



Ministry of Consumer
and Business Services
Registration Division
Title and Survey Services Office

BULLETIN NO. 2003-1

Land Titles Act

DATE January 30, 2003

Powers of Sale

TO: All Land Registrars

Section 99 of the *Land Titles Act* which is the section that provides for the registration of a Transfer under Power of Sale was amended in 1998 by the *Red Tape Reduction Act, 1998*. The amendment revoked the requirement to produce evidence satisfactory to the Land Registrar concerning the conduct of the power of sale, and substituted it with the requirement to register evidence specified by the Director of Titles. Pursuant to this section, the evidence that must be included in a Transfer under Power of Sale was specified and is contained in Bulletin 98007.

This bulletin expands on Bulletin 98007 and includes information regarding the deletion of encumbrances under the Transfer Under Power of Sale. As Bulletin 98007 is revoked by this bulletin, the evidence that has been specified is repeated in full below.

1) Use of all of the following documentation which is to be attached to the Transfer under Power of Sale:

- a) A statutory declaration of the chargee or the chargee's solicitor or of an agent of the chargee who has personal knowledge of the facts,
 - stating that the declarant has personal knowledge of the facts,
 - setting out the date upon which the default occurred,
 - verifying that the charge remained in default at the time when the chargee had entered into the agreement of purchase and sale of the land,
 - asserting priority over any subsequent encumbrance affecting the land,
 - where applicable, asserting that spousal or dower rights no longer affect the land.
- b) A statutory declaration of the solicitor for the chargee setting out,
 - That he or she is the solicitor for the chargee and as such has personal knowledge of the facts therein deposed to,
 - The names of all persons entitled to notice, and that such persons were served with notice as required by the *Mortgages Act*,
 - That the exercise of the power of sale is in compliance with the terms of the charge, Part III of the *Mortgages Act*, the *Bankruptcy and Insolvency Act*, the *Farm Debt Mediation Act (Canada)*, and other relevant requirements of law. The wording should be amended where the sale is made under Part II of the *Mortgages Act*.
- c) A statutory declaration or declarations of service verifying that notice was given to every person referred to in the declaration of the solicitor and specifying the manner of service, and
- d) Where notice was given by registered mail, an original or notarial copy of the post office receipt, attached to and marked as an exhibit to the statutory declaration referred to in c) above.

OR

2) Use of all of the following statements in the Transfer under Power of Sale.

- a) That the sale is authorized under the charge and the *Mortgages Act*.
- b) That notice of sale was given on (*enter date*) and the charge was in default at the time notice of sale was given and continues to be in default and that money has been advanced under the charge.
- c) That the sale proceedings and transfer comply with the charge, the *Mortgages Act*, and if applicable, the *Bankruptcy and Insolvency Act (Canada)*, the *Condominium Act*, the *Construction Lien Act* and the *Farm Debt Mediation Act (Canada)*.

d) Writs of execution:

- (i) If there are writs of execution that have been filed subsequent to the charge and that are to be deleted from the parcel register as a result of the transfer, the following statement must be made:

- The following writs are to be deleted: (*list the writs of execution by judgement creditor name and writ number*),

For electronically registered documents, this statement should be completed in Statement 61.

- (ii) If there are no writs of execution that are prior to the charge or that have been filed subsequent to the charge but do not affect the lands, the following statement must be made:

- This transaction is not subject to any writs of execution.

- (ii) If there are writs of execution filed prior to the charge under power of sale which are still outstanding, the following statement must be made:

- This transaction is made subject to the following writs of execution: (*list the writs of execution by name and writ number*).

e) Registered encumbrances:

For the purposes of a transfer under power of sale, an encumbrance is any document registered after the charge under which the sale is being conducted in which a person has an interest in the charged property.

If there are no registered encumbrances subsequent to the charge, the following statement must be made:

- There are no encumbrances to be deleted.

If there are encumbrances registered subsequent to the charge which are to be deleted under the Power of Sale, the following statement must be made:

- The encumbrance(s) listed herein, is/are subsequent in priority to the charge and is/are to be deleted (*list registration number of instruments to be deleted*).

f) **Family Law Act:**

In accordance with the *Family Law Act*, a statement of spousal status is required for every person whose spouse was not served with a notice under the *Mortgages Act* and whose interest is to be deleted upon the registration of the transfer. For the purposes of this section of the bulletin and for compliance with the *Family Law Act*, “owner” is deemed to be a person who has a registered interest in property under the *Land Titles Act*.

One of the following statements must be made in such a situation:

- The owner was not a spouse within the meaning of the *Family Law Act* at the time notice was served.
- The owner is a spouse who is not separated from their spouse and the property was not ordinarily occupied by the spouses as their family residence.
- The owner is a spouse who is separated from their spouse and the property was not ordinarily occupied by the spouses, at the time of their separation, as their family residence.
- The property is not designated by one or both of the spouses as a matrimonial home and that another property is designated as a matrimonial home by both spouses and that such a designation is registered and not cancelled.
- The spouse of the owner has released all rights under Part II of the *Family Law Act* by a separation agreement,
- The owners were spouses of one another at the time notice was served.
- The spouse(s) of (*enter the name(s)*) was not served.

If the last statement is made, the property will be made subject to spousal status.

If an existing registered charge is marked “subject to spousal rights”, a purchaser, under a power of sale, will take subject to those rights unless the following statement is made:

- Title to the land is not subject to spousal rights under the *Family Law Act*.

If those spousal rights have not been dealt with, the following statement must be made:

- Title to the land is subject to the spousal rights of the spouse of (*enter name of party who has spousal rights*).

g) Where notice is required and has not been given, a court order may be obtained dispensing with the service. If this is the case, use the following statement and enter the required information:

- Notice of Service was dispensed with for (*enter the name of the party*), by Court Order file number (*enter court file number and date*). The Order is still in full force and effect.

For electronically registered documents, this statement may be entered into Statement 61.

h) If a charge has been transferred after notice has been served, the following statement must be made:

- Notice of the transfer of charge and the address for the new chargee, was served on the registered owner(s) as well as all the parties having any interest in the land and the charge was in default when the chargee entered into an agreement of purchase and sale of the charge and continues to remain in default.

The above statements are consistent with those required for the electronic registration of a Transfer Under Power of Sale and can only be made by a solicitor. The statements must be signed by the solicitor.

Land Registry Offices can accept as evidence in a Transfer under Power of Sale, either the evidence as specified in accordance with the Act and set out in number 1 above, or the statements set out in number 2 above, but **not** a combination of both. If statements are made, the Land Registrar can act on them and give the same effect to them as the evidence set out in number 1 above.

Entries that may not be deleted from the Parcel Register

There are some documents that may not automatically be deleted just because notice has been given to the person claiming an interest. Consideration should be given to these document types when statements are being made. These documents are set out below.

Notice of Security Interest regarding Fixtures

A notice of security interest regarding fixtures registered subsequent to the charge will not be deleted from the parcel register unless the chargee or their solicitor makes a statement attesting to the following:

- That to the best of his/her knowledge and belief the security interest was attached to the goods after they became fixtures; and
- That the chargee did not consent in writing to the security interest nor disclaim any interest in the goods as fixtures; **or**, that to the best of his/her knowledge and belief the security interest was attached to the goods before they became fixtures; and
- That to the best of his/her knowledge and belief a subsequent advance, as set out in the *Personal Property Security Act*, was made or contracted for under the charge without actual notice of the security.

Notice of Security Interest under the *Personal Property Security Act*

A notice of security interest under the *Personal Property Security Act*, which assigns the right to payment in respect of the charge under power of sale, will prevent the sale proceedings from taking place without confirmation by the secured party or their solicitor that the mortgage is in default.

Documents Related to Arrears in Land Taxes

The entry of any undischarged notice, certificate, caution, lien or other document related to arrears in land taxes will not be deleted from the parcel register.

Claim for Lien under the *Construction Lien Act*

A claim for lien under the *Construction Lien Act* registered subsequent to the charge will not be deleted from the parcel register if:

The chargee was added in the lien claimant's claim for lien and no certificate of action has been registered by the lien claimant; or

- The chargee was added in the lien claimant's claim for lien and the lien claimant's certificate of action also adds the chargee as a party defendant; or
- The chargee was not added in the claim for lien but was added as a party defendant in the lien claimant's certificate of action or in a certificate of action under which the lien claimant is, or may be, sheltering.

Notwithstanding the above, the claim for lien may still be deleted from the parcel register if a statement of claim is produced in which the lien claimant is declaring priority:

- only as to some, but not all, advances made under the charge; or
- only with respect to the increased value of the land since the date the lien first arose.

In these cases only the claim for lien of the lien claimant who registered the certificate of action may be deleted. In addition, all other lien claimants who are not protected under another certificate of action claiming initial priority may be deleted if their claim for lien does not add the chargee as a party.

Rules for Sheltering

According to the *Construction Lien Act*, a claim for lien may shelter only under a certificate of action.

The rules for sheltering are:

- A claim for lien may shelter under any existing perfected lien (i.e., a lien for which a certificate of action has been registered) at the time the claim for lien is registered.
- A claim for lien may shelter under any lien which is perfected between the date the claimant's lien is registered and the expiry date for registration of the lien claimant's certificate of action.
- Land Registry Office staff do not police limitations on registration of claims for lien and certificates of action; therefore, a claim for lien may be "sheltering" under any "perfected lien" whether or not it is properly perfected.
- A claim for lien is sheltered only as to the defendants and the nature of the relief claimed in the statement of claim under which it is sheltering; accordingly, when a claim for lien is, in fact, sheltering under a perfected claim for lien, the lien claimant is protected only as to the priority specified in that claim for lien.
- A claim for lien that has been sheltering under a certificate of action continues to shelter under that certificate, even if the pending action has been settled and the certificate of action discharged from the parcel register. Therefore, Land Registry office staff will consider certificates of action that have been discharged subsequent to the registration of the claim for lien in question. If there is such a discharged certificate of action, it will not be deleted until any liens that can be sheltering under it have been discharged.

Notice of Lien under the *Condominium Act* or *Condominium Act, 1998*

Subsection 178(2) of the *Condominium Act, 1998* provides that liens registered under the *Condominium Act* continue. In addition, the *Condominium Act, 1998* provides that all liens have priority over any registered encumbrance. Therefore, a notice of lien registered under either the *Condominium Act, 1998*, or the *Condominium Act* will not be deleted from the parcel register regardless of whether the unit is residential or non-residential.

Certificate of Pending Litigation

A certificate of pending litigation may not be deleted unless a court order authorizing the deletion, or the consent of the person who registered the certificate or a statement by their solicitor that the person has consented, accompanies the transfer.

3) Electronic Registration Statements

Where provision has been made in this bulletin for additional information to be included in an electronic document, the information should be inserted in Statement 61 until such time as the electronic statements are amended or new statements created.

Bulletin 98007 is revoked and replaced by this bulletin.

A handwritten signature in black ink, appearing to read 'K. Murray', with a stylized flourish at the end.

Katherine M. Murray
Director of Titles