



Ontario

Ministry of
Consumer and
Commercial
Relations

Ministère de la
Consommation
et du
Commerce

Registration
Division

Division de
l'enregistrement

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EM199201

MEMORANDUM TO: LAND REGISTRARS
REGIONAL SURVEYORS

FROM: KATE MURRAY
DIRECTOR OF TITLES

RE: LAND TRANSFER TAX ACT ISSUES

Recently, I have received a number of questions concerning the Land Transfer Tax Act and the prescribed affidavits. The questions primarily concerned multiple conveyances and computer generated land transfer tax affidavits. I have discussed the issues with the Ministry of Revenue and I would like to advise you of the outcome of these discussions.

1. Multiple Conveyances

You will recall that at the Branch meeting at Collingwood, I circulated a copy of a newspaper article which discussed the concept of registrars submitting multiple conveyances (i.e. interest splitting) in order to reduce the amount of land transfer tax levied.

The Ministry of Revenue's position is that the tax rates apply not simply to the value assigned to one particular registered conveyance, but rather to the total value of the consideration relating to the entire conveyance. As a result, they initially requested that we police the registration of these types of conveyances. It was their position that the provisions of subsection 4(5) of the Land Transfer Tax Act, which permits a Registrar to refuse to register a conveyance, if the Registrar is not satisfied that the land transfer tax affidavit sets out the true value of the consideration for the conveyance, applied. In their view, Registrars would be justified in taking the position that the affidavit did not disclose the true value of the consideration. In their proposal, they outlined a number of fact situations in which they thought it would be appropriate for the Registrar to refuse registration.

We reviewed their proposal and the fact situations contained in it and advised them that we were concerned with the practical aspects of having land registry office staff administer it. We took this position because it is not always possible for land registrars to distinguish the registration of multiple deeds solely for the purpose of lowering the amount of land transfer tax payable, from legitimate registrations. There are conveyances which will appear to be registered for the purpose of interest splitting when, in fact, they are legitimate conveyances.

We agreed, therefore, to continue the present practice of the land registry offices that if the affidavit is properly completed, it is accepted and the appropriate amount of tax is collected. Only a rudimentary review of the affidavit is performed to ensure that it is properly completed and that the total consideration listed is consistent with the transfer document. We did not agree to policing the interest splitting because of the operational impact on the registry offices of this increased

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involvement and the potential legal liability from refusing to register a conveyance on the grounds which had been proposed by the Ministry of Revenue. Because we shared their goal of eliminating the practice of interest splitting for tax avoidance purposes, we agreed that land registrars would advise the Ministry of Revenue of any multiple deed conveyances which appear to be interest splitting for action by that Ministry. We had been advised that many of the land registrars were already doing this.

Mr. Moxley, Director of the Motor Fuels and Tobacco Tax Branch of the Ministry of Revenue, has advised that some of these multiple conveyance transactions have been audited and additional assessments have been raised, which are now under appeal. He also indicated that the volume of these types of conveyances appears to have decreased.

If you are not already flagging these types of conveyances when forwarding documents to the Ministry of Revenue, please ensure that you do.

2. Computer Generated Land Transfer Tax Affidavits

We have received a number of inquiries from land registrars concerning the status of these forms.

As you were advised, the Ministry of Revenue amended the prescribed form of land transfer tax affidavit in April of 1991 to include the school tax information. At that time, we advised them that we felt that the form was too crowded and difficult to microfilm. Revenue required these changes because it is advantageous for them to have the school tax information at the time of the land transaction, rather than later as was previously the case.

Since then, we have received notification that computer generated forms have been approved by that Ministry. As we do not police the form and because only a couple of forms have been forwarded to us, it was agreed by the Regional Managers that copies of these forms need not be forwarded to your offices as it would just be an unnecessary additional administrative item.

The computer generated forms do not appear to be any less desirable than the printed stationary form. However, if you find that a particular form is causing some difficulty in terms of microfilming, please contact Pat Moir, Manager of Training & Procedures, and she will advise the Ministry of Revenue of your specific concern.

I hope that this clarifies some of the outstanding issues concerning the Land Transfer Tax Affidavits and provides you with the information you need when responding to questions from your staff and clients.

KM/fs

cc: Despina Georgas
Bob Moxley
Regional Managers
Head Office Managers
Legal Services

