

DEAD MAN’S LAND: A POST-MORTEM THROUGH THE LENS OF A CONVEYANCER

This article examines a trilogy of key statutes that must come under a conveyancer’s radar in the transfer of a deceased proprietor’s land. It surveys the transmission framework under the Land Titles Act 1993 (2020 Rev Ed) (“LTA”), reveals the rather obscure limitation period in s 3(4) of the Residential Property Act 1976 (2020 Rev Ed) and casts light on the infamous s 35(2) of the Conveyancing and Law of Property Act 1886 (2020 Rev Ed) (“CLPA”), tracing its genesis, evolution and current role. This article proposes streamlining this area of conveyancing and, to that end, it argues that s 35(2) of the CLPA should be repealed or migrated to the LTA.

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I. Introduction

1 Any seasoned conveyancer will attest that conveyancing is much more than completing a real estate transaction between a willing buyer and a willing seller. Far from a form-filling exercise, conveyancing practice is fraught with pitfalls and for the unwary, dealing with the transfer of a deceased proprietor’s property is akin to walking into a minefield.

2 This article maps out the key statutory provisions when handling the transfer of land belonging to a deceased proprietor, highlights the challenges in this area of law and practice, and calls for legislative reform. To that end, this article examines specific legislative enactments in a trilogy of statutes dealing with land.

3 To preface the discussion, a thumbnail sketch of Singapore’s conveyancing landscape is set out. This is followed by a survey of the transmission framework under the overarching legislation that deals with title registration, *ie*, the Land Titles Act 1993¹ (“LTA”). Next, this article highlights the rather obscure statutory limitation period lurking

1 2020 Rev Ed.

in s 3(4) of the Residential Property Act 1976² (“RPA”). Lastly, it examines the infamous but routinely misconstrued and even overlooked s 35(2) of the Conveyancing and Law of Property Act 1886³ (“CLPA”).

4 With a postmortem of the aforesaid legislation, this article advances the suggestion that the time is ripe for legislative reform in this area and that the Parliament should consider repealing s 35(2) of the CLPA, but if it is deemed a necessary relic, that it should be migrated to the LTA.

A. *Conveyancing landscape in Singapore*

5 The single most important transformation in the Singapore conveyancing landscape in the last 70 years was the shift from the older system of registration of deeds under the Registration of Deeds Act 1988⁴ to the Torrens system of title registration under the LTA.⁵

6 In 1990, Rajan Menon, a senior conveyancer, wrote:⁶

... a young solicitor today may know nothing about the past preoccupation of experienced conveyancers with all the formalities and niceties of common law assurances which were still prevailing in the 60s. Now much more transactions are done under the LTA system and most probably the 90s will see a total take-over by the LTA system.

His predicted trajectory of Singapore’s conveyancing practice concretised with the completion of the mammoth project of land conversion from unregistered land to registered land (save for some remnant lands) by the Singapore Land Authority on 31 December 2002.

7 In a similar vein, the Court of Appeal pointed out in *Wong Kok Chin v Mah Ten Kui Joseph*⁷ that “the object of the LTA was to simplify dealings in land by the introduction of a register of titles to mirror land ownership” and that “the system was intended to supersede, in the course

2 2020 Rev Ed.

3 2020 Rev Ed.

4 2020 Rev Ed.

5 The Torrens system of conveyancing and title registration, which originated in New South Wales, Australia, was first introduced in Singapore with the enactment of the Land Titles Ordinance 1956 (Ordinance 21 of 1956). See also Alvin See, “The Torrens System in Singapore: 75 Years from Conception to Commencement” (2022) 62(1) *The American Journal of Legal History* 66.

6 Rajan Menon, “Prospects and Problems in Conveyancing Related Practice in the 1990s” (1990) 2 SAclJ 240.

7 [1992] 1 SLR(R) 894 at [7].

of time, the registration of deeds system, which had been in force in Singapore since 1886⁷.

8 The Torrens system of title registration has indeed simplified conveyancing to a large extent. Anecdotal evidence, academic literature⁸ and even case law⁹ suggest that, aside from keeping abreast of anti-speculative tax laws,¹⁰ the modern conveyancer's go-to legislation for title registration and compliance with land law is the LTA. For instance, the CLPA, to be discussed later, has played a much smaller role in conveyancing since the advent of the Torrens system under the LTA. It is no surprise that today, the CLPA is generally relegated to the background by conveyancers and regarded as a statute with limited practical relevance.

9 Although the role of the LTA cannot be understated, it is essential to bear in mind that Singapore has a stable of property law statutes¹¹ and, as shall be discussed later, these statutes impose stipulations that require strict compliance prior to the registration of title at the Singapore Land Authority.

B. Death of registered proprietor

10 When dealing with the transfer or divesting of legal title in a property belonging to a deceased proprietor, the first and pivotal question is whether the deceased proprietor owned the property in his sole name, as a joint tenant or as a tenant-in-common.

11 Two scenarios come to mind. The most straightforward is where the deceased owned the property as a joint tenant. Under joint tenancy, *jus accrescendi* or the right of survivorship prevails, and title to the property devolves to the surviving joint owners.¹² By virtue of s 114 of the LTA, the surviving proprietor who is entitled to the land in its entirety¹³ may apply in the approved form to notify the death in the land register. Completing

8 Alvin See, Yip Man & Goh Yihan, *Property and Trust Law in Singapore* (Kluwer Law International, 2018) at p 92, para 207.

9 See *Shafeeg bin Salim Talib v Fatimah bte Abud bin Talib* [2010] 2 SLR 1123 at [21], where when listing property law statutes, the Conveyancing and Law of Property Act is noticeably absent, and at [22] where the Land Titles Act (Cap 157 2004 Rev Ed) is cited as the applicable statute that determines title to registered land.

10 For example, the Stamp Duties Act 1929 (2021 Rev Ed).

11 The Housing and Development Act 1959 (2020 Rev Ed), Residential Property Act 1976 (2020 Rev Ed), Land Titles (Strata) Act 1967 (2020 Rev Ed) and Conveyancing and Law of Property Act 1886 (2020 Rev Ed) are some examples.

12 *Shafeeg bin Salim Talib v Fatimah bte Abud bin Talib* [2010] 2 SLR 1123 at [35] and [40].

13 *Goh Teh Lee v Lim Li Pheng Maria* [2010] 3 SLR 364 at [11]–[12].

and registering the approved form, known as a notice of death¹⁴ (“Notice of Death”) is straightforward and simply requires a certified true copy of the death certificate as proof of death. Upon registration of the Notice of Death, the surviving registered proprietor (or proprietors, if more than one) is registered as the owner of the property.

12 The second scenario is where the deceased proprietor owned the property either as a sole owner or owned an undivided share in the property as a tenant-in-common. Here, upon death, the deceased's share and interest in the property forms part of his estate, to be distributed according to his will if he died testate or according to the rules of intestacy if he died without a will.

13 It is to this second scenario that this article now focuses, as it creates a minefield for practitioners who fail to appreciate the dynamic nature of land laws as a tool for state social engineering,¹⁵ or that conveyancing practice does not operate in silo. That conveyancing works in tandem with other practice areas is perhaps most obvious here as probate practice and the duties of personal representatives rear their heads.

14 The rules governing registration of land titles are generally codified in the LTA. However, conveyancers need to look beyond the plain vanilla transfer provisions in Pt 7 of the LTA, as a tunnel vision assessment of the legislation can lead the unwary practitioner to pitfalls. A survey of the transmission provisions under this statute is now apposite.

II. Land Titles Act 1993

15 The machinery for succession and transfer of title of a deceased's property to the personal representatives is termed as “transmission on the death of proprietor”, and is set out in some detail under Pt 11¹⁶ of the LTA, in particular, ss 107–109 and s 113.

14 Form 48 (Notice of Death) under the Land Titles Rules (1999 Rev Ed).

15 Tang Hang Wu & Kelvin F K Low, *Tan Sook Yee's Principles of Singapore Land Law* (LexisNexis, 4th Ed, 2019) at p 18.

16 In the original Land Titles Ordinance 1956, the relevant provisions appeared in Pt X. See also, John Baalman, *The Singapore Torrens System: Being a Commentary of the Land Titles Ordinance 1956 of the State of Singapore* (Government Printer, 1961) at p 182.

A. *Transmission procedure*

16 The general procedure¹⁷ to register a transmission in favour of personal representatives is prescribed in s 107. Section 107(1) states:

Personal representatives or any other person claiming land of a deceased proprietor may apply in the approved form to become registered as proprietors by transmission of the land, and upon proof of their representation or claim, the Registrar must enter on the folio a memorial of registration in accordance with section 37.

The vesting effect of registering a transmission is set out in s 113(a), and s 113(b) further states that for the purpose of any dealing under the LTA, upon registration, that person, despite the fact that that person's description may indicate a fiduciary capacity, "is deemed to be the absolute proprietor of the land".

17 The transmission application is followed immediately or at a later date by an instrument of transfer in favour of a beneficiary under the estate or to a purchaser. It is trite law that except as provided in s 108 of the LTA, a transfer of the deceased's property to the person entitled cannot be made without first registering a transmission in favour of the personal representatives.

18 To register a transmission application, the personal representatives are required to first apply for and extract¹⁸ the grant of representation (a grant of probate or grant of letters of administration¹⁹) from the courts. They must then produce a copy of the grant when lodging the transmission application as it is a necessary evidentiary document establishing "proof of their representation or claim" to carry out the transmission on the death of a proprietor of registered land.²⁰

19 While the sources of authority for an executor and an administrator differ²¹ and disputes are known to arise questioning the rights and authority of personal representatives who act on behalf of the estate before a grant is extracted, for the purposes of registering

17 The detailed procedure is set out in *Chay Chong Hwa v Seah Mary* [1983–1984] SLR(R) 505 at [9]–[10]

18 *MTA Mootiah Chitty v Ong Hai Swee* [1911] 12 SSLR 84 and *Chye Hwa Luan v Do, Allyn T* [2023] SGHCR 10 at [37] underscore that a mere grant of representation without extracting it is not sufficient.

19 See *Chye Hwa Luan v Do, Allyn T* [2023] SGHCR 10 at [35] for the general process for obtaining the grant of letters of administration.

20 Land Titles Act 1993 (2020 Rev Ed) s 107(1). This requirement is also explicitly stated in s 108.

21 *S M K R Meyappa Chetty v S N Supramanian Chetty* [1916] 1 AC 603 at 608–609.

a transmission application, irrespective of whether the applicant is an executor or an administrator, it is a prerequisite that a grant of representation is produced to the Registrar of Land Titles.

B. Bypassing the two-stage transmission procedure

20 Offering an alternative route is s 108 of the LTA. Section 108 allows for an instrument of transfer to be lodged directly under specific situations. It dispenses with the two-stage procedure of firstly, a transmission to a personal representative and then only a transfer to the person entitled.

21 The specific scenarios where a transfer without a transmission application is permitted are listed at s 108(a):

108. Upon production of the grant of probate of the will or letters of administration of the estate of a deceased proprietor, the Registrar may, without requiring a transmission application, register —

(a) any transfer by the personal representative expressed to be made —

(i) pursuant to a devise in the will of the proprietor;

(ii) in exercise of a power of appropriation of the assets of the proprietor;

(iii) pursuant to an appointment of new trustees of the proprietor;

(iv) by way of distribution under the intestacy of the proprietor; or

(v) pursuant to a contract entered into by the proprietor in his or her lifetime;

22 John Baalman, the draftsman of the Land Titles Ordinance 1956, explains the simplified procedure in s 108 (formerly s 86) in his treatise, *The Singapore Torrens System, Being a Commentary on the Land Titles Ordinance, 1956, of the State of Singapore*²² (“Baalman”), as “all that is required is a transfer expressed to be made for one of the purposes mentioned in the section, with proof of the transferor’s capacity as a personal representative”.²³ A court order in the form of a grant of probate or letters of administration evidences such proof, and this requirement

22 John Baalman, *The Singapore Torrens System: Being a Commentary on the Land Titles Ordinance 1956 of the State of Singapore* (Government Printer, 1961).

23 John Baalman, *The Singapore Torrens System: Being a Commentary on the Land Titles Ordinance 1956 of the State of Singapore* (Government Printer, 1961) at p 186, in his commentary on s 108 (formerly s 86).

for such documentary evidence is codified and set out as a prerequisite in s 108.

23 Notably, and very conveniently, *Baalman*, while endorsing the common law position that a formal assent by the personal representative is necessary to vest the registered estate in a beneficiary, clarifies that “the assent here takes the form of a transfer in which all the personal representatives who are registered as proprietors must join”.²⁴ In view of his clarification that the assent operates under the LTA by taking the form of a transfer which is executed by all the personal representatives as transferors, a separate and additional vesting deed is rendered unnecessary.

C. *Necessary steps for personal representatives*

24 To recapitulate, Pt 11 of the LTA informs the practitioner that obtaining a grant of representation (in the form of a grant of probate or grant of letters of administration) and lodging a transmission application at the Registry of Titles is a necessary step to transfer title to the personal representatives so they can deal with the deceased’s property. Whilst this may appear clear enough, omissions have been recorded. A case in point is *United Overseas Finance Ltd v Victor Sakayamary*,²⁵ where G P Selvam J concluded from the facts that neither the lawyer nor his law clerk knew that upon extraction of the letters of administration, a transmission on death should be registered²⁶ and that the transmission application was only lodged subsequently upon the advice of the Registry.

25 Having reviewed the compliance requirements for transmission of title under the LTA, this article now turns its attention to the RPA. Here, the article highlights one rather inconspicuous compliance requirement at risk of being overlooked when dealing with estate property comprising restricted residential property.

III. Residential Property Act 1976

26 The RPA restricts the purchase or transfer of residential property to citizens of Singapore and approved purchasers. Conveyancers would be familiar with ss 3(1) and 23 of the RPA. Section 3(1) prohibits, *inter alia*, any transfer to or acquisition by foreigners of restricted residential

24 John Baalman, *The Singapore Torrens System: Being a Commentary of the Land Titles Ordinance 1956 of the State of Singapore* (Government Printer, 1961) at p 186.

25 [1996] 2 SLR(R) 20.

26 *United Overseas Finance Ltd v Victor Sakayamary* [1996] 2 SLR(R) 20 at [76].

property²⁷ except as provided under the RPA, failing which any such transfer, trust for sale, or purchase is void.²⁸ Section 23 of the RPA then addresses any remaining gaps which may allow for other forms of trust arrangements by voiding nominee arrangements in favour of a foreigner.²⁹

A. *Timeline for disposal of restricted residential property*

27 Section 3(3) of the RPA is well known to practitioners. Under scrutiny is s 3(4), which concerns the disposal of restricted residential property of a deceased proprietor, and lurking within s 3(4) is a strict timeline stipulation obscure to the unwary. Sections 3(3) and 3(4) state:

(3) No estate or interest in any residential property belonging to a deceased person who dies on or after 11 September 1973 passes by bequest, succession or inheritance to any foreign person who is beneficially entitled under a will or under any written law governing intestate succession.

(4) Where a foreign person would, but for subsection (3), be beneficially entitled to an estate or interest in residential property, the legal personal representatives to whom probate or letters of administration are granted in respect of such residential property are, subject to subsection (5), *bound to sell such estate or interest in the residential property to a citizen or an approved purchaser within a period of 5 years from the date of the death of the deceased person, or within any extension thereof allowed under subsection (12) and upon such sale to pay, ... to or for or on behalf of the foreign person so beneficially entitled.*

[emphasis added]

28 The directive to practitioners is twofold. One, restricted residential property shall not pass to a beneficiary defined under the RPA as a foreign person,³⁰ as the beneficiary's interest is solely in the sale proceeds of the residential property.³¹ Two, and pertinent to the present discussion, where a foreigner is beneficially entitled to restricted residential property, the legal personal representative must sell such property within five years³² of death or obtain the requisite approval

27 Not all residential property is subject to the control of Residential Property Act 1976 (2020 Rev Ed). Refer to the definition of "non-restricted residential property" under s 2. Section 4(1) further exempts residential flats in a building development which are not landed property, condominium units and executive condominiums.

28 Residential Property Act 1976 (2020 Rev Ed) s 3(2).

29 For an incisive and illuminating discussion by the Court of Appeal on the distinct provisions applicable for trusts and trusts for sale, see *Chee Yin Meh v Ong Kian Guan* [2023] 2 SLR 495.

30 Residential Property Act 1976 (2020 Rev Ed) s 2.

31 See *Wong Boon Pin v Wong Boon Wah* [1989] 1 SLR(R) 189 at [7].

32 When the Residential Property Act was first enacted, a period of ten years was prescribed. This was later amended to five years by the Residential Property Act (cont'd on the next page)

under s 3(12) of the RPA to sell the property within such period as may be extended by the Controller of Residential Property. Where the parties fail to sell the property within the stipulated period, the Controller may, under s 3(6) of the RPA, attach and sell the property. Such a sale by the Controller may not be in the best interest of the beneficiaries, who may wish for the property to be sold for a higher price, or to specific persons or in a more conducive sellers' market.

B. Strict application of timeline

29 The strict application of the timeline stipulated in s 3(4) of the RPA, as intended by the legislators,³³ was endorsed in the recent case of *Tan Mei Sin v Tan Ah Lim*³⁴ (“*Tan Mei Sin*”).

30 In *Tan Mei Sin*, a half-share in a property was owned by a deceased's estate, and the plaintiff, representing the personal representative of the deceased's estate, applied for the defendant, who was entitled to the other half-share and who occupied the property, to deliver vacant possession. The plaintiff's stated objective was to sell it on the open market and dispose of the estate's half-share in the property (as required under s 3(4) of the RPA), with proceeds to be divided between the plaintiff and the defendant.

31 When the matter came before the court, the plaintiff was already out of time as more than five years had passed since the proprietor's death. It was not disputed that the plaintiff had not obtained the requisite extension of time under s 3(12) of the RPA from the Controller of Residential Property. Goh Yihan JC affirmed that s 3(4) of the RPA is to be strictly applied and that it is immaterial whether the delay was due to the plaintiff or otherwise. As the plaintiff was already out of time, without the requisite extension of time under s 3(12), her application failed³⁵ as she could not fulfil the legal requirement for sale under s 3(4).

32 This case serves as a timely reminder to the conveyancer of the limitation period under s 3(4) of the RPA, and where parties are already out of time, to obtain the necessary extension of time under s 3(12).

(Amendment) Act 2010 (Act 35 of 2010). The reason cited by the Minister for Law K Shanmugam was that with the abolishment of estate duty in 2008, the estate administration process was simplified, and consequently, five years to dispose of foreign beneficiaries' interest in restricted residential property was a sufficient timeframe: see Singapore Parl Debates; Vol 87; Col 1543; [22 November 2010].

33 Singapore Parl Debates; Vol 87; Cols 1551–1552; [22 November 2010] (K Shanmugam, Minister for Law).

34 [2023] 3 SLR 778.

35 *Tan Mei Sin v Tan Ah Lim* [2023] 3 SLR 778 at [19]–[20].

Practitioners who overlook this provision or fail to advise clients risk exposure to s 3(6) of the RPA, which, as alluded to earlier, allows the Controller of Residential Property to attach and sell the property.

IV. Conveyancing and Law of Property Act 1886

33 Having reviewed the transmission provisions under the LTA and their application in practice, and with a caveat to be mindful of the five-year timeline for the sale of restricted residential estate property under the RPA, the final Act in the trilogy of statutes is the CLPA.

34 The intent and purpose of the CLPA is found in its long title, *ie*, “an Act to simplify and improve the practice of conveyancing and for other purposes”,³⁶ and this has been its stated objective since the Conveyancing and Law of Property Ordinance was enacted in 1886. With the passing of the Land Titles Ordinance 1956 (which came into force in 1959 and was later revised several times and re-enacted as the present LTA), the LTA is now regarded as the all-encompassing legislation governing title registration. The CLPA, instead of simplifying, appears to complicate modern-day conveyancing and title registration of estate property.

35 What complicates the registration of an instrument of transfer of a deceased proprietor’s property is that the personal representative must look beyond the LTA and ensure compliance with s 35(2) of the CLPA. Section 35(2) requires the personal representatives to obtain the court’s sanction in order to carry out certain transactions that take place more than six years after the death of the proprietor. Section 35(2) reads:

(2) No sale or mortgage of land belonging to the estate of a deceased person shall be made by the legal personal representative of that person after the expiration of 6 years from his death unless with the sanction of the court, or unless the sale or mortgage is made in pursuance of a power of sale or trust for sale or mortgage which is expressly contained in or may be implied from the terms of the will of the deceased.

36 To attempt any sort of meaningful discussion on s 35(2) of the CLPA, it is helpful to first consider and understand the genesis of s 35, which provides for the devolution of land on the death of the proprietor as chattels real.

36 Conveyancing and Law of Property Act 1886 (2020 Rev Ed).

A. *Genesis of section 35(2) of Conveyancing and Law of Property Act 1886*

37 Section 35(1) of the CLPA, which provides that land is to devolve to the personal representatives as chattel real on the death of the proprietor (thereby removing the different rules governing the devolution of freehold property and personal property, which includes chattel real³⁷), can be traced in part to the original (as enacted) s 30 of the Conveyancing and Law of Property Act 1881³⁸ (“UK CLPA”). Section 30(1) of the UK CLPA was enacted to alter the then-existing law in England by providing for the devolution and vesting of trusts and mortgages of land on the death of the proprietor to his personal representatives as though they were chattels real. Consequently, to give proper and clear effect to s 30(1) and to remove inconsistencies with other legislation, s 30(2) repealed several earlier English legislative provisions, such as s 4 of the Vendor Purchaser Act 1874³⁹ and s 48 of the Land Transfer Act 1875.⁴⁰

38 When the Conveyancing and Law of Property Bill was first introduced in Singapore in 1885, the present s 35(1) originally appeared as s 33(1) of the Conveyancing and Law of Property Ordinance 1886⁴¹ (“CLP Ordinance”). Section 33(1) adapted the language of s 30(1) of the UK CLPA, and it expanded its application to the transmission and devolution of all land belonging to the estate of a deceased person including those held on trust or subject to mortgages.⁴²

39 However, neither the CLP Ordinance, Indian Act XX of 1837 nor the English statutes from which the CLP Ordinance was adapted had the equivalent of s 35(2) of the CLPA from which one might have been able to glean the origin and rationale for the six-year timeframe. This observation was similarly made in *Tan Siew Kheng v Teo Kian Kian*⁴³ (“*Tan Siew Kheng*”) and in *Tan Soo Hean v Tan Eng Beng*.⁴⁴

37 *Syed Ali Redha Alsagoff v Syed Salim Alhadad bin Syed Ahmad Alhadad* [1996] 2 SLR 470 at [30]–[32].

38 c 41 (UK). Section 30 of the Act was subsequently repealed by the Law of Property Act 1925 (c 20) (UK).

39 c 78 (UK).

40 c 87 (UK).

41 Ordinance VI of 1886.

42 Section 33(1) of the Conveyancing and Law of Property Ordinance 1886 effectively repealed and re-enacted s 1 of the Indian Act XX of 1837 to include cases of a trustee or mortgagee dying possessed of trusts of mortgaged estates. See also *Tan Siew Kheng v Teo Kian Kian* [2024] 3 SLR 1399 at [17].

43 [2024] 3 SLR 1399 at [19].

44 [1980] 04 MC 1.

40 It is noteworthy that the earliest form of s 35(2) of the CLPA made its appearance when, by the motion of the Attorney-General, the Conveyancing and Law of Property Bill was considered by the Committee of the Legislative Council on 6 July 1886,⁴⁵ and the following subsection (2) was introduced to s 33 of the CLPA:

(2) Provided that where a sale or mortgage of land belonging to the estate of a deceased person is made after the commencement of this Ordinance by the legal personal representatives or representative of such person after the expiration of a period of six years from his death the purchaser or mortgagee shall be bound to enquire as to the necessity and the propriety of such sale or mortgage and shall (notwithstanding any stipulation to the contrary) be entitled to require evidence that such sale or mortgage is necessary and proper.

41 This original version of s 33(2) of the CLP Ordinance introduced the six-year limitation period to two types of transactions: sale and mortgage. It also placed an onerous obligation on the purchaser or mortgagee “to enquire as to the necessity and the propriety of such sale or mortgage” and directed rather ambiguously that they are “entitled to require evidence that such sale or mortgage is necessary and proper”.

B. Current form of section 35(2) of Conveyancing and Law of Property Act 1886

42 Some 25 years later, in 1911, the obligation on the purchaser or mortgagee to make enquiries was removed by the Conveyancing Law of Property Ordinance 1886 Amendment Ordinance 1911⁴⁶ (“CLPO Amendment Ordinance”), which replaced it with the current obligation on the personal representatives to obtain the court’s sanction.⁴⁷ The six-year period, however, remained unchanged.

43 Two matters surface from the explanatory notes under the heading of “Objects and Reasons” on p 1720 of the Straits Settlements Government Gazette dated 22 September 1911. To appreciate the full context of the CLPO Amendment Ordinance in the explanatory notes, the “Objects and Reasons” are reproduced in full below:

Objects and Reasons

This Ordinance has been drafted to meet the views of the Bar Committee that the original subsection, which was introduced to protect beneficiaries from wrongful dealings by executors or administrators with the property of a deceased person vested in them, entails great hardships upon a *bona fide*

45 Straits Settlements Government Gazette (9 July 1886) at pp 1069–1070.

46 Ordinance XVII of 1911.

47 Straits Settlements Government Gazette (22 September 1911) at p 1720.

purchaser or mortgagee, in that it is silent as to what inquiries should be made or from whom they should be made, nor does it lay down any rule of construction by which the necessity or propriety of the mortgage or sale should be tested.

44 One, the intent and purpose of the original subsection was ostensibly introduced “to protect beneficiaries from wrongful dealings by executors and administrators with the property of the deceased person vested in them”. This, however, lacks elucidation on what wrongful dealings were envisaged and the reason for the introduction of the statutory six-year limitation period.⁴⁸

45 Two, it is now known that the original version proved unpopular amongst conveyancers of that era, and that the amendment to s 33(2) was drafted in response to the then-Bar Committee’s views that the original version caused great hardship to a *bona fide* purchaser or mortgagee. By extension, this included their conveyancing lawyers, on the grounds that there was an absence of clear directions on the type of inquiries that should be made, and lack of clarity of the basis on which the purported mortgage or sale could be ascertained to be necessary or proper.⁴⁹

46 From the above, it can be gleaned that the amended s 33(2) of the CLPA, later renumbered as s 35(2)⁵⁰ was purportedly fashioned to continue protecting beneficiaries without unduly complicating the conveyancing process.

C. *Strict application of section 35(2) of Conveyancing and Law of Property Act 1886*

47 As discussed earlier, the original intent and purpose of s 35(2) of the CLPA was aimed to “protect beneficiaries from wrongful dealings by executors and administrators”.⁵¹ What exactly does this mean, and what is the scope of this protection? And how strictly is s 35(2) of the CLPA to be applied?

48 There is a dearth of local cases in this area of law, and this is compounded by the fact that there appear to be no English or Commonwealth cases to refer to, due to the absence of a similar or comparative provision in those jurisdictions. Nevertheless, some

48 See *Tan Soo Hean v Tan Eng Beng* [1980] 04 MC 1, decided by Evans J on 24 August 1949.

49 Straits Settlements Government Gazette (22 September 1911) at p 1720.

50 *Tan Siew Kheng v Teo Kian Kian* [2024] 3 SLR 1399 at [23].

51 Straits Settlements Government Gazette (22 September 1911) at p 1720 under the heading “Objects and Reasons”.

guidance on the nature of the “protection” envisaged under s 35(2) of the CLPA may be found in *Re Safiah Binte Tahar*⁵² (“*Re Safiah*”). In this case, the court held, *inter alia*, that an application under s 35(2) is not granted as a matter of course⁵³ and that the court may require to be satisfied on matters such as the reasons for the delay, and where infants’ interests are involved, that the property is not sold below value.

49 The underlying paternalistic approach to the application of s 35(2) of the CLPA in *Re Safiah*, decided in 1940, can still be observed more than 50 years later in two High Court cases. The first is *Herman Iskandar v Shaikh Esa*⁵⁴ (“*Herman Iskandar*”), where a restricted residential property was devised by the testator, an Indonesian proprietor, to his wife, also an Indonesian national. The wife subsequently died and after many years, the son, as personal representative, granted an option to purchase the property to the defendants. Under the circumstances, as both the RPA and CLPA were relevant, the correct interpretation and proper application of s 3(4) of the RPA and s 35(2) of the CLPA was raised by the parties, and an application was made to determine the proper court order to be made in respect of the proposed sale.

50 Pertinently, the court considered, in view of the mandatory provisions under s 3(4) of the RPA to sell the property within the stipulated timeframe, whether it was still necessary to apply for the court’s sanction under s 35(2) of the CLPA as it could be argued that “it is pointless and indeed contradictory to the provisions of s 3(4) of the RPA to require an application for leave since the court can hardly deny leave to a personal representative to carry out his statutory duty”.⁵⁵

51 The court then opined that while it must not prevent a personal representative from carrying out his duty to sell under s 3 of the RPA, it is not a licence for the legal personal representative to sell upon any terms and at any price and that the sale must still be subject to the supervision of the court.⁵⁶ It further held that the duty under s 3(4) of the RPA to sell does not override the other duties of the personal representative, such as the obligation to obtain the court’s sanction under s 35(2) of the CLPA.

52 The court in *Herman Iskandar* reiterated at [16] that an application under s 35(2) of the CLPA is not a redundant exercise and,

52 [1940] SSLR 253.

53 It can be gleaned from the holdings that in the past, s 35(2) applications were not likely to be *ex parte* applications and beneficiaries were made parties to the application. This is no longer the practice.

54 [1992] 2 SLR(R) 395.

55 *Herman Iskandar v Shaikh Esa* [1992] 2 SLR(R) 395 at [16].

56 *Herman Iskandar v Shaikh Esa* [1992] 2 SLR(R) 395 at [16].

hinting at its paternalistic approach, noted that the court should not approve any proposed sale unless the terms of sale are in the best interests of those entitled to the proceeds of the sale. It went as far as to suggest that had the draftsman intended to dispense with the s 35(2) application when a personal representative exercises his power of sale under s 3(4) of the RPA, such dispensation would have been explicitly codified.

53 The second and more recent case is *Tan Mei Sin*, where one of the objections raised by the defendant to the plaintiff's application was that the plaintiff had not obtained the court's sanction under s 35(2) of the CLPA to sell the property. It was argued on behalf of the plaintiff that a s 35(2) application was redundant as the plaintiff and her mother were the only two beneficiaries under the estate, and consequently, the court's oversight was not necessary as no other person's interest was at stake.

54 In *Tan Mei Sin*, Goh JC categorically held that s 35(2) of the CLPA is a statutory requirement that must be complied with, and whether or not the court's sanction is redundant is for the court to decide and not the plaintiff. He further observed that although a court may likely grant the required sanction more readily on the factual matrix of the case before him, that in itself does not dispense with the filing of such an application.⁵⁷

55 In situations where both s 3(4) of the RPA and s 35(2) of the CLPA are engaged, *Herman Iskandar* clarifies that the personal representative must comply with the statutory requirements under both statutes. This is reaffirmed in *Tan Mei Sin*, which supports the view that where several statutes apply, and each imposes distinct timelines and requires ministerial consent or sanctions of the court, the parties will have to comply with each of such statutory requirements.

D. Scope of section 35(2) of Conveyancing and Law of Property Act 1886

56 The Judiciary's requirement for strict compliance with s 35(2) of the CLPA is evident in the above cases. Section 35(2), however, does not apply to all situations involving a deceased proprietor's property.

57 With an understanding of its genesis and the Legislature's ostensible objective of protecting the beneficiaries' interest, this article now returns to examine s 35(2) of the CLPA.⁵⁸

57 *Tan Mei Sin v Tan Ah Lim* [2023] 3 SLR 778 at [21].

58 See para 35 above.

58 A correct understanding of s 35(2) is critical. It imposes a statutory requirement⁵⁹ on legal personal representatives to obtain the court's sanction before effecting a sale or mortgage of land belonging to the deceased after six years of his death. Unpack this provision, and it unambiguously and unequivocally stipulates that the court's sanction is required only where:

- (a) the sale or mortgage of the deceased's property is made after six years of his death; *and*
- (b) the sale or mortgage is not made in pursuance to a power of sale or a trust for sale or the mortgage is not expressly contained in or implied from the terms of the will.

The two limbs are to be read conjunctively.

59 It does not apply where a personal representative wants to sell or mortgage a deceased's property within six years of death⁶⁰ or where the sale is to take place after six years, a power of sale or trust for sale is explicitly provided or implied in the will of the deceased.

60 Anecdotally, there have been instances of practitioners who, without distinction or discrimination, cast a safety blanket over s 35(2) of the CLPA. They apply to the court to sanction a transfer to a beneficiary (pursuant to the terms of a will or upon intestacy), only to have the application set aside or withdrawn at the court's direction, as the application, being a transfer to a beneficiary, simply does not fall within the ambit of s 35(2).

61 Recently in *Tan Siew Kheng*, the court had to consider whether an application for the court's sanction under s 35(2) of the CLPA was necessary. Of significance in this case were the cogent observations made by Chua Lee Ming J that it might be appropriate to review whether the requirement to obtain the court's sanction under s 35(2) was still relevant. These will be discussed later.

62 In *Tan Siew Kheng*, the plaintiff applied to the court to exercise its power under s 18(2), read with para 2 of the First Schedule to the Supreme Court of Judicature Act 1969⁶¹ ("SCJA"), to order the sale of a property. Section 18(2) states that the General Division of the High Court has the powers set out in the First Schedule, and para 2 of the

59 *Tan Mei Sin v Tan Ah Lim* [2023] 3 SLR 778 at [21].

60 *Tan Siew Kheng v Teo Kian Kian* [2024] 3 SLR 1399 at [14].

61 2020 Rev Ed.

First Schedule sets out the court's power to direct a sale of land in lieu of partition. Paragraph 2 reads as follows:

Partition and sale in lieu of partition

2. Power to partition land and to direct a sale instead of partition in any action for partition of land; and in any cause or matter relating to land, where it appears necessary or expedient, to order the land or any part of it to be sold, and to give all necessary and consequential directions.

63 The dispute concerned a property that was owned by two sisters equally, and upon their deaths, their respective estates held the property as tenants in common in equal shares. The plaintiff, who was the personal representative of one sister's estate, raised, *inter alia*, the issue that without the court's sanction under s 35(2) of the CLPA, the personal representatives of the other estate lacked the capacity to deal with the property as that co-owner died more than six years ago. Chua J allowed the application and ordered the sale of the property under s 18(2), read with para 2 of the First Schedule to the SCJA. The learned judge further held that s 35(2) was not applicable in this case as the plaintiff who was seeking to sell the property was not the personal representative of the estate of the sibling who died outside the stipulated six-year period.

64 While still examining the scope of s 35(2) of the CLPA, with respect, from a practitioner's perspective, one cannot help but entertain some doubt on the correctness of Chua J's holding that s 35(2) was not applicable to that case and speculate whether another court might have taken a different view.

65 It is not disputed that "s 35(2) of the CLPA did not apply to the claimant as she was seeking a sale of the property within the six-year period".⁶² However, it is submitted that this provision does apply to the sale of the property as a whole. When orders under s 18(2) read with para 2 of the First Schedule to the SCJA are made, it can be observed that the usual consequential order (made on the assumption that one party may refuse to sign the transfer documents) tends to be in the following language:⁶³ "that the Registrar or assistant registrar of the Supreme Court shall be empowered to execute, sign or indorse all necessary documents relating to matters contained in the Order, on *behalf of the party* who fails to do so ..." [emphasis added]. Applying the facts of *Tan Siew Kheng*, the putative purchaser thus obtains title to the property – not from the court but from the personal representatives of both estates – as the Registrar or

62 *Tan Siew Kheng v Teo Kian Kian* [2024] 3 SLR 1399 at [14].

63 *Sun Yanyuan v Ng Yit Beng* [2023] 3 SLR 1727 at [21].

anyone else empowered by the court to execute the transfer documents does so on behalf of the personal representative.

66 The point is that to obtain a good title, the putative purchaser, who is acquiring both half shares in the property, would require the vendors to have the capacity to give a good title. This would, in turn, require the personal representative of the estate of the sister who died outside the six-year period to obtain the court's sanction under s 35(2) of the CLPA, as any sale of that half-share without the court's sanction under s 35(2) would arguably be void.⁶⁴ It is pertinent to note that when acting in a purchase of estate property, a purchaser's solicitor is also legally obliged⁶⁵ to ascertain if the court's sanction under s 35(2) is required where it is known that a proprietor died more than six years ago and, if it is so required, to ensure that the court's sanction is obtained in good time.

67 In the final analysis, the reason for the unease with this aspect of the decision in *Tan Siew Kheng* is that it is unclear if an order of court to sell the property granted in the exercise of the court's powers under s 18(2), read with the First Schedule to the SCJA, overrides the requirement under s 35(2) of the CLPA. Both *Herman Iskandar* and *Tan Mei Sin* support the view that where several provisions, including s 35(2), apply to a set of facts, all the applicable legislation must be complied with, failing which the transfer of the deceased proprietor's property to the purchaser is void. By extension, it is arguable that s 18(2), read with the First Schedule to the SCJA, does not override the statutory requirement under s 35(2) of the CLPA.

E. Laid to rest?

68 Section 35(2) of the CLPA has always been about compliance, deeply entrenched in practice and is regarded as "one of the most well-known provisions concerning the duties of the legal personal representatives".⁶⁶ It is submitted that the time is ripe to consider whether attention should be shifted from compliance to questioning whether the enactment is at all necessary. To quote Goh Yihan J: "Perhaps, as with many instances where subsequent developments have been justified by reference to a technical interpretation of the law, as the courts are bound to do, the time has come to return to the underlying purpose of the law".⁶⁷

64 *United Overseas Finance Ltd v Victor Sakayamary* [1996] 2 SLR(R) 20 at [89]–[90].

65 *United Overseas Finance Ltd v Victor Sakayamary* [1996] 2 SLR(R) 20 at [99].

66 *Herman Iskandar v Shaikh Esa* [1992] 2 SLR(R) 395 at [16].

67 *Prem N Shamdasani v Management Corporation Strata Title Plan No 920* [2023] 3 SLR 1662 at [185].

69 This question was raised, in *obiter*, by Chua J in *Tan Siew Kheng*⁶⁸ in what appears to be the first and only case to have done so, that it might be appropriate to review the necessity for the requirement to obtain the court's sanction under s 35(2) of the CLPA. He offered several cogent arguments for the repeal of s 35(2).

70 First, Chua J reasoned that since the sale or mortgage of a property belonging to the estate within six years of the proprietor's death does not require the court's sanction, it is unclear why such a sale or mortgage after that period would be more susceptible to wrongful dealings by the personal representatives.⁶⁹ Second, in ensuring that the sale is not at an undervalue where infants are involved, he pointed out that it is not clear why the court should be concerned only if more than six years have passed since death.⁷⁰ Further, the sale, whether within or after six years, is likely made to fulfil the personal representative's duty to distribute the assets in accordance with the terms of the will or laws of intestacy. That being the case, the requirement for the court's sanction to fulfil the personal representative's duty, which they are obliged to perform in any case, appears to be excessive.⁷¹ Simply put, there appears to be no sound reason to justify the basis for the six-year period.

71 Approaching the question from different stakeholders' perspectives, for the personal representative who may have finally found an interested buyer, s 35(2) of the CLPA is a time-sensitive hurdle as the sale cannot proceed without the court's sanction. This application is generally not made in advance without a confirmed buyer, as details of the current valuation, the purchase price and other pertinent information concerning the sale are required to be set out in the applicant's affidavit. For a purchaser who wants a clean title and a smooth transaction, the prospect of a sale subject to the vendor obtaining the court's sanction is far from appealing.

72 For the beneficiaries, the application is an additional expense for the estate, which would ultimately reduce the value of their share in the estate, and any delay is not likely to benefit the beneficiaries as it prolongs the sale and the subsequent distribution of sale proceeds to the beneficiaries. In *Re Safiah*,⁷² it was held that a key consideration for courts when sanctioning the sale of an estate or trust property (particularly where there are infant beneficiaries) is that it should not be below

68 *Tan Siew Kheng v Teo Kian Kian* [2024] 3 SLR 1399 at [15].

69 *Tan Siew Kheng v Teo Kian Kian* [2024] 3 SLR 1399 at [21].

70 *Tan Siew Kheng v Teo Kian Kian* [2024] 3 SLR 1399 at [24].

71 *Tan Siew Kheng v Teo Kian Kian* [2024] 3 SLR 1399 at [24].

72 *Re Safiah Binte Tahar* [1940] SSLR 253.

valuation. With respect, and as indicated by Chua J in *Tan Siew Kheng*, this is a valid consideration irrespective of the time that has elapsed since the proprietor's death.

73 Yet another reason for abandoning s 35(2) of the CLPA is that beneficiaries are not without protection. Where beneficiaries allege that the property ought not to have been sold, mortgaged, or mortgaged under terms that the beneficiaries find unfavourable, an aggrieved beneficiary is not without legal recourse as he can take action against the personal representatives for losses suffered.⁷³

74 Apart from the reasons cited above, having considered the genesis of s 35(2) of the CLPA, it would also appear that legal history does not indicate any valid basis for retaining this provision. It is therefore submitted that s 35(2) is indeed redundant and should be repealed.

F. Role in modern conveyancing

75 With the Torrens system of title registration (now augmented by digitalisation of title documents, online document creation for registration and e-lodgements), the new generation of conveyancers can hardly be faulted for focusing on the LTA for registration requirements, while regarding the CLPA as a statute with limited practical relevance and relegating it to the background.

76 The trajectory for conveyancing in Singapore is one that is fast-paced, automated and systematised. With the Digital Conveyancing Portal⁷⁴ now underway,⁷⁵ conveyancers will be expected to handle transactions at a much faster pace,⁷⁶ and with a demographic shift towards a rapidly ageing population, more and more estate matters will inevitably have to be dealt with. For practitioners as well as laypersons, the time is ripe for streamlining compliance requirements for the transfer of title of estate property.

73 *Tan Siew Kheng v Teo Kian Kian* [2024] 3 SLR 1399 at [24].

74 The online portal, which aims to fully digitise the current paper-based conveyancing process for both private and public properties, was announced by the then-Minister for Culture, Community and Youth, and Second Minister for Law, Edwin Tong SC, in 2021.

75 Updates on the development of the Digital Conveyancing Portal were announced by Second Minister for Law Edwin Tong SC on 26 January 2023 at the GNSS Innovation Challenge Award Ceremony.

76 In his speech on 26 January 2023, Edwin Tong SC commented that the current process of conveyancing is very much manual and old school, and "perhaps most inefficiently, it takes something like 8 to 12 weeks to successfully complete a transaction".

77 At the core of the problem for the conveyancer is the thorny quagmire of complying with timelines and obtaining orders of court codified not in one but several statutes in order to complete registration at the Registry of Land Titles. The question for stakeholders is whether s 35(2) of the CLPA can be removed altogether or, if it is deemed a necessary relic, whether it should be better placed in the LTA, the go-to legislation for the modern conveyancer.

78 Two solutions are proposed to serve the conveyancing community. First, assign greater visibility to this statutory requirement. While the LTA explicitly sets out that specific sections in the CLPA apply to mortgages and leases of registered land,⁷⁷ there are identifiable gaps when it comes to transfers of property belonging to deceased proprietors. If the legislators take the view that s 35(2) of the CLPA should remain a feature of Singapore land law, this can be accomplished by amending Pt 11 of the LTA to provide that s 35(2) applies to the sale or mortgage of deceased proprietors' land by personal representatives. This would helpfully direct the conveyancer to the CLPA when dealing with land belonging to the estate of deceased proprietors.

79 A second solution would be to migrate s 35(2) of the CLPA to Pt 11 of the LTA. Consolidation of statutory provisions from various statutes to one key statute is not novel or unheard of. As property lawyers would be well aware, in 2004, the Building Maintenance and Strata Management Act 2004⁷⁸ ("BMSMA") was enacted to improve the then-existing framework for management and maintenance of strata developments, by repealing the Buildings and Common Property (Maintenance and Management) Act⁷⁹ and absorbing Pts IV and VI of the Land Titles Strata Act⁸⁰ which governed the maintenance and management of strata property and the Strata Titles Boards respectively.⁸¹ By incorporating the statutory requirements of s 35(2) of the CLPA into the LTA, the modern conveyancer would find the registration requirements consolidated in one key statute.

77 See s 69 of the Land Titles Act 1993 (2020 Rev Ed) ("LTA") on the application of Conveyancing and Law of Property Act 1886 (2020 Rev Ed) ("CLPA") to mortgages of registered land, and ss 86(2) and 93(4) of the LTA on the application of the CLPA to leases of registered land.

78 2020 Rev Ed.

79 Cap 30, 1985 Rev Ed.

80 Cap 158, 1985 Rev Ed.

81 Singapore Parl Debates; Vol 77; Cols 2742–2744; [19 April 2004] (Mah Bow Tan, Minister for National Development).

V. Conclusion

80 It flows from the preceding analysis that s 35(2) of the CLPA should be laid to rest as it serves no discernible purpose in the transfer of title of estate property. Modern conveyancing practice should not be made to needlessly apply legislation that was enacted to provide for circumstances surmised to be relevant more than a century ago.

81 Property law, to the extent that it is codified, is spread over several statutes. If the objective is to simplify title registration and conveyancing generally, it is opportune to review critical legislative provisions, particularly those sequestered in statutes other than the LTA. It is submitted that s 35(2) of the CLPA is ripe for reform, either by removing it altogether or migrating it to the LTA. Legislative reform as contemplated here will benefit the conveyancing community and, to that end, anyone concerned with dead man's land.
