

Subject: **POSTPONEMENTS**Date Issued **2002 01 01**

## **BACKGROUND**

In the Land Titles system, priority is determined by the serial number assigned to an instrument or caveat upon its filing or registration. (1) Section 107 of the Land Titles Act permits a person to voluntarily alter the priority of his instrument or caveat by filing a postponement in the prescribed form (FORM 17). The registration of a postponement has the effect of postponing the rights of the person in the land to the same extent as if the postponed instrument or caveat had been registered immediately after the instrument or caveat to which it is expressed to be postponed. (2) A postponement, which does not alter the registration priority of documents, is not accepted for registration (e.g., a postponement of a second mortgage to a first mortgage).

Section 104 of the Land Titles Act establishes priority for advances and obligations secured pursuant to the terms of a mortgage either for a specific principal sum or for a revolving line of credit up to a specific principal sum, notwithstanding that they are made or incurred subsequent to the registration of any other instrument (except a builders' lien) or caveat.

## **REGISTRATION PROCEDURE**

1. The prescribed form (FORM 17) of postponement (3) must be executed by the person entitled to the benefit of the document being postponed (e.g., mortgagee, lessee, caveator, etc.) with the usual execution requirements. (4) If a caveat or builders' lien was signed by an agent, the agent may execute the postponement. An attorney with proper authority pursuant to a registered power of attorney may also execute a postponement.

2. If any of the documents referred to in a postponement are submitted for registration with the postponement, the registration number of the instrument(s) may be inserted in the postponement if the registrant has given clear instructions to do so. This does not apply to a postponement attached to a caveat.

3. A postponement must change the registration priorities on title in order to be registrable (e.g., a first mortgage being postponed to a second mortgage). A postponement, which postpones a second mortgage to both, a first mortgage and a caveat relating to an agreement amending the first mortgage, is registrable if the caveat is subsequent to the second mortgage. A postponement of a utility lien to a mortgage, which does not change priority, is also registrable as these liens have priority unless specifically postponed to a prior mortgage. (5)

4. As no provision is made in section 107 for a partial postponement, a postponement, which purports to postpone only part of the interest under a document,

either as to an amount or as to the interest of a particular party, is not registrable. A caveat claiming an interest pursuant to such an agreement may be accepted for registration.

5. There is no provision in the Land Titles Act for a discharge of a postponement. However, another postponement could be registered to restore the original priorities. In this case register the second postponement as a discharge of the first postponement to alleviate confusion as to the priority of instruments.

6. **Fees** - When only one certificate of title is affected, the fee listed in [Tariff item 11\(6\)](#) is charged. If the postponement affects more than one certificate of title, the extra reference fee listed in [Tariff item 13](#) is charged for each certificate of title affected after the first.

## STATUTE AND CASE REFERENCES

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

1. s. 14(3)
2. s. 107(2)
3. Form 17, Land Titles Act Forms Regulation, Alberta Regulation 480/81
4. see procedure on Attestation [AFF-1](#), [AFF-2](#) and [COR-1](#)
5. s. 21(2)(b), 21(3) and 20(5), Rural Electrification Loan Act, R.S.A. 2000, c. R-19