



**Ministry of Consumer
and Business Services
Registration Division
Title and Survey Services Office**

BULLETIN NO. **2005-03**

DATE: March 3, 2005

TO: All Land Registrars

*Land Titles Act
Registry Act*

Easement Certificates-
*Land Titles Act s.39(2)
and s.39(3)*

Background

Subsection 39(2) of the *Land Titles Act* permits the Land Registrar to enter an appurtenant easement over Registry Division lands (i.e. the servient lands are Registry) into a Land Titles Division parcel register. This entry must be based upon an approved application made by the Land Titles parcel owner. Subsection 39(2) also allows registration of a Certificate of Entry of Easement under the *Land Titles Act* on Registry Division lands to certify the easement entry. The attached procedure can be used if the easement was created after the dominant land was first registered in Land Titles. Easements existing prior to first registration of the dominant land should have been included in the First Application. If they were not included, the pre-existing appurtenant easements will require the usual Application for First Registration process under Part IV of the *Land Titles Act*.

Subsection 39(3) of the *Land Titles Act* allows a Certificate of Easement over lands registered under the Land Titles Act (i.e. the servient lands are Land Titles) to be registered in the appropriate Registry Division abstract. The dominant owner can make an application for this certificate if an easement over Land Titles land is granted in favour of his or her Registry Division lands. An owner can also apply for a certificate for an easement originally granted between two Registry Division parcels and the servient parcel was subsequently converted to Land Titles parcel and the easement was brought forward on the converted parcel.

All applications under sections 39(2) & 39(3) should be pre-approved by Registry Office staff. A draft Certificate, prepared by the applicant or their representative, should also be sent in for approval with the draft application. The owner or the owner's solicitor performs registration of the final approved application; the Land Registrar performs the registration of the final Certificate.

To release an easement where an entry has previously been made pursuant to either section 39(2) or 39(3), the respective owner must register either a Transfer, Release and Abandonment or a Deletion of Easement on the Land Titles parcel/PIN (following the procedures set out in Bulletin 2005-02, Section 2.1) and attach a copy of the registered document to a Document General to be registered in the Registry system.

Procedure under *Land Titles Act* s. 39(2) **(Easement over Registry Division land benefiting Land Titles Division land)**

The owner of the Land Titles parcel wishing to have an appurtenant easement added shall submit an Application To Amend – Subsection 39(2) – *Land Titles Act* using a Form 4 – Document General or an Application General if document is being registered electronically. The property description for the application should be that of the dominant Land Titles parcel.

This application must have three attachments as follows:

1. A law statement in electronic registration or affidavit in paper, signed by a solicitor, in support of the application.

This statement or affidavit must indicate that the solicitor has searched the Registry Division

index with respect to the servient land and is satisfied that the grantor had absolute title to the servient lands when the easement was granted and had full right to grant the easement.

The statement or affidavit should also indicate the results of the Sheriff's Certificate in item 2. below.

2. A Sheriff's Execution Certificate or Clear Certificate with respect to any writs of execution against the names of the owners of the servient Registry Division land starting at the time of the grant of the easement.

In the electronic system, the certificate should be scanned into the application. The Certificate of Entry of Easement will be made subject to any outstanding writs of execution unless released, discharged or dealt with as set out in Bulletin 98003.

3. A copy of the Transfer of Easement.

A paper copy is required for documents registered in the manual registration system. A scanned copy of the easement will be required for the application in the electronic system. If the description used for the easement is deemed unsuitable by the Land Registrar the matter may be referred to the Regional Surveyor for review.

If the Land Registrar is satisfied that the application should be granted, the owner will register the application on the Land Titles parcel upon payment of the appropriate fee. After registration of the application, the Land Titles parcel will be amended to show the appurtenant Registry Division easement.

In the Land Titles manual system the parcel entry would be in the form:

ADDITION TO PARCEL of an appurtenant easement over lands in the Registry Division of Peel (No.43) by Application as in LT654321.
TOGETHER WITH AN EASEMENT over Part of Lot 7, Plan 234, Part 2 43R-1234 as in VS123456.

DATE

Land Registrar

In the electronic registration system, the thumbnail description will be amended by adding a notation in the form of:

T/W AN EASEMENT OVER REGISTRY DIVISION LANDS BEING PT LT 7, PL 234, PT 2 43R-1234 AS IN VS123456.

A document remark will be added to the application: ADDITION TO PARCEL of an appurtenant easement over lands in the Registry Division of Peel (No.43) by Application as in VS654321.

The applicant is also required to provide a draft Certificate of Entry of Easement under The Land Titles Act (Appendix #1) The Certificate refers to the registration particulars of the application, sets out the name of the registered owner of the Land Titles parcel, the easement particulars, and the description of the easement lands. The final Certificate is prepared by the Land Registrar, based on the draft document supplied by the applicant. It should be signed by the Land Registrar and registered on the Registry Division servient lands at no fee.

Procedure under *Land Titles Act* s. 39(3)
(Easement over Land Titles Division land benefiting Registry Division land)

The owner of the Registry Division dominant land shall submit an Application to Amend - Request For Certificate Of Easement – Subsection 39(3) - *Land Titles Act* on a Form 4 - Document General or an Application General if document is being registered electronically. The description of the lands on the application will be the Land Titles parcel described as being subject to the easement.

This application must have a law statement in electronic registration or affidavit in paper, signed by a solicitor, in support of the application that addresses each of the following:

1. This statement or affidavit must indicate that the solicitor has searched the Registry Division index with respect to the dominant land and is satisfied that the owner is the owner of all the dominant lands.
2. If the easement was granted subject to any writs of execution these should be indicated in the statement or affidavit and on the Certificate unless they have been released, discharged or dealt with as set out in Bulletin 98003.
3. The statement or affidavit must set out the details of how the easement was granted including the date of grant and the instrument number.

If the description used of the dominant Registry lands is deemed unsuitable by the Land Registrar the matter may be referred to the Regional Surveyor for review.

If the Land Registrar is satisfied with the request, the application is registered by the Registry owner on the Land Titles parcel upon payment of the appropriate fee.

The applicant is required to also provide a draft Certificate of Easement Over Lands Registered Under The Land Titles Act (Appendix #2). The Certificate will refer to the transfer of easement particulars and set out the descriptions of both dominant and servient parcel. It will also set out the name of the beneficial owner of the easement. The final certificate is prepared by the Land Registrar, based on the draft document provided by the applicant. It should be signed by the Land Registrar and registered on the Registry Division lands at no fee. A parcel entry will also be added to the Land Titles parcel. In the manual system the parcel entry would be in the form of:

A CERTIFICATE of easement under subsection 39(3) of the *Land Titles Act*, was registered in the Registry Division of the Toronto Land Registry Office as CT369258.

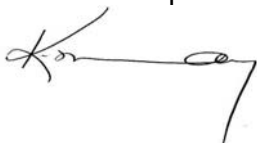
DATE

Land Registrar

In the electronic system, after registration of the Certificate on the dominant Registry Division parcel by the Land Registrar, a document remark for the application should be made on the Land Titles parcel in the form of:

A CERTIFICATE OF EASEMENT UNDER SUBSECTION 39(3) OF THE *LAND TITLES ACT* WAS REGISTERED IN THE REGISTRY DIVISION OF THE TORONTO REGISTRY OFFICE AS CT369258.

This Bulletin replaces the procedure outlined in a Memo dated August 27, 1992.

A handwritten signature in black ink, appearing to be 'K. [unclear]', written over a horizontal line.

Appendix 1



Ontario
Land Titles Act

**CERTIFICATE OF ENTRY OF EASEMENT
UNDER THE LAND TITLES ACT**

THIS IS TO CERTIFY THAT by a Request for Entry of Easement and Certificate thereof made by
..... *(name of registered owners(s))*....., being the registered owner(s) of :

(description of dominant Land Titles land)

registered in the Land Titles Division of theLand Registry Office (No.)
on....., 20..., as No....., an entry has been made in the register for the said
lands of the benefit of the easement described in a Transfer of Easement registered in the Registry Division
of theLand Registry Office (No.) as No....., in or over the following described land:

(description of servient Registry land)

Subject to the following writs of executions affecting the said easement: (if any)

This.....day of , 20....

(signature)
.....
(name in print)
LAND REGISTRAR

Appendix 2



Ontario
Land Titles Act

CERTIFICATE OF EASEMENT OVER LANDS
REGISTERED UNDER THE LAND TITLES ACT

THIS IS TO CERTIFY THAT on, 20..., by Transfer of Easement No.....
the registered owner of lands in ParcelSection, (or PIN.....-.....) transferred
to....., an easement in or over the following land:

(description of servient Land Titles land)

as appurtenant to the following described land:

(description of dominant Registry land)

AND I FURTHER CERTIFY THAT the land over which the said easement was granted was, on,
20..., subject to the following Writs of Execution affecting the said easement (if any):

This.....day of....., 20....

(signature)

.....
(name in print)

LAND REGISTRAR