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**Client Guide 2021-01****Land Titles Act, Registry Act,  
Expropriations Act****Date: March 19, 2021****Expropriation Plans**

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## 1. Background

Section 1 of the *Expropriations Act* (the ‘Act’) defines “expropriate” to mean “the taking of land without the consent of the owner by an expropriating authority in the exercise of its statutory powers.” “[L]and” is defined under the Act as including “any estate, term, easement, right or interest in, to, over or affecting land”.

Section 9 of the Act establishes that the effect of registration of an expropriation plan in the proper land registry office is to vest the specified interests of the described land in the expropriating authority - the entity empowered by statute to expropriate land.

Section 9 of the Act requires the expropriating authority to register its expropriation plan within three months of the date when approval for the expropriation was granted by the approving authority. As a result, if the prescribed three-month period is exceeded, the expropriation plan cannot be registered in the land registration system. Because of this statutory time limit, expropriation plans are examined and registered in the land registration system as expeditiously as possible.

The purpose of this Client Guide is to provide guidance in the preparation and registration of expropriation plans and to ensure that these plans continue to meet land registration requirements.

## 2. Plan of Survey

Expropriation plans are to be prepared in accordance with Ontario Regulation 43/96 under the *Registry Act* and Ontario Regulation 216/10 under the *Surveyors Act*.

In accordance with s. 32 of Ontario Regulation 43/96 under the *Registry Act*, all expropriation plans shall include “Expropriations Act” in the title block.

In addition, all expropriation plans must refer to the name and section of the Act from which the expropriating authority derives its power to expropriate. Despite that requirement, if an expropriating authority derives its power to expropriate under the *Public Transportation and Highway Improvement Act*, s. 32(4) of Ontario Regulation 43/96 provides that the section of that Act under which the expropriating authority derives its power need not be shown on the expropriation plan.

### **3. Strata Plan of Survey**

If the expropriation plan is a strata plan, the plan must include the title 'Strata Plan of Survey' as set out in clause 16(1)(a) of Ontario Regulation 43/96 under the *Registry Act*.

Section 16 also permits multiple sheet strata expropriation plans. Multiple sheet strata expropriation plans prepared for registration are required to include a Certificate of Registration, as prescribed in clause 16(1)(j) of Ontario Regulation 43/96, in the upper right corner of each sheet; and must show the plan sheet number and the total number of plan sheets on each plan sheet adjacent to the Certificate of Registration, pursuant to clause 16(1)(g).

For multi-sheet strata expropriation plans, the Certificate of Approval (see Section 5 below) or, where the Certificate of Approval is registered before the expropriation plan, the registration number of the Certificate of Approval, must be included on all sheets, however, the Surveyor's Certificate, including the statement "comprising sheets 1 to \_\_\_", is placed only on Sheet 1.

### **4. Existing Easements**

In accordance with s. 18(1) of Ontario Regulation 216/10 under the *Surveyors Act*, all plans of survey must show,

- (a) every right of way and easement affecting the land shown on the plan that is,
  - (i) described in a registered instrument, or
  - (ii) shown on a registered or deposited plan;

In addition, clause 35(1)(b) of Ontario Regulation 43/96 requires that an expropriation plan include, below or adjacent to the Part Schedule, a list of all parts on the plan that are subject to easements and the registration instrument numbers of those easements.

During the approval and registration of an expropriation plan it is necessary for the representative for the land registrar to have certainty regarding whether some or all the existing easements will continue, or if all the easements are extinguished by the expropriating authority.

In determining the effect of the expropriation plan on the existing land registration records, the representative for the land registrar will rely upon the expropriating authority statement (see Section 6).

For additional certainty, an expropriating authority shall include a note in the form 'this easement has not been expropriated' following an easement set out on the list described in clause 35(1)(b) of Ontario Regulation 43/96 if the land continues to be subject to the easement following expropriation of the land.

While expropriation plans must show all existing underlying easements, there is no requirement to create a Part for existing easements included in a new subdivision unit created by the plan.

## 5. Certificate of Approval

Under s. 4(1) of the *Expropriations Act*, an expropriating authority shall not expropriate land without the approval of the approving authority. Subsection 32(2) of Ontario Regulation 43/96 under the *Registry Act* requires that this approval be:

- i) registered before the expropriation plan is registered using a Certificate of Approval in Form 5 as prescribed in Regulation 363 under the *Expropriations Act*,  
or
- ii) endorsed on the expropriation plan using a Certificate of Approval (on Expropriation Plan) in Form 6 as prescribed in Regulation 363 under the *Expropriations Act*.

Under clause 32(1)(c) of Ontario Regulation 43/96, where the Certificate of Approval is registered before the expropriation plan, the registration number of the approval must be shown on the plan within the Certificate of Registration.

The Certificate of Approval must set out the interests being taken through clear and concise statements referencing Parts on the expropriation plan or with a registerable description if the Certificate is registered prior to the plan. If the approval includes a mix

of 'all right, title and interest' and 'limited estate, right or interest' in land, separate statements setting out the limited interest expropriations are required.

## 6. Expropriating Authority Statement

To ensure that the intended scope of the expropriation is clear and that the representative for the land registrar is able to understand the effect of the registration of the plan on the land registration records without the need to request additional information under the authority of s. 145(4) of the *Land Titles Act*, all expropriation plans, including plans with a Form 6 Certificate of Approval placed on the plan, are required to have a written statement of the land and interests being expropriated by the expropriation authority. This written statement may be located directly above the Plan Schedule as prescribed in s. 35 of Ontario Regulation 43/96 or it may be included in a statement located elsewhere on the plan.

Any registered interests that will remain following the expropriation should also be set out in the statement of land and interests being expropriated and referenced by document type and registration number.

The land expropriated by the expropriating authority must conform with what was approved by the approval authority, however it is acceptable for the plan to expropriate a lesser extent or a lesser interest than that stated in the Certificate of Approval.

Expropriation plans prepared to take both 'all right, title and interest' and a 'limited estate, right or interest' in land may be combined. A combined plan should show separate statements for different types of interests.

Other approval information required by s. 33 of Ontario Regulation 43/96 includes the following:

- Where a municipal expropriating authority has exercised its authority through passing a by-law, the name of the municipality, the by-law number and the date the by-law was passed must be shown on the plan.
- Approvals from entities other than a municipality require a reference to the official publication or public record (i.e. the Statute) where evidence of the exercising of the statutory power is published or recorded.

Section 9 of the *Expropriations Act* requires that an expropriation plan must be signed by the expropriating authority. If the expropriating authority is a corporation, including a municipal corporation, s. 33.1 of Ontario Regulation 43/96 under the *Registry Act* requires that the plan include a statement that the signing officers have the authority to bind the corporation.

## 7. Showing Purpose on Expropriation Plans

Section 11 of Ontario Regulation 43/96 under the *Registry Act* states as follows:

Except as required under any Act and subject to subsection 19(5), a plan shall not contain information describing the purpose for which any portion of the land on the plan is intended to be used.

If details about the purpose for which the land will be used are required, they must be included in a Certificate of Approval in Form 5 as prescribed in Regulation 363 under the *Expropriations Act*, which is registered prior to the registration of the expropriation plan.

### Exception

Subsection 9(2) of the *Expropriations Act* states as follows:

9(2) Where the land is required for a limited time only or only a limited estate, right or interest therein is required, the plan registered under this section shall indicate **by appropriate words thereon** that the land is taken for such limited time only or that only such limited estate, right or interest therein is taken, and, by the registration in such case, the land for such limited time or such limited estate, right or interest therein vests in the expropriating authority. [emphasis added]

In accordance with Section 9(2), “appropriate words” may be included on an expropriation plan to indicate that the land is taken for a limited time or that only a limited estate, right or interest is taken. This wording may also include short statements so that the duration of the limited time or the limited estate, right or interest is clear. For example:

The Part(s) enumerated hereunder refers to land(s) in which a temporary interest, for a period of sixty (60) days to commence upon at least three (3)

months prior notice and in any event not to extend beyond December 31, 2025 for driveway rehabilitation and ancillary works is expropriated by the <expropriation authority>.

Extraneous language detailing the activities which may be carried out on the land should be avoided. As set out above, if detailed information about the use of the land is included, a Certificate of Approval using Form 5 should be used and registered in advance of the registration of the expropriation plan.

This Guide replaces Bulletin 2007-01 Expropriations Act and Bulletin 2011-05 Expropriation Plans to Acquire Existing Easement Interests.

**(original signed by)**

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