

Recent News

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Real Estate Fraud Prevention: New Access Requirements for Electronic Land Registration System

On December 20th, 2006, the *Ministry of Government Services Consumer Protection and Service Modernization Act, 2006* (Bill 152) received Royal Assent. The Act amended several statutes, including the *Land Registration Reform Act, Land Titles Act* and *Registry Act*, in an effort to minimize occurrences of real estate fraud. In this regard, the provisions of the legislation contain requirements designed to enhance the security of transactions in the electronic land registration system (the “System”). These requirements pertain to user access of the System, registration for transfers of title and registration for powers of attorney and any documents registered under the authority of a power of attorney. The System changes will come into effect on April 7, 2008.

Access: Under the System, each user must have a unique access key, and all registrations performed through the use of that key are traceable back to the party. Ultimate authority to authorize persons to access the System to register documents and to establish the process by which authorization is assigned to those persons lies with the Director of Land Registration under the *Land Registration Reform Act*.

In this regard, the Ministry has introduced three criteria which must be met by anyone wishing to submit documents for registration in the System. These criteria are:

Identity – to ensure that only properly entitled users are accessing the System to register documents

Financial Resources – sufficient to compensate victims of fraud

Good Character / Accountability – to ensure that only those with appropriate qualifications and integrity are dealing with the System.

Registration of Transfers of Title: In November 2006, the Minister of Government and Consumer Services announced that the right to register most transfers of title would be restricted to lawyers only, while allowing other documents, such as mortgages, to be registered by those who meet specified criteria.

Transfers are key documents involved in title fraud. The rationale for the new rule hinges upon the fact that lawyers are part of a self-governing body with a legislative framework that deals with integrity and practice standards for its members. It is further thought that by restricting the ability to register transfers to lawyers, we can further secure the System, isolate documents and provide consumers with additional protection. Going forward, most transfer of title documents will require two different lawyers to sign for completeness, one for the transferor and one for the transferee. These requirements do

not apply to other types of interests. Transfers of easements, for example, do not need a lawyer to sign for completeness and a law statement will not be required. There are a number of exceptions to this requirement, where only one lawyer will be required to sign a transfer of title.

Powers of Attorney: Powers of Attorney are registered in the System by individuals and corporations/ banks to authorize someone else to sign a document on their behalf. In this regard, the Ministry is now requiring an individual who registers any document under the authority of a Power of Attorney to make a law statement. In these cases, lawyers will be required to discuss the Power of Attorney with their clients and provide the requisite law statement.

A law statement will not be required in documents signed under the authority of a Power of Attorney given by a corporation or a bank. In those cases, the attorney will be required to make a statement that they are acting within the scope of the Power of Attorney.

The original signed and witnessed Power of Attorney will now have to be scanned into the electronic registration of a Power of Attorney. The same will apply regarding the electronic registration of a Revocation of a Power of Attorney.

For a complete list and explanation of changes to the discretionary and mandatory statements given at the time of registration of electronic documents, please see the Bulletin No. 2008-02 by entering it as a search on the ServiceOntario website (www.serviceontario.ca). By accessing this website and selecting Land Registration from the menu at the left, one may also obtain current information regarding changes affecting stakeholders and users of the land registration system.