



Ministry of Consumer
and Commercial
Relations

Registration Division

Real Property
Registration Branch

BULLETIN NO. 98003

Land Titles Act

DATE: December 14, 1998

TO: All Land Registrars

Writs of Execution

The purpose of this bulletin is to clarify:

- (I) the rules for determining whether a name being searched matches a name in the writs database;
- (II) when an execution search is required at the time of registration of a document under the *Land Titles Act*;
- (III) when land registry offices may clear writs; and,
- (IV) when a writ does not apply.

Much of the information contained in this bulletin is a restatement of previous bulletins. It will be noted where there is a change in practice.

(I) WHEN A NAME MATCHES

An execution search need only be performed against the exact name of the registered owner. The *Land Titles Act* provides that if a writ is filed under a different name other than that under which the owner is registered, the writ has no effect.

The following is a summary of when a name will be considered a match in an automated search.

1. Individual names

Where the surname and one forename are identical, the names will be considered to match even if:

- a) one name contains initials and the other does not, e.g. John Smith and John A. Smith match.
- b) both names contain initials or additional forenames that do not match, e.g. John A. Smith and John B. Smith match, and John A. Smith and John Harold Smith match; or
- c) names or initials occur in a different order in each name, e.g. John A. Smith and Andrew John Smith match, and John Andrew Smith and Harold John Smith match.

In the following cases, individual forenames will be considered not to match:

- a) where forenames may be interchangeable, e.g. John Smith and Jack Smith do not match;
- b) where one forename may be an abbreviation of another forename, e.g. Belle Smith and Isobel Smith do not match;

- c) where both forenames may be abbreviations of the same name, e.g. Bill Smith and Willy Smith do not match;
- d) where one name may be an Anglicized version of the other, e.g. John Smith and Johan Smith do not match;
- e) where there are minor variations in spelling of given names, e.g. Ann Smith and Anne Smith do not match;
- f) where a variation may be due to a typographical error, e.g. John Smith and Jhon Smith do not match.

It will be assumed, for search purposes that single letters represent initials and not forenames, unless only single letters are given, e.g. in I. Roberts, the "I" should be considered the forename.

2. Corporate and Partnership Names.

Only executions against the exact name of the corporation or partnership as set out in the transfer will be searched. Names will be considered to match only if the name in the parcel register and the name in the writ are identical, except that, where the corporate identifier in one name ("Corporation", "Incorporated", "Limited" or the non-English version in any of these, e.g. "Limitee") is abbreviated in the other name ("Corp.", "Inc.", "Ltd.", "Ltee.") the names will be considered to match. However, where "Limited" or "Ltd." occurs in a corporate name being searched, the name with another corporate identifier, i.e. "Corporation" or "Corp." will not be searched, (e.g. John B. Smith Limited and John B. Smith Corp. do not match) unless "Corporation" forms part of the corporate name, e.g. "X Corporation Limited.

Names that include a number will be considered to match only if the number is identically set out in both names, e.g. 1000 Yonge Street Ltd. and One Thousand Yonge Street Ltd. do not match.

(II) WHEN AN EXECUTION SEARCH IS REQUIRED:

The practice of searching has changed since clients now perform their own searches remotely or use terminals in the land registry offices. Land Registry Office staff must ensure that the certificate is checked for the status of executions at the time of registration. The certificate is valid for the entire day for which it is dated.

▶ **Transfers:**

All transfers of any interest in freehold land require an execution search against the registered owner(s). This includes interspousal, interfamily, self to self, municipally owned land and change of tenure. This also includes interests other than fee simple. E.g., transfers of easements, life estates, etc.

▶ **Power of sale:**

Land Registry Office staff must be satisfied that at the time notice was sent, all execution creditors who were on file subsequent to the date of registration of the charge, have been served with notice of the sale proceedings. (Executions filed prior to the charge, even if the creditor is served, will not be deleted).

New An execution certificate presented and dated the same day notice was sent is sufficient evidence to meet the execution searching requirement, as executions filed after this date do not bind. Therefore, it is not necessary to do a writ search on the date the transfer under power of sale is registered if a certificate is presented as stated above.

▶ **Foreclosures:**

Land Registry Office staff must be satisfied that subsequent execution creditors (i.e., subsequent to the charge at the time of issuance of the statement of claim for foreclosure) have been specifically foreclosed in the foreclosure order.

New An execution certificate presented and dated the same day as the issuance of the statement of claim is sufficient evidence, as executions filed after this date do not bind. Therefore, it is not necessary to do a writ search on the date the order of foreclosure is registered if a certificate is provided as stated above.

Therefore, in either a transfer under power of sale or a foreclosure proceeding, if the execution creditor's claim is extinguished by the proceeding, an entry of the writ will not be made on the parcel register.

▶ **Bankruptcies:**

In the case of a transfer from the Trustee in bankruptcy, title will not be made subject to any execution on file against the bankrupt and an execution search is not required against the bankrupt or against the Trustee in Bankruptcy.

Therefore, neither a Transfer by the Trustee in Bankruptcy nor an Application by the Trustee to be entered as owner requires an execution search against the bankrupt's name.

Discharged Bankrupt

Once a bankrupt is discharged and transfers any property acquired after the discharge, the title will be subject to any executions on file against the former bankrupt. With regard to executions filed before the discharge, the title will be made subject to the writs unless the Land Registrar can be satisfied that the discharge was not conditional with respect to the bankrupt's after-acquired property and that the judgement on which the execution was based is not for a claim to which the bankrupt's assets remain liable after his discharge.

Writs in the following circumstances will continue to apply:

- ▶ any debt or liability arising out of fraud, embezzlement, misappropriation or defalcation while acting in a fiduciary capacity;
- ▶ any fine or penalty imposed by the court or any debt arising out of a recognizance or bail bond;
- ▶ any debt or liability for alimony;
- ▶ any debt or liability under a support or maintenance or affiliation order or under an agreement for maintenance and support of a spouse or child living apart from the bankrupt;

- ▶ any debt or liability for obtaining property by false pretences or fraudulent misrepresentation;
- ▶ liability for dividend that a creditor would have been entitled to receive on any provable claim not disclosed to the trustee, unless the creditor had notice or knowledge of the bankruptcy and failed to take reasonable action to prove his/her claim.

The Land Registrar may accept the statement of the bankrupt's solicitor with respect to the status of the discharge and of the debt as sufficient evidence that the writ does not apply. The solicitor must state that he/she has actual knowledge of the facts. A statement based on his/her knowledge and belief is not acceptable.

▶ **Partnerships:**

Since an execution against a partner in his/her personal capacity does not bind the partnership land, only the partnership name shown on title need be searched. If a partnership is not named on title, but only a general statement such as "as partnership property" is included, a statutory declaration stating the name of the partnership must be made to enable a search to be made against that name.

A search must be made against both the limited and general partners.

▶ **Transfers by Estate Trustee, etc. or Transmission Application:**

Where property is being transferred by an Estate Trustee, or where the devisee applies to be registered as owner, only the deceased's name should be searched. The search rules in the automated system are such that only the deceased's name needs to be entered and the system will search for any capacity of that name. (E.g., Robert Jones, Estate Trustee of Alexander Jones: search only Alexander Jones.)

▶ **Beneficial Interest:**

If a beneficiary is consenting to or releasing their interest in property, an execution search against the beneficiary must be conducted unless the releasing beneficiary disclaims all interest in the property.

▶ **Other instances where searches are required:**

In addition to the situations set out above, execution searches are required for:

- ▶ survivorship applications (against a deceased joint tenant)
- ▶ survivorship applications (against a deceased trustee, unless shown as a tenant-in-common)

In survivorship situations, an execution is only enforceable if the sheriff has advertised the lands for sale to enforce a writ of execution. The sheriff may only enforce the writ where the death of the joint tenant/trustee occurred after expiration of six months from the filing of the writ.

- ▶ applications to delete debts (against a prior deceased owner)
- ▶ applications to change name of registered owner
- ▶ any proceeding that eliminates, i.e. "cuts out" the registered owner (e.g., vesting order, foreclosure, power of sale)

New ▶ applications to release and/or abandon an easement.

NOTE: If the practice in a Land Registry Office prior to this bulletin, has been not to search the former name when an application to change name is registered, then both the former name and the new name must be searched when a transfer of land is registered. This search is only necessary with respect to applications which predate this bulletin.

(III) CLEARANCE PROCEDURES

New An affidavit by the registered owner stating that he/she is not the same person as a judgement debtor named in a writ of execution is acceptable to show title free and clear of the writ provided the amount of the judgement debt is less than \$50,000. Prior to the issuance of this bulletin, this amount was \$10,000.

Where the value of the writ of execution is \$50,000 or more, written acknowledgement by the judgement creditor or his/her solicitor that the debtor is not one and the same is acceptable to clear the writ of execution.

New In addition, regardless of the amount of the writ, the solicitor for the registered owner may make an unequivocal statement that their client is not one and the same as the person in the writ. There is no requirement to give any details of the writ in this case.

(IV) WHEN A WRIT DOES NOT APPLY

▶ When a search for writs reveals a certificate of lien under either the *Legal Aid Act* or the *Bail Act*, the lien only attaches to the lands specifically identified in the lien and therefore does not apply to other land.

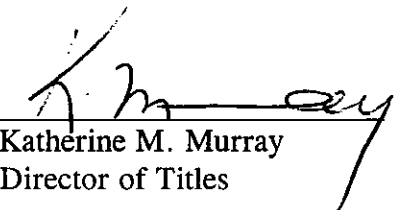
▶ It is not necessary to search for writs of execution against a spouse who is only joining in a document to consent under the provisions of the *Family Law Act*.

This bulletin is effective immediately.

This bulletin replaces bulletins 75078, 75085, 75088, 81031, 82027, 84028, 86002, 87003 and 89009, as well as Item 2 of bulletin 78020 and bulletin 84034 except paragraphs 1 and 2.



Ian Veitch
Director of Land Registration



Katherine M. Murray
Director of Titles