



Bulletin No. 2000-2

Land Titles Act

Date: July 21, 2000

Ministry of Consumer
and Commercial Relations

To: All Land Registrars

Cautions under Section 128
Cautions under Section 71

Registration Division

The provisions for registering cautions were amended by the *Red Tape Reduction Act, 1998*. These amendments came into effect June 18, 1999. Bulletin 98009 contained a summary of the amendments to the sections of the *Land Titles Act* dealing with cautions. The purpose of this bulletin is to provide further details for procedures when registering cautions and to clarify the use of these amended caution procedures.

The *Land Titles Act* provides for the registration of cautionable interests. The intent of this registration was to give the party claiming an interest an opportunity to protect that interest. These cautions expired after five years. If the registered owner disputed this caution he/she could make an application to the land registrar to have it removed and the land registrar would hold a hearing.

The subject matter of these cautions was often the subject of a court proceeding and decisions of these hearings were frequently appealed. As a result, the caution provisions were amended. The effect of the amendment is that the life of a caution has been reduced so that land is not tied up for an extended period of time. This time period is sufficient for a cautioner to start the appropriate action and, where applicable, obtain a certificate of pending litigation which may be registered against the title.

The following is a summary of the main legislative and procedural changes:

SECTION 71 – CAUTIONS

A. Section 71 – Registration of Agreements of Purchase and Sale

Section 134 which provided for the registration of a caution to protect an agreement of purchase and sale, was repealed and Section 71 of the *Land Titles Act* was amended to add the following subsection:

Section (1.1) An agreement of purchase and sale or an assignment of that agreement shall not be registered, but a person claiming an interest in registered land under that agreement may register a caution under this section on the terms specified by the Director of Titles.

The result of this is that cautions protecting an agreement of purchase and sale are now registered under section 71.

Pursuant to section 1.1 the following procedures have been specified:

Procedures:

1. A caution based upon an agreement of purchase and sale may be registered pursuant to the above section. It is to be abstracted as “Caution of Agreement of Purchase and Sale” (CAUAPS) in the automated system and as a “Caution of Agreement of Purchase and Sale” in the manual system. Corresponding amendments to the Abstracting Standards are attached.
2. The date of closing set out in the agreement of purchase and sale must be set out in the caution. (See example of completed caution attached, it replaces the affidavit and sets out particulars of the agreement)
3. The caution must contain a statement by the cautioner or his/her solicitor authorizing the Land Registrar to delete the caution from the property 60 days after the date of closing and the date of closing must be included as part of the statement.
4. A Land Transfer Tax affidavit is required on all agreements of purchase and sale and tax is payable where appropriate.
5. Cautions under this section cannot be renewed. However if the agreement is extended another caution may be registered based upon the agreement extending the date of closing.
6. A caution under this section **will not** prohibit dealings with the parcel. In the automated system land registry office staff are required to ensure that the No Dealings Indicator is not activated.

B. Other Cautions under Section 71

Section 71 provides for the registration of cautions authorized by the Director of Titles. The following interests have been authorized as acceptable:

- a) a claim by a creditor that the property has been conveyed with the intention to defeat creditors;
- b) a claim by the registered owner that the power of sale proceedings are improper because the owner has redeemed the charge prior to a sale of the property being made.

Procedures

1. An application for a caution under Section 71, except a caution based on an agreement of purchase and sale, will be abstracted as Caution, (CAU) in the automated system and as a Caution in the manual system.
2. The caution must contain a statement by the cautioner or his/her solicitor authorizing the Land Registrar to delete the caution from the parcel register upon the expiration of 60 days from the date of registration. Cautions under this section cannot be renewed.

3. A caution under this section **will not** prohibit dealings with the parcel. In the automated system land registry office staff are required to ensure that the No Dealings Indicator is not activated.

SECTION 128 - CAUTIONS

Cautions registered under this section must be based on a proprietary interest i.e.: the cautioner must have the right to receive a transfer, charge or transfer of charge.

Some examples are:

- The interest of a beneficiary under a trust agreement where the beneficiary claims to be entitled to and to have called for a transfer of the lands or charge to him/her from the trustee;
- The interest of an optionee under an option to purchase when the optionee has exercised the option;
- An interest that may be protected by way of caution pursuant to any Act of Ontario or Canada.

Procedures:

1. A caution registered under section 128 will be abstracted as a Caution (CAU) in the automated system and as a Caution in the manual system.
2. Cautions registered under this section cease to have effect 60 days after the date of registration.
3. Cautions registered under this section cannot be renewed.
4. Cautions registered under this section **will** prohibit dealings with the parcel register (see subsection 129(1)).

Section 129(2) was repealed and substituted with a provision that requires the cautioner to serve a copy of the caution and a notice containing the particulars of its registration on the registered owner of the land and all other persons having an interest in the land or the charges against which the caution was registered.

SECTION 130 - CAUTIONS

Section 130 of the *Land Titles Act* provides that the Land Registrar may register a second caution under certain circumstances. This section applies to section 128 and does not apply to cautions under section 71.

DELETION OF CAUTIONS UNDER SECTION 71 AND 128

A caution under these sections may be deleted by:

1. A withdrawal of caution by the cautioner;
2. The Land Registrar, upon request by the registered owner or any other person having an interest in the cautioned land or charge, 60 days after the date of closing in an agreement of purchase and sale, or 60 days after the date of registration for other cautions, without application.

DELETION OF CAUTIONS REGISTERED PRIOR TO JUNE 18, 1999

A caution registered prior to June 18, 1999 which prohibited dealings will continue to prohibit dealings until it has been removed.

An existing caution registered prior to the effective date of these sections of the *Red Tape Reduction Act, 1998* registered under either section 71, section 128 or section 134 may be deleted as follows:

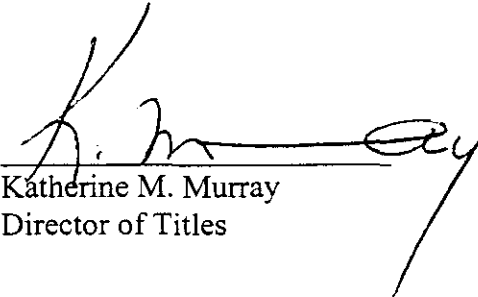
Cautions under section 128

- a) five years from the date of registration of the registered caution without application;
- b) on the date specified in the registered caution without application;
- c) the registered owner of the land, or any other person having an interest in the land or charge against which the caution was registered, may make an application to the land registrar to delete the caution. Proof that notice of this application to the land registrar has been served on the cautioner at least 60 days before the application is made is required; or
- d) upon registration of a withdrawal of the caution by the cautioner.

Cautions under section 71 and 134

- a) five years from June 18, 1999 (i.e., June 18, 2004) without application;
- b) on the date specified in the registered caution without application;
- c) the registered owner of the land, or any other person having an interest in the land or charge against which the caution was registered, may make an application to the land registrar to delete the caution. Proof that notice of this application to the land registrar has been served on the cautioner at least 60 days before the application if made is required; or
- d) upon registration of a withdrawal of the caution by the cautioner.

Bulletin 98009 is hereby revoked.



Katherine M. Murray
Director of Titles