



Subject BREACH OF TERMS AND CONDITIONS OF CROWN AND MINISTRY DOCUMENTS		Policy PL 2.05.03	
Compiled by - Branch Lands & Waters	Section Land Management	Date Issued February 11, 1997	
Replaces Directive Title Mortgages, Charges and Liens on Leasehold Land	Number LM 8.10.03 (POL)	Dated February 12, 1982	Page 1 of 4

1.0 **DEFINITIONS**

In this policy,

"assignment" means the change of ownership of a leasehold estate which is not registered in a Land Titles Division, or of a licence of occupation;

"breached" means the act of having broken a term, condition or covenant contained in a Crown or Ministry document;

"consent" means the permission required from the Minister to assign an interest in a Crown or Ministry document;

"chargee" means a person who has loaned money which is secured by a charge registered against the borrower's property in a Land Titles Division of the local Land Registry Office;

"chargor" means a person who has borrowed money which is secured by a charge registered his/her property in a Land Titles Division;

"Crown or Ministry document" includes a Crown term easement, Crown lease, Summer Resort Lease, Water Lot Lease, Provincial Park Lease, Licence of Occupation, and Land Use Permit;

"lessee" means the holder of a lease;

"mortgagee" means a lender to whom property has been conveyed, subject to a right of redemption, as security for the payment of the debt in a Registry Division;

"mortgagor" means a borrower who has conveyed his property to a lender (mortgagee), subject to a right of redemption, as security for the payment of the debt in a Registry Division of the local Land Registry Office;

"tenant" means the holder of a Crown or Ministry document; and

"transfer" means the change of ownership of a leasehold estate which is registered under the Land Titles Act.

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2.0 INTRODUCTION

Crown or Ministry Documents may contain numerous terms and conditions which a lessee, licensee or permittee is required to comply with.

Good land management practices may require that corrective action be taken or that the document be cancelled. Preferably, that corrective action should be taken by the tenant. However, if this does not occur, in the case of a lease, prior to cancelling the lease with cause, or taking alternative action (e.g. apply for a court order forfeiting land under subsection 18 (2), PLA), any chargee or mortgagee of the leased property should be given an opportunity to remedy the infraction.

Depending on the type and conditions of the mortgage/charge contract, a mortgagee/chargee has one of four possible options with regard to enforcing the mortgage in the event of a default. A mortgagee/chargee may:

- a) sue for payment on the basis of the mortgagor's/chargor's personal covenant;
- b) take possession of the property, assume all obligations for rent, taxes, etc., and sublet the property and apply the rent to the mortgage payment;
- c) take possession and seek a court order to sell the lessee's interest (any monies covered over the debt(s) due belongs to the mortgagor, and if the sale does not recover enough money the mortgagor is liable for the balance owing); or
- d) take possession and apply for full disclosure. If foreclosure is granted, the mortgagee becomes the sole owner, of any interests the mortgagor had and no funds are owing to the mortgagor. If the mortgagee asks for a foreclosure, the mortgagor may request a forced sale instead. The importance between sale and foreclosure is that under a sale the mortgagor can recover any remaining equity he may have in the property after all debts have been honoured. Under foreclosure the mortgagor recovers nothing.

3.0 PROGRAM DIRECTION

3.1 Application

This policy applies where a tenant/licensee/permittee of Crown document issued under the Public Lands Act or the Provincial Parks Act is in breach of the terms or conditions of the document.

This policy does not address Mining Leases, Licences of Occupation issued under the Mining Act, or Exploratory Licences of Occupation which are administered by the Ministry of Northern Development and Mines.

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3.2 Guiding Principle

Action should be taken to achieve compliance with terms or conditions of Crown or Ministry documents.

3.3 Goal

To achieve compliance with term and conditions in Crown or Ministry documents.

3.4 Policy Objectives and Strategies

- A) To take action to require compliance with terms and conditions of Crown or Ministry documents which have been breached.

If a term or condition of a Crown or Ministry document has been breached, the Ministry may take action to terminate the document, after giving the tenant a reasonable opportunity to rectify the breach.

Unless otherwise specified in a Crown or Ministry document, a reasonable opportunity is 45 days, although this may vary with the local circumstances. If access is impractical over much of the year (e.g. winter) it may be necessary in November to give the tenant until the following July to rectify on site breaches.

The non-payment of rent is a serious breach of a condition which may warrant quick action to terminate the document, where that action is in the interest of the Crown.

- B) To explore a variety of options to remedy an breach of a term or condition.

Options for the rectification of breaches include:

- a) giving the tenant a reasonable opportunity to rectify the breach;
- b) encouraging a tenant to assign/transfer a document to allow a third party to rectify the breach and granting consent to the assignment/transfer;
- c) giving a mortgagee/chargee the opportunity to rectify a term or condition which has been breached;
- d) apply to a judge for an order forfeiting the land to the Crown under subsection 18 (2) of the Public Lands Act, where land has been or is being used in violation of a land use condition in letters patent (See Explanatory Note 1); and
- e) cancelling the Crown or Ministry document, after other means have not been effective.

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- C) To notify parties holding an interest in the property or improvements thereon of any action to be taken by Ministry to remedy the breached term.

Mortgagees, chargees and lien holders have a significant financial and legal interest in properties on which they are secured.

Before taking any action to cancel a Crown or Ministry document, or to seek a court action for violation of a land use condition, the Ministry will notify, by registered mail, all registered mortgagees, chargees or lien holders of its intention and will give them a reasonable opportunity to rectify the breached term or condition.

- D) To maintain and improve the knowledge base.

If as a result of rectifying a breach, a transfer of ownership of the Crown or Ministry document occurs, it is necessary for the Ministry's records to accurately reflect the identity and address of our clients. Area Supervisors will ensure that the Land Index System (LIS) and Revenue Accounts Receivable System records are updated to reflect a change of a lessee/licensee.

This is done through using the appropriate requisition to change MNR corporate records.

4.0 EXPLANATORY NOTES

1. The Minister's power to seek a judge's order forfeiting land has been delegated to District Managers. Before seeking a judge's order the advice of the Regional Lands Specialist and Legal Services Branch should be sought.

5.0 REFERENCES

5.1 Statutory References

Public Lands Act - Subsection 18 (2)
Provincial Parks Act
Mining Act