



The Register

THE NEWSLETTER OF WEST COAST TITLE SEARCH LTD.

NUMBER 36 / 99

REGISTRY SERVICES • SEMINARS • PROCESS SERVING

October, 1999

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Land

UPDATE

Orders Approving Sale

An order approving sale (vesting order) directs the Registrar of Land Titles to register the title to property in the name of purchasers specified in the order *upon filing a certified copy of the order, together with a letter of authorization from the petitioner's solicitor.* A Form 17 application must be filed with the order and must include the following:

- Market value
- Names of those to be registered as owners *as stated in the order*, occupations (or incorporation numbers in the case of a limited company), tenancy *as stated in the order* and postal address.
- Legal description
- List of charges to be merged off the title

The *names of the purchasers* must match exactly the names as shown in the order. If the order has a misspelling in the purchaser's names, or a middle name has been omitted, the LTO will accept a statutory declaration from the purchaser attesting to the name discrepancy and stating which is the true and correct legal name. The true and correct legal name of the purchaser must then be shown on the Form 17 and the statutory declaration attached in support of the order.

The *tenancy of the purchasers* must also match the court order exactly. If the order does not show the purchasers as Joint Tenants, you cannot include "Joint Tenants" on the Form 17. The LTO will not accept a statutory

declaration to amend the tenancy of the purchasers. You must either:

- a) file an *amended* order to show the purchasers as joint tenants; or
- b) file a subsequent FORM A transfer creating the joint tenancy.

When filing an order approving sale (vesting order), you must also apply to merge the charges covered by the order. The phrase "*...do vest in the purchaser...free and clear of any estate, right, title, interest, equity of redemption, and other claims of the parties, except the reservations, provisos, exceptions, and conditions expressed in the original grant(s) thereof from the Crown...*" means that all financial charges of the petitioners and respondents will merge under the order. Although many orders do include the list of charges to be cancelled, the order will still be acceptable if there is no specific list. **However, in order for the certificate of pending litigation initiating the action to be merged, the wording of the order must specifically include an instruction to discharge or cancel the certificate of pending litigation.** The reason for this is a certificate of pending litigation is not deemed to be an encumbrance, and therefore, it cannot be merged off the title simply by citing the number on the Form 17 application. If this specific wording is not included in the order, a separate release of the certificate of pending litigation must be filed. Pursuant to Section 30 of the *Land Title Act*, all charges registered after the petitioner's certificate of pending litigation can be merged even if these chargeholders do not appear as respondents.

NOTE:

A tax sales notice and a charge under the Tax Deferment Act cannot be merged.

As a Condominium Act charge has statutory priority over other charges, it should be released by a FORM C under the Condominium Act.

Solicitors' Liens

Section 79(1) of the *Legal Profession Act* provides that a "lawyer who is retained to prosecute or defend a proceeding in a court or before a tribunal has a charge against any property recovered or preserved as a result of the proceeding for the proper fees, charges and disbursements of or in relation to the proceeding, including counsel fees".

A recent review of Land Title Office practices concluded that the practice of accepting applications to register Section 79 charges supported only by a solicitor's letter is not acceptable as it is not consistent with the law. To register a Section 79 charge, the Land Title Office requires a Form 17 application supported by a solicitor's letter **and judicial evidence as to the existence of the charge**. The letter should include the following information:

1. That the property was property in issue in the proceedings;
2. That the applicant seeking the lien is a lawyer and was employed to *either* prosecute or defend a claim regarding the property on behalf of the named litigant; and
3. That as a result of the efforts of the applicant, the interest of the named litigant in the property was *either* recovered or preserved.

Judicial evidence as to the existence of the charge is crucial in determining whether or not a charge under Section 79 is deemed to exist. Consequently, all applications to register a *Legal Profession Act* charge must be reviewed by the Land Title Office before they can be filed.

If you would like a copy of Practice Bulletin No. 0199 issued by the Director of Land Titles dealing with "*Legal Profession Act - Solicitors Charge on Property*", please contact our Client Services department at 659-8686 or 1-800-553-1936 or e-mail us at service@wcts.com

LTO Registry Tip

Catherine Greenall, Registrar of the Lower Mainland Land Title Office, has requested that the LTO be advised when submitting a certificate of pending litigation that has a *limitation period which is due to expire*. This should be done by way of a letter from the solicitor acting for the applicant, or, if there is no solicitor, by the applicant directly, setting forth the nature and time frame of the limitation period. An example of a certificate of pending litigation that would have a limitation period is one claiming a builders' lien where a 21 day notice has been served.

BC OnLine Deposits

As previously announced, BC OnLine is no longer a branch of the provincial government. Consequently, they had to make new, private banking arrangements. The government and the bank allowed BC OnLine a grace period for accepting and cashing cheques that were payable to the Minister of Finance up to the end of August, 1999.

Effective September 1, 1999, BC OnLine will no longer accept cheques to be deposited into a BC OnLine account if they are made payable to the Minister of Finance. **All cheques must now be payable to BC OnLine.** Therefore, West Coast's Victoria office will no longer be able to deposit your Ministry of Finance disbursement cheque into our BC OnLine account so that we can disburse the exact amount when faced with an over/under payment or multiple department situation.

BC OnLine has announced that government agents, and the Corporate, Personal Property and Manufactured Home Registry offices will continue to accept deposits to BC OnLine accounts into the foreseeable future.

Deposits to your BC OnLine account may still be made at Land Title Office until December 1, 1999.

Corporate / PPR

UPDATE

COMMON REASONS FOR REJECTION IN THE CORPORATE / PPR REGISTRIES

CORPORATE:

1. **Annual Report**
 - Position of president and secretary not shown in officer position.
 - Date of signing annual report not completed.
2. **Notice of Offices**
 - Not sent in duplicate as required under s.40 of the *Company Act*.
3. **Notice of Director**
 - Form 8, Form 9 or Form 8/9 not showing date of change.
 - Names of all directors not stated on last section of form or names not shown consistently wherever director name shown.
4. **Voluntary Dissolution**
 - Photocopies submitted rather than the required originally signed documents.
 - Consent resolutions rather than certified copy of ordinary resolution sent in.
 - Statement that the company has no debts or liabilities not made on affidavit.
 - Company not in good standing as of the date ordinary resolution passed.

PERSONAL PROPERTY REGISTRY:

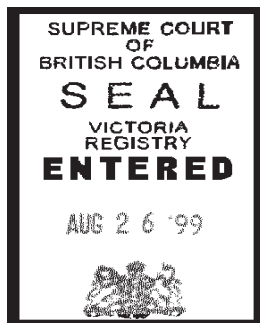
1. FCS - In Section 2 amendment details section, lines over 60 characters long. The details section only allows 60 characters on each line; any overage will be truncated by the registry. General Collateral description lines allow 70 characters. The forms are made to fit the number of characters in 10 pitch.
2. FCS - no registering party shown. Section 5 must be filled out on all FCS.
3. Double-barrelled names (e.g. Mary Ann) must be shown either as two names (first and second) or shown with a hyphen (Mary-Ann). The system does not recognize spaces in a name.

Court UPDATE

Entry Stamp on Court Orders - Victoria Court Registry

Effective September 1, 1999, the entry stamp that appears on Supreme Court Orders issued out of the Victoria Court Registry will be incorporated into a Supreme Court Seal.

Sample:



Victoria Masters' Schedule

As per the Supreme Court Chambers Clerk memo dated September 14, 1999, there will be no Master available on the following dates:

- September 23rd - 24th, 1999
- September 30th, 1999
- October 1st, 1999
- October 7th - 8th, 1999
- October 13th, 1999
- October 22nd, 1999
- November 10th, 1999
- November 26th, 1999
- December 15th, 1999
- December 20th - 24th, 1999
- December 29th - 31st, 1999

NOTE: Masters sittings are subject to change each month. Also, as per the November 10, 1998 memo, Masters will be sitting for chambers applications from Monday to Thursday only.

An Overview of Supreme Court Civil

The following rejection lists are taken from *An Overview of Supreme Court Civil*, prepared by the Ministry of Attorney General - Court Services Branch - Vancouver Law Courts.

Civil Document Filing - Counter 207

The top five reasons why documents are rejected at the Civil Counter:

1. *Garnishing Orders Before Judgment* do not disclose a liquidated claim.
2. No filing fees attached.
3. Documents not signed.
4. Wrong jurisdiction to commence proceedings.
5. *Writ of Summons* in the wrong form.

The top five reasons why Default Judgments are rejected:

1. *Eades vs. Kooknikoff* (defining liquidated demand) not complied with.
2. Substituted service not in accordance with Rule 12(4).
3. Service Ex Juris endorsement (Form 6) not served with the *Writ of Summons*.
4. *Default Judgment* in the wrong form.
5. Interest not pleaded at a per annum rate.

Chambers - Counter 207

The top ten reasons why orders are rejected by the Chambers Registry:

1. Order signed in quotation marks.
2. Name or title of the adjudicators not referred to correctly.
3. Order does not contain the full style of proceeding (Rule 4(4)).
4. Order not signed by the solicitor or counsel for all parties represented at the hearing or consenting to the order (Rule 41(8)).
5. Order signed by an articled student. A solicitor or counsel must sign the order (Rule 41(8)).

6. Orders under Rule 26 (11) for production of documents do not include provision for the payment of the reasonable costs of production of the non-party.
7. Hearing and/or judgment date is wrong.
8. Preamble of order is incorrect.
9. Order is not in proper form and does not comply with the C.L.E. Chambers.
10. Order has hand-written changes.

Family Registry - Counter 209

The top five reasons why documents are rejected at the Family Counter:

1. Documents (pleadings, etc.) not in the proper form.
2. Non-relevant paragraphs in the statement of claim are not struck out or omitted.
3. No original or certified copy of the marriage certificate/registration.
4. Foreign language marriage certificate/registration does not have an English translation.
5. Documents not originally signed.

The top five reasons why desk order applications are rejected:

1. Plaintiff's affidavit sworn too soon - the time to file the statement of defence has not expired and/or the one-year anniversary date of separation has not expired.
2. Documents (plaintiff's affidavit, child support fact sheet and/or draft order) not in proper form.
3. Non-compliance with Rule 60(1) (a), (b) or (c).
4. Insufficient proof of service.
5. Jurat to an affidavit not signed or the exhibits are not properly marked.

If you would like a copy of the entire publication, *An Overview of Supreme Court Civil*, please contact our Client Services department at 659-8686 or toll free at 1-800-553-1936 or e-mail us at service@wcts.com

Three Office Locations to Serve You

NEW WESTMINSTER

93 Sixth Street
New Westminster, BC
Canada V3L 2Z8
659-8600 / 1-800-553-1936
Fax: (604) 525-2593

Services: Administration & Accounts, Lower Mainland Land Registry Services, New Westminster Court Registry Services, Pick-up/Delivery

Hours: 8:15-5:00 Monday-Friday

VANCOUVER

840 Howe Street - # 100
Vancouver, BC
Canada V6Z 2L2
659-8700 / 1-800-806-2788
Fax: (604) 682-5793

Services: Vancouver Court Registry Services, Process Serving, Ships, Miscellaneous Vancouver Registries, Pick-up/Delivery

Hours: 8:00-5:00 Monday-Friday

VICTORIA

895 Fort Street - # 300
Victoria, BC
Canada V8W 1H7
405-6000 / 1-800-667-7767
Fax: (250) 383-1614

Services: Victoria Land & Court Registry Services, Corporate, Motor Vehicles, Process Serving, Vital Statistics, PPR, Manufactured Homes, Pick-up / Delivery

Hours: 8:15-5:00 Monday-Friday

If you have any questions about our services, please call 659-8600 or toll free at 1-800-553-1936 or e-mail us at service@wcts.com

Asked And Answered

In this issue of "Asked & Answered" we are pleased to answer the following **Process Serving** related questions:

Do I include witness fees and travel money when I am serving the Defendant with a Subpoena?

According to Appendix C, Schedule 3 of the BC Supreme Court Rules, a party or a present officer, director or partner of a party is not entitled to the Daily Witness fee of \$20.00. However, travel money should be provided at \$0.30/km each way by road within 200 km. Travel money is not required for distances less than 8 km.

When calculating time for a service or delivery of documents, do I count Sundays and holidays?

Sundays and holidays are not counted when calculating clear days. However, when calculating calendar days, Sundays and holidays are counted in time periods greater than 7 days, but are excluded in time periods of 7 days or less.

If you have any questions you would like answered in our next newsletter, please contact the appropriate West Coast department manager. We will be pleased to respond to any questions regarding procedures and requirements in Court, Land Titles, Corporate, Personal Property, etc.

Keeping You Informed

Below is a list of memorandums and notices that were issued since July, 1999. If you require additional copies, please call our Client Services department at 659-8686 or toll free at 1-800-553-1936 or e-mail us at service@wcts.com

CORPORATE

None Issued

COURT

- **August 10, 1999** - Divorce Certificates
- **July 16, 1999** - Victoria Registry - Change to Masters' Rota
- **June 22, 1999** - Supreme Court Rule Changes Effective July 1st, 1999

LAND

- **July 2, 1999** - Solicitors' Liens Pursuant to Legal Profession Act Section 88
- **June 15th, 1999** - Certificates of Pending Litigation

MHR / PPR

- **July 12, 1999** - Announcement from the Manufactured Home and Personal Property Registries



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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