



LAND CERTIFICATES

In cases involving registered land the Committee takes the view that, if no Land Certificate has been issued in respect of property the subject of a Mortgage, the Solicitor for the Building Society should not insist on the issue of the Land Certificate.

If a Land Certificate has issued, it must, of course, be made available to the Solicitors for the Building Society to enable registration of the Mortgage to take place. The Committee takes the view that the proper practice for a Solicitor for a Building Society is to retain the Land Certificate with the Deeds in such circumstances unless requested to return it by the borrower.

Certificates of Charge

It has been the general practice of Building Societies' Solicitors to apply for a Certificate of Charge under Rule 156 of the Land Registry Rules. This document comprises the duplicate Mortgage which is rubber stamped by the Land Registry as a Certificate of Charge. With the extremely high volume of Mortgages involved, the odd Certificate of Charge gets mislaid and in cases like this, considerable delay and inconvenience is caused to all parties concerned. It is the opinion of the Committee that in the absence of a secondary market for Mortgages between Building Societies and other institutions that there was no practical need to obtain Certificates of Charge in ordinary cases and that this practice of doing so should be discontinued.

UPDATE (1998): Notwithstanding the foregoing it appears now to be the practice of all lenders that a Land Certificate be taken up, further that a Certificate of Charge under Rule 156 of the Land Registry Rules be obtained because, subsequent to the first legal mortgage or charge in favour of the lender, the borrower may require further funds from the lender and the lender may accept in lieu of a further charge the Land Certificate as an equitable deposit. Furthermore in relation to the mortgages/charges now being executed by borrowers in respect of housing loans and other commercial loans, the document is for "all sums due" and accordingly the reason a Certificate of Charge under Rule 156 is taken up is because on the lodgement of the mortgage/charge in the Land Registry for registration the original is returned with the Rule 156 Certificate endorsed thereon so that in the event of the lender advancing further monies it is not necessary to go to the Land Registry to take up the original mortgage, have it stamped and re-lodged and the appropriate amendment made on the folio because the original mortgage will be to hand, it can be stamped and then lodged in the Land Registry and this of course expedites matters.

There is of course a difficulty if the original mortgage with Rule 156 Certificate endorsed thereon is lost. You are in a very similar position to where a Land Certificate is lost.

UPDATE (2006): See Section 73 of the Registration of Deeds and Title Act 2006 regarding the abolition of Land Certificates. See also page 3.41 hereof regarding liens over Land Certificates.