

*Ministry of Government Services  
Consumer Protection  
and  
Service Modernization Act, 2006 (Bill 152)*

**Legislative Amendments Relating to Real Estate Fraud  
and the Ministry of Government Services of Ontario  
Real Estate Fraud Action Plan**

**Thursday, September 27  
Dublin Conference 2007**

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*Ministry of Government Services Consumer Protection and  
Service Modernization Act, 2006 (Bill 152)*

**Legislative Amendments Relating to Real Estate Fraud  
and the Ministry of Government Services'  
Real Estate Fraud Action Plan**

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**September 27, 2007**

**I. INTRODUCTION**

In 2006, in response to several high-profile court decisions involving real estate fraud, the Ministry of Government Services developed a Real Estate Fraud Action Plan to ensure that property owners in Ontario would be protected.

On October 19, 2006, the Minister introduced Bill 152, which provided for amendments to more than thirty Ontario statutes which are administered by this Ministry. Royal Assent was received on December 20<sup>th</sup>, 2006, and the *Ministry of Government Services Consumer Protection and Service Modernization Act, 2006* was enacted as Chapter 34 of the Statutes of Ontario, 2006.

Bill 152 provided amendments to certain statutes relating to land registration, including the *Land Registration Reform Act*<sup>ii</sup> (LRRA), *Land Titles Act*<sup>iii</sup> (LTA) and *Registry Act*<sup>iv</sup> (RA). This paper will discuss these amendments, outline the Ministry's overall Real Estate Fraud Action Plan, and the ongoing initiatives that will continue to ensure the security and integrity of Ontario's electronic land registration system. Included with this paper as Appendix 1 is a copy of the provisions of the Bill which relate to the land registration statutes. Copies of the entire statutes, including the amendments, can be obtained by searching: [www.e-Laws.gov.on.ca](http://www.e-Laws.gov.on.ca).

**II. BACKGROUND: REAL ESTATE FRAUD**

Real estate fraud is a broad term used to describe the different types of fraud that the real estate industry faces. Other terms such as mortgage fraud and title fraud are used in relation to real estate fraud, the effect on consumers, and impact on the land registration system.

Mortgage fraud is a type of real estate fraud that most often affects financial institutions and other lenders. One of the most common forms of mortgage fraud is referred to as a "value flip". It involves fraudsters

acquiring property, following which the value of the property is inflated through a rapid series of sales designed to deceive a mortgage lender, so that the lender will grant a higher mortgage amount than would otherwise be granted, had the lender known the original value of the property. The mortgage is secured on the property based on the price that has been artificially inflated. Mortgage fraud can also occur when a mortgage is fraudulently obtained, based on false information or identification.

Title fraud is a different type of real estate fraud that most often hurts individual homeowners. It often involves fraudsters using stolen identity or forged documents to transfer a registered owner's title to himself or herself without the owner's knowledge. A mortgage is secured on the property and, once the funds are advanced, the fraudster disappears, leaving the true registered owner to deal with the problem.

The incidence of title fraud involving unauthorized changes to the land registration records is extremely low in comparison to the approximately 2.2 million real estate transactions that occur each year in Ontario, relating to the estimated 5.2 million parcels of land in the province. Over the last 10 years, there has been an average of only 10 claims per year to the Land Titles Assurance Fund ("LTAF") related to real estate fraud involving the land registration system. Notwithstanding the relatively low numbers, the Ministry regards any level of fraud as unacceptable and is working with its partners and stakeholders to fight the problem.

### **III. ORIGINS OF THE REAL ESTATE FRAUD ACTION PLAN**

The amendments to the land registration statutes under Bill 152 were introduced as part of the government's overall plan to combat real estate fraud. Most of the provisions of the legislation relating to real estate fraud came into force with Royal Assent and were effective as of October 19, 2006, the date of introduction of the Bill.

The changes to the legislation were necessary because of issues brought to the forefront by the November, 2005 Ontario Court of Appeal decision in the *Household Realty*<sup>v</sup> case, which dealt with the effect of registration on documents that were fraudulent and void at common law. In that case a husband and wife owned a home as joint tenants. When the husband was out of the country, the wife forged her husband's signature on a Power of Attorney, naming herself as his attorney, and used that power to obtain and register mortgages from two separate financial institutions against the title to their home. The husband was unaware of the situation. When the wife defaulted on the loans, the mortgagees commenced action against both the husband and the wife.

The husband relied on the doctrine of deferred indefeasibility, arguing that he was not responsible for payment of the amounts owing because the mortgages were obtained by way of the fraudulent Power of Attorney, so the mortgages should be held as invalid and unenforceable. He also relied on section 155 of the version of the *Land Titles Act* in effect at the time (pre-Bill 152), which provided that:

- s. 155 "Subject to the provisions of this Act, with respect to registered dispositions for valuable consideration, any disposition of land or of a charge on land that, if unregistered, would be fraudulent and void is, despite registration, fraudulent and void in like manner."

The husband also argued that the two financial institutions had been negligent in not conducting appropriate investigations into the authenticity of the fraudulent Power of Attorney. The lower court judge did not accept those arguments. She observed that "*The common law rule that a forged document is a nullity and is void is modified by the Land Titles Act.*"<sup>vi</sup>, and noted that s.155 was subject to s. 78(4) of the Act:

#### **Effect of registration**

- s. 78(4) "When registered, an instrument shall be deemed to be embodied in the register and to be effective according to its nature and intent, and to create, transfer, charge, or discharge, as the case requires, the land or estate therein mentioned in the register."

The judge concluded that this meant the two mortgages, having been given in good faith for valuable consideration and without notice of a fraud were, once registered, effective and could be relied on. The judge also dismissed the allegation of negligence, as there was nothing in the circumstances that would have suggested the Power of Attorney had been forged, and would have triggered an investigation. The husband was found to be jointly responsible for payment of the mortgages, a decision which was upheld by the Court of Appeal. This caused a great deal of discussion in the real estate legal community in Ontario, as the decision was inconsistent with the traditional interpretation of these sections.

Following the introduction of Bill 152, but before it received Royal Assent, another case caused the Ontario Court of Appeal to re-examine its decision in *Household Realty*. The *Lawrence v. Maple Trust*<sup>vii</sup> case received a great deal of media attention, and involved an innocent victim who faced losing her home as a result of real estate fraud. Someone had used false identification, impersonated Mrs. Lawrence, and fraudulently sold her house to a fictitious person named Mr. Wright. "Mr. Wright" then obtained a mortgage of just under \$300,000, again with false identification, and registered it against title to Mrs. Lawrence's property. He then absconded with the funds. Mrs. Lawrence first learned of the fraud several months later when she was served with eviction documents on behalf of the mortgagee, which had taken action when no mortgage payments were made.

Mrs. Lawrence brought an action to have the fraudulent transfer and mortgage removed from her title. The lower court ruled that the transfer to Mr. Wright was void and of no effect, but was bound by the ruling of the higher court in *Household Realty* and upheld the validity of the mortgage.

At the Court of Appeal, the Government of Ontario intervened in the case and supported the position of Mrs. Lawrence. Government counsel argued that the mortgage was invalid, but on different grounds than those argued by counsel for Mrs. Lawrence. A 5-member panel of the Court accepted Ontario's position that the doctrine of deferred indefeasibility governed, overturned its own decision in *Household Realty*, and held that the mortgage was invalid.

The Court stated that:

*"The theory of deferred indefeasibility accords with the [Land Titles] Act and must be taken into consideration in an analysis of s.155 and its relationship with other provisions in the Act. Under this theory, the party acquiring an interest in land from the party responsible for the fraud (the "immediate owner") is vulnerable to a claim from the true owner because the intermediate owner had an opportunity to avoid the fraud. However, any subsequent purchaser or encumbrancer (the "deferred owner") has no such opportunity. Therefore, in accordance with s. 78(4) and the theory of deferred indefeasibility, the deferred owner acquires an interest in the property that is good as against the world.*

*Wright never took valid title to the Property because he obtained it by fraud. He was, therefore, not a registered owner. In accordance with s. 68(1) of the Act, only a registered owner may give valid charges on land. Maple Trust is an immediate owner of an interest in the Property. It had an opportunity to avoid the fraud. It did not take from a registered owner. Therefore, despite registering the charge, Maple Trust loses in a contest with the true registered owner, Ms. Lawrence. Accordingly, the charge against the Property in favour of Maple Trust should be set aside."* <sup>viii</sup>

As a result, the issue raised by the *Household Realty* case relating to the registration of fraudulent documents was addressed by the *Lawrence* decision, for registrations prior to October 19<sup>th</sup>, 2006. The amendments to the *Land Titles Act* took effect on that date, and clarified the law from that point forward. Among other things, the Act now provides definitions for "fraudulent instrument" and "fraudulent person", which will be further outlined later in this paper.

In addition to Bill 152, additional non-legislative components of the Ministry's Real Estate Fraud Action Plan were also taking shape throughout 2006 and into 2007. The Ministry has met regularly with its Real Estate Fraud Stakeholder Consultation Group, to hear the concerns of interested parties in the real estate industry, and to discuss the implementation of other initiatives to combat real estate fraud. This group is comprised of approximately 40 stakeholders, including the Law Society of Upper Canada (which regulates all lawyers in Ontario), the Ontario Bar Association, representing lawyers who practice real estate law, representatives from major financial institutions, mortgage brokers, title insurers, law enforcement agencies, and real estate brokers.

A major part of the Real Estate Fraud Action Plan is the implementation of new restrictions on who may be authorized to access the electronic land registration system to register documents, and the involvement and input of these stakeholders has been valuable in developing the details of the restrictions. There are also measures being taken to strengthen the standards surrounding the use of Powers of Attorney in registering real estate transactions. These components of the Plan will be discussed in greater detail in Part V of the paper.

#### **IV. PROVISIONS OF THE MODERNIZATION LEGISLATION (BILL 152)**

The main provisions of the legislation related to real estate fraud are as follows:

##### **(i) Protection against the registration of fraudulent instruments**

Bill 152 defined fraudulent instruments, provides that they will not have any effect on the title, and can be removed from the parcel register.

The definition of “fraudulent instrument”, added to section 1 of the LTA, means an instrument:

- (a) under which a fraudulent person purports to receive or transfer an estate or interest in land,
- (b) that is given under the purported authority of a power of attorney that is forged,
- (c) that is a transfer of a charge where the charge is given by a fraudulent person, or
- (d) that perpetrates a fraud as prescribed with respect to the estate or interest in land affected by the instrument;

“fraudulent person” means a person who executes or purports to execute an instrument if,

- (a) the person forged the instrument,
- (b) the person is a fictitious person, or
- (c) the person holds oneself out in the instrument to be, but knows that the person is not, the registered owner of the estate or interest in land affected by the instrument.

In February of 2007, Ontario Regulation 26/99 to the LTA was amended by Regulation 53/07, which added “a cessation of a charge or an encumbrance” to the definition of fraudulent instrument, where “the person who purports to register it is a fraudulent person”. Ontario Regulation 53/07 is included as Appendix 2 to this paper.

In addition, subsections 78 (4.1) & (4.2) were added to the *Land Titles Act*:

**Exception**

(4.1) Subsection (4) does not apply to a fraudulent instrument that is registered on or after October 19, 2006.

**Non-fraudulent instruments**

(4.2) Nothing in subsection (4.1) invalidates the effect of a registered instrument that is not a fraudulent instrument described in that subsection, including instruments registered subsequent to such a fraudulent instrument.

Under subsection (4.1), property owners are protected from fraudulent documents, and will not lose their property because of any such documents registered on or after October 19, 2006 (the date of introduction of Bill 152). The registration does not validate the fraudulent mortgage or transfer, and it will not be enforceable against the property owner. This accords with the new wording of s. 155 of the legislation, which makes it clear that “a fraudulent instrument that, if unregistered, would be fraudulent and void is, despite registration, fraudulent and void in like manner.”<sup>ix</sup>

Under subsection (4.2), non-fraudulent instruments that are registered subsequent to a fraudulent instrument will be effective. This provision clearly states that nothing in the legislation invalidates the effect of a registered instrument that is not a fraudulent instrument.<sup>x</sup>

**(ii) Rectification of Title**

The legislation provides enhanced ability for the Director of Titles to order the rectification of the register in situations of fraud, thereby improving the government's ability to return title to the rightful owner. Under a new s. 57(13) of the *LTA*, if an instrument registered on or after October 19, 2006 is fraudulent, the Director of Titles may order it deleted from the title register. Attached as Appendix 3 is the Director of Titles' Order specifying the evidence that may be required to satisfy the Director that such a registration has taken place.

If the Director of Titles suspects that a fraudulent instrument has been registered, he or she may enter a Caution on title to prevent dealings with the land, and may hold a hearing to make a determination on the issue, pursuant to ss.57 (15) and (16) of the *LTA*. The title may then be rectified, in accordance with the Order made, by deleting the fraudulent registrations from the register.

If the affected party chooses to obtain a court order to rectify title, the legislation requires that the applicant in the proceeding before the court has given notice of the proceeding to the Director of Titles, and that the Director of Titles is a party to the proceedings.<sup>xi</sup>

**(iii) Suspension and Revocation of Access**

The *LRRA* was amended to strengthen the ability to suspend and revoke access to the electronic land registration system, and sets out a framework for a hearing process.

Under new sections 23.1, 23.2, 23.3 and 23.4, the Director of Land Registration may immediately suspend the authorization of a person to submit electronic documents for registration where there are reasonable grounds to believe that the submitter has submitted an electronic document that is not authorized by the registered owner of the land, or the holder of a registered interest in the land, or is not otherwise authorized at law, or if the Director considers it in the public interest to do so.<sup>xii</sup> The suspended person is not entitled to a hearing regarding the suspension, however the Director must send notice that he or she proposes to revoke their authorization to access the electronic system, and advise the person that they are entitled to a hearing regarding the proposal to revoke.<sup>xiii</sup> A hearing must be held if the suspended user requests one in writing within 15 days of the notice, and the hearing must take place within 10 days of the request. At any time after suspending an authorization and before revoking it, the Director may withdraw the suspension if he or she considers it in the public interest to do so.<sup>xiv</sup> If no hearing is requested, the Director may proceed to revoke access. After the revocation, a person may apply for reinstatement of the authorization within the time period that the Director specifies, and has the opportunity to be heard by the Director.<sup>xv</sup> An appeal of a revocation order may be made to the Divisional Court.<sup>xvi</sup>

#### **(iv) The Land Titles Assurance Fund**

A person who has been wrongfully deprived of an interest in land may apply to recover their loss from the Land Titles Assurance Fund (“LTAF”). This is a compensation fund established many years ago under s. 57 of the LTA; it is funded and administered by the Ontario Government.

Bill 152 transformed the LTAF. Section 57 of the LTA has been substantially changed, and has reformed the compensation claims process to ensure that the Fund will be more responsive to each individual case that comes before it.

There are now two processes that apply to applications to the LTAF: a new, earlier payment process has been established under new subsections 57(4.1) and 57(4.2) of the LTA, and the traditional LTAF process continues to apply in accordance with subsection 57(4) of the Act.

#### **Earlier Payment Process:**

This process is available to a person who is a member of a prescribed class, where a fraudulent instrument was registered against their interest in land on or after October 19, 2006. Regulation 53/07 (See Appendix 2) prescribes the class of persons as individuals who are registered owners of land used for residential purposes (homeowners); and individuals who are purchasers, in good faith for valuable consideration, of land used for residential purposes.

These changes ensure that the LTAF is now a fund of first resort for those innocent individual homeowners and *bona fide* purchasers of homes, who are victims of fraud, and for whom the loss is not covered under a policy of title insurance. These applicants are no longer required to pursue those otherwise responsible for their loss (the fraudsters) through other means, prior to being entitled to compensation from the LTAF. New service standards have also been put into place for these earlier payments: for most straightforward cases of fraud involving individual homeowners, in which there is no court action and all parties are cooperating, the intent is to rectify title and provide an expedited decision regarding compensation within 90 days after the suspected fraud is reported to the Director of Titles, and a Caution has been registered on title by the Director.

#### **Traditional Process:**

The traditional LTAF application process will continue to apply to all persons who do not fit within the prescribed class, however the process related to these applications has been streamlined to ensure that claims are processed as quickly as possible.

As part of the overall streamlining of the LTAF, Rules of Procedure have been developed. An Information document has also been created and is posted on the LTAF website, to advise what losses may be covered by the LTAF, how to make an application, what claims qualify for compensation, and what happens at an LTAF hearing. As well, prior LTAF decisions are available for search electronically.

These documents and LTAF decisions are posted on the Ministry of Government Services and ServiceOntario websites and may be found by selecting the appropriate link on the following page: <http://www.gov.on.ca/MGS/en/ConsProt/107229.html>. The Rules of Procedure and the Information document on the LTAF can be accessed directly at the following link: <http://www.gov.on.ca/MGS/en/ConsProt/121816.html>.

New subsection 59 (1)(d)<sup>xvii</sup> has been added to the LTA to ensure that persons having contributed to their own loss, by participating or colluding in the fraud, will not be eligible for compensation.

As well, pursuant to new subsection 59 (1)(e)<sup>xviii</sup>, if the interest or right on which the claim is founded is derived on or after October 19, 2006, from a subrogated claim, it is not eligible for compensation.

For all claims for compensation, s. 57(7) provides that an LTAF hearing is not mandatory but will be held at the discretion of the Director of Titles. No hearing is required to be held where a decision is made to pay the claim in full.

For an overview of these two processes that apply to LTAF applications, please see the process charts attached as Appendix 4.

#### **(v) The Land Titles Assurance Fund – Due Diligence Provisions**

The LTA now provides, under clauses 57 (4)(b) and 57(4.1)(b), that a person is entitled to compensation from the LTAF if a certain level of due diligence has been demonstrated.<sup>xix</sup> The LTA gives the Director of Titles authority to specify by Order what constitutes the requisite level of due diligence to be met for purposes of accessing the Fund.<sup>xx</sup> Following consultation with stakeholders on this issue, the Director of Titles issued such an Order, a copy of which is attached as Appendix 5 to this paper.

In accordance with the Order, a mortgagee, chargee or a lender is required to demonstrate that it took reasonable steps necessary in the circumstances of the case in order to verify the identity of the person mortgaging the property, and to verify that the registered owner was, in fact, selling or mortgaging the property. These steps may have included obtaining a copy of any Agreement of Purchase and Sale, conducting an on-site appraisal of the property, visiting the property, conducting appropriate searches of title, and reviewing any sale listing.

Where the person seeking compensation is a purchaser in good faith for valuable consideration, they must demonstrate that they took reasonable steps necessary in the circumstances of the case to verify that the registered owner was in fact selling the property. This may have included instructing their agent to conduct appropriate searches of title, providing the agent with the Agreement of Purchase and Sale, visiting the property, or causing the agent to visit it, and reviewing the sale listing.

The Order does not prescribe any due diligence for homeowner applicants. The list of examples of reasonable steps that may be required of other applicants is not exhaustive, and gives the hearings officer discretion to determine whether due diligence has been satisfied in the circumstances of the case.

As part of the Real Estate Fraud Action Plan, this Order will be reviewed in six months to assess if any amendments are required.

**(vi) Penalties for fraud-related offences**

Bill 152 also increased fines upon conviction of real estate fraud related offences in both the *Land Titles Act*<sup>xxi</sup> and the *Registry Act*<sup>xxii</sup> from \$1,000 to \$50,000, or imprisonment for a term of up to two years (or both) for an individual; and a fine of up to \$250,000 for a corporation. The court imposing the penalty may also order the person to pay compensation or make restitution.

**V. ADDITIONAL COMPONENTS OF THE REAL ESTATE FRAUD ACTION PLAN**

**1. Access to the electronic land registration system (ELRS)**

The electronic land registration system has enhanced the security of Ontario's land registration system by imposing increased identification requirements. Currently, anyone wishing to access the system submits an application to set up an account to conduct transactions electronically. After that, each person wishing to access the ELRS through that account must obtain a personal security licence, and an encrypted diskette with a unique access key (passcode). All registrations done through the use of that key are traceable back to the party.

Pursuant to the *Land Registration Reform Act*, no person is permitted to deliver an electronic document to the ELRS unless they are authorized to do so by the Director of Land Registration. The Director may also impose conditions and requirements for granting the authorization.

As part of the Real Estate Fraud Action Plan, security of Ontario's land registration records will now be enhanced by imposing additional requirements for those wishing to be account holders, and those wishing to access the system for registration.

## **New Access Criteria**

The Ministry plans to implement changes to the Director's authorization process that will further ensure only the appropriate parties have access to the electronic land registration system to register documents. A new set of criteria has been developed for authorization of account holders, who will be held responsible for all those accessing the ELRS through their account. The new criteria are based on three standards that are important in developing an effective strategy against fraud: identity, financial resources, and good character/accountability. In applying these criteria, it has been determined that the registration of transfers of title will be restricted to lawyers. By restricting the ability to register transfers to lawyers, who are required to be members of a self governing body (the Law Society of Upper Canada) which has a legislative framework that deals with integrity and practice standards for members, we can further secure the system and isolate one of the main documents involved in title fraud, and provide consumers with additional protection.

With respect to financial resources, lawyers are required by the Law Society to carry mandatory errors and omissions insurance with fraud coverage, and there is also a compensation fund for victims of fraud. In addition, the Ministry has worked with the Law Society and with LawPro, the lawyers' insurer, to develop mandatory additional insurance coverage for real estate lawyers, which will be available for situations where it is the *lawyer* who has acted fraudulently in completing a registration. The Ministry would be eligible to make a claim against this coverage after paying out an LTAF claim, if there was a lawyer involved in the fraud.

In order to implement the requirement that registration of transfers of title be limited to lawyers only, Law Statements will now be required for most transfers. This means that when the document is created and the Law Statement is selected, the system performs an electronic check against the membership directory of the Law Society, and ensures that a lawyer in good standing is completing the registration.

Other documents, such as mortgages and discharges, will continue to be registered by lawyers and all others who meet these additional criteria. By ensuring that all registrants meet these standards, we can further tighten the system and make certain that victims have appropriate recourse where registrants have acted fraudulently.

### **How applicants will fulfill the criteria**

Applications will be available to all current account holders, and must be submitted with the evidence required to show that they meet the new criteria. Under each of the three categories there is a base standard, and alternative evidence that will be acceptable for certain applicants to meet the criteria.

The Ministry has undertaken an analysis of the groups who now have access to the system and, based on our analysis, it is anticipated that the majority of current account holders should be able to meet the criteria.

**(a) Identity**

To satisfy the identity requirement, individual applicants and individuals designated by corporate or partnership applicants will be required to produce two pieces of identification, one of which must be government-issued photo identification containing the name, address and birth date of the individual. Where an applicant is a corporation or partnership, the designated individual must also provide evidence that they have been granted authority to execute the documentation and administer the account on behalf of the applicant. Where an applicant is a corporation, copies of foundational documents (i.e., letters patent or articles of incorporation) would also need to be provided.

**(b) Financial resources**

In order to demonstrate that an applicant has adequate financial resources to compensate victims of fraud, the base standard will require an applicant to produce evidence of either a surety bond or a certificate of insurance in the amount of not less than five hundred thousand dollars per claim, and one million dollars in the annual aggregate, including innocent party fraud coverage. It is believed that most registrants can evidence sufficient financial resources to meet the criteria without taking any additional steps, as they already meet the base standard or can meet an alternative standard. An applicant could, for example, evidence that they report to a regulatory body that requires its members to maintain mandatory insurance for fraud. An alternative may be that the regulatory body of which the applicant is a member maintains a compensation fund for victims of fraud. Another option is to establish that the applicant is by statute required to maintain adequate capital/solvency. Only where there is no alternative, satisfactory evidence to the Ministry of financial solvency, will the base criteria as either insurance for fraud or a surety bond have to be obtained.

**(c) Good character/accountability**

The base standard to meet the requirement for good character/accountability is a Canadian Police Information Centre (CPIC) report. As with financial resources, we believe that most registrants can evidence good character/accountability in alternative ways. For example, an applicant could evidence that they are required under legislation to report to a regulatory body and maintain standards of practice or a code of ethics, and that failure to comply can result in disciplinary action by the regulator. Only where there is no alternative evidence will the base criteria in the form of a CPIC report have to be obtained.

The Ministry will be holding meetings over the next few months to work with groups and individuals to assess the ways in which they may best fulfill the criteria. The above are examples, and there may be other kinds of evidence to show that an applicant can meet the three criteria.

Along with submitting an application, and the supporting evidence to meet the criteria, those account holders wishing to be obtain authorization from the Director of Land Registration will be required to enter into a Registration Agreement with the Ministry, and accept responsibility for all registration activity performed under their account.

It is anticipated that this account holder authorization process will be rolled-out starting this Fall, and be concluded before Spring of 2008. It is currently planned that lawyers will be required to apply first, and other registrants after that.

## **2. Powers of Attorney**

As fraudulent Transfers and Charges often involve the use of forged Powers of Attorney, the Ministry will be implementing a requirement that these documents contain a law statement by the solicitor registering these documents, that they have reviewed and discussed the original, signed and witnessed Power of Attorney with their clients, and the clients have confirmed that they are the lawful party named in the document, that it is still in force, and that they are acting within the scope of the power granted. Upcoming amendments to the Regulations will address this further step in ensuring that a registration is done with the proper authority.

## **VI. IDENTITY THEFT**

Everyone involved in real estate transactions can play a part in the fight against real estate fraud by ensuring that they exercise the proper due diligence. As real estate fraud is very much linked to identity theft, consumers can take steps to protect themselves and to safeguard their identities. Tips on how to prevent identity theft have been put on the Ministry website at: [www.mgs.gov.on.ca](http://www.mgs.gov.on.ca). Consumers can take measures such as carefully examining bank statements and correspondence to confirm that nothing is amiss with their finances; shredding bills, invoices and statements which have identifying account numbers, dates of birth and other personal information; and protecting credit card numbers, automated bank machine PIN numbers, etc., which are valuable tools for those creating false identification papers.

## **VII. CONCLUSION**

The Ministry is concerned about any level of fraud, and is committed to its work in combating fraud and addressing the needs of the consumer. Bill 152 and the overall Real Estate Fraud Action Plan have been put in place to ensure that the impact of any real estate fraud is addressed. The Ministry will continue to work with its stakeholders on these important issues.

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<sup>i</sup> The writer would like to acknowledge the contributions of Dianne Carter, Senior Counsel, Ministry of Government Services, Catherine Moore L.L.B., Senior Legal and Technical Analyst, Ministry of Government Services, ServiceOntario and Jan Robertson L.L.B., Senior Legal and Technical Analyst, Ministry of Government Services, ServiceOntario in preparing this paper.

<sup>ii</sup> *Land Registration Reform Act*, R.S.O. 1990, c.L.4 (*LRRA*)

<sup>iii</sup> *Land Titles Act*, R.S.O. 1990, c. L.5 (*LTA*)

<sup>iv</sup> *Registry Act*, R.S.O. 1990, c. R.20 (*RA*)

<sup>v</sup> *Household Realty Corp. v. Liu* (2005), 261 D.L.R. (4<sup>th</sup>) 679 (Ont. C.A.)

<sup>vi</sup> *Ibid*, at page 4 (QL).

<sup>vii</sup> *Lawrence v. Maple Trust* [2007], O.J. No. 381 (Ont. C.A.)

<sup>viii</sup> *Ibid*, at page 14 (QL).

<sup>ix</sup> S. 155 *LTA*

<sup>x</sup> S. 78(4.2) *LTA*

<sup>xi</sup> S. 57 (14) *LTA*

<sup>xii</sup> S. 23.1 *LRRA*

<sup>xiii</sup> S. 23.2 *LRRA*

<sup>xiv</sup> S. 23.3 *LRRA*

<sup>xv</sup> S. 23.4 *LRRA*

<sup>xvi</sup> S. 23.2 (10) *LRRA*

<sup>xvii</sup> S. 59(d) *LTA*

<sup>xviii</sup> S. 59 (e) *LTA*

<sup>xix</sup> S.57 (4)(b) and S.57 (4.1)(b)

<sup>xx</sup> S.163(1.1) *LTA*

<sup>xxi</sup> S. 156 *LTA*

<sup>xxii</sup> S. 101(3) *RA*

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## APPENDIX 1

### An Act to modernize various Acts administered by or affecting the Ministry of Government Services

Assented to December 20, 2006

. . .

#### LAND REGISTRATION REFORM ACT

**14. (1) Section 17 of the *Land Registration Reform Act* is amended by adding the following definitions:**

“authorization”, in respect of an electronic document submitter, means the authorization that the submitter has obtained from the Director of Land Registration to submit electronic documents by direct electronic transmission to the electronic land registration database; (“autorisation”)

“electronic document submitter” means a person whom the Director of Land Registration has authorized to submit electronic documents by direct electronic transmission to the electronic land registration database; (“personne qui présente des documents électroniques”)

**(2) Subsection 20 (2) of the Act is repealed.**

**(3) Section 23 of the Act is amended by adding the following subsection:**

Notice to registered owner

(4) When an electronic document that purports to effect a transfer or charge of land is delivered to the electronic land registration database by direct electronic transmission, the Director of Land Registration may have a notice of the delivery issued to the registered owner of the land by the means that Director specifies.

**(4) The Act is amended by adding the following sections:**

Suspending access to database

**23.1** (1) The Director of Land Registration may, by order, immediately suspend the authorization of an electronic document submitter if he or she,

- (a) has reasonable grounds to believe that the submitter has submitted an electronic document that,
  - (i) is not authorized by the registered owner of the land affected by the document or the holder of a registered interest in the land, or
  - (ii) is not otherwise authorized at law; or
- (b) considers it in the public interest to do so.

No right to hearing

(2) The electronic document submitter is not entitled to a hearing in respect of a suspension made under subsection (1).

Length of suspension

- (3) A suspension made under subsection (1) shall last until the earlier of the following times:
- 1. The time that a final determination is made under section 23.2 on the revocation of the authorization of the electronic document submitter.
  - 2. The time that the Director of Land Registration withdraws the suspension under section 23.3, if applicable.

Service of order

(4) Upon making an order under subsection (1), the Director of Land Registration shall serve it on the electronic document submitter.

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## Revoking access to database

**23.2** (1) If the Director of Land Registration has suspended the authorization of an electronic document submitter under section 23.1 and has not withdrawn the suspension under section 23.3, that Director shall, within two business days of the suspension, notify the submitter that he or she proposes to revoke the authorization.

### Content of notice

(2) The notice of proposal shall set out the reasons for the proposed revocation and shall state that the electronic document submitter is entitled to a hearing by the Director of Land Registration if the submitter serves, within 15 days after service of the notice, a written request for a hearing on that Director.

### Service

(3) The Director of Land Registration shall serve the notice of proposal on the electronic document submitter.

### If no request for hearing

(4) If the electronic document submitter does not request a hearing in accordance with subsection (2), the Director of Land Registration may by order revoke the authorization of the submitter if,

- (a) that Director is satisfied that the submitter has submitted an electronic document that,
  - (i) is not authorized by the registered owner of the land affected by the document or the holder of a registered interest in the land, or
  - (ii) is not otherwise authorized at law; or
- (b) the past conduct of the submitter affords reasonable grounds for belief that,
  - (i) the submitter will submit an electronic document described in clause (a), or
  - (ii) the submitter will act in a manner that is contrary to the public interest.

### Hearing

(5) If the electronic document submitter requests a hearing in accordance with subsection (2), the Director of Land Registration shall hold the hearing within 10 business days.

### Written hearing

(6) The hearing shall be a written hearing unless the Director of Land Registration or the electronic document submitter requires that the hearing be an oral hearing.

### Parties

(7) The parties to the proceeding described in subsection (6) are the electronic document submitter and the other persons whom that Director specifies.

### Request for information

(8) The Director of Land Registration may request the electronic document submitter to provide that Director, in the form and within the time specified by that Director, proof of the submitter's authorization and any other evidence that Director specifies.

### Revocation

(9) After the hearing, the Director of Land Registration may by order revoke the authorization of the electronic document submitter if,

- (a) the submitter fails to respond to a request described in subsection (8);
- (b) that Director is satisfied that the submitter has submitted an electronic document that,
  - (i) is not authorized by the registered owner of the land affected by the document or the holder of a registered interest in the land, or
  - (ii) is not otherwise authorized at law; or
- (c) the past conduct of the submitter affords reasonable grounds for belief that,
  - (i) the submitter will submit an electronic document described in clause (b), or

- 
- (ii) the submitter will act in a manner that is contrary to the public interest.

#### Appeal

(10) A party to the proceeding may appeal an order mentioned in subsection (4) or (9) to the Divisional Court, which may confirm the order or may order the Director of Land Registration to change the order or to make whatever other order the court thinks fit.

#### Withdrawal of suspension

**23.3** (1) At any time after suspending the authorization of an electronic document submitter under section 23.1, the Director of Land Registration may, by order and without holding a hearing, withdraw the suspension if that Director has not revoked the authorization under section 23.2 and if that Director considers it in the public interest to withdraw the suspension.

#### Service of order

(2) If the Director of Land Registration makes an order under subsection (1) withdrawing a suspension of an authorization of an electronic document submitter,

(a) any notice of proposal that the Director of Land Registration has served under section 23.2 with respect to the authorization is void and any hearing commenced under that section with respect to the authorization is terminated; and

(b) the Director of Land Registration shall serve the order on the submitter.

#### Application for reinstatement

**23.4** (1) Within a time period specified by the Director of Land Registration after the authorization of an electronic document submitter is revoked under section 23.2, the submitter may apply to have that Director reinstate the authorization.

#### Opportunity to be heard

(2) The Director of Land Registration shall give the applicant an opportunity to be heard.

#### Reinstatement

(3) The Director of Land Registration may, if of the opinion that it is appropriate to so do, reinstate the applicant's authorization.

#### Notice

(4) The Director of Land Registration shall notify the applicant of his or her decision as to whether or not to reinstate the applicant's authorization.

**(5) The Act is amended by adding the following section:**

#### Service

**29.2** (1) Any notice, order or request under this Part is sufficiently served if it is sent to the address that an electronic document submitter has provided to the Director of Land Registration for the purpose of obtaining his or her authorization and if it is,

(a) delivered personally;

(b) sent by registered mail; or

(c) sent in another manner if the sender can prove receipt of the notice, order or request.

#### Deemed service

(2) If service is made by registered mail, the service shall be deemed to be made on the third day after the day of mailing unless the person on whom service is being made establishes that the person did not, acting in good faith, through absence, accident, illness or other cause beyond the person's control, receive the notice, order or request until a later date.

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## LAND TITLES ACT

### 15. (1) Section 1 of the *Land Titles Act* is amended by adding the following definitions:

“fraudulent instrument” means an instrument,

- (a) under which a fraudulent person purports to receive or transfer an estate or interest in land,
- (b) that is given under the purported authority of a power of attorney that is forged,
- (c) that is a transfer of a charge where the charge is given by a fraudulent person, or
- (d) that perpetrates a fraud as prescribed with respect to the estate or interest in land affected by the instrument; (“acte frauduleux”)

“fraudulent person” means a person who executes or purports to execute an instrument if,

- (a) the person forged the instrument,
- (b) the person is a fictitious person, or
- (c) the person holds oneself out in the instrument to be, but knows that the person is not, the registered owner of the estate or interest in land affected by the instrument; (“fraudeur”)

### (2) Subsections 57 (4) and (5) of the Act are repealed and the following substituted:

Compensation from Fund

- (4) A person is entitled to compensation from the Assurance Fund if,
  - (a) the person is wrongfully deprived of land or of some estate or interest in land by reason of,
    - (i) the land being brought under this Act,
    - (ii) some other person being registered as owner through fraud, or
    - (iii) any misdescription, omission or other error in a certificate of ownership or charge or in an entry on the register;
  - (b) the person has demonstrated the requisite due diligence as specified by the Director if the person is wrongfully deprived of land or of some estate or interest in land by reason of some other person being registered as owner through fraud;
  - (c) the person is unable under subsection (1) or otherwise to recover just compensation for the person’s loss; and
  - (d) the person makes an application for compensation within the time period specified in subsection (5.1).

Earlier payment

- (4.1) A person who is a member of a prescribed class of persons is entitled to compensation from the Assurance Fund if,
  - (a) one of the following conditions is met:
    - (i) the person is wrongfully deprived of land or of some estate or interest in land or has not received land or some estate or interest in land by reason of the registration of an instrument described in clause (13) (b) and the Director of Titles or a court, under that clause, has directed that the registration of the instrument be deleted from the register,
    - (ii) the person is wrongfully deprived of land or of some estate or interest in land or has not received land or some estate or interest in land by reason of a rectification of the register made under clause (13) (a) or (c);
  - (b) the person has demonstrated the requisite due diligence as specified by the Director with respect to the instrument that is the subject of the rectification; and
  - (c) the person makes an application for compensation within the time period specified in subsection (5.1).

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Same

(4.2) A person who is a member of a prescribed class of persons is entitled to compensation from the Assurance Fund if,

- (a) the Director of Titles or a court, under clause (13) (b), has directed that the registration of an instrument described in that clause be deleted from the register;
- (b) the person has suffered a loss as a result of the deletion described in clause (a); and
- (c) the person makes an application for compensation within the time period specified in subsection (5.1).

Reliance on automated index

(5) A person who suffers damage because of an error in recording an instrument affecting land designated under Part II of the *Land Registration Reform Act* in the parcel register is entitled to compensation from the Assurance Fund if the person makes an application for compensation within the time period specified in subsection (5.1).

Time for application

(5.1) A person claiming to be entitled to the payment of compensation under subsection (4), (4.1) or (5) shall make an application within six years from the time of having suffered the loss described in the applicable subsection or, in the case of a person under the disability of minority, mental incompetency or unsoundness of mind, within six years from the date at which the disability ceased.

**(3) Subsection 57 (7) of the Act is repealed and the following substituted:**

Hearing

(7) Except if he or she determines the claim be paid in full, the Director of Titles may hold a hearing, and the claimant and the other persons that the Director of Titles specifies are parties to the proceeding before the Director.

**(4) Section 57 of the Act is amended by adding the following subsection:**

Recovery of compensation paid in error

(11.1) If, after compensation is paid out of the Assurance Fund, the Director of Titles determines that any part of the compensation was paid in error for any reason, including on the basis of any misrepresentation or any lack of information available at the time of making the payment, the Director of Titles may commence an action to recover the amount of that part from the person who received it.

**(5) Subsection 57 (12) of the Act is repealed and the following substituted:**

Subrogation

(12) If any amount is paid out of the Assurance Fund to an applicant in respect of a loss, the Director of Titles is subrogated to the right of the applicant and the applicant's heirs, executors, successors and assigns to recover compensation or damages from any person in respect of the loss, and the certificate of the Director of Titles of the payment out of the Assurance Fund is sufficient proof of the payment.

Agreements

(12.1) For the purposes of subsection (12), the Director of Titles may enter into agreements with any person or body that is liable to make any payment to a person who has received compensation from the Assurance Fund if the liability arises out of conduct that gave rise to the payment made from the Assurance Fund.

**(6) Subsection 57 (13) of the Act is repealed and the following substituted:**

Rectification of register

(13) Subject to subsection (14), the Director of Titles may, in the first instance or after a reference to a court, or a court may direct the rectification of the register if,

- (a) a registered instrument would be absolutely void if unregistered;
- (b) the Director of Titles or a court, as the case may be, is satisfied, on the basis of evidence that the Director of Titles specifies or the court orders, that a fraudulent instrument has been registered on or after October 19, 2006; or

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(c) the effect of the error, if not rectified, would be to deprive a person of land of which the person is legally in possession or legally in receipt of the rents and profits.

#### Notice to Director of Titles

(14) A court shall not direct the rectification of the register under clause (13) (b) unless the applicant in the proceeding before the court has given notice of the proceeding to the Director of Titles and the Director of Titles is a party to the proceeding.

#### Caution in case of fraud

(15) If it appears to the Director of Titles that a registered instrument may be fraudulent, the Director of Titles may of his or her own accord and without affidavit enter a caution to prevent dealing with the registered land.

#### Hearing

(16) If the Director of Titles has entered a caution under subsection (15), the Director of Titles may hold a hearing before making any rectification of the register under subsection (13) and subsections 10 (4), (5) and (6) apply to the hearing.

#### Power to summon witnesses

(17) For the purposes of the hearing, the Director of Titles may exercise the powers described in subsections 20 (1), (2) and (3) with necessary modifications and the reference in subsection 20 (1) to an applicant is deemed to be a reference to any party to the hearing.

#### Same

(18) Subsections 20 (4) to (7) apply to the hearing with necessary modifications.

#### Assistance

(19) The Director of Titles may, in the course of the hearing, require a party to the hearing to produce a document or record and to provide whatever assistance is reasonably necessary, including using any data storage, processing or retrieval device or system to produce information in any form, and the person shall produce the document or record or provide the assistance.

**(7) The French version of the following provisions of the Act is amended by striking out “réclamation” wherever that expression appears and substituting in each case “demande”:**

- 1. Subsection 58 (2).**
- 2. Clause 59 (1) (a).**
- 3. Subsection 59 (2).**

**(8) Subsection 59 (1) of the Act is amended by striking out “or” at the end of clause (b) and by adding the following clauses:**

#### fraud

(d) if the person knowingly participates or colludes in a fraud with respect to the interest or right on which the claim is founded;

#### subrogated claim

(e) if the interest or right on which the claim is founded is derived on or after October 19, 2006 from a subrogated claim; or

#### claim of insurer

(f) if the person makes the claim, on or after October 19, 2006, on behalf of an insurer of the person.

**(9) The Act is amended by adding the following sections:**

#### Inspection

**59.1 (1)** In this section,

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“inspector” means the Director of Titles or a person designated in writing by that Director when exercising any of the powers set out in this section.

#### Powers

(2) Upon having a reasonable belief that a person described in subsection (3) is likely to have information relevant to determining whether a payment of compensation out of The Land Titles Assurance Fund is authorized under subsection 57 (4.1), an inspector may,

(a) require that the person produce for inspection and examination, in a readable form, any documents and records that may contain the information;

(b) require that the person provide whatever assistance is reasonably necessary to produce documents and records in a readable form when required to do so under clause (a), including using any data storage, processing or retrieval device or system for that purpose;

(c) upon giving a receipt for them, copy any of the things that the person is required to produce under clause (a) if the inspector returns the things promptly to the person who produced them; and

(d) require that the person answer all inquiries relevant to the information.

#### Persons being inspected

(3) The persons who are subject to an inspection under subsection (2) are every person who is registered as the owner of land or some estate or interest in land with respect to which an application for compensation from The Land Titles Assurance Fund is made under subsection 57 (4.1) or who was registered as such at the time the claim for compensation arose.

#### Identification

(4) An inspector shall produce, on request, evidence of the authority to carry out an inspection.

#### No obstruction

(5) No person shall,

(a) obstruct an inspector conducting an inspection;

(b) withhold from the inspector or conceal information that is relevant to the inspection; or

(c) withhold from the inspector or conceal, alter or destroy any documents or records that are relevant to the inspection.

#### Admissibility of copies

(6) A copy of a document or record certified by an inspector to be a true copy of the original is admissible in evidence to the same extent as the original and has the same evidentiary value.

#### Offence

**59.2** A person who contravenes subsection 59.1 (5) is guilty of an offence and, on conviction, is liable to,

(a) a fine of not more than \$50,000 or imprisonment for a term of not more than two years less a day, or both, if the person is an individual; and

(b) a fine of not more than \$250,000, if the person is a corporation.

**(10) Section 78 of the Act is amended by adding the following subsections:**

#### Exception

(4.1) Subsection (4) does not apply to a fraudulent instrument that is registered on or after October 19, 2006.

#### Non-fraudulent instruments

(4.2) Nothing in subsection (4.1) invalidates the effect of a registered instrument that is not a fraudulent instrument described in that subsection, including instruments registered subsequent to such a fraudulent instrument.

**(11) Sections 155 and 156 of the Act are repealed and the following substituted:**

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## Fraudulent dispositions

**155.** Subject to this Act, a fraudulent instrument that, if unregistered, would be fraudulent and void is, despite registration, fraudulent and void in like manner.

## Offences

**156.** (1) A person is guilty of an offence if the person fraudulently procures or attempts to fraudulently procure a fraudulent entry on the register, an erasure or deletion from the register or an alteration of the register.

## Penalty

(2) A person who is convicted of an offence under this section is liable to,

(a) a fine of not more than \$50,000 or imprisonment for a term of not more than two years less a day, or both, if the person is an individual; and

(b) a fine of not more than \$250,000, if the person is a corporation.

## Order for compensation or restitution

(3) If a person is convicted of an offence under this section, the court making the conviction may, in addition to any other penalty, order the person convicted to pay compensation or to make restitution.

## Limitation

(4) No proceeding under this section shall be commenced more than six years after the facts upon which the proceeding is based first came to the knowledge of the Director of Titles.

## Evidence

(5) A statement as to the time when the facts on which the proceeding is based first came to the knowledge of the Director of Titles, that purports to be certified by the Director, is, without proof of the Director's office or signature, admissible in evidence in any proceeding as proof, in the absence of evidence to the contrary, of the facts stated in it.

**(12) Section 163 of the Act is amended by adding the following subsections:**

## Regulations

(0.1) The Lieutenant Governor in Council may make regulations governing the publication of information, including personal information as defined in the *Freedom of Information and Protection of Privacy Act*, regarding fraud or suspected fraud in the land titles system.

## Disclosure permitted

(0.2) Any information published under the authority of a regulation made under subsection (0.1) is deemed to have been disclosed in compliance with clause 42 (1) (e) of the *Freedom of Information and Protection of Privacy Act*.

**(13) Section 163.1 of the Act is amended by adding the following subsection:**

## Director's orders

(1.1) The Director of Titles may make orders,

(a) specifying evidence for the purposes of clause 57 (13) (b); or

(b) specifying what constitutes the requisite due diligence for the purposes of clause 57 (4) (b) or (4.1) (b).

**(14) Subsection 163.1 (2) of the Act is amended by adding "or by the Director of Titles under subsection (1.1)" after "subsection (1)".**

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## REGISTRY ACT

### 22. (1) Section 101 of the *Registry Act* is repealed and the following substituted:

#### Offences

**101.** (1) A person, other than the land registrar or other officer when entitled by law to do so, is guilty of an offence if the person,

- (a) alters any book, record, plan, registered instrument or deposited document;
- (b) by any means or in any way adds to or takes from the contents of any book, record, plan, instrument or document; or
- (c) removes or attempts to remove any book, record, plan, instrument or document from the place where it is kept.

#### Exception

(2) Subsection (1) does not apply to alterations to a record made by direct electronic transmission under Part III of the *Land Registration Reform Act*.

#### Penalty

- (3) A person who is convicted of an offence under this section is liable to,
- (a) a fine of not more than \$50,000 or imprisonment for a term of not more than two years less a day, or both, for each book, record, plan, instrument or document that the person alters, removes or attempts to remove, if the person is an individual; and
  - (b) a fine of not more than \$250,000 for each book, record, plan, instrument or document that the person alters, removes or attempts to remove, if the person is a corporation.

#### Order for compensation or restitution

(4) If a person is convicted of an offence under this section, the court making the conviction may, in addition to any other penalty, order the person convicted to pay compensation or to make restitution.

#### Limitation

(5) No proceeding under this section shall be commenced more than six years after the facts upon which the proceeding is based first came to the knowledge of the Director of Titles.

#### Evidence

(6) A statement as to the time when the facts on which the proceeding is based first came to the knowledge of the Director of Titles, that purports to be certified by the Director of Titles, is, without proof of the person's office or signature, evidence of the facts stated in it.

### (2) The definitions of "notice of claim" and "notice period" in subsection 111 (1) of the Act are repealed and the following substituted:

"notice of claim" means a notice of claim that is registered under subsection 113 (2) and that is in the prescribed form and includes a notice registered under a predecessor of this Part or under *The Investigation of Titles Act*, being chapter 193 of the Revised Statutes of Ontario, 1960, or a predecessor of it; ("avis de réclamation")

"notice period" means the period ending on the day 40 years after the later of,

- (a) the day of the registration of an instrument that first creates a claim, or
- (b) the day of the registration of a notice of claim for a claim; ("délai d'avis")

### (3) Subsection 111 (1) of the Act is amended by adding the following definition:

"year" means a period of 365 consecutive days or, if the period includes February 29, 366 consecutive days. ("année")

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**(4) Subsection 113 (2) of the Act is repealed and the following substituted:**

Notice of claim

(2) A person having a claim or a person acting on that person's behalf, may register a notice of claim with respect to the land affected by the claim,

(a) at any time within the notice period for the claim; or

(b) at any time after the expiration of the notice period but before the registration of any conflicting claim of a purchaser in good faith for valuable consideration of the land.

**(5) Subclause 113 (5) (a) (iv) of the Act is repealed and the following substituted:**

(iv) of a person to an unregistered right of way, easement or other right that the person is openly enjoying and using;

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## APPENDIX 2

THE ONTARIO GAZETTE / LA GAZETTE DE L'ONTARIO 697

# Publications under the Regulations Act Publications en vertu de la Loi sur les règlements

2007—03—10

## ONTARIO REGULATION 53/07

made under the

### LAND TITLES ACT

Made: February 14, 2007

Filed: February 20, 2007

Published on e-Laws: February 21, 2007

Printed in *The Ontario Gazette*: March 10, 2007

Amending O. Reg. 26/99  
(General)

Note: Ontario Regulation 26/99 has previously been amended. Those amendments are listed in the Table of Regulations – Legislative History Overview which can be found at [www.e-Laws.gov.on.ca](http://www.e-Laws.gov.on.ca).

**1. Ontario Regulation 26/99 is amended by adding the following heading immediately before section 1:**

DEFINITIONS

**2. The Regulation is amended by adding the following heading immediately before section 2:**

REGISTRATION OF DOCUMENTS

**3. The Regulation is amended by adding the following sections:**

CLAIMS AGAINST THE LAND TITLES ASSURANCE FUND

**15.** An instrument perpetrates a fraud for the purposes of clause (d) of the definition of “fraudulent instrument” in section 1 of the Act if,

- (a) it is a cessation of a charge or an encumbrance; and
- (b) the person who purports to register it is a fraudulent person.

**16.** (1) Subject to subsection (2), the following classes of persons are prescribed for the purposes of subsections 57 (4.1) and (4.2) of the Act:

1. An individual who was the registered owner of the land that is the subject of the application for compensation from the Assurance Fund mentioned in the applicable subsection, where the land was used for residential purposes.

2. An individual who is a purchaser in good faith for valuable consideration of the land that is the subject of the application for compensation from the Assurance Fund mentioned in the applicable subsection, where the land is used for residential purposes.

(2) No individual or person who is entitled to receive compensation from an insurer for any part of the loss for which the individual or person applies for compensation from the Assurance Fund shall be part of a class prescribed under subsection (1).

Made by:  
Date made: February 14, 2007

GERRY PHILLIPS  
*Minister of Government Services*

**APPENDIX 3**  
ORDER OF THE DIRECTOR OF TITLES Re: EVIDENCE FOR FRAUD

**ORDER OF THE DIRECTOR OF TITLES**

*LAND TITLES ACT*  
**R.S.O. 1990, c. L.5, AS AMENDED**

I, Katherine M. Murray, Director of Titles, hereby order that:

**IN THE MATTER OF** the *Land Titles Act*, R.S.O. 1990 Chapter L.5, subsection 163.1(1.1) and clause 57(13)(b):

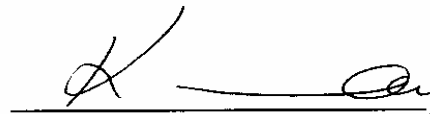
**WHEREAS**, pursuant to clause 163.1(1.1)(a) of the *Land Titles Act*, the Director of Titles may make orders specifying what constitutes evidence for the purposes of clause 57(13)(b);

**AND WHEREAS** the Director may, at any time, vary any of the evidence requirements specified under this Order for the purposes of clause 57(13)(b) of the *Land Titles Act*, having regard to the circumstances of the case,

**IT IS HEREBY ORDERED THAT** the evidence required for the purposes of clause 57(13)(b) may include:

- Copy of the parcel register relating to the subject lands;
- Copies of the instrument(s) registered on title which are alleged to be fraudulent;
- Copies of the instrument(s) registered on title which relate to the person(s) shown as registered owner, or as a holder of an interest in the land, prior to the date of registration of the instrument(s) alleged to be fraudulent;
- A copy of the Police Report, if any is available, or contact information regarding the officer contacted; and a certified copy of any Information sworn with respect to the matter;
- Any notes or records made by the parties to the proceeding, regarding calls or meetings, and any correspondence, notices, reports or other documents sent or received with respect to the matter;
- Where the hearing is in writing, a statutory declaration or affidavit by the parties indicating the facts regarding the alleged fraud; and additional affidavits of any person having further knowledge of the facts;
- A true copy of any relevant court orders;
- Copies of any available transcripts of related court proceedings, or examinations for discovery; and
- Any other documentation, which the Director deems necessary to establish proof of fraud.

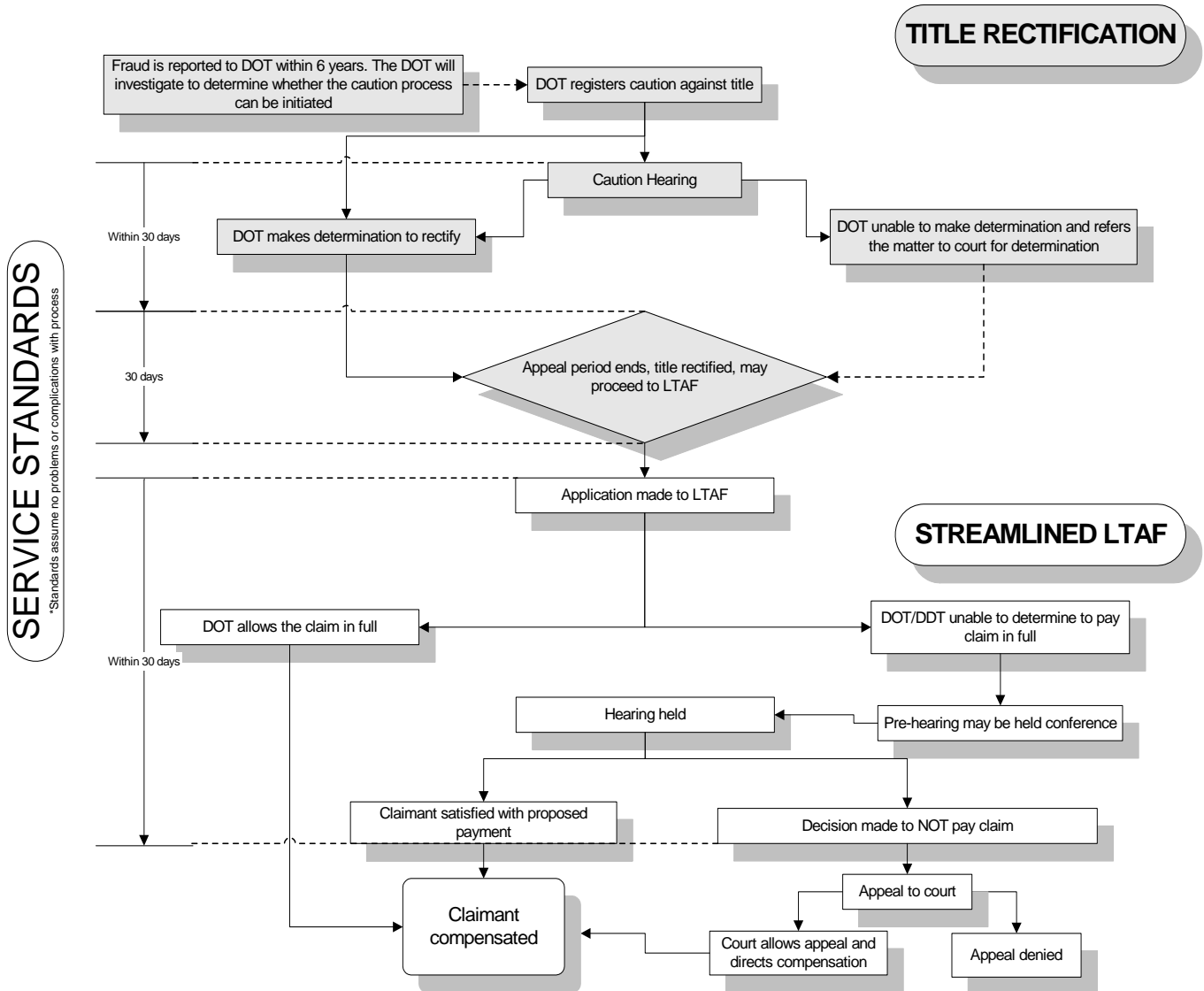
**Dated at Toronto, this 25<sup>th</sup> day of May 2007.**

  
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Katherine M. Murray  
Director of Titles

ODOT-2007-01

## APPENDIX 4 LTAF Payment Process Charts

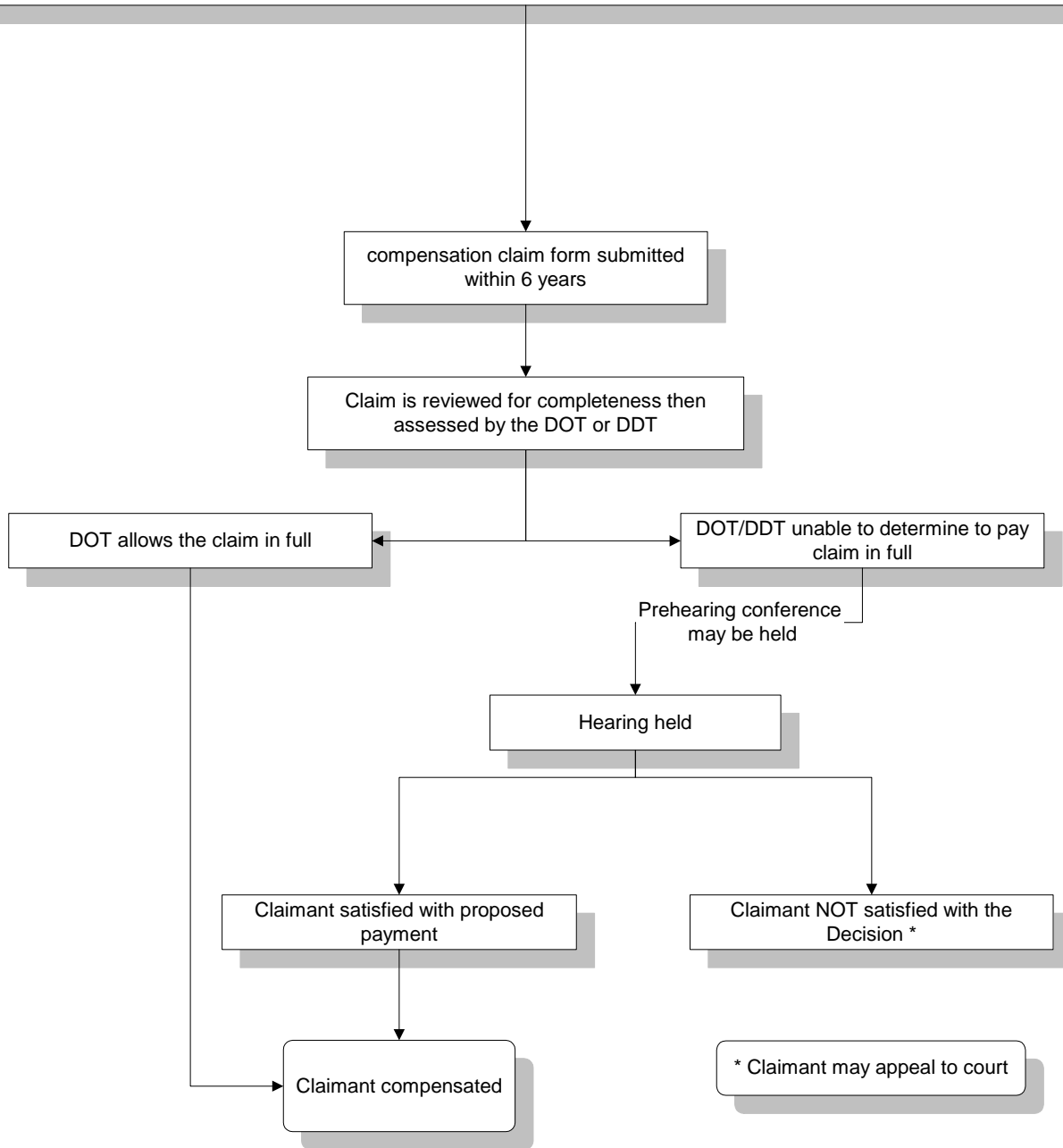
### Earlier Payment Process for Persons Prescribed:



## Traditional LTAF Process:

You discovered a loss as a result of wrongful deprivation of land or of some estate or interest in land by reason of:

- 1) The land being brought under the LTA;
- 2) Some other person being registered as owner through fraud; or
- 3) Any misdescription, omission or other error in a certificate of ownership or charge or in an entry on the register



**APPENDIX 5**  
ORDER OF THE DIRECTOR OF TITLES RE: DUE  
DILIGENCE

**ORDER OF THE DIRECTOR OF TITLES**

*LAND TITLES ACT*  
R.S.O. 1990, CL. 5, AS AMENDED

I, Katherine M. Murray, Director of Titles, hereby order that:

**IN THE MATTER OF** the *Land Titles Act*, R.S.O. 1990, Chapter L.5, subsection 163.1 (1.1), clause 57(4)(b) and clause 57(4.1)(b):

**WHEREAS** pursuant to subsection 163.1(1.1) of the *Land Titles Act*, the Director of Titles may specify what constitutes the requisite due diligence for the purpose of clause 57 (4)(b) and clause 57 (4.1)(b);

**AND WHEREAS** the Director may, at any time, vary any of the due diligence requirements specified under this Order that a person must demonstrate for the purpose of clause 57(4)(b) or clause 57(4.1)(b) of the *Land Titles Act*, having regard to the circumstances of the case;

**AND FOR THE PURPOSE OF THIS ORDER** the following words will have the corresponding meanings:

“person” – means the claimant as defined in subsection 59(2) the *Land Titles Act*, R.S.O. 1990 Chapter L.5, as may be amended from time to time; and

“property” – means the land or an interest in land that is the subject of the application for compensation from the Land Titles Assurance Fund;

**IT IS HEREBY ORDERED THAT** due diligence for the purpose of clause 57(4)(b) will require a person who is a mortgagee, chargee or a lender to demonstrate that the person has taken reasonable steps necessary in the circumstances of the case in order to:

- (a) verify the identity of the chargor or mortgagor who is charging or mortgaging the property; and
- (b) verify that the registered owner is, in fact, transferring, charging or mortgaging the property;

**IT IS FURTHER ORDERED THAT** due diligence for the purpose of clause 57(4)(b) and clause 57(4.1)(b) will require a person who is a purchaser in good faith for valuable consideration to demonstrate that the person has taken reasonable steps necessary in the circumstances of the case in order to verify that the registered owner of the property is in fact transferring the property;

**IT IS FURTHER ORDERED THAT**, where the person is a mortgagee, chargee or a lender, reasonable steps necessary to demonstrate that the person has verified the identity of the chargor or mortgagor who is charging or mortgaging the property may include:

1. conducting or causing the person's agent to conduct an in person meeting with the chargor or mortgagor within a reasonable time prior to the date of the charge, or mortgage of the property;

2. obtaining, from the chargor or mortgagor at the time of signing of the mortgage loan application, one piece of original government issued photo identification that must contain the name, date of birth and address of the mortgagor and one additional piece of original identification that provides the name of the chargor or mortgagor;
3. making and retaining copies of the front and back of the identification provided by the chargor or mortgagor;
4. instructing the person's agent to retain copies of the front and back of the identification provided by the chargor or mortgagor;
5. verifying the information supplied by the chargor or mortgagor in the mortgage loan application by checking the employment references and by ensuring that the information contained in a consumer report relating to the credit information of the chargor or mortgagor corresponds to the information in the mortgage loan application; and
6. satisfying any other requirement that is just or appropriate in the circumstances of the case;

**IT IS FURTHER ORDERED THAT**, where the person is a mortgagee, chargee or a lender, reasonable steps necessary to demonstrate that the person has verified that the registered owner of the property is in fact transferring, charging or mortgaging the property may include:

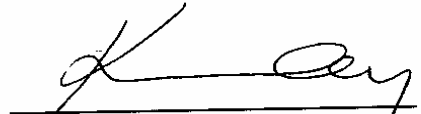
1. obtaining a copy of the Agreement of Purchase and Sale, whereby the chargor or mortgagor agreed to purchase the property;
2. conducting or causing the person's agent to conduct an onsite appraisal of the property within a reasonable time prior to the date of the transfer, charge or mortgage of the property;
3. visiting or causing the person's agent to visit the property within a reasonable time prior to the date of the transfer, charge or mortgage of the property;
4. instructing the person's agent to complete the appropriate searches of title affecting the person's interest in the property;
5. reviewing or causing the person's agent to review, the Multiple Listing Service (MLS) history or other sale listing, if any is available, and making reasonable inquiries into the sale listing; and
6. satisfying any other requirement that is just or appropriate in the circumstances of the case;

**AND IT IS FURTHER ORDERED THAT**, where the person is a purchaser in good faith for valuable consideration, reasonable steps necessary to demonstrate that the person has verified that the registered owner of the property is in fact transferring the property may include:

1. instructing the person's agent to complete the appropriate searches of title affecting the person's interest in the property;
2. providing the person's agent with a copy of the Agreement of Purchase and Sale, whereby the person agreed to purchase the property;

3. visiting or causing the person's agent to visit the property within a reasonable time prior to the date of the transfer of the property;
4. reviewing or causing the person's agent to review, the MLS history or other sale listing, if any is available, and making reasonable inquires into the sale listing; and
5. satisfying any other requirement that is just or appropriate in the circumstances of the case.

**Dated at Toronto, this 25<sup>th</sup> day of May, 2007.**

  
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Katherine M. Murray  
Director of Titles

ODOT-2007-02