

Practice Watch, by Barbara Buchanan, Practice Advisor

E-filing and retention of documents — What to do?

Some lawyers have asked what to do with the paper version of real estate documents now that the electronic versions are deemed by statute to be the originals once they are filed in the land title office.

Section 168.6(1) of the *Land Title Act* provides that an electronic instrument that has been received by the registrar under s. 153 is conclusively deemed to be the original of the instrument. For example, an electronically filed Form A received by the registrar is conclusively deemed to be the original, rather than the paper Form A with the actual signatures.

In most cases, you can return the paper originals to the client by enclosing them with the final reporting letter before closing out the client's file. You should also keep a copy in the client's file for the normal file retention period.

Lawyers who are concerned about retaining paper versions in the event of a requirement by the registrar to produce documents for inspection before registration pursuant to s. 168.51 of the *Land Title and Survey Authority Act* should note the LTSA's practice bulletin of November 8, 2006 (www.ltsa.ca/documents/ltl/bulletin%200306.pdf). According to that bulletin, the LTSA may require an applicant to produce for inspection either the paper form with the original signatures (referred to in the legislation as an "executed true copy of the electronic instrument") or a "copy of that true copy."

The LTSA has advised that the pending application stage of the registration process is currently about six days from the time the documents are transmitted electronically to the land title office to the time of registration. Therefore, lawyers should be in a position to comply with inspection requests from the registrar before final registration of the electronic instrument.

A suggested minimum retention and disposition schedule for real estate files is set out below. Keep in mind that these are guidelines and that you must apply your own judgement as well.

For general information about client documents and retention guidelines, see *Whose File is it Anyway? Who Owns Client File Documents When the Retainer Ends?* and *Closed Files – Retention and Disposition*, both of which are in the [Practice Support/Articles](#) section of the Law Society's website.

Suggested minimum retention and disposition schedule for real property files	
Residential conveyance	10 years after State of Title Certificate is received
Commercial conveyance	10 years after closing (there may be transactions of such complexity that a longer retention period is

	advisable)
Lease/Sub-Lease/Licence to Occupy	Six years after lease has expired, including any renewal
Foreclosure	Six years after Order Absolute, property sold, judgment satisfied or instruction received from client to stop proceedings
Receivership	Six years after receiver is discharged or payment unless receiver has entered into another agreement
Option to Purchase/Right of First Refusal	Six years after the options expire or are exercised
Easement/Right-of-Way/Restrictive Covenant	10 years after registration
Review of title and opinion	Six years from giving an opinion, unless opinion leads to an action
Mortgage/Debenture	Six years after expiry of mortgage term
Subdivision/Single plan strata development	Six years after completion of the sale of all the property
Phased strata development	Six years after completion of the sale of all of the property in the final phase
Real estate prospectus	Six years after sale of all property covered by prospectus
Building contract	Six years after substantial completion
Encroachment settlement	Six years after settlement