



Ministry of Government Services
ServiceOntario
Policy and Regulatory Services
Branch

Bulletin No. 2009-01

***Land Titles Act
Registry Act
Land Registration
Reform Act***

DATE: JANUARY 8, 2009

**Access Requirements
for ELRS; Registration
Requirements for
Transfers and Powers
of Attorney**

**TO: ALL LAND REGISTRARS
AND
USERS OF THE ELECTRONIC
LAND REGISTRATION SYSTEM**

This Bulletin updates and replaces Bulletin No. 2008-02 dated March 7, 2008, to reflect changes made to electronic statements after that Bulletin was issued. Minor wording changes have been made to statements involving the use of Powers of Attorney and to the statement relating to transfer of title to or from the Crown. The section regarding Documents in Progress has been removed as it is no longer relevant.

A. OVERVIEW

On December 20th, 2006, the Ministry of Government Services *Consumer Protection and Service Modernization Act, 2006* (Bill 152) received Royal Assent. The Act contained amendments to a number of statutes, including the *Land Registration Reform Act*, *Land Titles Act* and *Registry Act*, to address issues related to real estate fraud.

The Ministry continues to work with the Real Estate Fraud Stakeholder Consultation Group and users of the land registration system as we move forward to combat fraud through implantation of the provisions of the legislation and other initiatives contained in the Real Estate Fraud Action Plan.

This Bulletin is an update and replacement of Bulletin 2008-02 and provides a summary of access requirements, registration requirements for transfers of title, for powers of attorney and for any documents registered under the authority of a power of attorney, and the next steps relating to this initiative.

B. ACCESS REQUIREMENTS

The electronic land registration system (ELRS) has enhanced the security of Ontario's land registration by imposing increased identification requirements. Under the system, each user must have a unique access key and all registrations performed through the use of that key are traceable back to the party.

A key component of the Real Estate Fraud Action Plan was the implementation of new processes related to access requirements to ensure that appropriate checks and safeguards are in place. The Director of Land Registration has authority under the *Land Registration Reform Act* to authorize persons to access the electronic land registration system to register documents and to establish the manner in which the authorization is assigned to those persons.

In this regard, the Ministry has introduced three criteria which must be met by anyone who wishes to submit documents for registration in the electronic land registration system. These criteria are:

Identity – to ensure that only those who are entitled to have access to the system are registering documents

Financial Resources – sufficient to compensate victims of fraud

Good Character/Accountability - to ensure that only those with appropriate qualifications and integrity are dealing with the registration system.

By ensuring that all Account Holders meet the criteria, we can further strengthen the security of the system and make certain that victims of real estate fraud have appropriate recourse where registrants have acted fraudulently.

The roll-out of the authorization process was completed on September 30, 2008 and all account holders should now have submitted their application for authorization to the Director. If the Director's authorization was not obtained, users are not able to register documents in the electronic land registration system, but have access to the system on a search-only basis until such time as they receive authorization.

Users who have not obtained authorization or new users may apply to the Director for authorization. If for any reason authorization is not granted, a further process is in place to request a review of the Director's decision.

C. REGISTRATION REQUIREMENTS FOR TRANSFERS OF TITLE

In November 2006, the Minister of Government and Consumer Services announced that the right to register most transfers of title would be restricted to lawyers only, while allowing other documents, such as mortgages, to be registered by all those who meet specified criteria.

Transfers are one of the main documents involved in title fraud. By restricting the ability to register most transfers of title to lawyers, who are part of a self-governing body with a legislative framework that deals with integrity and practice standards for members, we have further secured the system, isolated documents and provided consumers with additional protection. In implementing these requirements, most transfer of title documents require two different lawyers to sign for completeness, one for the transferor and one for the transferee. These requirements do not apply to other types of interests. Transfers of easements, for example, do not need a lawyer to sign for completeness and no law statement will be required.

The exceptions to this requirement, where only one lawyer will be required to sign a transfer of title, are outlined below:

- Transfers where the transferor and transferee are the same, and
 - The transfer is to effect a change in legal tenure, e.g. from joint tenants to tenants in common; or
 - The transfer is to effect a severance of land prior to a certain expiry date;
- Transfers from an estate trustee, executor or administrator to a person who is beneficially entitled;
- Interfamily transfers, related party transfers and transfers occurring in remote communities. In these circumstances one lawyer may sign a statement stating that he/she is signing for both the transferor and transferee and that the transfer is being completed in accordance with the lawyer's

professional standards. The Law Society passed Rules of Professional Conduct to address this situation.

Government transfers where land is acquired or disposed of by the Crown in Right of Ontario or the Crown in Right of Canada, including any Crown corporation, or any agency, board or commission of the Crown; or by a municipal corporation, will not require a lawyer to sign for completeness.

The electronic system performs a validation check at the time a document is signed for completeness or submitted for registration to ensure that the statements outlined below have been included. If they are not, an error message will be displayed. To complement these changes, two statements relating to *Planning Act* consent were retired and replaced with one new statement. Law statements are identified by the number in **bold** font.

Retired *Planning Act* statements:

100 "A consent from the *name* has been obtained for this severance and contains *no conditions or the following conditions*" and

101 "The *name* has consented to this severance herein: *import consent*"

Available *Planning Act* statement:

4048 "The *name* has consented to the severance herein. *(import image)*."

D. LAW STATEMENTS FOR TRANSFER OF TITLE DOCUMENTS

To implement this initiative, Ontario Regulation 76/08 was filed April 7, 2008 which amended Ontario Regulation 19/99. The amendments provide for additional statements, including law statement(s).

These law statement(s) are contained in most transfers of title and the appropriate statement must be selected depending on the document type being registered.

The following are statements and associated statement numbers. Law statements are identified by the number in **bold** font.

(i) For Registration of Title Transfer Documents:

Each solicitor must select one of the following statements, as applicable:

4041 I am the solicitor for the transferor(s) and I am not one and the same as the solicitor for the transferee(s).

4042 I am the solicitor for the transferee(s) and I am not one and the same as the solicitor for the transferor(s).

OR the solicitor for the transferor(s) may select one of the following statements, if applicable:

4043 I am the solicitor for the transferor(s). The transferor(s) and the transferee(s) are one and the same, and the transfer is being made to effect a change in legal tenure.

4044 I am the solicitor for the transferor(s). The transferor(s) and the transferee(s) are one and the same, and the transfer is being made to effect a severance of the land prior to the expiry of a consent granted under the *Planning Act*.

(Note: if statement 4044 is selected, the following non-law statement must also be selected: 4048 “The name has consented to the severance herein. (import image.)

4045 I am the solicitor for the transferor(s). The transferor(s) and the transferee(s) are one and the same, and the transfer is being made to effect a severance of land pursuant to a municipal by-law registered as number.

4049 I am the solicitor for the transferor(s) and the transferee(s), and this transfer is being completed in accordance with my professional standards.

OR the following non-law statement may be selected, if applicable:

4046 The land is being acquired or disposed of by the Crown in Right of Ontario or the Crown in Right of Canada, including any Crown corporation, or any agency, board or commission of the Crown; or by a municipal corporation.

(ii) For Registration of a Transfer by Personal Representative:

All of the above statements are available for this document type. In addition, the following law statement is available for selection in lieu of the above statements:

4047 I am the solicitor for the transferor(s). The transfer is from an estate trustee, executor or administrator to a person who is beneficially entitled.

E. POWERS OF ATTORNEY

Powers of Attorney are registered in the land registration system by individuals and corporations/banks to authorize someone else to sign a document on their behalf. As another component of the Real Estate Fraud Action Plan, the Ministry has implemented changes with respect to the use of Powers of Attorney in real estate transactions by instituting a registration requirement that a law statement is necessary when an individual registers any document under the authority of a Power of Attorney. In these cases, a lawyer is required to discuss the Power of Attorney with their clients and provide the requisite law statement.

To implement these improvements, provisions for additional statements, including law statements, were made in Ontario Regulation 19/99 by the filing of Ontario Regulation 76/08.

A law statement is not required in documents signed under the authority of a Power of Attorney given by a corporation or a bank. In those cases, the attorney will be required to make a statement that they are acting within the scope of the Power of Attorney.

Additional changes were made to require the original signed and witnessed Power of Attorney or a notarial or certified copy of the original to be scanned into the electronic registration of a Power of Attorney. Similarly, provisions were made in the Regulation for electronic statements to require the scanning of a Revocation of a Power of Attorney into the electronic registration of a Revocation.

Most of the previous statements in an electronic Power of Attorney and Revocation of Power of Attorney document were retired and replaced with other statements, which are identified under the document headings below.

(i) Statements Retired on April 7th, 2008:

- 2901 I appoint the donee as my attorney to act for and on my behalf to do all things which I am legally entitled to do.
- 2902 I appoint the donee as my attorney to act for and on my behalf for the purposes of enter purpose.
- 2903 I appoint the donee as my attorney to act for and on my behalf. This power of attorney has been witnessed in accordance with the Substitute Decisions Act.
- 2910 The attorney has the authority to make spousal statements on behalf of the donor.
- 2911 I hereby revoke, effective yyyyymmdd, this Power of Attorney given by me to the attorney
- 3553 The Power of Attorney appoints the holder of the following office(s) position as our attorney to act for and on our behalf to do all things which we are legally entitled to do.
- 3554 The Power of Attorney is of a limited nature for the purpose of identify purpose.
- 3555 The Power of Attorney is of a general nature.

(ii) Statements Pertaining to Registration of a Power of Attorney

In all cases when a Power of Attorney is being registered, the following non-law statement must be selected:

- 2912 The Power of Attorney is attached hereto as an image in electronic format, is still in full force and effect, and has not been revoked. (*import image*)

and one of the following non-law statements must be selected:

- 2927 The power of attorney is for a limited purpose.
- 2928 The power of attorney is for a general purpose.

Where the donor is a company, the following non-law statement must also be selected:

- 10 I, name, have the authority to bind the corporation.

(iii) Statements for Revocation of Power of Attorney:

Select the appropriate statement below and enter the required information. Law statements are identified by the number shown in **bold** font.

- 2913 The revocation of power of attorney, effective yyyyymmdd, is attached hereto as an image in electronic format. (*import image*)
- 2914** The power of attorney is no longer in force, pursuant to an order which is in full force and effect and is attached hereto as an image in electronic format. (*import image*)
- 2915 Evidence that the power of attorney is no longer in force is attached hereto as an image in electronic format. (*import image*)

2916 The power of attorney is no longer in force, pursuant to the death of the donor on yyyymmdd.

(iv) Statements for Registration of All Documents Executed Under Authority of a Power of Attorney:

In this section, statements are shown with two different numbers. The first number is the statement that would be available for selection for a “Party From” on a document; the second number is the statement that would be available for selection for a “Party To” on a document. Law statements are identified by the number shown in **bold** font.

(a) For Documents Executed Under Authority of a Power of Attorney Granted by a Donor that is not a Company:

The following existing statement must be selected with the appropriate statements in either (I) or (II):

2907, 2904 I, name say that to the best of my knowledge and belief, the power of attorney is still in full force and effect and the principal had the capacity to give the power of attorney when giving it and was at least 18 years of age when the power of attorney was executed. The power of attorney was registered as number number.

(I) Where the attorney is not a company:

2917, 2922 I, name of solicitor, confirm that I have reviewed the power of attorney with the attorney, and the attorney has confirmed that:

1. The attorney is the lawful party named in the power of attorney,
2. The attorney is acting within the scope of the authority granted under the power of attorney,
3. To the best of the attorney’s knowledge, information and belief, the power of attorney was lawfully given and has not been revoked.

(II) Where the attorney is a company:

2918, 2923 I, name of solicitor, confirm that I have reviewed the power of attorney with the attorney, and the attorney has confirmed that:

1. The attorney is the lawful party named in the power of attorney,
2. The attorney is acting within the scope of the authority granted under the power of attorney,
3. To the best of the attorney’s knowledge, information and belief, the power of attorney was lawfully given and has not been revoked, and
4. At the time this document was executed, name was the position of company/bank (donee), and had the authority to bind the attorney.

(b) For Documents Executed under Authority of a Power of Attorney Granted by a Corporation/Bank:

These statements were retired, and replaced by the statements in (b) (I) (II) and (III) below.

2908, 2905 (1) Power of Attorney, registered as number number. (2) To the best of my knowledge and belief, the power of attorney is still in full force and effect and gives the attorney the authority to bind the corporation. (3) At the time the document was executed, the name of person was the position of the name of company/bank

The applicable statement to the situation being dealt with must be selected. None are law statements.

(I) For an attorney that is a company:

- 2919, 2924
1. Power of Attorney was registered as number number.
 2. To the best of the attorney's knowledge and belief, the power of attorney is still in full force and effect.
 3. The attorney is acting within the scope of the authority granted under the power of attorney.
 4. At the time this document was executed, name was the position of (attorney) company/bank, and had the authority to bind the attorney.

(II) For an attorney that is a named person who is not in a company:

- 2920, 2925
1. Power of Attorney was registered as number number.
 2. To the best of my knowledge and belief, the power of attorney is still in full force and effect and gives me, name, the authority to bind the donor.
 3. I am acting within the scope of the authority granted under the power of attorney.

(III) For an attorney that is a named person or a named position in a company:

- 2921, 2926
1. Power of Attorney was registered as number.
 2. To the best of my knowledge and belief, the power of attorney is still in full force and effect and gives me the authority to bind the donor.
 3. I am acting within the scope of the authority granted under the power of attorney.
 4. At the time this document was executed, I, name, was the position of (attorney) company/bank.

(v) Statements Available for documents executed without use of a Power of Attorney

The following statements continue to be available for selection when a document is not being executed under the authority of a power of attorney.

2909, 2906 This document is not authorized under Power of Attorney for this party.

F. SUMMARY

The security and integrity of land registration records are continuing priorities of the Ministry. The Ministry continues to take steps to combat real estate fraud.

Any new Teraview® account that is created for the purpose of registering documents in the electronic land registration system must receive authorization from the Director of Land Registration before the user(s) under that account can access the system for registration of electronic documents.

Phase II of the Real Estate Fraud Action Plan system changes are scheduled for Spring of 2009. A further Bulletin will be issued shortly.

Bulletin 2008-02 is hereby revoked.



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