



Ontario

Ministry of
Consumer and
Commercial
Relations

Property
Rights
Division

Legal
and

Survey
Standards
Branch

BULLETIN NO. 83003

DATE: February 14, 1983

TO:
ALL LAND REGISTRARS *

Land Titles Procedural Guide
Sales under Debentures
Sale under Charge of Lease
Sale by Chargee - Municipal Taxes, etc.
Tax Arrears Certificates & Deeds
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Inhibiting Orders
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* Only items 5, 8 and 9 relate to the Registry System

1. Land Titles Procedural Guide

The Land Titles Procedural Guide was first published in 1977, and a revised edition was published in 1979. Since then, numerous amendments to the Act and to the regulations, combined with changes in interpretation and policy, have reduced the utility and reliability of the Guide.

We are now working on a complete revision of the Land Titles Procedural Guide, for publication later this year. It is probable that the revision will be published by CCH(Canadian) Ltd., (both separately and as a segment of that company's loose leaf service, the "Ontario Real Estate Law Guide".)

2. Sales under Debentures
(Land Titles Act, R.S.O.1980, C.230, S.98)

Under certain conditions, a debenture may be registered as a charge under the Land Titles Act. Further details as to the registration of debentures, particularly floating charge debentures, and as to sales thereunder will follow, as soon as possible, either in a bulletin or in the Land Titles Procedural Guide.

While we have not been insisting upon compliance with Part III of the Mortgages Act in respect of sales under debentures, and while there may be some jurisprudence to support that position, we now consider compliance with Part III to be consistent with the intention of the legislature, and will be requiring proof of compliance with that Part (i.e. sections 30 to 38) in respect of any transfer by a debenture holder presented for registration under the Land Titles Act, after May 1, 1983. (See Note 3, Page 5).

Regardless of whether the debenture provides for the appointment of a "receiver manager" or other similar agent, and regardless of whether the receiver manager

is said to be the agent of the chargor (the land owner) or the debenture holder (chargee), it is my view that, if the transfer purports to be made in exercise of a power of sale, to comply with subsection 98(1) of the Land Titles Act, the transfer must be executed by the debenture holder, not by the receiver manager. Accordingly, Land Registrars are advised not to register any transfer dated after May 1, 1983 under a power of sale in a debenture unless the transfer has been executed by the debenture holder (or on behalf of the debenture holder under a registered power of attorney).

3. Sale by Chargee under a Charge of a Lease

If a chargee under a registered charge of leasehold land (i.e. land registered as a leasehold parcel) sells, upon default, the requirements applicable to a sale by a chargee of freehold land will apply. See the Land Titles Act, sections 95 and 98, and O. Reg. 75/82, clause 1(1)(a) and section 25.

However, if a chargee under a notice of charge of a lease sells, upon default, the "transfer" of the lessee's interest will take the form of an assignment of lease, and be registered as a notice under clause 110(6)(b) of the Act. While proof of compliance with section 25 of O.Reg.75/82, including Part III of the Mortgages Act, will not be required, we will allow appropriate proof to be filed with the application (O.Reg.75/82 Form 31).

4. Sale by Chargee - Municipal Taxes, etc.

When recording a transfer by a chargee (including a debenture holder), the Land Registrar will not delete the entry of any otherwise undischarged notice, certificate, caution, or other instrument relating to arrears in land taxes, regardless of whether such instrument was registered before or after the charge.

Moreover, if a tax arrears certificate, under the Municipal Affairs Act, or a tax deed under the Municipal Act, or a notice of forfeiture under the Provincial Land Tax Act, or similar instrument, has been registered, the transfer by the chargee will not be registered, (unless the land was redeemed by payment of taxes and appropriate release, etc.)

Municipal and provincial land taxes always have priority over a charge, and upon default of payment of taxes, and subsequent forfeiture or sale to or by the municipality or the province, the chargee's interest is extinguished. Only easements and restrictive covenants survive.

5. Tax Arrears Certificates - Tax Deeds

Section 25a of O.Reg.75/82, as made by section 6 of O.Reg.350/82, and section 30c of R.R.O.1980, Reg. 896, as made by section 17 of O.Reg.351/82, require the stamps referred to therein to be signed by the Director of the Land Management Branch of the Ministry of Natural Resources. (See Bulletin 82019 page 3, Bulletin 82020 page 8, and Bulletin 83001 page 3).

Land Registrars are advised that they may accept for registration tax deeds and tax arrears certificates bearing stamped facsimiles of that Director's signature, provided the instruments also bear impressions of that Ministry's seal.

6. Execution searches -
Purchase Money Charges

Bulletin 76003 established a change in land titles registration procedures by stating, in effect, that it is not necessary to search for writs of execution against the chargor, where the chargee is the vendor.

On the basis of certain judicial decisions to which I was referred a few months ago, I came to the conclusion that our position might not be well founded, and I advised the regional supervisors that Land Registrars should disregard Bulletin 76003, and revert to the practice of searching executions in relation to any charge presented for registration, (not distinguishing purchase money charges.)

Having now given this matter further consideration, I have decided that Bulletin 76003 should continue to be considered valid.

7. Inhibiting Orders

Land Registrars are requested not to make orders under section 23 of the Land Titles Act, either on or without application (except those to inhibit dealings by subdividers, pending the registration of subdivision agreements and transfers of land or easements to municipalities) until the related issues have been discussed with me or one of my staff lawyers.

It is to be noted that registered agreements under subsections 29(25), 36(6) and 40(7) of the Planning Act, R.S.O. 1980, C.379 are enforceable against subsequent owners, so that the municipality's rights under such an agreement are adequately protected. Accordingly, it is doubtful that a Land Registrar should make an order under section 23 in relation to an allegation on behalf of a

municipality that the subdivider has failed to comply with his obligations under a registered subdivision agreement.

8. General Registrations - Similar instruments

Subsection 21(7) of the Registry Act provides that an "instrument", within the meaning of clause 1(f) of the Act, may be registered. That definition includes "any instrument mentioned in subsection 18(6)". Our policy has been that Land Registrars should restrict registration to instruments that come within the definition.

According to subsection 69(1) of the Registry Act, the registration of an instrument constitutes notice. However, subsection 69(2) provides that subsection 69(1) does not apply to an instrument registered as a "general registration" under subsection 18(6), unless the instrument is also recorded in the abstract index or is referred to in another instrument recorded in the abstract index (e.g., as required by subsection 40(1) and section 50).

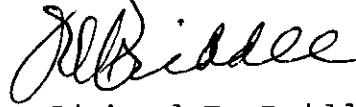
While it is possible that certain instruments registered as general registrations (e.g., powers of attorney and wills) may refer to specific land, most do not, and all could be considered as supporting instruments recorded in the abstract index. (Note that, in accordance with section 12 of R.R.O. 1980, Reg. 896, as remade by section 6 of O. Reg. 351/82, powers of attorney and wills are not normally recorded in the abstract index, but may be so recorded under subsection 21(2) of the Act).

In keeping with our policy, we have treated the classes of instruments that may be registered as "G.R.'s" as being restricted to those specifically mentioned in subsection 18(6). Recently, however, we decided that instruments similar to the types mentioned should be permitted to be registered, and accordingly Land Registrars are hereby advised that they may treat subsection 18(6) of the Registry Act as including instruments that both (a) are similar to those mentioned in that subsection and (b) do not contain descriptions of or references to particular parcels of land.

9. Corporate Powers of Attorney

Where an instrument has been signed by an attorney on behalf of a party, the attorney is required to include in the affidavit of age and spousal status a sworn statement to the effect that the power of attorney is in full force and effect and has not been revoked, in accordance with clause (c) of paragraph 6 of Form 21 of O. Reg. 75/82 as amended by section 6 of O. Reg. 350/82, under the Land Titles Act or subclause (iii) of Clause (f) of Form 20 of R.R.O. 1980, Reg. 896 as amended by section 36 of O. Reg. 351/82, under the Registry Act.

Until further notice, this requirement is not to be considered as applying to the execution of an instrument under a power of attorney on behalf of a party that is a corporation.



Richard E. Priddle
Director

REP:kk

Note:

- (1) *Bulletin 76003 is incorrectly shown as 76004 on page 8 of the current bulletin index, and related errors appear on page (ii) of the contents check list.*
- (2) *The word "mining" was omitted between "whether" and "rights" in the fourth line of the fifth paragraph on the first page of Bulletin 82019. (See comment on section 30 c on the third page of Bulletin 82020).*
- (3) *Subsection 93(8) of the Land Titles Act makes reference to "a charge in the form of a debenture". Clause 25(4)(b) of O. Reg. 75/82, as made by section 5 of O. Reg. 350/82, makes section 25 of O. Reg. 75/82 apply, with necessary modifications, to a charge in the form of a debenture. Subclause 25(2)(b)(iii) requires compliance with Part III of the Mortgages Act. Section 39 of the Mortgages Act, R.S.O. 1980, c.296 provides that Part III "does not apply to a (deed of trust and) mortgage given by a corporation to secure bonds or (to secure) debentures". As the draftsman of section 39, I have supplied the words in parentheses included in the excerpt from section 39, which was intended to relate to the phrasing in subsection 93(5) of the Land Titles Act, which reads in part "An instrument in the nature of a deed of trust and mortgage that provides for the issuance of bonds or debentures....." It seems obvious that a lender should not be permitted to avoid compliance with Part III by the simple device of calling what is essentially a mortgage or charge, a "debenture". Moreover, there is no provision in the Land Titles Act for the registration of a debenture as such. (See section 84).*

R.E.P.