

**Ministry of Government Services
Service Ontario****Policy and Regulatory Services
Branch****DATE: OCTOBER 17, 2008****LTCQ Procedures:**

- 1. Deleting "Subject to Interest" and Documents**
- 2. Registry Documents**
- 3. Description Notices**
- 4. Reference Plans**
- 5. Covenants to Indemnify**

TO: ALL LAND REGISTRARS

This Bulletin replaces Bulletin No. 2008-03 dated September 12, 2008 to reflect minor wording changes.

BACKGROUND

During the automation process, Registry records are administratively converted to Land Titles under the authority of subsection 32(1) of the *Land Titles Act* (LTA). The following procedures have, for the most part, been previously contained in a variety of materials and forms and this Bulletin is being issued to update and consolidate those procedures for ease of reference and understanding. In addition to this Bulletin there are additional current Memos and Bulletins that are applicable when dealing with Land Titles Conversion Qualified (LTCQ) properties and they are set out in Appendix "A" hereto. Although this Bulletin pertains to LTCQ properties, some procedures may be applicable to Land Titles Absolute and Land Titles Absolute Plus properties. As always, if there are questions regarding a PIN, registrants should consult with Registry Office staff to determine the best course of action to deal with the particular situation.

When the Registry records are searched during the automation process, they are parcelized on the basis of ownership. Most of the Registry records searched are converted to Land Titles and the land registration system makes a statement of ownership. All active interests that apply to that record are brought forward to the automated parcel register.

A First Application is not undertaken during this administrative conversion process. There is no survey of the property; no notice is served on interested parties and some issues that can be dealt with in a First Application such as adverse possession, cannot be dealt with. As a result, the land registration system brings the land into Land Titles with additional qualifiers to those listed in Section 44 of the *Land Titles Act* added to the parcel. Conversely, because of the searches performed during the conversion process, certain subsection 44(1) qualifiers are removed from the parcel. The net result is that the land registration system is able to offer a title with additional guarantees and fewer qualifications to ownership than "Absolute", notwithstanding the requirement in the Act that it be referred to as "Qualified". A search for writs of execution on the current registered owner(s) is conducted at the time of conversion of property to Land Titles. If the current

registered owner(s) received the property through a non-arms length conveyance, a search for writs of execution on the prior registered owner(s) is also conducted.

The LTCQ title issued may reflect interests and/or documents that the parties have determined in the Registry system do not apply. Because of the differences between the Registry and Land Titles systems, and because no notice is being served in the administrative conversion, interests may be brought forward to the LTCQ property description as "Subject to interest as in #" or as document entries in the instrument field. Any outstanding writs will be identified in the property description as "Subject to execution #, if enforceable".

These "subject to" notices, except writs, generally deal with interests that were not fully addressed in the registered documents. If the outstanding interest concerns a description, debts, spousal or beneficiaries it will be identified as such. All other outstanding interests will be shown as "subject to interest as in #".

The LTCQ PIN also may not include documents that were abstracted in Registry (e.g. most deposits). Also some traditional Land Titles practices have been amended so that documents registered or deposited in the Registry system can be referenced in post-conversion Land Titles registrations.

1.0 DELETING "SUBJECT TO INTEREST" and DOCUMENTS

Deleting "subject to interest" and documents that are believed to be no longer applicable but brought forward on conversion will, for the most part, require the registrant to prepare and register a document. In the electronic registration environment an Application (General) document type is required. In the non-electronic environment, an Application to Amend the Register under Section 75 of the *Land Titles Act* is required. In both the electronic and paper environments, the application must be made by an interested party. If the situation warrants, a solicitor's statement in electronic registration and a solicitor's statement or affidavit in the paper system may be used to provide the evidence required to delete the interest. In both the electronic and paper systems, an application to the Land Registrar to amend the title will be required, incorporating the wording and required information in Form 15, Ontario Regulation 690 under the *Land Titles Act*.

Whether a registration fee is applicable will depend on the particular situation. When dealing with situations that have not been dealt with in Registry prior to conversion, the normal Land Titles procedures apply, an application must be registered and the normal registration fee applied. If an interest or document has been entered on the LTCQ parcel where evidence has been registered or deposited in Registry and not brought forward, an application to amend the parcel is required, however, the registration fee will be waived. There may be some limited situations depending on the circumstances where no further explanation is required on title. If this is the case, the Land Registrar may amend the records without application or fee.

The type of evidence that may be required to be included in the application will depend on the particular interest or document shown on title and may include evidence based on a solicitor's legal opinion, evidence in the solicitor's possession, a consent of a third party, case law or time limits under the *Real Property Limitations Act*. The foregoing list is not exhaustive and, as always, registrants should work with the Land Registrar to determine what type of evidence is required and the applicability of a registration fee.

1.1 DOCUMENTS BROUGHT FORWARD ON CONVERSION

Set out below are common examples of documents that are carried forward onto a PIN from the Registry records pursuant to the conversion procedures and the processes for deleting them. This list is not exhaustive.

1.1.2 AGREEMENTS OF PURCHASE AND SALE

If consent can be obtained from the party that registered the agreement, an application with the consent may be registered to delete the agreement.

If consent cannot be obtained, the following evidence by way of a solicitor's statement/affidavit must be included in the application:

- There is no occupation of the premises by the purchaser, and;

Only the statement(s) below applicable to the situation being dealt with:

- The period as defined in the agreement has expired and there have been no renewals or extensions;
- Default has occurred and no money has been paid or is owing according to the terms of the agreement;
- Pursuant to the terms and conditions within the specific agreement no interest still exists.

1.1.3 NOTICE OF AGREEMENT OF PURCHASE AND SALE

Pursuant to the *Registry Act*, notices of agreement of purchase and sale expire one year after registration unless extended or renewed. In this case, an application is not required. The Land Registrar has the authority to delete expired interests.

If the notice has not expired, an application may be registered to delete the notice with consent from the party that registered the notice.

1.1.4 MECHANICS LIENS AND CERTIFICATES OF ACTION

Mechanics liens that have not been released, vacated or discharged will not be brought forward if there has been a subsequent conveyance and no certificate of action has been registered. If a lien was brought forward and there has been a subsequent conveyance, the Land Registrar may delete the lien if there has been no certificate of action registered.

To delete a mechanics lien and/or a certificate of action that has been brought forward, a release by the lien claimant or a court order vacating or discharging the lien/action may be registered. The lien/action may also be deleted by registering an application with evidence by way of a solicitor's statement/affidavit stating all of the following:

- A search has been done and the lien claimant cannot be located;
- The specific section under the *Mechanics Lien Act* that provides for the expiry of the lien;
- Whether or not the lien was perfected;
- No other liens are sheltering.

1.1.5 CONSTRUCTION LIENS AND CERTIFICATES OF ACTION

Construction liens and/or certificates of action will be brought forward unless released, vacated or discharged prior to conversion.

In accordance with the Ministry's long-standing practice, a release by the lien claimant or a court order vacating or discharging the lien may be registered to delete a construction lien and/or a certificate of action that has been brought forward. Where the lien claimant includes a certificate of

action in a release and there are any other outstanding liens on title, the Land Registrar will process the release and delete the lien and the release from title but will not delete the certificate of action. The certificate of action is to be left on title as there may be sheltering of the other lien(s) under the certificate.

The lien may also be deleted by registering an application with evidence by way of a solicitor's statement/affidavit stating all of the following:

- A search has been done and the lien claimant cannot be located;
- Specific section under the *Construction Lien Act* that provides for the expiry of the lien;
- Whether or not the lien was perfected;
- No other liens are sheltering.

1.1.6 CERTIFICATES OF PENDING LITIGATION

A certificate of pending litigation (or certificate of *lis pendens*) that has not been discharged or vacated by court order will be brought forward upon conversion.

Generally, a court order is required to delete a certificate of pending litigation as it is a notice of a court action. An application to the Land Registrar with a solicitor's statement/affidavit regarding the status of the action may be accepted if the Land Registrar is satisfied that obtaining a court order is not practical and, if registered, the certificate can be deleted. This should occur infrequently such as in the situation where a search has been conducted in the court files and that file is inactive. A solicitor's statement/affidavit to this effect would be acceptable evidence to delete the certificate. This type of application is only acceptable where the certificate was registered in Registry and brought forward to LTCQ and not a certificate registered in Land Titles.

1.1.7 MORTGAGES

Mortgages that have not been discharged will be brought forward to the LTCQ PIN. If a discharge of the mortgage cannot be obtained from the chargee or the chargee cannot be located, the Land Registrar may accept an application under Section 102 of the *Land Titles Act* to delete the mortgage. The evidence in support of the application could consist of receipts, bank statements, cancelled cheques, etc, along with a law statement setting out the chargee could not be located. A Covenant to Indemnify the Land Titles Assurance Fund is required. Another option is to obtain and register a court order discharging the mortgage.

A mortgage may have merged in fee if the land covered by the mortgage was transferred to the mortgagee. The merger of the charge is a matter of intention and in this regard there must be evidence of a merger. A mortgage that has merged may be deleted upon the registration of an application noting the instrument number of the document that sets out the mortgage has merged. If no such document exists, a solicitor's statement/affidavit stating that a mortgage has merged is also acceptable evidence.

1.1.8 LEASES

Leases for which there has been no surrender or determination registered, will be brought forward notwithstanding the lease may contain an expiry date. The majority of leases have an option to renew and the renewal may not be registered.

In order to delete the lease, a surrender or determination of lease may be registered or an application registered with solicitor or lessor statements/affidavit setting out why the lease is no longer in effect. For example, a statement that the term of the lease has been determined and

there is no occupation under it. If there is an outstanding charge of the lease and the term of the lease has not expired, the chargee must consent to the application, however the charge will not be deleted from title until a separate application/discharge is made.

1.2 DELETING "SUBJECT TO EXECUTION #, IF APPLICABLE"

As with deleting "subject to interest" and documents brought forward on conversion above, deleting executions requires the registrant to prepare and register an application in most cases. However, since there was no opportunity to clear the writs before conversion, the Land Registrar should waive the registration fee. Where the property description has been made subject to a writ against a previous registered owner on a non-arms length transfer and the writ was filed after the party had sold their interest, the Land Registrar may delete the writ without application.

If the writ is a lien under either the *Legal Aid Act* or the *Bail Act* that does not apply to the land in question, the Land Registrar may delete the writ from the property description without application as these writs are only enforceable against the property listed in them.

The evidence required to delete the writ can be the statement or affidavit of the registered owner or former registered owner, as the case may be, stating that he/she is not the same person as the judgement debtor named in the writ provided the amount of the judgement is less than \$50,000.

Where the amount of the writ is \$50,000 or more, written acknowledgement by the judgement creditor or his/her solicitor that the debtor is not one and the same as the registered owner/former registered owner is acceptable. Additionally, regardless of the amount of the writ, the solicitor for the registered owner/former registered owner may make an unequivocal statement or affidavit that their registrant is not one and the same as the person in the writ. See Bulletin 98003 Writs of Execution for further details.

1.2.1 ELECTRONIC REGISTRATION

To delete writs in the electronic system the registrant should select the Application Delete Execution document type and choose the applicable statement. The application must be made by an interested party. If the application is being made by the current registered owner and the registrant wishes to use statement 808 which pertains to a previous registered owner, the statement should be adapted to fit the situation. For example, add into the statement the following bold and italicized words;

808 *John Doe, the current registered owner and not* a previous registered owner is not one and the same as the party named in the writ.

1.2.2 PAPER REGISTRATIONS

In the paper system an Application to Amend the Register under Section 75 of the *Land Titles Act* is required. The application must be made by an interested party.

1.2.3 WRIT INFORMATION

Situations may occur on LTCQ properties where a notation has been made in the property description that the property is subject to a writ which is identified by number only. If the writ has been deleted from the Ministry of the Attorney General's (MAG) execution database and a search by writ number is done, the registrant will receive one of the following messages: "WRIT WITHDRAWN" or "WRIT IS EXPIRED". In this situation the applicant cannot provide evidence stating that the party is not one and the same person as the party named in the writ. Land Registrars may accept an affidavit or signed statement or a statement in the electronic system by a solicitor or registrant stating that

they have conducted a search of the MAG database and received one of the above messages.

2.0 REGISTRY DOCUMENTS

It has been the usual practice not to reference Registry documents in the Land Titles system however, there are occasions when it is permissible for Registry instruments to be cited on LTCQ parcels. For example, it is acceptable to register documents on LTCQ parcels which reference Registry registration numbers (where applicable, GRs, deposits, etc.) without the requirement for the documents to be registered in the Land Titles system.

2.1 CHANGE OF NAME

There are situations where a party's name has changed prior to conversion but the new name has not been reflected on the parcel pursuant to the registered or deposited Registry evidence. A transfer, with recitals as to the change of name, will be accepted without a separate change of name application however, an execution search of the former name is required.

Other documents such as a charge or transfer of charge may also be accepted with recitals as to a change of name based on information already registered or deposited however the owners field of the PIN will not be updated. If a registrant wishes to have the owner's field of a PIN updated to reflect the new name, a separate application to change name and an execution search will be required.

If no evidence has been previously registered or deposited then a standard change of name application is required.

2.2 DEPOSITS

During the conversion process, deposits are generally not reviewed, as they are not registered instruments under the *Registry Act*. Land Registrars may accept deposited evidence that will clarify or correct an omission that has arisen because of a property being automated as the deposit may contain information that explains the situation. Depending upon the circumstances, the Land Registrar may amend the records by referencing the deposit as a document remark or the deposit may be referred to in a document that is registered. In both situations there will be an audit trail as to why the PIN has been amended.

2.3 Z and E DOCUMENTS

Upon conversion to Land Titles certain combined instruments that have been previously registered in Registry with one registration number will be identified by adding a suffix to the registration number.

- Restrictive Covenants contained in a transfer will be identified by using the suffix "Z" after the instrument number and this document will be called restrictive covenants. The original transfer may also be brought forward if it is still a current title document. By adding the "Z" the covenants will remain on title when the transfer is deleted on a change of ownership.
- Easements are sometimes identified by the suffix 'E' when they are entered in the document list. Again this occurs where an easement has been created within a transfer that also holds title. When the transfer is deleted upon the ownership changing, the easement document with the "E" suffix will remain in the document list.

3.0 DESCRIPTION NOTICES

Description notices may be generated at the time of conversion of LTCQ properties. They are added to property descriptions to ensure users of the land registration system are aware of issues that were revealed during the review of the records prior to conversion. The issues did not warrant a non-convert but a concern remained with the description that was identified by way of a notice in the property description. Several notices - items 3.3 to 3.8 below - are included in the LTCQ parcel (PIN) description even though they do not relate to the description of the property.

Registrants may deal with the entire PIN and the notice will remain.

Included below are notices and processes that can be used to address these situations.

3.1 DESCRIPTION MAY NOT BE ACCEPTABLE IN FUTURE

This notice is included when the description in the current title document is vague, contains an error or is incomplete. The issue can be addressed and the notice removed by following one of the following steps:

- Deposit a reference plan followed by a transfer re-describing the property with the R-plan or an application to amend the description using the R-plan.
- The Land Registrar may approve an application to amend the register using a description contained in a previous transfer. The application will include a statement/affidavit outlining the issue together with a request to the Registrar to amend the property description to reflect the prior deed as the 'as in' number and to remove the notice. Land Registrars should exercise caution when amending the description; without a current survey it is often difficult to determine if the proposed change is more appropriate than the existing description.

3.2 SAVE AND EXCEPT EASEMENT OR RIGHT-OF-WAY

This notice is included in the property description of a dominant (T/W) PIN when an easement or right-of-way cannot be verified on the servient (S/T) lands. The description in the title document (the 'as in' number) includes reference to a dominant interest however as the interest cannot be established on the servient lands, it is excepted from the dominant Land Titles parcel description.

The process to delete this notation and have the easement or right of way reflected on the PIN(s) is set out in Bulletin 2007-02.

3.3 SUBJECT TO INTEREST OF ADJOINING OWNERS, IF ANY

This notice is included when the descriptions of adjoining parcels appear to overlap and include the same land. Each of the following processes may be used to address the issue and remove the notice. Consent of Chargees of the parcels involved may be necessary.

- An application for absolute title (LTCQ to Absolute Plus);
- Deposit a reference plan followed by a transfer re-describing the property with the R-plan or an application to amend the description using the R-plan.
- Register an application to amend the register that contains consents from the appropriate owner and any other relevant evidence (e.g. quit claims) that will allow the Registrar to remove the notice.

- As the *Land Titles Act* does not guarantee the extent of the property the Registrar may consider removing the notice with the registration of an Order.

3.4 S/T VENDORS LIEN in #

Under the registry system, a vendor's lien is typically not a separate registration but is included within a deed. Upon conversion, a vendor's lien may be noted in the property description of a PIN when it is contained in a deed within the three deed/ten year period for conversion and has not been dealt with in subsequent registrations.

To delete the lien, an application is required with evidence the lien no longer exists. Acceptable evidence could be reference to previously registered or deposited instrument or an application with a solicitor's statement/affidavit setting out that the time period for the vendor's lien has expired or that the lien has been paid off.

3.5 S/T DEBTS, if any, in #

A LTCQ PIN may include a notation of "s/t debts" in the property description where it is not clear that the debts of an estate have been sufficiently dealt with in previously registered instruments.

The debts notation may be deleted by registering an application. Pursuant to Bulletin 98003, an execution search against the deceased is required. The evidence in support of the application can consist of an affidavit from the estate trustee or statement/affidavit from a solicitor stating that:

- 1) The debts of the deceased are paid in full; or
- 2) The purpose of transfer (inst. # noted in the property description) was for the purpose of paying the debts of the estate; or
- 3) 40 years have passed since the date of death of the deceased in (inst. # noted in the property description); or
- 4) Unequivocal solicitor's statement that no debts exist; and
- 5) The clear Writ Certificate number.

3.6 S/T BENEFICIARIES INTEREST, if any, in #

When a potential beneficial interest has not been accounted for in an estate deed, a S/T Beneficiaries Interest, if any, in # notation may be included in the property description of the PIN. Examples of when this will occur are where the statement "this transfer is bona fide and for value and for the purpose of paying debts" was not included in the transfer from the estate or where the will specifies that the property be given to an individual but is conveyed to a third party without the beneficiary's consent.

To delete the beneficiaries notation, an application is required and the supporting evidence can be a solicitor's statement/affidavit, stating unequivocally, that no outstanding interest exists. Alternatively, appropriate consents may be obtained.

3.7 S/T LIFE INTEREST in #

A deed that contains a life interest that does not appear to have been dealt with in subsequent dealings with the property will be noted in the property description of a PIN. An application is required supported by evidence that the interest no longer exists. The evidence may be:

- 1) Reference to a previously registered or deposited instrument that contains proof of death or the consent of a life tenant; or
- 2) Where there is no evidence previously registered or deposited, proof of death or consent of the life tenant included in the application.

The proof of death evidence may be provided by a Law Statement. If the PIN is to be transferred and the life interest is contained in the current title document, the life interest may be dealt with in the Transfer by including the above evidence. Pursuant to Bulletin 98003, an execution search is required.

3.8 S/T SPOUSAL INTEREST in #

A potential outstanding spousal interest will be set out in the property description when a spousal consent or a family law statement is missing or deficient. For example, a PIN contained a Transfer with a statement that "the person consenting below is my spouse" however, the spouse did not execute the document. In this situation, the PIN would be made subject to a spousal interest.

An application is required with either an unequivocal solicitor's statement/affidavit stating there is no spousal interest or consent from the appropriate spouse.

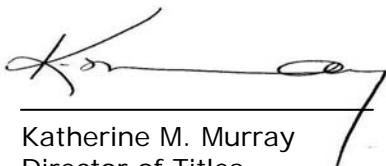
4.0 REFERENCE PLANS

Reference plans will generally not be used to describe a LTCQ property unless they have been used in a transaction. If a plan has been deposited and not used, registrants have the option of re-describing the property using the reference plan in a subsequent transfer or the submission of an application to amend the parcel requesting the Land Registrar to reflect the plan in the parcel description and delete the 'as in' number.

5.0 COVENANTS TO INDEMNIFY THE LAND TITLES ASSURANCE FUND

Land Registrars are reminded that pursuant to Section 55 of the LTA, the Land Registrar may require any applicant for registration to provide a bond or covenant to indemnify the Land Titles Assurance Fund. As set out in Ontario Regulation 690 under the *Land Titles Act*, a bond shall be in Form 53 and a covenant in Form 54.

Bulletin 2004-04 is hereby revoked.
Bulletin 2008-03 is hereby revoked.



Katherine M. Murray
Director of Titles

Appendix "A"

Description Notices:

- Save and Except Easement or Right of Way – See Bulletin 2007-02.

Rights of Way/Easements:

- Easements Not Brought Forward on LTCQ PINS - See Bulletin 2007-02.

Other Information

- Estates/Transmissions – See Bulletins 93002 and 2000-06 and Memo EM200003.
- Death of Joint Tenant/Survivorships – See Memo EM199606.
- Non-Converts – See Bulletin 2004-02.