



The Register

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Land

UPDATE

Easements on Multiple Servient Lands

An easement is a right to the use of, or a right to restrict the use of, the land of another person in some way. An easement may be either **positive** or **negative**. An easement must always have a *servient* and a *dominant* tenement. The easement will appear as a **charge** on the title(s) to the *servient* lands and as a **legal notation** on the title(s) to the *dominant* land(s). It is possible to have both multiple *servient* lands and/or multiple *dominant* lands in the same instrument.

Former Practice

Where there were multiple *servient* lands in the same instrument, the usual practice was to apply for a **separate** easement for **each** of the *servient* lands. The Land Title Office would assign a **separate** registration number for **each** easement and a **separate** filing fee for **each** easement would apply.

Current Practice

The Land Title Office practice now is to view an easement with multiple *servient* lands as a single charge rather than a separate charge, **provided the following conditions are met:**

- **All** of the *servient* tenements must be owned by the same person,
- **All** of the *dominant* tenements must benefit from the easement, and

- The restrictions, limitations and burdens created by the instrument must **apply equally** to all of the *servient* tenements.

If **all** of these conditions apply to your instrument, you only have to apply for **one** easement. The Land Title Office will assign **one** registration number and only **one** filing fee will apply. However, if **any** of the above conditions are not met, then the instrument does not constitute a single charge and you must apply for a **separate** easement for **each** of the *servient* lands and pay a **separate** filing fee for **each** easement.

Release or Modification of an Easement

When **releasing** or **modifying** an easement, all lenders on mortgages filed on the title(s) to the *dominant* lands must **consent** to the release or modification. This consent may be by way of a consent form attached to the Form C. The signature of the consenting mortgagee(s) does not have to be officer certified on the consent form. Alternatively, the mortgagee(s) may just execute the Form C. Where the mortgagee(s) executes, you should add “Consent as to Mortgage # _____” beneath their signature. The mortgagee does not have to be joined in as a Transferor on the Form C in order to execute the document.

Note: The conditions which determine whether a single charge or separate charges are created, where there are multiple *servient* lands in the same instrument, also apply to **restrictive covenants**.

Trust Instruments

Trust Instruments Must be Filed in Support

Current Filing Practice

The Land Title Office has advised that, once again, they will not accept trust instruments submitted with a filing letter as a Document Filed (“DF”). Trust instruments must be filed in **support** of the document that relates to the trust.

Exception: Trust instruments pertaining to *electronic submissions* may be filed separately as a “DF”, provided the filing letter attached to the trust instrument indicates “For electronic filing with PID # _____”.

History of Filing Practice

For many years, the Land Title Office allowed trust instruments to be filed separately as a “DF”. Then, in 2001, the Land Title Office decided they would no longer allow this practice and trust instruments had to be filed in support of the document relating to the trust. However, with the implementation of the electronic filing system (“EFS”), the Land Title Office decided to allow the separate filing of trust instruments as EFS did not allow for trust instruments to be “attached” to an electronic document. To be consistent, the Land Title Office extended this practice to allow the separate filing of trust instruments relating to paper documents as well.

This change in practice was in place for only a few months. The Land Title Office then reverted back to their original decision and decided, once again, not to allow trust instruments to be filed separately from the document relating to the trust (with the **Exception** noted above). They based their decision on s. 180(4) of the *Land Title Act* which states: “The trust instrument must be filed with the registrar with the application for registration of title”.

Subsequent Filings

If the original trust instrument is already on file, you may refer to the registration number of the “DF” or the document where the trust instrument is attached for the subsequent filing of any other documents that pertain to the *same* trust instrument.

Original vs Certified Copy

S.180(5) of the *Land Title Act* requires that the original trust instrument be filed. However, if the original trust instrument is produced at the Land Title Office, the Land Title Office will make a certified copy acceptable for filing. *Copies of a trust instrument certified by a notary public or solicitor are not acceptable.*

Transmission to Executor/Administrator

“List of Assets, Liabilities and Distribution” are now Court Certified

If an individual owns property, or is a tenant in common, and dies, the interest of the deceased must be transmitted to the **executor** (if the deceased prepared a will and appointed an executor) or to an **administrator** (if the deceased died without a will or if an executor was not named in the will).

To transmit property to an executor or to an administrator, you must file a **court certified** copy of the Letters Probate or Letters of Administration and a **court certified** copy of the List of Assets, Liabilities and Distribution with a Form 17 application.

Name Discrepancies for Deceased

If the name of the deceased as shown on the Letters Probate or Letters of Administration does not match the title, a new **Wills Search** must be done. The Land Title Office prefers that an **amended** copy of the Letters Probate or Letters of Administration be filed with the Form 17 but it is possible that the LTO will accept a statutory declaration from the Executor or Solicitor with a copy of

the new Wills Search attached, setting out the pertinent facts. It is best to confirm with each Land Title Office what will be acceptable.

Completing the Form 17

- On the Form 17, include the **name** of the Executor/Administrator, their capacity as “*Executor/Administrator of the Will/Estate of **name of deceased** as it appears on title, Deceased*” and their **address**. A personal occupation of the Executor/Administrator is not required. If the Letters Probate or Letters of Administration show various name variations for the deceased, **do not include all the name variations on the Form 17.**
- If the Letters Probate or Letters of Administration show the name of the Executor/Administrator with an **initial**, include the **full name** of the Executor/Administrator on the Form 17.

Land Tax Deferment Act

Effective for the 2007 tax year, the age at which a homeowner may begin to defer the property taxes on their principal residence is now 55 years of age.

A *Land Tax Deferment Act* agreement will stop the registration of a *transfer, right to purchase, or leasehold interest*. If you wish to register any of these documents, you must first release the *Land Tax Deferment Act* agreement. However, if you attach a copy of the payout letter to the document being filed, the Land Title Office will usually not issue a defect notice, **provided** the release is received in their offices within a reasonable time. Transmissions to surviving joint tenant or to a personal representative are not restricted by a *Land Tax Deferment Act* agreement.

Note: *The release of a Land Tax Deferment Act agreement is generally filed by the Surveyor of Taxes on behalf of the Ministry of Small Business and Revenue.*

Priority Agreements on the Common Property

A document that grants a charge over a portion of the common property of a strata plan (e.g., a statutory right of way) will often contain a priority agreement. In some instances, this priority agreement grants the charge being filed on the common property priority over a mortgage(s) registered against the title(s) of one or more of the strata lots in the strata plan. The charge appears only on the common property and the mortgage(s) appears only on the strata lot(s).

Upon final registration, the Land Title Office will endorse both the charge and the priority agreement on the common property record and just the priority agreement on the title(s) of the applicable strata lots. On the **common property record**, the priority agreement will indicate “granting charge # _____ priority over # _____, a mortgage registered on the title of the strata lots.” On each of the applicable strata lot titles, the priority agreement will indicate: “granting charge # _____ as registered on the common property priority over mortgage # _____”.

PTT UPDATE

First Time Home Buyers' Program

Amendments to the **threshold** requirements of the *First Time Home Buyers' Program* were introduced in the 2007 Provincial Budget. The fair market qualifying value threshold for eligible residential property was increased and **will now apply throughout the province**.

Effective for registrations filed **after February 20, 2007**, the fair market value threshold has been increased to **\$375,000** for all areas in the province. This is an increase from \$325,000 in the *Greater Vancouver Regional District*, *Fraser Valley Regional District* and the *Capital Regional District* and an increase from \$265,000 in all other areas of the province.

A proportional exemption is still provided for eligible residences that have a fair market value of **up to \$25,000 above** the new threshold of **\$375,000**. The formula for calculating the proportionate amount of tax payable is included in Section F(5) on the blue *First Time Home Buyers' Property Transfer Tax Return*.

Property Transfer Tax Returns

New *First Time Home Buyers' Property Transfer Tax Returns* will not be issued for manual submissions. However, practitioners making use of the Land Title Electronic Filing Service (EFS) will be required to use the latest Property Transfer Tax Return as the old form submitted electronically after the February 20th Provincial Budget will not use the new tax calculations. The new electronic PTT Return forms can be obtained from the LTSA web site at www.ltsa.ca/ltd_efs_forms.htm.

Vital Statistics UPDATE

Centralized Printing for Certificates

Effective February 12, 2007, the Division of Vital Statistics implemented centralized printing of all certificates. All certificates will now be **mailed or couriered** directly from the Vital Statistics office in Victoria. There will no longer be “pickup” service available, even in rush circumstances.

To provide better service for our clients, West Coast will request that all certificates be returned to our Victoria office so that we can match the certificate to your invoice. This will allow us to monitor any unusual delays and follow up with the Registry. For Rush certificate requests, please estimate a turnaround time of 4 to 5 days from submission to receipt of certificate.

Note: *This procedure change does not affect Wills Notice searches.*

Motor Vehicles UPDATE

Longer Turnaround Times

We have been advised that ICBC is now working on a **7 to 8 week** turnaround time for **certified “as at” requests** and **name searches**. If your limitation date is within 4 weeks of the request being submitted to ICBC, we will submit it on a rush basis. Since ICBC does not officially have a rush service, there is no guarantee that rush requests will be given priority. However, they do try to do requests more quickly where the deadline is looming.

In order to lessen the chance of there being a problem with a request, please include a copy of the *police report* for any request where the police attended the accident, along with the *licence plate* and *ICBC claim numbers*.

Corporate UPDATE

Certified Requests

Certified requests are often taking **4 to 5 working days** to be completed. If you need any certified work (*Good Standing, Status, Copies*, etc.) done more quickly or certified on a specific date, priority service will be required. The Registry charges an additional priority fee of **\$100 per rush service**.

Filing Deadlines

We have been experiencing many delays and cancellations of our *midday* courier bag from Vancouver to Victoria because of high winds, fog and other adverse weather conditions. If your documents are time-sensitive, please forward them to our Vancouver office **by 4:30 p.m. the day before your filing deadline**, so that they can be sent in our *overnight* courier bag.

Process Serving UPDATE

Service Outside British Columbia

Rule 13(2) of the Supreme Court Rules deals specifically with service outside British Columbia *without leave*. Except in a family law proceeding, a copy of an originating process served outside British Columbia without leave must be accompanied by a Form 6 “*Endorsement on Originating Process for Service Outside British Columbia*”. The Form 6 must state which of the circumstances enumerated in Section 10 of the *Court Jurisdiction and Proceedings Transfer Act* are the grounds on which the plaintiff is relying. The Form 6 must be included with the document served and also with the copy that will be attached as the exhibit to the Affidavit of Service.

Court UPDATE

Garnishing Orders

Effective March 1, 2007, applications for Garnishing Orders filed under the *Court Order Enforcement Act* must now include a Requisition in Form 2. In addition, the \$80.00 filing fee must now be paid at the time the application is presented to the Registry. The Requisition and the affidavits in support will not be returned if the application is rejected. If the reason for rejection is the need for additional material, such as a new Affidavit in Support, a further filing fee will not be required as long as a copy of the filed Requisition is provided to the Court with the resubmission. Other reasons for rejection (e.g., if the claim is not a liquidated demand) would require the applicant to file a new application and a new filing fee of \$80.00 would then have to be paid.

National Class Action Database

The Civil Litigation Section of the Canadian Bar Association (CBA) has established a National Class Action Database as a pilot project. The online database is designed to give lawyers and the public easy access to court documents submitted with regard to **class action** lawsuits currently underway across the country. Although it is a voluntary program in other provinces, it has been made a mandatory requirement in British Columbia effective January 1, 2007.

The Honourable Chief Justice Donald Brenner issued a practice direction dated December 1, 2006 requiring that any actions commenced under the *Class Proceedings Act* be registered with the National Class Action Database **within 10 days of service or filing**, whichever is earlier. Copies of the originating documents, the motion for certification, and any amendments are to be sent electronically, along with the registration form, to the CBA database.

For a copy of the practice direction, 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. You may also visit the CBA website at www.cba.org/ClassActions/main/gate/index.

JCC Exemptions in New Westminster

Rule 60E(1) requires that a Judicial Case Conference (JCC) be held prior to a Notice of Motion or an Affidavit being filed or delivered. Exceptions to this are applications that are under s.57 or s.67 of the *Family Relations Act*, or applications that are *by consent* or *without notice*. Subrule 60E(3) may relieve a party from the requirements of Subrule 60E(1) if the applications are urgent or if it is impractical for the parties to attend a JCC.

Previously, New Westminster Court required that counsel attend the Registry to speak to the exemption before a Master. Amendments to Subrule 60E(3) now allow the Court to let the application for exemption be made through Trial Division without being spoken to. While counsel may still speak to the matter if they choose, the application may be made by Requisition, supported by a letter signed by counsel or the party, setting out the reasons why the order is sought. The Judge or Master may then either grant the exemption by endorsing the Requisition, deny the exemption, or ask that counsel speak to the matter or provide further supporting material.

“Office Copies” No Longer Issued

Court Registries will no longer issue “office copies” of Disclosure Documents or Lists of Assets, Liabilities and Distribution as they feel that the term “office copy” does not have any statutory or defined meaning to the Court. However, certified copies or regular photocopies may still be requested. The Court disbursement for a **certified** copy is \$31.00 *up to 10 pages*, plus \$6.00 for each additional page. This disbursement is in addition to the \$31.00 disbursement for a certified copy of Letters Probate or Letters of Administration.

Note: The Land Title Office has confirmed they will accept a certified copy of the List of Assets, Liabilities and Distribution in lieu of the “office copy” they previously accepted.

New Civil Manager for New Westminster

Effective December 16, 2006, **Sonia Tulusso** became the Civil Manager for New Westminster Court. Ms. Tulusso replaced Arlene Lucas who relocated to Salmon Arm to assume the position of Court Manager there. We wish them both the very best of luck in their new positions.

West Coast UPDATE

Compatible E-Mail Programs

info@wcts.com

When e-mailing documents to us for review, or when e-mailing replacement pages to insert into documents we have already received from you, please attach them to your e-mail in *Word* or *WordPerfect* rather than in *PDF* format. We can print any type of document attached to an e-mail but we can only make changes, if necessary, to Word or WordPerfect documents. We cannot make any changes to PDF documents if there are further amendments to be made.

Our office staff will always send confirmation that your e-mail has been received. **If you do not hear from us within 15 minutes** of having sent your e-mail, then there has been a problem in transmission. If you have not received confirmation of successful transmission, please contact Marian Bragg or Linda Gomez in New Westminster at 604.659.8600 or toll free at 1.800.553.1936.

Pre-Printed Invoices

West Coast would be pleased to provide all clients with pre-printed invoices if this would better suit your needs. On pre-printed invoices, we imprint the *firm name, telephone number, fax number* and *account number*.

Our Accounting department in our New Westminster office handles all requests for pre-printed invoices. If you would like to receive pre-printed invoices, or if you need more invoices, please e-mail your request to invoices@wcts.com. You may also contact our Accounting department at 604.659.8615 or toll free at 1.800.553.1936 to request invoices.

There is no fee for pre-printed invoices.



Staff ANNIVERSARIES



West Coast is very pleased to announce that two staff members have recently celebrated significant **anniversary milestones**. On behalf of Wayne Crookes, Owner/President and all the staff, we would like to congratulate both Judith and Cheryl for their many years of dedicated service and say "Thank You For a Job Well Done!"



Judith Hellem - New Westminster Front Office
30 Years - December 15, 2006



Cheryl - New Westminster Land Title Agent
20 Years - January 16, 2007

Asked & Answered ~ A Manufactured Home Question

Question: *What do I need to provide to the Manufactured Home Registry to register a transfer from the Deceased to the Executor and then to the Beneficiary where the Estate is over \$25,000?*

Answer: All Estate transmissions and transfers require **paper filing** at the Manufactured Home Registry.

- **To transmit** to the Executor, you must file a *Notice to Transfer or Change Ownership* form, a Court Certified copy of the Letters Probate, a plain copy of the Will (or disclosure statement if no Will), plus a fee of \$50.00.
- **To transfer** from the Executor to the Beneficiary, you must file another *Notice to Transfer or Change Ownership* form, a Bill of Sale signed by the Executor, plus an additional fee of \$50.00. **Note:** Six months must elapse between conclusion of probate and transfer of ownership to a Beneficiary. However, within the six month period, if the Beneficiary provides a statutory declaration with the Bill of Sale, stating that all persons entitled to apply under the *Wills Variation Act* have consented in writing to the transfer, then the transfer can proceed. There is no additional fee to file the statutory declaration.

“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 *Registry News & Updates* link or e-mail your request to info@wcts.com.

CORPORATE/MHR/PPR

None issued

COURT

- March 14, 2007 - New Westminster Civil Trial Bookings for 1 - 5 Days
- March 12, 2007 - Vancouver Trial Scheduling Bookings for 6 - 19 Days
- January 23, 2007 - New Westminster 2007 Supreme Court “Non” Sittings
- December 6, 2006 - Master’s Schedule for December 2006, January, February and March 2007 in Victoria

LAND

- March 8, 2007 - Land Title Fees to Increase effective April 1, 2007

Skip Tracing

Our in-house skip tracer is **Ed Lopez** with seven years experience in skip tracing and process serving. If you would like to discuss skip tracing or have any requests, Ed can be reached at 604.659.8720 or toll free at 1.800.806.2788. You may also reach him via e-mail at info@wcts.com.

Process Serving

West Coast has been doing process serving since 1969 and is one of British Columbia’s leading process serving firms. We can also handle all your process serving needs throughout Canada, the United States and internationally. Our Process Serving team is available for any questions or quotes and can be reached at 604.659.8700 or toll free at 1.800.806.2788 or via e-mail at info@wcts.com.

Other Registry Services

West Coast is a full-service registry agent. We deal with over 200 government registries in the Lower Mainland and Victoria. Outside these areas, we have national and international contacts to handle your registry work for elsewhere in British Columbia, Canada and beyond.



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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