



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

BULLETIN NO. 2002-2

Land Titles Act

DATE: December 17, 2002

Non-Disturbance
Agreements

TO: All Land Registrars

Background

Traditionally, Non-Disturbance Agreements have been treated by the land registration system as not being title related or affecting an interest in land and generally were refused registration. However, over the years many of these documents have been registered as Notices under the provisions of Bulletin 96001, whereby solicitors must confirm there is an interest in land. These agreements are often associated with commercial developments and contain postponement type provisions.

Registration

The Ministry has reviewed this position and Land Registrars are instructed that the following documents may be accepted for registration.

1) Notice under Section 71 of the *Land Titles Act*

In a paper registration, the form shown in Appendix "A" of Bulletin 96001 is to be incorporated in Box 8 of a Document General or attached to it. In electronic registration, Appendix "A" is to be incorporated in Statement 61 and the document must be signed for completeness by the solicitor set out in Statement 61. The Notice is acceptable whether or not the agreement is included either in electronic registration or paper form.

If the agreement is included and contains a clause or clauses purporting to give effect to a postponement or change priority in some way, the Land Registry Office will not acknowledge or give effect to such clause or clauses. The document will be abstracted and certified as a Notice since the *Land Titles Act* specifically provides for the registration of a postponement. If a Transfer under Power of Sale were to occur and the parties to the notice had been served, the Notice would be "cut out" and deleted from title in the normal course of action.

2) Postponement of Interest

A Postponement under subsection 78(6) of the Act using Form 26 of Ontario Regulation 690 may be registered in paper form. In electronic registration, a Postponement of Interest may be registered. The paper or electronic postponement may have the Non-Disturbance Agreement attached to it. The Land Registry Office will abstract and certify the Postponement in the usual manner.

A handwritten signature in black ink, appearing to read "K. Murray", with a long horizontal stroke extending to the right.

Katherine M. Murray
Director of Titles