

[Empty box for Instrument No.]

Privacy Notice: Section 4 of the Registered Land Law authorises the Registrar of Lands to collect the information required by this form for the establishment and maintenance of the Land Register. Section 35 requires that the Register is made available to any person for search and inspection upon payment of a fee. It may also be used for authorised purposes in accordance with legislation and policy requirements. For more information, please see the Department's website.

CAYMAN ISLANDS
The Registered Land Law (2018 Revision)
The Registered Land Rules (2018 Revision)

THIRD SCHEDULE

**TRANSFER BY CHARGE IN EXERCISE OF
POWER OF SALE**

REGISTRATION SECTION

BLOCK

PARCEL

.....

I/WE

having exercised the power of sale conferred upon me/us by the charge shown as entry number in the incumbrances section of the register to the above mentioned title, in consideration of (the receipt whereof is hereby acknowledged) HEREBY TRANSFER

to

of

the interest charged by the said charge.

*The Transferees declare that they hold the said interest as proprietors in common in the following undivided shares:

(or Joint Proprietors)

Dated this day of 20

Signed by the Transferor

in the presence of:-

Signed by the Transferee

in the presence of:-

*Delete if not applicable.

CERTIFICATE OF IDENTIFICATION

Name.....

I HEREBY CERTIFY that the above namedappeared before me on the.....day of.....20.....and being identified by* (or being known to me) acknowledged the above signature or mark to be his/theirs and that he/they had freely and voluntarily executed this instrument and understood its contents.

.....
Signature and designation of the person certifying

CERTIFICATE OF IDENTIFICATION

Name.....

I HEREBY CERTIFY that the above namedappeared before me on the.....day of.....20.....and being identified by* (or being known to me) acknowledged the above signature or mark to be his/theirs and that he/they had freely and voluntarily executed this instrument and understood its contents.

.....
Signature and designation of the person certifying

CERTIFICATE OF IDENTIFICATION

Name.....

I HEREBY CERTIFY that the above namedappeared before me on the.....day of.....20.....and being identified by* (or being known to me) acknowledged the above signature or mark to be his/theirs and that he/they had freely and voluntarily executed this instrument and understood its contents.

.....
Signature and designation of the person certifying

CERTIFICATE OF IDENTIFICATION

Name.....

I HEREBY CERTIFY that the above namedappeared before me on the.....day of.....20.....and being identified by* (or being known to me) acknowledged the above signature or mark to be his/theirs and that he/they had freely and voluntarily executed this instrument and understood its contents.

.....
Signature and designation of the person certifying

*NOTE: Please ensure that the appropriate insertions and/or deletions are made so that the method of identification is clear.

The information provided in this guide is not intended to amount to legal advice. Professional assistance may be required to determine the most appropriate action. Lands Registry accepts no responsibility where parties print this guide and seek to rely on information that is out of date.

This guide details Land Registry practice and requirements relating to the registration of transfers of a registered estate under a chargee's power of sale. It is primarily aimed at lenders and attorneys.

BACKGROUND

Under the RLA, the land or interest in land of a registered proprietor may be sold to satisfy monies owing on a charge/mortgage. When a chargor is in default under a charge, the chargee is entitled to commence proceedings whereby the property will be sold to a third party and sale proceeds applied to the mortgage loan.

The appropriate means is to lodge a Transfer by Chargee, Form 4, and is effective as if made by the registered proprietor.

PROCEDURE

In the case of a charge created by deed expressed to be by way of legal mortgage, in the absence of an expression of contrary intention in the charge, the chargee has a statutory power of sale when the mortgage money is due (section 72 of the RLA). Although the power of sale arises at this point, it does not become exercisable unless one of 3 conditions has been satisfied, which are:

- There is a default in the payment or interest or some other condition (other than money) for one month;
- payment of the mortgage money has been served on the borrower, and
- default continues for 3 months thereafter.

A condition precedent to a valid exercise by a mortgagee of the power to sell is the service of a notice on the mortgagor. This notice must clearly specify the default complained of and provide the mortgagor with an opportunity to remedy the default within the specified time of one month as required by the RLA, or such other period as may be provided for in the mortgage.

It sometimes happens that a charge of the registered estate is made by deed and expressed to be by way of legal mortgage, but it is not completed by registration. In these circumstances, the charge takes effect as an equitable charge, and the chargee still has power of sale. If the charge is unregistered, the court must grant an order confirming the sale and directing the Registrar to do certain things, including registration of a transfer by a chargee.

REMOVAL OF ENTRIES IN THE REGISTER

In both situations, the chargee's security for the loan is the chargor's interest in the property as it existed at the time of registration of the mortgage. Thus, as a general principle, registration of such transfers deal only with the extinguishment of interests in the property which are registered after.

1. On registration of the transfer we will remove the entry in the proprietorship register that gives the **chargor/proprietor's details**.
2. We will remove the entries for the **charge and any associated restrictions**.
3. We will only remove other entries if it is clear to us that the charge has priority to the interest which is the subject of the entry (The sale will override all rights over which the charge has priority).
4. **Other registered charges** - The transfer overrides any subsequent registered charges. The priority of registered charges as between themselves is determined by the order in which they are entered in the register, subject to any entry in the register to the contrary (section xx

The registration of such a transfer may be prevented or delayed by the presence on the register of cautions, restrictions or inhibitions prohibiting dealings.

There are certain cases, however, where a contract made by a registered proprietor whose land is subject to a charge will have bound the registered chargee. That will be so where the registered proprietor contracts to grant a lease and the registered chargee has consented to that contract.

Restrictions

Where there is a restriction in the register, the chargee should check if the restriction will prevent registration of the transfer and needs to be removed from the register on registration of the transfer. If it does, they should ensure that the terms of the restriction has been complied with.

This can be ascertained from the wording of the restriction. In particular, many restrictions may prevent the registration of dispositions by the proprietor of the registered estate, example restriction on transfers within a certain time.

Effect on cautions

When lodged **prior** to the charge an absolute caution must be withdrawn. When lodged **subsequent** to the charge it will be automatically removed.

Discharge of Charge

The transfer operates to release the land from the charge. A separate discharge for the charge is therefore not required.

However, where another registered charge has priority, you will have to lodge a discharge from the lender for the charge or confirm that the transfer is being made subject to the other charge

REQUIREMENTS FOR REGISTRATION

To enable the Registrar of Lands to be satisfied that s.72 of the RLA have been complied with, the Registrar requires the chargee lodge a copy of the listing showing evidence that the property was offered for sale by way of "public auction" and that the sale has occurred in compliance both with the terms of the mortgage and the provisions of the RLA. In the case of Court authorization a copy of the order will also be required.

CHARGE OF A LEASE

A Mortgage of a Lease may exercise powers of sale against the Lease, the recital to the form being varied accordingly.