

(8) For furnishing a plan copy (blue print, or white print) of any plan on file in the Commission, the fee shall be as follows:

(a)	For the copy of any size not exceeding forty square decimeters	P3.00
(b)	For one copy of more than forty square decimeters but not exceeding eighty square decimeters in size	6.00
(c)	For one copy of more than eighty square decimeters but not exceeding one hundred twenty square decimeter in size	9.00
(d)	For one copy in excess of one hundred twenty square decimeters in size, the basis rate of nine pesos plus for every twenty square decimeters or fraction thereof in excess	0.50

(9) For the preparation of technical descriptions, other than mere copying from an existing copy, there shall be collected the following fees:

(a)	For technical descriptions of lots or parcels, typewritten in triplicate and double-spaced, including certification:		
	(1)	For each lot	P3.00
	(2)	For each corner of a lot	0.20

(3) For each extra carbon copy, extra charge 0.20

(4) Minimum total charge 3.00

(b) For lot description prepared in tracing cloth (on tabulated form) including certification:

(1) For each sheet P1.50

(2) For each lot 0.20

(3) For each corner in excess of ten for a lot 0.10

(c) Any common corner shall be counted as many items as there are lots to which it pertains.

(10) For certification of plans or copies of plans as to the correctness of the same, per plan or print copy — P3.00 and for the issuance of all other certification — P5.00 plus one 30-centavo documentary stamp to be affixed thereto.

(11) For inspection of land subject of private surveys, simple or complex subdivision plans, or consolidation, consolidation-subdivision, resubdivision, or reconsolidation plans, special work orders, and other plans of similar nature for the purpose of verification and/or approval:

(a) For each plan with an aggregate area of 1,000 sq. m. or less P100.00

(b) For each subdivision with an aggregate area of more than 1,000 sq. m.:

1. For the first 1,000 s.m P100.00
2. For every succeeding 1,000 sq. m. or fraction thereof 10.00

(12) For actual field work of subdivision survey, relocation survey and resurvey of land, the fees shall be as follows:

(a) Subdivision survey:

1. Rural (Agricultural)

Area		*Survey Fee*
For the first hectare	—	P350.00
For the 2nd ha. to 10th ha.	—	An additional 60.00 per ha.
For the 11th ha. to 20th ha.	—	An additional P30.00 per ha.
For the 21st ha. to 30th ha.	—	An additional P20.00 per ha.

For the 31st ha. to 200th ha. — An additional P10.00 per ha.

For the 201st ha. or over — An additional P8.00 per ha.

A fraction of a hectare shall be considered one hectare.

2. Urban (Solar):

First 200 sq. m. or less	P350.00
Succeeding 201 sq. m. or more	P20.00 - 100 sq. m.

(b) Relocation Survey or Resurvey:

The fee for relocation survey or resurvey shall be one hundred fifty percent (150%) of the amount of survey fee collectible on the basis of the schedule of fees for subdivision survey as provided in the preceding paragraph plus one per cent (1%) of the assessed value of the land.

Special Account. — Twenty per centum of all the collections of the Registers of Deeds and of the Land Registration Commission under this Section and Sections 118 and 116 of this Decree shall be appropriated and upon approval of a budget for it by the Ministry of the Budget, such amounts shall be disbursed and all offices under the Land Registration Commission, for the purchase of necessary equipment, for payment of allowances of officials and employees of the Commission, including those of the Registries of Deeds, as authorized by the Commissioner, for contracts regarding security printing of Land title forms, for survey contracts, and for the maintenance and other operating expenses of the Commission.

CHAPTER XII — FORMS USED IN LAND REGISTRATION AND CONVEYANCING

SECTION 112. *Forms in conveyancing.* — The Commissioner of Land Registration shall prepare convenient blank forms as may be necessary to help facilitate the proceedings in land registration and shall take charge of the printing of land title forms.

Deeds, conveyances, encumbrances, discharges, powers of attorney and other voluntary instruments, whether affecting registered or unregistered land, executed in accordance with law in the form of public instruments shall be registrable: *Provided,* That, every such instrument shall be signed by the person or persons executing the same in the presence of at least two witnesses who shall likewise sign thereon, and shall acknowledged to be the free act and deed of the person or persons executing the same before a notary public or other public officer authorized by law to take acknowledgment. Where the instrument so acknowledged consists of two or more pages including the page wherein acknowledgment is written, each page of the copy which is to be registered in the office of the

Register of Deeds, or if registration is not contemplated, each page of the copy to be kept by the notary public, except the page where the signatures already appear at the foot of the instrument, shall be signed on the left margin thereof by the person or persons executing the instrument and their witnesses, and all the pages sealed with the notarial seal, and this fact as well as the number of pages shall be stated in the acknowledgment. Where the instrument acknowledged relates to a sale, transfer, mortgage or encumbrance of two or more parcels of land, the number thereof shall likewise be set forth in said acknowledgment.

CHAPTER XIII — DEALINGS WITH UNREGISTERED LANDS

SECTION 113. *Recording of instruments relating to unregistered lands.* — No deed, conveyance, mortgage, lease, or other voluntary instrument affecting land not registered under the Torrens system shall be valid, except as between the parties thereto, unless such instrument shall have been recorded in the manner herein prescribed in the office of the Register of Deeds for the province or city where the land lies.

(a) The Register of Deeds for each province or city shall keep a Primary Entry Book and a Registration Book. The Primary Entry Book shall contain, among other particulars, the entry number, the names of the parties, the nature of the document, the date, hour and minute it was presented and received. The recording of the deed and other instruments relating to unregistered lands shall be effected by any of annotation on the space provided therefor in the Registration Book, after the same shall have been entered in the Primary Entry Book.

(b) If, on the face of the instrument, it appears that it is sufficient in law, the Register of Deeds shall forthwith record the instrument in the manner provided herein. In case the Register of Deeds refuses its administration to record, said official shall advise the party in interest in writing of the ground or grounds for his refusal, and the latter may appeal the matter to the Commissioner of Land Registration in accordance with the provisions of Section 117 of this Decree. It shall be understood that any recording made under this section shall be without prejudice to a third party with a better right.

(c) After recording on the Record Book, the Register of Deeds shall endorse among other things, upon the original of the recorded instruments, the file number and the date as well as the hour and minute when the document was received for recording as shown in the Primary Entry Book, returning to the registrant or person in interest the duplicate of the instrument, with appropriate annotation, certifying that he has recorded the instrument after reserving one copy thereof to be furnished the provincial or city assessor as required by existing law.

(d) Tax sale, attachment and levy, notice of *lis pendens*, adverse claim and other instruments in the nature of involuntary dealings with respect to unregistered lands, if made in the form sufficient in law, shall likewise be admissible to record under this section.

(e) For the services to be rendered by the Register of Deeds under this section, he shall collect the same amount of fees prescribed for similar services for the registration of deeds or instruments concerning registered lands.

CHAPTER XIV — REGISTRATION OF CHATTEL MORTGAGES

SECTION 114. *Recording of chattel mortgages.* — A chattel mortgage shall be recorded in the office of the Register of Deeds of the province or city where the mortgagor resides as well as where the property is situated or ordinarily kept.

SECTION 115. *Manner of recording chattel mortgages.* — Every Register of Deeds shall keep a Primary Entry Book and a Registration Book for chattel mortgages; shall certify on each mortgage filed for record, as well as on its duplicate, the date, hour, and minute when the same was by him received; and shall record in such books any chattel mortgage, assignment or discharge thereof, and any other instrument relating to a recorded mortgage, and all such instruments shall be presented to him in duplicate, the original to be filed and the duplicate to be returned to the person concerned.

The recording of a mortgage shall be effected by making an entry, which shall be given a correlative number, setting forth the names of the mortgagee and the mortgagor, the sum or obligation guaranteed, date of the instrument, name of the notary before whom it was sworn to or acknowledged, and a note that the property mortgaged, as well as the terms and conditions of the mortgage, is mentioned in detail in the instrument filed, giving the proper file number thereof. The recording of other instruments relating to a recorded mortgage shall be effected by way of annotation on the space provided therefor in the Registration Book, after the same shall have been entered in the Primary Entry Book.

The Register of Deeds shall also certify the officer's return of sale upon any mortgage, making reference upon the record of such officer's return to the volume and page of the record of the mortgage, and a reference of such return on the record of the mortgage itself, and give a certified copy thereof, when requested, upon payment of the legal fees for such copy thereof, when requested, upon payment of the legal fees for such copy and certify upon each mortgage officer's return of sale or discharge of mortgage, and upon any other instrument relating to such a recorded mortgage, both on the original and in the duplicate, the date, hour, and

minute when the same is received for record and record such certificate index of mortgagors and mortgagees, which record and index shall be open to public inspection.

Duly certified copies of such records and of filed instruments shall be receivable as evidence in any court.

SECTION 116. *Fees for chattel mortgages, etc.* — The Register of Deeds shall collect the following fees for services rendered by him under this section:

1. *Entry fee.* — For entry or presentation of any document in the Primary Entry Book, five pesos. Supporting papers presented together with the principal document need not be charged any entry or presentation fee unless the party in interest desires that they be likewise entered.

2. *Chattel Mortgage.* — For filing and recording each chattel mortgage, including the necessary certificates and affidavits, the fees established in the following schedule shall be collected:

(a) *Six thousand pesos maximum.* — When the amount of the mortgage does not exceed six thousand pesos, seven pesos for the first five hundred pesos, or fractional part thereof, and three pesos for each additional five hundred pesos, or fractional part thereof.

(b) *Thirty thousand pesos maximum.* — When the amount of the mortgage is more than six thousand pesos but does not exceed thirty thousand pesos, forty-eight pesos for the initial amount not exceeding eight thousand pesos, and eight pesos for each additional two thousand pesos or fractional part thereof.

(c) *One hundred thousand pesos maximum.* — When the amount of the mortgage is more than thirty thousand pesos but does not exceed one hundred thousand pesos, one hundred fifty pesos for the initial amount not exceeding thirty-five thousand pesos, and fourteen pesos for each additional five thousand pesos of fractional part thereof.

(d) *Five hundred thousand pesos maximum.* — When the amount of the mortgage is more than one hundred thousand pesos but does not exceed five hundred thousand pesos, three hundred fifty-two pesos for the initial amount not exceeding one hundred ten thousand pesos and twenty pesos for each additional ten thousand pesos or fractional part thereof.

(e) *More than five hundred thousand pesos.* — When the amount of the mortgage is more than five hundred thousand pesos, one thousand one hundred sixty-two pesos for the initial amount not exceeding five hundred twenty thousand pesos, and thirty pesos for each additional twenty thousand pesos or fractional part thereof: *Provided, however*, That registration of the mortgage in the province

where the property is situated shall be sufficient registration and *provided, further*, That if the mortgage is to be registered in more than one city or province, the Register of Deeds of the city or province where the instrument is first presented for registration shall collect the full amount of the fees due in accordance with the schedule prescribed above, and the Register of Deeds of the other city of province where the same instrument is also to be registered shall collect only a sum equivalent to twenty per centum of the amount of fees due and paid in the first city or province, but in no case shall the fees payable in any Registry be less than the minimum fixed in this schedule.

3. *Conveyance of mortgaged property, etc.* — For recording each instrument of sale, conveyance, or transfer of the property which is subject of a recorded mortgage, or of the assignment of mortgage credit, the fees established in the preceding schedule shall be collected on the bases of ten per centum of the amount of the mortgage or unpaid balance thereof, provided, that the latter is stated in the instrument.

4. *Notice of attachment.* — For recording each notice of attachment, including the necessary index and annotations, eight pesos.

5. *Release of mortgage.* — For recording such release of mortgage, including the necessary index and references, the fees established in the schedule under paragraph (b) above shall be collected on the basis of five per centum of the amount of the mortgage.

6. *Release of attachment.* — For recording each release of attachment, including the proper annotations, five pesos.

7. *Sheriff's return of sale.* — For recording each sheriff's return of sale, including the index and references, seven pesos.

8. *Power of attorney, appointment of guardian, administrator or trustee.* — For recording a power of attorney, appointment of judicial guardian, administrator, or trustee, or any other instrument in which a person is given power to act in behalf of another in connection with a mortgage, ten pesos.

9. *No specific fee.* — For recording each instrument or order relating to a recorded mortgage, including the necessary index and references, for which no specific fee is provided above, five pesos.

10. *Certified copy.* — For certified copies of records, such fees as are allowed by law for copies kept by the Register of Deeds.

11. *Certification.* — For issuing a certificate relative to, or showing the existence or non-existence of an entry in the registration book, or a document on file, for each such certificate containing not more than two hundred words, five pesos; if it exceeds that number, an additional fee of one peso shall be collected for every one hundred words or fractional part thereof, in excess of the first two hundred words.

12. *Research Fee.* — For services rendered in attending to requests for references to, or researches on any document on file in the Registry, there shall be collected a fee of two pesos per document.

CHAPTER XV — CONSULTAS

SECTION 117. *Procedure.* — When the Register of Deeds is in doubt with regard to the proper step to be taken or memorandum to be made in pursuance of any deed, mortgage or other instrument presented to him for registration, or where any party in interest does not agree with the action taken by the Register of Deeds with reference to any such instrument, the question shall be submitted to the Commissioner of Land Registration by the Register of Deeds, or by the party in interest thru the Register of Deeds.

Where the instrument is denied registration, the Register of Deeds shall notify the interested party in writing, setting forth the defects of the instrument or legal grounds relied upon, and advising him that if he is not agreeable to such ruling, he may, without withdrawing the documents from the Registry, elevate the matter by consulta within five days from receipt of notice of the denial of registration to the Commissioner of Land Registration.

The Register of Deeds shall make a memorandum of the pending consulta on the certificate of title which shall be cancelled *motu proprio* by the Register of Deeds after final resolution or decision thereof, or before resolution, if withdrawn by petitioner.

The Commissioner of Land Registration, considering the consulta and the records certified to him after notice to the parties and hearing, shall enter an order prescribing the step to be taken or memorandum to be made. His resolution or ruling in consultas shall be conclusive and binding upon all Registers of Deeds, provided, that the party in interest who disagrees with the final resolution, ruling or order of the Commissioner relative to consultas may appeal to the Court of Appeals within the period and in the manner provided in Republic Act No. 5434.

CHAPTER XVI — FINAL PROVISIONS

SECTION 118. *Appropriation.* — There is hereby appropriated initially the sum of TWELVE MILLION THREE HUNDRED FORTY THOUSAND PESOS (P12,340,000.00) from the National Treasury not otherwise appropriated for the implementation of this Decree; thereafter, said sum shall be added to the regular appropriation act of every year.

SECTION 119. *Postage exemption.* — No postage stamps or mailing charges shall be required in all matters transmitted by the Land Regis-

tration Commission or any of its Registry of Deeds in the implementation of Sections 21, 40, 106, 118 and 117 of this Decree.

SECTION 120. *Repealing clause.* — All laws, decrees, orders, rules and regulations, or parts thereof, in conflict or inconsistent with any of the provisions of this Decree are hereby repealed or modified accordingly.

SECTION 121. *Separability clause.* — In the event that any provision of this Decree is declared unconstitutional, the validity of the remainder shall not be affected thereby.

SECTION 122. *Effectivity.* — This Decree shall take effect upon its approval.

Done in the City of Manila, this 11th day of June, in the year of Our Lord, nineteen hundred and seventy-eight.

APPENDIX "B"

THE LAND REGISTRATION ACT (ACT NO. 496)

SECTION 1. The short title of this Act shall be "THE LAND REGISTRATION ACT."

SEC. 2. A court is hereby established to be called the "Court of Land Registration," which shall have exclusive jurisdiction of all applications for the registration under this Act of title to land or buildings or an interest therein within the Philippine Islands, with power to hear and determine all questions arising upon such applications, and also have jurisdiction over such other questions as may come before it under this Act, subject, however, to the right of appeal, hereinafter provided. The proceedings upon such applications shall be proceedings *in rem* against the land and the buildings and improvements thereon, and the decrees shall operate directly on the land and the buildings and improvements thereon, and vest and establish title thereto.

The court shall hold its sittings in Manila, but may adjourn from time to time to such other places as the public convenience may require, and may hold sessions at any time in the capital of any province. In the city of Manila, the Municipal Board, and in the provinces, the provincial boards, shall provide suitable rooms for the sittings of the Court of Land Registration in the same building with, or convenient to, the office of the register of deeds. All necessary books, printed blanks, stationery, and office equipment necessary for conducting the business of the court and the clerk shall be paid for from the Treasury of the Philippine Archipelago.

The court shall have jurisdiction throughout the Philippine Archipelago, and shall always be open, except on Sundays and holidays established by law. It shall be a court of record, and shall cause to be made and to be sealed therewith all orders, process, and papers made by or proceedings from the court and requiring a seal. All notices, orders, and process of such court may run into any province and be returnable, as the court may direct.

The court shall from time to time make general rules and forms for procedure, conforming as near as may be to the practice in special pro-

ceedings in Courts of First Instance, but subject to the express provisions of this Act and to general laws. Such rules and forms before taking effect shall be approved by the judges of the Supreme Court of a majority thereof.

In this Act, except where the context requires a different construction, the word "court" shall mean the Court of Land Registration. (Amended by Sec. 1, Act No. 659; partly repealed by Secs. 10 and 26(a), Act No. 2347; by Secs. 161 *et seq*., Act No. 2711, as amended by Acts Nos. 2941, 3107 and 3334; and Sec. 88, Rep. Act No. 296).

SEC. 3. (Repealed by Final Section [b], Act No. 2711.)

SEC. 4. (Repealed by Secs. 10 and 19, Act No. 2347.)

SEC. 5. Citations, orders of notice and all other process issuing from the court shall be under the seal of the court and signed by the judge or clerk thereof, and shall be served in the manner provided for the service of process in the Code of Procedure in Civil Actions and Special Proceedings, and by the officers therein designated as officers of the court, unless otherwise specially ordered in this Act.

SEC. 6. (Repealed by Sec. 29, Act No. 2347 and by Final Section [b], Act No. 2711.)

SEC. 7. There shall be a clerk and an assistant clerk of the Court of Land Registration, who shall be appointed by the Attorney-General, with the approval of the Secretary of Finance and Justice. The clerk and assistant clerk shall perform their duties under the control and supervision of the senior judge of the court and may be removed from office for cause by said senior judge.

The clerk shall have authority, subject to the provisions of the Civil Service Law and with the approval of the Attorney-General, to appoint and employ the necessary deputies, assistants, clerks, translators, stenographers, typists, messengers, and other subordinate employees which may be authorized by law.

The assistant clerk shall act as chief deputy to the clerk of the court and shall perform such other duties as may be assigned to him by the senior judge or the clerk of the court. In case of the death or disability of the clerk, the assistant clerk shall perform the duties of the clerk until the vacancy is filled or the disability is removed: *Provided, however*, That any judge of the Court of Land Registration having jurisdiction over any particular case may issue such orders to the clerk with reference to such case he may deem proper, without the intervention of the senior judge, and the clerk shall comply therewith. (Amended by Sec. 1, Act No. 614, and Sec. 2, Act No. 1648; superseded by R.A. No. 1151.)

SEC. 8. (Superseded by Sec. 174 *et. seq*., Act No. 2711.)

SEC. 9. (Repealed by Sec. 29, Act No. 2347, and by Final Section [b], Act No. 2711.)

SEC. 10. (Impliedly repealed and superseded by Sec. 192, Act No. 2711.)

SEC. 11. (Repealed by Sec. 29, Act No. 2347.)

SEC. 12. (Repealed by Sec. 12, Act No. 1699.)

SEC. 13. The salary of the judge of the Court of the Land Registration shall be ten thousand pesos *per annum*, and that of the associate judge shall be nine thousand pesos *per annum*; the salary of any associate judge appointed after July first nineteen hundred and five, under this Act shall be eight thousand pesos *per annum* for the first two years of service, and thereafter, nine thousand *per annum*.

All salaries and expenses of the court, including those for necessary interpreters, translators, stenographers, typists, and other employees, as well as those of deputy or assistant clerks duly authorized, shall be paid from the Insular Treasury, but the salary of the Register of Deeds for the city of Manila and of all of his deputies, assistants or clerks duly authorized and appointed, and all the expenses of every kind incident to the office of register of deeds, including necessary books and stationery, shall be paid out of the respective provincial treasuries, or out of the Insular Treasury from funds belonging to the city of Manila, as the case may be.

All fees payable under this Act for services by sheriff or other officer shall be paid to the officer or person entitled thereto.

Register of Deeds shall pay over to the provincial treasury or to the Insular Treasury, as the case may be, at the end of each calendar month, all funds received by them in accordance with the provisions of this Act. (Amended by Sec. 3, Act No. 1109, Sec. 1, Act No. 1109, Sec. 1, Act No. 1312, and Sec. 6, Act No. 1699; part referring to examiner of title repealed by Sec. 11, Act 1699; part referring to Court of Land Registration repealed by Secs. 10 and 11, Act No. 2347; and part referring to register of deeds and fees collected by him repealed by Sec. 192, *et. seq*. of the Administrative Code, as amended by Act No. 3156.)

SEC. 14. Every order, decision, and decree of the Court of Land Registration may be reviewed by the Supreme Court in the same manner as an order, decision, decree, judgment of a Court of First Instance might be reviewed, judgment of a Court of First Instance might be reviewed, and for that purpose Sections 141, 142, 143, 497, 497 (except that portion Court, except as otherwise provided in this section: *Provided, however*, That no certificate of title shall be issued by the Court of Land Registration until after the expiration of the period for perfecting a bill of exceptions for filing: *And provided, further*, That the Court of Land Registration may grant a new trial in any case that has not passed to the Supreme Court, in the manner and under the circumstances provided in Sections 145, 146 and 147 of Act No. 190; *And, Provided, also*, That the certificates of judgment to be issued by the Supreme Court, in cases passing to it from the Court

of Land Registration, shall be certified to the clerk of the last-named court as well as the copies of the opinion of the Supreme Court; *And provided, also*, That in the bill of exceptions to be printed, no testimony or exhibits shall be printed except such limited portions thereof as are necessary to enable the Supreme Court to understand the points of law reserved. The original testimony and exhibits shall be transmitted to the Supreme Court: *And provided, further*, That the period within which the litigation parties must file their appeals and bills of exceptions against the final judgment in land registration cases shall be thirty days, counting from the date on which the party received a copy of the decision. (Amended by Sec. 4, Act No. 1108; Sec. 1, Act No. 1884; Sec. 26[a] and [b], Act No. 2347.)

SEC. 15. Immediately after final decisions by the court directing the registration on any property, the clerk shall send a certified copy of such decision to the chief of the General Land Registration Office, who shall prepare the decree in accordance with Section 40 of Act No. 496, and he shall forward a certified copy of said decree to the Register of Deeds of the province or city in which the property is situated. The registrar shall then comply with the duties assigned to him in Section 41 of Act No. 496. (As amended by Sec. 21, Act No. 2347.)

SEC. 16. If the party appealing does not prosecute his appeal within the time limited, the original order, decision, or decree shall stand as if no appeal had been taken.

SEC. 17. (Repealed by Final Section[b], Act No. 2711.)

SEC. 18. Costs shall be taxed in contested cases in the Court of Land Registration in the same manner and for same items of costs as in Court of First Instance, where no different provision is made.

SEC. 19. Application for registration of title may be made by the following persons, namely:

First. The person or persons claiming, singly or collectively, to own the legal estate in fee simple.

Second. The person or persons claiming, singly or collectively, to have the power of disposing of the legal estate in fee simple.

Third. The person or persons claiming, singly or collectively, to own or hold any land under a possessor information title, acquired under the provisions of the Mortgage Law of the Philippine Islands and the general regulations for the execution of same.

Fourth. Infants or other persons under disability may make application for their legally appointed guardians, but the person in whose behalf the application is made shall be named as applicant by the guardian.

Fifth. Corporation may make application by any officer duly authorized by vote of the directors.

Foreign corporations may apply for and secure registration of title of lands in the name of the corporation, subject only to the limitations applied or to be applied to domestic corporations. Article eighteen of the royal decree of February thirteenth, eighteen hundred and ninety-four, concerning the adjustment and sale of public lands in the Philippine Islands, and article seventy-seven of the regulations for the execution of the same, together with any provision or provisions of existing law limiting or prohibiting the holding of land in the Philippine Islands by aliens or by foreign associations, companies, or commercial bodies, are hereby repealed.

Sixth. The Government of the United States, or of the Philippine Islands, or of any province or municipality therein, may make application through any agency by it respectively and duly authorized.

Seventh. An executor or administrator duly appointed under the laws of the Philippine Islands may make application on behalf of the estate of the deceased.

But the authority given to the foregoing classes of persons is subject to the following provisions:

(a) That one or more tenants for a term of years shall not be allowed to make application except jointly with those claiming the reversionary interest in the property which make up the fee simple at common law.

(b) That a mortgagor shall not make application without the consent in writing of the mortgagee.

(c) That a married woman shall not make application without the consent in writing of her husband unless she holds the land as her separate property or has power to dispose of the same in fee simple, or has obtained a decree of the court authorizing her to deal with her real estate as though she were sole and unmarried.

(d) That one or more tenants claiming undivided shares less than a fee simple in the whole land described in the application shall not make application except jointly with the other tenants owning undivided shares, so that the whole fee shall be represented in the action.

(e) Instruments known as *pacto de retro*, made under Sections fifteen hundred and seven and fifteen hundred and twenty of the Spanish Civil Code in force in these Islands, may be registered under this Act, and application for registration thereof may be made by the owner who executed the *pacto de retro* sale under the same conditions and in the same manner as mortgagors are authorized to make application for registration.

But, notwithstanding the foregoing provisos, if the holder of a mortgage upon the land described in the application does not consent to the making of the application, it may be entered nevertheless and the title

registered subject to such mortgage, which may be dealt with or foreclosed as if the land subject to such mortgage had not been registered. But the decree of registration in such case shall state that registration is made subject to such mortgage, describing it, and shall provide that no subsequent certificate shall be issued and no further papers registered relating to such land after a foreclosure of such mortgage. (Amended by Sec. 1[c], Act No. 809; Sec. 6, Act No. 1108; and Sec. 1, Act No. 2164; amended by Sec. 14, P.D. No. 1529.)

SEC. 20. The application may be filed with the clerk of the Court of First Instance of the province where the land or any portion thereof lies. If the land is situated in the City of Manila, the application should be filed with the chief of the General Land Registration Office. (Upon filing his application, the applicant shall forthwith cause to be filed with the register of deeds for said city or province a memorandum stating that application for registration has been filed, and the date and place of filing, and a copy of the description of the land contained in the application. This memorandum shall be recorded and indexed by the registrar with the records of deeds. Each registrar of deeds shall also keep an index of all applications in his province or city, and, in every case where the application is filed with him, shall transmit the same, with the papers and plans filed therewith, and such memorandum when recorded, to the clerk of the Court of First Instance.) (Last portion in parenthesis repealed. See Final Section [b], Act No. 2711; amended by Sec. 14, P.D. No. 1529.)

SEC. 21. The application shall be in writing, signed and sworn to by the applicant, or by some person duly authorized in his behalf. All oaths required by this Act may be administered by any officer authorized to administer oaths in the Philippine Islands. If there is more than one applicant, the application shall be signed and sworn to by and in behalf of each. It shall contain a description of the land and shall state whether the applicant is married; and if married; the name of the wife or husband; and, if unmarried, whether he or she has been married, and, if so, when and how the married relation terminated. If by divorce, when, where, and by what court the divorce was granted. It shall also state the name in full and the address of the applicant, and also the names and addresses of all occupants of the land and of all adjoining owners, if known; and, if not known, it shall state what search has been made to find them. It may be in form as follows:

UNITED STATES OF AMERICA
PHILIPPINE ISLANDS

To the Honorable Judge of the Court of Land Registration:

I/We, the undersigned, hereby apply to have the land hereinafter described brought under the operation of the Land Registration Act, and to have my/our title therein registered and confirmed. And I/we declare:

(1) That I/we are the owner/owners in fee simple (or by possessors information title) of a certain parcel of land with the buildings (if any, if not, strike out the words "with the buildings"), situated in (here insert accurate description). (2) That said land at the last assessment for taxation was assessed at _____ dollars. (3) That I/we do not know of any mortgage or encumbrance affecting said land, or that any other person has any estate or interest therein, legal or equitable, in possession, remainder, reversion, or expectancy (if any, add "other than as follows," and set forth each clearly). (4) That I/we obtained title (if by deed, state name of grantor, date and place of record, and file the deed or state reason for not filing. If any other way, state it). (5) That said land is _____ occupied (if occupied, state name in full and place of residence and post office address of occupant and the nature of his occupancy. If unoccupied, insert "not"), (6) That the names and addresses so far as known to me (or us) of the owners of all lands adjoining the above land are as follows (same directions above). (7) That I/we are married. (Follow literally the directions given in the prior portions of this section. (8) That my/our full name (names), residence, and post office address is/are as follows:

Dated this _____ day of _____, in the year nineteen hundred and _____.

(SCHEDULE OF DOCUMENTS)
UNITED STATES OF AMERICA
PHILIPPINE ISLANDS

Province (or city) of _____ (date).

There personally appear the above-named _____ _____, known to me to be the signer/signers of the foregoing application, and made oath that the statements therein, so far as made of his/their own knowledge, are true, and so far as made upon information and belief, that he/they believe them to be true. The residence certificate _____ of the applicant/applicants, or representative was exhibited to me, being No. _____ issued at _____ dated _____, 19 ___.

BEFORE ME:

(Notary Public or other official authorized to administer oaths)

(As amended by Sec. 1[2], Act No. 700 and Sec. 1[d], [e], Act No. 809; repealed by Sec. 15, P.D. No. 1529.)

SEC. 22. If the applicant is not a resident of the Philippine Islands, he shall file with his application a paper appointing an agent residing in the Philippine Islands, giving his name in full, and his post-office address,

and shall therein agree that the service of any legal process in proceedings under or growing out of the application shall be of the same legal effect if served upon the agent as if upon the applicant is within the Philippine Islands. If the agent dies or becomes insane or removes from the Philippine Islands, the applicant shall at once make another appointment; and if he fails to do so, the court may dismiss the application. (Repealed by Sec. 16, P.D. No. 1529.)

SEC. 23. Amendments to the application, including joined substitution, or discontinuing as to parties, shall be allowed by the court at any time upon terms that are just and reasonable. But all amendments shall be in writing, signed and sworn to like the original.

SEC. 24. The application may include all the parcels of land or properties belonging to the applicant, provided that they are situated within the same province or city. The court may at any time order an application to be amended by striking out one or more parcels or by severance of the application. (As amended by Sec. 7, Act No. 1108; and Sec. 7, Act No. 1875.)

SEC. 25. (Repealed by Sec. 20, P.D. No. 1529.)

SEC. 26. The applicant shall file with the application a plan of the land, and all original muniments of title within his control mentioned in the schedule of documents, such original muniments to be produced before the court at the hearing when required. When an application is dismissed or discontinued, the applicant may, with the consent of the court, withdraw such original muniments of title. (As amended by Sec. 19, Act No. 2347).

SEC. 27. When an application is made subject to an existing mortgage, the holder of which has consented thereto, or to a recorded lease, or when the registration is to be made subject to such mortgage or lease executed after the time of the application and before the date of the transcription of the decree, the applicant, shall, if required by the court, file a certified copy of such mortgage or lease and shall cause the original, or, in the discretion of the court, a certified copy thereof to be presented for registration before the decree of registration is entered, and no registration fee shall be charged for registering such original mortgage or lease or such certified copy.

SEC. 28. (Repealed by Sec. 21, P.D. No. 1529.)

SEC. 29. After the filing of the application and before the issuance of the decree of title by the Chief of the General Land Registration Office, the land therein described may be dealt with and instruments relating thereto shall be recorded in the Office of the Register of Deeds at any time before issuance of the decree of title, in the same manner as if no application had been made. The interested party may however, present such instruments to the Court of First Instance instead of presenting them to the office of the Register of Deeds, together with a motion that the same be

considered in relation with the application, and the court after notice to the parties, shall order such land registered subject to the encumbrance created by said instruments, or order the decree of registration issued in the name of the buyer or of the person to whom the property has been conveyed by said instruments. If such motion is made after the decision has become final, the court shall require the interested party, before granting his motion, to pay the fees which the register of deeds would collect in accordance with section one hundred and fourteen of this Act, as amended, if such instruments had been presented for registration in the office of the Register of Deeds after registration of the original certificate of title. If the order of the court above mentioned is received by the Chief of the General Land Registration Office after issuance of the decree of title, such order shall forthwith be forwarded by said officer to the Register of Deeds concerned, for compliance therewith. If the proceedings upon the application end in the issuance of a decree of title, the property included therein shall, as soon as said decree has been registered in the office of the Register of Deeds, as provided in Section forty-one, become registered land under this Act, and thereafter all deeds relating to such property shall be registered only in the registration book property registered under this Act. (Amended by Sec. 26[a], Act No. 2347, and Sec. 1, Act No. 3901.)

SEC. 30. (Repealed by Sec. 2, Act No. 2556.)

SEC. 31. Upon receipt of the order of the court setting the time for initial hearing of the application from the clerk of Court of First Instance, the Chief of the General Land Registration Office shall cause a notice thereof to be published twice, in successive issues of the Official Gazette, in the English language. The notice shall be issued by order of the court, attested by the Chief of the General Land Registration Office, and shall be in form substantially as follows:

REPUBLIC OF THE PHILIPPINES

Court of First Instance, Province of _____

Land Registration Case No. _____

G.L.R.O. Record No. _____

NOTICE OF INITIAL HEARING

To (here insert the names of all persons appearing to have an interest and the adjoining owners so far as known), and to all whom it may concern:

Whereas, an application has been presented to said Court by (name or names, addresses in full) to register and confirm his (or their) title in the following described lands (insert description) you are hereby cited to

appear at the Court of First Instance of _____ at its session to be held at _____ in said province (or city) or _____, Philippines, on the _____ day of _____, 19 _____, at _____ o'clock in the afternoon, to show cause, if any you have, why the prayer of said application shall not be granted; and unless you appear at such Court, at the time and place aforesaid, your default will be recorded and the said application will be taken as confessed and you will be forever barred from contesting said application or any decree entered thereon.

Witnessed _____, Judge of said Court, this _____ day of _____, in the year 19 _____.

Issued at Manila, Philippines, this _____ day of _____, 19 _____.

_____

ATTEST:

Commissioner of Land Registration

(As amended by Sec. 1, Republic Act No. 96; see also Rep. Act No. 1151.)

(Note: Pursuant to the decision of the Supreme Court in the case of Domingo T. Parras vs. Land Registration Commission, G.R. No. L-16011, promulgated July 26, 1960, the cost of publication of notices of initial hearing in the Official Gazette of applications for registration of land under Act No. 496, as amended, is no longer to be borne by the Land Registration Commission but by the applicants. See also Circulars Nos. 109, 120 and 124.)

SEC. 32. The return of said notice shall not be less than twenty nor more than one hundred twenty days from date of issue. The Chief of the General Land Registration Office shall also, within seven days after publication of said notice in the Official Gazette, as herein before provided, cause a copy of the notice to be mailed to every person named therein whose address is known. The Chief of the General Land Registration office shall also cause a duly attested copy of the notice to be posted in a conspicuous place on each parcel of land included in the application, and also in a conspicuous place upon the chief municipal building of the municipality or city in which the land or a portion thereof is situated, by the sheriff of the province or city, as the case may be, or by his deputy, fourteen days at least before the return day thereof, and his return shall be conclusive proof of such service. If the applicant requests to have the line of a public way determined, the Chief of the General Land Registration Office shall cause a copy of said notice to be mailed to the Mayor of the municipality or city, as the case may be, in which the land lies, and to the Provincial Governor. If the land borders on a river, navigable stream or shore, or on an arm of

the sea where a river or harbor line has been established or on a lake, or if it otherwise appears from the application or the proceedings that the National Government may have a claim adverse to that of the applicant, notice shall be given in the same manner to the Solicitor General, the Director of Public Works, the Director of Lands and the Director of Forestry. The court may also cause other or further notice of the application to be given in such manner and to such person as it may deem proper. The court shall, so far as it deems it possible, require proof of actual notice to all adjoining owners and to all persons who appear to have interest in or claims to the land included in the application. Notice to such persons by mail shall be by registered letter if practicable. The certificate of the Chief of the General Land Registration Office that he has served the notice as directed by the court, by publishing or mailing, shall be filed in the case before the return day, and shall be conclusive proof of such service. (As amended by Sec. 2, Republic Act No. 96.)

SEC. 33. Upon the return day of the notice, and proof of service of all orders of notice issued, the court may appoint a disinterested person to act as guardian *ad litem* for minors and persons not in being, unascertained, unknown, or out of the Philippine Islands, who may have an interest. The compensation of the guardian or the agent shall be determined by the court and paid as part of the expenses of the court.

SEC. 34. Any person claiming an interest, whether named in the notice or not, may appear and file an answer on or before the return day, or within such further time as may be allowed by the court. The answer shall state all the objections to the application, and shall set forth the interest claimed by the party filing the same and apply for the remedy desired, and shall be signed and sworn to by him or by some person in his behalf. (As amended by Sec. 1, Act No. 3621.)

SEC. 35. (Repealed by Sec. 26, P.D. No. 1529.)

SEC. 36. If in any case an appearance is entered and answer filed, the case shall be set down for hearing on motion of either part, but a default order shall be entered against all persons who do not appear and answer, in the manner provided in the preceding section. The court may hear the parties and their evidence or may refer the case or any part thereof to a referee, to hear the parties and their evidence and make report thereon to the court. The trial before the referee may occur at any convenient place within the province or city, and the time and place of trial shall be fixed by the referee and reasonable notice thereof shall be given by him to the parties. The court shall render judgment in accordance with the report as though the facts had been found by the judge himself, unless the court shall for cause shown set the report aside or order it to be reomitted to the referee for further finding: *Provided, nevertheless*, That the court may in its discretion accept the report in part or set it aside in part. The court may in any case before decree require a survey to be made for the purpose of determining boundaries, and may order durable bounds

to be set, and referred to in the application, by amendment. The expenses of survey and bounds shall be taxed in the costs of the case and may be apportioned among the parties as justice may require. If no person appears to oppose the application, such expenses shall be borne by the applicant. If two or more applications claim the same land, or part of the same land, the court may order the hearings upon all such applications to be consolidated, if such consolidation is in the interest of economy, time and expense. (As amended by Sec. 9, Act No. 1699; see Final Sec. [b], Act No. 2711.)

SEC. 37. If in any case without adverse claim the court finds that the applicant has no proper title for registration, a decree shall be entered dismissing the application, and such decree may be ordered to be without prejudice. The applicant upon terms to be fixed by the court: *Provided, however*, That in a case where there is an adverse claim, the court shall determine the conflicting interests of the applicant and the adverse claimant, and after taking evidence shall dismiss the application if neither of them succeeds in showing that he has proper title for registration or shall enter a decree awarding the land applied for, or any part thereof, to the person entitled thereto, and such decree, when final, shall entitle to the issuance of an original certificate of title to such person: *Provided, further*, That if the adverse claim covers only a portion of the lot and said portion is not properly delimited on the plan attached to the application, the court, upon pronouncing judgment, in case the same be in favor of the adverse claimant, shall order the latter to file a plan of the portion awarded to him duly approved by the Director of Lands: *And Provided, finally*, That the court shall in its judgment determine strictly necessary expenses incurred by the applicant for fees for the registration of his application in the office of the clerk of the court and for the publication thereof, and shall order the adverse claimant to whom a portion of the land applied for has been awarded to pay to the applicant such part of said expenses as may be in proportion to that awarded to said adverse claimant, unless the court finds that the applicant, upon filing his application, acted in bad faith or knowing that he had no right to the land awarded to another, in which case he shall not be entitled to any refund. In case the adverse claim is for the entire lot, the refund of expenses to which the applicant is entitled as provided in this Act shall also include the actual cost of making the plan of the lot in question. (As amended by Sec. 2, Act No. 3621.)

SEC. 38. If the court after hearing finds that the applicant or adverse claimant has title as stated in his application or adverse claim and proper for registration, a decree of confirmation and registration shall be entered. Every decree of registration shall bind the land, and quiet title thereto, subject only to the exceptions stated in the following section. It shall be conclusive upon and against all persons, including the Insular Government and all the branches thereof, whether mentioned by name in the application, notice, or citation, or included in the general description "To all whom it may concern." Such decree shall not be opened by reason of the absence, infancy, or other disability of any person affected thereby,

nor by any proceeding in any court for reversing judgments or decrees; subject, however, to the right of any person deprived of land or of any estate or interest therein by decree of registration obtained by fraud to file in the competent Court of First Instance a petition for review within one year after entry of the decree, provided no innocent purchaser for value has acquired an interest. Upon the expiration of said term of one year, every decree or certificate of title issued in accordance with this section shall be incontrovertible. If there is any such purchaser, the decree of registration shall not be opened, but shall remain in full force and effect forever, subject only to the right of appeal herein before provided; *Provided, however*, That no decree of certificate of title issued to persons not parties to the appeal shall be canceled or annulled. But any person aggrieved by such decree in any case may pursue his remedy by action for damages against the applicant or any other person for fraud in procuring the decree. Whenever the phrase "innocent purchaser for value" or an equivalent phrase occurs in this Act, it shall be deemed to include an innocent lessee, mortgagee, or other incumbrancer for value. (As amended by Section 3, Act 3621; and Sec. 1, Act No. 3630.)

SEC. 39. Every person receiving a certificate of title in pursuance of a decree of registration, and every subsequent purchaser of registered land who takes a certificate of title for value in good faith shall hold the same free of all encumbrances except those noted on said certificate, and any of the following encumbrances which may be subsisting, namely:

First. Liens, claims, or rights arising or existing under the laws or Constitution of the United States or of the Philippine Islands which the statutes of the Philippine Islands cannot require to appear of record in the Registry.

Second. Taxes within two years after same become due and payable.

Third. Any public highway, way, private way established by law, or any Government irrigation canal or lateral thereof, where the certificate of title does not state that the boundaries of such highway, way, or irrigation canal or lateral thereof, have been determined.

But if there are easements or other rights appurtenant to a parcel of registered land which for any reason have failed to be registered, such easements or rights shall remain so appurtenant notwithstanding such failure, and shall be held to pass with the land until cut off or extinguished by the registration of the servient estate, or in any other manner. (As amended by Act No. 2011, and Sec. 4, Act No. 3621.)

SEC. 40. Every decree of registration shall bear the day of the year, hour, and minute of its entry, and shall be signed by the clerk. It shall state whether the owner is married or unmarried, and if married, the name of the husband and wife. If the owner is under disability, it shall state the nature of the disability, and if a minor shall state his age. It shall contain a description of the land as finally determined by the court, and shall set

forth the estate of the owner and also, in such manner as to show their relative priority, all particular estates, mortgages, easements, liens, attachments, and other encumbrances, including rights of husband or wife, if any, to which the land or owner's estate is subject, and may contain any other matter properly to be determined in pursuance of this Act. The decree shall be stated in a convenient form for transcription upon the certificate of title hereinafter mentioned.

SEC. 41. Immediately after final decision by the court directing the registration of any property, the clerk shall send a certified copy of such decision to the Chief of the General Land Registration Office, who shall prepare the decree in accordance with Section forty of Act Numbered Four hundred and ninety six, and he shall forward a certified copy of said decree to the register of deeds of the province or city in which the property is situated. The register of deeds shall transcribe the decree in a book to be called the "Registration Book," in which a leaf, or leaves, in consecutive order shall be devoted exclusively to each title. The entry made by the register of deeds in this book in each case shall be the original certificate of title, and shall be signed by him and sealed with the seal of the court. All certificates of title shall be numbered consecutively, beginning with number one. The register of deeds shall in each case make an exact duplicate of the original certificate, including the seal, but putting on it the words "Owner's duplicate certificate," and deliver the same to the owner, or to his attorney duly authorized. In case the owner's duplicate certificate and the original certificate, the original shall prevail. The certified copy of the decree of registration shall be filed and numbered by the register of deeds with reference noted on it to the place of record of the original certificate of title: *Provided, however*, That when an application includes land lying in more than one province, or one province and the city of Manila, the court shall cause the part lying in each province or in the city of Manila to be described separately by metes and bounds in the decree of registration, and the clerk shall send to the register of deeds for each province, or the city of Manila, as the case may be, a copy of the decree containing a description of the land within that province or city, and the register of deeds shall register same and issue an owner's duplicate thereof, under this Act the portion in each province or city shall be treated as a separate parcel of land. (As amended by Sec. 21, Act No. 2347; see Republic Act No. 113.)

SEC. 42. The certificate first registered in pursuance of the decree of registration in regard to any parcel of land shall be entitled in the registration book, "Original certificate of title, entered pursuant to decree of the Court of Land Registration, dated" (stating time and place of entry of decree and the number of the case). This certificate shall take effect upon the date of the transcription of the decree. Subsequent certificates relating to the same land shall be in like form, but shall be entitled "Transfer from number" (the number of the next previous certificate relating to the same land), and also the words "Originally registered" (date, volume, and page of registration).

SEC. 43. Where two or more persons are registered owners, as tenants in common, or otherwise, one owner's duplicate certificate may be issued for the whole land, or a separate duplicate may be issued to each for his undivided share.

SEC. 44. A registered owner of several distinct parcels of land embraced in a single certificate of title desiring to have in lieu thereof several new certificates each containing one or more parcels, may file a petition for that purpose with the register of deeds, and this officer, upon the surrender of the owner's duplicate, shall cancel it and its original and issue in lieu thereof the desired new certificates. So a registered owner of several distinct parcels of land in separate certificates desiring to have in lieu thereof a single certificate for the whole land or several certificates for the different portions thereof, may file a petition with the register of deeds, and this officer, upon the surrender of the owner's duplicates, shall cancel them and their originals and issue in lieu thereof new ones as requested.

Any owner subdividing a tract of registered land into lots shall file with the Chief of the General Land Registration Office a subdivision plan of such land on which all boundaries, streets and passageways, if any, shall be distinctly and accurately delineated. If no streets or passageways are indicated or no alteration of the perimeter of the land is made, and it appears that the land as subdivided does not need them and that the plan has been approved by the Chief of the General Land Registration Office, or the Director of Lands as provided in Section fifty-eight of this Act, the Register of Deeds may issue new certificates of title for any lot in accordance with said subdivision plan. If there are streets and/or passageways, no new certificates shall be issued until said plan has been approved by the Court of First Instance of the province or city in which the land is situated. A petition for that purpose shall be filed by the registered owner, and the court after notice and hearing, and after considering the report of the Chief of the General Land Registration Office, may grant the petition, subject to the condition, which shall be noted on the proper certificate, that no portion of any street or passageway so delineated on the plan shall be closed or otherwise disposed of by the registered owner without approval of the court first had, or may render such judgment as justice and equity may require.

A registered owner desiring to consolidate several lots into one or more, requiring new technical descriptions, shall file with the Chief of the General Land Registration Office a plan on which shall be shown the lots to be affected, as they are before, and as they will appear after the consolidation. Upon the surrender of the owner's duplicate certificate of certificates and the receipt of proper authority from the Chief of the General Land Registration Office, the register of deeds concerned shall cancel the old certificates and issue a new one for the consolidated lot or lots. (As amended by Republic Acts Nos. 449, 1575 and P.D. No. 957, for other restrictions relative to residential lands in Quezon City.)

SEC. 45. The obtaining of a decree of registration and the entry of a certificate of title shall be regarded as an agreement running with the land, and binding upon the applicant and all successors in title that the land shall be and always remain registered land, and subject to the provisions of this Act and all Acts amendatory thereof.

SEC. 46. No title to registered land in derogation to that of the registered owner shall be acquired by prescription or adverse possession.

SEC. 47. The original certificates in the registration book, any copy thereof duly certified under the signature of the clerk, or of the register of deeds of the province or city where the land is situated, and the seal of the court, and also the owner's duplicate certificate, shall be received as evidence in all the courts of the Philippine Islands and shall be conclusive as to all matters contained therein except so far as otherwise provided in this Act.

SEC. 48. Every certificate of title shall set forth the names of all the persons interested in the estate in fee simple in the whole land and duplicate certificates may be issued to each person, but the clerk or register of deeds, as the case may be, shall note in the registration book, and upon each certificate, to whom such duplicate was issued.

SEC. 49. The clerk of the court shall make and keep indexes of all applications, of all decrees of registration, and shall also index and classify all papers and instruments filed in his office relating to applications and to registered titles. (He shall also under direction of the court, cause forms of index and registration and entry books to be prepared for use of the registers of deeds. The court shall also prepare and adopt general forms of memoranda to be used by register of deeds in registering common forms of deeds of conveyance and other instruments, and to express briefly their effect.) (The latter part has been superseded by Secs. 179, 180 and 181 of Act No. 2711.)

VOLUNTARY DEALING WITH LAND AFTER ORIGINAL REGISTRATION

SEC. 50. An owner of registered land may convey, mortgage, lease, charge, or otherwise deal with the same as fully as if it had not been registered. He may use forms of deeds, mortgages, leases, or other voluntary instruments like those now in use and sufficient in law for the purpose intended. But no deed, mortgage, lease, or other voluntary instrument, except a will, purporting to convey or affect registered land, shall take effect as a conveyance or bind the land, but shall operate only as a contract between the parties and as evidence of authority to the clerk or register of deeds to make registration. The act of registration shall be the operative act to convey and affect the land, and in all cases under this Act the registration shall be made in the office of the register of deeds for the province or provinces or city where the land lies. (Now Sec. 51 of P.D. No. 1529.)

SEC. 51. Every conveyance, mortgage, lease, lien, attachment, order, decree, instrument, or entry affecting registered land which would under existing laws, if recorded, filed, or entered in the office of the register of deeds, affect the real estate to which it relates shall, if registered, filed, or entered in the office of the register of deeds in the province or city where the real estate to which such instrument relates lies, be notice to all.

SEC. 52. No new certificate shall be entered or issued upon any transfer of registered land which does not divest the land in fee simple from the owner or from someone of the registered owners. All interests in registered land less than an estate in fee simple shall be registered by filing with the register of deeds the instrument creating or transferring or claiming such interest and by a brief memorandum thereof made by him. A similar memorandum shall also be made on the owner's duplicate. The cancellation or extinguishment of such interests shall be registered in the same manner. (Now Sec. 52, P.D. No. 1529.)

SEC. 53. Reference of doubtful matters to Commissioner of Land Registration. — When the Register of Deeds is in doubt with regard to the proper step to be taken or memorandum to be made in pursuance of any deed, mortgage, or other instrument presented to him for registration, or where any party in interest does not agree with the Register of Deeds with reference to any such matter, the question shall be submitted to the Commissioner of Land Registration upon the certification of the Register of Deeds, stating the questions upon which he is in doubt, or upon the suggestion in writing by the party in interest; and thereupon the Commissioner, after consideration of the matter shown by the records certified to him, and in case of registered lands, after notice to the parties and hearing, shall enter an order prescribing the step to be taken or memorandum to be made. His decision in such cases shall be conclusive and binding upon all Registers of Deeds: *Provided, however*, That when a party in interest disagrees with the ruling or resolution of the Commissioner and the issue involves a question of law, said decision may be appealed to the Supreme Court within thirty days from and after receipt of the notice thereof. (As superseded by Rep. Act No. 1151; repealed by Sec. 117, P.D. No. 1529.)

SEC. 54. Every deed or other voluntary instrument presented for registration shall contain or have endorsed upon it the full name, nationality, place of residence, and post office address of the grantee or other person acquiring or claiming such interest under such instrument, and every such instrument shall also state whether the grantee is married or unmarried, and, if married, give the name in full of the husband or wife. If the grantee is a corporation or association, the deed must state that such corporation or association has the requirements prescribed by existing law for acquiring public land, in case the land sold or conveyed was originally public land, in accordance with the provisions of Act Numbered Twenty-eighth hundred and seventy-four, known as the Public Land Act. Any change in the residence or post-office address of such person shall be en-

dorsed by the Register of Deeds on the original instrument, or receiving sworn statement of such change. All names and addresses shall also be entered upon all certificates. Notice and process in relation to registered land in pursuance of this Act may be served upon any person in interest by mailing the same to the address so given, and shall be binding whether such person resides within or without the Philippine Islands, but the court may, in its discretion require further or other notice to be given in any case, if in its opinion the interests of justice so require. (As amended by Sec. 11, Act No. 3300; and Sec. 1, Act No. 3796.)

SEC. 55. No new certificate of title shall be entered, no memorandum shall be made upon any certificate of title by the register of deeds, in pursuance of any deed or other voluntary instrument, unless the owner's duplicate certificate is presented for such endorsement, except in cases expressly provided for in this Act, or upon the order of the court for cause shown; and whenever such order is made, a memorandum thereof shall be entered upon the new certificate of title and upon the owner's duplicate: *Provided, however*, That in case the mortgagee refuses or fails to deliver within a reasonable time to the register of deeds the duplicate or copy of the certificate of title surrendered by the owner, after advice by said officer, in order to enable him to register or annotate thereon another real right acquired by said owner, the record or annotation made on the certificate in the register book shall be valid for all legal purposes.

The production of the owner's duplicate certificate whenever any voluntary instrument is presented for registration shall be conclusive authority from the registered owner to the register of deeds to enter a new certificate or to make a memorandum shall be signing upon the registered owner and upon all persons claiming under him in favor of every purchaser for value and in good faith: *Provided, however*, That in all cases of registration procured by fraud, the owner may pursue all his legal and equitable remedies against the parties to such fraud, without prejudice, however, to the rights of any innocent holder for value of a certificate of title: *And Provided, further,* That after the transcription of the decree of registration on the original application, any subsequent registration under this Act procured by the presentation of a forged duplicate certificate, or of a forged deed or other instrument, shall be null and void. In case of the loss or theft of an owner's duplicate certificate, notice shall be sent by the owner or by someone in his behalf to the register of deeds of the province in which the land lies as soon as the loss or theft is discovered. (As amended by Act No. 3322.)

SEC. 56. Each Register of Deeds shall keep an entry book in which, upon payment of the filing fee, he shall enter in the order of their reception all deeds and other voluntary instruments, and all copies of writs or other process filed with him relating to registered land. He shall note in such book the year, month, day, hour, and minute of reception of all instruments in the order in which they were received. They shall be regarded

as registered from the time so noted, and the memorandum of each instruments when made on the certificate of title to which it refers shall bear the same date: *Provided, however*, That no registration, annotation, or memorandum on a certificate of title shall be made unless the fees prescribed therefor by this Act are paid within fifteen days' time after the date of the registration of the deed, instrument, order, or document in the entry book or day book, and in case said fee is not paid within the time above mentioned, such entry shall be null and void: *Provided, further*, That the Insular Government and the provincial and municipal governments need not pay such fees in advance in order to be entitled to entry or registration.

Every deed or other instrument, whether voluntary or involuntary, so filed with the register of deeds shall be numbered and indexed, and endorsed with a reference to the proper certificate of title. All records and papers relating to registered land in the office of the register of deeds shall be open to the public, subject to such reasonable regulations as may be prescribed by the Chief of the General Land Registration Office, with the approval of the Secretary of Justice.

Deeds and voluntary instruments shall be presented with their respective copies and shall be attested and sealed by the register of deeds, and endorsed with the file number, and such attested copies shall be returned to the person presenting the same.

Certified copies of all instruments filed and registered may be obtained at any time, upon payment of the proper fees. (As amended by Sec. 2, Act No. 3300, now Sec. 56, P.D. No. 1529.)

CONVEYANCE IN FEE

SEC. 57. An owner desiring to convey in fee his registered land or any portion thereof shall execute a deed of conveyance, which the grantor or grantee may present to the register of deeds in the province where the land lies. The grantor's duplicate certificate shall be produced and presented at the same time. The register of deeds shall thereupon, in accordance with the rules and instructions of the court, make out in the registration book a new certificate of title to the grantee, and shall prepare and deliver to him an owner's duplicate certificate. The register of deeds shall note upon the original and duplicate certificates the date of transfer, the volume and page of the registration book where the new certificate is registered, and a reference by number to that last prior certificate. The grantor's duplicate certificate shall be surrendered, and the word "canceled" stamped upon it. The original certificate shall also be stamped "canceled." The deed of conveyance shall be filed and endorsed with the number and place of registration of the certificate of title of the land conveyed. (See Secs. 179 and 180, Act No. 2711.)

SEC. 58. When a deed in fee is for a part only of the land described in a certificate of title, or for one or more of several lots into which said land shall have been subdivided, the register of deeds shall not enter the transfer certificate to the grantee until a plan of such land showing all the portions or lots into which it has been subdivided, and the technical description of each portion or lot, have been verified and approved by the Director of Lands, but only, upon written request of the party concerned, make a memorandum of such deed of conveyance on the grantor's certificate of title and on its owner's duplicate, said memorandum to serve only as a notice to third parties of the fact that such portion or lost has been sold to the person or persons named in said deed. Upon the approval of said plan and technical descriptions, a certified copy thereof shall be filed in the office of the register of deeds and recorded in the corresponding certificate of title, and thereupon the Register of Deeds shall, after entering the transfer certificate and issuing its owner's duplicate to the grantee for the portion sold, also enter a new certificate and issue an owner's duplicate to the grantor for the part of the land not included in the deed: *Provided, however*, That if the land has been subdivided into several lots, designated by numbers or letters, the register of deeds may if desired by the grantor, instead of canceling the latter's certificate and issuing a new one to the same for the remaining unconveyed lots, enter on said certificate and on its owner's duplicate a memorandum of such deed of conveyance and of the issuance of the transfer certificate to the grantee for the lot or lots thus conveyed, and that the grantor's certificate is canceled to such lot or lots; and every certificate with such memorandum shall be effectual for the purpose of showing the grantor's title to the remainder of the land not conveyed as if the old certificate had been canceled and a new certificate of such land has been entered; and no transfer certificate to a grantee for part only of the land shall be invalid by reason of the non-issuance of a new certificate to the grantor for the remaining unconveyed portion: *Provided, further*, That if there is discrepancy between the subdivision plan and the original plan, and in the opinion of the Director of Lands such discrepancy may be prejudicial to an adjoining owner or other person having interest in the adjoining lands, the matter should be reported to the Court of First Instance of the province where the land lies, and the court, after notice to all persons concerned and hearing, shall decide the case and all questions arising in connection with such subdivision plan: *And provided, lastly*, That after the annotation of the sale of a portion of land on the grantor's certificate of title, as above authorized, no subsequent deed or other voluntary instrument relative to the same portion of land should be accepted for registration or annotation until the necessary subdivision plan and technical description of said portion of land, as approved by the Director of Lands, shall have been filed with the register of deeds, and the property transfer certificate of title shall have been entered in the name of the person executing such deed or instrument.

For the purpose of securing loans from banking and credit institutions, the foregoing prohibition against accepting for registration or anno-

tation of a subsequent deed or other voluntary instrument shall not apply in the case of deeds of sale duly executed by the Government, or any of its instrumentalities, with respect to portions of lands registered in the name of the Republic of the Philippines. (As amended by Republic Acts Nos. 93 and 1096.)

SEC. 59. If at the time of any transfer there appear upon the registration book encumbrances or claims adverse to the title of the registered owner, they shall be stated in the new certificate or certificates, except so far they may be simultaneously released or discharged.

MORTGAGES

SEC. 60. The owner of registered land may mortgage the same by executing a mortgage deed and such deed may be assigned, extended, discharged, released in the whole or in part, or otherwise deal with by the mortgagee by any form of deed or instrument sufficient in law for the purpose. But such mortgage deed, and all instruments assigning, extending, discharging, and otherwise dealing with the mortgage, shall be registered, and shall take effect upon the title only from the time of registration.

SEC. 61. Registration of a mortgage shall be made in the manner following, to wit: The owner's duplicate certificate shall be presented to the register of deeds with the mortgage deed, and he shall enter upon the original certificate of title, and also upon the owner's duplicate certificate a memorandum of the purport of the mortgage deed, the time of filing and the file number of the deed, and shall sign the memorandum. He shall also note upon the mortgage deed the time of filing and a reference to the volume and page of the registration book where it is registered.

The Register of Deeds shall also, at the request of the mortgagee, make out and deliver to him a duplicate of the certificate of title, like the owner's duplicate, except that the words "mortgagee's duplicate" shall be stamped upon it in large letters diagonally across its face. A memorandum of the issue of the mortgagee's duplicate shall be made upon the original certificate of title.

SEC. 62. Whenever a mortgage upon which a mortgagee's duplicate has been issued is assigned, extended, or otherwise dealt with, the mortgagee's duplicate shall be presented with the instrument assigning, extending, or otherwise dealing with the mortgage, and a memorandum of the instrument shall be made upon the mortgagee's duplicate certificate. When the mortgage is discharged or otherwise extinguished, the mortgagee's duplicate certificate shall be surrendered and stamped "canceled." The production of the mortgagee's duplicate certificate shall be conclusive authority to register the instrument therewith presented, subject, however, to all the provisions and exceptions contained in Section fifty-five of this Act so far as the same are applicable.

A mortgage on registered land may also be discharged, by the mortgagee in person, on the registration book by endorsing upon the original certificate of title and upon the owner's duplicate certificate a memorandum stating that the mortgage has been satisfied and is discharged together with the date of such entry, signed by the mortgagee, and such discharge shall be attested by the register of deeds, the mortgagee's duplicate certificate being at the same time surrendered and stamped "canceled."

SEC. 63. Mortgages of registered land may be foreclosed in the manner provided in the Code of Procedure in Civil Actions and Special Proceedings. A certified copy of the final decree of the court affirming the sale under foreclosure proceedings may be filed with the Register of Deeds after the time for appealing therefrom has expired, and the purchaser shall thereupon be entitled to the entry of a new certificate and to the issuance of a new owner's duplicate certificate, a memorandum thereof being at the same time likewise endorsed upon the mortgagor's original certificate and the mortgagee's duplicate if any, being first delivered up and canceled: *Provided, however*, That nothing contained in this Act shall be construed to prevent the mortgagor or other person interested from directly impeaching by any proper legal proceedings any foreclosure proceedings affecting registered lands, prior to the entry of a new certificate of title.

2. Cover the identified idle or abandoned lands under compulsory acquisition of private agricultural lands using the normal procedures but with the following modifications:

a. Indicate in the Notice of Coverage (I/A Form No. 1) that the landholding is being covered because, based on the field investigation, it has been determined to be idle or abandoned. This Notice should be sent by registered mail to the landowner and posted for 30 days in:

— a conspicuous place in the barangay where the property is located, such as barangay hall, school, and other public places; and

— the municipality or city hall.

b. If the landowner or any person claiming right fails to reply within 30 days from the receipt of the Notice and/or the last day of posting, as the case may be, assume that the landowner waived his retention right and proceed with the acquisition and distribution of the entire property or identified portion(s) thereof under the procedures on compulsory acquisition.

Any party who disagrees with the coverage of the subject landholding as idle or abandoned land may file with the MARO, copy furnished the PARO and RARO, a written protest fifteen days from receipt of notice or date of posting whichever is applicable. Otherwise, coverage shall become final.

c. Secure Sworn Statements (I/A Form No. 2) of at least two (2) disinterested farmers within the barangay where the subject landholding or a portion(s) thereof is located, in the presence of two (2) witnesses, preferably Barangay Agrarian Reform Committee (BARC) members, and before the administrative officer.

3. For landholdings greater than 50 hectares in size and with the landowner indicating his desire to avail of the temporary retention, cover first the area in excess of 50 hectares then determine — and cover accordingly — if there are idle or abandoned portions within the temporarily retained area.

LEASES

SEC. 64. Leases of registered land shall be registered in the manner provided in Section fifty-two of this Act, in lieu of recording. A lessee's duplicate certificate may be issued to the lessee upon his request subject to the provisions hereinbefore made in regard to a mortgagee's duplicate certificate, so far as the same are applicable.

TRUSTS

SEC. 65. Whenever a deed or other instrument is filed for the purpose of transferring registered land in trust, or upon any equitable condition or limitation expressed therein, or for the purpose of creating or declaring a trust or other equitable interest in such land without transfer, the particulars of the trust, condition, limitation, or other equitable interest shall not be entered on the certificate; but a memorandum thereof shall be entered by the words "in trust," or "upon condition," or other apt words, and by a reference by number to the instrument authorizing or creating the same. A similar memorandum shall be made upon the duplicate certificate. The register of deeds shall note upon the original instrument creating or declaring the trust or other equitable interest a reference by number to the certificate of title to which it relates, and to the volume and page in the registration book where it is registered. If the instrument creating or declaring a trust of other equitable interest is already recorded in the land register of the Philippine Islands, a certified copy may be filed by the Register of Deeds and registered.

SEC. 66. If the instrument creating or declaring a trust or other equitable interest contains an express power to sell, mortgage, or deal with the land in any manner, such power shall be stated in the certificate of title by the words "with power to sell," or "with power to mortgage," and by apt words of description in case of other power. No instrument transferring, mortgaging, or in any way dealing with registered land held in trust shall be registered, unless the power thereto enabling is expressly conferred in the instrument of trust, or unless the decree of a court of competent

jurisdiction has construed the instrument in favor of such power, in which case a certified copy of such decree may be filed with the register of deeds, and he shall make registration in accordance therewith.

SEC. 67. When a new trustee of registered land is appointed by a court of competent jurisdiction, a new certificate shall be entered to him upon presentation to the Register of Deeds of a certified copy of the decree and the surrender and cancellation of the duplicate certificate.

SEC. 68. Whoever claims an interest in registered land by reason of any implied or constructive trust shall file for registration a statement thereof with the register of deeds. The statement shall contain a description of the land, and a reference to the number of the certificate of title and the volume and page on the registration book where it is entered. Such claim shall not affect the title of a purchaser for value and in good faith before its registration.

SEC. 69. Any trustee shall have authority to file an application for registration of any land held in trust by him, unless expressly prohibited by the instrument creating the trust.

LEGAL INCIDENTS OF REGISTERED LAND

SEC. 70. Registered land, and ownership therein, shall in all respects be subject to the same burdens and incidents attached by law to unregistered land. Nothing contained in this Act shall in any way be construed to relieve registered land or the owners thereof from any rights incident to the relation of husband and wife, or from liability to attachment on mesne process or levy on execution, or from liability to any lien of any on, or the interest of, the owner in such land or buildings, or to change the laws of descent, or the rights of partition between co-owners, joint tenants and other co-tenants, or the right to take the same by eminent domain, or to relieve such land from liability to be appropriate in any lawful manner for the payment of debts, or to change or affect in any other way any other rights or liability created by law and applicable to unregistered land, except as otherwise expressly provided in this Act or in the amendments hereof.

ATTACHMENTS AND OTHER LIENS

SEC. 71. In every case where a writing of any description or a copy of any writ is required by law to be filed or recorded in the Registry of Deeds in order to create or preserve any lien, right, or attachment upon unregistered land, such writing or copy when intended to affect registered land, in lieu of recording shall be filed and registered in the office of the register of deeds for the province in which the land lies, and, in addition to any particulars required in such papers for recording with records of deeds, shall also contain a reference to the number of the certificate of title

of the land to be affected, and the volume and page in the registration book where the certificate is registered, and also, if the attachment, right or lien is not claimed on all the land in any certificate of title, a description sufficiently accurate for identification of the land intended to be affected.

SEC. 72. In every case, where an attachment or other lien or adverse claim of any description is registered and the duplicate certificate is not presented at the time of registration to the Register of Deeds, he shall within twenty-four hours thereafter send notice by mail to the registered owner, stating that such paper has been registered, and requesting him to send or produce the duplicate certificate in order that memorandum of the attachment or other lien or adverse claim shall be made thereon. If the owner neglects or refuses to comply within a reasonable time, the register of deeds shall suggest the fact to the court, and the court, after notice, shall enter an order to the owner to produce his certificate at a time and place to be named therein, and may enforce the order by suitable process.

SEC. 73. Attachment on mesne process and liens of every description upon registered land shall be continued, reduced, discharged and dissolved by any method sufficient in law to continue, reduce, discharge, or dissolve like liens or unregistered land. All certificates or other instruments which are permitted or required by law to be recorded in the Registry of Deeds to give effect to the continuance, reduction, discharge, or dissolution of attachments or other liens on registered land be filed with the Register of Deeds and registered in the registration book, in lieu of recording.

SEC. 74. All provisions of law now in force relating to attachments of real estate and leasehold estates on mesne process shall apply to registered land, except that the duties required to be performed by the present recording officer shall be performed by the register of deeds of the province where the land lies, who, in lieu of recording, shall register the facts heretofore required to be recorded, and for that purpose shall keep suitable books.

SEC. 75. The name and address of the plaintiff's lawyer shall in all cases be endorsed on the writ or process where an attachment is made, and he shall be deemed to be the attorney of the plaintiff until written notice that he has ceased to be such shall be filed for registration by the plaintiff.

SEC. 76. Whenever an attachment on mesne process is continued, reduced, dissolved, or otherwise affected by an order, decision, or judgment of the court in which the action or proceeding in which said attachment was made is pending, or by the order of any judge or court having jurisdiction thereof, a certificate of the entry of such order, decision, or judgment from the clerk of the court or judge by which such order, decision, or judgment has been rendered and under the seal of the court or judge, shall be entitled to be registered on presentation to the Register of Deeds.

SEC. 77. A lien of any description on registered land shall be enforced in the same manner as like liens upon unregistered land. Whenever registered land is sold on execution, or taken or sold for taxes or for any assessment, or to enforce a lien of any character, or for any costs and charges incident to such liens, and execution, or copy of execution, any officer's return or any deed, demand, certificate, or affidavit, or other instrument made in the course of proceedings to enforce such liens and required by law to be recorded in the Registry of Deeds in the case of unregistered land, shall be filed with the Register of Deeds for the province where the land, lies and registered in the registration book, and a memorandum made upon the proper certificate of title, in each case, as an adverse claim or encumbrance.

SEC. 78. Upon the expiration of the time, if any allowed by law for redemption after registered land has been sold on any execution, or taken or sold for the enforcement of any lien of any description, the person claiming under the execution or under any deed or other instrument made in the course of proceedings to levy execution or enforce any lien, may petition the court for the entry of a new certificate to him, and the application may be granted: *Provided, however*, That every new certificate entered under this section shall contain a memorandum of the nature of the proceeding on which it is based: *Provided, further*, That at any time prior to the entry of a new certificate the registered owner may pursue all his lawful remedies to impeach or annul proceedings under executions or to enforce liens of any description.

PENDING SUITS, JUDGMENTS, DECREES AND PARTITIONS

SEC. 79. No action to recover possession of real estate, or to quiet the title thereto, or to remove clouds upon the title thereof, or for partition or other proceeding of any kind in court affecting the title to real estate or the use and occupation thereof or the building thereon, and no judgment or decree, and no proceeding to vacate or reverse any judgment or decree, shall have any effect upon registered land as against persons other than the parties thereto, unless a memorandum stating the institution of such action or proceeding and the court wherein the same is pending, and the date of the institution thereof, containing also a reference to the number of the certificate of title of the land affected, and the volume and page of the registration book where it is entered, shall be filed and registered. This section shall not apply to attachments, levies of execution or to proceedings for the probate of wills, or for administration of the estates of deceased persons in the Court of First Instance: *Provided, however*, That in case notice of the pendency of the action has been duly registered, it shall be sufficient to register the judgment or decree in such action within sixty days after the rendition thereof.

SEC. 80. At any time after final judgment or decree in favor of the defendant, or other disposition of the action such as to terminate finally all rights of the plaintiff in and to the land and buildings involved, in any case in which a memorandum has been registered as provided in the preceding section, a certificate of the clerk of the court in which the action or proceeding was pending stating the manner of disposal thereof shall be entitled to registration.

SEC. 81. Whenever in any action to recover the possession or ownership of real estate or any interest therein affecting registered land judgment is entered for the plaintiff, such judgment shall be entitled to registration on presentation of a certificate of entry thereof from the clerk of the court where the action is pending to the register of deeds for the province where the land lies, who shall enter a memorandum upon the certificate of title of the land to which such judgment relates. If the judgment does not apply to all the land described in the certificate of title, the certificate of the clerk of the court where the action is pending and the memorandum entered by the register of deeds shall contain a description of the land affected by the judgment.

SEC. 82. When in any action to recover the possession of title of real estate or an interest therein execution has been issued directing the officer to place the plaintiff in possession of the land by the judgment on which the execution was issued, the officer shall cause an attested copy of the execution with a return of his doings thereon, to be filed and registered within three months after the service, and before the return of the execution into the office of the clerk whence it issued, and the plaintiff, in case the judgment was that he was entitled to an estate in fee simple in the demanded premises or in any part thereof, and for which execution issued, shall thereupon be entitled to the entry of a new certificate of title and to a cancellation of the certificate and owner's duplicate certificate of the former registered owner. If the former registered owner neglects or refuses within a reasonable time after request to produce his duplicate certificate in order that the same may be cancelled, the court on application and after notice shall enter an order to the owner to produce his certificate at the time and place named therein, and may enforce the order by suitable process.

SEC. 83. Every court passing a judgment or decree in favor of the plaintiff, affecting registered land shall, upon application of the plaintiff, order any parties before it to execute for registration any deed or instrument necessary to give effect to its judgment or decree, and may require the registered owner to deliver his duplicate certificate to the plaintiff to be cancelled or to have a memorandum upon it by the Register of Deeds. In case the person required to execute any deed or other instrument necessary to give effect to the judgment or decree is absent from the Philippine Islands, or is a minor, or insane, or for any reason not amenable to

the process of the court passing the judgment or decree may appoint some suitable person as trustee to execute such instrument, and the same when executed shall be registered and shall have full force and effect to bind the land to be affected thereby.

SEC. 84. In all proceedings for partition of registered land, after the entry of the final judgment decree of partition and the filing of the report of the committee or commissioners and final judgment thereon, a copy of the final judgment or decree certified by the clerk of the court rendering the same, shall be filed and registered; and thereupon, in case the land is set off to the owners in severalty, any to receive an owner's duplicate thereof. In case the land is ordered by the court to be sold, the purchaser or his assigns shall be entitled to have a certificate of title entered to him or to them on presenting the deed of the commissioners or committee for registration. In case the land is ordered by the court rendering the judgment to be sent off in its entirety to one of the parties upon payment to the other parties to the action, the party to whom the land is thus ordered to be set off shall be entitled to have a certificate of title entered to him or to them on presenting the deed of the commissioners or committee for registration. In case the land is ordered by the court rendering the judgment to be set off in its entirety to one of the parties upon payment to the other parties to the action, the party to whom the land is thus ordered to be set off shall be entitled to have a certificate of title entered to him on presenting a copy of the judgment or decree certified by the clerk of the court rendering the same: *Provided, however*, That any new certificate entered in pursuance of partition proceedings, whether by way of set-off or of assignment or of sale, shall contain a reference to the final judgment or decree of partition, and shall be conclusive as to the title to the same extent against the same person as such judgment or decree is made conclusive by the laws applicable thereto: *And provided, also*, That any person holding such certificates of title or transfer thereof shall have the right to petition the court at any time to cancel the memorandum relating to such judgment or decree and the court, after notice and hearing, may grant the application. Such certificate shall thereafter be conclusive in the same manner and in the same extent as other certificates of title.

SEC. 85. When a certified copy of a judgment or decree making final partition of land or building is presented for registration, if a mortgage or lease affecting a specific portion or an undivided share of the premises had previously been registered, the mortgagee, or tenant claiming under the mortgagor or lessor, shall cause the mortgagee or lessee and any duplicate certificate of title issued to the mortgagee or lessee to be again presented for registration, and the register of deeds shall endorse on each the memorandum of such partition, with a description of the land set off in severalty on which such mortgage or lease remains in force. Such mortgagee or tenant shall not be entitled to receive his own duplicate certificate of title until such mortgage or lease has been so presented for registration.

BANKRUPTCY, INSOLVENCY, AND ANALOGOUS PROCEEDINGS

SEC. 86. Whenever proceedings in bankruptcy or insolvency or analogous proceedings are instituted against a debtor who is an owner of registered land, it shall be the duty of the officer serving the notice of the institution of such proceedings on the debtor to file a copy thereof in the Registry of Deeds for the province wherein the land of the debtor lies. The assignee or trustee appointed shall be entitled to the entry of a new certificate of registered land of the debtor upon presenting and filing a certified copy of the order appointing him such assignee or trustee, with the debtor's duplicate certificate of title; the new certificate shall state that it is entered to him as assignee or trustee in insolvency or bankruptcy or other proceedings, as the case may be.

SEC. 87. Whenever proceedings of the character named in the preceding section against a registered owner, of which notice has been registered, are vacated by decree or judgment, a certified copy of the decree or judgment may be filed and registered. If a new certificate has been entered to the assignee or trustee as registered owner, the debtor shall be entitled to the entry of a new certificate to him, and the certificate of the assignee or trustee shall be surrendered.

EMINENT DOMAIN

SEC. 88. Whenever any land of a registered owner, or any right or interest therein, is taken by eminent domain, the Government or municipality or corporation or other authority exercising such right shall file for registration in the proper province a description of the registered land so taken, giving the name of each owner thereof referring by number and place of registration in the registration book to each certificate of title, and stating what the amount or interest in the land is taken, and for what purpose. A memorandum of the right or interest taken, shall be made on each certificate of title by the register of deeds, and where the fee simple is taken a new certificate shall be entered to the owner for the land remaining to him after such taking, and a new certificate shall be entered to the Government, municipality, corporation, or other authority exercising such right to the land so taken. All fees on account of any memorandum of registration or entry of new certificate shall be paid by the authority taking the land.

TRANSMISSION BY DESCENT AND DEVISE

SEC. 89. Lands and any estate or interest therein registered under this Act shall, upon the death of the owner, go to the executor or administrator of the deceased in like manner as personal estate, whether the owner

dies testate or intestate, and shall be subject to the same rules of administration as if the same were personality, except as otherwise provided in this Act and except that the rule of division shall be the same as in the descent of real property, or as shall be provided by will.

SEC. 90. Before the executor or administrator of a deceased owner of registered land or any estate, or interest therein, shall deal with the same, he shall file in the office of the Register of Deeds a certified copy of his letters of administration, if there is a will, a certified copy of the same and of the letters testamentary, or of administration, with the will annexed, as the case may be, and shall produce the duplicate certificate of title, and thereupon the register of deeds shall enter upon the certificate and the duplicate certificate a memorandum thereof with a reference to the letters or will and letters by their file number and the date of filing the same.

SEC. 91. Except in case of a will devising the land to an executor to his own use or upon some trust or giving to the executor power to sell, no sale or transfer of registered land shall be made by an executor or by an administrator in the course of administration for the payment of debts or for any other purpose, except in pursuance of an order of a court of competent jurisdiction obtained as provided by law.

SEC. 92. But after a memorandum of the will, letters testamentary, or letters of administration have been entered upon the register as hereinbefore provided, the executor or administrator may deal with mortgages, leases, and other personal interests in or upon registered land as if he were the registered owner thereof.

SEC. 93. Where it appears by the will, a certified copy of which with letters testamentary is filed as provided in this Act, that registered land is devised to the executor to his own use, or upon some trust, the executor may have the land transferred to himself upon the register in like manner and subject to like terms and conditions and to like rights as in the case of a transfer pursuant to deed filed in the Office of the Register of Deeds.

SEC. 94. When the will of a deceased owner of registered land, or any estate or interest therein, empowers the executor to sell, convey, encumber, charge, or otherwise deal with the land, it shall not be necessary for such executor to be registered as the owner, but a certified copy of the will and letters testamentary being filed as provided in this Act, such executor may sell, convey, encumber, charge or otherwise deal with the land pursuant to the power in like manner as if he were the registered owner, subject to the like conditions as to the trust, limitations, and conditions expressed in the will as in the case of trust, limitations, and conditions expressed in a deed.

SEC. 95. Before making distribution of undevised registered land, the executor or administrator shall file in the office of the register of deeds a certified copy of final decree of the court having jurisdiction of the estate, which shall be conclusive evidence in favor of all persons thereafter deal-

ing with the land that the persons therein named as the only heirs at law of the deceased owner are such heirs.

SEC. 96. Whenever the court having jurisdiction of the settlement of an estate shall, for the purpose of distribution thereof or for other purposes provided by law, order registered land or any interest or estate therein to be sold by the executor or administrator, upon the filing of a certified copy of the order of sale and the deeds, a transfer of the land, estate, or interest to the purchaser may be made upon the register as in the case of other sales by deed, and the original certificate and owner's duplicate be canceled and a new certificate and owner's duplicate be issued to the purchaser.

SEC. 97. Whenever, after the final determination of the amount of all claims against the estate of the deceased, it shall be made to appear to the court having jurisdiction of the estate that the estate will justify it and the proof of heirship has been clear to that court, it may direct the executor or administrator to make over and transfer to the devisees or heirs, or some of them, in anticipation of final distribution, a portion or the whole of the registered lands to which they might be entitled on final distribution; and upon the filing of a certified copy of such order in the Office of the Register of Deeds, the executor or administrator may cause such transfer to be made upon the register in like manner as in case of sale, and a certificate and owner's duplicate certificate shall be issued to the devises or heirs entitled thereto as in other cases. The land so transferred shall be held free from all liens or claims against the estate. In the proceedings to procure such order or directions, such notice shall be given to all parties in interest as the court having jurisdiction of the estate may direct.

SEC. 98. For the purpose of final distribution of the estate, the court having jurisdiction thereof may determine the rights of all persons in registered land, or any estate or interest therein of the deceased, declare and enforce the rights of devisees, heirs, surviving husbands or wives, and others, and make partition and distribution according to the rights of the parties, and may give direction to the executor and administrator as to the transfer of registered lands and any estate or interest therein to the devisees or heirs any may direct the transfer to be made to the several devisees or heirs or tenants in common, or otherwise, as shall appear to the court to be most convenient, consistently with the rights of the parties, or as the parties interested may agree. A certified copy of the final order judgment, or decree of the court having jurisdiction of the estate making final distribution shall be filed with the register of deeds and thereupon new certificates and owner's duplicate certificates shall be issued to the parties severally entitled thereto in accordance with such order, judgment, or decree, but nothing in this section contained shall in any way affect or impair existing requirements of law as to notice to be given to all parties interested in the estate of a deceased person before final decree of distribution thereof.

ASSURANCE FUND

SEC. 99. Upon the original registration of land under this Act, and also upon the entry of a certificate showing title as registered owners in heirs or devisees, there shall be paid to the Register of Deeds one-tenth of one per centum of the assessed value of the real estate on the basis of the last assessment for municipal taxation, as an assurance fund.

In case land is subdivided subsequent to the assessment and registration proceedings are had as to a portion only of such land, the value of such portion, for the purpose of this section and for the payment required by paragraph four of section one hundred and fourteen, shall be fixed by agreement between the applicant and the tax collector of the city or province where the land bears to the whole tract assessed. In case of disagreement between the tax collector and the applicant as to the value of the land, the question shall be submitted to the court for decision.

The court is authorized to increase the valuation as fixed under the two preceding paragraphs should it appear upon the hearing that the value stated in the application is too small. (As amended by Sec. 11[c], Act No. 700.)

SEC. 100. All money received by the register of deeds under the preceding section shall be paid to the Treasurer of the Philippine Archipelago. He shall keep the same invested, with the advice and approval of the Civil Governor, and shall report annually to the legislative body of the Philippine Islands the condition and income thereof.

SEC. 101. Any person who without negligence on his part sustains loss or damage through any omission, mistake or misfeasance of the clerk, or Register of Deeds, or of any examiner of titles, or of any deputy or clerk or of the Register of Deeds in the performance of their respective duties under the provisions of this Act, and any person who is wrongfully deprived of any land or any interest therein, without negligence on his part, through the bringing of the same under the provisions of this Act or by the registration of any other person as owner of such land, or by any mistake, omission, or misdescription in any certificate or owner's duplicate, or in an entry or memorandum in the register or other official book, or by any cancellation, and who by the provisions of this Act is barred in any way precluded from bringing an action for the recovery of such land or interest therein, or claim upon the same, may bring in any court of competent jurisdiction an action against the Treasurer of the Philippine Archipelago for the recovery of damages to be paid out of the Assurance Fund.

SEC. 102. If such action be for recovery for loss or damage arising only through any omission, mistake, or misfeasance of the clerk, or of the Register of Deeds, or of any examiner of titles, or of any deputy or clerk of the Register of Deeds in the performance of their respective duties under the provisions of this Act, then the Treasurer of the Philippine Archipelago

shall be the sole defendant of such action. But if such action be brought for loss or damage arising only through the fraud or willful act of some person or persons other than the clerk, the register of deeds, the examiners of titles, deputies or clerks or arising jointly through the fraud or wrongful act of such other person or persons and the omission, mistake, or misfeasance of the clerk, the register of deeds, the examiners of titles, deputies, or clerk, then such action shall be brought against both the Treasurer of the Philippine Archipelago and such person or persons aforesaid. In all such actions where there are defendants other than the Treasurer of the Philippine Archipelago and damages shall have been recovered, no final judgment shall be entered against the Treasurer of the Philippine Archipelago until execution against the other defendants shall be returned unsatisfied in whole or in part, and the office returning the execution shall certify that the amount still due upon the execution cannot be collected except by application to the assurance fund. Thereupon, the court having jurisdiction of the action, being satisfied as to the truth of such return, may upon proper showing, order the amount of the execution and costs, or so much thereof as remains unpaid, to be paid by the Treasurer of the Philippine Archipelago out of the assurance fund. It shall be the duty of the Attorney-General in person or by deputy to appear and defend all such suits with the aid of the fiscal of the province in which the land lies or the city attorney of the city of Manila as the case may be: *Provided, however*, That nothing in this Act shall be construed to deprive the plaintiff of any action which he may have against any person for such loss or damage or deprivation of land or of any estate or interest therein without joining the Treasurer of the Philippine Archipelago as a defendant therein.

SEC. 103. If the assurance fund at any time be not sufficient to meet the amount called for by such judgment, the Treasurer of the Philippine Archipelago shall make up the deficiency from any funds in the Treasury not otherwise appropriated; and in such case, any sums thereafter received by the Treasurer on account of the assurance fund shall be transferred to the general fund of the Treasury, until the amount paid on account of the deficiency shall have been made up.

SEC. 104. In every case where payment has been made by the Treasurer of the Philippine Archipelago in accordance with the provisions of this Act, the Government of the Philippine Islands shall be subrogated to all rights of the plaintiff against any other parties or securities, and the Treasurer shall enforce the same in behalf of the Government. Any sum so recovered by the Treasurer of the Philippines shall be paid into the Treasury of the Philippine Islands to the account of the assurance fund.

SEC. 105. The income of the assurance fund shall be added to the principal and invested, until said fund amounts to the sum of two hundred thousand dollars, and thereafter the income of such fund shall be paid into the Insular Treasury for the general purposes of the Insular Government.

The term "dollars," whenever used in this Act, shall be construed to mean money of the United States.

SEC. 106. The assurance fund shall not be liable to pay for any loss or damage or deprivation occasioned by a breach of trust, whether express, implied, or constructive, by any registered owner who is a trustee, or by the improper exercise of any sale in mortgage foreclosure proceedings. Nor shall any plaintiff recover as compensation in an action under this Act more than the fair market value of the real estate at the time when he suffered the loss, damage, or deprivation thereof.

SEC. 107. All actions for compensation under this Act by reason of any loss or damage or deprivation of land or any estate or interest therein shall be begun within the period of six years from the time when the right to bring or take such action or proceeding first accrued, and not afterwards: *Provided*, That the right of action herein provided shall survive to the personal representative of the person sustaining loss or damage, if deceased, unless barred in his lifetime: *And provided, further*, That if at the time when such right of action first accrues the person entitled to bring such action or take such proceeding is within the age of minority, or insane, or imprisoned, such person, or anyone claiming from, by or under him, may bring the action or take the proceeding at any time within two years after such liability is removed, notwithstanding the time before limited in that behalf is expired. (See Secs. 93-103, P.D. No. 1529 [Property Registration Decree].)

POWERS OF ATTORNEY

SEC. 108. Any person may by power of attorney procure land to the registered and convey or otherwise deal with registered land, but the letters of attorney shall be acknowledged before a notary public or a judge or clerk of a court of record attested by at least one witness and shall be filed with the clerk or register of deeds of the province where the land lies, and registered. Any instrument revoking such letters shall be acknowledged, attested, and registered in like manner.

LOST DUPLICATE CERTIFICATE

SEC. 109. If a duplicate certificate is lost or destroyed, or cannot be produced by a grantee, heir, devisee, assignee, or other person applying for the entry of a new certificate to him or for the registration of any instrument, a suggestion of the fact of such loss or destruction may be filed by the registered owner or other person in interest and registered. The court may thereupon, upon the petition of the registered owner or other person in interest, after notice and hearing, direct the issue of a new duplicate certificate, which shall contain a memorandum of the fact that it is issued in place of the lost duplicate certificate, but shall in all respects be entitled

to like faith and credit as the original duplicate, and shall thereafter be regarded as the original duplicate for all the purpose of this Act.

ADVERSE CLAIM

SEC. 110. Whoever claims any part or interest in registered land adverse to the registered owner, arising subsequent to the date of the original registration, may, if no other provision is made in this Act for registering the same, make a statement in writing setting forth fully his alleged right or interest, and how or under whom acquired, and a reference to the volume and page of the certificate of title of the registered owner, and a description of the land in which the right or interest is claimed.

The statement shall be signed and sworn to, and shall state the adverse claimant's residence, and designate a place at which all notices may be served upon him. This statement shall be entitled to registration as an adverse claim, and the court, upon a petition of any party in interest, shall grant a speedy hearing upon the question of the validity of such adverse claim and shall enter such decree therein as justice and equity may require. If the claim is adjudged to be invalid, the registration shall be canceled. If in any case the court after notice and hearing shall find that a claim thus registered was frivolous or vexatious, it may tax the adverse claimant double or treble costs in its discretion.

SURRENDER OF DUPLICATE CERTIFICATE

SEC. 111. In every case where the clerk or any register of deeds is requested to enter a new certificate in pursuance of an instrument purporting to be executed by the registered owner, or by reason of any instrument or proceedings which divest the title of the registered owner against his consent, if the outstanding owner's duplicate certificate is not presented for cancellation when such request is made, the clerk or register of deeds shall not enter a new certificate, but the person claiming to be entitled thereto may apply by petition to the court. The court, after hearing may order the registered owner or any person withholding the duplicate to surrender the same, and direct the entry of a new certificate upon such surrender.

If in any case the person withholding the duplicate certificate is not amenable to the process of the court, or if for any reason the outstanding owner's duplicate certificate cannot be delivered up, the court may by decree annul the same, and order a new certificate of title to be entered. Such new certificate and all duplicates thereof shall contain a memorandum of the annulment of the outstanding duplicate.

If any case in outstanding mortgagee's or lessee's duplicate certificate is not produced and surrendered when a mortgage is discharged or extinguished or the lease is terminated like proceedings may be held to

obtain registration as in the case of non-production of an owner's duplicate.

SEC. 112. No erasure, alteration, or amendment shall be made upon the registration book after the entry of a certificate of title or of a memorandum thereon and the attestation of the same by the clerk or any Register of Deeds, except by order of the court. Any registered owner or other person in interest may at any time apply by petition to the court, upon the ground that registered interests of any description, whether vested, contingent, expectant, or inchoate, have terminated and ceased; or that new interests have arisen or been created which do not appear upon the certificate; or that any error, omission, or mistake was made in entering a certificate or any memorandum thereon, or on any duplicate certificate; or that the registered owner has been married; or if registered as married, that the marriage has been terminated or that a corporation which owner registered land and has been dissolved has not conveyed the same within three years after its dissolution; or upon any other reasonable ground; and the court shall have jurisdiction to hear and determine the petition after notice to all parties in interest, and may order the entry of a new certificate, the entry or cancellation of a memorandum upon a certificate, or grant any other relief upon such terms and conditions, requiring security if necessary, as it may deem proper: *Provided, however*, That this section shall not be construed to give the court authority to open the original decree of registration, and that nothing shall be done or ordered by the court which shall impair the title or other interest of a purchaser holding a certificate for value and in good faith, or his heirs or assigns, without his or their written consent.

Any petition filed under this section and all petitions and motions filed under the provisions of this Act after original registration shall be filed and entitled in the original case in which the decree of registration was entered.

SERVICE OF NOTICES AFTER REGISTRATION

SEC. 113. All notices required by or given in pursuance of the provisions of this Act by the clerk or any register of deeds, after original registration, shall be sent by mail to the person to be notified at his residence and post-office address as stated in the certificate of title, or in any registered instrument under which he claims an interest in the office of the clerk or Register of Deeds, relating to the parcel of land in question.

All notices and citations directed by special order of the court under the provisions of this Act, after original registration, may be served in the manner above stated, and the certificate of the clerk shall be conclusive proof of such service: *Provided, however*, That the court may in any case order different or further service, by publication or otherwise, and shall in all cases do so when the interests of justice require such action.

FEES FOR REGISTRATION

SEC. 114. Fees payable under this Act shall be as follows:

A. *Fees payable to the Clerk of Court*. — The fees payable to the clerk of court or his deputies shall be as follows:

1. For filing an application for the registration of land, the fees shall be based on the assessed value of the property for the current year, in accordance with the following schedule —

(a) When the value of the property does not exceed two thousand pesos, fifteen pesos for the first five hundred pesos, or fractional part thereof, and five pesos for each additional five hundred pesos, or fractional thereof.

(b) When the value of the property is more than two thousand pesos but does not exceed ten thousand pesos, thirty-five pesos for the first three hundred pesos, or fractional part thereof, and five pesos for each additional one thousand pesos, or fractional part thereof.

(c) When the value of the property is more than ten thousand pesos but does not exceed one hundred thousand pesos, eighty pesos for the first twenty thousand pesos, or fractional part thereof, and ten pesos for each additional ten thousand pesos, or fractional part thereof.

(d) When the value of the property is more than one hundred thousand pesos but does not exceed five hundred thousand pesos, one hundred eighty pesos for the first one hundred twenty-five thousand pesos, or fractional part thereof, and twenty pesos for each additional twenty-five thousand pesos, or fractional part thereof.

(e) When the value of the property is more than five hundred thousand pesos, five hundred twenty pesos for the first five hundred fifty thousand pesos, or fractional part thereof and forty pesos for each additional fifty thousand pesos or fractional part thereof.

If the property has not been assessed for taxation, the fees above prescribed shall be based on the current market value, and the applicant shall file with his application a sworn declaration of three disinterested persons that the value fixed by him is to their knowledge a fair valuation.

2. For filing a petition for review of decree, or other claim adverse to the registered owner, for each petition, six pesos.

3. For filing a petition after the decision has become final, three pesos. If it affects land decreed in more than one case, for each additional case, one peso. If it affects several lots or parcels of land in which the petitioners have no common interests, each of such petitioners shall pay the

corresponding fees as if separate petition has been filed by him. (As amended by Republic Act No. 117.)

B. *Fees payable to the Sheriff.* — The sheriff shall collect fees for his services rendered in connection with land registration and cadastral proceedings as follows:

1. For posting notices of initial hearing of land registration cases in conspicuous places on the lands described in the notice, for each parcel of land on which a copy of such notice is posted, besides travel fees, three pesos.

2. For posting notices of initial hearing of cadastral cases in conspicuous places on the lands included in the survey, for each group of one hundred lots on which a copy of the notice is posted, besides travel fees, three pesos.

3. For posting one copy of a notice of initial hearing in a conspicuous place upon the chief municipal building of the city, municipality, or municipal district in which the land or portion thereof lies, besides travel fees, two pesos.

4. For posting notices upon cadastral claimants to appear before the court, travel fees only as provided in the Rules of Court.

5. For all other services not mentioned above, the same fees including travel fees as provided in the Rules of Court for similar services. (As amended by Republic Act No. 117.)

C. *Fees payable to the Register of Deeds.* — The register of deeds shall collect fees for all services rendered by him under this Act in accordance with the following schedule:

1. For the entry of one original certificate of title, and issuing one owner's duplicate certificate, eight pesos for the first parcel of land described thereon, and one peso for each additional parcel: *Provided, however*, That in case of certificates of title under the Cadastral Act, the fees for entering one original certificate of title and issuing the owner's duplicate thereof, when the total current assessed value of the lots included therein does not exceed seven hundred pesos, and irrespective of the number of such lots, shall be one peso for every one hundred pesos, or fractional part thereof.

2. For each entry in the primary entry book, one peso.

3. For the annotation of an attachment, levy, writ of execution, or adverse claim, three pesos for the first parcel of land affected thereby, and two pesos for each additional parcel. If the total assessed value of the land and improvements exceeds six thousand pesos, there shall be collected an additional fee equivalent to ten *per centum* of the fees under paragraph sixteen of this subsection computed on the basis of said assessed value.

4. For the annotation of a notice of *lis pendens*, or of any document or order in connection therewith, for each parcel of land affected thereby, two pesos.

5. For the annotation of a release of any encumbrance, except mortgage, lease, or other lien for the cancellation of which a specific fee is prescribed herein, for each parcel of land so released, two pesos; but the total amount of fees to be collected shall not exceed the amount of fees paid for the registration of such encumbrance.

6. For the annotation of an order of the court for the amendment of, or the making of a memorandum on, a certificate of title, except inclusion of buildings or improvements, or any order directing the registration of a document, or of any right or interest referred to in said order, or the cancellation of a certificate of title and/or the issuance of a new one, two pesos for each certificate of title on which the annotation is made, in addition to the fees prescribed under paragraph sixteen or seventeen, as the case may be, of this subsection, if the same are also due for the registration of such document, right or interest.

7. For the annotation of an order of the court for the inclusion of buildings and/or improvements in a certificate of title, five pesos for each certificate of title if the buildings or improvements belong to a person other than the registered owner of the land. If they belong to the same registered owner the fees to be collected shall be based on the value of such buildings and improvements in accordance with the schedule prescribed under paragraph sixteen or seventeen, as the case may be, of this section.

8. For registering and filing a power of attorney, letters of attorney, letters of administration or letters testamentary whether or not accompanied by a copy of the testament, certificate of allowance of a will with attested copy of the will annexed, appointment of guardian for a minor or incompetent person, appointment of receiver, trustee, or administrator, articles or incorporation of any corporation, association or partnership, or resolution of its board of directors empowering an officer or member thereof to act in behalf of the same, seven pesos; and for the annotation of such papers on certificates of title when required by existing laws or regulations, one peso and fifty centavos for each certificate of title so annotated; *Provided, however*, That when the certificate of allowance of a will and the letters testamentary or letters of administration are filed together, only one fee shall be collected. For registering and filing an instrument of revocation of any of the papers mentioned above, two pesos; and if annotated on the corresponding certificate of title, one peso and fifty centavos for each certificate of title.

9. For the annotation of a notice of tax lien of any description, notice of lost duplicate or copy of a certificate of title, order of the court declaring such duplicate or copy null and void, notice of change of address, or the cancellation of any such annotation, for each certificate of title, one peso.

10. For transferring the memorandum of an encumbrance of any kind from one certificate of title which is canceled to a new one in lieu thereof in the name of a new owner, for each memorandum thus transferred, one peso.

11. For any memorandum made in a standing co-owner's mortgagee's or lessee's copy of a certificate of title after a similar memorandum has been made in the original thereof, for each such certificate of title, one peso.

12. For any memorandum made in a certificate of title for which no specific fee is prescribed above, for each certificate of title, two pesos.

13. For the issuance of a transfer certificate of title, including its duplicate, to a trustee, executor, administrator, or receiver, or for the cancellation of such certificate of title and issuance of a new one, including its duplicate, to the *cestui que trust*, in case of trusteeship, eight pesos. If the certificate covers more than one parcel or lot, an additional fee of one peso and fifty centavos shall be collected for each additional parcel or lot.

14. For the issuance of a transfer certificate of title, including its duplicate to a person other than those named in the next preceding paragraph, three pesos, in addition to the fees hereinafter prescribed in paragraph sixteen or seventeen, as the case may be, of this subsection, if the same are also due. If the certificate covers more than one parcel or lot, an additional fee of one peso and fifty centavos shall be collected for each additional parcel of lot.

15. For the issuance of a new owner's duplicate or a co-owner's mortgagee's or lesee's copy of a certificate of title, or any additional duplicate or copy thereof, three pesos for the first page and one peso for each subsequent page, or fraction thereof.

16. For the registration of a deed of sale, conveyance, transfer, exchange, partition, or donation: a deed of sale with *pacto de retro*, conditional sale, sheriff's sale at public auction, sale for non-payment of taxes, or any sale subject to redemption, or the repurchase or redemption of the property so sold; any instrument, order, judgment or decree divesting the title of the registered owner, except in favor of a trustee, executor, administrator or receiver; option to purchase or promise to sell; any mortgage, surety, bond, lease, easement, right-of-way, or other real right or lien created or constituted by virtue of a distinct contract or agreement, and not as an incidental condition of sale, transfer or conveyance the assignment, enlargement, extension or novation of a mortgage or of any other real right, or a release of mortgage, termination of lease, or consolidation of ownership over a property sold with *pacto de retro*; where no specific fee is prescribed thereof in the preceding paragraphs, the fees shall be based on the value of the consideration in accordance with the following schedule:

(a) When the value of the consideration does not exceed six thousand pesos, three pesos and fifty centavos for the first five hun-

dred pesos, or fractional part thereof, and one peso and fifty centavos for each additional five hundred pesos, or fractional part thereof.

(b) When the value of the consideration is more than six thousand pesos but does not exceed thirty thousand pesos, twenty-four pesos for the first eight thousand pesos, or fractional part thereof, and four pesos for each additional two thousand pesos, or fractional part thereof.

(c) When the value of the consideration is more than thirty thousand pesos but does not exceed one hundred thousand pesos, seventy-five pesos for the first thirty-five thousand pesos, or fractional part thereof, and seven pesos for each additional five thousand pesos, or fractional part thereof.

(d) When the value of the consideration is more than one hundred thousand pesos but does not exceed five hundred thousand pesos, one hundred seventy-six pesos for the first one hundred thousand pesos, or fractional part thereof, and ten pesos for each additional ten thousand pesos, or fractional part thereof.

(e) When the value of the consideration is more than five hundred thousand pesos, five hundred eighty-one pesos for the first five hundred twenty thousand pesos, or fractional part thereof, and fifteen pesos for each additional twenty thousand pesos, or fractional part thereof.

17. In the following transactions, however, the basis of the fees collectible under paragraph sixteen of this subsection, whether or not the value of the consideration is stated in the instrument, shall be as hereunder set forth:

(a) In the exchange of real property the basis of the fees to be paid by each party shall be the current assessed value of the properties acquired by one party from the other, in addition to the value of any other consideration, if any, stated in the contract.

(b) In the transmission of an hereditary estate without partition or subdivision of the property among the heirs, devisees, or legatees, although with specification of the share of each in the value of the estate, the basis shall be the total current assessed value of the property thus transmitted.

(c) In the partition of an hereditary estate which is still in the name of the deceased, in which determined properties are adjudicated to each heir, devisee or legatee, or to each group of heirs, devisees or legatees, the basis of the fees to be paid by each person, or group, as the case may be, shall be the total current assessed value of the properties thus adjudicated to each person or group. In the case, however, of conjugal property, the basis of the fees for the registration of one-half thereof in the name of the surviving spouse shall

be an amount equal to ten *per centum* of the total current assessed value of the properties adjudicated to said spouse.

(d) In the partition of real property held in common by several registered co-owners, the basis of the fee to be paid by each co-owner or group of co-owners shall be the total assessed value of the property taken by each co-owner or group.

(e) In the sale, conveyance or transfer of two or more parcels of land in favor of two or more separate parties but executed in one single instrument, the basis shall be the total selling price paid by each party-buyer, or, in the case of lump sum consideration, such portion thereof as apportioned in accordance with the assessed value of the respective land acquired by each party-buyer.

(f) In the sale, conveyance, or transfer of properties situated in different cities or provinces, the basis of the fees in each registry of deeds where the instrument is to be registered shall be the total selling price of the properties situated in the respective city or province, or, in the case of a lump sum consideration, such portion thereof as obtained for those properties lying within the jurisdiction of the respective registry after apportioning the total consideration of the sale, conveyance or transfer in accordance with the current assessed values of such properties.

(g) In the sale, conveyance, or transfer of a mortgaged property, the basis shall be the selling price of the property proper plus the full amount of the mortgage, or the unpaid balance thereof if the latter is stated in the instrument. If the properties are situated in different cities or provinces, the basis of the fees in each registry of deeds where the instrument is to be registered shall be such sum as obtained for the properties situated in the respective city or province after apportioning in accordance with the current assessed values of said properties the total amount of consideration as above computed, unless the selling price of the properties in each city or province and the proportionate share thereof in the amount of unpaid balance of the mortgage of such selling price and share shall be the basis. In any case, however, where the aggregate value of the consideration as above computed shall be less than the current assessed value of the properties in the city or province concerned, such assessed value shall be the basis of the fees in the respective registry.

(h) In a mortgage affecting properties situated in different cities or provinces, the basis of the fees in each registry of deeds where the document is to be registered shall be such amount as obtained for the properties lying within the jurisdiction of said registry after apportioning the total amount of the mortgage in accordance with the current assessed value of such properties.

(i) In the release of a mortgage the basis of the fees shall be an amount equal to ten *per centum* of the total amount of obligation secured by the mortgage. If the properties are situated in different cities or provinces, the basis of the fees in each registry shall be ten *per centum* of such sum as obtained for the properties in the respective city or province after apportioning the amount of the mortgage in accordance with the current assessed values of such properties. In the case of a partial release, the fee shall be based on ten *per centum* of the current assessed value of the property so released in the respective city or province: *Provided, however*, That where several releases had been registered, the fees corresponding to the final release shall be computed on the basis of ten *per centum* of the difference between the amount of the mortgage and the aggregate of the consideration used as basis for the collection of the fees paid for the registration of all previous partial releases.

(j) In a certificate of sale at public auction by virtue of an order or execution, or sale for deficiency in the payment of taxes, or repurchase of the property so sold, the basis of the fees in each registry shall be ten *per centum* of the selling or repurchase price of the property lying within the jurisdiction of the registry.

(k) In an affidavit for the consolidation of ownership over a property sold with *pacto de retro* or pursuant to an extrajudicial foreclosure under the provisions of Act Numbered Thirty-one hundred and thirty-five as amended, the basis of the fees in each registry shall be an amount equivalent to ten *per centum* of the consideration of the sale in the respective city or province.

(l) In contracts of lease, the basis of the fees in each registry shall be the sum total to be paid by the lessee for the properties situated in the respective city or province during the entire period specified in the contract, including the extension contemplated by the parties which may be given effect without the necessity of further registration. If the period is from year to year, or otherwise not fixed, the basis shall be the total amount of rentals due for thirty months. If the rentals are not distributed; the total amount thereof as above computed shall be apportioned to said properties in accordance with their assessed values, and the proportionate sum thus obtained for each city or province shall be the basis of the fees to be collected in the registry concerned.

(m) In the termination of a lease, the basis of the fees in each registry shall be ten *per centum* of the amount used as basis for the collection of the fees paid for the registration of said lease.

(n) In contracts of option to purchase or promise to sell, the basis of the fees in each registry shall be five *per centum* of the current assessed value of the property subject of such contract in the respective city or province.

(o) In other transactions where the actual value of the consideration is not fixed in the contract or cannot be determined from the terms thereof, or, in case of a sale conveyance, or transfer, the consideration stated is less than the current assessed value of the property, the basis of the fees shall be the current assessed value of the property involved in the transaction. If the properties are situated in different cities or provinces, the basis of the fees in each registry shall be the assessed value of the properties lying within the jurisdiction of the registry concerned.

18. For furnishing copies of any entry, decree, document, or other papers on file, twenty centavos for each hundred words or fraction thereof contained in the copies thus furnished.

19. For certifying a copy furnished under the next preceding paragraph, for each certification, one peso.

20. For issuing a certificate relative to, or showing the existence or non-existence, of an entry in the registration books or a document on file, for each such certificate containing not more than two hundred words, three pesos; if it exceeds that number, an additional fee of fifty centavos shall be collected for every one hundred words, or fraction thereof, in excess of the first two hundred words. (As amended by Republic Act No. 928; See Circular No. N-165, [P.D. No. 91, July 1, 1953]; Also P.D. No. 1529 [Property Registration Decree].)

PENALTIES

SEC. 115. Certificates of title and duplicate certificate issued under this Act shall be subject to larceny.

SEC. 116. Whoever knowingly swears falsely to any statement required to be made under oath by this Act shall be guilty of perjury and liable to the penalties provided by law for perjury.

SEC. 117. Whoever fraudulently procures, or assists in fraudulently procuring or is privy to the fraudulent procurement of any certificate of title or owner's duplicate certificate, or of any entry in the register or other book kept in the office of the clerk of any register of deeds, or of any erasure or alteration in an entry join any set of books or in any instrument authorized by this Act, knowingly frauds or is privy to defrauding any person by means of a false or fraudulent instrument, certificate, owner's duplicate certificate, statement or affidavit affecting registered land, shall be fined not exceeding five thousand dollars or imprisoned not exceeding five years, or both, in the discretion of the court.

SEC. 118. (1) Whoever forges or procures to be forged or assist in forging the seal of the clerk or of any Register of Deeds, or the name, signature, or handwriting of any officer of the court or of the Register of Deeds,

in case where such officer is expressly or impliedly authorized to affix his signature; or

(2) Fraudulently stamps or procures to be stamped or assists in stamping any document with any forged seal of the clerk or Register of Deeds; or

(3) Forges, or procures to be forged, or assists in forging the name, signature, or handwriting of any person whosoever to any instrument which is expressly or impliedly authorized to be signed by such person under the provisions of this Act; or

(4) Uses any document upon which an impression, or part of the impression, or any seal of the clerk or of a register of deeds has been forged, knowing the same to have been forged, or any document the signature to which has been forged, shall be imprisoned not exceeding ten years or fined not exceeding five thousand dollars, or both, in the discretion of the court.

Prosecutions for offenses for violations of any of the provisions of this Act shall be instituted and conducted in the proper Court of First Instance.

SEC. 119. Whoever, with intent to defraud, sell and convey registered land knowing that an underdischarged attachment or any other encumbrance exists thereon which is not noted by memorandum on the duplicate certificate of title, without informing the grantee of such attachment or other encumbrance before considering is paid, shall be punished by imprisonment not exceeding three years or by a fine not exceeding one thousand dollars, or both, in the discretion of the court.

SEC. 120. No conviction for any act prohibited by this Act shall affect any remedy which any person aggrieved or injured by such act may be entitled to by law against the person who has committed such act or against his estate.

REGISTER OF DEEDS OF MANILA

SEC. 121. Whenever in this Act the phrase "the Register of Deeds in the province where the land lies," or an equivalent phrase, occurs, it shall be construed to include and be applicable to the Register of Deeds in the city of Manila.

PUBLIC LANDS

SEC. 122. Whenever public lands in the Philippine Islands belonging to the Government of the United States or to the Government of the Philippine Islands are alienated, granted, or conveyed to persons or to public or private corporations, the same shall be brought forthwith under the operation of this Act and shall become registered lands. It shall be the duty of the official issuing the instrument of alienation, grant, or convey-

ance in behalf of the Government to cause such instrument before its delivery to the grantee, to be filed with the register of deeds for the province where the land lies and to be there registered like other deeds and conveyances, whereupon a certificate shall be entered as in other cases of registered land, and an owner's duplicate certificate issued to the grantee. The deed, grant, or instrument of conveyance from the Government to the grantee shall not take effect as a conveyance or bind the land, but shall operate only as a contract between the Government and the grantee and as evidence of authority to the clerk or Register of Deeds to make registration. The act of registration shall be the operative act to convey and affect the lands, and in all cases under this Act registration shall be made in the office of the register of deeds for the province where the land lies. The fees for registration shall be paid by the grantee. After due registration of the certificate and owner's duplicate, such land shall be registered land for all purposes under this Act.

ACT, HOW CONSTRUED

SEC. 123. This Act shall be construed liberally so far as may be necessary for the purpose of effecting its general intent.

CONTINUANCE OF EXISTING SYSTEM AS TO UNREGISTERED LAND

SEC. 124. As to lands not registered in accordance with the provisions of this Act, the system of registration and recording heretofore established by law in these Islands shall continue and remain in force, except in so far as hereinafter modified, and the evidential weight given by existing law to titles registered as existing law now provides shall be accorded to such titles in hearings had under this Act before the examiners and before the court.

The duties of registering and recording land titles in accordance with the law heretofore existing shall be performed in the several provinces and the city of Manila by the Registers of Deeds in this Act provided, after such registers of deeds have been appointed: *Provided, however*, That the originals of deeds, mortgages, leases, and other instruments affecting the title to unregistered land shall not be retained by notaries public or other officials before whom the same are solemnized, but after having been duly executed may be delivered to the grantee, mortgagee, lessee, or other person entitled to the same and be by him presented to the Register of Deeds for the province where the land lies for registration and recording in the same manner and with the same legal effect that copies thereof certified by Register of Deeds upon receiving any such deed, mortgage, lease, or other instrument dealing with land not registered under this Act shall endorse upon the instrument so received the true years, month, day, hour, and minute when the same is received, and the same shall be deemed to

have been registered and recorded as unregistered land from the time of the endorsement of such memorandum thereon. He shall also endorse thereon the volume and page wherein the same is registered and recorded. After the due registration and recording of such instrument, the owner thereof shall be entitled to the custody and possession of the same. The original instrument, the record thereof in the books of the register of deeds, and any certified copy of such record shall be competent evidence in any court of justice. The fees of the register of deeds for registering and recording any such instrument shall be the same as those now provided by law for registering and recording a certified copy of a notarial instrument dealing with land. (Amended by Sec. 1[4], Act No. 700.)

SEC. 125. Until Registers of Deeds shall be appointed in accordance with the provisions of this Act, the officials performing the duties of registers and recorders of deeds in the several provinces, and in the city of Manila shall be Registers of Deeds and perform the duties of Registers of Deeds as defined by this Act. Their deputies shall be deputy Registers of Deeds. All laws relative to existing Registrars of Deeds and recorders, their deputies including their compensation, clerk hire, and expenses, shall extend to registers of deeds and their deputies under this Act so far as the same may be applicable.

NOTARIES PUBLIC

SEC. 126. (Repealed by Final Section [b], Act No. 2711.)

FORMS

SEC. 127. Deeds, conveyances, mortgages, leases, releases, and discharges affecting lands, whether registered under this Act or unregistered shall be sufficient in law when made substantially in accordance with the following forms, and shall be as effective to convey, encumber, lease, discharge, or bind the lands as though made in accordance with the more prolix forms heretofore in use: *Provided*, That every such instrument shall be signed by the person or persons executing the same, in the presence of two witnesses, who shall sign the instrument as witnesses to the execution thereof, and shall be acknowledged to be his or their free act and deed by the person or persons executing the same, before the judge of a court of record, or clerk of a court of recorded, or a notary public, or a justice of the peace, who shall certify to such acknowledgment sustantially in the form next hereinafter stated:

(Forms Omitted)

Provided, That when the instrument acknowledged before a notary consists of two or more pages, including the page on which the acknowledgment is written each page of the copy which is to be recorded in the

office of the Register of Deeds, or, if such copy is not be recorded, each page of the copy to be kept by the Notary Public, shall be signed on the left margin by the person or persons executing the instrument and their witnesses and sealed with the notarial seal, and this fact as well as the number of pages contained shall be stated in the acknowledgment: *Provided, further*, That when the instrument acknowledged relates to the sale, assignment, cession, conveyance, or mortgage of two or more parcels of lands, the number thereof shall be set forth in said acknowledgment. (As amended by Acts Nos. 3362 and 3439.)

SEC. 128. The Chief of the General Land Registration Office, with the approval of the judge of the fourth branch, as aforesaid, shall also prepare the blank forms necessary for carrying into proper effect the laws relative to the registration of land. (As superseded by Sec. 180, Act No. 2711.)

SEC. 129. This Act shall take effect February first, Nineteen hundred and three, and the law in force prior to January first, Nineteen hundred and three, in reference to the registration of titles to lands in the Philippine Islands, the execution of conveyances and the duties of notaries public and their appointment, is hereby continued in force for the month of January, Nineteen hundred and three, including the first day thereof. (As amended by Act No. 527.)

APPROVED, November 6, 1902.

APPENDIX "C"

REPUBLIC ACT NO. 26

AN ACT PROVIDING A SPECIAL PROCEDURE FOR THE RECONSTITUTION OF TORRENS CERTIFICATE OF TITLE LOST OR DESTROYED.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Certificates of title lost or destroyed shall be reconstituted in accordance with the provisions of this Act.

SEC. 2. Original certificates of title shall be reconstituted from such of the sources hereunder enumerated as may be available in the following order:

(a) The owner's duplicate of the certificate of title;

(b) The co-owner's mortgagee's, or lessee's duplicate of the certificate of title;

(c) A certified copy of the certificate of title, previously issued by the register of deeds or by a legal custodian thereof;

(d) An authenticated copy of the decree of registration or patent, as the case may be, pursuant to which the original certificate of title was issued;

(e) A document, on file in the Registry of Deeds by which the property, the description of which is given in said document, is mortgaged, leased or encumbered, or an authenticated copy of said document showing that its original has been registered; and

(f) Any other document which, in the judgment of the court, is sufficient and proper basis for reconstituting the lost or destroyed certificate of title.

SEC. 3. Transfer certificates of title shall be reconstituted from such of the sources hereunder enumerated as may be available, in the following order:

(a) The owner's duplicate of the certificate of title;

(b) The co-owner's mortgagee's, or lessee's duplicate of the certificate of title;

(c) A certified copy of the certificate of title, previously issued by the register of deeds or by a legal custodian thereof;

(d) The deed of transfer or other document, on file in the registry of deeds, containing the description of the property, or an authenticated copy thereof, showing that its original had been registered, and pursuant to which the lost or destroyed transfer certificate of title was issued;

(e) A document, on file in the registry of deeds, by which the property, the description of which is given in said document, is mortgaged, leased or encumbered, or an authenticated copy of said document showing that its original had been registered; and

(f) Any other document which, in the judgment of the court, is sufficient and proper basis for reconstituting the lost or destroyed certificate of title.

SEC. 4. Liens and other encumbrances affecting a destroyed or lost certificate of title shall be reconstituted from such of the sources hereunder enumerated as may be available, in the following order:

(a) Annotations or memoranda appearing on the owner's co-owner's mortgagee's or lessee's duplicate;

(b) Registered documents on file in the Registry of Deeds or authenticated copies thereof showing that the originals thereof had been registered; and

(c) Any other document which, in the judgment of the court, is sufficient and proper basis for reconstituting the liens or encumbrances affecting the property covered by the lost or destroyed certificates of title.

SEC. 5. Petitions for reconstitution from sources enumerated in Sections 2(a), 2(b), 3(a), and/or 4(a) of this Act may be filed with the Register of Deeds concerned by the registered owner, his assigns, or other person having an interest in the property. The petition shall be accompanied with the necessary sources for reconstitution and with an affidavit of the registered owner stating, among other things, that no deed or other instrument affecting the property had been presented for registration, or, if there be any, the nature thereof, the date of its presentation, as well as the name of the parties, and whether the registration of such deed or instrument is still pending accomplishment. If the reconstitution is to be made from any of the sources enumerated in Section 2(b) or 3(b), the affidavit should further state that the owner's duplicate has been lost or destroyed and the circumstances under which it was lost or destroyed. Thereupon, the register of deeds shall, no valid reason to the contrary existing, reconstitute the certificate of title as provided in the Act.

SEC. 6. The register of deeds may *motu proprio* reconstitute a certificate of title from its corresponding owner's duplicate, and, for this purpose, may compel the registered owner, or any person holding such owner's duplicate, to surrender the same to the Registry of Deeds. After reconstitution, said owner's duplicate shall be returned to the person concerned.

SEC. 7. Reconstituted certificates of the title shall have the same validity and legal effect as the original thereof: *Provided, however*, That the certificates of title reconstituted extrajudicially, in the manner stated in Sections five and six hereof, shall be without prejudice to any party whose right or interest in the property was duly noted in the original, at the time it was lost or destroyed, but entry or notation of which has not been made on the reconstituted certificate of title. This reservation shall be noted as an encumbrance on the reconstituted certificate of title.

SEC. 8. Any person whose right or interest was duly noted in the original of a certificate of title, at the time it was lost or destroyed, but does not appear so noted on the reconstituted certificate of title, which is subject to the reservation provided in the preceding section, may, while such reservation subsists, file a petition with the proper Court of First Instance for the annotation of such right or interest on said reconstituted certificate of title, and the court, after notice and hearing, shall determine the merits of the petition and render such judgment as justice and equity may require. The petition shall state the number of the reconstituted certificate of title and the nature, as well as a description, of the right or interest claimed.

SEC. 9. A registered owner desiring to have his reconstituted certificate of title freed from the encumbrance mentioned in Section seven of this Act, may file a petition to that end with the proper Court of First Instance giving his reason or reasons therefor. A similar petition may, likewise, be filed by a mortgagee, lessee or other lien holder whose interest is annotated in the reconstituted certificate of title. Thereupon, the court shall cause a notice of the petition to be published, at the expense of the petitioner, twice in successive issues of the Official Gazette, and to be posted on the main entrance of the provincial building and of the municipal building of the municipality or city in which the land lies, at least thirty days prior to the date of hearing, and after hearing, shall determine the petition and render such judgment as justice and equity may require. The notice shall specify, among other things, the number of the certificate of title, the name of the registered owner, the names of the interested parties appearing in the reconstituted certificate of title, the location of the property, and the date on which all persons having an interest in the property must appear and file such claim as they may have. The petitioner shall at the hearing, submit proof of the publication and posting of the notice: *Provided, however*, That after the expiration of two years from the date of the reconstitution of a certificate of title, if no petition has been filed within that period under

the preceding section, the court shall, on motion *ex parte* by the registered owner or other person having registered interest in the reconstituted certificate of title, order the register of deeds to cancel, after proper annotation, the encumbrance mentioned in Section seven hereof.

SEC. 10. Nothing hereinbefore provided shall prevent any registered owner or person in interest from filing the petition mentioned in Section five of this Act directly with the proper Court of First Instance, based on sources enumerated in Sections 2(a), 2(b), 3(a), 3(b), and/or 4(a) of this Act: *Provided, however*, That the Court shall cause a notice of the petition, before hearing and granting the same, to be published in the manner stated in Section nine hereof; *And, provided, further*, That certificates of title reconstituted pursuant to this section shall not be subject to the encumbrance referred to in Section seven of this Act.

SEC. 11. Petitions for reconstitution of registered interests, liens and other encumbrances, based on sources enumerated in Sections 4(b) and/or 4(c) of this Act, shall be filed, by the interested party, with the proper Court of First Instance. The petition shall be accompanied with the necessary documents and shall state, among other things the number of the certificate of title and the nature as well as a description of the interest, lien or encumbrance, in the manner stated in section nine of this Act, and after hearing, shall determine the merits of the petition and render such judgment as justice and equity may require.

SEC. 12. Petitions for reconstitution from sources enumerated in Sections 2(c), 2(d), 2(e), 2(f), 3(c), 3(d), 3(e), and/or 3(f) of this Act, shall be filed with the proper Court of First Instance, by the registered owner, his assigns, or any person having an interest in the property. The petition shall state or contain, among other things, the following: (a) that the owner's duplicate of the certificate of title had been lost or destroyed; (b) that no co-owner's, mortgagee's, or lessee's duplicate had been issued, or, if any had been issued, the same had been lost or destroyed; (c) the location area and boundaries of the property; (d) the nature and description of the building or improvements, if any, which do not belong to the owner of the land, and the names and addresses of the owners of such buildings or improvements; (e) the names and addresses of the occupants or persons in possession of the property, of the owners of the adjoining properties and of all persons who may have any interest in the property; (f) a detailed description of the encumbrances, if any, affecting the property; and (g) a statement that no deeds or other instruments affecting the property have been presented for registration, or if there be any, the registration thereof has not been accomplished, as yet. All the documents, or authenticated copies thereof, to be introduced in evidence in support to the petition for reconstitution shall be attached thereto and filed with the same: *Provided*, That in case the reconstitution is to be made exclusively from sources enumerated in Section 2(f) or 3(f) of this Act, the petition shall be further accompanied with a plan and technical description of the property duly approved by the

Chief of the General Land Registration office (now Commission of Land Registration) or with a certified copy of the description taken from a prior certificate of title covering the same property.

SEC. 13. The court shall cause a notice of the petition, filed under the preceding section, to be published, at the expense of the petitioner, twice in successive issues of the Official Gazettte, and to be posted on the main entrance of the provincial building and of the municipal building of the municipality or city in which the land is situated, at least thirty days prior to the date of hearing. The court shall likewise cause a copy of the notice to be sent, by registered mail or otherwise, at the expense of the petitioner, to every person named therein whose address is known, at least thirty days prior to the date of hearing. The court shall likewise cause a copy of the notice to be sent, by registered mail or otherwise, at the expense of the petitioner, to every person named therein whose address is known, at least thirty days prior to the date of hearing. Said notice shall state, among other things, the number of the lost or destroyed certificate of title, if known, the name of the registered owner, the names of the occupants or persons in possession of the property, the owners of the adjoining properties and all other interested parties, the location area and boundaries of the property, and the date on which all persons having any interest therein must appear and file their claim or objections to the petition. The petitioner shall, at the hearing, submit proof of the publication, posting and service of the notice as directed by the court.

SEC. 14. If any person withholds, refuses or fails within a reasonable time after request, to produce a document or paper without which the reconstitution of a certificate of title or any lien or annotation affecting the same, cannot be fully accomplished, the court may, on motion and after notice and hearing, order such person to produce and/or surrender such document or paper at the time and place named in the order and may enforce the same by suitable process.

SEC. 15. If the court, after hearing, finds that the documents presented, as supported by parole evidence or otherwise, are sufficient and proper to warrant the reconstitution of the lost or destroyed certificate of title, and that the petitioner is the registered owner of the property or has an interest therein, that the said certificate of title was in force at the time it was lost or destroyed, and that the description, area and boundaries of the property are substantially the same as those contained in the lost or destroyed certificate of title, an order of reconstitution shall be issued. The clerk of court shall forward to the Register of Deeds a certified copy of said order and all the documents which, pursuant to said order, are to be used as the basis of the reconstitution. If the court finds that there is no sufficient evidence or basis to justify the reconstitution, the petition shall be dismissed, but each dismissal shall not preclude the right of the party or parties entitled thereto to file an application for confirmation of his or their title under the provisions of the Land Registration Act.

SEC. 16. After the reconstitution of a certificate of title under the provisions of this Act, the Register of Deeds shall issue the corresponding owner's duplicate and the additional copies of said certificate of title, if any had been previously issued, where such owner's duplicate and/or additional copies have been destroyed or lost. This fact shall be noted on the reconstituted certificate of title.

SEC. 17. The register of deeds shall certify on each certificate of title reconstituted the date of the reconstitution, the source or sources from which reconstitution has been accomplished, and whether administratively or judicially.

SEC. 18. In case a certificate of title, considered lost or destroyed, be found or recovered, the same shall prevail over the reconstituted certificate of title, and, if both titles appear in the name of the same registered owner, all memoranda of new liens or encumbrances, if any, made on the latter, after its reconstitution, except the memorandum of the reservation referred to in Section seven of this Act, shall be transferred to the recovered certificate of title. Thereupon, the Register of Deeds shall cancel the reconstituted certificate of title and spread upon the owner's duplicate, as well as on the co-owner's, mortgagee's or lessee's duplicate, if any has been issued, such annotations of subsisting liens or encumbrances as may appear on the recovered certificate of title, cancelling at the same time the memorandum of the reservation referred to in Section seven hereof: *Provided, however*, That if the reconstituted certificate of title has been issued, the recovered certificate of title shall be likewise cancelled, but all subsisting liens or encumbrances, if any, appearing thereon shall be transferred to the new certificate of title and to its owner's duplicate, as well as to any co-owner's, mortgagee's, or lessee's duplicate that may have been issued, the memorandum of the reservation referred to in Section seven of this Act, if any, being thereby *ipso facto* cancelled.

SEC. 19. If the certificate of title considered lost or destroyed, and subsequently found or recovered, is not in the name of the same person in whose favor the reconstituted certificate of title has been issued, the register of deeds should bring the matter to the attention of the proper Court of First Instance, which, after due notice and hearing, shall order the cancellation of the reconstituted certificate of title and render, with respect to the memoranda of new liens or encumbrances, if any, made on the reconstituted certificate of title, after its reconstitution, such judgment as justice and equity may require: *Provided, however*, That if the reconstituted certificate of title has been cancelled by virtue of any deed or instrument, whether voluntary or involuntary or by an order of the court, and a new certificate of title has been issued, the procedure prescribed above with respect to memoranda of new liens or encumbrances made on the reconstituted certificate of title, after its reconstitution, shall be followed with respect to the new certificate of title, and to such new liens or encumbrances, if any, as may have been made on the latter, after the issuance thereof.

SEC. 20. If the registered owner or any other person withholds, refuses or fails, within a reasonable time after request, to produce the owner's duplicate or any other duplicate of a certificate of title, for cancellation or annotation as provided in Sections eighteen and nineteen of this Act, the Register of Deeds shall report the fact to the proper Court of First Instance and the court, after notice and hearing, may order the person concerned to produce the duplicate in his possession at the time and place named in the order, and may enforce the same by suitable process.

SEC. 21. In all cases where the reconstituted certificate of title does not contain the full technical description of the land, except where such technical description is contained in a prior certificate of title which is available, the registered owner shall, within two years from the date of the reconstitution, file a plan of such land with the Chief of the General Land Registration Office, who, after approving the same, shall furnish the register of deeds with a copy of the technical description of said land for annotation on the proper certificate of title and file. After the expiration of the period above prescribed, no transfer certificate of title shall be issued in pursuance of any voluntary instrument until such plan and technical description shall have been filed and noted as provided above.

SEC. 22. Every petition filed with the court under this Act shall be sworn to by the petitioner or the person acting in his behalf and filed and entitled in the land registration or cadastral case in which the decree of registration was entered. If the petition relates to a certificate of title originally issued under the provisions of Section one hundred twenty-two of Act Numbered Four hundred and ninety-six and the property has been included in a cadastral survey, the petition shall be filed in the corresponding cadastral case: *Provided, however*, That where the property has not been included in a cadastral survey, or where the land registration or cadastral case has been lost or destroyed and/or the number thereof cannot be identified, the petition shall be filed in a special case to be entitled "Special proceedings for reconstitution of lost certificate of title."

SEC. 23. No fees shall be charged for the filing of any petition under this Act, nor for any service rendered, in connection therewith or in compliance with any provision of this Act, by the Chief of the General Land Registration Office, clerks of Court of First Instance, sheriffs, and/or register of deeds. Any certified copy of document or paper that may be necessary in the reconstitution of a certificate of title under this Act shall, upon request of the court, Register of Deeds, or Chief of the General Land Registration Office, be furnished, free of charge, by any office or branch of the Government, including Government-controlled corporations, institutions or instrumentalities.

SEC. 24. The Chief of the General Land Registration Office (now Commissioner of Land Registration), with the approval of the Secretary (now Minister) of Justice, shall issue rules, regulations, circulars and in-

structions, and prescribe such books and blank forms, as may be necessary to carry into effect the provisions of this Act.

SEC. 25. Sections seventy-six, seventy-seven, and eighty-nine of Act Numbered Thirty-one hundred and ten are hereby declared inoperative, insofar as they provide for the reconstitution of certificates of title.

SEC. 26. This Act shall take effect upon its approval.

APPROVED, September 25, 1946.

APPENDIX "D"

REPUBLIC ACT NO. 6732

AN ACT ALLOWING ADMINISTRATIVE RECONSTITUTION OF ORIGINAL COPIES OF CERTIFICATES OF TITLES LOST OR DESTROYED DUE TO FIRE, FLOOD AND OTHER FORCE MAJEURE, AMENDING FOR THE PURPOSE SECTION ONE HUNDRED TEN OF PRESIDENTIAL DECREE NUMBERED FIFTEEN TWENTY-NINE AND SECTION FIVE OF REPUBLIC ACT NUMBERED TWENTY-SIX.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Section 110 of Presidential Decree No. 1529 is hereby amended to read as follows:

"SEC. 110. *Reconstitution of Lost or Destroyed Original of Torrens Title.* — Original copies of certificates of titles lost or destroyed in the offices of Register of Deeds as well as liens and encumbrances affecting the lands covered by such titles shall be reconstituted judicially in accordance with the procedure prescribed in Republic Act No. 26 insofar as not inconsistent with this Decree. The procedure relative to administrative reconstitution of lost or destroyed certificate prescribed in said Act may be availed of only in case of substantial loss or destruction of land titles due to fire, flood or other *force majeure* as determined by the Administrator of the Land Registration Authority: *Provided,* That the number of certificates of titles lost or damaged should be at least ten percent (10%) of the total number in the possession of the Office of the Register of Deeds: *Provided, further*, That in no case shall the number of certificates of titles lost or damaged be less than five hundred (500).

"Notice of all hearings of the petition for judicial reconstitution shall be furnished the Register of Deeds of the place where the land is situated and to the Administrator of the Land Registration Authority. No order or judgment ordering the reconstitution of a certificate of title shall become final until the lapse of fifteen (15) days from receipt by the Register of Deeds and by the Administrator of the Land Registration Authority of a

notice of such order or judgment without any appeal having been filed by any such officials."

SEC. 2. For the purpose of the preceding section, Section 5 of Republic Act No. 26 is hereby revived and amended to read as follows:

"SEC. 5. Petitions for reconstitution from sources enumerated in Sections 2(a), 2(b), 3(a), and 3(b) of this Act may be filed with the Register of Deeds concerned by the registered owner, his assigns, or other person, both natural and juridical, having an interest in the property. The petition shall be accompanied with the necessary sources for reconstitution and with an affidavit of the registered owner stating, among other things:

(1) That no deed or other instrument affecting the property had been presented for registration, or, if there be any, the nature thereof, the date of its presentation, as well as the names of the parties, and whether the registration of such deed or instrument is still pending accomplishment;

(2) That the owner's duplicate certificate or co-owner's duplicate is in due form without any apparent intentional alterations or erasures;

(3) That the certificate of title is not the subject of litigation or investigation, administrative or judicial, regarding its genuineness or due execution or issuance;

(4) That the certificate of title was in full force and effect at the time it was lost or destroyed;

(5) That the certificate of title is covered by a tax declaration regularly issued by the Assessor's Office; and

(6) That real estate taxes have been fully paid up to at least two (2) years prior to the filing of the petition for reconstitution.

If the reconstitution is to be made from any of the source enumerated in Section 2(b) or 3(b), the affidavit should further state that the owner's duplicate has been lost or destroyed and the circumstances under which it was lost or destroyed. Thereupon, the Register of Deeds shall, no valid reason to the contrary existing, reconstitute the certificate of title as provided in this Act."

SEC. 3. Immediately after the loss or destruction of titles mentioned in Section 2 hereof, a true, complete and faithful inventory of all books, titles, documents, cash and property in the Registry of Deeds concerned shall be prepared by the Land Registration Authority through the newly designated reconstituting officer or Register of Deeds. Said inventory, duly signed and certified under oath by the Administrator of the Land Registration Authority, shall be published in a newspaper of general circulation in the province or city where the loss or destruction of titles occurred.

SEC. 4. All reconstituted titles shall be reproduced by the Land Registration Authority in at least three image copies or in whatever means by which the original can be reproduced, one copy to be kept by the Land Registration Authority, the second copy to be kept by the National Library Archives Division, and the third copy to be secured in a government fireproof vault, preferably in the Security Printing Plant of the Central Bank. Such image copy of the original copy of the reconstituted title shall be considered after due authentication by the Land Registration Authority, through the Register of Deeds in the province or city where the land is located, as a duplicate original, and as an authorized source or basis for reconstitution together with the sources enumerated in Sections 2 and 3 of Republic Act No. 26.

SEC. 5. After reconstitution, said owner's duplicate or co-owner's duplicate exhibited as basis for the reconstitution shall be surrendered to the Register of Deeds and a new certificate of title issued in lieu thereof, the original of which shall be kept by the Register of Deeds and the owner's duplicate delivered to the registered owner.

SEC. 6. Section 6 of Republic Act No. 26 is hereby declared inoperative.

SEC. 7. Section 19 of Republic Act No. 26 is hereby amended to read as follows:

"SEC. 19. If the certificate of title considered lost or destroyed, and subsequently found or recovered, is not in the name of the same person in whose favor the reconstituted certificate of title has been issued, the Register of Deeds or the party concerned should bring the matter to the attention of the proper regional trial court, which, after due notice and hearing, shall order the cancellation of the reconstituted certificate of title and render, with respect to the memoranda of new liens and encumbrances, if any, made in the reconstituted certificate of title, after its reconstitution, such judgment as justice and equity may require; *Provided, however*, That if the reconstituted certificate of title has been cancelled by virtue of any deed or instrument, whether voluntary or involuntary, or by an order of the court, and a new certificate of title has been issued, the procedure prescribed above, with respect to the memorandum of new liens and encumbrances made on the reconstituted certificate of title, after its reconstitution, shall be followed with respect to the new certificate of title, and to such new liens and encumbrances, if any, as may have been made on the latter, after the issuance thereof."

SEC. 8. The Administrator of the Land Registration Authority, with the approval of the Secretary of Justice, shall issue rules, regulations, and circulars as may be necessary and appropriate to implement this Act, including but not limited to the following:

(1) The temporary designation of a reconstituting officer or another Register of Deeds;

(2) The submission of monthly periodic status reports on reconstitution proceedings and reconstituted titles to the Secretary of Justice and the governor or city mayor concerned; and

(3) The immediate reporting by the reconstituting officer or Register of Deeds to the Secretary of Justice and the governor or city mayor concerned on any verified complaint presented to him.

SEC. 9. The Land Registration Authority Administrator may review, revise, reverse, modify or affirm any decision of the reconstituting office or Register of Deeds. Any appeal shall be filed within fifteen days from the receipt of the judgment or order by the aggrieved party.

SEC. 10. Any interested party who by fraud, accident, mistake or excusable negligence has been unjustly deprived or prevented from taking part in the proceedings may file a petition in the proper court to set aside the decision and to reopen the proceedings. The petition shall be verified and must be filed within sixty (60) days after the petitioner learns of the decision but not more than six (6) months from the promulgation thereof.

SEC. 11. A reconstituted title obtained by means of fraud, deceit or other machination is void *ab initio* as against the party obtaining the same and all persons having knowledge thereof.

SEC. 12. Any person who by means of fraud, deceit or other machination obtains or attempts to obtain a reconstituted title shall be subject to criminal prosecution and, upon conviction, shall be liable for imprisonment for a period of not less than two (2) years but not exceeding five (5) years or the payment of a fine of not less than Twenty thousand pesos but not exceeding Two hundred thousand pesos or both at the discretion of the court.

Any public officer or employee who knowingly approves or assists in securing a decision allowing reconstitution in favor of any person not entitled thereto shall be subject to criminal prosecution and, upon conviction, shall be liable for imprisonment of not less than five years but not exceeding ten (10) years or payment of a fine of not less than Fifty thousand pesos but not exceeding One hundred thousand pesos or both at the discretion of the court and perpetual disqualification from holding public office.

SEC. 13. All acts, laws, decrees, executive orders, or parts thereof which are inconsistent with any of the provisions of this Act are hereby repealed or modified accordingly.

SEC. 14. This Act shall likewise cover administrative reconstitution of copies of original certificates of titles destroyed by fire, flood or other *force majeure* within a period of fifteen years before the effectivity of this Act.

SEC. 15. This Act shall take effect upon its publication in three newspapers of general circulation.

APPROVED,

(SGD.) JOVITO R. SALONGA
President of the Senate

(SGD.) RAMON V. MITRA
Speaker of the House of Representatives

This Act which is a consolidation of House Bill No. 14141 and Senate Bill No. 672 was finally passed by both the House of Representatives and the Senate on June 8, 1989.

(SGD.) EDWIN P. ACOBA
Secretary of the Senate

(SGD.) QUIRINO D. ABAD SANTOS, JR.
Secretary of the House of Representatives

(SGD.) CORAZON C. AQUINO
President of the Philippines

APPENDIX "E"

LRC CIRCULAR NO. 35

REPUBLIKA NG PILIPINAS
MINISTRI NG KATARUNGAN
KOMISYON SA PATALAAN NG LUPAIN
(LAND REGISTRATION COMMISSION)
LUNGSOD QUEZON

June 13, 1983

LRC CIRCULAR NO. 35

SUBJECT : Supplemental Rules and Regulations governing the Reconstitution of Lost or Destroyed Land Certificates of Title.

TO : All Clerks of Court of Regional Trial Courts, Registers of Deeds and Officials and Employees concerned.

In order to forestall, if not eliminate entirely anomalous or irregular reconstitution of lost or destroyed land certificates of title and, pursuant to the provisions of Section 6, subsections (b) and (d) and Section 110 of Presidential Decree No. 1529, the following rules and regulations governing the reconstitution of titles are hereby promulgated:

1. Certificates of title lost or destroyed for any cause shall be judicially reconstituted in accordance with the provisions of Republic Act No. 26, and its implementing rules and regulations, circulars, memoranda and administrative orders relative to judicial reconstitution of lost or destroyed certificates of title insofar as not inconsistent with the Circular.

2. All petitions of reconstitution shall be directly filed in duplicate with the clerk of court of the Regional Trial Court of the province or city where the property is situated serving copies thereof and its annexes to the following:

a. The Register of Deeds concerned

b. The Director of Lands

c. The Solicitor General

d. The corresponding Provincial or City Fiscal

3. Within five (5) days from receipt of the petition, the Clerk of Court shall forward to this Commission a signed copy of the petition together with the necessary requirements as prescribed in Sections 4 and 5 hereof; *Provided, however,* That if the certificate of title sought to be reconstituted covers two or more lots originally decreed in two or more registration cases, or that the petition covers two or more certificates of title issued pursuant to different registration cases, additional copies of the petition should be forwarded to this Commission for each additional case.

4. Where the reconstitution is to be made from the sources enumerated in Sections 2 and 3(a-e) of Republic Act No. 26 the signed duplicate copy of the petition to be forwarded to this Commission must be accompanied by the following:

(a) A copy of the document on file in the Registry of Deeds or title on the basis of which the reconstitution is to be made duly certified by the Clerk of Court of the Regional Trial Court where the petition is filed that the same is the true and faithful reproduction of the document or title presented by the petitioner or owner;

(b) A signed copy of the certification of the Register of Deeds concerned that the original of the duplicate title on file in the registry was either lost or destroyed, indicating the name of the registered owner, if known from the records on file in the said office.

5. In case the reconstitution is to be made exclusively from sources enumerated in Sections 2(f) and 3(f) of Republic Act No. 26 in relation to Section 12 thereof, the signed duplicate copy of the petition to be forwarded to this Commission shall be accompanied by the following:

(a) A duly prepared plan of said parcel of land in tracing cloth, with two (2) print copies thereof, prepared by the government agency which issued the certified technical description, or by a duly licensed Geodetic Engineer who shall certify thereon that he prepared the same on the basis of a duly certified technical description. Where the plan as submitted is certified by the government agency which issued the same, it is sufficient that the technical description be prepared by a duly licensed Geodetic Engineer on the basis of said certified plan.

(b) The original, two (2) duplicate copies, and a xerox copy of the original of the technical description of the parcel of land covered by the certificate of title, duly certified by the authorized officer of the Bureau of Lands or the Land Registration Commission who issued the technical description.

(c) A signed copy of the certification of the Register of Deeds concerned that the original of the certificate of title on file in the Registry was either lost or destroyed, indicating the name of the registered owner, if known from the other records on file in the said office.

6. The Notice shall state among other things:

(a) the number of the lost or destroyed certificate of title, if known;

(b) the name of the registered owner;

(c) the location and area of the property;

(d) the names of the occupants or persons in possession of the property;

(e) the owners of the adjoining properties;

(f) all other interested parties; and

(g) the date on which all persons having any interest therein must appear and file their claim or objection to the petition.

7. The Clerk of Court must comply strictly with the requirements of publication, posting and mailing as required under Section 13 of Republic Act No. 26.

Notices of hearings shall also be given to the Register of Deeds of the place where the property is located, the Land Registration Commissioner and the provincial or city fiscal of the province or city where the land is located who shall appear for and protect the interests of the government in court on the basis of the report and recommendations of the Land Registration Commissioner and the Register of Deeds concerned which are required to be submitted to the Court.

8. Upon receipt of the petition, the Records Section of this Commission shall, after the same is recorded in a separate book used exclusively for reconstitution cases, forward all the papers to the Clerks of Court Division for processing. If the Chief, Clerks of Court Division, finds that the requirements as called for by these guidelines have not been complied with, or that the plan and technical description as submitted by the petitioner are deficient or defective, the Court shall be immediately informed thereof so that action on the petition may be held in abeyance until after the requirements shall have been complied with.

9. Thereafter, the Chief, Clerks of Court Division, shall forward the entire records of the case, properly foldered, to the Head Geodetic Engineer of the Division of Original Registration for examination and verification.

10. After the processing and approval of the plan and technical description pursuant to Administrative Order No. 13, dated July 7, 1969

and the verification and examination of the documents to be used as the source of the reconstitution shall have been accomplished, the Head Geodetic Engineer shall return the entire records of the case, together with his written comments and/or findings, to the Chief, Clerks of Court Division, for the preparation of the corresponding report.

11. All papers, together with the Report, shall be forwarded to the Chief, Docket Division, this Commission, who shall transmit the same to proper Regional Trial Court, thru the Records Section.

12. The Register of Deeds, upon receipt of a copy of the petition and notice of hearing, shall verify the status of the title — whether valid and subsisting at the time of its alleged loss; whether or not another title exists in the said office covering the same property; and as to the existence of transactions registered or pending registration which may adversely affect thereby. He shall submit his written findings to the Court on or before the date of initial hearing of the petition.

13. The Court, after considering the report of the Land Registration Commission and comments and findings of the Register of Deeds concerned, as well as the documentary and parole evidence presented by the petitioner, may take such action on the petition as it may deem proper.

14. The Clerk of Court shall furnish by registered mail the Land Registration Commission, the Register of Deeds concerned, the Solicitor General, and the Provincial or City Fiscal each with a copy of the Order or judgment.

15. No order or judgment ordering the reconstitution of a lost or destroyed certificate of title shall become final until after thirty days from receipt of a copy thereof by the Register of Deeds and by the Commissioner of Land Registration without an appeal having been filed by any of such officials. (Sec. 110, P.D. No. 1529).

16. Should an order or judgment granting reconstitution be issued by the Court without awaiting the report and the recommendations of this Commission as well as the verification of the Register of Deeds concerned, or while the examination, verification and preparation of the report and recommendation are still pending in the said Offices due to the failure of the Clerk of Court or the petitioner to comply with all the necessary requirements as called for herein, and it appears that there is a valid ground to oppose the reconstitution, a motion to set aside the order/judgment granting reconstitution or to stay the period of finality of said order/judgment shall be filed by the Land Registration Commissioner and/or the Register of Deeds thru the Solicitor General or the Provincial or City Fiscal concerned.

17. In no case shall the Register of Deeds comply with the order of the Court to reconstitute a certificate of title without the petitioner presenting the certificate of finality from the Clerk of Court concerned.

All previous circulars, memoranda, orders or instructions or parts thereof inconsistent herewith are hereby deemed amended or superseded.

Strict compliance herewith by all concerned is hereby enjoined.

(SGD.) OSCAR R. VICTORIANO
Acting Commissioner

APPROVED.

APPENDIX "F"

LRA CIRCULAR NO. 13

REPUBLIKA NG PILIPINAS
KAGAWARAN NG KATARUNGAN
PAMBANSANG PANGASIWAAN NG PATALAAN
NG MGA TITULO AT KASULATAN SA LUPA
(NATIONAL LAND TITLES AND DEEDS
REGISTRATION ADMINISTRATION)

26 July 1989

LRA CIRCULAR NO. 13

TO : ALL RECONSTITUTING OFFICERS, REGISTERS OF DEEDS, BRANCH REGISTERS OF DEEDS AND CONCERNED OFFICIALS AND EMPLOYEES, THIS AUTHORITY

SUBJECT : ADMINISTRATIVE RECONSTITUTION OF ORIGINAL COPIES OF LOST OR DESTROYED CERTIFICATES OF TITLE PURSUANT TO REPUBLIC ACT NO. 6732

Pursuant to Section 8 of Republic Act No. 6732, the following rules and regulations are hereby promulgated for the effective implementation of the provisions of said Act:

1. *When Administrative Reconstitution May be Availed of.* — The procedure relative to administrative reconstitution of lost or destroyed original copies of certificates of title prescribed in Republic Act No. 26 may be availed of only in case of substantial loss or destruction of land titles due to fire, flood or other *force majeure* where the number of certificates of title lost or damaged is at least ten percent (10%) of the total number of titles in the custody of the Register of Deeds but in no case shall the number of titles lost or damaged be less than five hundred (500) as determined by the Administrator of the Land Registration Authority.

Original copies of certificates of title lost or destroyed due to the same causes within a period of fifteen (15) years before the effectivity of Republic Act No. 6732 may also be administratively reconstituted.

2. *Inventory of Registry Records.* — Immediately after the loss or destruction of registry records as a result of fire, flood or other *force majeure*, the newly designated Reconstituting Officer or the Register of Deeds shall prepare a true, complete and faithful inventory of all books, titles, documents, cash and property. Said inventory shall be signed by the Administrator of the Land Registration Authority and shall be published in a newspaper of general circulation in the province or city where the loss or destruction of titles occurred, together with the announcement that the lost or destroyed certificates of title may be administratively reconstituted pursuant to the provisions of R.A. No. 6732. The Administrator shall certify under oath that the inventory was prepared and certified correct by the newly designated Reconstituting Officer or the Register of Deeds.

3. *Where and By Whom Petition is Filed.* — Petitions for administrative reconstitution may be filed with the Register of Deeds of the destroyed or burned registry by the registered owner, his assigns, or other person both natural or juridical, having an interest in the property.

4. *Sources of Reconstitution.* — Only the owner's co-owner's duplicate of an original or transfer certificate of title may be used as a source of administrative reconstitution.

5. *Form and Contents of Petition.* — The petition must be verified and shall state, among other things, petitioner's full name, address and other personal circumstances, the nature of his interest in the property, and the title number of the certificate of title sought to be reconstituted.

6. *Documents to Accompany Petition.* — The petition shall be accompanied with three (3) clear and legible xerox copies of the owner's or co-owner's duplicate of the certificate of title and affidavit of the registered owner stating, among other things, the following:

(a) That no deed or other instrument affecting the property had been presented for registration, or, if there be any, the nature thereof, the date of its presentation, as well as the names of the parties, and whether the registration of such deed or instrument is still pending accomplishment;

(b) That the owner's duplicate certificate or co-owner's duplicate is in due form without any apparent intentional alterations or erasures;

(c) That the certificate of title is not the subject of litigation or investigation, administrative or judicial, regarding its genuineness or due execution or issuance;

(d) That the certificate of title was in full force and effect at the time it was lost or destroyed;

(e) That the certificate of title is covered by a tax declaration regularly issued by the Assessor's Office; and

(f) That real estate taxes have been fully paid up to at least two (2) years prior to the filing of the petition for reconstitution.

Where the reconstitution is to be made on the basis of the co-owner's duplicate certificate, the affidavit shall further state that the owner's duplicate has been lost or destroyed and the circumstances surrounding its loss or destruction.

If such loss or destruction occurred while said owner's duplicate was in the possession of any person other than the registered owner, an affidavit of such person stating the fact and circumstances of such loss or destruction, and how he obtained possession of said owner's duplicate, must be submitted together with the petition.

7. *Referral of Petition to Reconstituting Officer.* — After receipt of the petition and upon being satisfied that the requirements of Republic Act No. 6732 and these guidelines have been complied with, the Register of Deeds concerned shall forward the petition and its accompanying documents, together with his comments, if any, to the Reconstituting Officer or the Register of Deeds of another registry to be designated by the Administrator. The Reconstituting Officer shall be assisted by such number of personnel as may be designated by the Administrator.

8. *Order of Reconstruction.* — If the Reconstituting Officer or the Register of Deeds of another registry, after appropriate verification, is an order of reconstitution. Otherwise, he shall deny the petition, stating his reasons therefor. The Register of Deeds concerned and the petitioner shall be furnished with copies of the order.

9. *Review by the Administrator.* — The Administrator of the Land Registration Authority may review, revise, reverse, modify or affirm any decision of the Reconstituting Officer or Register of Deeds. Any appeal shall be filed within fifteen (15) days from the receipt of judgment or order by the aggrieved party. *(Section 9, Republic Act No. 6732.)*

10. *Manner of Reconstitution.* — If no appeal has been taken, or if the Administrator affirms the order of reconstitutions of the Register of Deeds concerned, no valid reason to the contrary existing, and upon surrender of the owner's or co-owner's duplicate, shall reconstitute the certificate of title copying *verbatim* on the appropriate judicial form the full name of the registered owner, his civil status, name of spouse if married, citizenship, residence, extent of ownership in case there are several owners, the description of the property and all liens and encumbrances noted on the owner's or co-owner's duplicate. All blank spaces in the form shall be filled out properly and correctly and as completely as possible in accordance with the data available.

11. Adoption of Applicable Rules of GLRO Circular No. 17. The following paragraphs of GLRO Circular No. 17, dated February 19, 1947, as modified, relative to administrative reconstitution of certificates of title are hereby adopted as part of these rules and regulations:

x x x x x x x x x

"7. A certificate of title partially destroyed shall be reconstituted totally. But if said certificate of title consists of more than one sheet, such sheet or sheets only as may have been destroyed or be missing should be reconstituted.

x x x x x x x x x

14. The Register of Deeds shall certify on each reconstituted certification of title the date of its reconstitution, the source or sources thereof, and the number of pages of which said certificate consists. This certification which shall be placed on the space immediately below the last annotation on the reconstituted title or on the additional sheet thereof, should be in a form substantially as follows:

"It is hereby certified that this certificate of title, consisting of _____ pages, has on date been constituted from its owner's (or co-owner's) duplicate, the reconstitution having been effected administratively under the provisions of Republic Act No. 26 in relation to Republic Act No. 6732."

The Register of Deeds shall further write or have stamped in a conspicuous place on the face of the reconstituted certificate of title, preferably on the upper portion thereof, the following words in capital letters:

"RECONSTITUTED UNDER REPUBLIC ACT NO. 26 IN RELATION TO REPUBLIC ACT NO. 6732."

15. On the owner's or co-owner's duplicate which served as basis of the reconstitution, the Register of Deeds shall enter a note in a form substantially as follows:

"It is hereby certified that pursuant to the provisions of Republic Act No. 26 in relation to Republic Act No. 6732, the original of this certificate of title has been reconstituted from this owner's (or co-owner's) duplicate on this date."

17. Reconstituted certificates of title shall be given new number in the following manner:

(a) In the case of original certificates of title entered pursuant to decrees issued in land registration or cadastral proceedings, the new numbers which must be in consecutive order starting from number 1, shall be preceded by a dash and the capital letters RO, and followed, in parenthesis, by the number of the respective lost or destroyed certificates of title, for example, RO-1 (3647), RO-2 (4567), RO-3 (763), etc.

(b) In case of original certificates of title entered pursuant to patents issued under the Public Land Act, the new numbers which

must be in consecutive order starting from number 1, shall be preceded by a dash and the capital letters RP, and followed, in parenthesis, by the number of the respective lost or destroyed certificates of title. For example, RP-1 (528), RP-2 (376), RP-3 (787), etc.

(c) In the case of transfer certificates of title, irrespective of their origin the new numbers which must be in consecutive order starting from number 1, shall be preceded by a dash and the capital letters RT, and followed, in parenthesis, by the number of the respective lost or destroyed certificates of title. For example, RT-1 (123456), RT-2 (78654), RT-3 (89674), etc.

18. All owner's or co-owner's duplicate subsisting at the time of, or issued after, the reconstitution of their originals, shall bear the same number as that given to their respective reconstituted certificates of title in accordance with the preceding paragraph.

19. Reconstituted certificates of title shall be placed in their corresponding binders which, with such certificates, shall be known as the registration books of reconstituted certificates of title. There shall be three sets of this kind of books which shall be entitled as follows:

(a) "Registration Book of Reconstituted Original Certificates of Title," which shall contain reconstituted copies only of original certificates of title entered pursuant to decrees issued in land registration or cadastral proceedings.

(b) "Registration Book of Reconstituted Original Certificates of Title, Section 103, P.D. No. 1529," which will contain reconstituted copies only of original certificates of title entered pursuant to patents of title of all kinds irrespective of their origin.

20. Each Book of Reconstituted Certificates of Title shall contain 200 certificates only of the same kind, as above indicated, and all books belonging to the same kind shall be numbered consecutively beginning with number 1. The title of each book shall be written on the cover thereof.

21. The Register of Deeds shall keep a record book in which he shall enter chronologically all petitions or orders for reconstitution of certificates of title. All entries in said record book shall be numbered consecutively beginning with number 1, and shall state the date of entry, name of petitioner, number of the certificate of title, and date of reconstitution.

22. All deeds, documents and other papers, including court orders, notices of attachment, notice of *lis pendens*, and other adverse claims, which had been presented and duly noted in the entry books and are intact in the office of the Register of Deeds, but the registration thereof had not been accomplished at the time the certificates

of title affected thereby were lost or destroyed, shall be taken into consideration in effecting the reconstitution of the certificates of title concerned, and their registration shall be accomplished or completed, if found to be in order, upon or after such reconstitution."

12. *Annotation and Cancellation of Reservation.* — On all administratively reconstituted certificates of title, as well as on their owner's or co-owner's duplicates that served as basis for the reconstitution, the Register of Deeds shall enter a memorandum of the reservation provided in Section 7 of Republic Act No. 26. this memorandum should be in a form substantially as follows:

(a) On the reconstituted certificate of title:

"Pursuant to Section 7 of Republic Act No. 26, this certificate of having been administratively reconstituted is without prejudice to any party whose right or interest in the property was duly noted on the original hereof at the time it was lost or destroyed.

(b) On the owner's and co-owner's duplicates of the reconstituted certificate of title:

"Pursuant to Section 7 of Republic Act No. 26, this certificate of title, the original of which has been administratively reconstituted, is without prejudice to any party whose right or interest in the property was duly noted on said original copy at the time it was lost or destroyed."

(c) On all transfer certificates of title issued subsequently covering the same property:

"Pursuant to Section 7 of Republic Act No. 26, this certificate of title is without prejudice to any party whose right or interest in the property was duly noted on the original of reconstituted certificate of title No. _____ at the time it was lost or destroyed."

This reservation shall be carried over in all transfer certificates issued subsequently covering the same property, or a portion thereof, until cancelled in accordance with Section 9 of Republic Act No. 26.

13. *Titles Without Full Technical Description.* — Where the reconstituted certificate of title does not contain the full technical description of the land but only the location, area and boundaries thereof, except where such technical description is contained in a prior certificate of title which is available, the Register of Deeds shall annotate on said reconstituted certificate a memorandum to the effect that the registered owner must, within two (2) years from the date of reconstitution, file a plea and technical description of such land with the Administrator, Land Registration Authority pursuant to Section 21 of Republic Act No. 26. Said memorandum shall likewise be annotated on the owner's duplicate, as well as on all other duplicates, and shall be carried over on all new certificates of title

that may be subsequently issued. After the expiration of the period above mentioned, no transfer certificate of title shall be issued in pursuance of any voluntary instrument until such plan and technical description shall have been filed approved and noted as provided by law.

14. *Retention of Owner's or Co-owner's Duplicate.* — After reconstitution, the owner's or co-owner's duplicate surrendered by the petitioner shall be retained by the Register of Deeds and a new certificate of title issued in lieu thereof, the original of which shall be kept in the registry while the owner's duplicate thereof delivered to the registered owner.

15. *Reproduction of Reconstituted Titles.* — Reconstituted titles shall be reproduced in three (3) image copies, one copy to be kept in this Authority, while the second and third copies shall be stored for safekeeping purposes in the National Library Archives Division and in the fire-proof vault of the Security Printing Plant of the Central Bank. Such image copy shall, after the authentication by the Register of Deeds of the province or an authorized source of reconstitution together with the other source enumerated in Sections 2 and 3 of Republic Act No. 26: *Provided, however,* That for examination, verification or reference purposes, only the original copy of the reconstituted certificate of title filed in the registry or the timage copy thereof kept in this Authority may be used.

16. *Monthly Reports.* — The Reconstituting Officer or the Register of Deeds concerned shall submit to the Secretary of Justice and the governor or city mayor concerned monthly periodic status reports on reconstitution proceedings and reconstituted titles, as well as immediate reports of any verified complain presented to them.

17. *Exemption from Fees.* — No fees shall be charged for the filing of any petition nor for any service rendered in connection therewith or of in compliance with any provision of Republic Act No. 26 in relation to Republic Act No. 6732 by the Administrator, Reconstituting Officer or Register of Deeds.

18. *Recourse to the Courts.* — Any interested party who by fraud, accident, mistake or excusable negligence has been unjustly deprived or prevented from taking part in the proceedings may file a petition in the proper court to set aside the decision and to reopen the proceedings. The petition shall be verified and must be filed within sixty (6) days after the petitioner learns of the decision but not more than six (6) months from the promulgation thereof.

19. *Penal Sanctions.* — Any person who by means of fraud, deceit or other machination obtains or attempts to obtain a reconstituted title shall be subject to criminal prosecution and, upon conviction, shall be liable for imprisonment for a period of not less than two years but not exceeding five years or the payment of a fine of not less than Twenty thousand pesos but not exceeding Two hundred thousand Pesos at the discretion of the court.

Any public officer or employee who knowingly approves or assists in securing a decision allowing reconstitution in favor of any person not entitled thereto shall be subject to criminal prosecution and, upon, conviction, exceeding ten years or payment of a fine of not less than Fifty thousand pesos but not exceeding ten years or payment of a fine of not less than Fifty thousand pesos but not exceeding One hundred thousand pesos or both at the discretion of the court and perpetual disqualification from holding public office. *(Section 12, R.A. No. 6732.)*

20. *Repealing Clause.* — All circulars, administrative orders, rules, regulations and other issuance or parts thereof inconsistent with any of the provisions of these guidelines are hereby repealed or modified accordingly.

21. *Effectivity*. — This Circular shall take effect after fifteen (15) days following its publication once in a newspaper of general circulation in the Philippines.

APPENDIX "G"

BATAS PAMBANSA BLG. 185

PARLIAMENTARY BILL NO. 1705

AN ACT TO IMPLEMENT SECTION FIFTEEN OF ARTICLE XIV OF THE CONSTITUTION AND FOR OTHER PURPOSES.

Be it enacted by the Batasang Pambansa in session assembled:

SECTION 1. In implementation of Section fifteen of Article XIV of the Constitution, a natural-born citizen of the Philippines who has lost his Philippine citizenship may be a transferee of private land, for use by him as his residence, subject to the provisions of this Act.

SEC. 2. Any natural-born citizen of the Philippines who has lost his Philippine citizenship and who has the legal capacity to enter into a contract under Philippine laws may be a transferee of a private land up to a maximum area of one thousand square meters, in the case of urban land, or one hectare in case of rural land, to be used by him as his residence. In the case of married couples, one of them may avail of the privilege herein granted: *Provided*, That if both shall avail of the same, the total area acquired shall not exceed the minimum herein fixed.

In case the transferee already owns urban or rural lands for residential purposes, he shall still be entitled to be a transferee of additional urban or rural lands for residential purposes which, when added to those already owned by him, shall not exceed the maximum areas herein authorized.

SEC. 3. A transferee under this Act may acquire not more than two lots which should be situated in different municipalities or cities anywhere in the Philippines: *Provided*, That the total area thereof shall not exceed one thousand square meters in the case of urban lands or one hectare in the case of rural lands for use by him as his residence. A transferee who has already acquired land shall be disqualified from acquiring rural land, and vice versa.

SEC. 4. As used in this Act —

(a) A natural-born citizen is one who is a citizen of the Philippines from birth without having to perform any act to acquire or perfect his

Philippine citizenship.

(b) Urban area shall include:

(1) In their entirety, all municipal jurisdictions which, whether designated as chartered cities, provincial capitals or not, have a population density of at least 1,000 persons per square kilometer;

(2) *Poblaciones* or central districts of municipalities and cities which have a population density of at least 500 persons per square kilometer;

(3) *Poblaciones* or central districts (not included in 1 and 2) regardless of population size which are the following:

(a) Street pattern, *i.e.*, network of street in either at parallel or right angle orientation;

(b) At least six establishments (commercial, manufacturing, recreational and/or personal services); and

(c) At least three of the following:

1. A town hall, church or chapel with religious services at least once a month;

2. A public plaza, park or cemetery;

3. A market place or building where trading activities are carried on at least once a week; and

4. A public building like a school, hospital puericulture and health center or library.

(4) Barangays having at least 1,000 inhabitants which meet the conditions set forth in subparagraph (3) of paragraph (b) above, and in which the occupation of the inhabitants is predominantly other than farming or fishing.

(c) All other areas of the Philippines which do not meet the conditions in the preceding definition of urban areas shall be considered as rural areas.

SEC. 5. Transfer as a mode of acquisition of private land under this Act refers to either voluntary or involuntary sale, devisee or donation. Involuntary sales shall include sales tax delinquency, foreclosures and executions of judgment.

SEC. 6. In addition to the requirements provided for in other laws for the registration of titles to lands, no private land shall be transferred under this Act, unless the transferee shall submit to the Register of Deeds of the province or city where the property is located a sworn statement showing the date and place of his birth; the names and addresses of his

parents, of his spouse and children, if any; the area, the location and the mode of acquisition of his landholdings in the Philippines, if any; his intention to reside permanently in the Philippines, the date he lost his Philippine citizenship and the country of which he is presently a citizen; and such other information as may be required under Section 8 of this Act.

SEC. 7. The transferee shall not use the lands acquired under this Act for any purpose other than for his residence. Violations of this section, any misrepresentation in the sworn statement required under Section 6 hereof, any acquisition through fraudulent means or failure to reside permanently in the land acquired within two years from the acquisition thereof, except when such failure is caused by *force majeure*, shall, in addition to any liability under the Revised Penal Code and deportation in appropriate cases, be penalized for forfeiture of such lands and their improvements to the National Government. For this purpose, the Solicitor General or his representative shall institute *escheat* proceedings.

Any transferee liable under this section shall moreover be forever barred from further availing of the privilege granted under this Act.

SEC. 8. The Minister of Justice shall issue such rules and regulations as may be necessary to carry out the provisions of this Act. Such rules and regulations shall take effect fifteen days following its publication in a newspaper of general circulation in the Philippines.

SEC. 9. If any part of this Act shall be declared unconstitutional, the remaining provisions not thereby affected shall remain in full force and effect.

SEC. 10. This Act shall take effect upon its approval.

APPROVED, March 16, 1982.

APPENDIX "H"

RULES AND REGULATIONS TO IMPLEMENT THE PROVISIONS OF BATAS PAMBANSA BLG. 185, ENTITLED "AN ACT TO IMPLEMENT SECTION FIFTEEN OF ARTICLE XIV OF THE CONSTITUTION AND FOR OTHER PURPOSES."

Pursuant to Section 8 of Batas Pambansa Blg. 185, the following rules and regulations are hereby promulgated to implement the provisions of said Act:

SECTION 1. *Definition of terms.* — As used in these rules and regulations:

1. A natural-born citizen is one who is a citizen of the Philippines from birth without having to perform any act to acquire or perfect his Philippine citizenship.

2. Private land shall refer to all lands of private ownership as distinguished from public lands or lands of the public domain.

3. Urban land shall refer to land located in an urban area. The urban areas shall include:

(1) In their entirety, all municipal jurisdictions which, whether or not designated as chartered cities, provincial capitals, have a population density of at least 1,000 per square kilometer;

(2) *Poblaciones* or central districts of municipalities and cities which have a population density of at least 500 persons per square kilometer;

(3) *Poblaciones* or central districts (not included in 1 and 2 above) regardless of population size which have the following:

(a) A street pattern, *i.e.*, a network of streets in either at parallel or right angle orientation; and

(b) At least six establishments (commercial, manufacturing, recreational and/or personal services); and

(c) At least three of the following:

1. A town hall, church or chapel with religious services at least once a month;

2. A public plaza or cemetery;

3. A market place or building where trading activities are carried on at least once a week; and

4. A public building like a school, hospital, puericulture and health center or library.

(4) Barangays having at least 1,000 inhabitants which meet the conditions set forth in the preceding subparagraph (subpar. [3]) and in which the occupation of the inhabitants is predominantly other than farming or fishing.

4. Rural land shall refer to land located in a rural area. The rural areas shall refer to all areas of the Philippines which do not meet the conditions set forth in the definition of urban areas found in the immediately preceding paragraph (par. 3) of this section.

5. Transfer as a mode of acquisition of private land under Batas Pambansa Blg. 185 as implemented by these rules and regulations shall refer to either voluntary or involuntary sale, devise or donation. Involuntary sales shall include sales on tax delinquency, foreclosures and executions of judgment.

SECTION 2. *Aliens who may be transferees of private land in the Philippines.* — Only those natural-born citizens of the Philippines who have lost their Philippine citizenship and who have legal capacity to enter into a contract under Philippine laws may be transferees of private land in the Philippines as authorized in Batas Pambansa Blg. 185.

SECTION 3. *Area limitation and use.* — A qualified transferee under these rules shall be entitled to acquired and own private land up to a maximum area of one thousand (1,000) square meters in the case of urban land, or one (1) hectare in the case of rural land to be used by him as his residence.

In the case of married couples, any one or both of them may avail of the privilege herein granted, provided, that if both shall avail of the same, the total area thus acquired shall not exceed the maximum herein fixed.

A qualified transferee who already owns urban or rural lands for residential purposes shall still be entitled to be a transferee of additional urban or rural lands for residential purposes which, when added to those already owned by him, shall not exceed the maximum areas herein authorized.

A transferee may acquire not more than two (2) lots which should be situated in different municipalities or cities throughout the Philippines:

Provided, That the total areas of the two (2) lots shall not exceed one thousand (1,000) square meters in the case of urban lands or one (1) hectare in the case of rural lands.

A transferee who has already acquired urban land in accordance with Batas Pambansa Blg. 185 shall be disqualified from acquiring rural land, and vice versa.

The transferee shall not use lands acquired under these rules and regulations for any purpose other than for his residence.

SECTION 4. *Mechanics for registration of transfer.* — No deed of conveyance in favor of a transferee under Batas Pambansa Blg. 185 shall be registered by the Register of Deeds unless accompanied by a sworn statement showing the date and place of the transferee's birth; the names and addresses of his parents, of his spouse and children, if any; the area, the location and the mode of acquisition of his landholdings in the Philippines, if any; his intention to reside permanently in the Philippines; the date he lost his Philippine citizenship, and the country of which he is presently a citizen.

The sworn statement herein above mentioned shall be in addition to the documentary requirements prescribed as prerequisites for the registration of titles under existing law, rule and regulation.

SECTION 5. *Prohibitions and restrictions; penalties.* — It shall be unlawful for any transferee to devote land acquired under these rules and regulations to any use other than for residential purposes. Any violation of this section, any misrepresentation in the sworn statement required under the preceding section, any acquisition through fraudulent means, or failure to reside permanently in the land acquired within two (2) years from the acquisition thereof, except when such failure is caused by *force majeure*, shall be penalized by forfeiture of such lands and the improvements thereon in favor of the National Government through *escheat* proceedings to be initiated by the Solicitor General or his representative.

The transferee who commits any of the acts referred to in the preceding paragraph shall, in addition, be liable to prosecution under the applicable provision of the Revised Penal Code and shall be subject to deportation proceedings. Furthermore, he shall forever be barred from availing of the privilege granted under Batas Pambansa Blg. 185.

SECTION 6. *Effectivity.* — These rules and regulations shall take effect fifteen (15) days following their publication in a newspaper of general circulation in the Philippines.

July 13, 1982.

APPROVED:

(SGD.) RICARDO C. PUNO
Minister of Justice

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LAND REGISTRATION AND RELATED PROCEEDINGS

by

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To my wife Perlita and daughters Amelita, Marissa, Nieves, Cristina, Liza Ann and Grace Victoria

PREFACE

This book, on its fourth edition, proceeds on the hope that it would continue to provide a better understanding of the subject by the law students and by the practicing lawyers. A modest revision was made to incorporate recent clarificatory rulings of the Supreme Court.

I wish to acknowledge the continuing support and encouragement of Prof. Ruben E. Agpalo and the clerical assistance of Consuelo Liwag.

AMADO D. AQUINO

February, 2007.

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