

Malawi

Deeds Registration Act

Chapter 58:02

Legislation as at 31 December 2014

FRBR URI: /akn/mw/act/1916/8/eng@2014-12-31

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PDF created on 21 February 2024 at 12:26.

Collection last checked for updates: 31 December 2014.

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Malawi

Deeds Registration Act Chapter 58:02

Commenced on 31 March 1916

[This is the version of this document at 31 December 2014.]

[Note: This version of the Act was revised and consolidated in the Fifth Revised Edition of the Laws of Malawi (L.R.O. 1/2018), by the Solicitor General and Secretary for Justice under the authority of the Revision of the Laws Act.]

An Act to replace with amendments the law as to the registration of documents relating to land

1. Short title

This Act may be cited for all purposes as the Deeds Registration Act.

2. Saving

All documents affecting land registered under the Registration of Documents Ordinance, 1910 (now repealed) or under any previous regulation shall be deemed to be registered under this Act.

[12 of 1910]

3. Interpretation

In this Act unless the context otherwise requires—

“**Deeds Registrar**” means the Registrar General or such other person as the Minister may, by notice published in the *Gazette*, appoint to be Deeds Registrar for the purpose of this Act;

“**Document**” includes deeds and all instruments m tenting which pass any interest in land or affecting land and in the case of a will means the probate of a will sealed in Malawi or letters of administration with will annexed sealed in Malawi;

“**Deeds Registry File**” shall consist of documents filed in chronological order in the archives of the Deeds Registry.

4. Official seal

- (1) The Deeds Registrar shall have an official seal.
- (2) Judicial notice shall be taken by all courts of law of the said official seal and any instruments purporting to be sealed therewith shall be presumed to be a correct copy of the original.

5. Power to sue

The Deeds Registrar may sue and be sued by his official title.

6. Compulsory registration of documents

From and after the commencement of this Act all deeds, conveyances, wills and instruments in writing whether under seal or not whereby any land or interest in or affecting land other than land registered in accordance with the Registered Land Act, may be affected at law or in equity whether executed prior or subsequent to the date of this Act are subject to compulsory registration in the Deeds Registry Office:

Provided that the Minister designated for the purpose of this section by the President may, in such areas and in respect of such leases or classes of leases or other instruments relating to land tenancy as he may

specify by notice published in the *Gazette*, exempt such leases, classes of leases or other instruments from the requirement of registration under this section.

[Cap. 58:01]

[25 of 1968]

7. Time for presenting documents for registration

- (1) In the case of any deed or document the registration of which is declared by this Act to be compulsory—
 - (a) where such deed or document is executed after the commencement of this Act the same shall be presented for registration within three months from the date of its execution if executed within Malawi;
 - (b) where such deed or document is executed after the commencement of this Act but without Malawi, the same shall be presented for registration within six months from the date of its execution;
 - (c) where such deed or document has been executed before the commencement of this Act and has not been registered but its effect continues after the commencement of this Act the same shall be presented for registration within three months of the commencement of this Act;
 - (d) the registration of any unregistered document executed before the commencement of this Act shall validate the transaction thereby effected as from the date of the document but subject to any interim registered acts touching the same land or interests and subject to any dealings of later date that may be registered under the next following paragraph;
 - (e) the High Court may in its discretion in any particular case extend the time for lodging any deed or document for registration upon such terms and conditions as it may deem reasonable.
- (2) In calculating the time within which any deed or document shall be presented for registration in accordance with paragraph (a) or (b) of subsection (1), any period during which such deed or document is lodged with the Commissioners of Stamp Duties for purposes of adjudication of stamp duty under the Stamp Duties Act shall not be taken into account and such deed or document shall be presented for registration within thirty days after the date shown on the particular stamp stamped thereon pursuant to [section 16 \(2\)](#) or [section 16 \(3\)](#), as the case may be, of the said Stamp Duties Act.

[51 of 1971]

[Cap. 43:01]

8. Charges on land take priority according to date of registration

All charges upon land or any interest in land whether by way of mortgage or otherwise and whether equitable or otherwise and all transfers, assignments or leases of land shall take priority according to the date of registration.

All priorities given by this Act shall have full effect in all courts except in cases of actual fraud and all persons claiming thereunder any legal or equitable interests shall be entitled to corresponding priorities and no person shall lose any such priority merely in consequence of his having been affected with actual or constructive notice of a prior unregistered document except in cases of actual fraud.

9. Holder of mortgage entitled to certificate of registration

The holder of a mortgage or charge shall be entitled on demand to receive a certificate of registration on payment of the prescribed fees.

10. Registration of recognizance

A recognizance or bond entered into by order of the High Court may be registered as a charge on land or any interest in land on lodgment of a certificate from the Registrar of the High Court that such recognizance or bond has been duly filed.

11. Registration of *lis pendens*

A *lis pendens* to affect land or interest therein may be registered as a charge against the same on production of evidence of the institution of any proceedings in the High Court affecting the land or interest. Such evidence shall consist of the certificate of the Registrar of the High Court or any order of the High Court showing the institution of such proceedings.

12. Cancellation of registration

A recognizance, bond or *lis pendens* may be cancelled in the Register on the lodgment of a certificate from the Registry of the High Court showing that the same has been vacated.

13. Registration defined

Registration shall consist—

- (a) where the land affected is not public land, in the filing of a copy of the document brought for registration in the Deeds Registry File, such copy to be duly certified by the Deeds Registrar as a true copy and in the entry in the Deeds Registry of the names of the parties, the date of the document, the date and hour of registration and briefly the nature of the document;
- (b) where the land affected is public land, registration shall be defined as in the preceding paragraph with the addition that an extra copy must be lodged and certified for the use of Government;
- (c) in the case of bonds, recognizances or *lites pendentes* referred to in section 10, 11 or 12, registration shall consist in the filing of the certificate of the Registrar of the High Court or a copy of the order of the Court.

14. Power of attorney

If the instrument presented for registration has been executed under power of attorney the power of attorney or an office copy thereof shall be produced to the Registrar and in cases not falling within section 8 and 9 of the Conveyancing Act, 1882, of the United Kingdom evidence (by the statutory declaration of the attorney or otherwise) sufficient to satisfy the Registrar that the principal was alive at the time of execution of the instrument and that the power was then unrevoked shall also be produced.

[45 & 46 Viet.,]

[Cap. 39]

15. Registration of map accompanying document

When a map or plan is comprised in or annexed to any document a true copy of such map or plan shall be filed together with the copy of the document to which it refers.

16. Persons to present documents for registration

- (1) Every document presented for registration under this Act must be presented either by a person executing or claiming an interest under the same or the representative or agent of such person and the Deeds Registrar may require to be satisfied as to the identity of the person by whom it is brought, or, in the case of a representative or agent, as to his authority.

- (2) Every document presented for registration under this Act shall have endorsed thereon a certificate in the form set out in the Second Schedule signed by the person or firm presenting such document.
- (3) A document may be presented for registration through the post or under cover if it is accompanied by the prescribed fee and by a letter requesting registration signed by the person or firm who has signed the form of certificate referred to in subsection (2).

17. Description of parcels

- (1) Every document on presentation for registration must contain a description of the land to which it refers sufficient for its proper identification and the Deeds Registrar may refuse to accept for registration any document as aforesaid which does not contain such a description.
- (2) Every document presented for registration must contain the registered number of some previous document relating to the land to which it refers:

Provided that this subsection shall not apply to—

- (a) a Grant of Probate, a Grant of Letters of Administration or other order of any Court;
- (b) any disposition by the Minister responsible for Land or public land or customary land or any interest therein and any permit or licence in respect of any such land;
- (c) a power of attorney;
- (d) any certificate of title granted under the Lands Acquisition Act;
[Cap. 58:04]
- (e) any declaration by Order issued under Part V of the Land Act;
[Cap. 57:01]
- (f) any rights in respect of prospecting, mining and water issued under the Mining Act.
[Cap. 61:01]

18. Documents in foreign language

If any document presented for registration be not in the English language it must be accompanied by a translation in English together with the requisite number of copies in English duly certified to the satisfaction of the Deeds Registrar and also by a true copy of the original document.

19. Fees and duties to be paid before registration

The Deeds Registrar shall refuse to register any document until he is satisfied that all Government duties and fees have been paid in respect thereof or in respect of the transaction or series of transactions of which the document forms a record in whole or in part if any such duties or fees are eligible.

20. Right of Registrar to refuse documents

- (1) The Deeds Registrar may in his discretion refuse to accept for registration any documents in which any interlineation, blank, erasure or alteration appears unless such interlineation, blank, erasure or alteration shall have been initialled by the parties to the document or otherwise validly incorporated in the same. On the registration of such document the Deeds Registrar will in addition initial such interlineation, blank, erasure or alteration.
- (2) The Deeds Registrar shall refuse to register any document which purports, on the face of it, to have been executed outside Malawi by any party thereto unless—
 - (a) he is satisfied by affidavit or otherwise that the document was in fact executed inside Malawi; or

- (b) such document has been authenticated in a manner which complies with the Authentication of Documents Act.

[Cap. 4:06]

21. Registrar to refuse documents executed by companies in certain circumstances

- (1) The Deeds Registrar shall refuse to register any document which is executed by, or on behalf of, a company within or without Malawi otherwise than under the common seal of that company, affixed in the presence of at least one director and the secretary of the company, whose signatures shall appear on the document, or in accordance with its constitution, when such document, if executed by an individual within Malawi, is by law required to be executed under seal:

Provided that such document may be registered if it is executed by an attorney of the company appointed by a power of attorney under the common seal of the company and in accordance with its constitution.

- (2) For the purposes of this section—
 - (a) every company shall have its name engraved in legible characters upon its common seal in such a manner that, when the seal is affixed to any document, a permanent impressed or embossed mark is made on the document; and
 - (b) the impression upon any document of a rubber or other stamp bearing the name of a company or of a wafer seal upon which is written or printed the name of the company shall not be deemed to be a valid execution under the common seal of the company.

22. Registration not to cure defect or confer validity

Registration shall not cure any defect in any document registered or confer upon it any validity which it would not otherwise have had except in so far as provided in this Act.

23. Copy documents to be numbered and filed in order of lodgment

The Deeds Registrar shall number every copy of documents filed consecutively entering the time of the day and the day of the month and the year when it is registered and shall file the copies in the order in which the documents are received by him.

24. Endorsed memorandum *prima facie* proof of registration

- (1) A memorandum signed by the Deeds Registrar shall be endorsed on every document or copy of a document registered containing a sufficient reference to the number and position of the document in the Register which memorandum shall be proof of the due registration of the document in the absence of sufficient evidence to the contrary.
- (2) Where any extension of time for registration is granted by order of the High Court reference to such order of Court shall be made in the margin of the Register and in the endorsement of the document presented for registration.

25. Indemnity of Deeds Registrar

The Deeds Registrar shall not nor shall any person acting under any order or general Rule made in pursuance of this Act be liable to any action, suit or proceedings for or in respect of any act or matter *bona fide* done or omitted to be done in the exercise or supposed exercise of the powers of this Act or any order or general Rule made in pursuance of this Act.

26. Amendment of Register

Where any person alleges that any error or omission, has been made in the Register or that any entry or omission therein has been procured by fraud or mistake the Deeds Registrar shall if he shall consider such allegation satisfactorily proved correct such error or omission or entry as aforesaid.

27. Appeal and reference to the Court

If the Registrar shall refuse to correct any error, omission or entry in pursuance of an application under the last preceding section any person aggrieved by such refusal may apply to the Court for an order that the Register be rectified and the Court may make an order for the rectification of the Register in such manner as it shall direct.

28. Effect of non-registration

The non-registration of a document the registration whereof is compulsory according to this Act will render such document null and void.

29. Penalties for fraud

If any person commits any of the following offences—

- (a) fraudulently procures or attempts fraudulently to procure or is privy to the fraudulent procurement of any entry, erasure or alteration in the Register; or
- (b) in any affidavit or certificate required or authorized to be made for any purpose under this Act or under any order or general Rules made in pursuance of this Act wilfully makes a false statement in any material particular,

he shall be guilty of a misdemeanour and if convicted on information shall be liable to a fine of K200 and to imprisonment for one year.

30. Saving of obligation to make discovery

Nothing in this Act shall entitle any person to refuse to make a complete discovery in any legal proceedings or to answer any question or interrogatory in any civil proceedings but no such discovery or answer shall be admissible in evidence against that person in any criminal proceeding under this Act.

31. Penalty for non-registration of documents

Any person wilfully or negligently failing to register any document which is subject to compulsory registration under this Act shall be liable on summary conviction to a penalty of K100 or on information to a penalty of K200.

32. Certified copy admissible as evidence of contents of lost or destroyed document

In the event of the loss or destruction of any document registered under this or any previous Act or regulation a copy certified to be a true copy under the hand of the Deeds Registrar shall be admissible in evidence of its contents in all Courts of Justice in Malawi saving all just and lawful exceptions.

33. Production of filed document in Court

Where the production in court is required of any filed documents an official of the Registry will attend with the document on receipt of an application made to that effect accompanied by payment of the prescribed fee and expenses if any.

34. Search

Subject to such directions as the Deeds Registrar may think proper any person is entitled on payment of the prescribed fees to search the indexes and registers at the office of the Registrar and to have a certified copy of any entry in the Registers and Records in the custody of the Registrar or an official search against index of names but no document filed in the office of the Registrar shall be permitted to be taken therefrom.

35. Fees payable

- (1) In respect of the registration of documents under this Act the fees stated in the First Schedule shall be payable, provided always that the Court may remit or reduce any of the prescribed fees in special cases for reasons to be recorded.
- (2) The Minister may from time to time by notice published in the *Gazette* rescind, revoke, amend or vary the said First Schedule in whole or in part and may add thereto such fees as may be deemed fit.

[First Schedule]

36. Power of Minister to make Rules

The Minister may from time to time make Rules for the better carrying into effect of this Act.

Such Rules may provide a penalty not exceeding K10 recoverable on summary conviction before a magistrate for any breach thereof.

First Schedule (Section 35)

First column	Second column		
	K	t	
1. On registration of any document	5,000	00	
2. For making a photostat copy of any document	5,000	00	plus such sum per page to recoup the cost of the paper used as the Deeds Registrar may, from time to time, determine.
3. For certifying a copy of any document in addition to any charges under paragraph 2	500	00	per page
4. For certificate of official seal	1,000	00	per page
5. For leave to search indices and registers of one title	5,000	00	for each day of search
6. On requisition to produce a document or documents in Court (in addition to any expenses as provided by section 33 of the Act)	5,000	00	
7. For any act not specifically prescribed	5,000	00	

8. For any act where the fee would otherwise be payable by Government	Nil.		
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[G.N. 80/1987]

[109/1987]

[31/2002]

[26/2011]

Second Schedule (Section 16(2))

This is to certify that this document was prepared by

(a) _____ and that it is presented for registration by the undersigned.

(b) _____

Date _____

(a) Name and address of person who prepared the document or, in the case of a Government Department or office, the words "the Government" to be inserted.

(b) Name and address of person or firm presenting the document.