



The Register

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The staff at West Coast wish you all the best of the Holiday Season & a Happy New Year!

Winter Weather Warning

Adverse Weather Conditions Can Delay Midday Bag to Victoria and Overnight Couriers

Midday Bag to Victoria

Since flights can be delayed without warning in the winter months, it is best not to rely on our **midday service** from **Vancouver to Victoria** for documents that must be filed on a specific day. High winds and fog can affect whether or not our midday bag arrives on time or even at all.

Overnight Couriers

Our **overnight courier** provides **next day service** to most locations in BC and across Canada. For remote locations, however, it can take two or three business days. During winter months, road conditions and adverse weather can cause unexpected delays and longer turnaround times.

Specific Day Filings/Registrations

If you require filing/registration on a specific day, where it is necessary to send your documents *outside the Lower Mainland*, please forward your documents to our Vancouver office by **4:45 p.m. the day before your deadline for filing** and indicate the filing date on your invoice.

Court

UPDATE

Court Services Online (CSO)

The new CSO website for online information on civil court proceedings held in any BC Supreme Court or Provincial Court Registry is now available. However, *there are limitations to the information that is available online*. Some limitations allowing access to information will apply based on the type of proceeding. *For example*, the Electronic Search system (E-search) will **not** provide information on *Provincial Family* files, *Supreme Adoption* files, *Provincial* or *Supreme Criminal* files and most *Probate* files.

Another significant limitation is that E-search will only search **exact** matches, not variations. Variations include spaces and punctuation as well as different spellings. To search name variations is considered to be a separate search and will cost an additional disbursement. The disbursement to view each civil case file is \$6.00. To search name variations is an additional \$6.00 disbursement for each variation. To download or print the file record that has been viewed will be another \$6.00 disbursement.

Although the website says that information is available from 1989 on, this is somewhat misleading. *Victoria* Supreme Court only became computerized in 2002, *Vancouver* in 1990 and *New Westminster* in 1992. All other court registries throughout the Province have different computerization dates. *Records prior to a court's computerization date will therefore have to be searched in person at the court registry*. **Note:** As the **Victoria** Court Registry's online records only go back to April 2002, West Coast staff will search *Victoria* files in person at the court registry to ensure that all actions are found. We will also search any variations *without charging any additional disbursements*.

Return of Marriage Certificates

The Supreme Courts will no longer return a marriage certificate to a party, after a divorce is final, *without a court order*. When the marriage certificate is presented at the Registry to be date stamped by the Court, it then becomes a filed document. Therefore, the release of the marriage certificate can only be obtained with an order of the court.

Filing Amended Pleadings

Where Rule 24(1)(a) and 24(1)(b) Apply

When filing an amended pleading in Supreme Court, it is important to cite the correct rule or authority for making the amendment and to underline all the amendments. Rule 24(1)(a) may be used only **once** and only when the notice of trial or hearing has not yet been delivered. When using Rule 24(1)(b), "*at any time with the written consent of all the parties*", it is not necessary to obtain a consent order. The written consent may be an endorsement by all other parties or their counsel on the front of the document, directly beneath the heading "*Amended Pursuant to...*", or all parties or their counsel may sign at the end of the document beneath the signature line of the filing party. Registries will also accept the attachment of an extra page titled "*Consent*" or "*Consents*", with the appropriate signatures following.

Where Rule 24(1)(a) and 24(1)(b) Do Not Apply

Where Rule 24(1)(a) or 24(1)(b) do not apply, a court order must be obtained to file an amended pleading. When amending a pleading pursuant to an order, the document must refer specifically to the order, for example, "*Amended Pursuant to the consent order of May 8, 2004*". **Note:** Some court registries, such as *Chilliwack*, will also insist that the date that the original document was filed be added to the heading.

Small Claims Amendments

In Small Claims Court, amendments may be made to any document, not just pleadings as in Supreme Court, *as long as the changes are made before the settlement conference begins*. After that time, an "Application to a Judge" must be filed to seek permission for the changes. In Small Claims, changes must be *underlined, initialed and dated*, as per Rule 8(2). Some court registries, such as *Surrey*, interpret this to mean that at each and every place a change has been made, there must be an initial, date, and underlined segment of text. The document must also be titled "*Amended insert name of document*" and, if there is an order authorizing the change, the document must refer specifically to the order.

Court Registry Tips

RULE 51(a) - Reminder

- When setting down a Rule 51(a) application, both *New Westminster* and *Chilliwack* Supreme Court will keep the original *plus two copies* of your Notice of Motion and Notice of Hearing. If you require a stamped copy of these documents back, please submit the original and *three copies*.

Probate Fees

- When opening a Probate file, the probate fees and the \$208.00 filing fee must be paid on separate cheques.

Masters in New Westminster

- Please keep in mind, that there are no Masters sitting in New Westminster on **Mondays**.

Setting Actions Together at Trial

- When submitting a consent order to have two actions heard at the same time, *New Westminster* Court Registry requires that a brief affidavit be attached setting out why it is appropriate that the actions be heard together. **Note:** This requirement has been in effect since 1998 when a Masters Directive made this mandatory.

Corporate

U P D A T E

Society Act Changes

The *Society Amendment Act, 2004* (Bill 32) was brought into force November 1, 2004. Several subsections were repealed entirely, others were repealed with a new subsection substituted, others were just amended and some new subsections were added. Highlights of the amendments now in force are as follows:

Bylaws

Bylaws will no longer be examined by Corporate registry staff at the time of incorporation or when bylaws are changed. Because of this change, the Registry will no longer offer a pre-vetting service. The Registry will only be a repository of bylaws for public access. The Registry advises that a Society must ensure their bylaws comply with section 6 of the *Society Act* ("the Act") before filing them with the registrar.

Forms

The Schedule A forms listed in the Act have been repealed. Where forms were referred to by number in the various sections of the Act, it now states "*the form established by the registrar*". However, the forms in their current format (except Form 11 Annual Report) may still be used until further notice.

Orders

A Society no longer needs to request an Order from the Registrar to approve the way it notifies its members of meetings, or to approve a specific system or method of voting by members. These issues are now dealt with in the Society's bylaws. If a Society wishes to change the method of notification or establish a new system of voting, it must amend its bylaws and file the amendments with the Registrar.

Consents

Upon incorporation, a Society that will operate as a social club will no longer need the consent of the Minister of Finance.

Financial Statements

Societies are no longer required to submit a Financial Statement to the Registry when filing their annual report. This applies to all annual reports filed as of November 1, 2004 regardless of whether the anniversary date pre-dates November 1, 2004. However, Financial Statements must still be produced and presented to the members at the Society's Annual General meeting. Also, new section 95(3) of the *Society Act* (referred to in the *Finance Statutes Amendment Act, 2004*) requires Financial Statements to be kept at the Society's address and be made available to the public, upon request, for a fee.

The Registry advises that sections 42 to 44 of the *Finance Statutes Amendment Act, 2004* (www.legis.gov.bc.ca/37th5th/3rd_read/gov69-3.htm), which contains amendments to the *Society Act*, be consulted to ensure that changes are complied with.

Where To Obtain Copies

A copy of the *Society Amendment Act, 2004* may be viewed at www.legis.gov.bc.ca/37th5th/3rd_read/gov32-3.htm. You may also obtain a copy by contacting Kelly Buziak in our Client Services department at 604.659.8610 or toll free at 1.800.553.1936 or by emailing your request to info@wcts.com.

BCA Project Website

The *Business Corporations Act* (BCA) Project Website has been brought down and all pertinent information is now consolidated at the Corporate Registry website at www.fin.gov.bc.ca/registries/corppg/default.html.

PPR

U P D A T E

Extending Repairers Liens

A court order is required to extend the registration life of a Repairers Lien. The entered court order must be submitted with an original Financing Change statement to the Personal Property Registry. *These court ordered changes cannot be registered online.* The Financing Change statement and accompanying entered order must be submitted to the Registry *prior to* the registration's expiration date.

Court Orders

When amending a PPR registration with a court order (*other than extending Repairers Liens*), you must amend the original registration as required by the court order, as well as register the court order against the Base Registration number in the Personal Property Registry.

If the original registration is set to expire soon, and a court order orders that the base registration not be discharged until further notice, it is necessary for the party registering the court order to also go into the original base registration and renew the registration for an acceptable time period within which the court matter will be satisfied. In this situation, two disbursements will be charged – the disbursement to register the court order (\$10.00) and the disbursement to renew the registration (\$5.00 per year).

Note: If this is not done, even though the court order has been entered against the base registration, the charge will automatically expire on its original expiration date.



Land

UPDATE

Springing Powers of Attorney

A springing power of attorney is a power of attorney that only takes effect upon the happening of a precisely defined event or upon the occurrence of a contingency. That is, it “springs up” when the triggering event or the contingency occurs.

The *Power of Attorney Act* does not explicitly provide for springing powers of attorney. At one time, the Land Title Office would not even consider accepting this type of power of attorney because of the inherent problem of how to determine whether the event triggering the power had occurred and what proof would be acceptable to confirm this.

As a result of a 2002 Vancouver Court case, *Goodrich v. British Columbia (Registrar of Land Titles)*, the issue of springing powers of attorney was revisited and brought under discussion. In this particular case, judgment was pronounced in favor of the Respondents and the Court upheld the Registrar of Land Titles’ decision to refuse to register the power of attorney document and the transfer and mortgage documents dependent on that power of attorney. That judgment was subsequently appealed and in February, 2004, the Court of Appeal ordered that the judgment be set aside and the matter referred for rehearing to the Supreme Court of British Columbia. As of this date, the action has not yet been returned to the Supreme Court.

Although the judgment was set aside by the Court of Appeal, this does not mean that the Land Title Office will automatically accept all springing powers of attorney. However, they will **consider** each one on its own individual merits. *One of the key things they will look at is whether or not the triggering event can be proven.*

Transfer/Assignment of Charge on Title

“Why does a different registration number sometimes appear below the name of the charge holder on title?”

Although the current format of computer titles showing *current information only* has not changed, this question is being asked more and more frequently. The answer and explanation is given below.

For all charges on title, where the name of the registered owner of the charge is shown, the registration number will appear in two places: below the *nature* of the charge and below the *name* of the owner of the charge. When the registration number is the same in both places, this means there has never been a change in the owner of the charge.

If the charge is transferred or assigned, the title will reflect only the name of the **new** charge holder in the ownership section and a **different** charge number will appear below the name of the new charge holder. In most cases, the original charge number and the date the original charge was filed will still appear below the nature of the charge. The title will not indicate the date that the transfer or assignment of the charge was filed.

If the charge has been assigned or transferred several times, the **most recent** assignment or transfer of charge will be shown below the name of the charge holder. All previous assignments or transfers will appear in the *Remarks* section.

Note: When dealing with a charge that has been assigned or transferred, the whole history of the charge must be shown. **For example:** Assignment of Lease A1234 (*original lease*) see M5678, BG121314 and BW151617 (*all assignments*) or Assignment of Lease BW151617 (*last assignment*) see A1234, M5678 and BG121314 (*original and interim assignments*).

New Deputy Registrar for Lower Mainland LTO

In November, 2004, Ian MacDonald joined the Lower Mainland Land Title Office as a Deputy Registrar. Mr. MacDonald has previously worked in both the Victoria and Kamloops Land Title Offices and most recently worked at Land Title Branch headquarters in Victoria.

The Lower Mainland Land Title Office has 3 Deputy Registrars. *Ian MacDonald* is responsible for Survey, *Terry Dinnell* is responsible for Document Examination and *Judy McKay* is responsible for Support Services. *Brian Bigras* has moved into the new position of General Manager of the Lower Mainland Land Title Office.

Consent Letters For “In Trust” Mortgages

The Lower Mainland Land Title Office advises they will no longer review mortgages held “In Trust” to determine whether they rank in a second or lower position, or whether they are contributory mortgages or not. Previously, the practice had been to review these types of mortgages and to require consent letters from the beneficiaries of the trust in those circumstances where the mortgage was not a first or second mortgage, or where the mortgagee “In Trust” was only contributing to the mortgage and was not giving the whole mortgage.

Section 15.1 of the *Trustee Act* was a new section introduced in February, 2003, dealing with investment property. The Land Title Office has recently decided that they will no longer police this section because they cannot, in any particular circumstance, decide what a prudent investor might do. Therefore, *consent letters are no longer required for “In Trust” mortgages.*

Land Title and Survey Authority

As previously announced, the Land Title Offices in the *Lower Mainland*, *Victoria* and *Kamloops* will no longer come under the control of the provincial government. The operation of the provincial land title and survey system will be assumed by the **Land Title and Survey Authority (LTSA)**. The effective date of the turnover has not been announced yet but it is expected to take place sometime in December, 2004.

The Land Title and Survey Authority, which will be headquartered in Victoria, is an independent, non-profit authority headed by a permanent board of directors whose members come from both government and key stakeholder groups. The new Board of Directors for the LTSA has now been formed and will comprise the following 11 members: *Province of British Columbia* (2), *Law Society of British Columbia* (2), *Corporation of the Land Surveyors of the Province of British Columbia* (2), *Society of Notaries Public of British Columbia* (1), *Union of British Columbia Municipalities* (1), *British Columbia Real Estate Association* (1), *First Nations Summit* (1), and *British Columbia Association of Professional Registry Agents* (1).

West Coast

U P D A T E

Computer Mousepads

In November, 2004, West Coast distributed computer mousepads imprinted with two year calendars for 2005 and 2006. We have received many favourable comments from our clients that these mousepad calendars are very useful in making future Court dates.

If you did not receive a computer mousepad, please contact Kelly Buziak in our Client Services department at 604.659.8610 or toll free at 1.800.553.1936 or e-mail your request to info@wcts.com.

Residential Tenancy

U P D A T E

Surrey Branch Closed

The Surrey Branch (*Lower Mainland South*) of the Residential Tenancy Office (RTO) has closed permanently. There are now only three Residential Tenancy offices in British Columbia: the *Lower Mainland North* office located in **Burnaby**, the *Vancouver Island* office located in **Victoria** and the *Interior and North* office located in **Kelowna**.

Residential Tenancy office hours in **Burnaby** and **Victoria** are 8:30 a.m. to 4:30 p.m., Monday to Friday. West Coast attends once daily (as required) at each of these offices. In the Lower Mainland, the RTO run leaves from our New Westminster office at 1:00 p.m. In Victoria, attendance at the Residential Tenancy Office is at 2:30 p.m. **Note:** As there is now only one Residential Tenancy office for the Lower Mainland, wait times for filing are longer as agents must wait in line along with the general public. Often it is necessary to return to the Residential Tenancy Office the following day to pick-up your documents, which will increase the turnaround time in receiving the filed documents back in your office.

The **Kelowna** Residential Tenancy Office has reduced their current service levels to the public and are now only open from 8:30 until 12:00, Monday to Friday. West Coast can also arrange for filing at the RTO in Kelowna.

Additional information about the RTO, including complete information on the Residential Tenancy Legislation and Rules, as well as all the necessary forms and fees, may be obtained through their website at www.pssg.gov.bc.ca/rto/index.htm.

Victoria Staff

ANNIVERSARY



On December 12, 2004, **Sheila Mitchell**, our Victoria Office Assistant Manager celebrated her **20th Anniversary** with West Coast. On behalf of Wayne Crookes, Owner/President and all the staff, we would like to congratulate Sheila for her many years of dedicated service and say "Thank You For a Job Well Done!"

Asked & Answered ~ A Process Serving Question

Question: *If I have to serve a Defendant with a Subpoena, do I also have to provide them with money?*

Answer: Travel money should be provided at .30 cents per km each way by road *within 200 km* and include any ferry fares and road tolls. However, travel money is not required for distances *less than 8 km*. A witness who is a party or a present officer, director or partner of a party to the proceeding is **not** entitled to the daily witness fee of \$20.00.

Further information can be obtained in Appendix C, Schedule 3 of the BC Supreme Court Rules.

*If you have questions you would like answered in our next Newsletter,
please contact the appropriate West Coast department manager.*

“You asked . . . We answered.”

Keeping You Informed

Below is a list of memorandums and notices that we have sent out since our last newsletter. For additional copies, please call our Client Services department at 604.659.8610 or toll-free at 1.800.553.1936. You may also view these on our website at www.wcts.com under the News and Updates button or e-mail your request to info@wcts.com.

LAND

- **November 4, 2004** - Pre-Sold Strata Units

COURT

- **December 1, 2004** - Booking of Appointments Before the Registrar
- **November 22, 2004** - Identity of Counsel or Commissioner
- **November 22, 2004** - Guidelines in Cross-Border Cases
- **November 22, 2004** - Directions for Appeals from the Provincial Court
- **October 25, 2004** - Judicial Settlement Conference Pilot Project
- **October 8, 2004** - Judges & Masters Chambers in Nanaimo
- **October 7, 2004** - Vancouver Lengthy Chambers Scheduling
- **October 1, 2004** - Civil Emergency After-Hours Applications

CORPORATE & PPR

- **December 1, 2004** - Business Number Required by Corporate Registry
- **November 30, 2004** - Corporate Names in All Registries
- **October 19, 2004** - Notice of Changes to the Society Act

E-Mail Service

info@wcts.com

In addition to sending work requests via our run system or by fax, work requests may be sent via e-mail to info@wcts.com. These requests will be received in our New Westminster office and forwarded to the department where your work will be processed. We will e-mail confirmation, *generally within five minutes*, so that you will know your request has been received.

If you do not receive confirmation from us **within 15 minutes**, please contact Marian Bragg or Patt Kerr at 604.659.8600 or toll-free at 1.800.553.1936.



The Register is the newsletter of **West Coast Title Search Ltd.** It is available free of charge and we encourage you to use the information to assist you with your work.

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