



Bulletin No. 2007-02

*Consumer Protection and
Service Modernization Act
2006*

Ministry of Government Services
ServiceOntario
Policy and Regulation Branch

DATE: MARCH 5, 2007

***Registry Act
Amendments***

TO: All Land Registrars

On December 20, 2006 Bill 152, the *Consumer Protection and Service Modernization Act, 2006*, received Royal Assent.

Among the many provisions affecting the land registration system were a number of amendments to Part III of the *Registry Act*.

The amendments provide that an easement is only valid for 40 years after the date of registration of the instrument that created the easement or for 40 years after the registration of a Notice of Claim. The amendments also clarify that a Notice of Claim may only be in the prescribed form, being Form 32 in Regulation 995 under the *Registry Act*, and in no other form. Pursuant to Section 115, these amendments apply to every claim and Notice of Claim, whether registered before or after the August 1st, 1981.

Where the creating document for the easement has been registered for over 40 years, a registered Notice of Claim may only be valid if there are no conflicting claims. The amendments further define a conflicting claim, being a transfer to a purchaser in good faith for valuable consideration.

With the enactment of these amendments, the law with respect to easements under the *Registry Act* has been clarified to reflect the Ministry's consistent interpretation of the amendments originally made in 1981

Accordingly, there are four options available to consumers who have had their title converted from Registry to Land Titles under the government's automation and conversion program and not had an easement interest brought forward:

- 1) The owner of a servient parcel may make an application to amend the register to add the easement to the parcel description. The description of the dominant and servient lands must be included. If an encumbrance has been registered on the servient lands subsequent to automation, the consent of the encumbrancer is also required. The document must include a statement from solicitor that the easement is in full force and effect and has not been released. The land registrar can then amend both parcels.
- 2) The owner of a dominant parcel which has the notation "except the easement therein" (or a variation thereof) may make an application to amend the register, with the consent of the servient owner, to delete the remark and add the easement to both the dominant and servient lands. If an encumbrance has been registered on the servient lands subsequent to automation, the consent of the encumbrancer is also required. The document must include a statement from solicitor that the easement is in full force and effect and has not been released. The land registrar can then amend both parcels.
- 3) The owner of the dominant parcel may register a notice under section 71 against both the dominant and servient lands but this will not result in an amendment to the property description. (The notice should set out the original registration number and date of the easement and the rationale for the easement being valid). This notice can remain on the parcels indefinitely until an application to amend the register is registered by either the owner of the dominant or servient lands.

The owner of the dominant property may apply to have the parcel amended by adding the easement to the description with appropriate evidence (e.g. consent of the registered owner of the servient property). Again, if there has been a mortgage registered on the servient lands subsequent to the property being converted, consent of the chargee must be obtained.

The owner of the servient property may apply to have the register amended by removing the notice with evidence that the parcel is not subject to the easement.

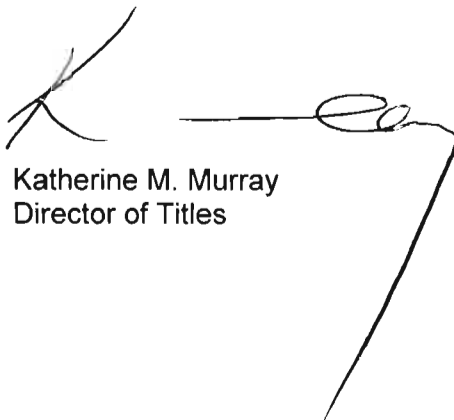
- 4) If the property had remained in the registry system the solicitor for the owner of the dominant parcel could have registered a notice of claim under section 113(2)(b) of the *Registry Act*, stating there have not been any conflicting registrations. Therefore if a property has been converted to land titles without an easement, an application to amend the register based on the principles of this section may be registered. A solicitor must make the statement that there have been no conflicting registrations and a covenant to indemnify the Land Titles Assurance Fund will be required.

The description used in the document that created the easement can be accepted for registration if it contains sufficient information to enable the registration to be recorded against the proper parcel.

The registration of a new transfer of easement is the preferred alternative to include an easement in a parcel description.

When dealing with any interest regarding a PIN, registrants should consult with Registry Office staff to determine the most appropriate course of action to address the particular situation.

EM2006-01 and EM1999-09 are rescinded.



Katherine M. Murray
Director of Titles