Article 6.

Method of Transfer.

§ 43-31. When whole of land conveyed.

Whenever the whole of any registered estate is transferred or conveyed the same shall be done by a transfer or conveyance attached to the certificate substantially as follows:

The owners (giving the names of the parties owning land described in the certificate) hereby, in consideration of _____ dollars, sell and convey to the purchaser (giving name of purchaser) the lot or tract of land, as the case may be, described in the certificate of title hereto attached. The transfer shall be indexed on the grantor and grantee indexes in the same manner as deeds are indexed.

The same shall be signed and properly acknowledged by the parties and shall have the full force and effect of a deed in fee simple: Provided, that if the sale shall be in trust, upon condition, with power to sell or other unusual form of conveyance, the same shall be set out in the transfer, and shall be entered upon the consolidated real property records as hereinafter provided; that upon presentation of the transfer, together with the certificate of title, to the register of deeds, the transaction shall be duly noted and registered in accordance with the provisions of this Chapter, and certificate of title so presented shall be canceled and a new certificate with the same number issued to the purchaser thereof, which new certificate shall fully refer by number and also by name of holder to former certificate just canceled. (1913, c. 90, s. 12; C.S., s. 2405; 1999-59, s. 3; 2000-140, s. 42(c).)

§ 43-32. Conveyance of part of registered land.

The transfer of any part of a registered estate, either of an undivided interest therein or of a separate lot or parcel thereof, shall be made by an instrument of the transfer or conveyance similar in form to that herein provided for the transfer of the whole of any registered estate, to which shall be attached the certificate of title of such registered estate. In case of the transfer of an undivided interest in a registered estate, such instrument of transfer or conveyance shall accurately specify and describe the extent and amount of the interest transferred and of the interest retained, respectively. In case of a transfer of a separate lot or parcel of a registered estate, such instrument of transfer or conveyance shall describe the lot or parcel transferred either by metes and bounds or by reference to the map or plat attached thereto, and shall in every case be accompanied by a map or plat having clearly indicated thereon the boundaries of the whole of the registered estate and of the lot or parcel to be transferred, but a new survey of the original registered estate shall not be required. The transfer shall be indexed on the grantor and grantee indexes in the same manner as deeds are indexed. (1919, c. 82, s. 4; C.S., s. 2406; 1999-59, s. 4.)

§ 43-33. Duty of register of deeds upon part conveyance.

Upon presentation to the register of deeds of an instrument of transfer or conveyance of an undivided interest in a registered estate, in proper form as above prescribed, it shall be his duty to cancel the certificate of title attached thereto and to issue to each owner a new certificate of title, each bearing the same number as the original certificate of title and accurately specifying and describing the extent and the amount of the interest retained or of the interest transferred, as the case may be. Upon presentation to the register of deeds of an instrument of transfer or conveyance of a separate lot or parcel of a registered estate, in proper form as above prescribed, it shall be his duty to cancel the certificate of the title attached thereto and to issue to each owner a new certificate of title bearing a new number and describing the separate lot or parcel retained or transferred, as the

case may be, either by metes and bounds or by reference to a map or plat thereto attached. The register of deeds is responsible for determining that each new certificate of title contains a description of the property transferred or retained but not for verifying the accuracy of any description. (1919, c. 82, s. 4; C.S., s. 2407; 1999-59, s. 5.)

§ 43-34. Subdivision of registered estate.

Any owner of a registered estate who may desire to subdivide the same may make application in writing to the register of deeds for the issuance of a new certificate of title for each subdivision, to which application shall be attached a map or plat having clearly indicated thereon the boundaries of the whole of the registered estate in question and of each lot or parcel for which he desires a new certificate of title. Thereupon it shall be the duty of the register of deeds, upon payment by such applicant of necessary surveyor's fees, if any are required, and of the amount herein provided for issuing the certificates of title and recording the map, to cancel the certificate of title attached to said application and to issue to such owner new certificates of title, each bearing a new number, for each lot or parcel shown upon the said map, describing such lot or parcel in such certificates either by metes and bounds or by reference to a map or plat attached thereto. (1919, c. 82, s. 4; C.S., s. 2408.)

§ 43-35. References and cross references entered on register.

In all cases the register of deeds shall place upon the consolidated real property records and upon the certificate of title of such registered estate therein, references and cross references to the new certificates issued as above provided, in accordance with the provisions of this Article, and the new certificates issued shall fully refer by number and by name of the holder to the canceled certificate in place of which they are issued. (1919, c. 82, s. 4; C.S., s. 2409; 2000-140, s. 42(d).)

§ 43-36. When land conveyed as security.

(a) Whole Land Conveyed. – Whenever the owner of any registered estate shall desire to convey same as security for debt, it may be done in the following manner, by a short form of transfer, substantially as follows, to wit:

A.B. and wife (giving names of all owners or holders of certificates and their wives) hereby transfer to C.D. the tract or lot of land described as No. _____ in registration of titles book for _____ County, a certificate for the title for same being hereto attached, to secure a debt of _____ dollars, due to _____, of _____ County and State, on the _____ day of _____, _____, evidenced by bond (or otherwise as the case may be) dated the _____ day of _____, _____. In case of default in payment of said debt with accrued interest, _____ days notice of sale required.

The same shall be signed and properly acknowledged by the parties making same, and shall be presented, together with the owner's certificate, to the register of deeds, whose duty it shall be to note upon the owner's certificate and upon the certificate of title in the consolidated real property records the name of the trustee, the amount of debt, and the date of maturity of same.

(b) Part of Land Conveyed. – When a part of the registered estate shall be so conveyed, the register of deeds shall note upon the consolidated real property records and owner's certificate the part so conveyed, and if the same be required and the proper fee paid by the trustee, shall issue what shall be known as a partial certificate, over his hand and seal, setting out the portion so conveyed.

(c) Effect of Transfer. – All transfers by such short form shall convey the power of sale upon due advertisement at the county courthouse and in some newspaper published in the county,

or adjoining county, in the same manner and as fully as is now provided by law in the case of mortgages and deeds of trust and default therein.

(d) Other Encumbrances Noted. – All registered encumbrances, rights or adverse claims affecting the estate represented thereby shall continue to be noted, not only upon the certificate of title in the consolidated real property records, but also upon the owner's certificate, until same shall have been released or discharged. And in the event of second or other subsequent voluntary encumbrances the holder of the certificate may be required to produce such certificate for the entry thereon or attachment thereto of the note of such subsequent charge or encumbrance as provided in this Article.

(e) Other Forms of Conveyance May Be Used. – Nothing in this section nor this Chapter shall be construed to prevent the owner from conveying such land, or any part of the same, as security for a debt by deed of trust or mortgage in any form which may be agreed upon between the parties thereto, and having such deed of trust or mortgage recorded in the office of the register of deeds as other deeds of trust and mortgages are recorded: Provided, that the book and page of the record at which such deed of trust or mortgage is recorded shall be entered by the register of deeds upon the owner's certificate and also on the consolidated real property records.

(f) Sale under Lien; New Certification. – Upon foreclosure of such deed of trust or mortgage, or sale under execution for taxes or other lien on the land, the fact of such foreclosure or sale shall be reported by the trustee, mortgagee or other person authorized to make the same, to the register of deeds of the county in which the land lies, and, upon satisfactory evidence thereof, it shall be his duty to call in and cancel the outstanding certificate of title for the land, so sold, and to issue a new certificate in its place to the purchaser or other person entitled thereto; and the production of such outstanding certificate and its surrender by the holder thereof may be compelled, upon notice to him, by motion before and order of the clerk of the superior court in the original proceeding or the clerk of the superior court of the county in which the land lies; but the right of appeal from such order may be exercised and shall be allowed as in other special proceedings, and pending any such appeal the rights of all parties shall be preserved. (1913, c. 90, s. 14; 1915, c. 245; 1919, c. 82, s. 5; C.S., s. 2410; 1999-456, s. 59; 2000-140, s. 42(e).)

§ 43-37. Owner's certificate presented with transfer.

In voluntary transactions the owner's certificate of title must be presented along with the writing or instrument conveying or effecting the sale, and thereupon and not otherwise the register shall be authorized to register the conveyance or other transaction upon proof of payment of all delinquent taxes or liens, if any, or if such payment be not shown the entry and new certificate shall note such taxes or liens as having priority thereto. (1913, c. 90, s. 15; C.S., s. 2411.)

§ 43-38. Transfers probated; partitions; contracts.

All transfers of registered land shall be duly executed and probated as required by law upon like conveyances of other lands, and in all cases of change in boundary by partition, subtraction or addition of land there shall be an accurate survey and permanent marking of boundaries and accurate plots, showing the courses, distances and markings of every portion thereof, which shall be duly proved and registered as upon the initial registration. Such transfers shall be presented to the register of deeds for entry upon the consolidated real property records and upon the owner's certificate within 30 days from the date thereof, or become subject to any rights which may accrue to any other person by a prior registration. All leases or contracts affecting land for a period exceeding three years shall be in writing, duly proved before the clerk of the superior court,

recorded in the register's office, and noted upon the registry and upon the owner's certificate. (1913, c. 90, ss. 15, 32; C.S., s. 2412; 2000-140, s. 42(f).)

§ 43-39. Certified copy of order of court noted.

In voluntary transactions a certificate from the proper State, county or court officer, or certified copy of the order, decree or judgment of any court of competent jurisdiction shall be authority for him to order a proper notation thereof upon the consolidated real property records, and for the register of deeds to note the transaction under the direction of the court. (1913, c. 90, s. 16; C.S., s. 2413; 2000-140, s. 42(g).)

§ 43-40. Production of owner's certificate required.

Whenever owner's certificate is not presented to the register along with any writing, instrument or record filed for registration under this Chapter, he shall forthwith send notice by registered mail to the owner of such certificate, requesting him to produce the same in order that a memorial of the transaction may be made thereon; and such production may be required by subpoena duces tecum or by other process of the court, if necessary. (1913, c. 90, s. 17; C.S., s. 2414.)

§ 43-41. Registration notice to all persons.

Every voluntary or involuntary transaction, which if recorded, filed or entered in any clerk's office would affect unregistered land, shall, if duly registered in the office of the proper register as the case may be, and not otherwise, be notice to all persons from the time of such registration, and operate, in accordance with law and the provisions of this Chapter, upon any registered land in the county of such registration. (1913, c. 90, s. 18; C.S., s. 2415.)

§ 43-42. Conveyance of registered land in trust.

Whenever a writing, instrument or record 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, the particulars of the trust, condition, limitation or other equitable interest shall not be entered on the certificate, but it shall be sufficient to enter in the consolidated real property records and upon the certificates a memorial thereof by the terms "in trust" or "upon condition" or in other apt words, and to refer by number to the writing, instrument or record authorizing or creating the same. And if express power is given to sell, encumber or deal with the land in any manner, such power shall be noted upon the certificates by the term "with power to sell" or "with power to encumber," or by other apt words. (1913, c. 90, s. 19; C.S., s. 2416; 2000-140, s. 42(h).)

§ 43-43. Authorized transfer of equitable interests registered.

No writing or instrument for the purpose of transferring, encumbering or otherwise dealing with equitable interests in registered land shall be registered unless the power thereto enabling has been expressly conferred by or has been reserved in the writing or instrument creating such equitable instrument, or has been declared to exist by the decree of some court of competent jurisdiction, which decree must also be registered. (1913, c. 90, s. 20; C.S., s. 2417.)

§ 43-44. Validating conveyance by entry on margin of certificate.

In all cases where the owner of any estate in lands, the title to which has been registered or attempted to be registered in accordance with the provisions of this Chapter, has before August 21,

1924, and subsequent to such registration made any conveyance of such estate, or any portion thereof, by any form of conveyance sufficient in law to pass the title thereto if the title to said lands had not been so registered, the record owner and holder of the certificate of title covering such registered estate may enter upon the margin of his certificate of title in the consolidated real property records a memorandum showing that such registered estate, or a portion thereof, has been so conveyed, and further showing the name of the grantee or grantees and the number of the book and the page thereof where such conveyance is recorded in the office of the register of deeds, and make a like entry upon the owner's certificate of title held by him, both of such entries to be signed by him and witnessed by the register of deeds, and attested by the seal of office of the register of deeds upon said owner's certificate, with the further notation made and signed by the register of deeds on the margin of the certificate of title in the consolidated real property records showing that such entry has been made upon the owner's certificate of title, and thereupon such conveyance shall become and be as valid and effectual to pass such estate of the owner according to the tenor and purport of such conveyance as if the title to said lands had never been so registered, whether such conveyance be in form absolute or upon condition of trust; and in all cases where such conveyance has been made before August 21, 1924, upon the making of the entries herein authorized by the record owner and holder of such owner's certificate of title, the grantee and his heirs and assigns shall thereafter have the same right to convey the said estate or any part of the same in all respects as if the title to said lands had never been so registered. (Ex. Sess. 1924, c. 41; 2000-140, s. 42(i).)