

The volume of requests for substitute Title Certificates continues to rise. It now stands at an average of ten each day. It may be that more are requested because the Keeper has relaxed the standard of proof he required to be satisfied in terms of Rule 19 of the Land Registration (Scotland) Rules 1980 that the original is lost or destroyed. It is, however, interesting to note that in a surprising number of cases the original certificate suddenly appears after the substitute has been issued and the latter has to be recalled and destroyed. Additional work for all concerned. In time the concept of the paperless office and dematerialisation will lead to less reliance on physical certificates of title and thus cure the problem, but in the interim the Keeper wishes to try to alleviate matters a little. The Keeper hopes that the steps set out below will be of some assistance to the legal profession.

It may be that in a number of cases substitute certificates are being requested when an Office Copy would suffice. Section 6(5) of the Land Registration (Scotland) Act 1979 provides that an Office Copy "shall be accepted for all purposes as sufficient evidence of the contents of the original". Thus an Office Copy would be sufficient evidence to transact upon while waiting to see if the original turns up.

This is something to keep in mind when the transaction is a second security and the original certificate should be, in theory at least, in the possession of the prior security holder. Rule 18(2)(b) provides that the fact that a Land Certificate is held by a creditor is good cause for not producing it to the Keeper. Accordingly, when a prior security exists, the Keeper does not require the production of the Land Certificate with the application to register the second security.

The Keeper suggests that in all cases where the Title Certificate is apparently missing, but an existing security is registered, unless the prospective transaction is a transfer of the title or the Discharge of the prior security in a remortgage transaction, an Office Copy is ordered rather than a substitute certificate. It may be even that, if both parties agree, an examination of the title on Registers Direct would suffice. This will enable the transaction to go ahead, will in all probability prove cheaper and will allow time for the missing certificate to turn up before the Keeper has to insist on its production in terms of Rule 9(3) if and when a later application to which Rule 18(2)(b) does not apply is received.

To encourage this, the Keeper will institute a practice of asking why a substitute certificate is needed at the point in time it is requested. If there is no immediate need for the Title Certificate to be produced the Keeper will recommend the use of an Office Copy. He will

do so by putting a note to that effect on Form L22A used for ordering substitute certificates.

If it is clear that a substitute certificate is necessary in the circumstances, the Keeper will revert to his earlier policy and seek more stringent evidence of the loss or destruction of the original before he is satisfied that it is proper for him to issue a substitute in terms of Rule 19.



He will do this by insisting on a letter from the persons or body who would be expected to have the Certificate of Title in their possession stating that they have made a diligent search and are satisfied that they do not hold the original certificate. Normally this will be the mortgage lender holding the prior ranking security which is being discharged.

To assist solicitors the Keeper will accept applications for registration which should, in terms of Rule 9, be accompanied by the Certificate of Title but cannot be because that certificate is lost or destroyed, if they are accompanied by a Form L22A requesting the issue of a substitute certificate and the foresaid letter. This should eliminate unnecessary exchanges between the Keeper and the applicant's solicitor about the presence of the original certificate.

This is the latest in a series of updates to keep you informed on the various aspects of Registers of Scotland's services, policies and procedures. More details can be found at www.ros.gov.uk/updates, or by contacting Customer Relations on 0131 200 3944.