

Practice Note 02-16

Land Title and Survey Authority of BC Land Title Division

September 28, 2016

Truing Up an Original Electronic Instrument

1. Background

The Land Title Office has received numerous inquiries on the acceptability of making changes to the original electronic instrument after execution of the true copy in order to bring the original instrument in-line with changes and additions that were made to the true copy after it was printed. This process is referred to as "truing up" the original instrument.

In accordance with s. 168.3(3), *Land Title Act* (Act), a subscriber must not apply their digital signature to an electronic instrument unless they are in possession of an executed true copy or copy of a true copy (true copy):

- (3) A subscriber must not incorporate his or her electronic signature into an electronic instrument unless
 - (a) if Part 5 applies in relation to the electronic instrument, a true copy of the electronic instrument has been executed and witnessed in accordance with Part 5, and otherwise, a true copy of the electronic instrument has been executed in accordance with the enactment that applies in relation to the electronic instrument, and
 - (b) the true copy referred to in paragraph (a), or a copy of that true copy, is in the possession of the subscriber.

True copy is defined under s. 1 of the Act:

"true copy" means in relation to an electronic instrument, electronic plan application or electronic plan, as those terms are defined in s. 168.1, a legible paper copy of the electronic instrument, electronic plan application or electronic plan containing every material provision and particular contained in the original.

2. Practice:

Truing up of the electronic instrument is expected as certain particulars required on the electronic instrument may not be known at the time it is prepared and the paper print is made, e.g. the date of execution. This practice note is being issued to provide practitioners with some guidelines regarding the truing up of the electronic instrument.

True copy and Truing up Principles

1. The executed true copy must be a print of the electronic instrument of which it purports to be a true copy.
2. There must be one electronic instrument for each true copy. Printing off a series of copies of an incomplete electronic form and executing these before all material information has been completed, then adding the material facts after the execution of these forms and subsequently populating a different electronic form is unacceptable. This is because the executed forms are not true copies of the newly created instrument.
3. Creating a new electronic instrument based on the content of a printed hardcopy form does not make the printed form a true copy.
4. Truing up the execution section of the electronic instrument is expected and acceptable since the person preparing the instrument will not typically know the date of execution, who will be witnessing the transferor's signature or whether the transferor will execute in their own capacity or through a representative, e.g. attorney.
5. When execution occurs outside of the Province and is supported by a separate certification of the officer witnessing the execution, the separate certificate must be scanned and attached to a declaration general and included when submitting the electronic instrument.
6. The goal when truing up the execution details should be to make the electronic instrument match the true copy exactly. However, where the witnessing officer writes or stamps more information than can fit in the officer field of the form, it is acceptable to truncate the information so long as the essential facts pertaining to the witnessing officer's execution are set out. This includes the full name and address of the officer as well as the qualifications that make him or her an officer under the *Evidence Act* and Part 5 of the *Land Title Act*.
7. Truing up the application section to change the applicant information or add additional information, e.g. telephone number or file reference, is also acceptable.
8. To avoid transcription errors, efforts should be made to complete the filling out of the electronic original form to the greatest extent possible, before the true copy is printed.
9. Any change made to the true copy must be reflected in the electronic instrument.

For further information see the Land Title Practice Manual, the Land Title Electronic Forms Guidebook, the Law Society of BC's Notice to the Profession entitled "Law Society Protocol for land title electronic instruments", and the paper written by Edward Wilson entitled "Land Title Branch - Electronic Filing System: The Statutory Framework" included in the Continuing Legal Education Society of BC publication LTO E-Filing: Fall 2004 Update.

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