



Ontario

Ministry of
Consumer and
Commercial
Relations

Property
Rights
Division

BULLETIN NO. 78020

DATE: April 12, 1978

TO: ALL LAND REGISTRARS
(LAND TITLES SYSTEM)

THE FAMILY LAW REFORM ACT, 1978

REVISED PROCEDURES IN THE
LAND TITLES SYSTEM

1. Powers of Attorney - Some Land Registrars have expressed concern as to whether an attorney under a general power of attorney can consent to a disposition or encumbrance on behalf of a spouse under the provisions of The Family Law Reform Act, 1978.

The general powers of attorney (long form) that we have seen (Dye & Durham Form No. 404-407 Revised October, 1972, and Newsome and Gilbert, Form 218) give the attorney wide powers to deal with property owned by the principal. It is our opinion, however, that a spouse's right to possession under The Family Law Reform Act, 1978, is not an ownership right but a right which is not covered by these long form general powers of attorney, and accordingly the attorney cannot properly consent for his or her principal under the provisions of The Family Law Reform Act, 1978.

On the other hand, some short form powers of attorney printed by the legal stationers (Newsome and Gilbert, Form 1068) appear to be wide enough to give the attorney power to consent for his or her principal under the provisions of The Family Law Reform Act, 1978.

Land Registrars before accepting a consent under The Family Law Reform Act, 1978 executed under any other power of attorney must be sure that the power of attorney gives a clear authority to execute such a consent.

2. Writs of Execution - Land Registrars are further advised that it is not necessary to search executions against a spouse who, not as an owner and party, joins in or consents to an instrument under the provisions of The Family Law Reform Act, 1978.

3. Sale Papers - Because changes are required in the last two sentences of paragraph 2 on page 6 of Bulletin 78014, the following are to be substituted for that paragraph:

Where the chargee is other than a corporation, executor, administrator, trustee in bankruptcy, Public Trustee, committee of a mentally incompetent person, Official Guardian, Sheriff, trustee of a religious institution or trustee of a school board, the Land Registrar will be concerned with the matrimonial home provisions of Part III of The Family Law Reform Act, 1978 with respect to the chargee because of the fact that the chargee may have gone into possession and has used the charged premises as his or her matrimonial home. Accordingly, an affidavit of age and spousal status is required from many chargees when exercising a power of sale. The Land Registrar will not be concerned with the spousal rights of the chargor's spouse if the charge was effective prior to March 31, 1978.

However, where the Notice of Sale under Charge is sent on or after March 31, 1978, notice of the sale must be given to the spouse of each chargor as required by section 43 of The Family Law Reform Act, 1978, unless the Land Registrar is satisfied that the notice is not required.

In this regard, a statement in the statutory declaration of the chargee,

- (a) that the chargor was not a spouse within meaning of section 1(f) of The Family Law Reform Act, 1978 at the time notice was served; or
- (b) that the chargor and his/her spouse never occupied the property as their matrimonial home; or
- (c) that the chargors were spouses of one another at the time the notices were served

will be sufficient proof to the Land Registrar that notice to the spouse of the chargor is not required.

Statement (b) above does not relieve the chargee from serving notice on the wife of the chargor if she is entitled to redeem (i.e. where she has barred her dower in the charge and her husband died before March 31, 1978). Thus, notice must be served on the wife of a chargor who has barred her dower in the charge unless the Land Registrar is satisfied by the declaration of the chargee that the chargor (husband) was alive on March 31, 1978.

(Continue with paragraph 3, page 6 of Bulletin 78014)

This Bulletin amends Bulletin 78014.



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