

BACKGROUND

Until section 191 of the Land Titles Act came into force upon proclamation of the Land Titles Amendment Act, 1982 (1) what is commonly known as a certificate of no appeal was only legally required upon registration of a foreclosure order vesting the title to land in a mortgagee or encumbrancee. (2) The addition of section 191 has expanded the requirement for a certificate of no appeal to a wide range of orders. The purpose is to delay implementation of certain orders pending a possible appeal, or the disposition of any appeal taken, in cases where subsequent transactions might make it difficult or impossible to restore the parties to their original position if the order had been acted upon prior to a successful appeal.

REGISTRATION PROCEDURE

1. **Type of order to which section 191 applies** - The section provides that a judgment, order or certificate made in any court proceedings that operates to:

- a) cancel a certificate of title,
- b) terminate an interest in land, or
- c) discharge an instrument or caveat,

shall not be registered unless certain requirements outlined below are met. Section 191 does not generally apply to an order that directs the registration of a mortgage or lease. These orders do not terminate an interest - they create an interest.

2. The Registrar is not normally a named party in court proceedings as the Registrar has no interest in the issue(s) being litigated and should not be named merely because the court will order the Registrar to do certain acts to implement the court's direction in respect of the matter(s) in issue. (3) However if a court order (including a fiat) is sought as a result of the Registrar's refusal to perform a filing or registration then the Registrar should be named in, or at least given prior adequate written notice of, the application for that order. If it is known that such an order will be sought the customer should be advised (preferably in writing) of this requirement. An exception would be where the order being sought simply relates to the due execution of an instrument issued as mentioned in section 162 of the Land Titles Act.

3. **Requirements** - A judgment, order, fiat or certificate to which the section applies may only be registered in the following circumstances:

- a) where all parties named in the style of cause for the proceedings, or their solicitors consent (an order which is "consented to" or "consented to and approved as to form" is acceptable as well as an order called a "Consent Order" which is consented to by the respondent. An order that is "approved as to form" is not sufficient because this phrase is not regarded as a commitment not to appeal the order.),
- b) where the order recites that the parties have consented to the order,

- c) where it was granted *ex parte* and states that it does not need to be served on any person (If the order does not specifically state it was granted *ex parte*, a statutory declaration from the solicitor declaring it was granted *ex parte* is sufficient.),
- d) where it is accompanied by a written undertaking of all parties having a right to appeal, or their solicitors, that no appeal will be commenced,
- e) where it is accompanied by a certificate of the clerk of the court indicating that:
 - (i) no defence or demand of notice has been filed on behalf of any defendant, or
 - (ii) that the time for appeal has expired and no notice of appeal has been filed, or
- f) where it is accompanied by a solicitor's certificate to the effect
 - (i) that an appeal to the Court of Appeal has been finally disposed of or discontinued and that the time for an appeal to the Supreme Court of Canada has expired and no appeal has been filed, or
 - (ii) that an appeal to the Supreme Court of Canada has been finally disposed of or discontinued. (4)

A copy of the final judgment of the Court of Appeal or Supreme Court of Canada must accompany the solicitor's certificate. (5)

4. **Exceptions** - The above requirements need not be complied with in the following situations:

- a) an order removing a builders' lien or a certificate of *lis pendens* with respect to a builders' lien, (6) or
- b) a judgment, order or certificate that expressly states that it shall be registered notwithstanding the requirements of section 191(1). (7)

5. An affidavit of value is required if title is being vested in a new owner. (8) The fee prescribed in [Tariff item 3](#) is charged.

STATUTE AND CASE REFERENCES

Statute references are to the Land Titles Act, R.S.A. 2000, c. L-4, unless otherwise indicated.

- 1. S.A. 1982, c. 23
- 2. s. 44(2), Law of Property Act, R.S.A. 1980, c. L-8 repealed by S.A. 1982, c.23, s. 31.
- 3. *Director of Soldier Settlement v. Registrar North Alberta Land Registration District et al.* (1982), 17 Alta. L.R. (2d) 351 (Master)
- 4. s. 191(1)
- 5. s. 191(2)
- 6. s. 191(3)(a)
- 7. s. 191(3)(b)
- 8. s. 164(3)